



# Ombudsreport 1998

Annual Report of the Ombudsman, Province of British Columbia

*I have walked that long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can rest only for a moment, for with freedom comes responsibilities, and I dare not linger; for my long walk is not yet ended.*

Nelson Mandela



## Message from the Ombudsman

Dulcie McCallum

April 6, 1999

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

I have been honoured to serve as Ombudsman for the Province of BC for the past six years. My term ended August 4, 1998. Fortunately, I was asked to continue as Ombudsman to give the Special Committee to Select an Ombudsman time to complete its work. It has also given me the opportunity to fulfil my statutory duty to table this, my sixth Annual Report. I respect the role of the Committee to make a recommendation to the Legislative Assembly to name my successor. I urge all Committees who are asked to undertake the selection process for Officers of the Legislature to commit to the public service principle of merit, respect the rules of natural justice and honour the principles of administrative fairness.

I want to take this opportunity to touch on a number of matters that remain outstanding and that I believe warrant highlighting to the Legislature.

During my term as Ombudsman I have concentrated on educating and requiring public bodies to have existing and appropriate review, appeal and resolution mechanisms to serve the public. My recently tabled Public Report, *Fair First*, details the serious efforts made by the Workers' Compensation Board. Other public bodies who attract significant volumes of complaints from the public, such as the Insurance Corporation of BC, have made less progress. I urge all public bodies to study the report thoroughly and implement the recommendations on how to be fair first.

In 1993 I recommended to government that it create a non-confrontational alternative means of determining compensation for those who alleged abuse while residing at Jericho Hill School for the Deaf. Government responded by establishing the Jericho Individual Compensation Program (JICP). Based on recommendations from a report commissioned from Thomas Berger, the JICP is restricted to claims of sexual abuse only and for a maximum amount of compensation. I wish to reiterate to government that these limitations do not meet the intent of my original recommendation. JICP does provide a non-confrontational process to give voice to those who sought compensation for the harm done. However, the definition of the abuse being "sexual" is restrictive and harmful. While in the mind of the perpetrator the assault may or may not have had sexual meaning, for the victim the harm was in the assault, the touching without consent, the infringement on body and spirit. Restricting compensation to abuse defined from the perspective of the offender rather than the victim perpetuates the myth that abuse is ever sexual to a child. Assault is assault regardless of the motivation or pleasure of the perpetrator. These deaf children, now adults, should not be forced to prove that the assault and abuse they endured was sexual and have to distinguish it from other emotional, psychological or physical abuse they suffered.

Addressing claims for historic abuse presents a particular challenge for governments. I will expand on my thoughts in

this regard in my upcoming report on the internment of Sons of Freedom Doukhobor children in New Denver. Suffice to say that compensation must be holistic, based solely on the needs of the victim, appropriate and sufficient. The report will also address the issue of prevention. To that end, my recommendation in *Getting There*, Public Report No. 36, remains outstanding and should be implemented immediately. Section 70 of the *Child, Family and Community Services Act* defines the rights of children in the care of the ministry. Currently these rights do not apply to children in care who are in places of confinement. Among the most basic of rights is the right to be free from corporal punishment, the right of access to family, the right to be nurtured, the right to receive religious instruction and the right to privacy during discussions with the Ombudsman. I have recommended to government that it amend the statute to extend these basic rights to all children in care, regardless of where they reside, and, in particular, to children and youth in places of confinement.

Similarly, I have consistently raised concerns about the state of correctional centres where youth convicted of offences are confined. This Office has made public statements about the Burnaby Secure Custody Centre, which has yet to be replaced. I have also advised government that we do not believe the Victoria Youth Custody Centre meets residential standards for children. Troubled youth are forced to live in a place where it is impossible for staff to provide a child-centred environment. I am hopeful that there will be an announcement about the replacement of these facilities in the very near future. These replacements and the amendment of s. 70 will provide protection for children currently institutionalized and go a long way towards preventing a repeat of history.

This Office has had an open file in the name of Katie Lynn Baker since 1996 when we received a complaint that government failed to intervene to ensure her well-being and indeed her life. The issue of "mercy" killing has long been resolved in the courts and yet it appears that Katie Lynn Baker, a child with a disability, was allowed to die because it was believed that her death was inevitable. The Coroner has completed an inquest. The death of Katie Lynn is a matter for the Children's Commission to review. That review has been forestalled while the police investigation was completed and the Crown decided whether to pursue charges. The Ombudsman will not replicate any of the investigations by those responsible but will await the outcome of those processes to ensure fairness has been achieved. My Office will, however, pursue with vigour with the Ministry the issue of ceasing the use of "do not resuscitate" orders. It is my expectation that government will take definitive action shortly to ensure the entitlement to life of all children, regardless of how fragile a life may be.

Finally, my focus in the coming year was to be on fairness for seniors, especially in 1999, the UN Year of the Older Person, and for people who live in poverty. In the case of the latter, of particular concern are the new criteria and rates in the BC Benefits scheme that mean far fewer people qualify and those who do are forced to live on far less.

In closing, I wish to thank all of my staff for their devotion and hard work, the public for having the confidence to file complaints with the Office and all of the people working within the administration of the public bodies we have jurisdiction to investigate for their receptivity, courtesy and good faith.

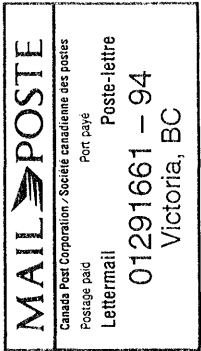
With the greatest of respect,

*Dulcie McCallum*

Dulcie McCallum  
A/Ombudsman for the Province of BC

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## Did You Know?

Visits to the Ombudsman's Home Page in 1998	33,240
Contacts to the automated Voice Tree of information in 1998	24,792
Inquiries and complaints received in 1998	13,269
Inquiries and complaints handled in the last six years	128,691
Budget amount allocated in 1998	\$4,705,000
Budget reduction by government mid-year	\$142,000
Amount spent in 1998	\$4,560,000
Number of the last six years in which the Ombudsman balanced her budget	6

# Ombuds World at a Glance



Follow-up

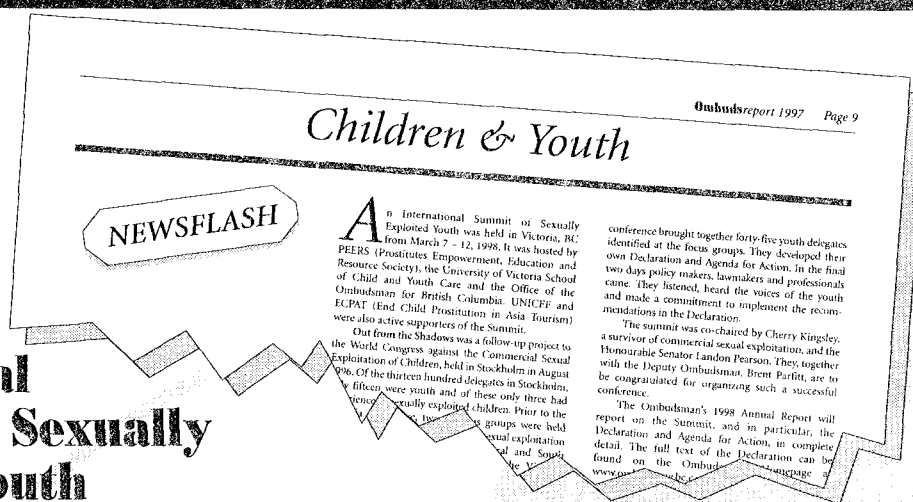
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## International Projects for Sexually Exploited Youth

