PUBLIC REPORT NO. 30

COURT REPORTING

AND

COURT TRANSCRIPTION SERVICES

IN BRITISH COLUMBIA

September, 1992

Ombudsman
Fairness for all in British Columbia

OMBUDSMAN

Legislative Assembly
Province of British Columbia

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In May 1991 the Ombudsman's Office received a formal written complaint from contract court reporters (contract reporters) about what they believed was unfairness, government waste, conflict of interest and improprieties within the Ministry of Attorney General, Court Services Branch (the "Ministry), regarding court reporting in British Columbia. For the purposes of our investigation the complaints were broken down into the following areas:

I. Allegations of unfair practices by the Ministry in contracting court reporter services and in the decision announced April 30, 1991 that court reporter contracts would not be renewed after September 30, 1991.

II. Questions about the awarding of transcription service contracts to Omni Script Services Ltd., owned by a former manager of Court Services Branch. An interim Public Report on this issue was released on July 5, 1991; the findings and conclusions reached in that report are contained in this report.

III. Allegations that the Vancouver Official Court Reporters (staff reporters) were not attending court for a minimum of eight days per month as required by policy. There were further allegations of unfairness in the scheduling process, and that the staff reporters were using publicly funded offices and equipment to run a private examination for discovery/transcription business.

The Ministry was made aware of the complaints and the Assistant Deputy Minister asked our office to conduct an investigation. On June 4, 1991, due to this request and the nature of the complaint, the investigation was changed to an Ombudsman's initiative.

In June, July and August 1991, we met with the staff reporters in Vancouver, Victoria, New Westminster, Kelowna and Vernon. They were advised of the Ombudsman's role, jurisdiction and the issues being investigated. They were given an opportunity to ask questions and make comments. We were also contacted by a number of contract reporters who shared their perspectives with us.

In November 1991, at the time our investigation was nearing completion, a confidential draft report was provided to the Ministry and to staff reporters to advise of our tentative findings and recommendations, and to invite responses. These responses were reviewed, further clarified and are included in this report.

In December 1991 and January 1992, we received further complaints. There were further allegations of unfairness in scheduling the courts in Vancouver from September to December of 1991 and of improper revenues to staff reporters and staff reporter managers for the supervision and preparation of Chambers Appeal Books. There were also a series of complaints which involved contract reporters. We investigated these complaints in January, February, March and April 1992, and the results of this investigation are included in Part III of this report.

Where this office finds that there may be sufficient grounds for making a report or recommendations which may adversely affect an authority or a person, the Ombudsman Act requires that we inform the authority or person of this and provide an opportunity to make representations before the report is finalized. All adversely affected parties were given this opportunity, in November, 1991 and again in June and July, 1992.

This office does not have jurisdiction to investigate decisions of pure policy, such as the government's decision in 1985 to privatize court reporters, or its decision whether or not to contract. We do have jurisdiction to review related administrative practices and procedures, which are addressed in this report.

Our investigation focused on systemic issues in the current court reporting system. We examined aspects of the system which touch on the interplay between contract reporters, staff reporters, schedulers, support staff and administrators employed by the Ministry. We did not investigate various personal disputes between individuals within the system.

In the course of our investigation, we received some allegations of criminal conduct which we referred to the Deputy Attorney General. It is not within our mandate to investigate allegations of this kind. These allegations were referred by the Assistant Deputy Attorney General, Criminal Justice Branch, to the R.C.M.P., who have an ongoing investigation at the present time. The Comptroller General is also conducting an audit of the scheduling functions for court reporters at the request of the Deputy Attorney General.

This report deals with complaints which in our opinion were found to be relevant to our system review.

Some of the report's findings are:

- In the first period of review (January 1990 - June 1991) we could not make a clear determination of the number of days in court per month reported by Vancouver staff reporters, because the available records were incomplete or inconsistent.

- In the second period under review (September, 1991 - December 1991) we found that Vancouver staff reporters received considerably more assignments to standby or short matters than those received by contract reporters during that four month period. This allowed the staff reporters to be available to conduct examinations for discovery after they had completed their court assignments. We found that this gave the staff reporters an advantage over contract reporters in the examination for discovery business, since contract reporters are generally unable to regularly conduct their examination business to do the same. We concluded that this was an advantage which is derived from their public service positions.

- Due to the manner of scheduling staff reporters for court between January 1990 and March 1991, it appeared that the Ministry was using more contract reporters to cover the courts than was necessary. While staff reporters were available, the scheduler received the necessary information too late in the process to schedule them in the most efficient manner. This process improved after March 1991.

- Staff reporters now receive a higher per diem rate (with additional benefits) than contract reporters for reporting the courts because their salaries have increased over the years while contract rates have not. Accordingly, contract reporters have not received equal treatment from the Ministry.

- The current system and fee structure for the preparation of Chambers Appeal Books needs to be reviewed.

- At a minimum, there is a public perception that the Vancouver staff reporter managers, and the staff reporters to a lesser extent, are in a conflict of interest, due to the inherent structure of the present system. They are continually placed in a position where their private business interests may be in conflict with their public responsibilities.

The recommendations are listed at the end of this report.

This office appreciates the time and cooperation of all those who provided us with information. While this final report was delayed due to our further investigation, we hope that our more thorough review will provide the Ministry with some useful recommendations.

Dulcie McCallum

Dulcie McCallum
Ombudsman

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I. CONTRACTING OF COURT REPORTER SERVICES

All court reporting in B.C. is currently done by two groups of court reporters. The first group, staff reporters, are salaried government employees. The second group, contract reporters, are retained on contract. Staff and contract reporters report the courts and also operate private examination for discovery/transcript businesses. There are two staff reporter managers, who occupy two government positions: Manager of Contract Administration and Manager of Reporter Operations. They revolve through the positions on a monthly basis. Their major responsibility is to ensure that available resources are utilized efficiently and that there is an effective reporting service for the Vancouver Law Courts.

At the time of our initial investigation in June 1991, there were 25 staff reporters and approximately 150 contract reporters in B.C. By June 1992 the number of contract reporters had increased to 194, while the number of staff reporters remained the same. Some contractors have "guaranteed days" contracts and some have "as and when required" contracts with the Ministry. A third group of private sector independent reporters only operate private examination for discovery/transcript businesses.

Unfair practices in contracting court reporter services and the decision announced by the Ministry that court reporter contracts would not be renewed effective September 30, 1991 was the first issue addressed by this office.

We interviewed contract reporters, staff reporters, Ministry staff and management, and members of the British Columbia Shorthand Reporters Association (BCSRA) which represents 200 of the approximately 235 court reporters in British Columbia. We received correspondence from many sources, and unsolicited information from many others who became aware of our office's involvement and wanted to share their experiences and perspectives with us.

A. Privatization

The history of court reporting in British Columbia is lengthy and complex. Prior to 1974 all court reporters were hired on a per diem payment basis. In 1974 all per diem reporters were invited

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to become government employees as staff reporters. From that time until September 1984 all reporting in the County and Supreme Courts, Court of Appeal and private examinations for discovery was done by staff reporters.

In December 1983 the Ministry announced a plan to privatize staff reporters. There were many months of negotiations between the Ministry and the solicitor who represented the majority of the staff reporters who were to be privatized. At the time of privatization a small group of 39 of the most senior staff reporters were retained by the Ministry. There were three staff reporters retained on Vancouver Island, 20 in the Vancouver region, ten in the Fraser region, and six in the Interior region.

The privatized staff reporters signed three-year contracts with the Ministry. Auxiliary reporters who had worked for more than one year were given 18 month contracts. The contract terms were negotiated, and whether a privatized reporter was offered a "guaranteed days" contract or an "as and when required" contract depended on the experience and years of public service of the reporter at the time of privatization. The per diem rate reflected years of service. Those with ten or more years were contracted at a per diem rate of $250.00 for eight days per month. This per diem rate when calculated over the course of a year was equivalent to the 1984 annual salary of a staff reporter. Those with five to ten years service were given a per diem rate of $225.00 and nine guaranteed days/month, and those with under five years were given a per diem rate of $200.00 and ten guaranteed days/month. Although the rates were different, the total annual payments by the Ministry were similar for the three categories.

We were advised that, immediately after privatization was implemented, there were too many contractors in Vancouver to service the anticipated September to June court sittings. The Ministry and the privatized Vancouver staff reporters (approximately 40) had negotiated a condensed ten month work year, when they had previously worked over a twelve month period. The Ministry told us that this reflected the fact that fewer trial courts are in session during July and August.

After privatization, in order to do reporting in the courts or private examinations for discovery, "official" court reporter status was required in British Columbia. This status could only be obtained by privatized court reporters through a "guaranteed days" contract or an "as and when required" contract with the Ministry. Since July, 1990 reporters in the private sector no longer have to contract with the Ministry to obtain "official" reporter status to report examinations for discovery.

B. <u>Subsequent Contracts</u>

In 1987 court reporter contracts were renewed for three years at the 1984 rates. In 1990 the contracts were renewed for a further year again at 1984 rates, with an expiry date of September 1991.

