



Ombudsreport 1997

Annual Report of the Ombudsman, Province of British Columbia

Don Pierce, UVic Photo Services



Message from the Ombudsman

Dulcie McCallum

May 4, 1998

The Honourable Gretchen Brewin
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC

It is with a great deal of pride and excitement that I submit my 1997 Annual Report. My Office has once again experienced a very active and challenging year. I am grateful to all those individuals who have worked with me to assist in meeting my duties as Ombudsman.

A number of reports were tabled during the year. Special Report No. 19 reported on the investigation into the problems at Willemar Bluffs in the Comox-Strathcona Regional District, problems that unfortunately remain unresolved. An investigation of the implementation by government of the Gove Report into the death of Matthew Vaudreuil began in 1997 and was completed early in 1998 with the tabling of *Getting There*, Public Report No. 36. A strategic planning process begun in 1997 was completed early in 1998 with the tabling of Special Report No. 20, *Ombuds Strategic Plan*.

Our interest in the concerns of children and youth remains high. Many excellent initiatives have been put in place as a result of the Gove Report and the work of the Transition Commissioner. Nevertheless, the role of the Ombudsman to ensure the fair and effective administration of those within government responsible for children is critical. I have included in this Report an excerpt from my submission to the Special Legislative Committee responsible to oversee the implementation of Gove. My submission outlines how all the new players can work together to serve the interests of children and youth. In addition, my Office worked with Senator Landon Pearson and Cherry Kingsley of PEERS (Prostitutes Empowerment, Education and Resource Society) to plan, together with UVic, the *Out from the Shadows* International Summit. My 1998 Annual Report will provide full details of the Summit.

The state of Parana appointed Brazil's first Ombudsman. The incumbent, Mr. João Oliveira and I began discussions with the Canadian International Development Agency (CIDA) with a view to establishing "twin" Ombudsman offices. The work of his office with children and local governments closely matches ours. A delegation from Brazil visited

my Office in the fall of 1997 and a delegation from my Office then returned to visit Brazil. CIDA covered all the expenses for exploring the establishment of a three-year program with Brazil. We are optimistic that the federal government will approve the project and are thankful to the Honourable Lloyd Axworthy, who is responsible for CIDA, for his interest in supporting this project.

The highlights of the Canadian Ombudsman Conference are reported. The Canadian Ombudsmen are working to formalize their relationship with the US Ombudsman Association (USOA) to form the North American Region of the International Ombudsman Institute. That work should be finalized in 1998. I am continuing to work as vice president on the USOA board. The USOA Annual Conference was held in Portland, Oregon in 1997, enabling staff from Canadian jurisdictions to attend as speakers and participants. Excerpts from the keynote addresses given by Andrew So, the Hong Kong Ombudsman, and Roberta Jamieson, the Ontario Ombudsman, are included in this Report.

A very exciting project began in 1997. I asked Bill Summersgill, an Ombudsman Officer, to act as part-time Coordinator of Volunteers, to set up a volunteer program for the Office. My dream was to invite retired people to train as "Ombuddies" and go into the public schools to teach young students about the role of the Ombudsman. Greg Smith from the Curriculum Branch of the Ministry of Education, Skills and Training worked with us to advise us on the content of our presentation. We approached the Retired Civil Servants Association for volunteers for the pilot project in the Victoria School District. The Chair of the School Board, Carole James, approved the pilot and supported the committee with the assistance of a grade five teacher, Andrew Barclay.

My planned report regarding the serious issues facing seniors was not completed in 1997. Because government indicated that it would be focusing its efforts on seniors, I put our work on hold. I plan to report on seniors in 1998.

In 1999, the Office of the Ombudsman will celebrate its 20th Anniversary. I have asked the Lieutenant Governor, the Honourable Garde Gardom, who was a member of the Legislative Assembly and introduced the *Ombudsman Act*, to assist and participate in the celebrations. He has agreed to do so. We look forward to celebrating the contribution made by the Ombudsman of BC during the past two decades.

This Annual Report can be found on our Homepage at www.ombud.gov.bc.ca

Respectfully,

Dulcie McCallum

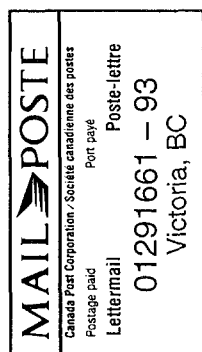
Dulcie McCallum
Ombudsman for the Province of BC

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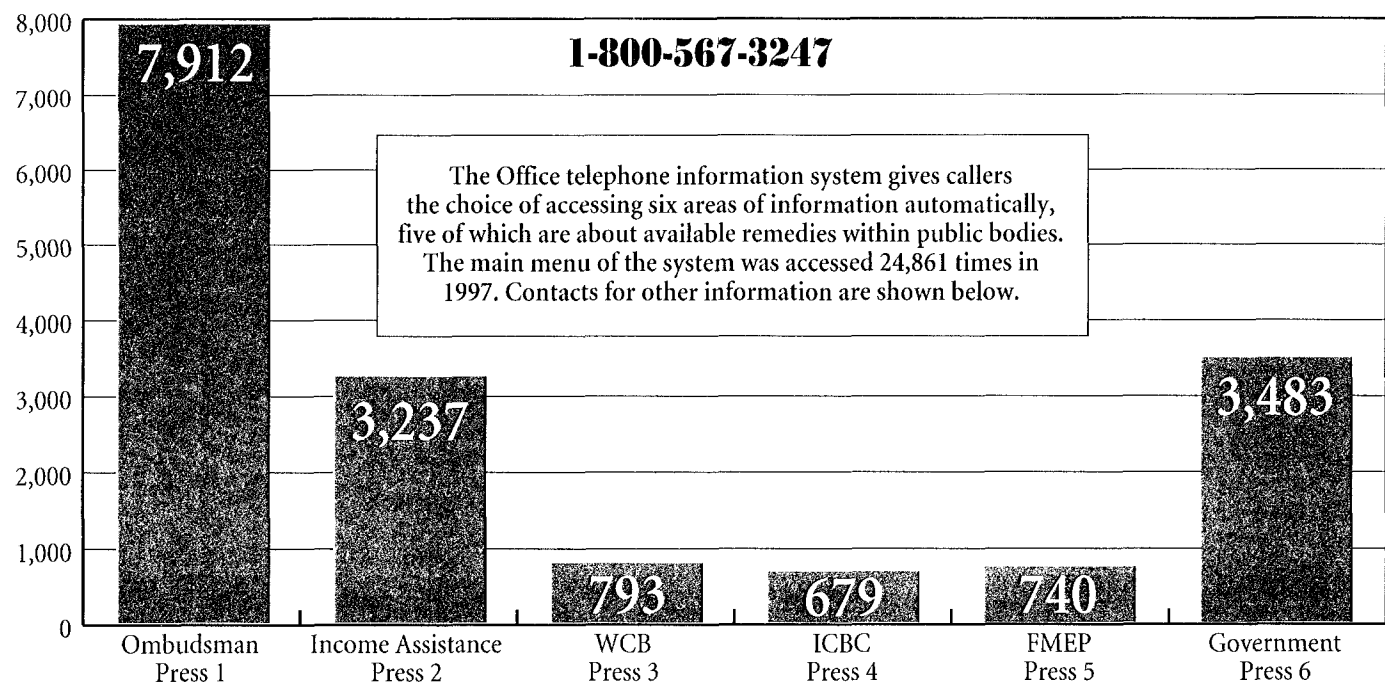
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Growth of the Telephone Tree





Speech

Well-being in the Workplace

excerpts from an address given by the Ombudsman at the Australasian and Pacific Ombudsman Conference (see page 26).

When I first became Ombudsman for BC, one of my Canadian colleagues woke up one morning to a magazine article entitled “The Workplace from Hell.” Disgruntled employees had gone public with their workplace complaints. Not long after, I began to receive complaints from unhappy employees of other officers of the Legislature. Regardless of the nature of their grievances, the fact was that these non-unionized workers had nowhere to go with their complaints. The final incident was when a person complaining to my Office became seriously disturbed and began stalking me and another Ombuds employee. Her constant and unexpected presence in the Office became a serious problem for my frontline staff who were ill equipped to cope with her unwelcome behaviour and their own stress.

As our Office was about to embark on the largest growth spurt in its history with proclamation of new authorities, I recognized that I had to turn my attention to the level of well-being in our own workplace.

Well-being has two components. The first is avoiding or coping with dangerous situations. The second is promoting a healthy and happy environment. The vulnerability of the Ombuds staff soon became very clear to me. We often work physically

separated from the rest of the public sector in order to honour our autonomy as an Officer and our independence from government. Our employees are excluded from union membership. And finally we serve many clients who are marginalized and at times hostile. Given this scenario, I looked for practical ways to promote well-being. This article is to share some of the ideas we put in place to achieve this goal.

Begin by hiring people who have the knowledge, skills and abilities to do the work. One of the criteria, for example, for any position at our Office now is to have the demonstrable skills to deal with people who present with challenging behaviours.

Have a plan in place. Often the most vulnerable staff are those who work at the frontline and receive the least pay. Involve those most affected on a safety and security committee. Give those directly responsible the authority to design the solutions. In our Office, this initiative resulted in the redesign of the reception area. We enhanced security with concave mirrors, locked entrances, predesigned escape passages, buzzers with well-understood codes, automatic dial 911 dedicated line and an employee buddy system. Network with those outside the Office who can support your staff in times of crisis. Local police should have a floor plan of the Office in the event of a hostage taking. Dispatch should know that most difficult situations will be handled internally, and that any 911 call ought to be taken very seriously.

Train all staff. Too often stress management focuses on the professionals responsible for the central work of the Office, in our case, investigations. Managing the needs of the public we serve, many of whom are angry and belligerent, and handling the fallout from providing such a service, are tasks that all staff need to be educated in together. Training must be practical. Our Office has a psychiatrist in Vancouver who provides on-the-spot consultations

in difficult situations and does workshops for all staff.

Articulate and document clear expectations for staff to give them a sense of calmness and clarity. We have one policy for all staff that outlines how, as an Office, we will serve people who present with challenging behaviours. If any member of our staff at any time feels afraid of a client she or he can, without prior approval from anyone, designate the individual in the case tracking system as a challenging complainant. This is a subjective test and respects the right of all staff to err on the side of their own personal safety. Because not all of us can know who these individuals might be at any given time, this policy is supported by the computer system. To ensure the policy is followed, there is a “pop up” screen on the case tracking system that will inform any employee at any time of the plan to serve a particularly challenging person.

Honour the work of the staff. Provide adequate resources to give staff the support and tools they need to do their work efficiently and effectively. Include in-service training, a library, a computer system and educational opportunities outside the Office. Respect the skills of staff by setting up a mentoring program that permits them the time to trade skills with others. Set debriefing sessions when there is a particularly difficult investigation with strong emotional aspects, such as the death of many children. Establish teams clustered by their assigned work to facilitate peer support. Highlight the big and little successes by having a set time at staff meetings for employees to share their stories. Have regular social events: birthdays, dinners or showers, where people, if they so choose, can build friendships and have a reprieve from engaging in stressful work. Publicly praise the work of individuals who show particular creativity, courage or tenacity. Too often the Ombudsman alone receives the credit and praise for the work of her delegates. Share the successes as an Office.

Ombudsman’s Community Outreach – a Sampling

January 8 Legislative Interns, Victoria 15 Newcomers’ Club, Victoria 17 Legal Process Course, UVic	February 19 Canadian Bar Association, Poverty Law Section 26 Ministry for Children and Families Symposium, UVic	March 5 Career Day, Oak Bay High School, Victoria 7 Women in Law Conference, UVic 7 International Women’s Day, Parliament Buildings 10 Meeting with Dr. Seiichi Kitano, Osaka, Japan, Sociologist	April 3 Legal, Constitutional, Administrative Committee, Queensland, Australia – visit to Office re: <i>Canadian Charter of Rights and Freedoms</i> 16 Auditor General of Canada – visit 16 Forum on Roles and	May 28 Distinguished Alumni Award, UVic	June 2 Society for Children and Youth AGM, Vancouver 2 Presentation re: setting up Internet communications, to representatives from Ombudsman offices in Ontario, Alberta and Yukon 9 Rediscovery Training Session, Closing Ceremonies, Pearson International College 11 Lunch at Government House, guest of Mrs. Garde Gardom 12 Third International Conference	July 18 Twenty-second Annual Conference on Law and Mental Health, Montreal	August 21 Leadership summit, Principals, Vice Principals, Ministry and Senior Staff, Coquitlam 18-20 Australasian and Pacific Islands Ombudsman Conference, Darwin, Australia	September 8-22 Host to three-person delegation from Parana, Brazil re: CIDA “twinning” project 10-12 Canadian Ombudsman Conference, Regina, Saskatchewan 19 Children’s Commission, Panel Tribunal Division Training, Vancouver	October 1 AM1040 Radio, Vancouver, Road Sense Auto Show 8 Surveillance Technologies: Challenges to Privacy Rights, Conference, Victoria 15 Provincial Council of Women of BC, Vancouver 20 UVic Faculty of Education 22 First Chancellor’s Reception, UVic Presentation of Distinguished Alumni scholarship 22 UBCM Convention, Vancouver	November 2 BC Council of Administrative Tribunals, Richmond 20 Kiwanis Club of Vancouver 21/22 New Volunteer Roles for Retired Persons Workshop, Victoria	December 8 Victoria City Police Reception 15 UVic Downtown Advisory Committee Open House 15 Forest Practices Board Annual Meeting, Victoria
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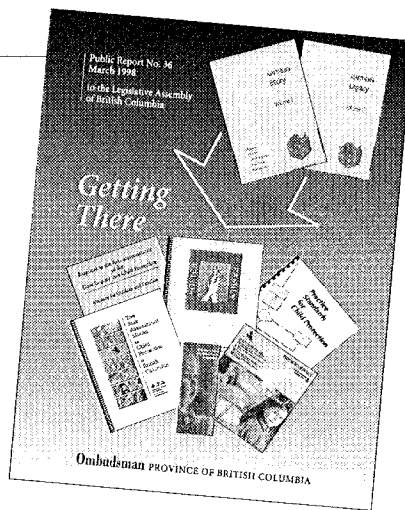
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NEWSFLASH

As this Annual Report was going to press, the Ombudsman released Public Report No. 36, *Getting There*. The Report is the Ombudsman's audit of government's response to recommendations arising out of the Gove Inquiry into Child Protection. In order to ensure that his Report was not shelved and forgotten, Judge Gove recommended that the Ombudsman monitor and report on government's implementation of the more than one hundred recommendations to improve the child welfare system in British Columbia.

Getting There acknowledges the tremendous contribution made by the Gove Inquiry, which has had enormous impact on the way in which we provide public services to children. *Getting There*, however, is about bringing closure to the Gove Report and moving on. The Ombudsman acknowledges government's bold and decisive action in implementing remarkable structural changes over a very short time period.

There is now a Ministry for Children and Families devoted to integrated services to children and their families. Children now have a minister who is solely responsible for representing their interests at the cabinet table. A Children's Commission is in place to review every death of a child in this province and to provide an avenue of complaint resolution outside the Ministry for Children and Families. These are "firsts" for children in British Columbia.



In *Getting There*, the Ombudsman identifies and reports on Judge Gove's recommendations in the following categories:

- those fully implemented by government
- those not fully implemented, but are a work in progress
- those not acted upon and no longer necessary to pursue.

In the case of those not yet implemented, the Ombudsman makes her own recommendations, developed as a result of her investigation into government's progress on Gove's recommendations.

The Ombudsman's thirty-four recommendations include:

- that the Ministry for Children and Families must encourage communities to put forward their own "Building Blocks" program proposals that focus on prevention, well-being and outcomes for all children from birth
- that s.70 of the *Child, Family and Community*

Services Act be amended to ensure that children in places of confinement are not denied the fundamental rights that are guaranteed to other children in care

- that the Ministry for Children and Families continue its effort to professionalize child protection work, including regulation of the contract sector that provides services to children
- that government expand the jurisdiction of the Child, Youth and Family Advocate to be consistent with the mandate of the Children's Commission.

The Ombudsman will track government's response to her recommendations and will continue to report to the public on their implementation.

Getting There is available in your local library and on the Ombudsman's web site at <http://www.ombud.gov.bc.ca>. Copies can also be purchased from the Queen's Printer. Limited copies are available upon request by contacting the Ombudsman's Office.

Ombuds GUIDING PRINCIPLE

Leadership

Modeling and promoting fairness, equity, clarity, innovation and consistency.

For the Safety of Children

Ms. Dana Brynelsen's five-year-old daughter, Erendira, died in 1990 in the Post Anaesthetic Care Unit (PACU) at BC's Children's Hospital (BCH) after a fairly routine surgery. Ms. Brynelsen had not been allowed to be in the PACU with her daughter after the surgery. Following her daughter's death, Ms. Brynelsen attempted to have a Coroner's inquest into the death, to have the hospital acknowledge responsibility and to have changes made in the policy regarding the presence of parents in the PACU. The following interview with the Ombudsman highlights her concerns and the results of her efforts. The Ombudsman has approved to have the names of Ms. Brynelsen and her late daughter appear in this interview. Ms. Brynelsen has also consented to have her name used.

Omb: How could things have been different in the case of your daughter, Erendira?

DB: Erendira was left unattended in the recovery room (PACU) for at least fifteen minutes almost immediately following her arrival there after upper airway surgery, and suffocated. The main factor contributing to her death was the fact that she was left unattended. Had a nurse been with her and observing her or had I been with her as I had requested, she would not have died.

Omb: What were the most frustrating or upsetting aspects of your attempts to have changes made?

DB: It was extremely difficult to get information about my daughter's death. The hospital was reluctant to discuss her death with me. The coroner's report took four months, was complimentary to BC's Children's Hospital, and was inaccurate.

Over the next five years, correspondence regarding her death and my request for changes in recovery room practices were often not responded to by senior hospital employees.

Immediately following Erendira's death, I asked that hospital policies be changed to permit parents to be with their child in the recovery room. Changes were promised by BCH administration in 1990, but they did not happen. Research was clear and acknowledged by the senior anaesthetist at BCH that there were only benefits to children, parents and staff when parents were permitted to be in

the PACU. To this day I do not understand why it took seven years for policies at BCH to change. I received the package of information on the PACU and the booklet *Your Child's Surgery or Procedure* on the seventh anniversary of my daughter's death, October 4, 1997. Had the Ombudsman's Office not been involved two years earlier, practices would not have changed and I would still be working for this reform.

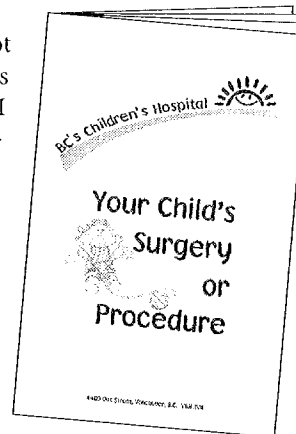
Omb: Do you believe that enough changes have been made to protect children and allow parents to be more involved?

DB: The materials prepared by the hospital, including the video, are a welcome step in the right direction. However, in my opinion, these materials have been prepared by people who do not in their hearts believe that parents have the right to be with their children in such settings. Materials will, I hope, be developed in future that reiterate strongly the importance to children of parental presence in stressful circumstances. Parents should also be educated to be alert to oversights or errors that busy professionals may make. Mistakes happen and an alert parent can prevent harm or, in the "worst case scenario," death.

I have had no sense that the hospital was or is working on attitudinal change. In our meeting two years ago, called by the Ombudsman, with the President of BCH and the Chair of the Board, we were assured that policies had changed and that the recommendations were being followed. We were able to demonstrate case-by-case that the reality for parents was very different. Parents were not welcome, or were brought into the recovery room just as the child was to be transported up to the ward.

Omb: Is the service adequately publicized?

DB: One hundred copies of a video, parent brochures, notices and other printed material are only as good as the support and encouragement that staff can give to individual parents prior to and during the



course of their child's hospitalization.

I think attitudinal change on behalf of the service providers is a critical part of the success of this program and it is my impression that this is still not fully endorsed by all staff at Children's Hospital.

Omb: Anything else you would like to say?

DB: I had requested a Coroner's inquest into my daughter's death, which was denied. One of the unfortunate results of concealing my daughter's death from any real scrutiny, such as a public inquest, was the fact that staff at the hospital were never faced with acknowledging responsibility for her death. An understanding of the tragic errors that led to her death and acknowledgement of responsibility would have given a much greater impetus to reform policy and practices.

I do believe, however, that the public explanation and apology for the death of a young child at BCH in June 1997 reflects a true value change at the administrative level. The dialogue with the parents, media, public and their own staff, and complete acceptance of responsibility is a remarkable shift in practice. Health systems all over the world will be impacted by their honest and open approach to that tragedy. The public as well benefits immensely by this honesty, and children are safer when we are all reminded so painfully that mistakes happen. I was later told by a senior BCH administrator that they changed practice, in part, as a result of Erendira, their response to her death and the lessons they have learned from it.

Thank you for your interest in this issue. I hope that your article will serve to promote the role of the Ombudsman in resolving such issues by encouraging open and honest dialogue with public officials. There are many lessons to be learned from my beautiful daughter's death, and I hope that your article will educate your readers as to the important role of the parent in the hospital settings.

(A special thanks to Ms. Brynelsen for this interview).

A Dream Come True

Fair play, justice, equality, truth and impartiality are some of the concepts the Ombudsman's volunteers, the "Ombuddies," will present to grade five students in the spring of 1998. A small committee of Ombudsman staff and volunteers spent months planning, organizing and choosing a focus for volunteers. The committee was chaired by Bill Summersgill, the Ombudsman's Coordinator of Volunteers. Also on the committee, along with current and retired Ombuds staff, were Genevieve Exley, former Coordinator of Volunteers with GVHS, and Mrs. Margaret Bryant, the Ombudsman's grade two teacher. The final decision was to link retired persons and youth in a pilot project in the Victoria School District. Curriculum planners and educators tell us that grade five is the ideal age to introduce concepts of government, rights and fairness. Children at this age are curious, eager to learn new concepts and have few preconceived ideas about government and fairness. Both the Superintendent and the Chair of the Victoria School District have given their enthusiastic support to the program.



Dulcie McCallum, Geovanna Meardon, Jo Thomson, Joyce Murphy, James Twiddy prepare the Ombudsman program for grade five students.

THE OMBUDDIES

Joyce Murphy

Norma Chan

Ken Wilkins

Evelyn Carter

Jo Thomson

Bill Summersgill,
Coordinator of Volunteers

Lois Akam,
retired Ombuds staff

Dave Staples,
retired Ombuds staff

The rationale for the volunteer program, a dream of the Ombudsman, is to provide education and information about the role of the Ombudsman by:

- promoting the concepts of fairness, equality and justice
- enhancing the understanding of the role of the Ombudsman
- encouraging self-help by enabling people to understand and pursue their rights and remedies

A magic blend:
Ombuds staff, grade five students, retired civil servants, teachers, curriculum planners and retired Ombuds staff.

- creating a personal, harmonious relationship with the community by inviting people to participate in making Ombuds work known.

The Ombudsman's belief is that many problems could be dealt with early on if people were more familiar with the concepts of natural justice and fairness. Making these concepts part of children's value system will make them more aware of their rights as well as their responsibilities as members of our community.

The call for volunteers went out in September through the BC Retired Civil Servants' Association. A number of interested senior civil servants applied, and five were selected to be the first "ambassadors of fairness" to the schools. Each of the volunteers will have a staff "partner" as mentor and guide. The volunteers have gone through a rigorous training program to acquaint them with the work of the Ombudsman. They learned about such things as:

- principles of administrative fairness and natural justice
- the Ombudsman Act
- the role of the Ombudsman
- the role and function of teams in the Office
- techniques of classroom presentation
- how to listen to and engage children.

The new volunteer Ombuddies will work with staff and a volunteer teacher from the Victoria School district to plan how they will present the concept of fairness and the role of the Ombudsman to the students. Their presentation will include stories, group discussions, role playing and a video of actual grade five students interviewing the Ombudsman about her role, about fairness and unfairness and about how to deal with conflict. We hope the pilot will spread throughout BC.