*Out from the Shadows, an International Summit of Sexually Exploited Youth, co-hosted by the Ombudsman, was held in Victoria in March 1998. Youth delegates from Canada, the United States, Central and South America developed their own Declaration and Agenda for Action.*

While at the United Nations in New York on June 18, 1998, Foreign Affairs Minister Lloyd Axworthy announced a \$150,000 contribution to support recovery and social reintegration projects for sexually exploited youth in six Latin American countries: Brazil, Dominican Republic, Honduras, Bolivia, Peru and Chile.

The projects will address the particular needs of the 15 young delegates who attended the



*Out From the Shadows: International Youth Summit of Sexually Exploited Youth held in Victoria from March 7 to 14, 1998.*

Senator Landon Pearson, who co-hosted the conference, will act as project director. The University of Victoria School of Child and Youth Care (co-host of the conference) will supervise the projects.

The projects will be implemented through a partnership of six Canadian NGOs and eight local NGOs in the six Latin American countries.

The complete text of the *Declaration and Agenda for Action* drawn up by the youth delegates to the conference can be found on the Ombudsman's Home Page: [www.ombud.gov.bc.ca](http://www.ombud.gov.bc.ca)

## Ombudsmans for Children

The European Network of Ombudsmen [sic] for Children (ENOC) met for the second time in Copenhagen, Denmark from September 2 to 4, 1998. Brent Parfitt, Deputy Ombudsman, introduced a draft proposal for a Commissioner for Canada's children. He explained the framework and structure of the proposed office, as well as its functions.

Per Schultz Jorgensen, Chair of ENOC responded:

*ENOC applauds and strongly supports your efforts to establish a Canadian Children's Commissioner to complement the role of existing Ombudsmen and child advocates. ENOC believes independent offices are essential to the promotion and protection of the human rights of children. To be effective advocates for children, such offices must be established through legislation with guarantees of independent and appropriate powers, linked to States' obligations under the Convention on the Rights of the Child.*

*One of the roles of ENOC is to promote and support the development of new independent offices for children and we would be pleased to help with the development and promotion of your proposal.*

## Happy Twentieth Anniversary

The Office of the Ombudsman in British Columbia marks its twentieth anniversary in 1999. The *Ombudsman Act* was passed by the Legislature in 1977 and was proclaimed into force October 1, 1979. On that date, the Office opened for business after a busy planning and organizational period to recruit staff and to establish offices in both Vancouver and Victoria.

In recognition of this milestone, I asked the Lieutenant Governor to issue a Royal Proclamation declaring October 1 to 8, 1999 to be Ombudsman Week in BC. As the Vice-President of both the Canadian Ombudsman Association and the United States Ombudsman Association, I invited both associations to help celebrate by holding their annual conferences in Victoria during that week. Two to three hundred delegates from across Canada and the United States are expected to attend the joint conference. His Honour Garde Gardom will host the celebration. This is particularly fitting, since he was the Attorney General who introduced the *Ombudsman Act*.



Follow-up

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## From BC to Parana

*A Partnership Project is planned between the British Columbia Ombudsman and the Ombudsman (Ouvidor Geral) for the state of Parana in Brazil. The Canadian International Development Agency (CIDA) is providing financial support for the project.*

On March 5, 1998 the Honourable Diane Marleau, Minister for International Cooperation, advised that "the Ombudsman for the Province of British Columbia has been selected for the development and implementation of the proposed Ombudsman Cooperation Sub-Project under the Canada-Brazil Technology Transfer Fund." This announcement constituted approval in principle of the project proposal that the BC and Brazilian Ombudsmans had presented.

The next step in the process is the preparation and approval of the details that will define the individual projects, together with their objectives,

schedules and budgets. This step in the process was delayed by an intervening election in Brazil during 1998. The Governor of Parana, who was successful in his bid for reelection, has reappointed João de Oliveira as Ombudsman. The preparation of the detailed project plan is again underway.

Despite the delay in the overall project, the Ouvidor Geral was able to bring several youth to attend the *Out from the Shadows* International Summit in Victoria during 1998. This conference focused on sexually exploited youth, as a follow-up to the World Congress against the Commercial Sexual Exploitation of Children held in Stockholm, Sweden in 1996. Our Office assisted in planning the focus groups in Brazil to select the Parana youth who attended the conference. This co-operative initiative is an example of the type of project the CIDA-funded partnership will foster and develop.

## Farewell, Mr. So

Mr. Andrew So's term as the Ombudsman of the Hong Kong Special Administrative Region of the People's Republic of China came to an unexpected end at the close of his five-year term of office on January 31, 1999. I quote from his letter to me.

*I consider it my honour and blessing that I have come to know you and those working in your Office as ombudsman colleagues as well as wonderful friends.*

*When I assumed my office five years ago, I knew it would not be an easy task and the road would be long and winding, as the Office was at that time relatively young. Nevertheless, the knowledge that there are colleagues like you in the international scene who shared the ombudsman ideals and are ready to join hands to defend and promote the ombudsman cause and to give advice and share experience in ombudsmanship is surely comforting. I believe much achievement of my Office would not have been possible if not for your support and encouragement.*

*I would like to take this opportunity to thank you for all the recognition and encouragement that you have given me and my Office. I hope that the same will be given to Ying-lun [Deputy Ombudsman] and Alice [the incoming Ombudsman] in the years to come.*

Mr. So will be greatly missed. He was a fine Ombudsman and a man of great wisdom, dignity and honour.

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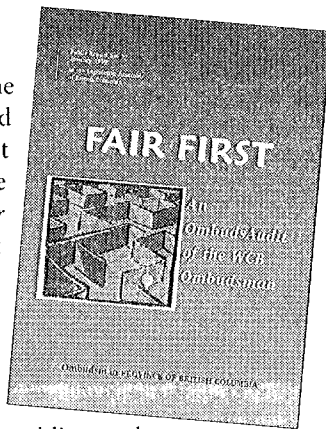
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# Fair First

In January 1999 the Ombudsman tabled Public Report No. 37, *Fair First*, in the Provincial Legislature. *Fair First* is a report of the audit conducted to assess the effectiveness of the Workers' Compensation Board Ombudsman in addressing complaints from members of the public, and its competence in practising and promoting



administrative fairness. Although *Fair First* focused on the Executive Ombudsman model as implemented at the Workers' Compensation Board, the Report was also designed to provide guidance to a wide range of organizations that have established or are considering establishing internal complaint-handling mechanisms and/or Executive Ombuds Offices.