A number of contracts which were renewed with contract reporters in 1990 required computer compatibility within three years. Scheduled in the contract was a fee (not to exceed $25.00) for the preparation and supply of a copy of a computer diskette which was produced when the transcript was prepared on computer. There is correspondence in 1989 between the Ministry and the BCSRA discussing the length of the phase-in program required to get the remaining 20% of contract court reporters computer compatible. It was decided that a three-year time frame was appropriate and the BCSRA was put on notice in March 1990 that should contractors be unable to provide diskettes by 1993, the Ministry would not renew their contracts.

C. Recording Devices in Supreme Court Chambers

In September 1990, audio recording devices were introduced into Supreme Court Chambers. This decision was supported by the Chief Justice of the Supreme Court. It was based on a model which had been used successfully in the Court of Appeal, and it was seen as a move to provide a service which had not been available before. Orders and dispositions had not formerly been recorded, nor had the relatively informal reasons typically given for deciding most shorter contested Chambers applications. Court reporters were usually called to Chambers only to record oral reasons given after a more lengthy hearing leading to a final order (for example, a judicial review proceeding).

The Ministry decided that the Chambers transcript production from audio tapes would be done by typists, not court reporters. While at least half of the former Chambers work had been done by staff reporters, contract reporters were concerned that the Court Services Branch did not consider contracting this work to them. However, this decision was not seen by the Ministry or by the judicial administration as displacing a significant amount of court reporting work.

This change to audio recording was believed by some contract reporters to be the beginning of the end of contract court reporting. As a result, there were rumours circulating among Vancouver contract reporters that all reporters would "be gone" in a year. The Honourable William A. Esson, Chief Justice of the Supreme Court of British Columbia, responded to a member of the BCSRA by letter dated September 18, 1990, addressing this concern. He said, in part:

> As to the rumours which you say you have heard to the effect that "the reporters will be gone" in a year, I believe there to be no substance in them. I assure you I have no intention or desire to diminish the role of court reporters in the operations of this court. Particularly for recording trial proceedings, I believe strongly that technology should not displace the live reporter. Nor do I have any reason to believe that there are any plans afoot in that direction.

Court Services thought that contract reporters would not be interested in providing this type of service, because the dispositions are usually very short and the rates are per page. Further, they did not know how much transcription would result from audio tape recorders being placed in Chambers, because they had not been used before. Therefore, Court Services requested submissions from two established contract transcription service providers, and one provider was awarded an interim contract. The interim contract was extended to June 30, 1992. Thereafter, the dispositions were to be prepared by Ministry support staff.

D. Seven Years Later

In June 1991, 25 of the 39 staff reporters were still employed by the Ministry. There was one reporter in the Vancouver Island region, three in Fraser, five in the Interior, and 16 in Vancouver.

The complainants told us that at the time of privatization the Ministry had indicated that the 39 staff reporter positions which remained after privatization would be eliminated through attrition. The BCSRA's recollection was the same. The Ministry advised us that no such commitment was made and it was left to the discretion of the operational managers to periodically assess the need for staff reporters. In April 1991, the Ministry's advice to contract reporters was that a core of approximately 20 staff reporters would be maintained in Vancouver and possibly a core maintained in the Interior.

We understand that the judiciary has been in favour of maintaining a core of reporters in the

Vancouver Law Courts. Over seven years 14 staff reporter positions which became vacant were not filled. However, in the fall of 1990 a competition was posted for one staff reporter for the Vancouver region. This position was for an R.T.T. (real time transcribing method) reporter. The position was not filled because of the November 1990 freeze on hiring in the public service. It was posted again in April 1991, and was filled in the summer of 1991. The total number of staff reporters in Vancouver was then increased to 17. Filling one vacancy in the complement of staff reporters with an R.T.T. reporter was a management decision to fill a need for a specialized reporter. The Ministry advised us that this action was not intended to set a precedent for the expansion of staff reporters.

E. The Ministry Audit (1989)

At the request of Court Services Branch management, the Internal Audit Division of the Office of the Comptroller General, Ministry of Finance and Corporate Relations, conducted an audit in July and August 1989. The purpose was to review, evaluate, verify and report upon the adequacy of financial and management controls over contract administration within the Branch. Court reporting services and transcript production were identified by the Branch as top priorities for the audit. In November, 1989 a draft report "for discussion only" was issued. It contained a number of recommendations, some of which were specific to court reporting. The report commented on the special status of reporters and suggested that the Branch needed to determine whether it was receiving the required services in the most efficient, effective and economical manner.

Pending the final report being issued, Court Services has been dealing with the problems identified in the audit and the Ministry has advised the Internal Audit Division that they have complied with many of the recommendations.

In September 1990, the Ministry prepared a proposed audit plan for contracted services and it was tested in the Victoria Law Court Review of October, 1990. In April, 1991 the audit plan was updated and as of June, 1991 the audit plan was to be incorporated in the Ministry's Inspections Guide.

Also in June, 1991 Regional Directors were canvassed to confirm what regional action had been taken in response to the audit. The final report was recently received by the Ministry, and it was still dealing with the issues, problems and recommendations identified in the audit at the time of our investigation.

F. The Interact Report

In 1989 the Ministry contracted with Interact Policy Consultants to provide a technical report about the different systems of making and transcribing official court records. This was in response to the concern expressed in 1988 by the Justice Reform Committee about the high cost of transcripts. The August 1989 interim Interact Report was widely released.

In December, 1989 the BCSRA submitted a brief in response to the report to Interact Policy Consultants and to Court Services Branch. BCSRA's position was:

> Reporters are a vital and integral part of the modern and future court and legal system; and as a crucial link between courts, lawyers and litigants, they are employing technology that is valuable to the administration of justice. The Justice Reform Committee (1988) recommends expanding the use of computer technology

throughout our court system. Official Reporters using C.A.T. and R.T.T. will enable this goal to be achieved.

The BCSRA stated that they wanted to respond in greater detail after a review of the second stage of the report.

The final Interact Report of March 22, 1990 was not released by the Ministry. This gave court reporters and others the impression that something was being hidden and that adequate consultation had not occurred. This also precluded the BCSRA and others from responding to the final recommendations. This final report included a recommendation to eliminate all court reporters in Supreme Court and to replace them with recording equipment. The Ministry advised us that it did not release the Interact Report because it did not endorse this recommendation and it did not want to defend it, as it saw a need for court reporters in Supreme Court criminal matters.

It is unfortunate that the Ministry did not release the final Interact Report at that time and did not seek further submissions from those parties affected by the recommendations. This lack of disclosure created an atmosphere of further distrust in an already difficult climate. Even if the Ministry did not intend to implement some of the recommendations, further discussion could have been productive.

G. The April 1991 Decision

All reporting contracts were to expire on or about October 1, 1991. Before this, the Ministry had planned to introduce a competitive bidding process for future contracts. On April 30, 1991 it announced that:

1. Court reporters would continue to report Supreme Court criminal trials.

2. Supreme Court civil trials would be audio recorded at the government's expense unless counsel requested the services of a reporter. In such instances, a reporter would be arranged by Ministry staff and provided at the expense of the parties.

3. At a future date, real time transcription would be pilot tested in several Court locations at the expense of the litigants.

Following this, the Ministry announced that a pre-bid conference was to be held May 21, 1991. This conference was cancelled pending our investigation and the Request for Proposals was withdrawn.

The effect of the April 30, 1991 decision was to immediately and significantly reduce the amount of court reporting work available. The President of the BCSRA advised that an estimated 60% of the contract reporters' work in January, February and March 1991, was from Supreme Court civil trials. The contract reporters interpreted this as the first step in a process which would ultimately eliminate all contract positions.

This led some contract reporters to make a written complaint to our office in May 1991. The complainants were of the view that the costs of court reporting were not reduced after privatization. They believed the real problem was not the cost of contract court reporting but the mismanagement of staff reporters. The complainants believed that Court Services was using and paying for contract reporters more than necessary because staff reporters were not spending enough time reporting the courts. The complainants believed that the cost issue was used to support a Ministry decision to install audio recording devices in the courts. We did not investigate the issues relating to costs. However, based upon our review of the Interact report, cost was one of the criteria upon which the Interact recommendations were based, and was the subject of continuing debate after the March, 1990 final report was sent to the Ministry.

The complainants also expressed concerns about the lack of choice where legal counsel requested a court reporter for a Supreme Court civil matter. Arrangements were to be made by Ministry staff. If the cost of the court reporter was to be borne by the litigants, they felt that counsel should have the right to select the reporter of his or her choice. The Ministry advised us that it was necessary for its staff to make these assignments because it needed to have control over scheduling matters in order to ensure the smooth operation of the courts.

H. Lack of Consultation

On November 28, 1990, the Assistant Deputy Minister wrote to all court reporters canvasing ideas about contracted court reporting services in the future, requesting a response by December 31, 1990. There was a feeling of uncertainty among all court reporters, because it was felt that the Ministry had already decided to replace reporters with recorders in Supreme Court civil matters.

In October 1990 the Ministry was reviewing a proposed model for service delivery which saw a substantial reduction in the number of contracts in place. It advised us that it was considering various reporting/recording models and no final decisions were made at that time. However, the fact that the Ministry was reviewing specific models, which included some recording functions supports concerns that it may have been consulting with contract reporters after the fact.

The Chief Justices were not meaningfully consulted before the actual decision was made. In January 1990, the Chief Justice of the Supreme Court wrote to the Deputy Attorney General, referring to the interim Interact Report. He advised the Deputy that if the final report was to be seen as making a case for changing the present system of reporting, he expected to be consulted, and to have an opportunity to respond after full consideration. The Deputy agreed with the Chief Justice's expectations.