Employment Equity Action Plan

Action	Status
1. Senior Level Support	
Circulate plan to all employees expressing Office's commitment to Employment Equity (EE).	Completed for 1997
Ensure EE is integrated into Office Strategic Plan.	Completed for 1997
Ensure EE is routinely on Management Team agenda.	EE Team to report to Management Team quarterly
Include statement on EE in Annual Report.	Completed for 1997
Communicate and raise awareness of EE by showing EE related videos.	Under development
Discuss EE at Office staff meetings to share ideas and obtain feedback.	Ongoing
2. Resources	
Establish Office EE team to champion EE activities.	Completed
Provide EE team with time and budget to carry out approved meetings, consultations, training and communications.	Ongoing
Modify workplace to accommodate individual needs.	Ongoing
3. Training on EE Issues	
Provide Harassment Awareness Training for all employees.	Under development 1998
Provide Valuing Diversity course for EE team.	EE team reviewing
Provide Aboriginal Cultural Awareness course for all staff.	Completed for 1997 Under development 1998
Provide timely and consistent information for secondment and temporary assignment opportunities.	Ongoing
Enable Director of Corporate Services to participate in course on reasonable accommodation in the workplace.	Completed for 1997

Action	Status
4. Barrier Identification and Removal	
Review the paper, Employment Barriers and Actions Required to Eliminate Them, and recommend possible actions to address barriers in the Office.	Underway
Review BC Human Rights Code and identify to Management Team any individual needs in the workplace related to the thirteen grounds in the Code.	Underway
Ensure that Management Team reviews and acts on issues identified by EE team in previous two items.	As required
Provide timely, consistent information regarding job postings and career development.	Ongoing
Complete job descriptions using KSA approach and use classification systems that support this approach.	Completed
Fill vacancies using evaluation methods based on KSA.	Completed in 1997
Create opportunities for bridging.	EE Team reviewing
5. Remedial Measures	
Support career development opportunities through secondment and temporary assignments.	Ongoing
Support Mentoring program.	Ongoing
Recruit practicum Aboriginal students.	EE Team reviewing
Provide employment opportunities to persons who have a disability from the Skills Now program and from Tideline Ventures.	Completed in 1997
6. Goals and Timeframes for Improving Representation	
Continue placement of practicum Aboriginal students.	EE Team reviewing
Ensure special notice of vacancy competitions to groups representing First Nations.	Completed for 1997 Ongoing for 1998
Recruit for two positions with a preference for First Nations.	Completed for 1997
7. Monitoring Progress	
Monitor workplace profile data.	EE Team reviewing
Provide semi-annual progress reports to Management.	Under development

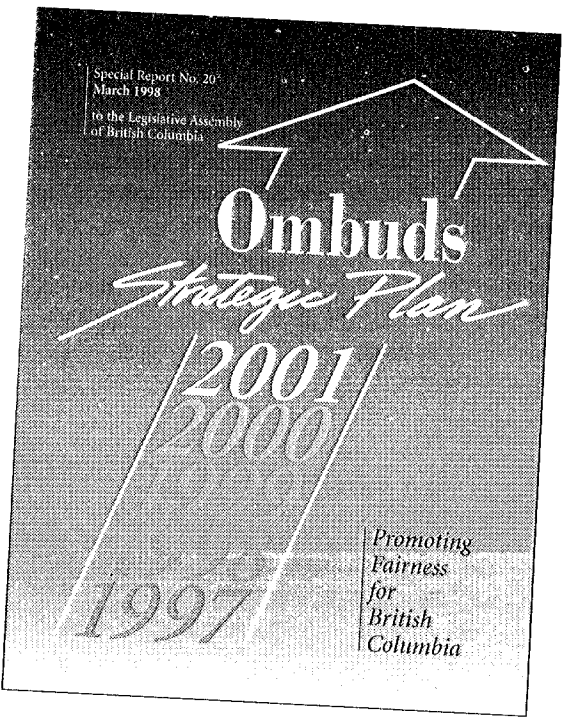
How Are WE Doing?

Holding the Ombudsman to Account

During 1997 the Office of the Ombudsman began its first Strategic Planning process. The purpose, in part, was to address a number of operational issues in the Office, but more important, with the approaching twentieth anniversary of the Office in 1999, it was time to articulate the strategic direction and priorities for the future and make these publicly known.

Of the many models for conducting strategic planning, some work well and some often end in failure. An important belief, in the process used by the Ombudsman, is that *people support what they help create*. For this reason, the Ombudsman used an inclusive process that involved all of the staff in both office locations and that also sought and incorporated input from senior officials in some public bodies the Ombudsman is authorized to investigate.

The Ombudsman established a Core Planning Team that included the members of the Management Team, each of the Investigative Team Leaders and the Managers of the Administrative, Intake and Systems Teams. This Core Team met on four occasions for a



total of six days over a period of many months to develop the components of the plan. In between Core Team meetings, other meetings (referred to as “parallel process” meetings) were held with all staff in the Victoria and Vancouver offices to review the ideas and work of the Core Team and to add further ideas.

People support what they help create.

Once a complete draft of the plan was put together, parallel process meetings were held in Victoria and Vancouver with a randomly selected group of representatives from public bodies. The comments and input from this “external” group were very helpful and many good suggestions were put forward. However, it was very important that these suggestions be considered by the Core Team and the rest of the staff to decide which should be included and could be actively supported.

I believe that the Strategic Plan for the Office of the Ombudsman, 1997 – 2001, is both challenging and yet realistic, has a strong consensus of support from the staff, and most important, establishes a strong framework for promoting fairness for British Columbia.

Guiding Principles

Respect

Treating everyone with courtesy, dignity and respect.

Leadership

Modeling and promoting fairness, equity, clarity, innovation and consistency.

Equality

Promoting equality, inclusion and access for all persons regardless of such factors as age, gender, marital status, sexual orientation, physical or mental ability, race, national or ethnic origin, religion or creed, language, and family or economic status.

Empowerment

Encouraging and helping people using public services to find their own solutions to problems.

Continuous Learning

Promoting and encouraging continuous learning for staff, authorities and the public.

Cooperation

Using cooperation, empathy and good will in all our work.

Teamwork

Combining the diversity of experience and talent of people who have a unity of purpose and commitment to success.

Integrity

Being independent, impartial and honest.

Vision

The vision for the Office of the Ombudsman today and for the future is to ensure fairness and accountability in public administration in British Columbia by:

- *improving our quality of service to benefit the public and authorities*
- *working in a supportive environment and serving as a role model for our Guiding Principles*
- *fulfilling our statutory mandate.*

Goals

High-quality Service

Principled Approach

Thorough and Impartial Investigations

Well-being in Our Workplace

Appropriate Use of Technology

Our Core Strategies represent the major ongoing initiatives to be implemented or improved in order to achieve our Vision and Goals. Specific actions are listed in the Strategic Plan to carry out each of these Core Strategies over the period from 1997 to 2001.

Core Strategies

Ombudswork

To manage work load in the most efficient and fair manner possible, having regard to our statutory mandate and limitations on resources.

Ombudsmanship

To broaden and enhance our understanding of Ombudsmanship and to generate creative approaches to the application of these principles in collaboration with Ombudsman offices in other jurisdictions.

Continuous Quality Improvement

To develop and implement actions to achieve high-quality service on a continuous basis.

Systemic Approach to Investigations

To enhance fair public administration by actively employing a systemic approach to the investigation and resolution of complaints.

External Education and Communication

To broaden the public profile and improve external understanding of the role of the Ombudsman and administrative fairness through well-planned initiatives directed towards both the public and authorities.

Well-being

To promote well-being in the workplace through effective communication and adherence to our Guiding Principles.

The central theme of our Office is to promote fairness for British Columbia. Our focus for now and through the year 2001 will be to strive for ongoing improved quality of service for all those we serve. We are committed to making our plan a reality.

The *Ombuds Strategic Plan 1997 – 2001* has been tabled in the Legislature by the Ombudsman as Special Report No. 20.
For a copy of the Strategic Plan visit our web site at www.ombud.gov.bc.ca or call toll free : 1-800-567-3247 or fax : (250) 387-0198

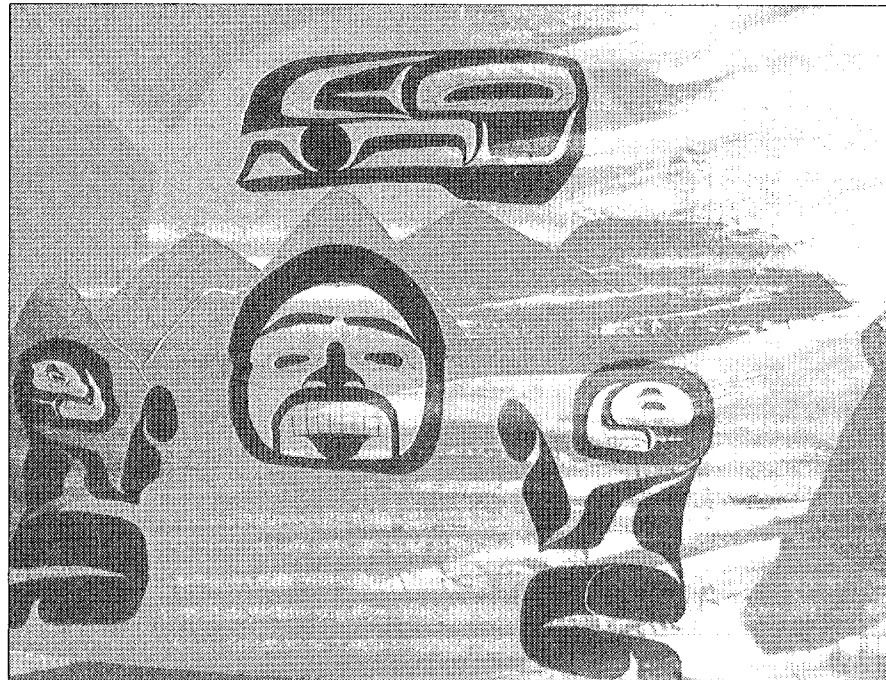
Rediscovering that the Key is Listening

Respect for self, for others and for the world is the basic philosophy behind this program of youth camps for young people, native and non-native, boys and girls, whether in crisis or not.

Rediscovery began in Masset, Haida Gwaii (Queen Charlotte Islands) in 1978. The first staff members were trained in environmental education and outdoor theatre; they had wilderness experience and knowledge gained from contact with other cultures. But the most important element was supplied by the Haida Elders, who brought their wisdom, a continuity with the past and a willingness to share their traditions with non-native children, as they did with their own.

As the Haida Gwaii Rediscovery program developed and matured, other communities became interested, and within a few years, programs were set up in many parts of British Columbia, and throughout the world.

In 1985 the Rediscovery International Foundation was established to support the broad international network of affiliated programs. Each is community founded and community based, independently administered and funded, and uniquely suited to its bioregion and indigenous culture. While all Rediscovery programs meet agreed-upon health and safety



A banner made by Gitskan Rediscovery, Kispiox, BC.

standards, and none discriminates on the basis of race, sex, creed or nationality, there are more distinctions than similarities between them. No two cultures and no two bioregions are ever alike and Rediscovery programs reflect that wonderful diversity. Rediscovery offers a new direction for youth camps all over the world.

The Vision Statement of the Rediscovery International Foundation states the goal of the program well:

Drawing on the strength of indigenous culture, the wisdom of Elders, with a philosophy of respect and love for the Earth, ... to empower youth of all ages to discover the natural world, the worlds between cultures and the worlds within themselves.

Highly technological cultures can learn a great deal from indigenous cultures if they simply silence the mind, surrender the desire to control, take the time, pay the respect and listen. Listening is the key to cross-cultural understanding. Indigenous cultures are vibrant, but primarily oral, not written, and words are carefully measured before being spoken. Listening, the cornerstone of fairness promoted by the Ombudsman, is the common foundation of Rediscovery.

The essence of Rediscovery can be summed up in the words of a participant, written while she was alone at her Spirit Spot – a place chosen by an individual that feels special and full of power, and where she or he can go each day for quiet introspection and intimate observation of nature.

...I lay back and listen to the water's song this is the way it should sometimes be just Mother Nature with me.

(From an interview with Thom Henley and excerpts from his book, *Rediscovery, Ancient Pathways, New Directions*, Revised Edition, 1996, Lone Pine Publishing)

Checklist for Culturally Competent Organizations

How would you rate your organization's level of cultural competence?

Client services and reception are user-friendly, welcoming clients in languages other than English.
☐ poor ☐ fair ☐ good ☐ excellent

Information about services is available in the languages of our community.
☐ poor ☐ fair ☐ good ☐ excellent

Decoration, posters, brochures and reference material reflect different cultures and interests.
☐ poor ☐ fair ☐ good ☐ excellent

The foods, customs and holidays of a variety of cultures are honoured.
☐ poor ☐ fair ☐ good ☐ excellent

Interpretation and translation services are readily available for clients and employees.
☐ poor ☐ fair ☐ good ☐ excellent

Community is involved when policies, programs and services are being developed or revised.
☐ poor ☐ fair ☐ good ☐ excellent

The attitudes and behaviours of staff members show respect for cultural diversity.
☐ poor ☐ fair ☐ good ☐ excellent

Personnel policies and practices support the principles of the *Multiculturalism Act*, the *Human Rights Code* and the *Canadian Charter of Rights and Freedoms*.
☐ poor ☐ fair ☐ good ☐ excellent

The material was prepared by the Public Service Employee Relations Commission of British Columbia, Employee Development Centre and presented by Inder Mehat, a private consultant. Mr. Mehat is currently Manager for Organizational Development with Multiculturalism BC.

How Do You Rate on Ethics?

excerpts from *Administrative Ethics Checklist*, Ombudsman for Hong Kong

The purpose of this checklist is to provide in a ready, though by no means exhaustive form, general guidance on the good administrative ethical practices that are considered important by the Ombudsman. It is hoped that the checklist will assist public officers in the best performance of their public duties at a historical time when Hong Kong will shortly become the Special Administrative Region.

How would you rate yourself?

Sense of Responsibility and Accountability

- ☐ Are you performing your public duties to the best of your ability in accordance with the law, policy, goals, objectives, performance pledges, administrative procedures, instructions and orders of your organization?
- ☐ Do you act within your delegated authority or power?

Making of Decisions

- ☐ Do you avoid undue delay in taking actions or making decisions?
- ☐ Do you ensure that your decision will not hinder or even harm someone, be it a client, a colleague or a third party?
- ☐ Can you justify your decision before your clients, colleagues and the public, and can you explain it fairly, with the conviction that you have acted properly under the circumstances?

Honesty and Integrity

- ☐ Are you acting with honesty, integrity and good faith?
- ☐ Are you not afraid of admitting your mistakes and do you take positive steps to prevent their recurrence?

- ☐ Do you always avoid explicit or potential conflicts of interest which might cause deviations from the good principles of honesty and integrity or bring your organization into disrepute?

Professionalism and Public Interest

- ☐ Are you in constant search and gain of knowledge and expertise to enable you to perform your public duties to the best of your ability?
- ☐ Do you observe the ethical practices of your own profession?
- ☐ Have you always considered a client's dissatisfaction as a possible means of improvement and not mere criticism?

Courtesy, Equality and Equity

- ☐ Do you treat your clients and colleagues with respect, courtesy, consideration and reason?

Loyalty and Dedication

- ☐ Do you act with loyalty and dedication to your job and your organization?
- ☐ Do you enjoy a sense of pride and dignity in your duties in serving the community?

Economy and Environmental Consciousness

- ☐ Are you mindful of avoiding the waste, abuse and misuse of public resources?
- ☐ Are you conscious of the need and importance of preserving the environment?

The full text of this Checklist is available as Occasional Paper #63 from the International Ombudsman Institute, c/o The Law Centre, University of Alberta, Edmonton, AB T6G 2H5

Children & Youth



Guest
Comment

The External Complaints Role of the Children's Commission

by Eric Jones
Director of External Complaints
Children's Commission
at the invitation of the Ombudsman

The *Children's Commission Act* establishes the Children's Commission as an independent agency to ensure that children are protected and properly cared for in their dealings with the Ministry for Children and Families (MCF).

What principles guide the Children's Commission?

The complaint review process should be accessible to each eligible child, child-centred and solely concerned about the child, fair to each review participant, particularly the child, and responsive to the needs and circumstances of the child.

Who can complain to the Children's Commissioner?

The child, the child's parent, the Child, Youth and Family Advocate (the Advocate) or any other person representing the child.

What can be complained about?

Most MCF services for children, including a complaint about the breach of the rights of a child in care under the *Child, Family and Community Services Act* or about a MCF decision, including the decision to deny a child access to a designated service. The Commission cannot accept a complaint before it has

been reviewed internally by the MCF or when the issue is before a court or another tribunal.

Will children be listened to during the Children's Commission review?

Yes. All parties to a complaint have the right to be heard during the review process, including the child. The Advocate has agreed to ensure that children have appropriate advocacy support during internal MCF and external Children's Commission reviews.

The goal of the Children's Commission is to help solve problems affecting children in a non-confrontational manner that best protects the child's rights and serves her or his needs and interests. Being child-centred requires a commitment to services that treat children with dignity and respect.

What can be expected during a review by the Children's Commission?

- Commission staff will gather and assess relevant information by, for example, talking to those involved and reviewing documents and MCF files.
- Staff will notify those involved whether a complaint is accepted or refused.
- When a complaint is accepted staff will gather further information, and make efforts to negotiate a settlement that best serves the child's individual needs.
- When a complaint is not settled, staff will prepare a report for the Children's Commissioner. A copy will go to each person involved in the dispute. The report may include a description of the complaint, the agreed to facts, efforts to settle and special considerations concerning the child.
- The Children's Commissioner may then decide

to dismiss the complaint or may refer it for review by an independent tribunal (chosen from a roster appointed by the Attorney General).

- Reasons for dismissing a complaint may, for example, be that the complaint is withdrawn or that the Children's Commissioner finds that there would likely be no benefit to a child by proceeding with a review.
- Panel reviews are conducted in a manner best suited to the child and the type of complaint. The level of formality may vary but the review process must, above all, be fair, accessible and responsive to the child.
- After hearing everyone's views, and if the panel decides that the child's rights have been breached or that a complaint is justified, they may make an order and recommendation to MCF.
- If the Children's Commissioner believes that MCF has not taken adequate steps to respond to a panel order, she may then report to the Minister for Children and Families and, after thirty days, make the report public.

The goal of the Children's Commission is to help solve problems affecting children in a non-confrontational manner that best protects the child's rights and serves her or his needs and interests. Being child-centred requires a commitment to services that treat children with dignity and respect. Crucial to this commitment is the creation of fair internal and external complaint resolution processes. These processes must be available when conflicts involving children cannot be settled through regular case-management processes.

A *Children's Commission Guide to External Complaints* provides more detailed information and can be obtained by calling, toll free, 1-800-859-1441.



How can a complaint be made to the Children's Commission?

Children's Commission
PO Box 9207 Stn Prov Govt
Victoria BC V8W 9J1
1-800-859-1441 (toll free)
(250) 356-8972 (fax)

Youth in Limbo

For many years the Ombudsman's Annual Report has commented on the dilemma experienced by youth under nineteen who apply for income supports from government.

The Ministry of Human Resources (MHR) administers income support programs, now called BC Benefits. For a youth to be eligible for benefits, a maintenance enforcement order must be assigned to the Family Maintenance Enforcement Program. The outcome for underage applicants is that they have an order for maintenance against parents with whom they may have a tentative relationship at best. This MHR requirement may make the repair of family relationships more difficult.

The experience of the Ombudsman's Child and Youth Team has been that underage applicants encounter several blocks when attempting to obtain benefits.

The team has found that BC Benefits:

- is an adult service that is not sensitive to the circumstances of young people
- is not flexible and applies rigid criteria across the board that do not recognize the circumstances that youth find themselves in
- is based on the principle that individuals must exhaust all options before seeking assistance, and that parents are responsible for maintaining children
- demonstrates a philosophical opposition to giving public money to children, that is, youth who are the responsibility of their families until they reach nineteen years, the age of majority.

Currently, the Ministry for Children and Families does not provide income support to

children unless they are in ministry care. Some older youth may not want to be part of "the child welfare system." In addition, s. 9 of the *Child, Family and Community Services Act* is not yet proclaimed. The resulting dilemma for those youth who "fall through the cracks" is that, in order to receive service from the Ministry for Children and Families, they must demonstrate that they are in need of protection. Few people would assume that most youths of seventeen or eighteen are not able to protect themselves.

An underage youth who is a partner in a common-law relationship with an adult faces additional challenges from both MHR and the Ministry for Children and Families. Both ministries may conclude that the youth can return to her parents, since her parents are responsible for maintenance, although her adult partner may be approved for benefits. The youth cannot be approved as a dependant of the adult partner because of her age and her common-law relationship, nor can she apply as an individual because she is residing in a relationship with someone who has income. It appears that these youth are often subject to decisions based more on some view of morality than on policy about being in need.

The proclamation of s.9 of the *Child, Family and Community Services Act* may not address the needs of every youth who needs support, but it seems to be a preferable alternative to the current situation. The Ombudsman looks forward to proclamation of s.9 in 1998, as recommended in her Public Report No. 36, *Getting There*, a Review of the Implementation of the Gove Inquiry.

Child, Family and Community Services Act

Agreements with youth

- 9 (1) Subject to the regulations, a director may make a written agreement with a youth who needs assistance and who
- (a) cannot, in the opinion of the director, be re-established in the youth's family, or
- (b) has no parent or other person willing or able to assist the youth.
- (2) The agreement may provide for one or more of the following:
- (a) financial assistance;
- (b) residential, educational or other services to assist the youth.
- (3) The agreement must include a description of the services to be provided by the director and the goals to be met by the youth.
- (4) Before making the agreement, the director must
- (a) consider whether the agreement is in the youth's best interests, and
- (b) recommend that the youth seek advice from an independent third party.
- (5) The initial term of the agreement must not exceed 6 months, but the agreement may be renewed for terms of up to 6 months each.
- (6) No agreement under this section continues beyond the youth's 19th birthday.
- (7) For the purposes of this section, "youth" includes a person who
- (a) is under 16 years of age, and
- (b) is married or is a parent or expectant parent.

Children & Youth

Please Hear Me

A youth appealed a decision to her local school board with the expectation that the final decision would be made by the Board of Trustees. However, the school board's appeal policy at the time provided for a committee, made up of senior administrators and two trustees, to be the final arbiter of the appeal. She believed it was unfair to be denied the opportunity to have the Board of Trustees hear the matter.

Upon reviewing the young woman's concerns, the Ombudsman concluded that the school district's appeal policy did not reflect the intent of the *School Act*, which states in s.11:

Appeals

11 (1) In subsections (2) and (4), "decision" includes the failure of an employee to make a decision.

(2) If a decision of an employee of a board significantly affects the education, health or safety

of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.

(3) For the purposes of hearing appeals under this section, a board must, by bylaw, establish an appeal procedure.

(4) A board may refuse to hear an appeal under this section unless the appellant discusses the decision under appeal with one or more persons as directed by the board.

(5) A board may establish one or more committees for the purpose of investigating appeals under this section.

(6) A board may make any decision that it considers appropriate in respect of the matter that is appealed to it under this section, and the decision of the board is final.

(7) A board must

(a) make a decision under this section as soon as practicable after receiving an appeal, and

(b) promptly report that decision to the person making the appeal.

The Superintendent of the School District informed the Ombudsman that the district appeal policy was intended to offer a comfortable and informal opportunity for students and parents to resolve complaints. He was nonetheless appreciative of the observations and comments from our Office.

The Board of Trustees, after reviewing its policy, developed a new appeal policy that provided a range of options for resolving problems, with an opportunity for appeals to ultimately be heard by the Board of Trustees. The school district, the students and their advocates all benefited from this effort to ensure a fair administrative appeal process.

Ombudsman Reports to Gove Special Committee

Throughout the Ombudsman's Annual Reports readers are informed of the ways in which the Ombudsman holds public agencies accountable to administer public policy fairly. The Ombudsman herself is accountable to the Legislature. In May 1997 she presented to the Special Committee of the Legislature into the Gove Inquiry. Portions of the presentation are reproduced here. In this first submission to the Special Committee the Ombudsman dealt with the particular roles of those responsible for the interests of children and youth.