Over the past several years, the Ombudsman has devoted considerable attention to harmonizing attempts of public bodies to establish appeal, review and complaints mechanisms in accordance with the threshold established in subsection 13(c) of the *Ombudsman Act*, which permits the Ombudsman to

decline to investigate a complaint where:

*The law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for failure to do so;*

Such remedies must be existing and adequate in the circumstances for the person aggrieved. To qualify as an adequate remedy, a process should meet the test of the first four sections in the Guiding Principles listed below. A position that meets the test of all five sections could properly be considered an Executive Ombudsman.

## Guiding Principles

### 1. Organizations bear responsibility in the first instance for complaints from the public.

In order to foster greater accountability to the public it serves, large public agencies bear responsibility to establish an in-house position dedicated to ensuring fair administrative policies, procedures and practices.

### 2. The public is entitled to have access to a complaint mechanism regarding process and service within large public bodies.

It is inevitable in large and complex institutions that there will be numerous complaints from the public who seek service. It is essential that there be an office where those who are dissatisfied with the services received from large public agencies can go to seek redress for their grievances. The mechanism chosen must be highly effective or it will be considered as a "twin cousin" of the very organization it is intended to monitor and investigate.

### 3. As the intended monitor of fair practices, the complaints mechanism must itself demonstrate unequivocally a commitment to administrative fairness. A demonstrated adherence to principles of administrative fairness and the rules of natural justice in its own policies, procedures and practices would include:

- Timeliness in responding to the complaints received;

- Notice to all parties potentially adversely affected during the course of an investigation;

- Giving parties the chance to be heard and make representations before an investigation is completed;

- Consideration of all relevant evidence related to the complaint;

- Giving full, adequate and appropriate reasons for a decision;

- Making findings known to those adversely affected and giving them the opportunity to respond;

- Proposing recommendations that are systemic, remedial and appropriate;

- Reporting to the public on the work of the investigating office;

- Commitment to operate on clearly articulated principles that may include the following:

- Treating everyone with courtesy, dignity and respect
- Being independent, impartial and honest
- Using co-operation, empathy and good will in all work
- Promoting equality, inclusion and access for all persons.

### 4. The complaints mechanism must have particular characteristics to ensure its effectiveness as a fair and adequate remedy, including:

- A clearly articulated mandate provided for in law or an existing administrative procedure;

- Policies, procedures and practices that demonstrate a respect for and are consistent with its legislative authority or administrative procedure;

- Absence of bias;

- Competence and capacity to receive complaints and conduct thorough reviews, investigations or appeals;

- Power to order or recommend corrective action to the public body;

- Commitment to the principles of administrative fairness and the rules of natural justice.

### 5. The title Ombudsman is held by the person responsible for protecting and promoting a person's right to be heard by government and to be treated fairly. The designation Ombudsman should be used only for an office that can demonstrate compliance with a set of clearly articulated principles that have been developed over time by law and by custom.

All available remedies within public bodies that practise administrative fairness and are constituted to be "adequate" may not necessarily equate with the role and mandate of an ombudsman. All reasonable steps should be taken to maximize the public's understanding of the role of an ombudsman. The title should, therefore, be protected legislatively to ensure that its use is measured against appropriate criteria. These criteria would, as a minimum, include:

- A clearly articulated mandate that has legislative authority (constitution, statute, by-law, ordinance);

- Clearly entrenched competence and capacity to conduct thorough and impartial investigations;

- Capacity to investigate on its own initiative;

- Independence and impartiality;

- Guaranteed functional and political independence from the legislative body who appoints and the public body the Ombudsman reviews.

Independence is evidenced by:

- security of salary and tenure
- rigorous appointment, reappointment and removal process
- sufficient resources
- authority to recruit, manage and terminate staff
- discretion to determine jurisdiction;

- Protection to conduct investigations on a confidential basis and to shield the Ombudsman from release of all information obtained during the course of work as Ombudsman except in accordance with the law;

- Duty to report to the governing body annually on the work of the office;

- Power to report publicly on the work of the office, individual complaints and systemic investigations;

- Commitment to educate the public body(ies) about the principles of administrative fairness and the rules of natural justice.



## Guest Comment

### Canada's Newest Ombudsman

by André Marin  
Ombudsman  
National Defence and Canadian Forces  
at the invitation of the Ombudsman

Although there was discussion in federal government as long ago as the early 1990s about the creation of an Ombudsman for the Department of National Defence and the Canadian Forces (DND and CF), it was the Somalia Inquiry Report in June 1997, which recommended the creation of an Inspector General, that gave the momentum necessary to create the position I occupy. A year later, I was appointed Ombudsman and invited to draw up a plan for the Minister of National Defence suggesting an operational framework to tackle individual and systemic issues and complaints that affect members of the DND and CF.

In the six months that followed, I consulted with stakeholders and others with experience in ombudsmanship, including the British Columbia Ombudsman. I then presented *The Way Forward* to the Minister, setting out a proposal for case management. The document also contained a proposal on the infrastructure necessary to allow an Ombudsman's Office to succeed: independence, impartiality, confidentiality and an effective and credible review process.

In studying the various models of Ombudsman that exist, both in their classical and organizational forms, we proposed a regime that balances the necessity of protecting the complainant's confidentiality, while still allowing a transparent and open process. Ombudsman seem always to have to deal with these seemingly contradictory concepts. In addition, however, the creation of our office posed a particular challenge: how do you have an effective office while protecting the principle of a strong chain of command, necessary to operate an armed force?

While we are awaiting the Minister's response, we are busy cataloguing the two hundred or so complaints we have already received, as well as developing strategies to resolve the cases. We are anxious to begin operations and to assist individual members of the DND and CF and indeed, the institution itself, to obtain just and equitable resolutions of issues.

## Fairness at Home

My Office has formalized an internal complaint mechanism for those complainants dissatisfied with investigations carried out by my staff. Those dissatisfied with our services can ask to be provided with a *Request for Internal Review* form. Although there is no right to appeal a conclusion or determination of the Ombudsman or her delegates (except where it is alleged that she acted beyond her jurisdiction and a judicial review application can be made to court), we will accept and review complaints, among others, that the Ombudsman or her delegates:

- failed to listen to all relevant parties
- based her or his conclusions on irrelevant considerations or did not consider all relevant matters
- demonstrated bias in the process of making findings
- failed to give adequate reasons for her or his decision.

This process was established to ensure that we "practise what we preach."



# Proclamation Passages

When the Ombudsman Act was proclaimed in 1979, sections 1 and 2 only of the Schedule were brought into force, covering all government ministries and Crown corporations. Beginning in 1992 with schools and school boards, the remaining sections of the Schedule to the Act were proclaimed. In 1993 the jurisdiction was expanded to include hospitals, universities and colleges and self-regulating professional and occupational governing bodies. Finally in 1995 all forms of local government were included as public bodies to be investigated by the Ombudsman. Proclamation was a planned event at our Office. Beginning in 1992, we strategized to familiarize ourselves with the work of the new authorities and to educate those bodies on how to practise administrative fairness. The strategy has proven to be highly effective. While the numbers of complaints have been steady, the authorities themselves have proven, on the whole, to be conscientious about providing fair and equitable decisions and service to members of the public they serve. The ratio of complaints resulting from the new 2,500 authorities to those from the original 280 authorities that have been within our jurisdiction since 1979 remains remarkably small. A representative of each of the new authorities has been invited to make a contribution to this annual report to celebrate the success of the proclamation passage.