There was an initial meeting in March 1991 with the Chief Justice. The Ministry's proposal was later outlined in a letter dated April 4, 1991 to the Chief Justice. This letter indicated that the decision to eliminate court reporters from Supreme Court civil trials had been made. The Chief Justice then considered the full extent of the ramifications of the proposal and wrote to the Assistant Deputy Minister on May 9, 1991, shortly after the decision was announced. In this letter, he raised serious concerns with the Ministry's plan. Thereafter, the Ministry met further with the Chief Justices to discuss the proposed changes.

The President's Report in "Bar Talk", the Canadian Bar Association, B.C. Branch, April/May 1991 edition reported:

> While the Bar did provide comment to the Ministry's research study on court reporting, the decision recently announced had been made without consultation with the Bar.

We have concluded, therefore, that while the Ministry did not make a decision until April 30, 1991, there was a lack of meaningful consultation about the issue with court reporters, the judiciary and the bar.

I. Lack of Notice

Contract reporters advised us that they have spent a considerable amount of time and money establishing their private reporting businesses. Computers, photocopying and printing equipment were purchased or leased, monthly maintenance service contracts were signed, space was leased and support staff were hired. This was a result of privatization, regular renewal of contracts, and the need to be computer compatible. Contract reporters stated that they did not have sufficient notice to properly dismantle an infrastructure which took over seven years to build. They said that they had been encouraged by the Ministry until April, 1991 and that the Ministry should act accordingly. They also felt the decision to use audio tape recorders was wrong.

The Ministry was of the view that the terms of the reporters' contracts did not require it to give more than five months' notice of any program changes. Because Supreme Court civil reporting work constituted a portion of available work, it considered the amount of notice given to be adequate.

While the Ministry may not have been contractually bound to consult with contractors or to give more notice, the amount of work generated by Supreme Court civil matters is significant, and many of the technological advancements in the field were made recently due to initiatives and requirements from the Ministry. Therefore, we have concluded that the amount of notice given was inadequate, taking into consideration the lack of meaningful consultation and all of the other factors referred to above.

J. The Ministry's Response and our Findings

In May, 1991 shortly after our investigation began, the Ministry decided that the April 30, 1991 decision would be put on hold pending our investigation and a response from the judiciary.

From a review of all the information we received we concluded that there was a lack of consultation, a lack of notice and therefore a reasonable expectation that work would continue for contract reporters. This expectation was promoted not only by the Ministry but also by members of the bar and the judiciary, who continue to support the use of court reporters. These fairness issues and our findings were discussed with the Ministry in late June 1991.

K. Attorney General's Announcement

On July 5, 1991 the then Attorney General announced the appointment of a sub-committee of the Attorney General's Justice Reform Advisory Committee. The sub-committee was asked to examine the use of various technologies in making and transcribing court records and the accuracy, cost-effectiveness and needs of the courts throughout British Columbia. A Ministry liaison was appointed to the sub-committee.

While the study was underway, contracts with contract reporters were renewed.

In a letter to contract reporters dated July 5, 1991, the Attorney General announced that the 1990 final Interact Report would be made available to interested parties. The Attorney General also encouraged all users of the court system to make submissions to the sub-committee.

II. TRANSCRIPTION SERVICES

On July 5, 1991 our office released an Interim Public Report dealing with the awarding of provincial court transcription service contracts to Omni Script Services Ltd. ("Omni Script"). At that time we advised that the interim report would form part of our final report. The interim report was released because a private company and its principal officer had been specifically named and the complaint had been discussed in the public arena. Therefore, it was important that this matter be reported on as soon as possible.

The complaints relating to Omni Script arose out of a 1988 Court Services decision to partially eliminate the court recorder position in Provincial Courts and to develop a combined clerk/recorder position. This resulted in the contracting out of transcription services previously done by court recorders for Provincial Courts. The province was divided into regions for transcription service contracting purposes and the complaint specifically referred to the 1988 Omni Script contract for transcription services for the Fraser Valley and Vancouver Provincial Courts (excluding 222 Main Street).

A. The Contract for Provincial Court

The complainants believed that the process of awarding the 1988 contract was flawed from the outset because the President of Omni Script, J. Donald Stewart, was a Ministry employee. Prior to becoming President of Omni Script in January 1989, Mr. Stewart had over 25 years of Court Services experience, including management of the Vancouver Provincial Court, and regional responsibility as the Deputy Regional Director for the Fraser Region.

Our investigation found no evidence that Mr. Stewart had discussions, attended meetings, or had any active involvement in the decision to privatize transcription services for Provincial Courts. Government encouraged employee proposals. Mr. Stewart submitted a bid, and announced his intention to do so very early in the process. He was forthright about his interest. Management considered whether it would be necessary for him to take a leave of absence while the bid was being prepared. This idea was rejected because Mr. Stewart was not working on the bid during government time and was meeting his responsibilities as Deputy Regional Director.

A Privatization Committee was established to review employee proposals and the actual tendering process was done through the Purchasing Commission. Court Services and Purchasing Commission representatives were on the selection committee. Government Employee Privatization groups were permitted a 5% allowance over the lowest bidder under established guidelines.

Mr. Stewart's proposal was submitted as an employee proposal under the terms of privatization. However, very early in the process, the Privatization Committee decided that the proposal would not be given government employee privatization status because Mr. Stewart's position was not being privatized; his employees were being privatized. In order to be given employee group status, the majority of shareholders would have to be made up of privatized employees and this condition could not be satisfied in this case.

Blind bids were not used, as the Committee felt it needed to have relevant information about the bidders in order to establish their knowledge of court transcription and to compare competency of proposed staff. We agree that it was reasonable for the Committee not to use blind bids in these circumstances. The usual evaluation process was used for all bids. We found no evidence of a flawed process.

The complaint specifically mentioned what was believed to be an irregularity in the process - that a rate ceiling was established, which was not made known to all the bidders. We have been informed that the rate ceiling was not set at the time of the request for proposals. The Committee wanted to see what bids would be received. The Ministry had decided that the established rate (as set by Regulation) would be the maximum public rate, but the cost that the contractors would charge to government was open. The Ministry's position was that their costs should not increase with the privatization initiative. Bids ranged widely, and different contracts reflected different prices. We found nothing improper with this process.

The statistics and other information regarding the new service were available to all interested parties and while Mr. Stewart, due to his experience, likely understood the situation better than others who submitted proposals, he had no "inside" information as alleged in the complaint.

Mr. Stewart, and others, acknowledged that he had many contacts with people in senior government positions, mainly due to the level of seniority he had reached within the public service. However, it was clear from our review that Omni Script went through appropriate regional negotiations as each region negotiated the final contracts awarded in 1988. Our investigation found that these negotiations, which covered all operational issues, were rigorous. Many of Mr. Stewart's proposals were rejected.

B. The Contract for Supreme Court Chambers

As previously stated, Court Services introduced audio recording devices to Vancouver Supreme Court Chambers proceedings in September 1990. The contract for transcription was alleged to have been "given" to Omni Script. It was alleged that only Omni Script was approached about the contract.

Another committee was established in 1990, and submissions were requested from the two established contract service providers in Vancouver, one of which was Omni Script.

Because the volume of work required was unknown, Court Services was unable to identify specific volumes and were unsure of the demand for transcription services. Therefore, Court Services decided to offer an interim contract to one of the two firms which were at the time qualified, by way of addendum to the existing contract. A number of stringent predetermined criteria were used to assess the submissions and the proposals were evaluated against those criteria. The proposal put forward by the other supplier ranked lower in the scoring process. These proposals were reviewed by our office. Based on the information reviewed, this complaint was not substantiated.

About the time this interim contract was awarded to Omni Script, rumours began circulating that family members of a Court Services Director were involved in Omni Script. This involvement was said to range from the manager level to the level of principal of the firm. This office found no evidence of any such involvement between Court Services officials or their families and Omni Script.

C. Transcription of Supreme Court Civil Trials

It was suggested that Omni Script was aware of the planned change in the method of providing services in Supreme Court civil trials before it was announced by the Ministry on April 30, 1991.

It was also suggested that this was proof that Omni Script still had the "inside track" and had used the information to start recruiting and training for the additional transcribing which would be required.

Our investigation revealed that the recommendations upon which the April 30, 1991 decision was made were leaked by a Ministry official in January 1991. The recommendations were common knowledge among those involved with Court Services. In fact, Mr. Stewart acknowledged that he had this information prior to April 30, 1991, but stated that the source of this information was his competitors.

D. Superannuation - Transfer Employer

There were questions about whether Mr. Stewart was able to roll over his own superannuation as a negotiated part of Omni Script's 1988 transcribing contract. Our investigation revealed that Mr. Stewart negotiated pension matters with the Superannuation Commission directly and not with the Ministry as part of Omni Script's transcribing contract.

There were also questions about whether it was a benefit that Mr. Stewart was able to roll over not only his portion of his superannuation but also the government's contributions.

Special pension options were implemented in connection with the privatization component of the government restructuring program. These special pension options were open to all persons who ceased to be employed in the public service. The options were:

1. receiving a refund of contributions plus interest (refund option),

2. leaving the pension contributions in the pension plan (deposit option), or

3. transferring the value of the pension to a personal RRSP or other pension plan (transfer option).