I will now outline how I see the present system responding to quality of service concerns:

If the complaint is that there is no advocate provided to a child or youth in trying to resolve a matter with the ministry, the complaint goes to the Child, Youth and Family Advocate.

The Children's Advocate should be involved, as appropriate, at any step from the initiation of an internal complaint process through to the investigation by the Children's Commissioner, to ensure that the child or youth's voice is heard and considered by those making the decision.

If after the internal complaints process has unsuccessfully tried to resolve an issue, the complaint that the ministry's decision is wrong goes to the Children's Commission.

The Children's Commission can review the merits of the ministry's decision and ensure it is in the child's interests. The outcome for children is that if they continue to oppose the decision or action of ministry staff, the merits of the decision can be reviewed or investigated by someone outside the child-serving ministry.

If the complaint was that the process by which the ministry or Children's Commission or any child-serving public agency responded to the child or youth was not fair, it goes to the Ombudsman.

The Children's Commission does not consider the process by which a decision was made, since the Ombudsman continues to fulfill the mandate of ensuring administrative fairness at all stages for all parties affected. If a complainant takes issue with the process by which the decision was made, that someone treated her or him unfairly, then the complaint goes directly from the internal regional complaints process to the Ombudsman. Children and their advocates therefore have access to a full range of reviews, ensuring that their voice is heard and considered, that their rights are respected and that they are treated fairly.

Currently there also exists another independent, but limited, review of complaints from clients of the ministry. Under the *Child Family and Community Services*

Act, a violation of the rights detailed in s.70 can be directed to the Tribunal Division of the Children's Commission for a hearing.

If the Tribunal concludes that the right has been violated, it can direct the Director of Child Protection to cease the violation. Section 70 of the *Child Family and Community Services Act* does not address a child's right to choose where she or he wants to live, a fundamental issue for children removed from their parents. Children in care must have access to review, and participation in decisions to change their placements, with the ongoing assistance of an advocate. The Children's Commission will be able to hear complaints about placement that were not resolved by the internal complaints process.

Comments and Observations

Judge Gove intended that the Children's Commission be responsible to ensure that there is a process in place outside the Ministry for Children and Families that will address complaints. The Children's Commission must be vigilant in remaining separate from the Ministry for Children and Families, and ought not to be seen to be designing the ministry's decision or complaints processes. The Children's Commission needs to ensure that an adequate complaints procedure is in place in every region and that advocates are welcomed and included. I believe that the Commissioner shares this expectation.

In addition to responding to complaints, Judge Gove envisioned that the Children's Commission would address the problem of children in care drifting through the system. My understanding is that the Children's Commission would not implement plans of care but would monitor the adherence of the Ministry for Children and Families to standards for managing plans of care.

The Children's Commissioner must have the ability to report publicly through her annual report. The Children's Commission legislation needs to ensure discretion and ability to reconsider decisions if new information comes to light.

Judge Gove identified some limitations to the existing role of the Child, Youth and Family Advocate, which the Advocate will address. The Child, Youth and Family Advocate has restricted jurisdiction, does not review decisions but advocates for the child or youth, and has no authority to require change. Her statute requires her to provide information and advice to government about services to children but does not empower her to direct the provision of services. The Advocate's role is to ensure that the child has an advocate.

The Ombudsman is not an expert on child welfare but rather on administrative fairness. The

Children's Commissioner can give expert opinion about a decision, can be competent in child welfare matters. The Ombudsman has no authority to direct change. If the Children's Commission has the power to order rather than the power to recommend, it will not have to rely on public argument to convince authorities to implement a recommendation. The process of making recommendations that must go public for purposes of persuasion is not a child-centered process. To serve the needs of children, the Children's Commission must have the ability to make a decision that is in the child's interests.

The Children's Commission is to ensure that children's rights are respected, that the system protects the children from harm, and that decisions are in the individual child's interests. The Children's Commission does not review process or administrative fairness. Unlike the Ombudsman, who is an Officer of the Legislature, the Children's Commissioner is accountable to Cabinet, is appointed by Order in Council, and reports through the Attorney General.

The Children's Commission is an authority within the jurisdiction of the Ombudsman to review. If the Children's Commissioner were to go beyond her legal mandate or jurisdiction and make an error in law or in fact, the complainant would have the option of a complaint to my Office or judicial review. If the complainant believed that the Children's Commissioner erred or conducted her process unfairly or inappropriately, the Ombudsman could also review these allegations. Therefore there is no need for a formal appeal process internal to the Children's Commission.

Some would consider that there are now too many options for children, youth and their families. I do not agree. Each body now in place has a distinct and important role to play. What is critical is that each office understand its duties, that its role be clearly articulated in legislation and that any confusion on the part of the public be minimized by each office not usurping its statutory mandate. In my opinion, choices are important for people and this includes children, youth and their families. It is incumbent upon each party — Child and Family Advocate, Children's Commissioner, Ministry for Children and Families, the Public Trustee, and the Ombudsman — to appreciate the role it has been granted by statute, make it known to the public and vigorously resist blurring the boundaries between the offices. While each office seeks to serve the children it is designed to serve, we all must avoid the temptation to pursue cases not properly ours, regardless of whether our motivation is altruistic or because we are trying to be all things to all people. Fairness for children and youth requires that we respect one another's roles and that we be patently clear about those roles, to their benefit.

Children & Youth

Doing What's Right

Getting to the heart of a matter and finding a helpful solution to a complex problem, beyond just the surface facts, is often time consuming, but ultimately rewarding. The Ministry for Children and Families (MCF) was faced with a very complex situation of a fifteen-year-old youth who complained to the Ombudsman that it was not safe, nor in her best interests to return to her home province. She wanted to be placed in the care of the ministry.

This was the situation:

- she had lived away from her home province for approximately one year, and had lived in BC for six months of that year
- her mother had serious drug and alcohol problems and was unable and unwilling to permit her daughter to live with her should she return home
- because she had previously been involved in juvenile crime, nearly all of her connections in her home province were with people who were engaged in criminal activity
- she did not believe she would be able to make a break from her former peers, nor did she believe she would receive any family support to make a new beginning
- her father had an extensive criminal record and had helped her flee her home province
- because of her father's drug habits and her formerly entrenched street life-style she had agreed to do drugs with her father and assisted him to buy and sell drugs

- although she had asked her father on many occasions to enroll her in school, he had failed to do so because they were frequently on the move
- she had fled from court charges in her home province
- aside from one minor incident with the law, she had stayed out of trouble since coming to BC.

The young woman wanted to remain in BC because she had a good relationship with her probation officer. If she was allowed to stay, her probation officer could get her into school; she had made a positive connection with new friends and with a highly functional family who also cared for her. She believed that if she could be placed in foster care and allowed to remain in BC she would get a fresh start away from the dysfunction of her family and the pressure of former peers.

The initial decision of the MCF's district supervisor was to return the youth to her home province. In fact, responsibility for this youth rested with the authorities in her home province and she had outstanding court matters to settle.

However, after discussing the situation with the Ombudsman and with the youth's probation officer, the district supervisor agreed to review his initial decision. He considered the following factors:

- this youth had made some very positive connections in recent months and had shown improvement in several areas of functioning
- she would have little chance of avoiding further criminal activities and consequences if she

returned to her home province

- any outstanding charges from her home province could be transferred to BC
- she could enroll in school immediately
- her father's criminal history made it unlikely that he could ensure the safety and well-being of his daughter.

As a result of the review and a risk assessment based on all the information available to him, the district supervisor found the youth to be in need of protection. She was taken into care under section 13 of the *Child, Family and Community Services Act*.

This complex matter was reviewed in a child-centered, integrated manner, with a focus on the safety, well-being and development of this young person. The district supervisor clearly could have made arrangements with the authorities in her home province, informed the child welfare authorities of any other concerns and sent the youth home. The rationale, particularly in times of fiscal restraint, would be that she belongs to another province, and that province ought to be taking financial and social responsibility for planning for her. However, the district supervisor and others involved in the decision had the courage to listen to the youth, carefully gathered the facts, looked at the risk of sending her home with her father and made a decision based on her specific and individual needs. Decisions of this sort require courage, principle-based practice and a willingness to take risks that favour successful outcomes for the individual child.

NEWSFLASH

An International Summit of Sexually Exploited Youth was held in Victoria, BC from March 7 – 12, 1998. It was hosted by PEERS (Prostitutes Empowerment, Education and Resource Society), the University of Victoria School of Child and Youth Care and the Office of the Ombudsman for British Columbia. UNICEF and ECPAT (End Child Prostitution in Asia Tourism) were also active supporters of the Summit.

Out from the Shadows was a follow-up project to the World Congress against the Commercial Sexual Exploitation of Children, held in Stockholm in August 1996. Of the thirteen hundred delegates in Stockholm, only fifteen were youth and of these only three had experience as sexually exploited children. Prior to the Victoria conference, twenty focus groups were held with youth involved in commercial sexual exploitation in Canada, the United States, Central and South America. The initial three days of the Victoria conference brought together forty-five youth delegates identified at the focus groups. They developed their own Declaration and Agenda for Action. In the final two days policy makers, lawmakers and professionals came. They listened, heard the voices of the youth and made a commitment to implement the recommendations in the Declaration.

The summit was co-chaired by Cherry Kingsley, a survivor of commercial sexual exploitation, and the Honourable Senator Landon Pearson. They, together with the Deputy Ombudsman, Brent Parfitt, are to be congratulated for organizing such a successful conference.

The Ombudsman's 1998 Annual Report will report on the Summit, and in particular, the Declaration and Agenda for Action, in complete detail. The full text of the Declaration can be found on the Ombudsman's Homepage at www.ombud.gov.bc.ca

Favourable Return



A young man complained to the Ombudsman that the former Ministry of Social Services had failed to provide adequate care for him when, as a youth, he came into government care as a result of being orphaned. The ministry collected orphan's benefits from the federal government to cover the cost of the youth's care. In 1990, having completed an investigation, the Ombudsman recommended to the then Ministry of Social Services that it repay to the young man the benefits it had collected. The ministry declined.

When the Ministry for Children and Families was created, the young man returned to the Ombudsman to inform us that he had written to the ministry asking that it honour the Ombudsman's 1990 recommendation. The young man believed that if the new ministry was truly different from its predecessor and if it really placed children as the client, then it would respond more favourably.

The Ministry for Children and Families demonstrated to the Ombudsman and to the young man that it was committed to ensuring that the child was the client.

The Ministry for Children and Families, having agreed to review the previous decision to deny a refund of his orphan's benefits, concluded that payment to the young man was appropriate and fair in the circumstances. First they ensured that he received independent legal advice prior to signing a release, then made the payment in full.

The Ministry for Children and Families demonstrated to the Ombudsman and to the young man that it was committed to ensuring that the child was the client. The Ombudsman believes that the ministry's actions were fair and just, and sensitive to the circumstances of the young man who had continued for several years to fight for the return of the benefits that he felt were rightly his.

Finding Another Route

A nine-year-old girl had been identified as having an Attention Deficit Disorder and was in a special class. She took the bus to school. Because of her behaviour, her bus transportation privileges were suspended by the school district for five days. Her mother, who was enrolled in a training program, feared that she could not continue if she missed days to stay home with her daughter, since she could not find alternate transportation. She had tried, without success, to resolve the matter at the school level.

The Coordinator of Student Services reviewed with us the district's transportation policy in the event of a student's non-compliance with the safety standards. Apparently, the student had refused to remain seated while the bus was in transit, and both the student and her mother had been warned earlier. Since it was not clear whether the recently changed procedures had been followed at the time of the previous incident, the Coordinator agreed to discuss the situation with the school principal.

The principal found that the procedures had not been adequately followed and reduced the suspension to two days. When the mother was told of the decision, she was able to make arrangements for her daughter's transportation for those days.

During our contacts with both the parent and the Coordinator of Student Services, we raised the possibility that a similar problem could develop in the future. The Coordinator met with the girl's mother and worked out a longer-term solution that was satisfactory to all concerned.

Children & Youth Team

Files Open Jan. 1, 1997	180
Files Received in 1997	1112
Reopened	1
Closed – No Investigation	326
Closed – Investigation	592
Internal Team File Transfers	4
Files Open Dec. 31, 1997	371

Local Government

Hope Is in Sight

For the last two years, I reported progress in the case of a waterfront property almost lost to the owner at a tax sale. In that case, the courts reversed the transfer of title in the tax sale, and when it was established that the owner was not capable of managing his own affairs, his interests were protected by the Public Trustee. The Ombudsman's concern was that our current tax sale provisions had the potential to allow for gross injustice. At her request, the Ministry of Municipal Affairs committed to work towards revision of the legislation.

The ministry and the Union of BC Municipalities (UBCM) are engaged in a multi-year process of reviewing the *Municipal Act* and jointly proposing amendments. Unfortunately, this process takes time, and meanwhile the Ombudsman remains concerned and watchful for fair process in individual cases.

One example we dealt with this year ended well, but points out the potential for tragedy. We commend the local government involved with this property for walking more than "the country mile" on behalf of the landowner.

Mr. A is a man in his middle years, with no job and few known contacts in the community. He

lives in the house owned by his mother until her death in 1992, and rents part of it out to provide an income for himself. Mr. A had done nothing to regularize this situation. When the Ombudsman became involved, neither Mr. A nor anyone else had paid the taxes for four years. The property had forfeited and been sold over eleven months earlier, and the sale would be final unless the city received \$4,300 within ten days. It was not clear that Mr. A

The Ombudsman's concern was that our current tax sale provisions had the potential to allow for gross injustice. At her request, the Ministry of Municipal Affairs committed to work towards revision of the legislation.

understood what was happening. City staff had tried to balance the legislation, fairness to the purchaser and concern for Mr. A's particular situation. We discussed with them and with the Office of the Public Trustee options for avoiding an unjust outcome. The city responded magnificently by ensuring that Mr. A received independent legal advice. Fortunately, the lawyer was able to locate an old bank account in the name of Mr. A's mother, and to satisfy the bank that the money could and should be used to stop the forfeiture of the property.

I hope that the *Municipal Act* will be amended soon, so that Mr. A's tale is the last we need to tell.

Water Tight

When a man applied for a building permit in May 1995, he was told that as a condition of receiving a permit he was required to pay a sum to the Regional District for water connection. He did so, and was granted the permit. Four months later he became aware that a private utility, and not the district, was providing the water service. He asked the district to refund his payment. The district acknowledged that it did not provide the water service, but stated that it was not legally obligated to refund his payment.

Four months later he became aware that a private utility, and not the district, was providing the water service.

The Ombudsman reviewed two issues with the district:

- whether there was, in the circumstances of this case, a legal obligation to refund the fees paid by the man because of a mistake
- whether principles of administrative fairness might nevertheless call for a refund in this case, even if there was no legal obligation to do so.

The district advised the Ombudsman that it would make a refund, with interest, to the man and to several other property owners who had been in the same situation.

The Water Samaritan

A Regional District cut off Mr. B's water supply. They refused to allow him to present his argument for more time before the line to the district was disconnected. They also instructed staff not to talk with him or with the other four families adversely affected.

Mr. B and his neighbours live on a street without "town" water. For many years, the residents of these houses have asked for water service, since the line goes past the end of the road, although the connection cost was extremely high. About a decade ago, an enterprising neighbour on the next street set up a private metered water service distributing to these five houses the "town" water he received. The owners of the five houses paid the neighbour, who paid the Regional District.

This arrangement violated the *Municipal Act*. The District served notice to the neighbour to stop distributing water or lose his service. Since Mr. B was not a customer of the district, they chose not to accept his letter of concern. The result seemed unfair in that five households were unable to be heard by the district in a decision that seriously affected them.

... an enterprising neighbour on the next street set up a private metered water service ...

The district agreed with the Ombudsman that cutting off the water supply was a significant event and that the five households had a reasonable expectation that they would be heard and that the district would consider their information. The district called a special meeting of its Utilities and Services Committee. Owners and residents of the five homes were invited to attend, present their concerns and discuss the options and costs for receiving water service by a more conventional method.

You Are Invited

In 1995 the Ombudsman's jurisdiction was expanded to include local governments. Since then, this Office has participated in several activities to enhance our knowledge about the administrative work of local governments and to assist local government representatives to better understand our role.

In October 1997, the Ombudsman attended the UBCM convention and extended an invitation to all local government representatives to meet with her. The invitation was made in a spirit of openness; the agenda was set by those requesting the meeting. During two days, the Ombudsman and members of her staff met with mayors, board chairs, councillors and administrators, representing local governments large and small, from across the province.

We plan to continue taking advantage of opportunities, such as the UBCM Annual Convention, to improve communication and further develop our working relationships with local governments.

We found the meetings to be an excellent opportunity to meet face to face with municipal representatives. These are the people we deal with when we make inquiries about an issue brought to our attention by a member of the public. Given the number of requests we received for meetings and the positive response from all those we met with, we felt that the experience was invaluable. We plan to continue taking advantage of opportunities, such as the UBCM Annual Convention, to improve communication and further develop our working relationships with local governments.

Spitting Bullets

This woman's problem was unusual. She held a licence to receive her water supply from a nearby stream. The stream ran just beyond property used for shooting practice by a local gun club. On occasion, the flow of the stream was obstructed by debris. The woman was concerned that stray rounds from the gun club made it unsafe for her to clear debris from the stream. She had found the gun club unresponsive to these concerns, as well as the city, which had taken no steps to resolve the problem or otherwise ensure a safe supply of drinking water.

When the Ombudsman explained the situation, the City Administrator made an arrangement with the executive of the gun club. He told the woman that when they needed to clear debris from the stream, she and her neighbours could telephone any one of six club members who would close the shooting range to allow them safe access to the stream. The woman confirmed that this arrangement satisfactorily addressed her immediate concerns.

Ombuds GUIDING PRINCIPLE

Equality

Promoting equality, inclusion and access for all persons regardless of such factors as age, gender, marital status, sexual orientation, physical or mental ability, race, national or ethnic origin, religion or creed, language, and family or economic status.

Local Government

SPECIAL REPORT NO. 19

An Investigation into the Instability and Recession of Willemar Bluffs (Regional District of Comox-Strathcona)

In 1987 my Office began investigating a complaint about excessive erosion at Willemar Bluffs, near Comox, British Columbia. Numerous parties complained that the Bluffs had begun to erode at excessive rates since a sewer pipeline was installed along the foreshore in 1982.

Approval for the “sanitary sewer pipeline over unsurveyed foreshore” was granted by the then Ministry of Lands, Parks and Housing in 1982. This approval was granted subject to certain terms and conditions, among which were:

- The foreshore is to be returned to its natural condition after construction is completed.
- Late spring and summer (i.e. March to October) are the recommended months for construction.
- Mitigation may be called for during construction.
- All contractors are to be made aware of the environmental concerns and performance bonds posted to ensure their compliance.

Because of delays in the project, the sewer pipeline was installed in November-December 1982, when high tides and strong storm conditions existed. During this stormy, high-tide period, part of the disturbed foreshore was washed out to sea, and it was necessary for the contractor to stabilize the pipeline work by utilizing rock from the reef and foreshore.

Shortly after this construction, numerous individuals who lived and owned property atop the Bluffs complained that, as a result of the construction, they had experienced accelerated and undue erosion, with the result that they were losing considerable portions of their property.

The residents affected by this matter were very active early on in seeking to have their concerns addressed. For a variety of reasons these residents had

difficulty in getting all involved parties to respond to their requests. It was clear that the matter had a profound effect not only on the property, but also on the lives of affected residents, many of whom had a deep and personal commitment to the land in question.

For ten years my Office undertook extensive and repeated consultations to try to seek consensual resolutions to this very problematic situation. We particularly directed our resolution efforts at the Regional District of Comox-Strathcona, which was granted conditional approval to install the pipeline, and the (now) Ministry of Environment, Lands and Parks, which granted the conditional approval.

Despite these lengthy and repeated efforts, the parties were unable to achieve consensual resolution, and undue erosion continued to cause grave concern. At the time this Report was written, one home was a mere ten metres from the edge of the very unstable bluff, and it was clearly foreseeable that the home and perhaps its occupant would fall onto the beach 150 feet below unless a comprehensive solution was found very soon.

Having exhausted all possibility of consensual resolution, I concluded my investigation into this matter in November 1996. I found that the Regional District of Comox-Strathcona had wrongfully failed to ensure that the conditions attached to the sewer installation approval had been fulfilled, most particularly the requirement that the foreshore be returned to its natural condition following installation of the pipeline. I recommended that the Regional District undertake specified restoration work to the foreshore along the Bluffs. The Regional District refused to accept my findings and recommendations, and in the circumstances I was compelled to draw this

very important matter to the attention of the Legislative Assembly, the Board of the Regional District and the people of British Columbia by way of a Special Report.

My jurisdiction over local governments was proclaimed in March 1995, and I recognize that local governments may face change and challenges in being subject to Ombudsman review. However, the fact that the Legislature has entrusted scrutiny of local government to the Ombudsman, in my view affirms a commitment to local government as a strong and important component of our democratic system, and along with this responsibility and authority must go administrative accountability.

In my Open Letter accompanying the Report, I stated: “It is disturbing that, in one of the infrequent cases where I make formal findings against a local government, that authority has not to date been prepared to honour those findings and recommendations. I hope that this Special Report will cause the Regional District to reconsider its position and to work with all relevant agencies to address this long-standing concern.”

At the time of this Annual Report the matter remains outstanding.

Local Government Team	
Files Open Jan. 1, 1997	93
Files Received in 1997	425
Reopened	0
Closed – No Investigation	89
Closed – Investigation	234
Internal Team File Transfers	0
Files Open Dec. 31, 1997	195

Attorney General

NEWSFLASH

My 1996 Annual Report included a guest article by Peter Hopkins, newly appointed as the first internal Ombudsman by the Workers’ Compensation Board (WCB). For a number of years my Office had urged the WCB to establish an internal review mechanism, so that complainants would have someone to go to within the WCB itself, as a first recourse to address their concerns. At the beginning of 1998, as the office of the WCB Ombudsman approached its two-year anniversary, I initiated an audit of its operation. The purpose of this audit is to assess the effectiveness of this internal complaint and review mechanism within the WCB. I also expect the audit to provide useful information about the possible application of this type of model to other agencies, and general information about internal complaint handling. I expect that my 1998 Annual Report will report on the results of this audit.

Ombuds
GUIDING PRINCIPLE

Integrity

Being independent, impartial
and honest.

Lost Time Regained

The transfer of inmates between centres makes the assessment of remission (time taken off the sentence) for each month difficult and inconsistent. Each institutional centre develops a culture of its own and what may be judged fair performance in one centre could be considered poor in another.

An inmate who had been transferred from one centre to another on the 22nd of the month was assessed by the receiving centre for the loss of the total month’s remission. The regulations envision that the remission assessment would be done at month’s end or at the time of transfer, but the assessment had not been done at the previous centre. Following the assessment at the receiving centre, the inmate’s file record was lost. When he applied for review to the district director, the review was completed by an acting director and the assessment remained the same. The man complained to the Ombudsman.

When we discussed the matter with the district director he decided to give the benefit of the doubt to the inmate for that month. The committee’s notice to the inmate had not listed any examples of specific incidents that had led them to their conclusion. We felt that the director’s decision was appropriate in this case, given the impossibility of a true review as requested.

Adding Insult to Injury

A man received a photo radar ticket with his name misspelled. In court, the judge acknowledged the error, reduced the fine and ordered that the court records be corrected.

Subsequently, the man received a letter from court services regarding the amount of the fine with his name, once again, misspelled. He contacted a court registry clerk who confirmed that his name was entered correctly on the database. Neither the clerk nor the supervisor could explain why the most recent letter had his name misspelled. The man requested a letter from court services acknowledging the error and confirming that his name was now entered correctly on the database.

We contacted the supervisor in charge of the database. Having checked the database information and determined that it was correct, the supervisor had felt that no further action was required.

The supervisor agreed to send the man a letter of apology, properly addressed, and confirm in writing that his name had been entered correctly on the database.

It is important for all those who rely on computers to support their work to remember that people can be easily offended by errors such as this case demonstrates.

