Ombudsreport 1996

Annual Report of the Ombudsman, Province of British Columbia

Message from the Ombudsman

Dulcie McCallum

May 12, 1997

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

It is with considerable pleasure that I present my 1996 Annual Report to the Legislature. This year saw yet more changes to our Office and the way in which we serve the people of British Columbia. The number of investigations and inquiries has stabilized. In response to the ever-increasing demand on our service, we introduced a telephone information system. The system gives information to people making an inquiry about remedies available to them before they formalize a complaint to our Office. Members of the public can learn about Ombuds work and order Ombuds reports through our Homepage on the Internet.

The Office of the Ombudsman is committed to providing service to everyone in British Columbia. Meeting the challenge of diversity has become a growing concern in the workplace and in our communities. I had the pleasure of giving an address at the University of Victoria on meeting the challenge of diversity, excerpts of which are found in this Report (see Common-unity, page 2). My Office has an employment equity plan in place that will continue to guide us in our hiring practices. A brochure about the work of the Ombudsman is now available in five languages: French, traditional Chinese, Punjabi, Spanish and Vietnamese. The brochure is in high demand by government and community agencies and has already gone for reprint.

Our community outreach both within BC and beyond continues. I attended the international conference of Ombudsman in Buenos Aires, an event held every four years. The new Ombudsman for Argentina presented a thoughtful and interesting conference. My Deputy also travelled to Russia to assist new states in their efforts to establish ombuds agencies. In 1997 I plan to establish a volunteer bureau of "Ombuddies" to make our Office more inviting to the public at large and to improve understanding of Ombuds work throughout our communities.

Those serving children in BC had a very challenging year in 1996. My staff and I worked tirelessly urging government to respond positively to the recommendations of Judge Gove in his Inquiry into Child Protection. In September, government announced their commitment to the integration of all services for children and youth into one ministry, the appointment of a Minister responsible for Children and Families, and a Childrens' Commissioner to investigate deaths and critical incidents involving all children. Although these announcements have resulted in enormous changes for those within the system, government has clearly demonstrated its willingness to look at better ways to meet the needs of children and their families. Confusion and turmoil will continue throughout the system until the new ministry is firmly established and understood. I urge all the participants to have patience, respect and tolerance during this period of change.

The new Minister, The Honourable Penny Priddy, re-established the Special Legislative Committee to oversee the implementation of Judge Gove's recommendations. I will continue to review implementation, as suggested by Judge Gove, and will report to the Legislative Committee regularly.

The *Ombudsman Act* is now cited as R.S.B.C. 1996, c. 340. For the purpose of this report the old section numbers will be used, to avoid confusion.

Many steps taken by my Office in the last few years have put us in the forefront of Ombudswork. Our reports are being cited in Legislatures in other jurisdictions, being relied on in judgments of the Supreme Court of BC, and are acting as a guide for many of our newer authorities. We receive many requests to purchase our Investigative Policies and Procedures Manual. Our computerized Casetracker is recognized as one of the most well-suited to Ombuds work and is being considered for purchase by many jurisdictions including Russia, Iowa, Alaska and Portland. I acknowledge and honour the remarkable work of all of my staff whose efforts, in large part, form the basis for this Annual Report. To capture the essence of all of these changes and to harmonize the work of the Office, we will begin a strategic planning process in early 1997.

Respectfully submitted,

Dulcie McCallum

Dulcie McCallum
Ombudsman for the
Province of British Columbia, Canada

Highlights:

The Classical Ombudsman

from a paper by Sir Brian Elwood, Chief Ombudsman for New Zealand,
presented at the 1996 International Ombudsman's Conference in Buenos Aires (see also page 27).

Throughout history efforts have been made to devise a means by which administrative actions can be reviewed and the wrongs identified and put right without the risks inherent in pursuing redress through judicial process. The single most effective institution in the area of government or public administration has been that of Ombudsman.

What is surprising...is the slowness in the pace at which it came to be accepted outside Scandinavia. What is...not surprising is that governments seemed reluctant to endorse concepts which might have appeared to lessen their control of collective affairs in the name of the state. What finally changed...was the perception of the place of ordinary people in the relationship between state and citizen. The citizen was recognized as having a right to be heard by the state and to be treated fairly.