Information was provided in the superannuation pamphlet "Privatization: Employee Pension Options". This pamphlet explained the three options in further detail. It was clear that the value of the employer's contributions could be retained under the transfer option. The value under that option would be equal to at least twice the amount of the employee contributions with interest.

Mr. Stewart negotiated with the Superannuation Commission and Omni Script became a transfer employer. As such it is listed with other transfer employers in the publication "Public Service Superannuation Plan". The Superannuation Commission confirmed that Mr. Stewart received no special consideration in obtaining portability.

Accordingly, the complaint that Mr. Stewart or Omni Script received benefits which were not available to or obtained by others under the privatization initiative was not substantiated.

E. Performance Reviews

There were allegedly many complaints about service performance, quality of product and overcharging. The complainants questioned whether the requirement for performance reviews, contained in the request for proposal, had been met. Our investigation revealed that performance reviews were carried out by the contract manager. Information was solicited from users of the service. Weaknesses and strengths were discussed with Omni Script during an evaluation of the Fraser Region and Vancouver. A performance review of another transcription service contractor was underway in 1991 and again, weaknesses and strengths were discussed with that supplier. The Ministry is continuing this process.

F. Jury Management System Program

The complainants also questioned the awarding of a Jury Management System Program contract by Court Services. Mr. Stewart was involved in the computerization of Provincial Courts and therefore had relevant knowledge of systems in place. When approached by Court Services, the price offered by Omni Script was significantly less than another price received. Omni Script was awarded the contract. Based on the explanations provided during our review, this action appeared reasonable.

G. Conclusion

Our investigation of matters relating to Omni Script Services Ltd. and Mr. Stewart's involvement in the process of contracting with the Ministry has led us to conclude that the complaints in this area cannot be substantiated.

III. COURT REPORTING IN BRITISH COLUMBIA

A. Introduction

All trials in the Supreme Court of British Columbia are recorded. A verbatim record of the proceeding is most often taken down on a stenotype machine by either a staff or a contract reporter.

Until 1984, all court reporters were public servants. They occupied a unique position in the public service. While they were paid a government salary for court reporting, they were permitted to receive additional fees for reporting private examinations for discovery and preparing both court and examination transcripts during regular work days. We understand that many reporters also spent a great deal of time outside regular hours producing transcripts.

Court reporters were known as "Official Court Reporters" and they had, in essence, a monopoly on the private examination for discovery business in the province.

When the government chose to privatize court reporters in 1984, staff reporters with over 10 years of service were given the option to remain in the public service or to take advantage of the contracts which were being offered to other reporters. Those who chose to remain in the public service were assured by the Assistant Deputy Minister that their public service status would not be affected, and their positions and functions would continue.

The staff reporters who kept their public service positions continued a private business called Official Court Reporters (from now on referred to as "OCR"). This business carried on the private transcript and examination business prior to privatization, and after, in a similar way as contract reporters. Due to the historical reference to the title of "Official Court Reporters", the use of this name can be confusing.

B. The Complaints

It was alleged that Vancouver staff reporters had not, since at least 1986, attended court for a minimum of eight days per month as required by policy, and that they were using publicly-funded offices and equipment to run their private examination for discovery/transcript business.

These allegations referred only to the Vancouver staff reporters. However, there are also staff reporters in Victoria, New Westminster, Kelowna and Vernon. In order to conduct a review of the Ministry's overall administrative practices, our office also received information from these centres.

In December 1991 and January 1992, we received further complaints about unfairness in scheduling the courts in Vancouver during September, October, November and December 1991 and improper revenues to the staff reporters and the staff reporter managers for the preparation of Chambers appeal books. We also investigated a series of complaints involving contract reporters.

C. Scheduling of Court Reporters

The first allegation was that since 1986 Vancouver staff reporters were not consistently honouring their obligation to report court at least eight days per month. The second allegation was that Vancouver staff reporters were receiving preferential assignments.

We reviewed the scheduling functions for specific periods of time. In respect of the first allegation, our review was from January 1990 to June 1991; in respect of the second, we reviewed the four month period from September to December 1991.

A major observation should be noted here. Because the needs of the courts vary from time to time, different conclusions may have resulted from a review for different periods of time. In order to get an overall analysis of the scheduling functions in the Vancouver Law Courts, a thorough audit over a longer period of time should be done. In fact, we have been advised that the Office of the Comptroller General is conducting a two year audit of the scheduling functions for court reporters, at the request of the Deputy Attorney General. (The Ministry Audit in 1989, which was referred to earlier, made some recommendations about court reporting, but it did not review the administrative and scheduling functions). **However, our recommendations for immediate restructuring should not be affected by any further auditing of the system.**

1. The Eight Day Requirement - January 1, 1990 to June 30, 1991

The eight day obligation is set out in Court Services policy (April 1985):

> Official reporters shall report court at least eight days per month unless supervisory responsibilities prevail.

This policy was based on past practice and on the formula negotiated during the privatization process. Staff reporters cannot refuse court assignments or subcontract the eight days to other reporters. It appears, however, that the eight day policy was not widely known within the Ministry.

Since privatization, staff reporters have been considered as back up. At the time of privatization the then Assistant Deputy Minister said:

> The purpose of retaining a small group of senior employees is to ensure that administration of reporting services will continue at the same high level and that there is an emergency backup capacity within the Public Service.

Staff reporters are expected to cover court before 9:00 a.m. and for late and weekend sittings. They also cover for contractors who are scheduled for court and are ill or otherwise unavailable and without a replacement. They must provide additional reporters for court if the scheduler runs out of reporters, which happens from time to time.

In Vancouver, until November, 1989, the staff reporter managers were responsible for scheduling all reporters to court. They advised us that it was not always possible to meet the eight day requirement for staff reporters, for a variety of reasons. For example, they said that soon after privatization, the Ministry had too many contract reporters available. Staff reporters who were available for court were often not scheduled, because the Ministry needed to meet the "guaranteed days" requirement in its contracts.

Therefore, the Ministry set a policy to first schedule "guaranteed days" contractors, second, available staff reporters and, third, "as and when required" contractors. This was a reasonable decision in the circumstances. However, it would in some cases result in staff reporters being available for court, but not scheduled.

Another example occurred in September, 1990, just after the merger of the Supreme and County Courts. The merger did not initially create as great a demand for court reporters as expected. Court Services again found that they had a surplus of contractors. The Branch was aware of the surplus problem and was reviewing this prior to our involvement.

These examples demonstrate that it is not always possible to accurately predict the needs of the courts. However, there have been problems associated with the actual availability of staff reporters. Until March, 1991, the pool of available staff reporters was not determined until the morning a court was scheduled to sit. However, the pool of available contract reporters was normally determined three months in advance, and specific assignments were made on the morning of the trial.

It was very difficult to determine the actual number of days assigned to Vancouver staff reporters for the period from January 1990 to June 1991. We received statistics for the Vancouver staff reporters which the initial complainants had obtained from a review of the morning court lists. We found that these were not reliable because changes were made throughout the court day which were not recorded on the morning lists. Further, these lists did not show when staff reporters were available but not scheduled, scheduled to report a matter which was then cancelled and removed from the morning list before it was released, or available for after hours coverage or to perform other duties, such as Ministry support staff relief. During our investigation, we requested information from staff reporters about the actual scheduled court days dating back to January 1990. We received statistics from some individual staff reporters, the staff reporter managers, the scheduler, and from the morning and final court lists.

The Vancouver staff reporters' blue book or diary was available and filled in by various people throughout the day, and after the fact, due to the various and changing needs of the courts. This record did not show those staff reporters who were available but not required and therefore not scheduled.

The original complaint and the data supplied by the complainants was based on 16 Vancouver staff reporters reporting the courts monthly when in fact only 13 staff reporters were reporting the courts. One staff reporter was seconded to other duties and the two staff reporter managers were assigned supervisory responsibilities and did not report the courts at all during the time frame we investigated. The complaint did not take into consideration sick leave, other leave time or holiday time, which was considerable. As such, the conclusion made by the complainants that the Vancouver staff reporters reported on average 2.82 days per month was not accurate.

The data from the other sources reviewed for the Vancouver region did not support the information given to us by the complainants, but did indicate that the Vancouver staff reporters were reporting court less than eight days per month. In one randomly chosen month (March 1991) the total court days reported by Vancouver staff reporters was 51 days (morning court lists), 65 days (final court list), 81 days (the scheduler), and 84 days (the staff reporters and staff reporter managers). When divided between the 13 staff reporters, the court days per month, per staff reporter, without considering any holiday or sick time were 3.1 days, 5 days, 6.2 days, and 6.4 days respectively.

Data that could be collected in the New Westminster, Interior and Victoria regions was incomplete.

However, the court reporters and schedulers in those regions told us that they were quite confident that the eight day requirement had been met.

Based on the records available, we could not make a clear determination about how many days in court per month were reported by staff reporters during this time period. Clearly, there is a need for better and standardized recording methods in all regions.

It was also not clear what constituted a "day in court". It appears that a staff reporter could be credited with a day in court where that reporter was available for court, regardless of whether or not he or she was actually scheduled and used. This should be clarified and consistently applied.