Attorney General

A Long Struggle for Justice ★

Because this case has already attracted wide media coverage, I considered it appropriate to use actual names.

In late 1992 Mr. Frank van Beers, age 70 years, was diagnosed with cancer. Shortly thereafter he began treatment at the BC Cancer Agency. His treatment plan involved a course of chemotherapy with good expectations for success.

During the treatment Mr. van Beers experienced some serious medical problems which he and his family reported on several occasions to the attending doctors. Notwithstanding repeated expressions of concern, the chemotherapy treatment continued unaltered. Mr. van Beers' condition continued to deteriorate rapidly and he was eventually admitted to a hospital two and a half weeks after his chemotherapy began. He died two days later.

Mr. van Beers' family felt certain that he had died from an overdose of chemotherapy drugs. They also felt that the health care professionals involved had failed to properly treat Mr. van Beers even after these concerns were noted – right up to and including his final admission to hospital.

The BC Coroners Service conducted an "inquiry" into the death. An inquiry is conducted by the Coroner's officials and, unlike a Coroner's inquest, does not involve a jury of private citizens or sworn testimony. Coroners' inquiries do not exist in most other Canadian provinces.

The Coroner's inquiry noted that there were two possible methods of administering the chemotherapy drug given to Mr. van Beers. One is the "bolus" method, direct infusion of the drug over short periods of time. The other is a continuous infusion method where the drug is mixed with other solutions and administered by intravenous over several days. Mr. van Beers was originally scheduled to

receive the continuous infusion method, but this was changed to the bolus method to avoid his having to stay in the hospital over Christmas.

The Coroner noted that the overall amount of drug administered by the continuous infusion method is greater than by the bolus method, and concluded that the medical oncologist at the BC Cancer Agency had failed to adjust the dosage when the administration plan was changed from continuous infusion to bolus. The prescribed dosage was even questioned by another doctor, and by a nurse who discussed the matter with the pharmacist, but the dosage was not altered. The net result was that Mr. van Beers received a much higher dosage than was considered acceptable.

In spite of this finding, the Coroner went on to conclude that the cause of death was "undetermined" rather than an accident or a death caused by the action of others. The Coroners Service later stated that this determination was made because it could not be said with complete certainty that the chemotherapy overdose was, in fact, the cause of Mr. van Beers' death. The Coroner did nonetheless make a number of recommendations to attempt to minimize the possibility of such circumstances occurring again.

Mr. van Beers' family was most dissatisfied with the Coroner's conclusion and complained to my Office. They felt it was absolutely clear that the overdose and lack of appropriate follow-up care caused Mr. van Beers' death, and they further alleged that the Coroner had covered up for the Cancer Agency. My Office investigated this case for several years and assessed many complex matters, including the underlying medical issues, the legal authority and mandate of the Coroner and his staff, the distinction between Coroner's "inquiries" and "inquests,"

the burden of proof that applies to Coroners' reviews and the classification of death system used by coroners in British Columbia. It was through the commitment and persistence of Mr. van Beers' surviving brother that my Office came to review each of these matters.

Throughout this time the Coroners Service refused to revisit its conclusion about the classification of death as "undetermined." The Cancer Agency refused to acknowledge the error, and declined to issue an apology to the family. They noted instead that Mr. van Beers' widow had filed a lawsuit and that the matter would be addressed in the courts.

In July 1997 I advised the Attorney General of my conclusion that the complaint of Mr. van Beers' family against the Coroners Service was substantiated. I concluded that the classification of Mr. Frank van Beers' death as "undetermined" was unreasonable in the circumstances of such a clear and significant overdose, and that the appropriate way to address the family's concerns was to have a full Coroner's inquest (i.e. with sworn testimony and with a jury comprised of members of the public) so that the classification of death could be revisited. I also recommended that the Coroners Service review and develop publicly available policies regarding the classification of deaths, as well as the standard of proof applicable in Coroner's determinations.

Following my investigation I also suggested that the Attorney General consider looking into the allegations of a cover-up by the Coroner, and I spoke with the BC Cancer Agency to stress how important an apology could be in situations where responsibility should properly be acknowledged.

The Attorney General asked a former Justice of the British Columbia Court of Appeal, Mr. Martin Taylor,

Q.C., to consider the results of my investigation and to report back to him. On December 12, 1997, following Mr. Taylor's report, the Attorney General and the Minister of Health announced that a further inquiry would take place regarding the death of Mr. van Beers. This is to take the form of an independent medical review conducted by health care professionals not involved with the BC Cancer Agency. Around this time the BC Cancer Agency settled the lawsuit with the van Beers family. It issued a statement accepting responsibility for the death of Mr. van Beers, and it offered a full apology to his family.

The issues raised in this complaint go to the very core of the public's trust in important government bodies, such as health care agencies and the Coroners Service, which can have profound impacts on the well-being of individuals, families and the public at large. I sincerely hope that the course of action proposed by the Attorney General and the Minister of Health will address issues of public confidence regarding the health care aspects of this complaint. It is my further hope that similar benefits will flow from the significant discussion that has occurred during the course of my investigation regarding the role and function of the Coroner, the distinction between inquiries and inquests and the classifications of death by the Coroners Service in British Columbia. My Office will continue to monitor the Coroners Service in relation to our findings.

There is no doubt in my mind that the persistence of the van Beers family in this case has served an enormous public good, and I commend them for their long-standing commitment to what must certainly have been a most difficult and trying struggle for justice. I also commend the Attorney General and the Cancer Agency for responding fairly in the end.

What a Difference a Day Makes

Mr. Q maintained that the judge had sentenced him to two years, a sentence that would place him in the federal penal system. The pre-trial services centre, however, classified him as having received a sentence of two years less a day and transferred him to a provincial correctional centre. Mr. Q wanted to be transferred to the federal system.

A copy of the warrant supported the correctional centre's position. We then spoke with Mr. Q's lawyer who confirmed that the judge had given a sentence of two years. With the lawyer's assistance, Court Services reviewed the tape of the judgment and acknowledged that it had made an error on the warrant.

Court Services promptly issued an amended warrant and Mr. Q was transferred to a federal facility.

NEWSFLASH

When the BC Council of Human Rights became, by statute, the Human Rights Commission on January 1, 1997, Mary-Woo Sims was appointed as Chief Commissioner. She is responsible for ensuring the fair, effective and efficient administration of BC's *Human Rights Code*. She is also responsible for developing a public education and information campaign to make British Columbians aware of the goals of the Code so that everyone may be treated and treat others with the dignity and respect we all deserve.

Ombuds

GUIDING PRINCIPLE

Cooperation

Using cooperation, empathy and good will in all our work.

A Half-century Old

1998 marks the fiftieth anniversary of the signing of the Universal Declaration of Human Rights. In part, this Declaration affirms that all human beings have the right to:

- life, liberty and security of the person
- freedom from slavery and discrimination
- a family and to marry
- own property
- a nationality and to participate in government
- education, work, rest and leisure
- an adequate standard of living and security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond their control.

Attorney General

Hearing Reviewed

An inmate complained that the procedures that denied him parole were unfair. He had applied for parole, but when the reports about him were disclosed to him he found them inaccurate, misleading and incomplete. Because the inmate was upset by the disclosure, the parole coordinator excluded the inmate's common-law spouse from the parole hearing, even though she had travelled from Nanaimo to Kamloops to attend. The members of the parole board continued with the hearing and denied the parole.

When we examined the parole package, including the institutional report and the community assessment, we found them misleading and incomplete. The centre had not followed the board's policy of disclosing documents two days before the hearing, with the result that the inmate was upset immediately prior to the hearing. The recording device taping the hearing had not functioned properly. The briefing of the board members by the parole coordinator about the conduct of the inmate, and the presence of additional staff members in the hearing to protect the board members raised questions about the fairness of the decision.

The inmate was returned to Victoria where he could have visits from his common-law wife more frequently. The Provincial Releasing Authority and chair of the parole board requested a new community assessment and set a new date for a parole hearing.

The Provincial Releasing Authority used this case to assist in building a new release model with revised policies for presenting reports both at the centre and in the community.

Missing Savings

An inmate entered into an agreement with a correctional centre to obtain the glasses he needed. They agreed to an arrangement by which he would pay \$7 per week from his employment income at the centre. Everything went well until about half-way through his repayment plan. At that point the centre staff decided to transfer him, without his request or agreement, to another centre. Looking into his trust account they saw that he had saved enough money to pay out the agreement in full. They took the balance to settle his debt.

All correctional centres now require inmates to purchase basic hygiene products, toiletries and snacks from canteen. This man arrived with no money and was unable to obtain employment in the receiving centre.

When the Ombudsman investigated the complaint, we felt that the action was arbitrary and possibly oppressive, in that the centre, when transferring the inmate, had used its power to take the money, contrary to the agreement to pay. We proposed that the centre pay the inmate the amount they had taken, and that he return the money he owed at the agreed-upon rate of \$7 per week.

However, beyond this individual case, the Ombudsman was concerned about the systemic problem of treating each centre as an isolated identity for the purpose of such agreements to pay for glasses or dentures. We met with the Provincial Director of Custody and the Director of Investigation, Inspection and Standards to work out a method of transferring payments that enables centres to recognize such agreements when transferring inmates within the province.

NEWSFLASH

The Public Trustee of British Columbia has developed an internal process called Response to Client Complaints and Review of Decisions. The process will be outlined in a brochure, *Review that Decision*, which will soon be available to the public. Complaints will continue to be handled within the Public Trustee's divisions. All staff receive training in how to handle complaints. If the matter is not resolved by the division, a request for a review of the decision will be considered by a Review Committee, which will be chaired by the Deputy Public Trustee.



AFTER MAY 15, 1998:

Secretary of Policy Planning
and Communication Department
(604) 660-4344 local Vancouver call or collect
Call through Enquiry BC 387-6121

It's the Law

Persons in custody who await trial may require access to a law library. However, centres facing severe budget cuts have reduced services to inmates. Specifically, the Surrey Centre stopped funding an outside librarian. The Ombudsman received a complaint from a person awaiting trial that the volunteer librarian who visited the centre once a week was unable to provide an adequate service. The inmate said that over a period of months he had been able to go to the law library only three times, each time for just a few minutes.

Staff at the centre were aware that they were not meeting the Corrections Branch standard that inmates should have access to a basic law library. They did not have the funds to employ a librarian on a regular basis, and had been exploring the possibility of obtaining regular law student assistance, perhaps together with some minimal hours of a paid librarian.

This plan did not materialize. Instead, the centre decided to employ an inmate librarian who would be responsible for all library materials, including those of the law library. The inmate librarian would work a total of five hours a day, five days a week. This plan appeared to offer more appropriate access to law materials and, depending on the incumbent's particular strengths, some guidance for those who needed it.

Although it would be ideal for the centre to have the services of a professional librarian, we viewed the creation of this inmate position as a positive step towards meeting the Corrections Branch standard.

Careful Restraint

An inmate who had been at the centre of a number of disciplinary measures complained that in segregation he had been required to wear a security gown contrary to the regulations governing the clothing issued for that area. Following a dispute over the wearing of the gown, and some tampering with the locking mechanism of his door, he refused to return to his cell. The tactical team was deployed and after using gas, secured him on a restraint board, showered him and returned him to a cell. He complained that he was held on the board for twenty hours in a way that was cruel and unusual, in that he was not allowed food or water nor allowed to use a toilet to urinate.

We investigated both the use of the security gowns for persons who had given no indication that they were suicidal, and the use of the restraint board. A restraint board immobilizes a person in a prone position by strapping the arms and legs. A strap around the waist prevents the person from turning or

moving. In addition, leg irons may be applied.

We submitted a preliminary report to the authorities, containing proposals related to the absence of clear policy for the use of the restraint board and the disciplinary process that followed the inmate's release from the board. The Corrections Branch carried out all thirteen proposals and agreed to provide our Office with a new draft policy governing the use of a restraint board. The disciplinary measures we objected to were amended and corrected.

The Corrections Branch was negotiating with the inmate's counsel to set the terms of an apology and compensation when the man disappeared from his court-ordered probation supervision. He later contacted us from outside the province. At his request, we took steps to conclude the matter. The use of the restraint board in custody is now limited to the most severe cases where restraint is clearly required. When the board is used, medical personnel must monitor the inmate's condition.

Thanks to UVic

I was honoured to be given the Distinguished Alumni Award by the University of Victoria in 1997. I want to thank the university by highlighting the Award in my Annual Report. I graduated from the UVic law school in 1991. The two other award recipients were the then Mayor of Toronto Barbara Hall and internationally acclaimed cyclist Alison Sydor.

A scholarship of \$1,000 was granted in my name to a student in a faculty of my choice. The recipient was Ann Roberts, a second year student in law, who has a disability.

Ms. Roberts grew up in the small town of Brooks, Alberta, where she developed great respect for the RCMP and a compassion and respect for the native people. She felt deeply the injustices they suffered and their sense of desperation. These experiences led to her interest in criminal law, with a special interest in the concept of restorative justice. Once in law school, she established the Aboriginal Cultural Awareness Camps, based on an Alberta model, which bring together the RCMP and municipal police, law students and native people, to talk about restorative justice, and how traditional native justice methods might be incorporated into the regular justice system.

She sees the award as a recognition of the Cultural Awareness program and appreciates the financial assistance.

Attorney General Plus Team

Files Open Jan. 1, 1997	312
Files Received in 1997	1771
Reopened	0
Closed - No Investigation	387
Closed - Investigation	1201
Internal Team File Transfers	21
Files Open Dec. 31, 1997	474

Ombuds GUIDING PRINCIPLE

Respect

Treating everyone with courtesy,
dignity and respect.

from British Columbia CANADA

Brothers and sisters are often twinned; cities are twinned; but twinned Ombudsmans? For the first time in history an Ombudsman twinning has been proposed, between British Columbia and the state of Parana, Brazil. The Canadian International Development Agency (CIDA) supported the Ombudsman for British Columbia to develop a partnership with an office in Brazil under the Canada-Brazil Technology Transfer Fund, set up in 1996 to share Canadian "know how" with partner institutions in Brazil.

João de Oliveira,
Ouvidor for
Parana; Dulcie
McCallum,
Ombudsman for
British Columbia.



The Ombudsman for British Columbia and the Ombudsman (*Ouvidor Geral*) for Parana share a common vision: commitment to fairness rooted in legal rights, citizenship, equality and common sense. They both serve large geographic regions, multi-linguistic groups and a range of economic groupings, including the very poor.

Although Brazil has gone through a long period of uncertainty and instability, the country is now attempting to bring about economic reform and political stability. The government is committed to an ambitious social development, public sector and economic reform agenda. Brazil faces great developmental challenges, including high levels of poverty and inequity, important environmental concerns and the need to continue on its course of economic and public sector reform.

The Partners

Ombudsman for the Province of British Columbia

The Office was set up by provincial statute in 1979. British Columbia, with a population of 3.7 million, was the ninth of ten Canadian provinces to appoint an Ombudsman. The Ombudsman is appointed by an all-party committee of the provincial legislature, for a term of six years.

The Ombudsman is a member of the International Ombudsman Institute, the Pacific Region Ombudsman Association and is involved in creating a Canadian Ombudsman Association. The current Ombudsman is serving a second term as vice president of the US Ombudsman Association.

Representatives from the Office have gone to Moldova, Kazakstan and Moscow as part of the UN Development Program to help develop ombudsman and human rights mechanisms in those countries.

As part of the NAFTA agreement, together with the US and Mexico, the Office has helped in discussions of labour exploitation of minors.

Ouvidor Geral for the State of Parana

The *Ouvidoria Geral* institution existed in Brazil from 1648 – 1832 during the Portuguese colonial period. The Ouvidor was appointed by the King of Portugal and worked with the Governors to inquire into administrative abuse and unfairness on the part of government officials.

The first modern Ombudsman Office was created in 1991 in the state of Parana, one of twenty-seven states in Brazil, with a population of 8.5 million.

The Ouvidor is a State Secretary, appointed by the Governor. State legislation gives him his authority and outlines his role, duties and jurisdiction. Currently he has a staff of 31 and a network of 112 civil servants.

The office is a member of the Iberian-American Ombudsman Association and the Latin American Ombudsman Institute. The current Ombudsman is vice president of the Brazilian Ombudsman Association and second vice president of the Iberian-American Ombudsman Association.

*The first act of an official
is to clean his ears.*

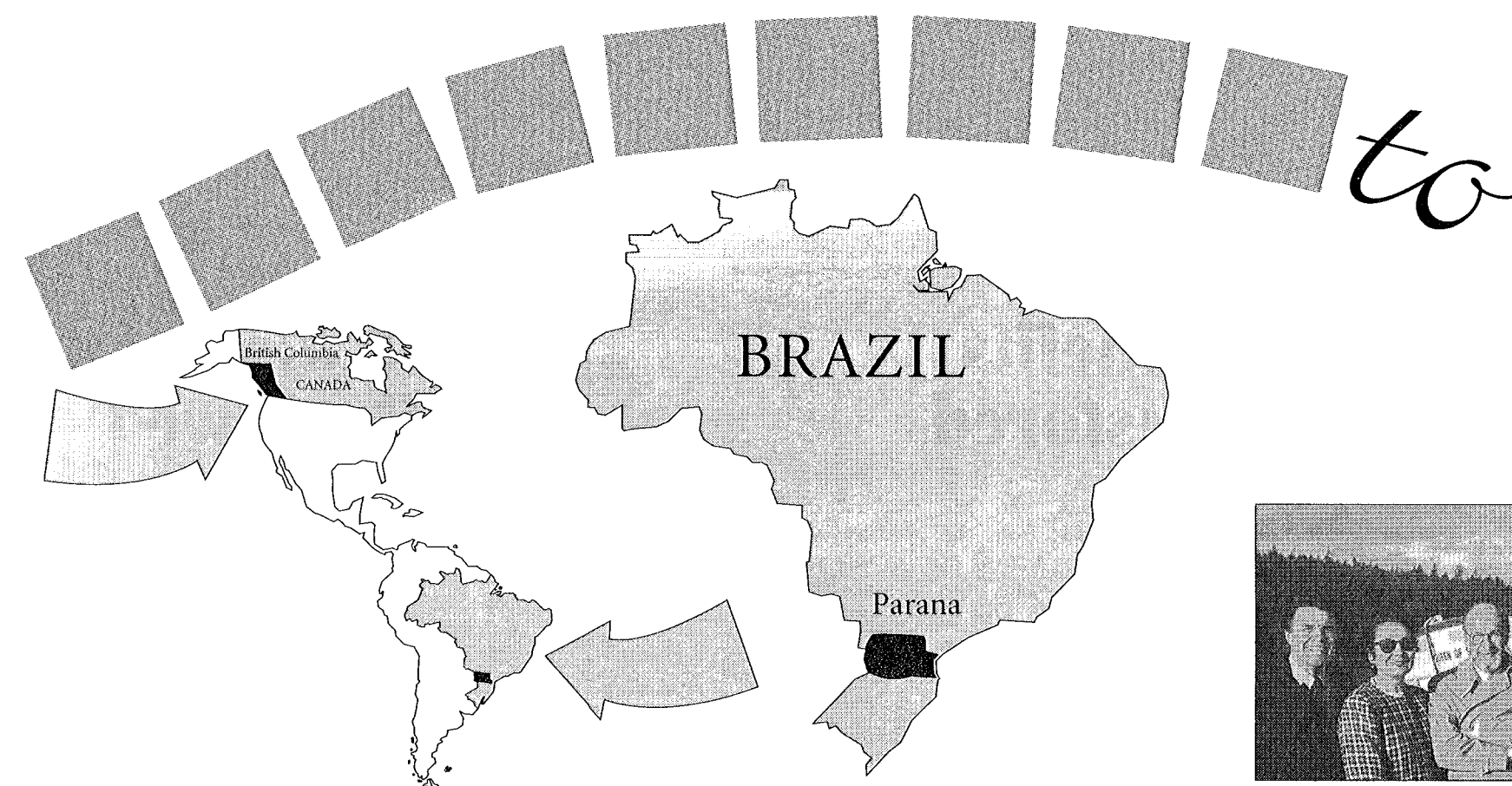
*A municipal poster inviting
citizens to contact the Ombudsman
to give suggestions, criticisms
or make claims.*

*In Portuguese the play on words is
clear: "ouvido" means ear, and the
Ombudsman is the "Ouvidor,"
the one who hears.*

**A primeira ação
da Prefeitura
foi limpar
os ouvidos.**



Dulcie McCallum, Ombudsman for British Columbia, witnesses the signing of an agreement between the Minerva Pharmaceutical Company and the Ouvidor of Parana. The pharmacies will display information brochures and "Open Channel (Cahal Aberto)" boxes in all of their pharmacies. They have 46 in Curitiba, the capital, alone. Left to right: Valmor Rovaris, Director; Marisol Sepulveda, British Columbia; Dulcie McCallum, BC Ombudsman; Hernan Alday, Marketing Manager; João de Oliveira, Ouvidor of Parana.



The Project

The goal of the partnership is to enhance the role of the Ouvidor of Parana in ensuring effective participation of citizens in public administration through the expansion and betterment of the SISDADANIA project – the Integrated System of Citizenship.

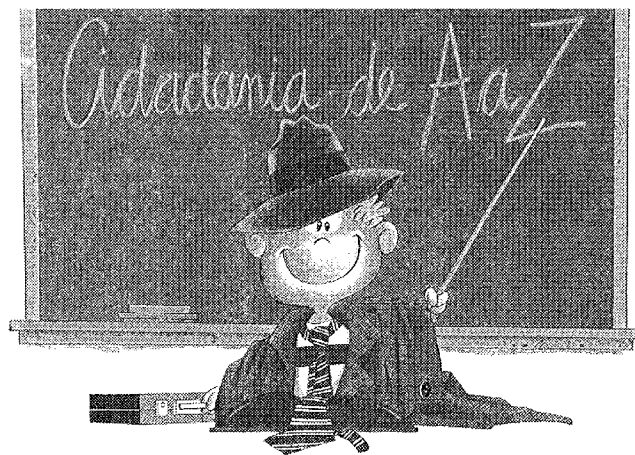
SISDADANIA is a creative attempt on the part of the Ouvidor to teach citizens about their rights and responsibilities in a democracy and to make it easier for them to contact government services and to register complaints about unfair treatment. The following are some of the programs he has begun:

● Hello citizen (*Alo Cidadão*)

A toll free line and an Internet site to receive inquiries and complaints.

● Little Ombudsman (*O Ouvidor Mirim*)

A booklet and video, using puppets, to teach children in state public schools the rights and duties of citizenship. Introducing to state public schools a system for electing a student as the Little Ombudsman. She or he helps other students understand what their rights and duties are and what it is to be an Ombudsman and a citizen.



● The Open Channel

Citizens can send letters and messages to the government by putting them into specially marked boxes placed in public offices, factories and drugstores.



Dulcie McCallum
with the puppeteer
holding the
puppet of the
Ombudsman from
The Little
Ombudsman
puppet show.

At Colégio Lins de Vasconcelos, Curitiba; from left to right: Deline Gessi Hass, school city councilor; Dulcie McCallum, Ombudsman for BC; Rafael Alessi Munth, school mayor; Angélica Taques Camargo, Little Ombudsman.



● Municipal and House Ombudsman Offices

A voluntary partnership with mayors of remote areas and public offices, universities, educational centres and banks, to perform ombuds-like duties.

● Environmental Ombudsman

Selected officers to educate about environmental issues and Earth preservation.

● Citizen is the Following ...

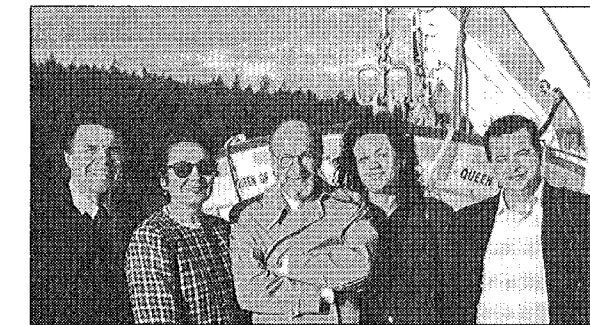
Booklets and an Internet site to explain to citizens, in simple language, their rights and duties.

● Citizens' Stamp

Postage paid letter forms provided in public places for citizens to register complaints with the Ouvidor.