UNIVERSITIES AND COLLEGES  
APRIL 1993

“Proclamation, which placed universities and colleges under the aegis of the Ombudsman Act, took place a few years after I had arrived at the University of Victoria as its new President and Vice-Chancellor. The Ombudsman of the day was Dulcie McCallum, and she took great pains to meet with our key administrators to ensure that the process of placing the University under her wing would be a painless transition. And so it has proved to be.

The University is as dedicated as the staff in the Ombudsman's Office to ensuring fair treatment for its students, faculty and staff, and this is reflected in all our policies and procedures, and in our staff training programs. However, no matter how hard you strive, there is always room for improvement. The Office of the Ombudsman has made several helpful suggestions over the years that improved our internal procedures and policies. The Ombudsman's investigations were thorough but unobtrusive, and the staff always professional and objective.

Happily, there have been very few cases, which speaks well of our efforts. Nevertheless, I for one, appreciate that the Office of the Ombudsman exists, and is able to train an impartial eye on the actions and decisions of institutions having a public trust. The Office has shown during its history just how valuable it is to government and public enterprise, and has set a standard of integrity and impartiality that can be upheld and build upon in future years.

This brief note would not be complete without a few words about the retiring Ombudsman, Dulcie McCallum. Always professional, always honest, always fair – she administered her doses of good sense and fair play with firm courtesy. Above all, I've enjoyed her keen wit and lively personality! On behalf of the students, faculty and staff of the University of Victoria, I congratulate her and her staff on a successful term, and send warmest wishes from all the University community.”



David F. Strong  
President and Vice-Chancellor  
University of Victoria

SCHOOLS  
NOVEMBER 1992

“The BC School Trustees Association (BCSTA) is a voluntary organization of 60 school boards across British Columbia. The Association is dedicated to providing professional development, legal services and advocacy on behalf of school trustees.

School boards have a single aim: to provide the best education possible for the students in our district, balancing needs on the one hand with the district operating budget on the other. School boards have a single test: communities judge us by the quality of programs and services we offer, and by what students learn from them.

Through the BCSTA we've had several chances of productively working together with the Ombudsman on a common goal of caring about the best interests of the citizens of our province. The Ombudsman's Public Report, *Fair Schools*, clarified her role in relation to schools and the promotion of fairness, and provided a guide for school board appeal processes. We share information on trends, always working towards improving our system for the public and students we serve.

Advocacy for Fairness: there again, a common note with the Ombudsman. It's a privilege when our advocacy efforts gel with Ms. McCallum's. A significant example is the partnership between the Ombudsman's Office and the Victoria School District to introduce the Ombuddy Volunteer Program. Victoria's "Ombuddy" program, highlighted recently in our trustee newsletter, *Education Leader*, provides valuable student role-modelling. The program teaches students about the role of the Ombudsman, and about the basic rules of fairness – everyday skills for living and working together.

We hope we may "buddy" with the Ombudsman's Office in other ways. This would be a natural partnership, one in which we respect the role of the Ombudsman to investigate complaints and in which we learn from the outcomes of those investigations to continue to promote fairness for all in the school community.”



Carole James  
President  
BC School Trustees Association

HOSPITALS  
APRIL 1993

“In today's health care systems, establishing positive links between provincial and regional health teams benefits both the respective systems and the public who use the health services. This article will provide a brief overview of the Capital Health Region's (CHR) Client Relations Office (CRO) and highlight the benefits of working collaboratively with the Provincial Ombudsman's Health Team.

The CHR provides an integrated network of health services that includes prevention, and hospital and home health care for residents of southern Vancouver Island, including Greater Victoria. The CRO team was established in August 1997 to ensure that public concerns about the region's health care system are acknowledged, resolved and used to improve the system. We endeavour to provide an accessible, consistent regional process for registering, trending and resolving public concerns.

The Ombudsman supports our efforts to inform the public about our service by directing clients who complain to her Office to work with us at the local level. Working at this level enhances our accountability for the health services we provide and makes it easier to resolve problems at the source.

Should resolution not occur at our level, the Ombudsman's Health Team works collaboratively with the client and the CRO to provide an impartial and fair review. The diverse backgrounds and expertise of the Ombudsman's staff, combined with their provincial perspective, offer the client and the CRO an expanded repertoire of possible solutions.

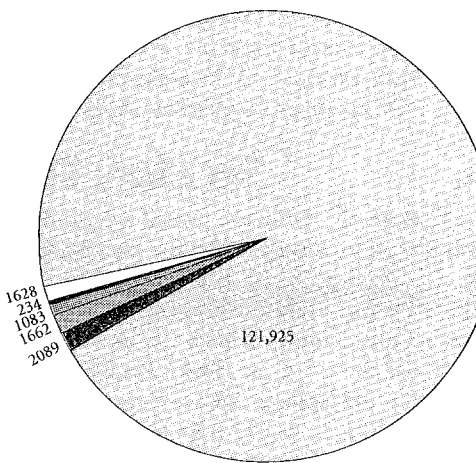
At a broader level, we share information and consult about regional and provincial services, standards, trends in public concerns and ideas for service improvements for our clients.

Our relationship with the Office of the Ombudsman is still quite young. However, as an organization committed to customer focus and continuous improvement, it is clear that maintaining an open and mutually informative relationship with the Provincial Ombudsman's Health Team enhances our ability to provide excellent and accountable service to clients of the Capital Health Region.”

Cathy L. Yaskow  
Coordinator of Client Relations  
Capital Health Region

## Inquiries and Complaints (1992 - 1998)

- Schools
- Universities and Colleges
- Hospitals
- Self-governing Bodies
- Local Governments
- Original Authorities



SELF-GOVERNING BODIES  
OCTOBER 1993

“The medical profession's tradition of self-discipline dates back about twenty-five hundred years to the democracy of ancient Greece, which saw schools of medicine set down high ethical standards for their members. Later, in thirteenth century Europe, self-regulation began to be embodied in laws created to protect the public from unqualified and unscrupulous practitioners. Eventually, similar legislation reached North America and other parts of the world, and in British Columbia the *Medical Act* (1886) established the College of Physicians to govern the medical profession.

Processes for investigation and adjudication of public complaints must be shown to be thorough and fair to all parties involved. It is here that the Ombudsman, independent from the influence of executive government, has a very important role.