These matters were brought to the Ministry's attention in November 1991. They agreed to ensure that standardized records will be kept in the future, utilizing more advanced technology, and that policies would be established. The staff reporters have requested that the scheduling process be computerized.

2. Assignments - September 1, 1991 to December 31, 1991 **(Vancouver only)**

By September 1, 1991, 15 staff reporters were available for assignments. Further concerns were presented to our office that Vancouver staff reporters were not always meeting the eight day requirement between September 1, 1991 and December 31, 1991. More particularly, the complaints involved the process of assigning reporters to courts. It was alleged that staff reporter assignments were more often for standby or short matters. This resulted in staff reporters receiving abbreviated court days, which gave them more time to conduct their private business.

We conducted an extensive review of the manner of scheduling and assigning courts during this period of time. By September 20, 1991, a new independent scheduler commenced his duties and was primarily responsible for all scheduling matters.

Our findings are that the 15 staff reporters were each available for court assignment eight days per month and were on the daily list of all reporters available for court. By this time, the court reporter managers were providing more timely information about the pool of available for court staff reporters.

We compared the actual court list with the list of available reporters. We reviewed the morning court lists, the final court lists, the staff reporter managers' monthly court lists for contractors and staff reporters, and the civil and criminal trial lists for September through December 1991, for all staff and contract reporters. We also reviewed the staff reporters' examination for discovery appointment book, and their daily examination schedule.

We found that staff reporters received considerably more assignments to standby or short matters than those received by contractors during this four month period. Further, the documents we reviewed showed that staff reporters did a court standby or short assignment and an examination for discovery on the same day a significant number of times between September 1 and December 31, 1991. We did not examine the records of contract reporters. However, we were advised by many of them that they generally do not have the ability to benefit from this practice, mainly because they do not conduct a large portion of their examinations at the Vancouver Law Courts. Because they must be "on call" until 11:00 a.m., it is difficult to organize their examination business around this requirement.

We have therefore concluded that the Vancouver staff reporters have an advantage over contract reporters in the examination for discovery business. There appear to be two reasons for this:

(a) they have in fact received more short assignments, at least during the four month period we reviewed, and

(b) only Vancouver staff reporters are able to regularly conduct examinations on scheduled court days where they are not needed for either a full or partial day.

However, we found no evidence that the staff reporters or their managers sought to influence the scheduler in order to seek preferential treatment. And it should also be recognized that there are some types of work which staff reporters are not able to do, such as private arbitrations or administrative tribunal hearings. A contract reporter's ability to compete for this kind of work may in some cases equalize the advantage the staff reporters have in the examination business.

3. Independent Scheduler

Scheduling and distribution of court assignments are important issues for all court reporters. The volume of assignments is high. In order to function properly any system must have the acceptance of those whose interests are affected. The key to acceptance is an independent, autonomous scheduler who has no stake in the assignments. A scheduling system which is seen to have clear policy, and which is independent will assist Court Services to gain that acceptance. The Ministry responded to our November 1991 draft report by advising us that it would carefully review its policy in this area.

As previously stated, there are profitable and unprofitable court assignments. It is unclear whether anyone can predict if an assignment will result in transcript work. The Ministry advised us that, in the vast majority of cases, it is difficult for anyone to accurately predict whether a transcript will be requested. Cases can collapse, trials can continue for much longer than they were scheduled and appeals are not predictable. The exception is high profile cases where there is a significant likelihood that the trial will continue for some time and transcript work, if requested, would be significant.

In areas of the province other than Vancouver there did not appear to be a concern over the independence of the schedulers. We found that in these regions Court Services staff were involved in the scheduling process and did not have a reporting relationship with the court reporters.

In Vancouver, the staff reporter managers were responsible for the scheduling until November 1989. Then, in response to complaints from contract reporters, an independent scheduler position was created. This position was initially filled on a temporary basis, until it could be classified and posted. The scheduler was not a court reporter and did not report to or take direction from the staff reporter managers. She reported to the Deputy Director of the Vancouver Law Courts.

The scheduler's role was to ensure the fair and equitable distribution of court assignments to contract and staff reporters. This person was in fact seen by all court reporters as being independent. Generally, staff and contract reporters were of the view that the independent scheduler system was working well between November 1989 and June 1991. Unfortunately, the position was initially not extended after June 30, 1991.

A major problem identified during the time from November 1989 to March 1991 was the short notice given by the staff reporter managers to the scheduler about which staff reporters were available for court. The staff reporter managers supplied a list of the available staff reporters to the scheduler each morning. The scheduler advised us that this information was of very limited value to her when provided so late in the process. By the time she received this information, she had usually completed her list, notified the "guaranteed days" and "as and when" contractors and made most of the assignments for the day. She said that she would often have to add the available staff reporters to the standby list.

The examination for discovery list for the staff reporters is set and confirmed the day before. Reporters are assigned to examinations the following morning. Therefore, the fact that the pool of staff reporters available for court was also determined by the staff reporter managers the following morning created a very real perception that their availability for court depended on how many examinations for discovery were proceeding on that day.

It appears that another result of this practice was that many more "as and when" contractors were used and paid for by the Ministry when staff reporters could have been used instead.

In March 1991, the staff reporter managers began to provide the scheduler with advance lists of available staff reporters - one manager was providing a one-week list and the other a one-month list. This was an improvement. In June, the scheduler began to cancel the "as and when" contractors. In September, both managers were providing one-month lists.

The Ministry advised us that contract reporters are initially scheduled into court three months in advance. A copy of the scheduling list is sent to scheduled contract reporters. On the morning of the trial, reporters are assigned to specific courts. This assignment occurs within the first hour of the day. If, for example, a court is then cancelled, and a contract reporter is not used, he or she is required to remain "on call" in case further needs arise during the day.

There appears to be no valid reason why Vancouver staff reporters should not be scheduled in the same way. The staff reporter managers have agreed that all reporters should be scheduled at the same time in advance.

In response to our 1991 draft report, the Ministry agreed that it would maintain an independent scheduler in the Vancouver Law Courts and review the need for this type of a position in other regions of the province.

The Vancouver scheduler's position was temporarily filled by another individual in September 1991. We were advised that the Ministry then had the position classified and posted for an in-service competition. This was held and the person who had filled the position temporarily was successful in the competition. The scheduler reports to the Manager of Court Clerks.

There were also allegations that the staff reporter managers were involved in scheduling the Courts between September 1, 1991 and December 31, 1991, and had influenced the assignments.

The managers were involved in the scheduling to some degree. The individual who became the scheduler did not begin performing his duties until September 20, 1991. Between July 1, 1991 and September 20, 1991, scheduling duties were done by a staff reporter manager. At the beginning of the new scheduler's term, he was being trained and assisted by the managers. They advised us that while they tried to maintain distance from the scheduling, there were matters which from time to time required their assistance. We found no evidence that the managers had improperly influenced the assignments and accordingly, that allegation was not substantiated.

In November 1988, the Justice Reform Committee identified a number of problems with the court reporting system. It recommended that all court reporters should be managed by a "Chief Reporter", who would have several responsibilities, including assignments to court, discipline, and ensuring continuity. At that time, the management at the Vancouver Law Courts considered that the Regional Director performed the role of Chief Reporter. Further, the management has attempted to delegate these tasks to several people - the staff reporter managers and the independent scheduler. Despite these attempts to deal with the problems of managing a two-tiered system of contractors and staff, there remains a general perception by many contract reporters that the system works unfairly.

D. The 'Subsidy' Issue

1. Remuneration

In 1984, staff reporters were paid an annual salary by the Ministry of approximately $23,000.00 (when calculated this was a rate of $240.00 for each of the court days required). This was roughly equivalent to the per diem rate contained in the privatized reporters' contracts. This salary has increased over the years, and staff reporters are now paid approximately $29,000.00 annually ($302.00 for each court day). They also receive public service benefits such as paid vacation, dental plan, office space, telephone service, some support staff services, stenotype and office supplies. In addition, they operate a private examination for discovery business out of their offices. It therefore appears that the overhead costs for their private business are less than the overhead costs of the contract reporters, who do not receive these public service benefits. While data was not collected on this point, this seemed apparent. (The Ministry advised us that a high speed photocopier and paper is provided at the Vancouver Court Registry for contractors to make copies of files for appeal book purposes. The use of the copier is provided at no cost to contract reporters. However, this benefit is also provided to the staff reporters, who are given an additional high speed photocopier and paper for all of their work.)

In August, 1991, the BCSRA reported that while contracts at the $250.00 per diem rate remained, the majority remained at the $200.00 rate notwithstanding that these contract reporters by then had an additional seven years experience. The fact that staff reporter salaries have increased since 1984 and contract rates have not, has added to the imbalance between staff and contract reporters. Contractors generally believe that staff reporters have a competitive advantage over contract reporters because they receive a higher per diem rate, plus benefits. As a result of this, they say that staff reporters are able to underbid contract reporters in the private sector. They believe that this advantage is maintained and subsidized by the public and that this is unfair.

It is clear that staff reporters now receive a higher per diem rate (with additional benefits) than contract reporters, due to the fact that their salaries have increased and the contract rates have not. We have found that this does give staff reporters an advantage, which is derived from their public service positions.