One of the aims of the project is to have the Office of the Ouvidor seen as an open channel connecting government and society rather than a policing organization.

to Parana BRAZIL



Parana delegation visits with Ombuds staff; from left to right: Brent Parfitt, Marisol Sepulveda from British Columbia; João de Oliveira, Estela Saldanha, Roberval Castilho from Parana.

The Process

To begin discussions and the preparation of a specific proposal for CIDA, the Ouvidor Geral of Parana, João de Oliveira came to British Columbia in September accompanied by Estela Saldanha, Coordinator of Programs and Roberval Castilho, Assistant to the Ombudsman. They spent two weeks in the Victoria and Vancouver offices, learning how the Offices function and sharing information about their own programs. They accompanied some staff to the Canadian Ombudsman Conference in Regina.

In late October, Dulcie McCallum, Ombudsman, accompanied by her deputy, Brent Parfitt and Marisol Sepulveda, an Ombudsman Officer, (who speaks Portuguese) travelled to Curitiba, capital of the state of Parana, for further sharing, to learn first-hand how the Parana office functions and to refine the proposal.

A draft concept was signed in Brasilia at the offices of the Brazilian Cooperation Agency (ABC) and the Canadian Embassy. Now approved by Canada's Minister for External Affairs, the final proposal will be signed by the Ombudsman for British Columbia, the Ouvidor Geral for Parana, ABC and CIDA, and work will begin on the exciting projects.

What BC Can Contribute

✓ Sharing computerized Case Tracking system to keep track of complaints and investigations and to generate reports; training staff and technicians in its use.

✓ Working jointly with the Ouvidor of Parana, the Brazil Association of Ombudsman and other Ombudsman organizations to broaden the understanding of ombudsmanship through seminars, conferences and workshops. A special goal might be to promote the expansion of the ombudsman institution throughout Brazil.

✓ Sharing special reports on children and youth, and strategies for integrating children's services in government. Work jointly with Parana to develop educational programs targeted for children and youth on rights and responsibilities of citizens, protection of the environment and health and safety issues.

✓ Upgrading Parana's "Little Ombudsman" program for schools by production of a video dubbed in both English and Portuguese.

✓ Sharing strategies for increasing participation in the internal ombudsman concept, and developing, jointly with Parana, training packages, seminars and workshops for established and potential participants.

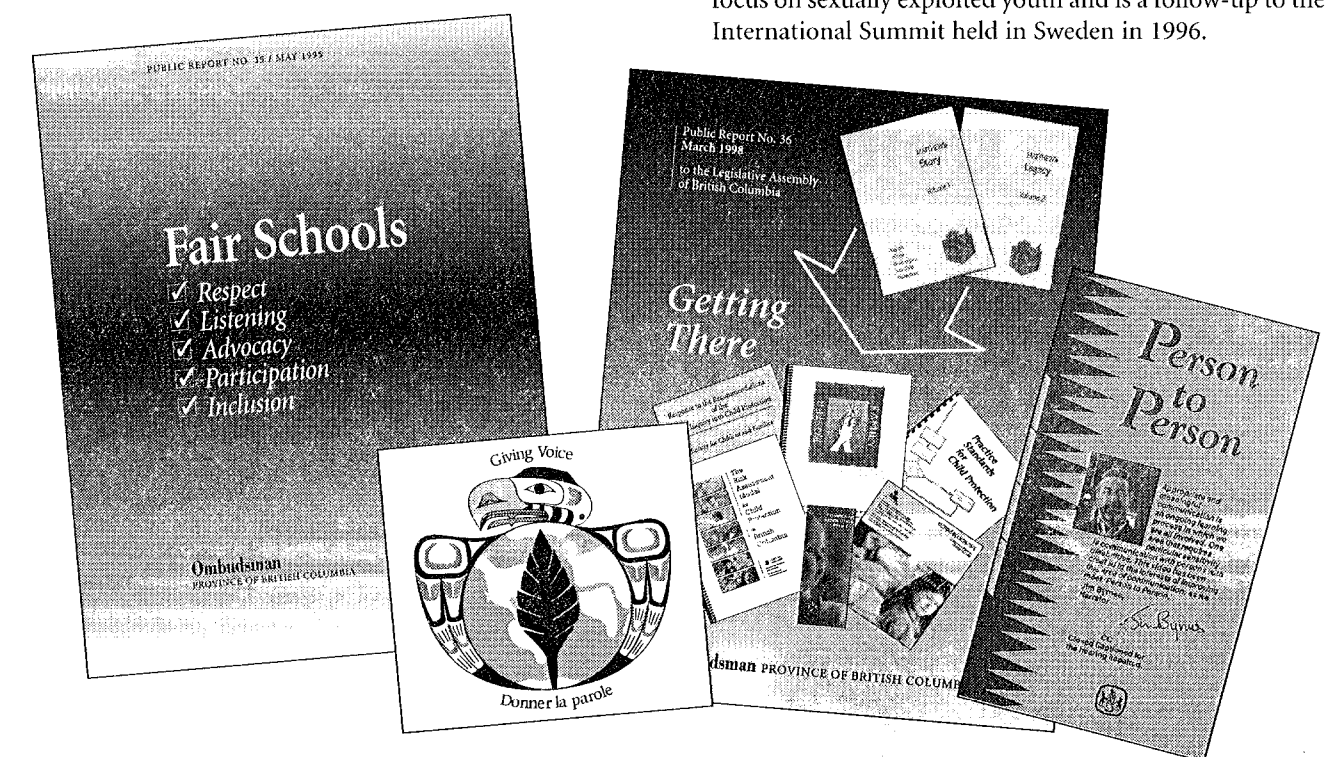
✓ Producing jointly a video on the role of the Ombudsman in local government.

✓ Creating jointly a draft Code of Conduct for consideration by local governments and internal Ombudsmans.

✓ Adapting for Brazilian use a CD ROM containing UNICEF's latest Report on the World's Children.

✓ Adapting to Brazilian context the "Person to Person" video on interacting with persons with disabilities and expanding it to include people with different languages and cultures.

✓ Assisting in planning focus groups to select Parana youth to attend a major conference, "Out from the Shadows," in Victoria, BC in 1988. The conference will focus on sexually exploited youth and is a follow-up to the International Summit held in Sweden in 1996.



Income

Bureaucratic Bungle

A man with AIDS had been contacted by the Prevention, Compliance and Enforcement Unit of the Ministry of Human Resources regarding his collection of Canada Pension Plan (CPP) benefits while simultaneously receiving income assistance several years earlier. The ministry's investigation had been put on hold while the man appealed the decision to deduct his CPP payments from his income assistance. When originally contacted by the ministry several years earlier, the man had signed a release form. Now he was contacted several times by another ministry investigator with the request that he sign a new authorization form allowing the federal government to release information to the ministry about his past payments. He believed that he was being harassed and that the investigator had committed a breach of conduct by attempting to obtain information about his CPP payments, as well as those of his deceased roommate, without the required signed release forms in place.

After speaking with the ministry investigator and examining the file, we were unable to conclude that the investigator had committed a breach of conduct or that she had harassed the man. The federal government had failed to send the information when first requested to do so and required a new

release form since the old one was considered "stale." The man incorrectly judged the ministry's actions to be an unlawful attempt to gain information about him. The man's suspicion that the investigator had been trying to get information about his deceased roommate had apparently been caused by a checkmark in the "spouse" box on the new request for information. The investigator's practice was to prepare her request forms ahead of time as much as possible, ticking all boxes that could be a source of information. The spouse box was always ticked but would yield no information if a person was not listed with the government as having a spouse, as was the case with this particular man.

Although we did not find that the investigator's actions were wrong, we did note that she had used inflammatory language (e.g. "fraud") on several occasions when speaking with the man. This was inappropriate, since there was no evidence of the man's trying to hide the fact that he had collected both CPP benefits and income assistance at the same time. The man had requested a written reply to his concerns about the investigator's action. We noted an unreasonable delay on the part of the supervisor in responding to this request. The delay had heightened the man's anxiety about the situation.

Not in My School

The man wanted to be a teacher. He complained to the Ombudsman that the University of Victoria had failed to place him in a practicum. Without the practicum he could not complete the Elementary Teacher Education Program in which he was enrolled through a college in his area. He wanted the university either to refund the full cost of the program (approximately \$20,000) or allow him to apply other practical work he had done outside the program so that he could receive his certification. The university had turned down both of the requests.

The program required that the students complete two six-week practicum sessions. The man had received a conditional pass in his initial practicum and later received a full pass after meeting certain conditions. For the second and final practicum in which the university placed the man, the sponsor teacher withdrew her sponsorship after only a short time. Placed by the university in yet another practicum, the man withdrew after only one week. A third placement was found for him, but the sponsor teacher became ill just prior to the start of the practicum and a replacement could not be found.

The university was unable to find another principal or sponsor teacher in the man's school district who was willing to accept him. The fact that the man was unwilling, for financial reasons, to accept a practicum outside his school district made it more difficult for the university to find placement. University officials believed that the problems that had occurred in the placement where the sponsor teacher withdrew put a mark on the man's reputation and, as a result, no other schools were willing to deal with him.

The Ombudsman accepted the university's position that they could not force students onto schools, since the schools were under no obligation to accept any students. We could find no fault with the university's actions in this case and therefore could not support the man's position that he should have his full costs refunded to him. Neither could we find fault with the university's decision not to apply the man's other practical experience to the program practicum, since it had not been performed under the supervision of university staff, as required, and was not directly related to the certification he was seeking.

Benefits Restored

A woman who had received disability benefits from the Ministry of Social Services learned that she was no longer eligible for such benefits when her husband enrolled in a college program. After unsuccessfully appealing the amount of his student loan, the couple discovered that neither the student loan process nor the BC Benefits program was prepared to help them cope with the additional expenses they incurred as a result of her disability. They were worried that the husband would have to discontinue his studies, since they had exhausted the student loan.

In August 1996, those who were previously receiving income assistance benefits and attending post-secondary studies were required to apply for student financial assistance to cover all of their expenses. This change meant that individuals who were eligible for student financial assistance would no longer have their living expenses covered through the provincial income assistance program. However, an exception was made through the Interface Agreement between the then Ministry of Social Services (now the Ministry of Human Resources) and the Ministry of Education, Skills and Training. The Agreement specified that individuals or families where one member of the family unit received disability benefits from the then Ministry of Social Services would continue to receive living expenses from that ministry even though someone in the family was attending a post-secondary education program.

In August 1996, those who were previously receiving income assistance benefits and attending post-secondary studies were required to apply for student financial assistance to cover all of their expenses.

Our investigation noted that the Interface Agreement had not been applied in this case. The Ministry of Human Resources (MHR) had incorrectly interpreted this Agreement as being restricted to students with disabilities.

When MHR recognized that the Agreement included anyone in the family unit who had disability status, the living expenses of the couple were immediately restored to their previous level, enabling the husband to complete his studies.

Truck Trouble

Mr. T had been delinquent in reporting his business sales to the Ministry of Finance. Based on estimates of taxes owing, the ministry ordered his van to be seized and sold for recovery of arrears of the social services tax. After the vehicle had been seized by the bailiff acting for the ministry, Mr. T satisfied the ministry that no taxes were owing. However, this information was not communicated to the bailiff in time to prevent the sale. The proceeds of the sale were refunded to Mr. T, but he complained that they fell far short of the market value of the vehicle.

The Ombudsman verified the facts of the case and recommended that the ministry make Mr. T an offer of settlement. Mr. T accepted the offer, but asserted that he was still owed for an overpayment of taxes for a period preceding the seizure of the van. The ministry provided a detailed reconciliation of taxes, penalties and interest owed by the business, together with collection action proceeds and refunds paid to the business. The Ombudsman was satisfied that no refund of taxes was owing and the matter was settled.

Double Appeal ★

A student at a community college who failed a clinical course was immediately dismissed from a professional program of study. His appeal of the dismissal was not successful and he complained to the Ombudsman.

The Ombudsman's investigation of the appeal process identified a number of problems:

- the student was not given a proper opportunity to appear or make submissions
- reasonable notice provisions were not followed
- although the student claimed that he was not aware that the appeal body was looking at his situation, a final appeal decision was rendered without any evidence to dispute his claim
- no safeguards were in place to ensure that the same individuals did not become involved at

- different levels of the appeal process
- responsibility for various tasks essential to a properly functioning appeal system was not clearly defined
- those charged with appeal responsibilities were not properly trained.

The problems that occurred in the case of this student were so considerable that they indicated a clear breach of the rules of natural justice and thereby invalidated the decision. The college agreed with the Ombudsman that the student should be allowed to begin the appeal process all over again. The college also agreed to review its appeal policies and undertook to provide training to those charged with appeal responsibilities.

Income

Compensation Crawl

May 31, 1995

Mr. C retired from the Saanich Police Department. From 1963 to 1968 he had been a member of the Public Service Pension Plan; he had received refunds for his contributions.

1968 - 1995

As a member of the Municipal Pension Plan, he was eligible to retire at age 50. He sought and obtained estimates from the Superannuation Commission as to his potential income should he re-purchase his service under the Public Service Pension plan. With this information, he calculated that he would have sufficient income; he re-purchased his Public Service Pension benefits and retired May 31, 1995. He was granted a pension effective June 1, 1995.

July 18, 1995

Mr. C discovered:

- early retirement under the Public Service Pension plan did not permit payment of benefits until age 55
- he would face a shortfall of about \$340 per month until age 55
- the dental coverage and life insurance provided by the Public Service Pension Plan were not part of the benefit package of the Municipal Pension Plan.

The commission apologized, but said they were powerless to change anything.

July 25, 1995

Mr. C complained to the Ombudsman. The Ombudsman's investigation showed that, in both written and verbal communication with the commission, Mr. C was given to understand that pay-out of pension benefits would commence from both plans as soon as he retired. Staff acknowledged that there was an oversight in his case because of the complexity of his file and because staff were learning about recent new legislation and new rules governing the re-purchase of previous periods of service.

October 15, 1996

The Ombudsman found that the commission was administratively negligent in failing to make Mr. C aware of the pension implications of his early retirement. She recommended that they make Mr. C an *ex gratia* payment of the amount of the shortfall he experienced, and ensure appropriate dental and insurance coverage until the provisions of the Public Service Pension Plan became effective.

February 3, 1997

The commission ensured Mr. C's dental and insurance coverage and made him an *ex gratia* payment of \$4,000.



Follow-up

Ombudsreport 1996

page 6

A Step in the Right Direction

At a new university a student wanted to appeal the university's handling of a rebate on residence fees to compensate for late arrival of furniture in the residence. Complaint review procedures regarding non-academic issues were found to be very unclear. The university board delegated to the President the responsibility of hearing appeals on non-academic issues. The President planned to designate a person responsible for non-academic affairs and also to recommend to the board that the right of a formal appeal be extended to all matters involving penalties.

By April 1997 the following had been accomplished:

- The President had appointed an Associate Vice President for Student Services and had delegated to this person the responsibility of addressing



most non-academic complaints.

- New procedures for residence discipline had been drafted and recently approved by the Residence Council. An elected Residence Council had come into existence for the first time in the fall of 1996.
- The Board of Governors approved a new Harassment and Discrimination Policy for the university. Students disciplined as a result of this policy have the right to appeal the disciplinary action through the Senate Committee on Academic Appeals.
- The President was to refer to the Senate a recommendation for a revision to the Calendar concerning matters that could be appealed to the Senate Committee on Academic Appeal.

Finding the Common Ground

On occasion, both parties in a dispute are able to agree that their differences are limited to a portion of the problem before them. Finding a way to isolate the areas of disagreement and clarify the areas of agreement is an important role for the Ombudsman.

Needing this clarification, a woman approached the Ombudsman because she was having difficulty obtaining payment for contracted services that she had provided to the Ministry of Education, Skills and Training. Although the ministry recognized that she had provided some training services, it questioned whether it should be responsible to pay her for services she continued to provide after she was advised to discontinue them. While the matter was still not settled, the ministry agreed to allow her to begin another training session for ministry clients, only to change its mind again and ask her to discontinue the training. The ministry agreed that it was responsible for payment for some

of the training services provided, but it was reluctant to pay until the overall disagreement was settled.

Until the Ombudsman was asked to examine the matter, it appeared headed for the courts, a less than satisfactory option for the woman. After listening to the legitimate concerns and interests of both parties, the

Finding a way to isolate the areas of disagreement and clarify the areas of agreement is an important role for the Ombudsman.

Ombudsman was able to obtain agreement on that portion of the complaint that was not subject to dispute. The ministry agreed to make an initial payment of over \$2,000 for the first

undisputed contract and an additional almost \$9,000 for that portion of the second training session that was not in dispute. For the portion of the training that was in dispute, the parties agreed to share the costs of obtaining an arbitrated decision from an outside neutral body. By agreeing to this, the parties did not compromise their interests regarding the issues in dispute by agreeing to resolve the payment for those issues that were not in dispute. This type of problem solving is an important aspect of the work of the Ombudsman.

The Justice Clock Ticks Slowly

Ms. R planned to retire from a college on August 31, 1993.

March 1993

The college requested pension forms for Ms. R from the Superannuation Commission.

September 1993

The college phoned the commission to inquire why the forms had not been sent. The commission replied that the March 10 request had been received but overlooked. A staff person apologized and promised to send the forms within two weeks.

October 25, 1993

The college wrote to the commission asking why

the forms had still not arrived.

November 3, 1993

The forms had been received, were completed and sent with supporting documentation to the commission.

December 1993

A new set of forms was sent to Ms. R because the initial package had not included quotations on joint life-last survivor options. Although Ms. R's spouse had indicated that he was waiving any pension claim, the commission contended that the joint life-last survivor option must be quoted in order for the spouse to make an informed decision prior to waiving entitlements. These forms were sent to Ms. R's previous address and reached her only on December 28, 1993.

January 12, 1994

Ms. R's pension for September-December 1993 was paid. As a result of the delay, Ms. R was unable to take advantage of the spousal roll-over feature when paying her 1993 income taxes. The value of this deduction was \$2,425.

October 11, 1996

The Ombudsman's investigation found that the Superannuation Commission was guilty of unreasonable delay in dealing with Ms. R's requests, and that the commission should indemnify Ms. R the amount of her loss resulting from the administrative delay.

February 3, 1997

The Superannuation Commission made an *ex gratia* payment of \$2,425 to Ms. R.

Income



Never Give Up Anything

Because Mr. Truss' case was so longstanding and a classic example that whatever could go wrong did go wrong, the Ombudsman decided to interview him, to allow him to express his views. The interview follows this summary. The Ombudsman has approved to have Mr. Truss' name appear in the interview and Mr. Truss has also consented to have his name and photo used.

Mr. Truss, who has HIV/AIDS, had appealed a decision of the then Ministry of Social Services to reduce his income assistance benefits by the amount that he was receiving from the Canada Pension Plan (CPP). He successfully appealed this decision to a tribunal established under the then *Guaranteed Available Income for Need (GAIN) Act*. When the BC Benefits Appeal Board initially considered the ministry's subsequent appeal, there was a three-three split of the six member board on one major issue of importance.

Confronted with this deadlock, the ministry initially advised Mr. Truss that his previous level of income assistance benefits would be restored because he had been successful at the GAIN tribunal. After restoring his benefits for one month, the ministry reduced his benefits the following month because it was now interpreting the board's decision as a unanimous decision in its favour.

When my Office advised the BC Benefits Appeal Board of the ministry's interpretation of this matter, the ministry resisted the board's attempts to clarify whether it had issued a split decision or a unanimous decision, as the ministry claimed. When the board again considered this matter, a majority of members disagreed with the ministry's claim that the board had issued a unanimous decision in the ministry's favour. More important, the board confirmed that the failure of the ministry to file its appeal on time invalidated the appeal. Mr. Truss was relieved when, once more, the ministry restored his previous level of income assistance benefits.

Unfortunately, this saga did not end here. The following month, the ministry once more told Mr. Truss that notwithstanding the tribunal decision and the two board decisions, it would be reducing his benefits the following month as if these decisions had never occurred. The ministry claimed that the benefits were now provided under new legislation, and that the ministry was no longer bound by the decisions made under the *GAIN Act*.

I advised the ministry that I considered its actions to border on an abuse of power. I noted that the ministry's claim that it was no longer bound by the appeal decision was puzzling on several counts:

- the wording of the relevant sections of the two pieces of legislation was almost identical
- the ministry had not taken this approach on other cases where it continued to provide benefits in accordance with decisions by tribunals and the board under the previous legislation.

I observed that the ministry's decision in this case to ignore decisions that it didn't agree with called into question its respect for the appeal system.

At my urging, the ministry agreed to retroactively reinstate Mr. Truss' benefits to the level prior to the ministry's most recent reversal of its position. A senior ministry official apologized for the ministry's handling of this matter, particularly the breakdown in communication that had occurred throughout.

Incredible as it may seem, the ministry did not ensure that its field staff and staff of the Prevention, Compliance and Enforcement Branch were fully informed of its decisions. This administrative shortcoming led to the ministry initiating a third series of contacts with Mr. Truss to tell him that he was not entitled to full income assistance benefits because he was receiving a CPP pension. The failure of the ministry to prevent this from occurring struck me as oppressive treatment of a vulnerable person whose very survival may hinge on the continuation of these

benefits. Although this apparent reversal was subsequently rectified, I am continuing to consider the systemic implications of this most recent interaction between the ministry and Mr. Truss.

Interview between Dulcie McCallum, Ombudsman and Mr. John Truss

Omb: What was the issue when you first thought you had a problem?

JT: At the very beginning it was an issue of fairness. All I wanted to do was keep my Canada Pension Plan, which I had worked many years for.

Omb: What would you consider to be the most frustrating part of the experience for you personally?

JT: Basically it was the attitude. It was a very condescending, patronizing attitude, that I believe came from a despair that has permeated the ministry at all levels, especially in the FAWs [Financial Assistance Workers]. The entire concept of welfare is to do things for people who are least able to do for themselves. And yet in the atmosphere of cost cutting that has permeated this regime, you see an attitude of what can we do to people.

Omb: Did you ever get the impression that individuals were trying to use income assistance to support you, to enable you to meet your needs?

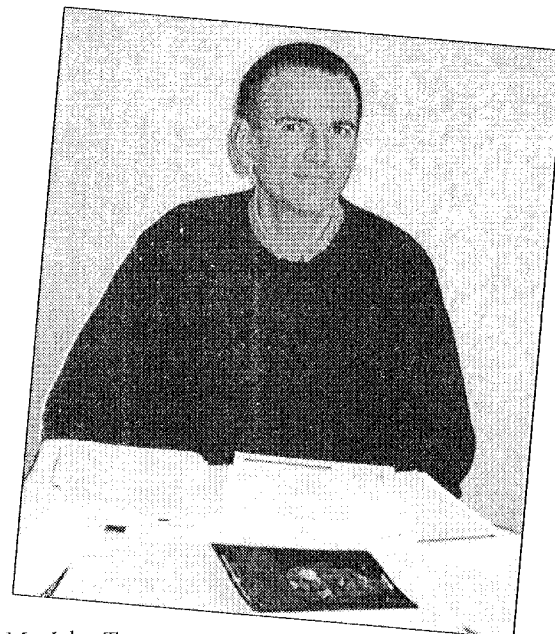
JT: Yes, yes. Shaun McDonald and I want his name mentioned. He was a very kind man – a man that respected me and I respected him. He was my Financial Aid Worker from February of '95 until the middle of September of last year, when he died of a massive heart attack at work.

Omb: Can you identify good moments, when you actually felt heard or when your workers were supportive and adequate?

JT: There are good people in the ministry. I certainly won't tar them all with the same brush. I refer to it in all of my correspondence as "it" because I believe it is a corporate entity. And yet out of that there are many people who, in spite of the ministry, do deliver services to people. Do do things for people, not to them.

Omb: What do you think you have learned from this experience about yourself?

JT: I've learned I'm a much stronger person than I ever thought I was.



Mr. John Truss

Omb: What have you learned about government, about the public service and about being a British Columbian in need?

JT: The government is extremely dysfunctional. It says one thing and does another. You ask it to reconsider a decision, through the appeal process. It says yes, the appeal process works and then it proceeds to do nothing.