Given the proliferation...of "ombudsman-like" institutions and the growth in the number of those who would seek membership in the International Ombudsman community, it seems desirable for each jurisdiction in which an ombudsman institution has been established to address the question to what extent are "ombudsman-like" institutions to be allowed to develop with or without restraint...

In the ideal situation, harmonization by a specialist ombudsman model with the classical ombudsman model would require conformity to the following principles:

- independence
- used as a last resort
- personal access to the ombudsman, without cost
- use of non-adversarial complaint investigation techniques
- ombudsman recommendation to resolve grievances
- ombudsman recommendation to change practices
- public reporting.

The objective must be to achieve fairness of outcome in the often unbalanced relationship between the complainant and the organization complained about, when something has gone wrong. The ombudsman must be able to recommend a resolution which is equitable, complies with any applicable rule of law and is reasonably achievable. The complainant should not expect miracles or the final drop of blood. The organization complained about must be willing to accept the outcome and recommendations from an ombudsman's investigation...

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Speech

Common-unity

excerpts from a speech given by the Ombudsman at UVic Womens' Conference November 13, 1996 "Common Ground: Uncommon People"

The progress of any community can be measured only by the well-being of its members. A report by the United Nations Progress of Nations states:

"The day will come when the progress of nations will be judged not by their military or economic strength, nor by the splendor of their capital cities and public buildings, but the well-being of their peoples: by their levels of health, nutrition, and education; by their opportunities to earn a fair reward for their labours; by their ability to participate in the decisions that affect their lives; by the respect that is shown for their civil and political liberties; by the provision that is made for those who are vulnerable and disadvantaged; and by the protection that is afforded to the growing minds and bodies of their children."

Well-being is defined as "the state of being happy, healthy or prosperous." I would extend that definition to include being at peace, having a sense of harmony and balance, having a feeling of being valued and included, a sense of belonging.

This [article] is not about tolerance. What I propose goes beyond the Judeo-Christian ethic of simply accepting those who are made in a different image. This is not about including people of different religions, races, colour, gender or abilities by allowing them in but leaving them at the margin of our circle of community. Historically, human rights and criminal legislation have not worked to eliminate intolerance or to achieve the goal of meaningful and equitable inclusion. I suggest, that in order for a community to have a corporate sense of well-being, in other words, "common-unity," it must take dramatic steps to move beyond the simplistic notion of tolerance for difference.

From my life experiences, I have learned two important lessons.

The first lesson is about sameness and commonality. By way of example, I previously considered people with disabilities to be different from me in most respects. What I began to see as I dealt personally with individuals is that they wanted to celebrate life's cycles in the same way I did. Their hopes, their fears, their longing for love, their thirst to learn, their passion for fun were in essence the same as mine. Had I not had the opportunity to know them as individuals, tolerance would have kept them at a distance, and I would never have known how much we have in common.

The second lesson is about respect and affection. I learned to truly respect and honour those different from me by knowing and understanding them. Without this "up close and personal" contact and knowledge, there could not, in my opinion, have ever been true affection or respect. Without this respect there could be no personal nor communal state of well-being. With it, I acknowledged and celebrated our differences with quiet pleasure.

How does this relate to Ombuds work? People's egos, self-interest, arrogance, defensiveness, pride, jealousy and fear manifest themselves in behaviour that shows lack of respect for another person. The principles underlying the obligation to be fair animate respect. The right to be listened to, the right to be given reasons for decisions that affect you, the right to be given notice, the right not to have factors taken into consideration that are irrelevant or highly prejudicial are all requirements that breathe life into the duty of fairness.

As individuals we must fight the urge to retreat to a safe environment, a place where things are as we expect them to be. We must plunge into relationships with people having diverse cultural heritages, with needs ostensibly different from ours; we must engage in an intimate examination of how we can know one another. Respect will become the common ground, the foundation of our relationship. From this foundation will spring the sense of well-being.