The issue of fees was discussed in 1984, at the time of privatization. A BCSRA brief dated December 1989, states:

> Transcript fees increased in 1984 due to privatization. This increase was necessary to cover overhead expenses previously supplied by government.

While the increase was seen as a supplement for contract reporters, it also applied to fees charged by staff reporters.

The staff reporters are not responsible for creating the imbalance. Legal counsel for the Vancouver staff reporters made the following submission to us:

> At the time of privatization, my clients were assured that the status quo would be preserved. That has been the case and they have received no benefits that they did not have in 1984. It would be most unfair to take away what benefits they do have, given that their career choices in 1984 were based upon assurances that those benefits would remain intact.

Regardless of the cause, this imbalance should be corrected, as long as the present system is continued. Contract reporters have not received equal treatment from the Ministry. A public service benefit which allows an employee to gain a private advantage is, in our view, a form of indirect subsidy.

2. Private Examination for Discovery/Transcript Business

a) Practice

After privatization, there was no longer a monopoly on the examination for discovery business. Law firms now choose the reporters they want to provide the service, and there is direct competition between staff, contract and independent reporters for this work. In some of the more lengthy examinations for discovery, reporters are asked to bid on the fees.

As stated previously, many contract reporters believe that Vancouver staff reporters have an advantage because they have been available for more examinations for discovery. By allowing this practice, it is alleged that the Ministry is indirectly subsidizing the OCR business.

In Vancouver, staff reporters have been able in the same day to report 10:00 a.m., 10:30 a.m., 11:00 a.m. or 2:00 p.m. examinations for discovery if they conclude their court room assignments. Staff reporters in Kelowna, Vernon, New Westminster and Victoria, when scheduled for a day in court, are not available that day for examinations for discovery. Similarly, contract reporters do not normally conduct examinations due to the "on call" requirement. Vancouver staff reporters do this because, they say, they are able to remain "on call" and still report examinations in the Vancouver Law Courts building. They say they can, and have, been pulled from examinations if they are later required in court. Further, there is a greater demand in Vancouver.

While we understand that the Vancouver staff reporters have always been able to conduct examinations when their court assignments are finished or cancelled, staff reporters in other locations, and contractors are not able to regularly conduct their examination business this way. It is this office's opinion that all reporters should be subject to the same rules of practice. The Ministry should consider developing a policy which would prohibit any reporter from conducting examinations for discovery on a scheduled court day. Government is paying these people to be available for court. If they are not required, they should be free to conduct other business which does not have the potential to interfere with their availability for court. The scheduler or other Ministry staff should not have to interrupt an examination for discovery if a reporter is needed. This affects other lawyers and litigants. It should be remembered that this would only apply for eight days per month for each reporter. On all other days, they are free to conduct their examination business as they see fit.

We concluded earlier that the staff reporters have an advantage over contract reporters in the examination business. We also conclude that the advantage is derived from their public service positions. Therefore, by allowing this practice, it can be said that the Ministry is indirectly subsidizing the OCR's private business.

b) System For Booking Examinations For Discovery and Support Staff

Bookings for examinations for discovery in Vancouver for September through December 1991 were taken in numbers which exceeded the entire OCR complement. This is commonly done because there is a very high cancellation rate. Prior to the scheduled day, a list of the remaining examinations is typed, and the bookings are confirmed.

We were told that the goal of the OCR is to keep the private business to 12 examinations per day for the 15 staff reporters and the two staff reporter managers. They say that this is difficult to achieve due to the cancellation rate.

Sometimes the OCR cannot be available to cover the numbers of examinations booked. In those circumstances they request the service of other private firms and reporters. The records showed that this occurred on 79 occasions between September 1 and December 31, 1991.

On three occasions between September 1 and December 31, 1991, contract reporters who were scheduled for and paid by the Ministry for a court day, also covered examinations for discovery which had been overbooked by the OCR. The staff reporter managers advised that this should not normally happen without their approval.

We found that there are different systems throughout the province for booking examinations for discovery for staff reporters. For Victoria, the Okanagan and the New Westminster regions the booking systems were separated from the staff reporter's public service position.

The amount of government support staff for staff reporters also varies from region to region. The Ministry advised that in Vancouver there are four employees whose primary duties relate to court reporting. We were advised that these employees answer phones for the staff reporters in respect of both public and private business, book examinations for discovery, type daily examination for discovery lists, and telephone and confirm examination appointments.

In New Westminster and Victoria, no support staff are presently provided. In Kelowna and Vernon there is some part-time assistance. In Victoria, New Westminster, and Kelowna staff reporters have their own answering machines which are used to take messages for booking examinations for discovery. The staff reporters answer their own calls when they are available, and schedule their own examinations.

Two business telephone numbers for the Official Court Reporters are listed in the government directory under the heading "Official Court Reporters - Appointments for examinations only", with the name of the Ministry clerk who arranges the private business appointments for Vancouver staff reporters. In other regions, no private business telephone numbers are listed under "court reporter" in the government directory.

The working conditions for staff reporters in each region of the province should be standardized and equalized. The Ministry has agreed to review this.

c) Examinations conducted by the Staff Reporter Managers (Vancouver)

The staff reporter managers are qualified court reporters. They used to report the courts, but Court Services management, after receiving complaints from court reporters, agreed that this created a conflict with their scheduling responsibilities. Therefore, since approximately 1986, the managers have not reported the courts. They do report and transcribe examinations for discovery. It was alleged that each manager is assigned one or two examinations for discovery each day, and as such they are not available to perform their government management responsibilities.

A review of the September through December 1991 records show that each manager reported between ten and eighteen examinations for discovery in each month. On eighteen days in 1991, one manager took both morning and afternoon examinations on the same day, and the other manager did the same on twelve days. There were times when both managers were reporting examinations at the same time.

Our office was advised by the staff reporter managers and by Court Services management that each manager spends approximately 30 hours per month in examinations for discovery. It was their view that this did not affect their ability to perform their government management responsibilities. They advised us that both managers could be interrupted during examinations if necessary.

It was our observation that this situation created difficulties in management. There was a perception by other staff members that the managers were not always available. This perception can only be corrected if at least one manager is readily available at all times. In our view, other staff members should not have to interrupt an examination in order to speak with a manager.

d) Vancouver Law Courts Hearing Rooms

The Vancouver Law Courts provides 25 hearing rooms for examinations for discovery and assumes the administrative costs for booking and billing the rooms. Policy was established in 1985 to ensure reasonable access to the rooms for lawyers, staff reporters, contract reporters and independent firms. The ratio between staff and contractor was to be applied to the number of rooms.

In 1987 the Director of the Vancouver Law Courts called a meeting with a number of contract reporters to discuss the use of the examination rooms. It was agreed that 10 hearing rooms would be available for staff reporters. We found that the practice was consistent with this.

In our view, the 1985 policy, which applied a ratio, was based on sound fairness principles. With this in mind, the subsequent agreement should be reviewed.

The Ministry charges a $25.00 daily fee for the use of a hearing room. This fee is payable by the OCR and any other firm or reporter who uses these rooms. We were told that some private reporters pass this cost on to the lawyers while others assume the cost.

Ministry support staff handle the room bookings for the OCR and private reporters, and the staff reporter managers have responsibility to monitor the use of hearing rooms, and to ensure that the users are billed for use of the rooms. The book which contains this information is normally kept at the staff reporters' front desk. Accordingly, the staff reporters and their managers have access to information about the examinations booked for private reporters. The information relates to booking time, reporter's name or firm name, lawyers and law firm names and litigants names. We were told by private reporters that the book is not readily available to them. The OCR advised us that they do not wish to have access to information which is not also accessible to private reporters.

There appears to be no reason to restrict access to this type of information. Booking information about both private and staff reporters should be recorded consistently and publicly available.

E. Chambers Appeal Books

There were further complaints that the OCR received revenues for the preparation of Chambers Appeal books which were inappropriate because it did not perform any services which would justify such payments. It was alleged that the staff reporter managers each received 10% of the gross revenues of Chamber's appeal book receipts, and that the rest of the staff reporters also received revenues for this work, which was performed mainly by one employee of the OCR.

There are two types of books used on an appeal. The blue "appeal book" contains pleadings, exhibits, affidavits, orders, judgments and the notice of appeal. The red book is the "transcript" of the evidence led at trial, which is prepared by reporters in Supreme Court.

Usually, there is no transcript prepared for a Chambers appeal because evidence is not led in Chambers matters. Transcripts will be prepared, for example, where a matter is appealed from the Provincial Court. However, because proceedings in Provincial Court are recorded, court reporters are not involved in the production of these transcripts. For these Chambers appeals, the OCR are involved in providing copies of the transcript with the order.

Chambers appeal books are also known as "walk-in appeal books".

In Vancouver, an Appeal Book Order Form is available at the Court of Appeal registry. This form directs the order to the Official Court Reporters.

We were advised that the form was designed before privatization, when all court reporters were known as Official Court Reporters. It has never been changed.

Assigning production of Chambers appeal books requires a check of the Chambers sheets to ascertain who prepared the Chambers judgment. If no court reporters were involved in preparing the judgment, the order is directed by the staff reporter managers to the OCR. An OCR employee photocopies, numbers and does appropriate margins on the photocopy of the documents.