Omb: And what would be your advice to others who might find themselves in a similar situation?

JT: Never give up anything. A right can be violated but you can never give it up. Keep meticulous records of any appeal process. Follow up phone calls with letters. Write down dates, times and places. Verify facts the ministry gives you. Break a task down. Take it a step at a time.

Omb: What's the piece of this whole experience that you own, where you made the greatest contribution?

JT: I synthesized it all. I facilitated my own salvation as it were. If I had not done what I did at any one step nothing more would have been done, so to me I was the synthesis of all of this.

Omb: So what would be one of your greatest sources of pride, having been through this frustration?

JT: I really know how to write a letter now. A really good letter. And to put my thoughts, my feelings, my reality into words. To a philosopher reality becomes words. You study your reality, you put it into words, it mirrors reality back and someone else can finally understand you.

(A special thanks to Mr. Truss for this interview).

Dear Staff,

Please accept our regrets and condolences upon the passing of Shaun McDonald (FAW with the Ministry of Social Services, Barrons Road, Nanaimo). He was a kind and respected gentleman. Shaun had a personality that radiated concern, courtesy and care for all.

If a man is known by those he helped, then Shaun was indeed a great man. His gentle nature caused him to suffer the indignities and the agonies of others. It was a personal burden at times for him that he cared so much.

His smile and his manner will be missed. Our words do not do justice to Shaun's character or his many deeds above the obligations of a man and beyond the call of duty and life.

He was a friend to all. No kindness however small shall be wasted. Shaun was a special man and he shall be remembered.

Sincerely,
Brian Thorne and John Truss
(from the BCGEU Newsletter)

Keep it a Secret

A worker made a confidential wage complaint to the Employment Standards Branch. He then wished to appeal the determination made against him by the branch. The Employment Standards Tribunal refused to accept a confidential appeal. The governing statute allowed for a confidential complaint, but not an appeal.

The tribunal agreed to review whether it could accept a confidential appeal and, if so, what procedure it would follow in making a ruling. If the tribunal decided that it could not process a confidential appeal, the worker could withdraw his appeal without his name being disclosed. The man submitted his appeal on that basis, knowing he could withdraw if necessary.

The tribunal agreed to hear the appeal by written submissions from the parties, allowing the man's name to remain confidential.

Income

Groundhog Day – a Horror Film

Organizations with limited resources and a high volume of clients face an ongoing challenge to develop processes tailored to the needs of those they serve. District Offices of the Ministry of Human Resources (MHR) fit this description. They have tried to develop processes for handling new BC Benefits applications that are responsive to the changing needs of their clients.

In one case, the resulting system created a situation reminiscent of the movie *Groundhog Day*. In that movie the principal character kept waking up each morning and experiencing the same sequence of events, no matter what he had done the previous day.

The increase in volume at some District Offices led them to abandon booking appointments for new clients because of staff complaints about delays for those appointments and the large number of cancellations and “no-shows.” However, the new first-come-first-served policy created a situation where new BC Benefits applicants felt as if they were in a remake of *Groundhog Day* as a horror movie. They would get up early and line up outside the District Office only to

...the new first-come-first-served policy created a situation where new BC Benefits applicants felt as if they were in a remake of Groundhog Day as a horror movie.

learn that the few appointments available for that day had been given to even earlier risers. They were told to come back the following morning. They would get up even earlier the next morning, often with the same results. Frustrated that they might never be able to submit their applications, people were arriving at District Offices sometimes in the dark and in inclement weather, in order to be sure that they would get an appointment to have their new applications initiated.

When the Ombudsman raised questions with one District Office about this process, they quickly revised their practices. Following a daily information session held when the District Office opened in the morning, new applicants would leave the office with an appointment time. Although they would not necessarily be able to apply for BC Benefits that day, at least they would not have to go through a daily lineup in order to submit their applications.

No one wants to keep endlessly reliving early morning lineups, nor should they be required to do so, especially when the temperature outside is below zero!

Outstanding Warrants

The Income Assistance Regulation, and the regulations governing Youth Works and Disability benefits, which came into effect on March 31, 1997, stated that a person was not eligible for regular income assistance benefits while an indictable arrest warrant for the person or for his or her adult dependant remained outstanding. Until the warrant had been cancelled or cleared, regular benefits could not be paid.

Typically, the outstanding warrant is from another jurisdiction in Canada and often involves charges that date back some time. In virtually all instances, the other jurisdiction refuses to pay to transport the person named in the warrant, and someone without funds cannot travel to the other jurisdiction to deal with the charge or charges. However, if the person is prepared to plead guilty, the other jurisdiction may agree to waive the charge to BC. The policy of the Ministry of Human Resources prevented the issuing of income assistance or benefits until the charge had actually been waived and the person had made a court appearance. This procedure could take many weeks, and sometimes months. Only if the person had dependent children could hardship benefits (with lower rates than regular income assistance) be issued.

The Ombudsman received a number of complaints that the policy was discriminatory and was depriving people of the basic necessities of life. An investigation was begun. By the fall of 1997, the ministry amended its policy, making it possible to issue hardship benefits to those without dependent children once they presented proof of having requested that the charges be waived to BC.

A SAFER Place

A man who was receiving income assistance from the Ministry of Human Resources (MHR) was in need of shelter aid. MHR required him to apply for Canada Pension Plan (CPP) benefits prior to his turning 65 years of age, but had agreed to provide him with hardship assistance while he awaited these benefits. Once he received his CPP benefits, he was expected to repay in full the amount of hardship assistance he had received.

Although the man did not object to paying back the hardship assistance, he believed that he should be eligible for a shelter assistance grant for the period when he was receiving hardship assistance. This grant was provided through the SAFER (Shelter Aid for Elderly Renters) Branch, then with the Ministry of Housing, Recreation and Consumer Services. The SAFER Branch was making no distinction between

hardship assistance and regular income assistance. As a result, SAFER policy did not permit him to apply for shelter assistance until he was no longer receiving hardship assistance. Since SAFER applications could not be made retroactive, this man was not receiving shelter assistance from either regular income assistance or through the SAFER program.

The Ombudsman advised the SAFER Branch of the distinction between hardship assistance, which was subject to repayment by the client, and regular income assistance, which was not. The man's circumstances were reviewed and he was considered eligible for SAFER shelter assistance effective when he began receiving hardship assistance from MHR. The branch also took measures to ensure that others receiving hardship assistance from MHR until their CPP benefits arrived would not be considered ineligible for shelter assistance through SAFER.

Safe Move

A frustrated owner of a moving company complained that the Ministry of Human Resources was not respecting legislation governing licensing for cartage firms. The ministry required its employees anticipating a transfer to obtain estimates from moving companies. The written policy directed staff to advise those obtaining estimates that “licensed carriers have greater accountability for their actions than do unlicensed carriers.” The owner said he was often asked to submit an estimate, but he rarely got the work because unlicensed firms were offering to do the job at a lower cost. In his view, the ministry was in effect penalizing businesses complying with the *Motor Carrier Act*, which requires companies transporting goods to be licensed. He argued that, because licensed carriers had higher costs, they could not compete with the rates of unlicensed firms. He had contacted the ministry directly but said he had no success in having his concerns addressed or in changing the policy.

The Ombudsman raised the matter with the policy division of the ministry and referred it to the Comptroller General. As a result, the Ministry of Human Resources amended its policy so that only licensed cartage firms would be asked to submit estimates on work.

Smiling Again

In this case the left hand did not know what the right hand was doing. A woman was receiving Transition to Work benefits. She had requested, and was awarded, enhanced dental benefits to allow for extensive dental work for her son. When she was told, after six months, that she was to be removed from the Transition to Work Program, she appealed and won a further six months enhanced dental coverage. Since her son's dental work would not be completed even then, she requested an extension of the twelve-month maximum allowed under the Transition to Work benefits. The ministry refused, and before the twelve-month deadline had been reached, she stated that she intended to appeal that decision to the BC Benefits Appeal Board. She argued that it would be unfair for the ministry to discontinue coverage for her son's dental work, since she could not pay for it herself. The ministry informed the woman that her appeal to the BC Benefits Appeal Board before her benefits were exhausted would essentially be an appeal of the

tribunal decision she had won and would result in her benefits being cut off.

The Ombudsman's contacts with the District Office indicated that the woman's benefits were still ongoing. Staff appeared unclear about the status of the woman's declared intent to appeal. However, several weeks later the woman informed us that the District Office had not implemented the decision of the BC Benefits Appeal Board that the ministry pay for completion of her son's dental work. When we contacted the District Office again, staff stated that they knew nothing of the appeal nor of the decision and that the woman's file had been closed because of lack of contact. We confirmed with the Appeal Board that the woman's appeal had been successful and had been forwarded to the Health Services Division. Once again we contacted the District Office and asked them to follow up. They did, and confirmed that the woman's claim for her son's dental work would be processed immediately.

Income Team

Files Open Jan. 1, 1997	254
Files Received in 1997	1632
Reopened	1
Closed – No Investigation	355
Closed – Investigation	1018
Internal Team File Transfers	147
Files Open Dec. 31, 1997	367

Health

Closer to Home: Update on Regionalization

I first reported on the planned regionalization of health care and the expected impact such reorganization might have on Ombudsman investigations in my 1994 Annual Report. The plan of the Ministry of Health originally called for over one hundred Regional Health Boards and Community Health Councils, with full transfer of responsibility to the new health authorities by mid-1996. However, the review of the regionalization initiative by a Caucus Committee suspended the process temporarily. In my 1996 Annual Report we outlined the changes in the regionalization plan announced by the Minister of Health following the Caucus review. These changes included a reduction in the number of Regional Health Boards (RHBs) from twenty to eleven, the establishment of thirty-four Community Health Councils (CHCs), and seven Community Health Services Societies (CHSSs). The RHBs, located in the urban areas of the province, are responsible for the delivery of all health care services in their region. CHCs, located in the more rural areas, are responsible for facility-based health care, such as hospitals and long term care facilities. CHSSs provide services in areas such as mental health, public health and continuing care. The CHSS is composed of representatives from each of the CHCs in the geographical area it serves.

The transfer of responsibility and funding to

these new health authorities took place on April 1, 1997. With the exception of denominational hospitals, most hospitals and facilities have now been amalgamated with the appropriate RHB or CHC. Denominational hospitals have the option of establishing an affiliation relationship by contract with the RHB or CHC, which allows the hospital board to continue to govern and operate the facility, but requires that the facility participate in the initiatives of the RHB or CHC to achieve efficiencies and improvements in service delivery. The denominational hospitals that have "affiliated" with their RHB or CHC include: Mount Saint Joseph, St. Vincent's, Brock Fahrni, Holy Family, St. Paul's, St. Michael's and St. Mary's, all located in the lower mainland. A number of other denominational hospitals are expected to affiliate, rather than amalgamate, with their RHB or CHC.

Several non-denominational facilities have established a contractual agreement with the Vancouver/Richmond Health Board, rather than undergo amalgamation. These facilities have developed "cluster" boards, intended to reduce administration, with each cluster board establishing its own relationship to the RHB. These facilities include:

- the Vancouver Hospital and Health Sciences Centres, incorporating the G.E. Strong Centre, the George Pearson Centre, the Arthritis Society, and Vancouver

- General Hospital (including the UBC site)
- the Children's and Women's Health Centre of British Columbia, incorporating the BCs Children's Hospital, the BC Women's Hospital and Health Centre, and the Sunny Hill Centre for Children
- the BC Cancer Agency.

The reorganization has changed the way in which the Office of the Ombudsman deals with complaints about the delivery of health care. With the exception of complaints about facilities not amalgamated, we advise the CEO or Senior Manager of the RHB, CHC, or CHSS of any complaint under investigation in her or his region. Much of our time now is spent building relationships with these new authorities and ensuring that they understand the role and function of the Ombudsman. Fortunately for the Ombudsman's Health Team, not all health-related authorities have been affected by regionalization. Centralized programs, such as Pharmacare, the Medical Services Plan, the BC Ambulance Service, and provincial facilities such as the Forensic Psychiatric Institute and Riverview Hospital, remain unaffected. Self-governing regulatory bodies, such as the College of Physicians and Surgeons and the Registered Nurses Association of BC are also unaffected.

(For further discussion of regionalization see the Auditor General's report: *A Review of Governance and Accountability in the Regionalization of Health Services*. 1997/1998:2. Homepage: www.oag.bc.ca)

Gender Pay

A woman had been a client of the Vancouver General Hospital Centre for Sexuality, Gender Identity, and Reproductive Health for some time. Her physician, on staff with the centre, had written to the Medical Services Plan (MSP) requesting approval for male to female gender reassignment in March 1996. When the plan did not respond, she travelled to Montreal, the only place in Canada where the procedure was available, and underwent surgery in April 1996. She felt that the delay of MSP in responding to her physician's request was unfair.

For the past several years MSP has paid for gender reassignment based on the current fee schedule. In July 1995, the plan had suspended approval of all requests for gender reassignment. (Although the plan had notified the centre of the suspension of approval and the reasons for that decision, the woman claimed that this information was not communicated to her). At the direction of the Medical Services Commission, the plan had begun the search for a contracted facility prepared to carry out male to female gender reassignment at no additional cost to the patient. The plan finalized a contract with a facility in Oregon during the latter part of 1996. The woman's application for gender reassignment had been approved for this facility and scheduled for January 1997. However, as she had already undergone surgery, she requested reimbursement for the full cost of the procedure done in Montreal.

MSP refused to reimburse her. However, as she clearly met the plan's criteria, the plan agreed to the Ombudsman's suggestion that they provide payment at the same amount that would have been reimbursed prior to July 1995. But since the surgeon had increased his fees substantially, the woman received reimbursement equal to only about 25 per cent of the total expenses related to her surgery. Before July 1995, when the surgeon increased his fees, payment from MSP was equivalent to about 50 per cent of the cost. Had she waited for the plan's response, the woman would have had full coverage, with only travel and incidental expenses to pay. Given that she had undergone surgery without prior authorization, we considered payment at July 1995 rates to be reasonable and fair.

A Thin Line

When a woman received a bill from the Medical Services Plan (MSP) for \$288 to cover premiums retroactive to April 1 and through July, she felt it was unfair. The family income was \$1,500 per month and she believed they qualified for premium assistance.

The woman and her children were receiving full premium assistance until March 1997. Effective April 1, 1997, her husband was included under her account. The application for premium assistance, signed by both the woman and her husband, indicated continued entitlement to full premium assistance, based on their joint 1996 net income. However, information from Revenue Canada indicated that the family's adjusted net income of \$20,520 was \$1,500 over the threshold to qualify for premium assistance, as established by the Regulations under the *Medicare Protection Act*. The couple then applied for temporary premium assistance, indicating a total monthly income of \$1,865. However, the plan calculated expenses differently, and allowed \$424.34 with which to pay the monthly MSP premium of \$72. Temporary premium assistance was denied.

The Ombudsman concluded that the plan's decision was consistent with the *Medicare Protection Act* and Regulations. We advised the woman that she could pay the arrears by instalment, and referred her to the plan to make the necessary arrangements.

No Quid Pro Quo

After his mother's death, Mr. J received a bill for the last month of her care in a long term care facility. While his mother had been a patient in the facility, she had lost a number of items for which she had never been compensated. The total cost of the missing items exceeded the total of the outstanding bill. Considering this, Mr. J felt that the facility was unreasonable in requiring him to pay his mother's care charges. At a minimum, he thought he should have been offered a repayment plan.

When we reviewed the situation with the staff at the facility, we discovered that the cost of the missing items could not be considered as a "trade off" to the care charges since the facility had not been responsible for the loss of the mother's personal items. Apparently, Mr. J had not made alternate arrangements for safekeeping of her items when his mother was admitted to the facility, in accordance with the facility's policy.

Although we were not able to substantiate any unfairness in the billing practices of the facility, in consideration of Mr. J's financial situation, we were able to arrange with the facility a mutually agreeable repayment schedule for him.

NEWSFLASH

The Minister of Health and Minister Responsible for Seniors, in her recently released 1998 Mental Health Plan, announced the creation of a Mental Health Advocate. She said:

Systemic advocacy is required to monitor the performance of the various elements of the service system, particularly at their boundaries, to ensure that services are integrated, coordinated and non-discriminatory.

To support this initiative, the minister will appoint a Mental Health Advocate for the province of British Columbia. The Ombudsman, in *Listening*, Public Report No. 33 on Riverview Hospital (May 1994) recommended:

That the Provincial Government appoint a Mental Health Advocate for the Province of British Columbia, with the following mandate:

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 provide a single information and referral source for advocacy resources in mental health services in BC.

We hope that the minister will make the appointment in the near future to enable the Advocate to be in place as implementation of the Mental Health Plan proceeds.

Health

Give Me FULL Reasons

Six physicians were involved in the care of a woman's now-deceased mother. She complained to the College of Physicians and Surgeons regarding their care. After receiving the decision from the college, she complained to the Ombudsman. She alleged that the college's decision reflected inadequate investigation; that the college had failed to address her complaint about two of the six physicians; and that its conclusions regarding the other four physicians did not flow from the evidence reviewed.

Our investigation included a thorough review of all documentation related to the woman's complaint, including the minutes of the Quality of Medical Performance Committee, a peer review committee established under the college's rules. We also interviewed the Deputy Registrar who had considered the matter.

The Ombudsman's role is not to assess the medical evidence, but to consider whether that evidence leads logically to the final decision of the college. In this case, we found that evidence supported the college's findings. However, when we reviewed the college's decision letter to the woman, we found that:

- the college had failed to report on two of the six physicians she complained about
- although the college's letter gave an excellent summary of the care provided to the woman's mother prior to her death, the final decision regarding the remaining four physicians did not appear to flow from that summary.

In the Ombudsman's view, giving reasons enhances the public's understanding of the adminis-

tration of public policy, thereby providing an opportunity for critical scrutiny, as well as a rational focus for public debate, judicial review and an Ombudsman investigation. Moreover, giving reasons promotes public acceptance of the legitimacy of administrative action; failure to give reasons may leave the decision open to question.

We were unable to substantiate the woman's complaint that the college's investigation was inadequate. However, after hearing our concerns regarding the adequacy of the reasons provided in this case, the college wrote the woman a second decision letter. This time they addressed her concerns about all six of the physicians she had complained about, providing full and adequate reasons. We considered this action to have resolved the remaining portion of the woman's complaint to the Ombudsman.

Some time ago, the Office of the Ombudsman developed the following criteria for assessing the adequacy and appropriateness of

REASONS FOR A DECISION:

- the individual's concerns are addressed directly and completely
- assertions of fact are supported by appropriate sources of documentation
- statements of law are supported by statutory or judicial authority
- the reasons plainly state the rule upon which the decision proceeds, and whether the rule as applied to the facts logically leads to the decision reached
- the reasons are understandable and in plain language
- the reasons are consistent with reasons given in other cases dealing with the same or similar issues.

Understanding Why

A woman was not satisfied with the investigation of the College of Physicians and Surgeons into the death of her 26-year-old son who had been hospitalized for ulcerative colitis at the time of his death. Understandably, she was very upset at the loss of her son.

Our investigation found that the college had done an extensive review of the complaint about the physicians involved in the son's care. The matter had been considered by the Quality of Medical Performance Committee three times and by four deputy registrars. Three of the deputy registrars had met with the woman to address her concerns directly, in addition to writing lengthy letters addressing her many questions. The opinion of the college was that the cause of death was a massive pulmonary embolism, which could not have been predicted or prevented. Although the woman appeared to accept this finding on one level, she continued to raise various questions in an attempt to understand why her son had died.

Since the college appeared to have done an exhaustive review and provided clear information to the mother, we were unable to substantiate her complaint.

A Mis-read

This woman missed her examination entirely. She went to the wrong campus of the college where the exam was being given, and by the time she arrived at the right campus, the examiners had already left. The college refused to give her another opportunity to take the examination.

The notice sent out to the examinees clearly stated, in bold print, the location of the campus, and included a map. It also stated that there would not be another opportunity to take the examination, and that candidates must be on time. It was clear that the woman had been sent all this information before the exam date. The examination was scheduled for 4:05 pm and the examiners waited until 5:30 pm before leaving.

We concluded that the college had provided clear and concise information regarding the location of the examination site. We were unable to substantiate this complaint.

Injection of Fairness

A woman had been prescribed a drug called Eprex, to be delivered by injection three times per week. The drug cost \$134 per month and was necessary to keep her alive, since all other treatments had failed. However, Pharmacare had refused to cover the cost of the medication, even though the woman's physician had requested special authority. The woman's husband had been borrowing the money to pay for the drug, as he did not have the disposable income to meet the expense on his own.

Pharmacare confirmed that Eprex was not currently an eligible benefit. The drug was covered under two funding mechanisms, through the kidney dialysis service, and through the Centre for Excellence, for patients developing AZT-related anaemia. However, the woman did not qualify for either of these programs. The drug manufacturer had recently applied to Pharmacare for coverage related to two further indications for use. This application had been forwarded to the Therapeutics Initiative and the Pharmacoeconomics Initiative, the two advisory committees that review the therapeutic and cost effectiveness of new drugs. The results of this review were not expected until the late spring.

Under the circumstances, Pharmacare agreed to provide the woman with coverage for Eprex for a period of one year, the standard approval period. The woman and her husband were delighted with this resolution.

More Pills, Please



Mr. K, who had undergone prostate surgery in 1974, was required to take a particular medication to reduce inflammation, at a rate of four doses of the medication each day. For some years his doctor had prescribed the medication at four hundred doses at a time. However, his pharmacy would no longer fill the prescription at the usual rate because, he was told, Pharmacare rules would not allow more than 120 doses of a medication to be dispensed at one time. Since this practice would cost him more for the additional dispensing costs, he spoke to the manager of his pharmacy who agreed to write to Pharmacare on his behalf. There had been no reply from Pharmacare.

He was so grateful that he came to our office to personally thank the Officer who had handled his case.

At the request of the Ombudsman, the senior pharmacist at Pharmacare agreed to review the man's situation. It appeared that Mr. K's pharmacist had not called Pharmacare. In any event, she said it would be up to the physician to make such a request to Pharmacare on behalf of his patient, not up to the pharmacist.

Mr. K's physician wrote a new prescription and faxed it to Pharmacare for the senior pharmacist's attention, requesting an exemption. Pharmacare granted the special authority and the man was able to receive the same prescription amount he had been used to receiving. He was so grateful that he came to our office to personally thank the Officer who had handled his case.

Getting Younger

An elderly gentleman received a birth certificate in 1944 recording his birth date as June 1925. He recently obtained a new birth certificate and surrendered the old one in the process. The new birth certificate recorded his birth date as June 1927. He contacted the Vital Statistics Agency to contest this error and request the return of the old certificate, which he considered correct. He was told that the date of birth on his new certificate was correct, and that the old certificate had been destroyed.

We found that the man's certificate of registration of live birth, signed by his birth mother, recorded the date as June 1927. An adoption order, dated May 1928, also read as June 1927. The agency explained that the birth certificate obtained in 1944 had been issued by a District Registrar and that such birth certificates were not accepted as identification any more, because they frequently contained errors. For this reason, the agency had replaced the man's old certificate free of charge.

We concluded that the agency had acted correctly. Although the man accepted this information, he was left with the unsettling news that he was two years younger than he had thought.

Health

Short-sighted

Ms. Y failed the written licensing examination offered by the College of Opticians in September 1996. Since this was the last written examination offered under the American Board of Opticianry and the National Contact Lens Examiners (ABO/NCLE) series, she requested the option of a practical examination. The college refused. She felt this was unfair.

Following designation under the *Health Professions Act*, the college arranged to have a series of six licensing examinations held around the province. These examinations were scheduled between April 1995 and July 1996, with an additional final examination added in September 1996, after a change in the by-laws. (This additional date was intended, in part, to allow a second opportunity to those who had failed the examination). In all cases, the examination had been purchased under arrangement with the ABO/NCLE of the United States. These examinations were intended to establish a minimum level of competency from which to build in the future, and were available only for the initial registration of the profession, after which the college intended to develop its own examination. We learned that Ms. Y had not attempted an examination until the final one in September 1996.

The by-laws of the college allow for a practical examination only if the candidate has failed the written examination twice. In this situation, the college did not have the authority to offer a second practical examination. We were unable to substantiate this complaint.