The College voluntarily cooperated with the Ombudsman's Office on occasion prior to being added to the Ombudsman's jurisdiction in October 1993. At that time the College had become the focus of public attention because of several high-profile cases of physician misconduct. We had concerns about whether the Ombudsman's Office would be able to maintain impartiality. However, in the first high-profile report on the College, the Ombudsman found that the College and its staff had demonstrated their commitment to the goal of accurately informing the public and providing access to fair complaint processes. She added that the College had acted in good faith, conscientiously, and in a manner consistent with the law. She made certain recommendations, some of which we had already instituted, others, which we were pleased to respond to constructively. Consequently, we do not hesitate to refer dissatisfied complainants to the Ombudsman. We continue to work with her staff to address any concerns identified. They have done much to demonstrate "the bottom line-respect for those providing the service as well as those receiving it" (1992 Annual Report). We have done much to account for the integrity of the medical profession's independent self-regulation.”



Dr. T.F. Handley  
Registrar  
College of Physicians and Surgeons of BC

*Proclamation was a planned event at our Office. Beginning in 1992, we strategized to familiarize ourselves with the work of the new authorities and to educate those bodies on how to practise administrative fairness. The strategy has proven to be highly effective.*

LOCAL GOVERNMENTS  
JUNE 1995

“The proclamation of the Ombudsman Act with respect to local government – the 180 municipalities and regional districts – has an interesting history. The original Act had local governments referenced as sections 4, 5, and 6 of the Act's Schedule. The full Schedule was not proclaimed when the Act came into force in 1979. In 1987, almost ten years after the Act was passed, the UBCM Convention recommended that the provincial government finally decide whether or not local government would be covered by this legislation. Finally, in June 1995 the government enacted a Regulation to proclaim the local government sections of the Schedule.

Since that time, the local government world has not been greatly changed. Local government has always felt it was open and accountable, which is attested to by the small number of serious complaints received. The Ombudsman's Office has made significant efforts to learn about the local government system. An early initiative brought in staff temporarily seconded from local government to establish a working relationship with the new authorities and to familiarize Ombudsman staff with this new group.

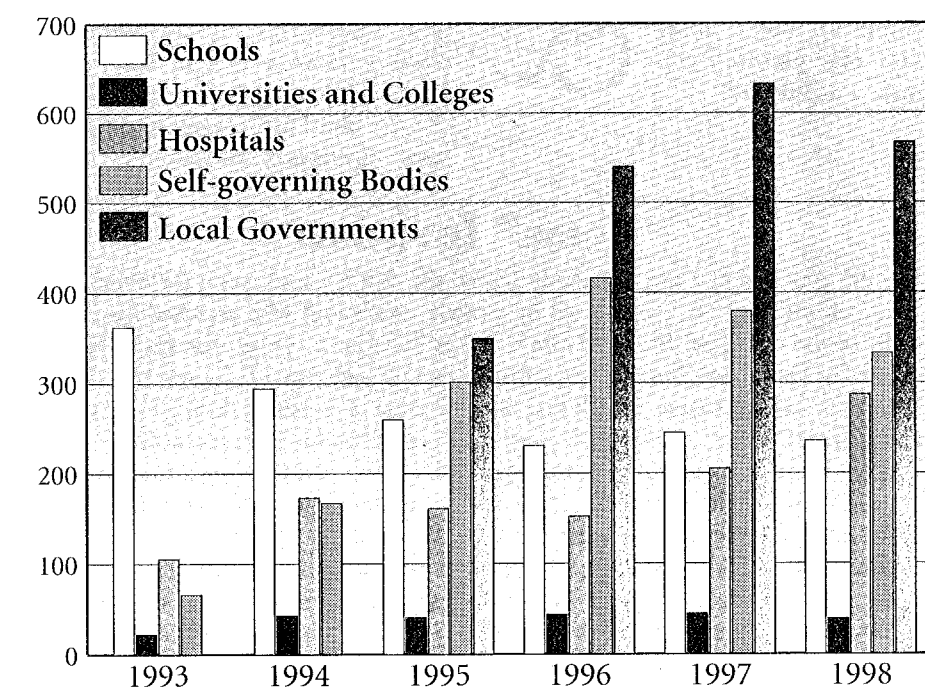
It is a tribute to both local government and the Ombudsman's Office that there have been few major disputes in the process of integrating the Ombudsman's objectives and practices for administrative fairness into the local government system. However, no new system is without problems. Situations where the boundaries of jurisdiction of the Ombudsman have overlapped with the perceived boundaries of local elected officials who feel accountable to their electorate, first and foremost, have been problematic. The circumstances are somewhat unique to local government, as compared with the provincial system, because the lines of responsibility between elected officials and appointed staff are not as clearly drawn. This sorting out of roles is an ongoing challenge.

The Ombudsman's Office has also established substantial credibility and respect in its outreach relationships. The Ombudsman and Ombudsman staff have a regular presence at the UBCM annual convention and in joint policy and advocacy initiatives where their experience has proven invaluable. We look forward to a productive ongoing relationship with the Ombudsman.”



Richard Taylor  
Executive Director  
Union of BC Municipalities

## Inquiries and Complaints for the New Authorities



# Team Summaries

The Ombudsman Office received over 48,000 electronic contacts and 13,000 inquiries and complaints in 1998. About 70% of these are managed by well-trained Intake staff who answer questions and may refer callers, when appropriate, to available remedies, if they are considered adequate in the circumstances. The remainder are referred to Ombudsman Officers for investigation. Some of these are resolved expeditiously, but many require intense investigation. Some examples follow.

## Children & Youth

### Fairness for Students

Two students complained to our Office that the district's student discipline policy was not fair to them. The area superintendent agreed that the policy needed revision. The district area superintendents met to discuss the policy and recommend revisions to the Board of Trustees. Their aim was to clarify roles and ensure that the policy was applied fairly to all involved. In order to understand better how the application of the student discipline policy affected students, they invited the two students to meet with them.

We requested and received a copy of the draft policy, still a work in progress. We acknowledge the willingness of the area superintendent to listen to the experiences of those students and consider their input in drafting a student discipline policy that will give fair guidance on how to handle situations that are difficult and that may have significant impact on students.

### The Power of One

A student who required a wheelchair for mobility called to complain that the school he attended had not been designed to be fully accessible. He said he was assured when he enrolled that an elevator would be installed to give him access to the entire school. However, towards the end of that school year no progress was evident.

Once we contacted the school with the student's complaint, the school district put the construction to tender for the start of the next school year, since the funding was in place.

The student wrote to the investigating Ombudsman Officer expressing his appreciation for our assistance. He said that in addition to the elevator, the district made other modifications throughout the school to make it fully accessible for students in wheelchairs. His closing comment was, "Who says one person can't make a difference!"



### "Home" Invasion

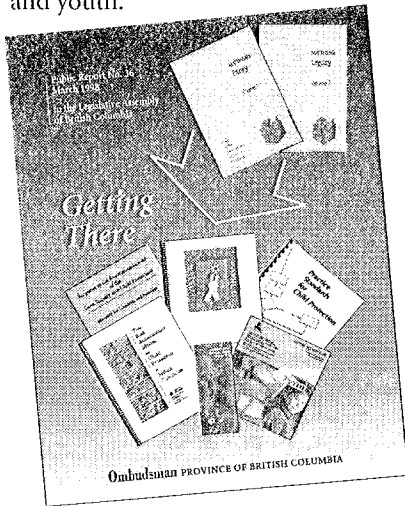
A youth confined to a secure custody centre said that his application for transfer to open custody might be jeopardized by custody centre staff who searched his room while he was not there. They told him that they had found a paper that they believed smelled of marijuana. The youth said that he had no such paper in his room and that he did not use marijuana. He felt that the procedure of searching during his absence was unfair. His efforts to have his concerns addressed had not been successful.