The staff reporter management positions include a general responsibility to supervise the production of appeal books. It therefore appears that compensation for this service is provided by the Ministry through the managers' government salary. However, the system of supervising appeal books and transcripts which have been transcribed by court reporters is quite different from that of supervising Chambers appeal books. We were advised by the staff reporter managers that it had always been their understanding that supervision of Chambers appeal books was not a service provided by government. The OCR provide this service because, they say, no one else is interested in doing this work. They also advised us that it was an internal decision of the OCR that the managers receive a fee each for their supervision.

It was not clear to us what duties the staff reporter managers performed in respect of the preparation of Chambers Appeal books. With the exception of obtaining and directing the initial order, it appears that one OCR employee had the responsibility to prepare the books and ensure that the appropriate standards were met.

Fees for this service are not regulated. They are established by those who do the work; in this case by the OCR, who charge the same rate as the maximum set for regular appeal books. The fees are paid to the OCR, which distributes a percentage to the staff reporter managers, a price for the work of the main employee, office expenses and a remaining amount to the OCR business. It appears to us that the fees charged for this service are much higher than they ought to be. Government is providing much of the company's overhead costs and in addition, the Ministry is charged fees for appeal books which are prepared in cases where the government is a party to the action or where a copy is requested. The result is that the Ministry is paying twice, in respect of the portion of the fees which relate to overhead expenses.

The OCR has essentially monopolized this service since privatization. The OCR agree that others interested in producing Chambers appeal books should be given the opportunity. It was agreed that a practical solution would be to amend the order form so that those who wished to compete for the business could have their names included on the form. In our opinion the form should also clearly state that all those listed are private individuals or private businesses. The form should not be directed to staff managers for processing but rather to the Court Registry, where the documents are held. The Ministry has advised us that the form is presently being amended to reflect this.

A change in the form will make Chambers appeal book production available to all, and should result in fair competition. Hopefully, this will have an affect on prices. If not, the Ministry should consider regulating these fees.

Alternatively, this service could be provided by the Ministry. It already covers a significant portion of the cost, yet receives no part of the fees.

F. Conflict Of Interest

Contract reporters strongly perceive that the staff reporter managers are in a conflict of interest. They say that their private business interests interfere with many of the duties they perform as part of their government positions. Many contractors advised us that they never understood why this conflict has been allowed to exist.

Staff reporters are also strongly perceived to be in a conflict of interest because they are part of the same private business and have similar business interests as the staff reporter managers. Staff reporters in competition with contract reporters for the private business are seen to be receiving a benefit as a result of their association with the staff reporter managers.

Staff reporter managers and staff reporters are public service employees and as such are subject to personnel management policies, procedures and directives dealing with conflicts of interest and outside remuneration. The Ministry advised us that personnel management directives which existed in 1984, when privatization was implemented, did not conflict with the staff reporting system. However, directives which are presently in force (dated 1987) state in part:

> ... Conflicts of interest include situations:
>
> - where an employee's private affairs or financial interests are in conflict with his/her duties, responsibilities and obligations or result in a public perception that a conflict exists;
> - which could impair the employee's ability to act in the public interest; or
> - where an employee's actions would compromise or undermine the trust which the public places in the public service.
>
> ... Employees may engage in remunerative employment with another employer, carry on a business, or receive remuneration from public funds for activities outside their position

provided that:

- it does not interfere with the performance of their duties as a public servant;
- it does not bring the government into disrepute;
- it does not represent a conflict of interest (refer to Conflict of Interest section of this policy);
- they do not have an advantage derived from their employment as a public servant;
- it is not performed in such a way as to appear to be an official act or to represent government opinion or policy;
- it does not involve the use of government premises, services, equipment or supplies to which they have access by virtue of their public service employment.

In our opinion, it is clear that at a minimum, there is a public perception that the staff reporter managers, and the staff reporters to a lesser extent, are in a conflict of interest, due to the inherent structure of the present system. They are continually placed in a position where their private business interests may be in conflict with their public responsibilities. The remuneration they receive from their private business clearly involves the use of government premises, services, equipment or supplies to which they have access by virtue of their public service employment. We have found that they have some advantage over contract reporters in the examination for discovery business, and this advantage is derived from the public services benefits they receive.

G. Complaints involving contract reporters

In addition to the more general issues discussed above, we received numerous complaints which involved contract reporters. We reviewed these complaints carefully, because it was our view that these matters needed to be aired publicly.

1. Alleged Association Between Staff and Contract Reporters

There was an allegation by some contractors that there was and continues to be a connection between the OCR and a firm known as United Reporting Ltd. ("United"). This allegation is an indicator of how much conflict has existed between various groups of contractors for the past six years. It surfaced in 1984, and appears to be based on several incidents.

On August 31, 1984 a notice was sent by Official Court Reporters to members of the legal profession about privatization of court reporters. The memo stated in part:

> We anticipate very little change in the operation of the Vancouver Office. Approximately 55 - 60 reporters will be staying together, comprising both staff reporters and contract reporters.

Further suspicion was raised in a March 1, 1985 letter to Court Services from a private law firm representing a privatized court reporter which stated that:

> ... the reporters who are remaining as public servants were intending to share a computer for accounting and booking purposes with one of the private groups.

Neither of these events ever took place. The Assistant Deputy Minister at the time confirmed that the public servants would, under no circumstances, have any connection with any of the private groups.

Policy was put into place in April 1985 which stated that:

> The Court Services Branch should ensure that no formal association is struck between private sector reporters and public sector reporters with respect to the carrying out of examinations for discovery.

Suspicions were also raised by another allegation, which concerned the use of a photocopy machine by United. The machine had been one of two copiers which, before privatization, belonged to all official court reporters. When their numbers were reduced in 1984, the OCR returned one machine to the supplier. Our office was advised that United took over the lease for this machine.

During the transition period after privatization, from September 1984 until March 1985, we understand that many of the requests for reporters for examinations for discovery continued to come to the Vancouver Law Courts. These requests were directed to the OCR. As privatization had reduced the number of staff reporters significantly, those remaining could not handle all of these requests. Most of the examination business which was overbooked by the OCR during the transition period was given to United. More recently, between September 1 and December 31, 1991, approximately 45% of overbooked examinations were covered by United. However, because United is the largest firm, this may not be unusual.

While we did observe that the OCR has referred some examination business to United, we did not find that there was a formal association between them. Accordingly, this complaint was not substantiated.

2. <u>Daily Transcript Assignments</u>

Since privatization contract reporters have repeatedly complained to the Ministry about the fairness of assignments for both staff and contract reporters. There has been a belief that profitable court assignments were repeatedly being assigned to some contract reporters and not to others. Profitable court assignments are those where there is a strong likelihood that a transcript will be ordered. Transcript fees can amount to substantial remuneration over the course of a year for a reporter. Estimates for transcript fees paid annually to individual reporters vary widely and can, we were advised, double a contract reporter's income. Court assignments where there is little likelihood that a transcript will be ordered are obviously less desirous. A recurring concern was that United received a disproportionate share of profitable court assignments, particulary during October, November and December, 1991, where many daily transcripts were ordered.

The monthly contractor court record lists approximately 110 contractors (40 "guaranteed day" contractors and 70 "as and when required" contractors) and 15 staff reporters as being available during the time when the cases were scheduled. Of the 110 contracts, United reporters held 24 contracts.

We reviewed the court assignments which were the subject of the complaints. A particularly lengthy matter was scheduled in October, November and December 1991. We were advised that the Court had specifically requested that United report the entire trial. Court Services met this request. This information was not communicated to other contractors. This lack of communication contributed to the perception of unfairness, and provided some contractors with what they believed was further support that United was receiving special consideration.

During October, November and December 1991 United received 26 of the 54 assignments in eight other cases. Clearly, the scheduling system did not result in the even distribution of these potentially lucrative assignments. However, it is important to examine the reasons why situations such as this occur.

We were told that there are many considerations in scheduling the Courts, which include:

- the changing needs of the Court,
- the scheduler's familiarity with and ability to deal with the system,
- late notice or no notice of court cancellations,
- short notice of court convening,
- special requests by the Court for specific firms or reporters because of their knowledge of the case or specific reporting expertise,
- requests from the Court for reporters to read back testimony to a jury which may have been recorded days or weeks before,
- monthly court sittings increasing or decreasing,
- limits on the number of different reporters on a specific case for continuity, and keeping a balance in the number of days a reporter is assigned so as to provide a reasonable expectation that if a transcript is required that individual reporters can produce it within a reasonable period of time,
- reporters' abilities or preferences,
- medical certificates excusing reporters from specific types of assignments (e.g., jury trials),
- holidays and sick days,
- sub-contracting provisions,
- contractors' schedules,
- ability to supply "as and when required" contractors when called,
- having too many or too few reporters on a given day,
- seniority of "as and when required" contractors.

Because United holds the largest percentage of contracts, contract reporters with this firm are seen on the court lists more often than other contract reporters. It usually has on any given day, an unassigned contract reporter. Therefore, the scheduler can usually rely on it to provide a court reporter on short notice. United is also able to provide the consistency required for longer trials. Accordingly, this complaint has not been substantiated.

3. Standby Assignment Complaint

Concerns were also raised about the scheduling of a specific "guaranteed days" contractor. It was alleged that during October and November 1991 the contractor had on five occasions been assigned to a standby position. This meant that for each day, a fee of $250.00 was paid by the Ministry whether or not the reporter was used.