Leaders must clearly articulate a commitment to making a community a place where the well-being of its citizens is the paramount consideration, where principles guarantee that everyone is welcomed, valued, included and respected. This commitment cannot be vague, unspoken, disregarded or abandoned at any time or in the making of any decision.

Often, women and men in the majority in our culture find themselves accommodating others who fall within a minority category. Accommodation is not about equality. Accommodation is about paternalistic altruism. It is about moving over and making adjustments for those who do not fit within the so-called norm. That is not what true inclusion is about. This can be achieved only through communication and by intimately knowing another. As we come together and explore our differences together, we discover the magic of knowing that we are more alike than different and that the difference is a gift.

The challenge for all of us is to be willing to take risks; to get in touch with our own values, prejudices and stereotypes; to reach out and to listen; to be willing to go beyond the barriers of difference; to find a place to celebrate together.

We must have the courage, tenacity and vision to commit to our personal and others' communal well-being, to become intimate with those whom we consider different. Only when we are in this place can the essential link of respect bind us one to the other in a "common-unity."

Ombudsman's Community Outreach - a Sampling

January
CKNW Bill Good Show

Seniors' Abuse Workshop, Victoria

First Call, Vancouver (Gove)

February
Rotary Club, Victoria

BC Professional Foresters

First Call, Victoria (Gove)

March
Kids at Risk Forum, Vancouver

Malaspina Community College, Nanaimo

April
UN Association of Canada, consult with The Honourable Walter McLean

Centre for Asia Pacific Initiatives Workshop

BC Confederation of Parent Advisory Councils Conference, Vancouver

May
Vancouver Island Municipal Officers' Association, Victoria

Canadian Association for Practical Study of Law in Education, Victoria

Freedom of Information Conference, Victoria

First North American Super Ombudsman Conference, St. Louis, MO

June
Islands Trust, Gabriola Island

Municipal Officers' Association, Vancouver

CKNW radio interview

Canadian Association of Statutory Human Rights Agencies (CASHRA) Annual Conference, Victoria

BC Coalition to Eliminate the Abuse of Seniors Annual Meeting, Langley

July
Union of BC Municipalities and MLAs reception, Victoria

BC Police Commission, Community Outreach Strategy meeting, Vancouver

August
CFAX radio interview, Local Action Hotline, Victoria

Institute of Public Administration of Canada (IPAC) Workshop, Victoria

September
BC Mental Health Society AGM, Coquitlam

John Pifer Show, radio interview, Vancouver

Secretaries and Registrars of Professional Organizations in BC, Vancouver

Union of BC Municipalities Annual Conference, Penticton

Juna de Fuca Hospital presentation, Victoria

October
VI International Ombudsman Institute Conference, Buenos Aires

Voice of the Province, Rogers Cable TV, Victoria

St. Christopher's Church, West Vancouver

Meeting with Fred Albeitz, Ombudsman of Queensland, Vancouver

November
Winnipeg Ombuds staff visit to Vancouver Office

Phi Delta Kappa International, UBC Chapter, Vancouver

UVic Women's Conference, Common Ground: Uncommon People

Canadian Ombudsman Conference, Fredericton, NB

December
Victoria City Police, reception

St. Paul's Anglican Church, Nanaimo

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Guest Comment

Birth of an Ombudsman

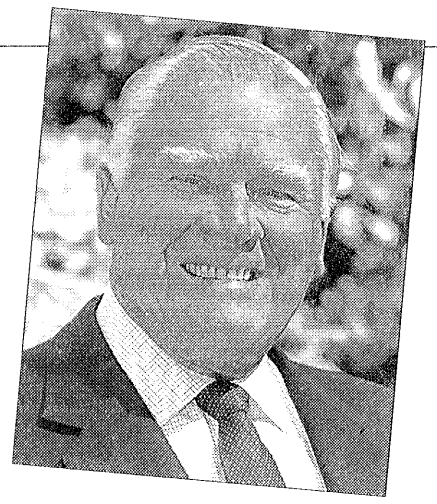
by His Honour
The Honourable Garde B. Gardom, Q.C.
Lieutenant Governor of British Columbia
at the invitation of the Ombudsman

Twenty years ago, by royal assent, the Office of the Ombudsman for British Columbia came into being. Another rung in BC to the ladder of public accountability, which is the essence of a responsible, responsive democracy.