We asked the quality assurance manager of the Ministry for Children and Families to meet with the youth. The manager undertook to review the matter with the director of the custody centre, who acknowledged that the centre's policy required that residents were to be present during searches by staff. The director agreed that the incident report was not necessary and informed the youth that no action would be taken. The youth was transferred to open custody the following day.

When we contacted the youth he informed us that he would not hesitate to contact the quality assurance manager directly should he have concerns in the future.

### Getting There

The Ombudsman was asked to monitor government's implementation of the recommendations in the Gove Inquiry into Child Protection, published in 1995. In March 1998, the Ombudsman released Public Report No. 36, *Getting There*. The Report is an audit of government's response to the more than one hundred recommendations to improve the Child Welfare System in BC. *Getting There* acknowledges the significant amount of work that was done in a very brief period to integrate public services to children and youth.



Most important, the Ombudsman suggested that it was time to move forward from the Gove Report in our collective interest of protecting and serving children. In particular, two recommendations continue to be of significant importance. The first involves a recommendation to government to proclaim s.9 of the *Child, Family and Community Services Act*, which would enable the Ministry for Children and Families to enter into agreements with youth who are in need of financial support when they are not being supported by or living with parents or family. The second recommendation relates to s.70 of the *Child, Family and Community Services Act*. Section 70 defines the rights of children in the care of the ministry but excludes children in places of confinement from these rights. These children may be in mental health or correctional facilities and are often the most vulnerable of our youth.

## Health

### An Independent View

A woman with Multiple Sclerosis applied for Home Support services to her regional health board when her roommate was unable to continue providing her daily care. She was told that there was insufficient money in the budget to provide her with the assessed 83 hours per month of service and she was put on a waiting list.

With the regionalization of health care, each region is responsible for its budget and may not run a deficit. Previously the home care program was run on a province-wide basis so that shortfalls in one region could be made up by another. Our investigation found that the region did not have funding to provide the woman's required service. Within several weeks a region-wide reassessment of current home support clients was completed and funding became available to provide the service this woman required.

While this case raises obvious concerns about the impact of regionalization on service to home support clients, it is important to emphasize that the region was doing everything in its power to provide appropriate service. An independent reassessment of the care providers was an essential step in improving the program.

### Random Error

A number of people objected to a form letter sent by the Medical Services Commission (MSC) to individuals who had consulted more than four primary care physicians during a defined period. Our investigation found serious flaws in the computerized process used to select the group. For example, it was not able to identify cases where an individual had seen several different physicians working together in a clinic, or cases where a physician's locum had been involved. As well, ambiguous wording in the letter was perceived as a threat. MSC apologized and acknowledged the flaws in both the database and the letter.

### No Fine, Thank You!

The College of Denturists passed a resolution that several members were guilty of professional misconduct because they had not completed the 30 hours of continuing education required every three years. One woman complained that she was required to pay a fine and to sign a consent order agreeing that she was guilty of professional misconduct, or have her licence suspended.

In our review of the *Health Professions Act* under which the College operates we found that the College did not have the legal power to deem members to be guilty of misconduct, to invoke fines or to suspend a licence without a hearing.

I was pleased that, in response to my report under s.17 of the *Ombudsman Act*, the College acknowledged that its regulatory powers must be exercised in accordance with the procedural fairness safeguards set out in the *Health Professions Act*. As well, it agreed to return all of the fines it had collected under the unlawful resolution.

### Tragedy Strikes

A young woman who had been severely beaten by an unknown assailant applied to the Criminal Injuries Compensation Program (CICP) for compensation. She died in a tragic accident before the adjudication of the claim was complete. Subsequently the claim was accepted for payment, but the Compensation Program decided not to make payment to the young woman's estate.

Our investigation showed that there had been a long, unexplained delay in adjudicating the claim. Had the claim been adjudicated more promptly, the funds would have been received before the young woman died. The CICP agreed that the delay had been unreasonable and paid the money into the young woman's estate.

## Income

- Because the Superannuation Commission was late in paying pension benefits to the complainant, she had to pay \$2,000 too much income tax. When the Commission agreed to reimburse her the \$2,000, it was erroneously categorized as income, so she had to pay tax on the reimbursement. The Commission agreed to correct the error.
- A woman made a large purchase relying upon the Superannuation Commission's advice that she would have her contributions refunded. The Commission then informed her that it had erred and she would not be getting a refund. After the intervention of our Office, the Commission agreed to refund the contributions.
- BC Transit refused to interview a former employee because of his poor work record. We pointed out that this record dated back over 20 years to when he was very young and that he could provide strong references attesting to his change in performance. BC Transit agreed to consider his application.
- A woman was delinquent in making payments on her loan and had refused to provide financial information to the Student Loans Branch. As a result, her bank account was garnished without warning. The Branch agreed in future not to garnish accounts without warning owners of the possible consequences.



## Income (continued)

- During the pre-Christmas rush, the Ministry of Human Resources (MHR) acknowledged that, because of a reassessment of a benefit recipient's disability status, there may have been an error in the ministry's calculation of her earlier benefits. The ministry agreed to complete a reconciliation the following week and to make up any shortfall on a priority basis.
- A single parent with four children had too much money deducted from her BC Benefits because of MHR's misunderstanding of how the BC Family Bonus is paid out. As a result of this and similar cases, ministry procedure was amended to ensure that all eligible persons received the benefits to which they were entitled under the two programs.
- In accordance with its regulations, MHR denied BC Benefits to a woman who had outstanding warrants for indictable charges in Ontario. However, the woman was facing criminal charges in British Columbia and was required by the conditions of her undertaking to appear in court, to remain here and to continue to reside at a specific facility. The ministry decided she would be eligible for benefits in the interim.
- The lack of a special designation code for a prestigious overseas institution delayed the processing of a BC student loan. Student Services hastened the process for assigning the code, and the loan was approved.

## Attorney General

### Getting the Total Picture

Mr. L complained about ICBC's investigation into the actions of a private investigator who provided services to that Corporation. Our investigation revealed that ICBC's investigative procedures for this type of complaint had shortcomings. An official from one section of ICBC interviewed the complainant's witnesses, but the manager from a different section, responsible for making the decision, interviewed the investigator retained by ICBC. ICBC agreed with our proposals that:

- it would be more effective for the decision maker to interview all parties and witnesses involved; and
- the official responsible for the program should ensure that a letter was issued to the complainant explaining the results of ICBC's investigation and expressing regret for any discomfort that the individual had experienced as a result of the incident.

### Person-to-Person

An inmate explained that his 17-year-old girlfriend had been denied visitation privileges despite the fact that her mother had given written consent for her daughter to visit. Requests from the inmate and the mother to speak with the Director of Programs had been denied.