A review of the daily court list does confirm that the reporter was on standby on the dates in question. However, a review of the work sheets leading up to the daily court list shows that on two days in October 1991, this reporter was assigned to third and second standby, and on three days in November 1991, this reporter was initially assigned to a 10 a.m. civil matter which was cancelled, and was thereafter placed on standby.

Being placed on standby after a court case is cancelled is usual practice. We understand that it is not usual practice for a guaranteed days contractor to be placed initially on standby, but on occasion mistakes have been made. In this matter, the reporter remained at the court house until excused on all five days, as required.

4. Contractor Seniority List

A number of reporters complained that junior "as and when required" contractors with a different firm received more assignments for a particular court case in November and December 1991 than other contractors. Court Services advised us that the trial in question required an R.T.T. (real time) reporter. We were also advised that very few reporters can provide this service. The trial involved technical, medical terminology. The contractors assigned to the trial reported the examinations for discovery, were correctly formatted, and had a dictionary in place for the terminology. Further, the Court requested that the same reporters be assigned to the trial. Unfortunately, Ministry staff did not communicate these factors to all contractors.

In the fall of 1991 there were a series of meetings between Court Services and the BCSRA in response to concerns that junior "as and when required" contractors were getting a disproportionate share of profitable court assignments. An "as and when required" contractor seniority list for scheduling purposes was proposed and ratified. This list has been used for scheduling purposes since January 1992 and will hopefully deal with some of these recurring scheduling concerns.

H. Recommendations

The basic two-tiered system for court reporting was negotiated and accepted by contract and staff reporters in 1984.[1] At that time there were some inequities. With the passage of time, further problems and inequities have developed. Staff reporters did not cause all of these problems and inequities. However, they have become the target of much of the dissatisfaction, mainly because it is perceived, and we have found that it is the case, that they receive more benefits than contract reporters. We have also found that they have an advantage over contract reporters in respect of the conduct of examinations for discovery. Finally, the staff reporter managers are in the centre of a system which continually places them in a conflict between their public duties and their private interests.

Disputes and complaints are common in systems. A healthy system will develop procedures and resolve disputes in a fair and timely manner. The same concerns have been expressed many times during the nearly eight years the two tiered system has existed. The Ministry has repeatedly attempted to resolve these matters, with little success.

Varied and conflicting solutions for problems inherent in the two-tiered system were suggested by many of those interviewed by our office. There was no consensus among any group. We reviewed several options with the Ministry in late 1991. The Ministry has told us that it is committed to reviewing the present system with a view to eliminating the inequities identified and improving efficiency and accountability.

The Ministry does not believe it is appropriate to embark on any significant program changes until the recommendations of the sub-committee of the Justice Reform Advisory Committee have been fully considered. However, we have concluded that there are a number of important changes which should be implemented immediately.

1. **We recommend that immediate restructuring is necessary to deal with the issues of unfairness and conflict of interest which have been identified in this report. Therefore we recommend that Court Services reorganize the management of the present system by creating the position of Chief Court Reporter, who would report directly to the Director of the Vancouver Law Courts.**

   This person would not report the courts or examinations for discovery and would not be involved in any private business. The Chief Court Reporter would be responsible for the management of all reporters who report the courts, in place of the two current positions. For example, he or she would be responsible to:

   - assign all reporters to courts;
   - set and maintain standards, and supervise the production of all appeal books and transcripts, including Chambers appeal books;

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1 *We refer to it as a two-tiered system only on the basis that there are two basic types of reporters. We recognize that within the group of contractors that there are a variety of different types of contracts and terms of remuneration.*

- ensure that reporters are present in court when and where required;
- ensure a proper level of continuity of court reporting;
- discipline court reporters where necessary;
- provide access to court files for reporters.

It is our observation that the present management structure in Vancouver has too many inherent problems. The duties and responsibilities outlined above should not be split among several managers or delegated to less senior employees.

2. **We recommend that the Ministry establish policy**

    a) **to ensure that record keeping is standardized in all regions, and**

    b) **as to what constitutes a "day in court" for all reporters.**

    The Ministry has agreed to conduct this review and establish the required policy as recommended.

3. **We recommend that all reporters should be scheduled for court in the same way. A list of available staff reporters should be prepared three months in advance, in the same way as contract reporters are presently scheduled. The scheduler would then have, in advance, a proper pool of available reporters from which he or she could make assignments.**

4. **We recommend that the Ministry take the necessary steps to equalize the benefits received by all reporters, taking into consideration issues of seniority, experience and service quality.**

5. **We recommend that all reporters should be subject to the same rules of practice. The Ministry should consider developing a policy which would prohibit any reporter from conducting an examination for discovery on a day in which he or she is scheduled for court. This should be done in consultation with both staff and contract reporters.**

6. **We recommend that the working conditions for staff reporters in each region of the province be standardized and equalized, taking into consideration the heavier demands in Vancouver.**

    The Ministry has agreed to review this.

7. **We recommend that the Ministry review its current policy and practice to ensure that both staff and private reporters have fair access to the discovery hearing rooms at the Vancouver Law Courts. It should also ensure that information supplied by all individuals to book the hearing rooms is publicly available.**

8. **We recommend that the Ministry review the current system and fee structure for the preparation of Chambers appeal books. The service should be provided either by government or by private firms or individuals. Supervision should be provided by the Chief Court Reporter referred to in Recommendation #1.**

9. **We recommend that the private business operated by the OCR be severed from the public service provided by the present complement of staff reporters in Vancouver. The Ministry should negotiate with the OCR for a fair remuneration for the company's use of office space,**

equipment and support staff in the Vancouver Law Courts.

The Ministry has agreed to review this matter.

10. **We recommend that the Ministry reconsider its policy of allowing a private business to be operated by public servants using public facilities.**

    The Ministry has agreed to review this policy.

In addition, there are a number of broad policy changes which the Ministry should consider in conjunction with the Justice Reform Advisory sub-committee's report:

11. **We recommend that the Ministry reconsider its policy of maintaining a two-tiered system of court reporting in British Columbia. There should be consultation with the Chief Justice of British Columbia and the Chief Justice of the Supreme Court in order to determine the need to maintain a core of staff reporters within the Vancouver Law Courts.**

12. **We recommend that in its review of the present system of court reporting, that the Ministry include consideration of the following options:**

    (a) The Ministry could sever the public and the private business of reporting by hiring a sufficient number of staff reporters whose sole function would be to report the courts. Their salary would have to be commensurate with full time court reporting duties. All examinations for discovery would be reported by independent court reporters on a private basis.

    In considering this option, the Ministry would have the benefit of reviewing similar systems which have been adopted in the states of Washington and California and the province of Ontario.

    There are several advantages to this option. In many respects, it is the most logical solution. Management would have more direct supervision and a greater ability to assure quality control and production of transcripts. Roles would be well defined and there would no mixture of public and private business.

    There are also some disadvantages to this option. The Ministry says that it may be costly for government, as all staff reporters would need an adequate amount of compensation for lost examination work. However, this cost issue should be carefully examined, as it is our observation that the present system may be more costly than many of the other options.

    Court reporters have advised us that their professional work would be less interesting if they were restricted to reporting either courts or examinations for discovery. The mixture of work, they say, keeps good reporters interested and active, and encourages professionalism. Government may not be able to attract the best quality of reporters to become public servants under this type of system.

    (b) The Ministry could privatize the remaining staff reporters. This option would clearly eliminate a two-tiered system. Government would still be required to provide management supervision and scheduling of the courts, but all reporters would be on a similar footing.

The main disadvantage of this option is that a core of staff reporters would not be housed in the Vancouver Law Courts to provide immediate coverage in situations where the number of courts increase unexpectedly or where there are disruptions in contract reporting services.

In considering options (a) or (b), the Ministry should consider the fairness to the staff reporters, who had an agreement with government in 1984 that if they stayed in the public service, their positions would remain as they were with all of the attendant benefits and obligations. They submitted to us that it was on the basis of these assurances that they chose to stay. It will be important for the Ministry to treat these employees fairly in any negotiations which may be undertaken in the future regarding any change in the system of court reporting.

(c) The Ministry could hire all court reporters in the Province and assign all the courts and examinations for discovery. This option would place all court reporters in the position they were in prior to privatization in 1984.

Management would have considerable control as to the duties of all court reporters. However, there may not be enough work in the courts to hire all existing court reporters as public servants. Further, many contract reporters would likely be unwilling to return to the public service, since they have established private businesses. Other reporters do not report the courts and concentrate only on examination work by choice. The Ministry's view is that this would be a very costly option.

(d) The Ministry could maintain a core of staff reporters as they have now, but formalize a policy that through attrition the number of staff reporters will decline with the goal that all reporters will eventually be privatized.

This may be one of the least disruptive solutions to the goal of eliminating a two tiered system. It would have little impact on existing staff and contract reporters.

(e) The Ministry could maintain the two tiered system, but take definitive steps to separate the public and private businesses of the staff reporters. It is our observation that this is not a realistic option, due to the number of serious deficiencies which have been identified in this report.

If the Ministry considers options (d) or (e), Recommendations 1-10 should apply.

It is hoped that government will address these issues quickly in order to alleviate the pressures caused by the continual conflicts which have existed for many years.