Within our system, the electorate selects its representatives. Its representatives, in conjunction with the Crown, establish a government. Government, in turn, determines policies, establishes priorities, collects public revenues, and applies public funds, all within democratically granted powers. But, only as trustees. Trustees for the citizens. Trustees of the public purse – for governments have no moneys of their own.

Under the government, the civil servants, the authorities and the institutions of government administer the system for the general public whose ready access to, and ready accountability from the process is vital.

Thirty years ago in British Columbia, avenues to accountability were not as they are now. In the legislature there was no Hansard, no oral question period, no televised debates. There was no "right to sue the Crown" (the government), no Auditor General and no Ombudsman.



The Office of the Ombudsman is independent and non-partisan, providing accountability to and for the public. The position provides an additional check, balance and safeguard for the citizen against bureaucratic excess, or its likelihood, assisting government to accommodate the citizen, rather than the other way around.

The institution of Ombudsman is good for the citizen, good for the civil servant, good for public bodies and good for government.

The concept of Ombudsman, relatively modern, initially was developed in Scandinavia, first in Sweden, followed by Finland, Denmark and Norway. The first Ombudsman in the Commonwealth was in New Zealand in 1962. In North America, New York in 1966. Hawaii in 1967. Next the UK, followed in Canada by New Brunswick, Alberta, Manitoba and Ontario. Then British Columbia on September 1, 1977.

Its philosophy, its concept, its practice are straightforward, uncomplicated, open, workable and assistive. When called upon, the Ombudsman helps the people in British Columbia enjoy a fair, just and equitable relationship with governing authorities and their institutions.

The Office is able to represent the conscience of the state, wade through red tape and move bureaucratic roadblocks. The Ombudsman can approach the sometimes unapproachable, and recommend improvements to administrative practices and procedures.

The Ombudsman can investigate, can complain, can publicly comment and publicize. She can bring her findings to the attention of the person aggrieved, to the attention of the authority, to Cabinet, and to the legislative assembly.

The institution of Ombudsman is good for the citizen, good for the civil servant, good for public bodies and good for government.

When called upon, the Ombudsman helps the people in British Columbia enjoy a fair, just and equitable relationship with governing authorities and their institutions.

But one caveat: the Office of the Ombudsman, of course, must never become bureaucratic itself, nor fall heir to the ills it seeks to cure. As continuing insurance for fairness and impartiality, with the capacity to unravel complex situations, its ultimate success is when it doesn't have to be called upon.

The Office of the British Columbia Ombudsman enjoys an excellent record, twenty years of great performance. I wish Ms. Dulcie McCallum, the Office and everyone ever connected with it the best. May its next twenty years be as helpful.

Law Gives Birth to Policy

Legislation passed by elected representatives of the people is the basis for programs operated by government. Policies and practices are promulgated under laws and must be in accord with the relevant legislation. The Ombudsman found that a branch of a ministry was using an inverted method to upgrade its policies because it lacked a legislative base to do so.

The branch had been attempting to give new meaning to a piece of legislation that had not been updated for a number of years. While they realized that changes to the legislation were necessary, when they tried to initiate them, they found that the process of introducing legislative changes was cumbersome, formidable and slow.

Instead of persevering in attempts to change the legislation, the branch developed a policy manual to support their existing practices. Management knew that they were operating under questionable legal authority in making these decisions. They hoped to use the development of a policy manual as a springboard for identifying the legislative changes necessary to support the existing program.

The policy manual was admittedly at odds with the legislative basis for the program. I brought to management's attention the problems inherent in this type of approach for policy development and legislative change. Until I did, there was no sense of urgency in the branch to ensure that there was a legislative basis for the decisions they were making.

Authorities should be reminded that all powers granted to administer programs must flow from the governing legislation. While I can sympathize with the frustrations of officials who have difficulty getting the needs of their programs on the legislative agenda, policy manuals are not an appropriate substitute when legislative authority is unclear, inconsistent or lacking.