Although the policy allows such visits with written consent, the Director of Programs believed that the young woman should be accompanied by a legal guardian or custodian during visits because she was under 19, was not a family member and was not considered a positive influence on the inmate.

The Director agreed to review the matter to determine if there were any other reasons (e.g. no contact order for minors) that supported his decision to apply restrictions to the inmate's visitation privileges. The Director met with both the inmate's girlfriend and the girlfriend's mother; he reversed his decision as a result of the meeting, and granted the young woman visitation privileges without having to be accompanied by a parent or guardian.

### Legal Seal

An inmate complained that correctional officials were opening confidential correspondence to and from the Ombudsman. This was in direct violation of subsection 12(3) of the *Ombudsman Act* that guarantees the right of any person in custody to have confidential communication with the Ombudsman. The Corrections Branch subsequently implemented procedures to ensure confidentiality of all correspondence with the Ombudsman.

### Rest in Peace

The Office of the Public Trustee (OPT) was Committee of the legal and financial affairs of Ms. B's mother. After her mother died, Ms. B complained to the Ombudsman that she was being assigned burial and other costs that she could not afford.

The OPT informed our Office that the mother's funds were exhausted. The review by the Manager for Estate Liaison concluded that, although the Public Trustee was not responsible for debts incurred by Ms. B, the OPT could have taken a more proactive role in the funeral arrangements. As a result of the Manager's review, the OPT was prepared to pay the burial expenses owing, in recognition of Ms. B's financial hardship.

### Driving Infractions

A number of individuals working in the driving school industry came to the Ombudsman with several complaints about ICBC. They ranged from the improper conduct of staff members to the improper issuance of instructor's licenses and the implementation of unclear and unreasonable guidelines for road tests.

We arranged a meeting between ICBC representatives and the complainants. A subsequent three-day mediation session between the complainants and ICBC officials resulted in a settlement agreement signed by both parties. The agreement included a commitment to enhance the systems for assigning appointments for tests and the random assignment of road-test-ready applicants.

## Natural Resources

### Road Access

A property owner was concerned that the Ministry of Transportation and Highways was delaying the completion of a road that was being built in front of his property on a Crown right-of-way. He also raised concerns about the lack of access to his property, signage on the road and a ditch that had been excavated by the developer constructing the road.

We contacted the ministry and were advised that, in spite of the delays, the developer was attempting to complete the road in accordance with the permit. Following discussions with this Office, ministry staff and the developer met with the property owner to discuss his concerns. The developer made a commitment about the completion date of the road work. As well, the ministry agreed to install signs on the corner of the road and to correct the slope of the ditch. The road was subsequently completed and the ministry assumed responsibility for its future maintenance.

### Hasty Apology

A woman was angered to see a BC Transit bus speeding on her residential street. She used her local telephone directory to obtain a phone number for BC Transit to

report the bus. The person who answered her call was very rude. Apparently, the number the woman had called was incorrectly listed as BC Transit's complaints department. Although the person who answered the woman's call worked for BC Transit, she did not work in the complaints department.

The supervisor of the person who had answered the phone at BC Transit called the complainant to discuss the incident and apologized for the rudeness. The woman appreciated the apology, and as well, the bus was no longer speeding down her street.

### A Trap-line Stake

A man complained that a regional office of the Ministry of Environment, Lands and Parks refused to accept his application to register a trap-line cabin.

The ministry claimed that the region did not have sufficient resources to process the application. We asked the ministry to clarify the basis for the region's decision, as our understanding was that the ministry accepted applications to register trap-line cabins in all other regions. After reviewing the matter, the ministry agreed to accept the application, as well as any other trap-line cabin registration application that might be submitted from any region.

### Park Marks the Spot

A man purchased property from the province in 1985. In 1992 he discovered that he was unable to obtain a mortgage, since a portion of his property had been inadvertently transferred into an adjacent park when it was created by provincial statute. He was upset that the Ministry of Environment, Lands and Parks had delayed so long in making a boundary adjustment to the park.

The ministry had agreed to seek a legislative amendment to adjust the boundary and remove the portion of the man's property that was included in the park. However, this had not been done. When we inquired as to when the boundary adjustment would be completed, we were advised that the legislative amendment would definitely be scheduled for the upcoming session. We will track this proposal to ensure implementation.

## Local Government

### Preserving the Old

The proclamation of amendments to the *Municipal Act* and to the *Vancouver Charter* introduced a new and unusual authority for the Ombudsman, the ability to issue a directive that a council, or a complainant, or both, must not take any further steps with respect to a heritage site. Simply put, when my Office is investigating a complaint about a council decision or procedure pursuant to municipal legislation in heritage matters, I may order a stay of action, for example, to halt the demolition of a building. Such an order will be effective until our investigation is complete.

A woman contacted my Office after learning that the City of Vancouver planned to demolish some of the buildings that have housed the Pacific National Exhibition (PNE) for decades. She asked that I issue an order to stay the demolition (the bulldozers were booked and waiting), while I investigated her various complaints. Among them, she claimed that the city's public consultation process on the future use of the lands that housed the PNE was inadequate and that the omission of the buildings used by the PNE from Vancouver's heritage registry was evidence of inadequate procedure to inventory and classify the city's stock of buildings.

My investigative Officer was able to provide information quickly to demonstrate to me that the city had not used its own heritage authority in reaching relevant decisions for buildings at the PNE site at issue. Therefore, I had no authority to issue a directive, no matter how valid the complaint.

### A House Is not a Home

The homeowner grant program is intended to benefit registered owners of eligible residences by reducing the net amount of annual property taxes payable in a current tax year. Over the years my Office has heard from many complainants who feel that they have been unfairly found to be ineligible for the grant. They are unclear as to what constitutes adequate proof of eligibility. Because of personal circumstances, applicants are sometimes unable to produce the type of documentation that is considered necessary by the grant administration, such as telephone and hydro bills, driver's licence, or bank statements showing the applicant's name and address.

We have begun consultations with the homeowner grant administration on this and other issues identified in the course of our investigations, and expect to report further in the next annual report.

## Well, Well — Well-being

The Administrative staff is responsible for clerical, customer and support services in the Victoria and Vancouver offices. Until 1993, we worked for specific staff and/or groups of staff within the Office. When Dulcie became Ombudsman she changed the way we did business by introducing the concept of team work. We became the Administrative Team. Skills we already had were further developed and strengthened as we experienced functioning as a team. Through her deliberate empowering and constant support, together we have created a solid, across-the-water working unit capable of handling the varying workloads and challenges that come our way.

Concerned about our safety and well-being, she provided us with extensive training in dealing with the public, and especially in ways of dealing with difficult complainants.

The Ombudsman wrote and enacted an Employment Equity Plan in 1997 and assembled an Employment Equity Team to carry out the plan. As

one result, we have had the experience of training and mentoring students requesting work placements.