East Meets West

Ms. N came from Newfoundland to British Columbia after working for eight years in the field of Early Childhood Education. She had received her training in Newfoundland at a private institution that was recognized both in Newfoundland and in other provinces.

She applied for an Early Childhood Education Licence from the Community Care Facilities Branch, submitting all of the required documentation. Her application was refused. She was told that the problem centred on her credentials from the institution she had attended in Newfoundland, which was currently being assessed by the Ministry of Health. No final decision would be made for six to eight months. Since she had a friend here who had trained at the same institution, who had already been licensed in British Columbia and was practising her profession, she felt she had been treated unfairly.

We explained the woman's circumstances to the Director of Licensing at the Community Care Facilities Branch. She advised us to have the woman call her to discuss her individual situation further. Ms. N was granted the license and expressed her thanks to the Director and to us for our intervention.

Ombuds

GUIDING PRINCIPLE

Teamwork

Combining the diversity of experience and talent of people who have a unity of purpose and commitment to success.

Exam Time

A group of recent graduates from a privately operated school of massage therapy all failed the licensing examination administered by the College of Massage Therapists of British Columbia in August 1995. They had all done well during the course of the two-year program, each paying an average of \$20,000 in tuition and related expenses. Having failed the examination, they could not practise as registered massage therapists. The graduates believed that the college was unfairly trying to limit the number of registered massage therapists by making the licensing examination unreasonably difficult. In support of their allegation, they noted that the failure rate for the August 1995 examination was extremely high.

The college administers the licensing examination in February and August of each year, and continued to do so during the course of the Ombudsman's investigation, which was completed in June 1997. The failure rate continued to be somewhat high for each of these examinations. However, the Ombudsman was unable to find any evidence that the college was attempting to limit admission to the profession through the license examination process. In fact, concerned about the apparent increase in the failure rate, the college began a significant review of the examination process, including thorough analysis of each question by private consultants. The analysis focused on the way the questions were worded as well as the content. As a result of this review, a number of changes were made. One of the four sections of the written examination (anatomy) continued to be identified as problematic, with the highest overall failure rate. The college then hired two other consultants to carry out an extensive analysis of this section of the examination.

Two-thirds of each examination is made up of questions selected from a "bank" of questions used in previous examinations, and one-third, of new questions developed specifically for that examination. The analysis considered all the questions used in the anatomy examination for several years and found that the section on anatomy was actually no more difficult than in previous years. The results of the review suggested that the increase in failure rate was not caused by a problem with the examination.

The graduates believed that the college was unfairly trying to limit the number of registered massage therapists by making the licensing examination unreasonably difficult.

The college has continued to exhibit a great deal of care in administering the licensing examination, selecting and editing the items used from the "question bank," and in writing the new questions used. All questions are subject to review by private consultants for both content and item analysis. Once the examination has been administered, a computer marks it, and then the college's private consultants carefully review each question. Any questions that statistical analysis finds defective are removed. The computer, without consideration of the "defective" questions, then re-marks the examination. The final score for each candidate can now be said to be based on a highly refined testing instrument.

We consider the actions taken by the college to ensure a valid licensing examination to have settled this complaint.



Heavy-handed

A woman admitted to hospital for a thirty-day psychiatric assessment returned to the ward from an outing around 9 pm. She got into an altercation with a nurse who questioned what she was doing as she sat colouring a poster in the day room. She alleged that the nurse started shouting at her and calling her a liar. When she did not respond, she said that the nurse kept shouting at her and then attempted to lock her in the seclusion room. When she refused to cooperate, arguing that she had not done anything wrong, the nurse called a "yellow alert" and five men came into the day room and began to drag her away. When she resisted, the nurse grabbed her thumb and bent it backwards. She was then sedated and thrown into the seclusion room. She felt strongly that this nurse had mistreated her.

We learned that the Registered Nurses Association of British Columbia (RNABC) had also become involved, and that a Nursing Practice Consultant had been sent to the hospital to assist in addressing the issue. File evidence suggested that the woman's behaviour had escalated, and was out of control at the time of the incident. There was a history that she had injured hospital staff. Nevertheless, questions remain regarding the behaviour of the nurse who initiated the outburst with his confrontational approach and use of the "thumb hold."

The Nursing Practice Consultant intended to discuss this behaviour with the Nursing Manager and the nurse's supervisor, to stress the need to document such incidents and the importance of ongoing evaluation of nursing staff. These actions, as communicated to the woman by the RNABC, and confirmed by this Office, were considered by her to have resolved the matter.

Patients at Risk

A woman had worked as a nurse in long term care facilities for years. She alleged that the Professional Conduct Committee of the Registered Nurses Association of British Columbia had unfairly terminated her membership in the Association, effectively eliminating her income and livelihood. She alleged that the committee had "never believed her side of the story," and therefore she had been mistreated in the process.

The committee had found the woman guilty of conduct contrary to the ethical standards of the profession of nursing and of professional misconduct for failing to meet the standards for nursing practice in British Columbia. The decision to terminate membership was based on the committee's concern that the woman was placing her elderly patients at risk, and that, in spite of a long history of being advised of her practice problems, she had failed to show any insight into them.

The Ombudsman was unable to identify any procedural error on the part of the committee, and found the committee's decision followed reasonably from the evidence under consideration. The fact that the committee presented other evidence over that offered by the woman did not, in and of itself, suggest that the committee was biased against her.

Health Team

Files Open Jan. 1,1997	241
Files Received in 1997	473
Reopened	0
Closed – No Investigation	163
Closed – Investigation	400
Internal Team File Transfers	25
Files Open Dec.31, 1997	126

Charter Rights Defined

A case the Ombudsman resolved in 1991 illustrates the difficulties people with disabilities may experience in obtaining access to health care, even though they carry medical insurance. We were contacted by a woman who is deaf, who frequently experienced life-threatening allergic reactions. As a result she had been treated in several different hospitals, none of which provided sign language interpreters.

As the woman was receiving income assistance, she requested that the then Ministry of Social Services and Housing provide funding for a sign language interpreter during her hospital stays. The ministry felt that it lacked the authority to do so, arguing that it was the responsibility of the hospital to provide such assistance. The ministry did, however, authorize interpreter coverage for the woman’s medical appointments outside of the hospital. The woman filed an appeal of the refusal to provide coverage during her hospital stays, and under the ministry’s legislation at that time, the issue was set down for hearing by a tribunal.

In the meantime, the woman was hospitalized on several further occasions. One hospital agreed to provide up to two hours per day of interpreter service. Other hospitals took the position that as interpreters for people who are deaf were not a specific benefit under the governing legislation, they were not authorized to use their budgets to provide coverage. The woman told us she experienced considerable fear and stress during her hospitalizations, because she felt that she might not be able to adequately communicate about her life-threatening condition. Finally, the Income Assistance Tribunal ordered that the woman be provided with coverage during her hospital stays, and that an interpreter who had previously provided services on an unpaid basis be paid for her time. The problems experienced by this individual were therefore resolved. However,

until the recent decision of the Supreme Court of Canada in *Eldridge and Warren v. Attorney General of British Columbia, et al*, other people who are deaf continued to face a significant disadvantage in their ability to access health care.

Eldridge and Warren v. Attorney General of British Columbia et al (excerpt from c. 10, by D. McCallum and P. Carver, from *A Legal Handbook for the Helping Professional*, edited by Uhlemann and Turner, 1998).

As this Chapter was being prepared for publication, the Supreme Court of Canada handed down the most significant decision to date with respect to the scope of equality rights under the Charter for persons with disabilities. In *Eldridge and Warren v. Attorney General of B.C. et al*, a deaf couple whose child was born prematurely and a deaf individual with various illnesses that required frequent medical attention challenged the failure of both Medical Services Plan and the Hospital Insurance Plan to expressly cover the costs of sign language interpreters as part of health insurance in British Columbia. The trial and appeal courts had dismissed the case, concluding that section 15 [of the Charter] did not impose a positive obligation on government to pay for what was viewed as a service “ancillary” to medical care.

The Supreme Court of Canada disagreed. In a sweeping (and unanimous) decision, the Court ruled that section 15 is broad enough to impose just such an obligation on government, if that is necessary to ensure that persons with disabilities receive the same quality of benefits that all other citizens are entitled to under legislated schemes such as public health insurance. Mr. Justice LaForest, writing for the Court, found that communication between physician and patient is integral to health care. For deaf persons, therefore, interpretation is not ancillary to medical service but a necessary component of it. To exclude costs of

interpretation from health insurance coverage is a form of discrimination, which violates section 15(1).

The court identified the two main objectives of equality rights to be:

- a) to prohibit the attribution of untrue characteristics based on stereotyping attitudes (e.g., racist or sexist attitudes); and
- b) to take into account true characteristics (e.g., mobility or communication impairments) that act as “headwinds” to the equal enjoyment of rights and benefits available to mainstream society.

The latter objective is particularly important for persons with disabilities. It gives rise to a duty of “reasonable accommodation.” That is, where governments design schemes providing general benefits, they are under a duty to accommodate persons with disabilities so that they have equal enjoyment of those benefits. This duty is subject to a limit of reasonableness, or “undue hardship.” This would allow a government to argue as a section 1 defense that the accommodation in question is, in all the circumstances, too costly to undertake.

In the case of sign language interpretation in medical services, the Court found that the cost would amount to a tiny fraction of the province’s overall health insurance budget. The Court, therefore, ordered the government of British Columbia to administer its health insurance plans in “a manner consistent with the requirements of section 15(1)” (paragraph 95) – i.e., to pay for interpretation services as part of health insurance.

This breakthrough decision would appear to have important implications for all publicly provided services and programs, including public transit and employment programs, to name only two. It is, in short, the kind of decision that proponents of disability rights have hoped and worked for over the 15 years of the Charter’s existence.

How Files Were Closed in 1997

Section of the Schedule to the Ombudsman Act	Enquiries	No Investigation	Investigation	Total
1. Ministries	2092	3595	2849	8536
Ministry for Children and Families	176	237	388	801
Ministry of Aboriginal Affairs	1	0	4	5
Ministry of Agriculture, Fisheries and Food	2	0	8	10
Ministry of Attorney General	1112	536	1111	2759
Ministry of Education, Skills and Training	62	20	59	141
Ministry of Employment and Investment	4	2	15	21
Ministry of Environment, Lands and Parks	38	16	83	137
Ministry of Finance and Corporate Relations	45	17	47	109
Ministry of Forests	19	6	54	79
Ministry of Health	117	58	196	371
Ministry of Human Resources	222	2654	636	3512
Ministry of Labour	190	18	74	282
Ministry of Municipal Affairs	27	7	80	114
Ministry of Small Business, Tourism and Culture	9	0	8	17
Ministry of Transportation and Highways	67	23	82	172
Ministry of Women's Equality	1	1	4	6
2. Commissions and Boards	370	461	373	1204
Workers' Compensation Board	106	358	112	576
Other Commissions and Boards	264	103	261	628
3. Crown Corporations	80	549	188	817
BC Hydro	11	153	65	229
ICBC	28	374	61	463
Other Crown Corporations	41	22	62	125
4. Municipalities	80	190	153	423
5. Regional Districts	22	60	42	124
6. Islands Trust	4	0	4	8
6.1 – 6.14 Improvement Districts	8	1	6	15
7. Schools and School Boards	72	41	120	233
8. Universities	15	4	21	40
9. Colleges	26	3	31	60
10. Hospitals	50	63	88	201
11. Professional and Occupational Associations	235	35	86	356
12. Regional Health Boards	8	6	14	28
Jurisdictional Files	3062	5008	3975	12045
Non-jurisdictional Files				2927
Total Files Closed in 1997				14972

Natural Resources

Having a Mine as a Neighbour Can Be the Pits

With expanding urban growth, especially in the Lower Mainland of BC, it is not surprising that the incidence of land-use conflicts has increased. A case in point is when one landowner's interest in earning money through the development of an aggregate operation on his property seriously disturbs neighbours or conflicts with other values in the community. Aggregate resources such as sand and gravel have considerable value as raw materials for the buildings, roads and other infrastructures of community growth. Since transportation costs are high, it is economical to use aggregate close to the source of extraction.

Both rural and urban lifestyles can conflict with activities necessary to extract, process and transport aggregate. Neighbours have sought to enlist the help of provincial or local governments to restrict these activities; proponents of the aggregate industry feel that landowners have a right to develop this resource. The extent to which government is responsible for addressing these issues has been raised in complaints to the Ombudsman against the Energy and Minerals Division of the former Ministry of Employment and Investment, now the Ministry of Energy, Mines and the Ministry Responsible for Northern Development.

Sand and gravel pits and rock quarries are included in the definition of "mine" in the provincial *Mines Act*. The Act applies to all phases of mining from initial exploration to final reclamation and abandonment. This statute and its supporting *Health, Safety and Reclamation Code for Mines in British Columbia* provide the regulatory framework for the ministry to ensure the health and safety of both workers and the public. They also address the technical aspects and environmental impacts of aggregate operations. The Act requires that a permit be obtained before any mining work takes place; the Code sets the standards by which a mine must operate.

The most common complaints received by the Office of the Ombudsman about aggregate development activities are that:

- the opposition of neighbours to a gravel pit or quarry application has not been considered
- inadequate conditions have been attached to a permit
- the ministry has not adequately enforced provisions of the Code or of a particular permit.

Issues have not been restricted to obvious concerns about noise, dust and public safety. One person complained that his neighbour's proposed gravel pit would mask the warning signal of

rattlesnakes. Another believed that the ministry had taken inadequate enforcement action regarding an adjacent landowner's historical overmining. On the other side of the issue, the owner of a gravel processing operation complained that the ministry initially requested that she obtain a permit for activities that were later determined not to require one.

The regulatory framework for the aggregate industry is complex. Although the ministry is the lead agency in regulating aggregate operations, it is not responsible for addressing all issues related to such operations. Various federal, provincial and local government agencies may have involvement with these activities. The need to deal with various agencies, each with a limited mandate to regulate an operation, can be frustrating for individuals and for industry.

Perhaps the most important ministry initiative was to develop a document entitled: A Guide to the Development of Soil Removal and Deposit By-laws in conjunction with the Union of BC Municipalities (UBCM).

For example, the *Mines Act* does not explicitly provide that consideration be given to issues such as appropriate land use or impacts on social issues such as lifestyle. Special conditions are nevertheless sometimes attached to permits, as a means of mitigating adverse impacts of aggregate operations on adjoining property owners. The inclusion of such special conditions can result in increased demands for enforcement by ministry staff.

The ministry has recently taken steps to improve coordination and communication among the various parties and to reduce land-use conflicts. Perhaps the most important ministry initiative was to develop a document entitled: *A Guide to the Development of Soil Removal and Deposit By-laws in conjunction with the Union of BC Municipalities (UBCM)*. The Guide was written by a working group that included representatives of the ministry and several Lower Mainland and other local governments with experience in aggregate operations. The Aggregate Producers Association of British Columbia and lawyers representing the industry, the UBCM and the provincial government were also consulted during development of this Guide, which will soon be distributed to local governments and other interested parties.

The Guide begins with historical background information, including the observation that municipalities have had authority to regulate soil removal activities since 1957. Three approaches to by-law development are suggested in the Guide, along with explanations of the factors on which they are based. The three options are:

- an operation may occur anywhere
- an operation may occur only within a defined area
- an operation may occur anywhere, but preferably outside a defined area.

The bulk of the Guide is a model by-law with explanatory notes accompanying each section. It is intended to assist local governments to develop soil removal and deposit by-laws and to promote a consistent approach to by-law development throughout the province. Other stated purposes of the Guide are to eliminate regulatory duplication and to increase certainty for both local communities and industry.

Local governments have an interest in encouraging the aggregate industry to ensure an economical source of raw materials, which would strengthen their tax bases. However, each local government has a unique set of interests and concerns that it must consider. Concerned neighbours may see local rather than provincial government as the level most accessible to them. Local governments have the option of addressing the issues arising from conflict about social impact and land use, after weighing the various interests represented. Particularly under current economic circumstances, these are difficult decisions for local governments to make.

The Ombudsman did receive one complaint that directly raised the issue of the role of local government in regulating aggregate activities. The complaint was that a gravel pit permit was being issued contrary to a position taken by local government. In this case no soil removal by-law was in place and therefore local government had no jurisdiction to intervene. However, at the conclusion of the Ombudsman's investigation such a by-law was being developed.

The complaints made to the Ombudsman raise questions about the jurisdiction of each level of government and the need to accommodate both public and private interests. We commend the collaborative efforts of the ministry and the UBCM. They will assist local governments to take a planned approach to reducing land-use conflicts associated with aggregate operations.

A Commitment to Clean

A homeowner claimed that a road building contractor had committed to cleaning the exterior of his house following completion of road work in the immediate vicinity. The contractor later cancelled this aspect of its "goodwill policy," claiming that the goodwill was being unfairly taken advantage of by residents in the area.

It appeared to us that the commitment to house-clean in this case had been made prior to the contractor's modification of the goodwill policy. We requested that the ministry's area manager speak to the contractor about this matter.

The contractor acknowledged that a commitment had in fact already been made to this particular homeowner. The contractor contacted him and renewed the commitment to clean the exterior of his house.

Mr. M, whose property had been transferred to him by his father, sought to obtain an easement. To his surprise, he found that the property was in the Agricultural Land Reserve. He thought it was unfair that the Agricultural Land Commission would not allow him to remove the property from the reserve.

An earlier land exchange in 1979, at the request of Mr. M's father, had bound the subject property to another farm property that was in the Agricultural Land Reserve. The father assumed that the restrictive covenant was in place for only ten years. Prior to transferring the subject property to his son, a title search showed no restrictive covenant, even though the property was in fact in the Agricultural Land Reserve. The Ombudsman found that the restrictive covenant was in fact in place and that there was no evidence to support the father's contention about the ten-year term of the covenant.

Fair Trade



The option offered to the man and his son was to consolidate two other properties to be included in the Agricultural Land Reserve in exchange for excluding the subject property, provided the same net benefit to agriculture was achieved. They accepted the option and the Agricultural Land Commission cancelled the restrictive covenant on the son's property.

NOTICE TO THE PUBLIC

If you are considering buying acreage that appears to be farmland, in addition to doing a title search at the Land Title Office, it would be prudent to contact the Agricultural Land Commission at (604) 660-7000 to confirm whether or not the land is in the Agricultural Land Reserve.

Natural Resources

Getting to the Fire

The Ministry of Forests sent out a Request for Proposals (RFP) to move forestry personnel and equipment during the fire season in large transport aircraft. Mr. L complained that his submission was unfairly rejected. Although his bid came in higher than the successful proponent's bid for the trial season, the ministry entered into a long-term agreement for the provision of services at a much greater cost. After reviewing copies of evaluations obtained under the *Freedom of Information and Protection of Privacy Act*, Mr. L alleged that no consideration was given to the proponent's long-term options and that his company would have provided long-term services at a significantly lower cost. He also believed that the RFP process was manipulated to provide the successful proponent a weighted average.

The Ombudsman found that the ministry had considered long-term options and costs in a manner consistent with the information included in the RFP package. There was no evidence that the RFP process was manipulated to provide the successful proponent any advantage over other applicants.

The ministry, at Mr. L's request, explained why his company was not awarded the contract. The reasons included considerations other than price.

In the Hole

A young man damaged both wheels of his bicycle when he hit a pothole. Both the Ministry of Transportation and Highways and the road maintenance contractor denied any responsibility and refused to pay damages.

We reviewed the related correspondence and the circumstances surrounding this incident. We learned that the pothole had been repaired after the incident, but as well, that the on-site visit of the Area Manager noted further surface deficiencies close to the offending pothole. We questioned how well the road had been routinely inspected and maintained during the period leading up to the reported incident.

We requested that the ministry reconsider its original decision not to accept any responsibility. In response, the ministry agreed to contact the young man with a view to negotiating some compensation for damage to his bicycle.

Ombuds

GUIDING PRINCIPLE

Empowerment

Encouraging and helping people using public services to find their own solutions to problems.

Relationship Boundaries

Mr. R applied for a woodlot licence. The Ministry of Forests said no, we can't give you a licence because your spouse also works for the ministry. Mr. R thought this was unfair because his spouse worked in a different district office.

The ministry had acted according to its conflict of interest policy in this case, but agreed to review the policy.

A revised policy requires a Forest Service employee to consult with the district manager, regional manager or branch director if an immediate family member wants to apply for a woodlot licence. Each situation will be assessed to determine whether or not there is an actual conflict of interest should an application be accepted from, or a woodlot licence awarded to, a member of the employee's immediate family. After review, Mr. R's application was accepted.

Natural Resources Team

Files Open Jan. 1,1997	314
Files Received in 1997	454
Reopened	0
Closed – No Investigation	101
Closed – Investigation	444
Internal Team File Transfers	28
Files Open Dec.31, 1997	195

NGOs Support Children's Rights

Every day close to forty thousand children under the age of five die, worldwide, from lack of food, shelter or primary health care. More than one hundred million children work under hazardous and often fatal conditions. More than eighty million homeless children live on the streets of the world's cities. Almost ten years ago, on November 20, 1989, the United Nations General Assembly adopted by consensus the *UN Convention on the Rights of the Child*. All UN member nations except Somalia and the United States have ratified the Convention.

The Deputy Ombudsman attended an important conference in Indiana in 1997, dealing with the role of non-governmental organizations (NGOs) in supporting the Convention, monitoring children's rights and promoting ratification. The Conference was hosted by Indiana University-Purdue School of Education.

The conference focused especially on helping the US NGOs:

- to understand the positive effect that ratification has had on the work of NGOs in other countries
- to explore how ratification might affect child advocacy in the US

- to build a strong NGO coalition that would be ready to monitor the Convention after ratification.

The conference was attended by the Directors and leaders of numerous child advocacy organizations in the US, a youth contingent from local high schools and universities and invited experts from Europe and Canada.

Mrs. Awa N'Dye Ouedraogo, one of the ten member UN Committee on the Rights of the Child, applauded the work of NGOs in campaigning for the adoption of the Convention. She stressed that after ratification they must continue "to remind governments of their commitment and to urge them to disseminate information on children's rights and the Convention in official as well as other languages spoken within the country."

She encouraged NGOs to help ensure that the reporting process under the Convention is participatory and transparent, that the reports are comprehensive and analytical and that children are involved in the reporting process so that their voices are heard. She also encouraged NGOs to present alternative reports and said that in 90 per cent of the State Reports submitted,

an alternative NGO report was received.

NGOs represented at the conference explained their roles in the implementation and reporting on the Convention. They all seemed to have these functions in common:

- review measures undertaken by their country
- evaluate the measures for success and adequacy
- make suggestions for further action
- encourage public scrutiny of policies
- investigate and report violations.

They also see their role as including information gathering, development of indicators on the implementation of child rights, including surveys, research and documentation, training, lobbying, advocacy, networking, public hearings and debates and the distribution of national and alternative reports.

The last speaker at the conference likened the children's rights struggle to the suffragette movement and the civil rights struggle in the US and South Africa. He suggested that some of the same techniques used by these movements might be necessary and appropriate to further the quest for the implementation of children's rights.

Governing Bodies of Professional and Occupational Associations

Enquiries and Complaints Received in 1997

Categories	Enquiries	Complaints				Total
		No investigation	Investigation			
			Closed without findings	Settled	Closed with findings	
1.College of Dental Surgeons of BC	16	4	5	0	2	27
2.College of Massage Therapists	2	1	2	3	0	8
3.College of Opticians	2	0	1	1	4	8
4.College of Physicians and Surgeons	82	12	12	6	5	117
5.College of Psychologists	1	2	4	1	0	8
6.Law Society of BC	109	9	10	3	2	133
7.Registered Nurses Association of BC	7	2	3	0	2	14
8. Other	16	5	12	4	4	41
Total	235	35	49	18	19	356

Ombuds World at a Glance

National Conference of Canadian Ombudsman

Ombudsmans from across Canada have been meeting annually for two decades. One of their aims at this year's meeting in Regina, Saskatchewan from September 10-12 was to develop the by-laws necessary for the incorporation of a Canadian Ombudsman Association. As an association, the group will be better able to formalize contacts with one another and within the North American region and international regional Ombudsman Associations.