Equity in Action

The Ombudsman's Office has long been committed to employment equity. Part of its role in promoting the principles of administrative fairness and the rules of natural justice is to promote equitable treatment throughout the public service.

The Office has adopted a process of competency-based hiring that focuses on an individual's knowledge, skills and abilities ("KSA") to perform the work, rather than specific education and experience as preconditions of employment. This hiring model has been designed to remove systemic barriers to employment often faced by members of groups who are underrepresented in the workforce.

The Office has implemented a training plan for staff. Much of this training has been devoted to learning about the administrative work of the newly proclaimed authorities (over 2,500 since 1992). The Office is committed to continue with training sessions for *all* staff and students regardless of classification, giving particular attention to equality, human rights and equity issues.

The Ombudsman has devoted considerable attention to public education both inside and outside of government. She focuses on the principles of administrative fairness and how these ought to be considered in light of the provisions of the BC *Human Rights Code*, international instruments and the equality imperatives of the *Canadian Charter of Rights and Freedoms*. She stresses a principled approach to the public service and promotes the fundamental concept that part of fair service and practice is treating people equitably.

The Office of the Ombudsman has taken steps to address the underrepresentation of particular historically excluded groups of people on her staff. The numbers of women, visible minorities and people with a disability fall close to or above the numbers in the external work force. Representation of First Nations people presents the most immediate and greatest challenge to our Office at this time.

The Ombudsman applauds the efforts by government and individual ministries to promote employment equity. In an improved world that commitment would find its way into a legislative expression in the near future.

New **Ombuds** brochure in French, Chinese, Punjabi, Spanish and Vietnamese

Follow-up **Ombuds***report 1995* *page 32*

Annual Report Working Group

The Ombudsman noted that many ministries had failed to issue annual reports, even though many of them were obligated by law to do so.

I am pleased to report that the Deputy Ministers' Council has set up a working group. With assistance from the Auditor General's Office and my Office the group is developing proposals to improve the annual reporting process within the provincial government. I am optimistic that a more effective method of reporting on the activities of provincial ministries will emerge from this process.

Community, Adult Services & Education

Income Assistance

Major changes have been made in both regulations and the organization of the service delivery system of the Ministry of Human Resources, making 1996 a difficult year for both clients and staff. Rules governing eligibility for assistance are more restrictive. Requirements for documentation are more stringent. The review and appeal processes have undergone major revisions. Changes are still taking place. The new policies, practices and regulations have challenged front-line ministry staff, who have had to assimilate the new information and communicate it to clients, in some cases without the benefit of up-to-date written materials being available. They have also led to many individual complaints from clients about the denial, discontinuance or reduction of benefits, and about procedural problems related to the new review and appeal processes.

In her 1995 Annual Report in an article on page 18 entitled, "And Now For Something Completely Different," the Ombudsman detailed the government's policy and legislative changes to Income Assistance. She stated her intention to monitor complaints during 1996 to identify any administrative fairness issues arising from the sweeping changes. The following two articles report on the Income Assistance Appeal Board and the three-month residency requirement.

BC Benefits Appeal Board

One of the major systemic issues the Ombudsman investigated this year was the functioning of the Income Assistance Appeal Board (now the BC Benefits Appeal Board), during its first year of operation. The BC Benefits Appeal Board came into effect in December 1995. Early in 1996, the Ombudsman began to receive complaints about the board's failure to issue appeal decisions within the forty-day time frame set out in s.42 of the *GAIN Regulation* then in effect. We were initially advised that, according to the board's interpretation, s.42 was only a procedural guideline and, therefore, the board was not compelled to issue a decision within the specified time. We were surprised to hear the board's position on this issue. We recognized that the board would require some time to get established. However, it was our understanding that once the board was fully functional, it would try to comply with the time frame set by the *GAIN Regulation*. We were concerned that the board's delay in issuing decisions could cause undue hardship to individuals who would not receive benefits while the matter was under appeal. In 1996 persons receiving assistance before a decision to reduce or discontinue their benefits, continued to receive assistance while the matter was under appeal. However, those who were denied assistance following a *new* application received nothing while awaiting the outcome of the appeal. In one case, a person who was without benefits pending the appeal had been waiting for five months for a decision from the board.