Arrival of technology six years ago on the Administrative Team's doorstep was welcome, but caused a whirlwind of change to the way we did our work. All payroll, leave management, accounts and file management methods went full speed ahead into electronic processing; the team went full speed ahead with on-the-job training in the new systems. Although we had to quickly learn the new skills in order to take advantage of the advanced work tools, we have gained valuable computer knowledge and abilities necessary to take the Office (and us personally) into the new millennium.

We played a significant role in moving both the Victoria and Vancouver offices into new locations. We all agreed it was worth every minute of it once we arrived at our new homes. No longer would we be working in cramped quarters — the Administrative Team now has a larger work area and windows — and I don't mean just the software kind! Thank you, Dulcie.

## Mental Health Advocate Appointed

The last outstanding recommendation of *Listening*, my 1994 Public Report No. 33, a review of Riverview Hospital, was addressed in August 1998. The Minister of Health announced the appointment of Ms. Nancy Hall as Mental Health Advocate for British Columbia.

While I applaud the minister for appointing Ms. Hall, I am concerned by the way in which her office has been constituted. The *Listening* recommendation called for an established office within the ministry and not a contract position. Although working at arm's length is important, security, credibility and status within the system are more so. I urge the minister to give this position permanency so that people with a mental illness, families and communities can rely on it with surety. After all, a position that was proposed as a means to bring stability and clarity to an area often filled with chaos and unknowing, should be able to operate from a stable foundation and with a clear mandate.

I believe that people with mental illness and their families need, in a prominent position, a person who can give mental health advocacy a public profile and who can monitor progress being made in developing advocacy services in BC. The Advocate's principal responsibilities include reporting publicly on systemic issues related to the care and support of those diagnosed with mental illness.

Nancy Hall comes to the position as someone personally and professionally knowledgeable about people who live with the diagnosis of mental illness. She has had 20 years of experience working in health promotion and health policy at the regional, provincial and federal levels.

After meeting with individuals and agencies in the first months, Nancy Hall defined her 1999 priorities relating to mental health services as: support, income and housing. She will be reporting her experience and recommendations to the Ministry of Health on a regular basis. This information will be available to the public from her office and on her web site, currently under construction.

I trust that Ms. Hall will enable all those in our communities touched by mental illness to monitor whether government honours its commitment under the Mental Health Plan now and in the future.



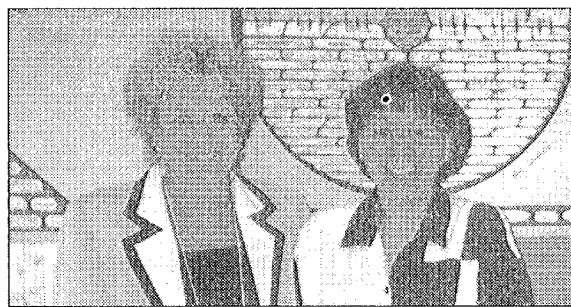
(604) 775-4000  
1-877-222-0412 (toll free)  
fax (604) 775-4005  
Mail:  
Office of the Mental Health Advocate  
905 – 207 West Hastings Street  
Vancouver BC V6B 1H7  
e-mail: mhinfo@mhadvocate.com

## The Warmth of the Midnight Sun

To be in Yellowknife for the summer solstice, in a land where eight official languages can be heard, including Chipewyan, Cree, Dogrib, Inuktitut and Gwich'in, as well as English and French, to be entertained by native drummers and to be served traditional foods was a rare privilege. The occasion was the 1998 Canadian Ombudsman Association conference, hosted by Judi Tutcho, Languages Commissioner for the Northwest Territories.

Working sessions, on such topics as Fairness in a Cross-Cultural Environment and An Aboriginal Worldview on Complaint and Conflict, were very informative and productive.

Our friends and colleagues in the Northwest Territories know how to make visitors feel welcome!



Dulcie McCallum and Judi Tutcho at the Yellowknife Conference.

## Listening and Learning

A CD-ROM has been prepared as a training tool for staff at Riverview Hospital, based on the *Hospital's Charter of Patient Rights*. The Charter describes the standard of care patients can expect when they are at Riverview Hospital. The multimedia CD-ROM has been designed to help staff integrate concepts of the Charter into their clinical practice. Development of such a tool was one of the key recommendations in the Ombudsman's Public Report, *Listening*.



## Ombudsreport 1998

The *Ombudsreport* is published annually and tabled in the British Columbia Legislature. The report is available from the Ombudsman's Office and on the Internet.

Editor.....Eileen King  
Designer.....Dee van Straaten  
Production.....Denise Nicholls



Follow-up  
**Ombudsreport 1997**  
page 5

## How Are WE Doing

Core Strategy No. 5, under External Education and Communication, in the Ombudsman's Strategic Plan, lists as a short-term action: to develop and build a liaison with ethnic cultural groups and service agencies.

The Ombudsman cooperated with the Victoria Immigrant and Refugee Centre in the production of a video entitled *Human Rights and Responsibilities in a Multicultural Society*.

The video traces the history and application of human rights in Canada, with a special focus on British Columbia. It explores through case studies the values enshrined in the *Canadian Charter of Rights and Freedoms*.

The video also explains the role of the Ombudsman and how people can be helped by the Ombudsman when they feel they have been treated unfairly.

To order, contact:  
Caroline Daniels, Librarian, Office of the Ombudsman  
e-mail: cdaniels@ombd.gov.bc.ca

## A Tribute to Emery Barnes

Emery Barnes was born in New Orleans, Louisiana and died in Vancouver on July 1, 1998 at the age of 68.

He took post-graduate studies in social work at the University of British Columbia and served for several years as a social worker. Among his many community involvements, he was vice-president of the BC Association for the Advancement of Coloured People, was a founding member of the Black History and Cultural Society of BC and worked with several Community Neighbourhood Houses.

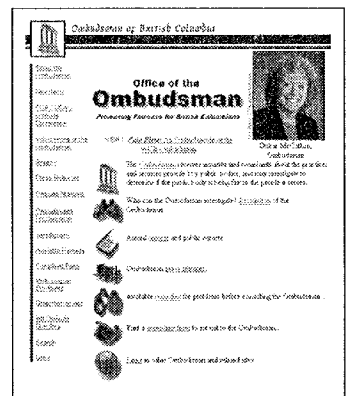
He first ran for political office in 1969 and was elected in 1972. He represented his Vancouver Centre constituency until 1996 when he retired. He was Speaker of the Provincial Legislature for his last three years.

He will be remembered as a fine athlete and a compassionate social worker, but probably most will long remember him as an outstanding Speaker of the Legislative Assembly. He understood how representative government should function and managed the House brilliantly, always showing great personal respect for, and warm humour with his elected colleagues.

Our province and all those whose lives he touched have lost an invaluable role model and a wise, patient and sensitive person.

## Ombudsman Online

For a complete list of Ombudsman publications, and other information about the Office of the Ombudsman, consult our Home Page at [www.ombud.gov.bc.ca](http://www.ombud.gov.bc.ca)



## Ombudsaccess

Internet <http://www.ombud.gov.bc.ca>  
1-800-567-3247 (toll free)  
1-800-667-1303 (TTY)  
(250) 387-5855 (Victoria)  
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