Some of the key topics discussed were:

- The Ombudsman and Privacy Issues
- Privatization and Contracting Out
- Ombudsman Experiences in Municipal Jurisdictions.

In attendance were three guests from Parana, Brazil who were visiting British Columbia with a view to setting up a "twinning" project under CIDA funding. (See centrespread).

The Saskatchewan Ombudsman, Ms. Barbara Tomkins, was a wonderful host. The pitchfork fondue, along with good old fashioned Western dancing, will not be forgotten. Thank you to her and all her staff.



Australasian and Pacific Ombudsman Conference

The sixteenth annual conference was held in Darwin, Northern Territory, Australia from August 18-20, and hosted by Peter Boyce, Ombudsman for the Northern Territory. Ten delegates from Australia attended, as well as delegates from eleven other member countries - Hong Kong, Japan, Korea, Macau, Malaysia, New Zealand, Pakistan, Papua New Guinea, Solomon Islands, Vanuatu and Western Samoa. British Columbia's Ombudsman attended and made a presentation on Well-being in the Workplace. (See excerpts on page 2).

Major topics of discussion included:

- Corporatization and privatization
- Use and protection of the term "Ombudsman"
- Prison complaints
- Local government issues
- The Ombudsman and Freedom of Information
- The Ombudsman and complaints against police.

The delegates unanimously agreed that the use of the name "Ombudsman" needed to be protected by statute or regulation, as it is in New Zealand. It was agreed that an Ombudsman should be able to function with independence and impartiality in undertaking an investigation into complaints, should be accessible and should have the ability to speak in the public interest. The proliferation and misuse of the title "Ombudsman" is confusing to citizens and, in the longer term, could undermine the credibility of the role.

The conference was a huge success.

USOA Conference



Board members of the USOA. Left to right: Patricia Seleen, President; John Eddings, Vice-president; Dulcie McCallum, Vice-president; Len Yew, Secretary; Marie Ferguson, Past President.

Over one hundred delegates gathered at Timberline Lodge in Portland, Oregon for the twentieth annual United States Ombudsman Association Conference. The location of the conference made it possible for many Canadian Ombudsman staff to attend and to exchange information and ideas with their American counterparts. Among the issues they dealt with were: Advanced Investigative Skills, Dealing with Difficult Complainants, Local Governments and the Ombudsman and The Effects of Privatization on Ombudsman Jurisdiction.

The keynote address, "The Times They Are a'Changing," was given by Roberta Jamieson, Ombudsman for Ontario and the closing address, "Entering the New Millennium: Something Old, Something New," by Mr. Andrew So, Ombudsman for Hong Kong. (see excerpts on page 27).



British Columbia Ombudsman delegation to US Ombudsman Conference.



Speech

The Ombudsman, the Public and the Media

excerpt from address given at the Canadian Ombudsman Conference in Regina by Senhor João de Oliveira, Ombudsman of Parana, Brazil

For many years, conventional wisdom has said that the majority of citizens were apathetic about politics and governments, that people just didn't care. In fact, just the opposite is true; people have a clear sense of their civic responsibilities. They care so deeply that their frustration runs to anger and cynicism. These citizens feel they have been pushed out of the political system by a professional political class of powerful lobbyists, incumbent politicians - and a media elite. They see a system with its doors closed to the average citizen.

The media generally see themselves as neutral referees who serve the public interest by keeping a critical eye on what politicians and governments do. The public, on the other hand, see themselves at the mercy of the press; they feel that politics is steered by the media, that the media deliberately try to sway people. Many citizens believe that the media are partly responsible for the public's distaste for politics and governments, that their coverage of issues is trivialized by sound bites and distorted by negativism.

The Ombudsman must operate in this milieu, but media interest in the Ombudsman work is important for two reasons:

- highlighting a particular case contributes to the effectiveness of the Ombudsman's work, and can be seen as one of the pillars of his or her authority
- it is essential to inform the public about an institution that they can use to make complaints about public administration.

The majority of Ombudsman offices maintain active contact with the news media. They issue press releases on important reports; they present their annual reports at press conferences; some have a weekly column in a major newspaper; some have coverage on news and current affairs programs on both radio and TV; they give talks to various professional bodies. All these initiatives are relevant and important. However independent the Ombudsman may be, however

With the help of Ombudsman offices why not assume that it is time to get off the beaten track and give ourselves a new social contract to make relations between the people and the government fully democratic? The Ombudsman Offices ... give a greater value to citizens' rights by establishing ways that permit them to participate efficiently, incorporating the whole community in the government mandate as a way of rectifying mistakes and distortions that are common in a representative system.

efficient in investigating, however swift in reporting, however impartial in judgment, however fair in awarding redress - all is of no avail if the ordinary citizen with a grievance does not know that the Ombudsman is there and waiting to help. The Ombudsman should be clearly visible and readily accessible.

Have we as Ombudsman done enough to inform the public of our existence? Are we hiding our lights under bushels with unwarranted and unnecessary modesty? There is of course a danger in too much

publicity, in becoming too visible, of raising excessive expectations that may be disappointed. This is a risk we should take willingly. We should regard the time and expense of dealing with additional complaints we may attract this way as a necessary concomitant to resolving more appropriate issues.

Another area of concern is public relations with citizens. Ombudsman offices must pay special attention to whether civil servants respect the democratic rights of citizens in the performance of their duties. Many people believe that officials of government are out of touch with citizens and their concerns, that they are not accessible and responsive, that they have closeted themselves away from the general public and no longer care about the average citizen. Civil servants must fundamentally change the way they think about and interact with citizens if the citizen - official relationship is to improve.

With the help of Ombudsman offices why not assume that it is time to get off the beaten track and give ourselves a new social contract to make relations between the people and the government fully democratic? The Ombudsman Offices expand the democratic and public ability of making decisions. They give a greater value to citizens' rights by establishing ways that permit them to participate efficiently, incorporating the whole community in the government mandate as a way of rectifying mistakes and distortions that are common in a representative system. They provide each citizen with the power of action in order to receive the proper protection in a fast, safe, efficient and, above all, respectful way.

Ombuds World at a Glance



Speech

The New Millennium

excerpts from the closing address at the Twentieth Annual Conference of the US Ombudsman Association, given by Mr. Andrew So, Ombudsman for Hong Kong. The complete address is available from the International Ombudsman Institute as Occasional Paper Number 61.

I have been asked what made me travel half the world to come and address this conference. My short answer is that it is the theme of the conference, "The Times They Are a'Changing," that has attracted me here. The theme has very aptly and timely put the institution of Ombudsman in perspective.

The Ombudsman institution is well positioned at the leading edge of change with its inherent characteristics of being independent in operation, flexible in approach, credible to the public and the authority and accessible to the people. Standing still is simply not an option in this fast-changing world. In order to be a successful agent for change, it is important for the Ombudsman institution to adopt a visionary approach and take a proactive stance in helping redesign, reinvent and reinvigorate the public service and in raising and improving the standard of public services.

The imminent return of Hong Kong to China is the greatest change of all of Hong Kong's history. The change of sovereignty after 150 years of British rule has



Dulcie McCallum with Mr. Andrew So, Ombudsman for Hong Kong, at the US Ombudsman Association Conference

captivated the attention of the international community. I regard myself as both privileged and fortunate to be the Ombudsman of Hong Kong at this great historical time and to be able to contribute towards a smooth and successful transition. I hope to prepare the Ombudsman Office to play a role in ensuring the continued stability and prosperity of Hong Kong as we become part of China and as we enter the new millennium.

The Hong Kong Ombudsman, previously known as the Commissioner for Administrative Complaints, was first appointed in 1989. The institution was established at a time when the Sino-British Joint Declaration on the future of Hong Kong had already been signed and the Basic Law, our future mini-constitution, was in the final drafting stage. It was a period of rapid

economic, political and social changes when the institution was tasked to serve the people of Hong Kong.

The function and powers of the Ombudsman are broadly in line with those of the Ombudsman community internationally.

What will happen to the Ombudsman institution after July 1, 1997? The Ombudsman institution is already an integral part of the Hong Kong system and I see no reason why a well-developed institution as an independent complaint channel on matters of maladministration will be changed in any way.

As we move into the new millennium and when governments will get more complex and sophisticated, there is a lot to be done by us as the Ombudsman. When we leave behind old memories, our traditional role of overseeing the public administration will not change in the new time. But we must move on to what is necessary in response to the needs of the public. For no community is static. It grows and changes with time. We have to act in unison to help make the world a better and fair place for all to live in.

Ombuds

GUIDING PRINCIPLE

Continuous Learning

Promoting and encouraging continuous learning for staff, authorities and the public.



Speech

The Times They Are a'Changing

excerpts from the opening address at the annual USOA Conference.

by Roberta Jamieson, Ombudsman for the Province of Ontario, Canada

Not only are the times a'changing, but change itself is changing. If we compare ourselves with Ombudsman of just the previous generation, we can see that we have changed our way of doing business, our way of evaluating fairness. We have added systemic investigations to our ongoing work of investigating individual complaints. We are becoming experts in informal resolution of issues and complaints, offering leadership in non-adversarial approaches to friendly conciliation. We find services that we dealt with yesterday out of

reach today because of privatization, restructuring, downsizing. Internationally, we see Ombudsmanship being applied to the protection and improvement of human rights, particularly in the Americas.

Ombudsman will be the healthier for change if we can seek out some solid bedrock to provide us common ground on which to stand.

The first solid rock is the principle that healthy democracy requires of any institution that exercises arbitrary authority that it provide the opportunity to have concerns and complaints resolved by an investigator with the highest possible independence.

The second is the fact that we are experts in non-adversarial resolution of conflict as well as being expert investigators. We don't much advertise ourselves as expert conflict resolvers. We are missing a valuable opportunity. In a world increasingly beset by conflict, the skills we have developed in providing balance in the relationship between individuals and powerful institutions are increasingly more relevant.

The third piece of bedrock is that we all want to improve the service we offer as Ombudsman. If we are concerned that our office might not have sufficient independence, that the tenure is not

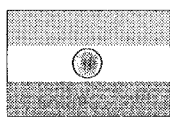
sufficiently long, that there is not sufficient protection against dismissal for an unpopular finding, if our office might not have sufficient investigative powers, if there is insufficient protection to confidentiality, if sufficient immunity is not enjoyed against giving evidence – these are areas where we can seek change.

To deal with the problem of diminished resources we can make strategic decisions that increase focus on systemic issues and system-wide public concerns – and their corresponding remedies – as opposed to handling complaints one by one.

Another area of change that I consider mandatory for any Ombudsman office is the adoption of service equity as our overriding modus operandi. This is particularly true for us because Canada and the US have become the home of such a diverse population.

The final firm foundation is the international arena. As the Ombudsman institution gains acceptance internationally, as it is applied to improving human rights and the emergence of new democracies, we will find better acceptance at home. One of the best vehicles for international involvement is the International Ombudsman Institute.

Around the World



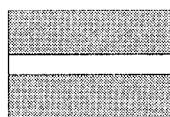
India

To mark the 50th anniversary of Indian independence, Prime Minister Kumar Gujral announced that the government planned to legislate the appointment of a Lok Pal (Ombudsman) to monitor corruption complaints against public figures.



Guatemala

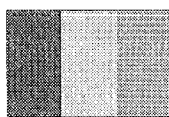
The Guatemalan Congress on August 14 named Julio Arango the new Human Rights Ombudsman. Snr. Arango is a former judge and prosecutor and is appointed for a five-year term. The post of Human Rights Ombudsman was created in the mid-1980s by the country's first civilian leader in three decades.



Latvia

The UN Development Program, together with the government of

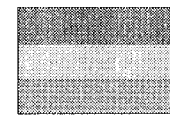
Latvia, hosted the Third International Workshop on Ombudsman and Human Rights Institutions. One hundred and eighty-five delegates from 29 countries attended. The keynote address was given by Mr. Stephen Owen, Professor of Law and Public Policy at the University of Victoria, and former Ombudsman for British Columbia. He noted that conditions of democracy must exist before Ombudsman institutions can operate effectively. The most important principle underlying these institutions is that they have a statutory base. They must be independent, have integrity, be impartial advocates of fairness, have strong investigative powers laid out in statute and be able to access information, initiate investigations, react quickly to notorious situations and be able to report publicly.



Romania

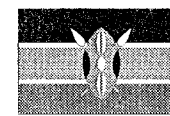
Romania elected its first Ombudsman in May 1997. Mr. Paul Mitroi has been a Supreme Court judge in the

economic section of the Supreme Court since 1989. The mandate of the Ombudsman includes both traditional Ombudsman functions and the protection of individual rights.



Ethiopia

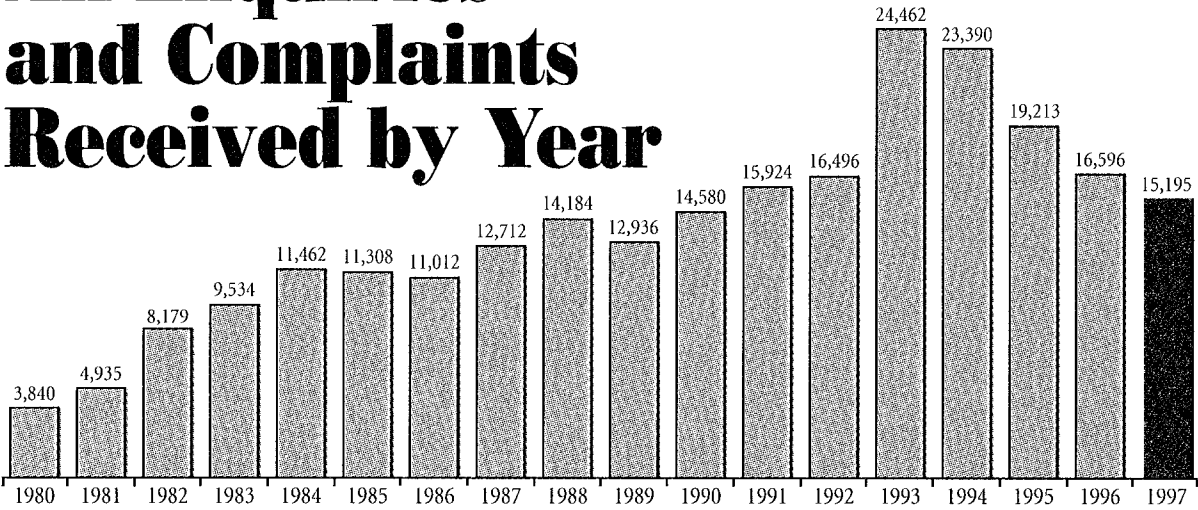
The new federal parliament of the Federal Democratic Republic of Ethiopia plans to establish a Human Rights Commission and an Ombudsman Office. The legislation will draw from experiences of other countries that suit Ethiopia's needs and take into account traditional values.



Kenya

President Daniel arap Moi announced he will soon establish the Office of Ombudsman to collect information from the public on corruption. The information will be taken directly to the President.

All Enquiries and Complaints Received by Year



Case Tracker Travels

One of the strong resources within our Office is our technical knowledge base, a priority of the Ombudsman over the past six years. Two elements have gone into making our database so effective:

- information technology staff with a variety of expertise
- a computer system for handling complaints that we developed in-house and consistently refine.

The Case Tracker System (CTS) is integral to the day-to-day activity in our two offices. All information concerning complaints is tracked from the moment of contact until its final disposition. Information is readily available to staff at any point throughout the course of an investigation. The information collected provides research and statistical data, which is key to how we manage our resources and determine which systemic issues or individual concerns we need to focus on.

Because CTS is basically a complaint tracking and statistical database, it has proven to be useful for others besides the Ombudsman. My systems staff regularly provide advice and support to many other national and international organizations, implementing or modifying their specific complaint-type databases.

In 1997 the newly established Children's Commission for BC purchased a copy of our Case Tracker, since they believed it was the most cost-effective method of implementing a case tracking system for their service. My staff were assigned to the Children's Commission to assist in installing Case Tracker, modifying screens and reports and developing some new functionality so it could be in operation within four weeks. They accomplished this on time and below budget for the Children's Commission.

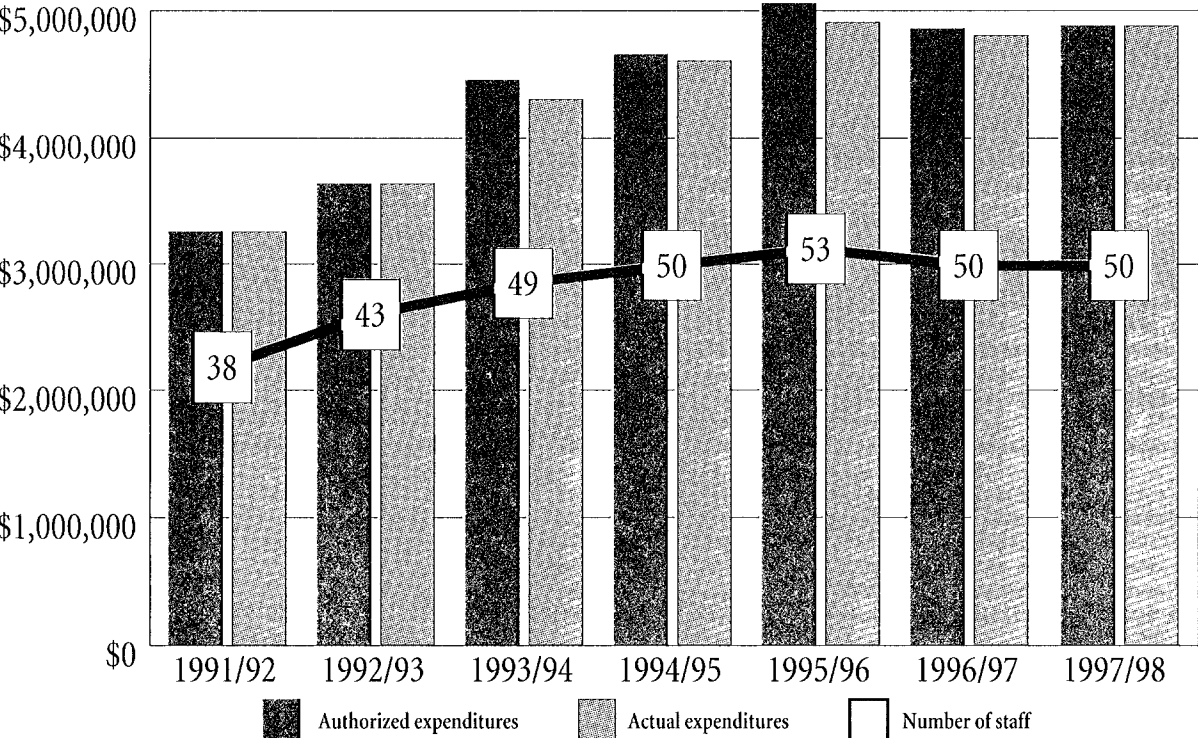
NEWSFLASH

Mr. Don Morrison has been appointed as the first Police Complaint Commissioner, an Officer of the Legislature. The Commissioner is broadly responsible for overseeing the process by which the public can make complaints against municipal police departments. He may receive complaints from any source, and is required to maintain a record of complaints and their disposition. The Commissioner does not make findings on the validity of complaints, but monitors the manner in which police departments investigate and conclude complaints made against them. In addition the Commissioner may order investigations, oversee mediation between the complainant and the police department and refer serious matters to Crown Counsel for prosecution. The Commissioner has the power to order a public inquiry on a matter affecting the public interest. Congratulations to Mr. Morrison!

Congratulations!

The newly appointed David Lam Professor of Law and Public Policy, Stephen Owen, was Ombudsman for the province of BC from 1986 to 1992, immediately preceding the incumbent, Dulcie McCallum. In his new position, Mr. Owen will teach in global studies, law and public policy. He will also continue "action research," building on his previous activities with civil and human rights organizations.

Growth in the Office



Publications

Annual Reports 1979-1997

Special Reports

- Garibaldi Case, 1981 (Environment)
- Lotteries Case, 1981 (Government Services)
- Cuthbert Case, 1981 (Harbours Board)
- Certificate of the Attorney General, 1982 (Attorney General)
- Reid Case, 1982 (Transportation and Highways)
- "A Matter of Administration" : B.C. Appeal Court Judgment, 1982
- Shoal Island Case, 1984 (Forests)
- Workers' Compensation Board (No. 1) Vol. 1 – WCB, 1984 Vol. 2 – An Investigation by the Ombudsman into Eleven Complaints about the WCB, 1984
- Supreme Court of Canada Judgment, 1985
- Section 4 of the *Highway Act*, 1985 (Transportation and Highways)
- The Cobb Case, 1985 (Forests)
- Workers' Compensation Board (No. 2) Vols. 1&2 – WCB, 1985
- Willingdon Case, 1985 (Corrections Branch)
- Hamilton Case, 1985 (WCB & Attorney General)
- Workers' Compensation Board (No. 3) Vol. 1 – WCB, 1985
- Nikki Merry Case, 1994 (College of Physicians and Surgeons)
- Regulation of Newport Realty Incorporated by the Superintendent of Brokers, February 1996
- A Complaint Regarding an Unfair Public Hearing Process (City of Port Moody), February 1996
- An Investigation into the Instability and Recession of Willemar Bluffs (Regional District of Comox-Strathcona), June 1997
- Ombuds Strategic Plan 1997 – 2001, March 1998
- Statutory Officers of the British Columbia Legislature, May 1998 (Officers of the Legislature)

Public Reports

- East Kootenay Range Issues, 1981 (Environment; Forests; Lands, Parks and Housing)
- Ombudsman Investigation of an Allegation of Improper Search for Information on Five Individuals on the Part of the Ministry of Human Resources, 1982
- Expropriation Issues, 1983 (Transportation and Highways)
- The Nishga Tribal Council and Tree Farm Licence No.1, 1985 (Forests)
- The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People, 1987 (Social Services and Housing)
- Liquor Control and Licensing Branch Fairness in Decision Making, 1987 (Liquor Control and Licensing Branch)
- WCB System Study, 1987
- Skytrain Report, 1987 (B.C. Transit; Municipal Affairs)
- Practitioner Number Study, 1987 (Medical Services Commission)
- B.C. Hydro's Collection of Residential Accounts, 1988
- Pesticide Regulation in British Columbia, 1988
- Investigation into the Licensing of the Knight Street Pub, 1988 (Labour and Consumer Affairs)
- Abortion Clinic Investigation, 1988 (Attorney General)
- 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
- Aquaculture and the Administration of Coastal Resources in British Columbia, 1988 (Crown Lands)
- Police Complaint Process: The Fullerton Complaint, 1989 (Matsqui Police)
- Willingdon Youth Detention Centre, 1989
- The Septic System Permit Process, 1989 (Municipal Affairs, Recreation and Culture)
- The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)
- An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd., 1989
- Sustut-Takla Forest Licences, 1990 (Forests)
- Public Services to Children, Youth and their Families in British Columbia, 1990
- Graduates of Foreign Medical Schools: Complaint of Discrimination in B.C. Intern Selection Process, 1991 (Health)
- Public Response to Request for Suggestions for Legislative Change to *Family and Child Service Act*, 1991 (Social Services and Housing)
- Public Services for Adult Dependent Persons, 1991 (Social Services and Housing)
- Access to Information and Privacy, 1991
- The Administration of the *Residential Tenancy Act*, 1991 (Residential Tenancy Branch)
- The Sale of Promissory Notes in British Columbia by Principal Group Ltd., 1991
- A Complaint about the Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus, 1992 (Vancouver Community College)
- Court Reporting and Court Transcription Services in British Columbia, 1992 (Attorney General)
- Administrative Fairness of the Process Leading to the Clayoquot Sound Land Use Decision, 1993
- Abuse of Deaf Students at Jericho Hill School, 1993 (Education)
- Listening: A Review of Riverview Hospital, 1994
- Building Respect: A Review of Youth Custody Centres in British Columbia, 1994 (Attorney General)
- Fair Schools, 1995 (Education)
- Getting There: A Review of the Implementation of the Report of the Gove Inquiry into Child Protection, March 1998

Discussion Papers

- Advocacy for Children and Youth in British Columbia, 1993
- Children Should be Seen and Heard, 1994