The new legislation has established a legislated right to a reconsideration of a ministry decision prior to an appeal being lodged to an independent tribunal.

Several reasons for the delays were found:

- the number of appeals received by the board was considerably higher than anticipated
- the board members, including the chair, had been told that their expected time commitment to board matters would be only two or three days a month
- there appears to have been no clear definition of the role of the chair and the rest of the board members
- the scheduling of three-member panels, as dictated by the legislation, presented logistical challenges.

The initial board's decisions were lengthy, with copious references to case law. We were told by board members and staff that writing and preparing decisions took several hours of work. In some cases the decisions were confusing for both parties, the Ministry of Human Resources and its clients. In one case there was an even split among the six board members on an important issue. The *GAIN* legislation included no provision for breaking a tie.

The high number of dissent opinions on panel decisions seemed to indicate fundamental differences of opinion among board members. We were concerned that dissents were often sent out separately from the decision, sometimes considerably later, potentially leading to more confusion for the ministry and its clients.

We were concerned that the board's delay in issuing decisions could cause undue hardship to individuals who would not receive benefits while the matter was under appeal.

The *BC Benefits (Appeals) Act*, proclaimed in September 1996, has addressed a number of the above issues and the board has been trying to deal with the backlog of appeals. We are now receiving fewer complaints about delay in obtaining a board decision. The new legislation has established a legislated right to a reconsideration of a ministry decision prior to an appeal being lodged to an independent tribunal. Within the next year I will be reviewing whether this change will improve the current review and complaint systems. Such improvement would enable my Office to shift its emphasis towards systemic reviews of issues, which have a wider effect in promoting fairness for people relying on income assistance.

Three-month Residency

One of the most serious and troubling matters I dealt with in 1996 was the establishment by the provincial government of a three-month residency requirement for individuals arriving in this province and applying for income assistance. I reported in 1995 that I had recommended that the regulation be rescinded.

While I recognize the financial strain caused by the influx of people to this province, in my view the residency requirement was oppressive.

In 1996 I continued to communicate to the ministry my concern about the effects of this regulation. It applied a blanket denial to individuals without children who had not resided in this province for three months, even if they met other eligibility criteria. Exceptions were made for persons with dependants, and later for refugees. However, there was no discretion for waiving the rules in other cases, even for individuals with serious health concerns, or compelling personal reasons for residing in British Columbia and being in need of income assistance. Persons who had been residents but had left the province for more than six months were considered no longer to be residents and also had to wait for three months to apply. Moreover, in some cases we investigated, staff were misapplying the regulation and denying assistance to individuals with dependants, even though the regulation allowed exceptions in those cases. We also questioned the logic of some information sent to some individuals affected by the regulation. Applicants were advised by letter that they were not eligible for assistance because of the residency requirement, but had no right of appeal because there had been no denial of income assistance. The ministry revised the letters when I brought the issue to its attention.

While I recognize the financial strain caused by the influx of people to this province, in my view the residency requirement was oppressive. I am therefore very pleased that the government has decided to rescind the regulation following negotiation of a federal-provincial agreement on cost sharing.

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Community, Adult Services & Education

And Now for Something Completely Different

Income Assistance Reform 1995

Although the provincial government introduced major policy and legislative changes late in 1995, the impact of some of [illegible] cannot yet be fully assessed. The rapid [illegible] in the pub[illegible] conf[illegible]

board to dismiss an appeal summarily if the appeal does not meet either of those grounds or if the board considers the appeal to be frivolous or vexatious. The new regulations repealed the provision that allowed a tribunal to reopen the appeal and hold further hearings on the basis of new evidence presented within [illegible] days. If [illegible] appeal is filed to the board within [illegible] period, [illegible] decision is set aside [illegible] on. Th[illegible] of th[illegible]

Three-month residency requirement

A major regulation change imposed a three-month residency requirement for eligibility for benefits, with exceptions made to some applicants with dependents who had been o[illegible] for less than 180 days and had re[illegible] for three months immediately [illegible] who [illegible] returned to [illegible]

Appeal Rights

Having the right to appeal decisions, in certain circumstances, is an essential component of administrative fairness. The policy of the Ministry of Human Resources (formerly Social Services) is that decisions that do not involve the exercise of discretion are not appealable. The policy is clear, but sometimes difficult to interpret.

Complaint:

A client disputed a decision regarding the extent of dental treatment required and the ministry judged the decision to be non-appealable.

Investigation:

The ministry had misinterpreted the request to be for dental services beyond the prescribed fee schedule.

Outcome:

The ministry, having recognized the true nature of the dispute, agreed that the matter could be appealed.

Complaint:

A woman's benefits were reduced because she drove a vehicle that was owned by her ex-husband; he paid the loan and insurance on it. The ministry judged the vehicle to be money-in-kind. The area manager had determined that the woman's benefits had been properly reduced, that the financial worker had not exercised discretion in determining that the vehicle was part of maintenance, and that the decision was therefore not appealable.

Investigation:

The Ombudsman did not investigate the merits of the case, but raised the issue of the appealability of the decision. It appeared that the worker had to exercise discretion to determine whether or not the vehicle was part of maintenance.

Outcome:

The policy division of the ministry agreed that the matter was appealable.

Community, Adult Services & Education

Getting to "How"

A young man sought funding from the Ministry of Health and the (then) Ministry of Social Services to attend a day program. The assessment carried out by the ministries showed different results. The Ministry of Social Services maintained that the individual's abilities were too high for him to be considered a "dual diagnosis" client and therefore its responsibility. The Ministry of Health questioned the most recent testing that had been conducted and considered him functionally a dual diagnosis client who should access services through the Ministry of Social Services. While the two ministries disagreed on this matter, the individual was unable to obtain services.

...there was no existing forum or mechanism in which the two ministries could discuss their differences and attempt to resolve problems as they arise.

The Ombudsman, having investigated the situation, convinced the ministries that there was little purpose in continuing the dispute regarding the accuracy of the assessments that had been performed. The Ministry of Health agreed to supplement existing funds committed to this individual to enable him to attend a part-time day program. While we accepted the Ministry of Social Services' claim that it did not have funds to assist in meeting this individual's needs, we did obtain an agreement that it would place his name on a waiting list for services along with others who have similar needs.

The investigation and ensuing discussions revealed that there was no existing forum or mechanism in which the two ministries could discuss their differences and attempt to resolve problems as they arise. They both agreed that a dispute such as this one should not have taken years to resolve, nor should it have required the intervention of senior staff of both ministries and the Ombudsman. Together they established a protocol at the regional level whereby representatives of the two ministries can discuss problems that arise between them. Use of this procedure should reduce the possibility of a similar impasse occurring in the future. I hope that the protocol will survive the projected transfer of the Services for People with Mental Handicaps program to the new Ministry for Children and Families.

I would encourage government ministries who disagree with one another over service delivery issues on a recurring basis to consider establishing similar protocols. To disagree with one another is human; to disagree and deny people necessary services and supports because there is no mechanism available to discuss one's differences is unfair!

It's All a Question of Timing

A man applied to the Ministry of Social Services (now the Ministry of Human Resources) for status as a person with a handicap under the *GAIN Act*. When he had received no update after eight months, he started asking the field office about the status of his application. He subsequently learned that the division of the ministry that had been attempting to obtain additional information from the field office deactivated his application while he was raising questions with the field office. He was then asked to reapply, over one year after his original application.

When he was granted the designated status he was seeking, the ministry advised him that it would make the increased payments effective from the date of his second application. The man considered this unfair, as his second application was necessary only because the ministry had mishandled the original one. He contacted the Ombudsman.

Our investigation confirmed that the man was not responsible for the deactivation of his application. The ministry agreed to use his original application date as the effective date and gave him the upgraded payments for the intervening months, a sum in excess of $1,700.

Home Finders

A woman came to the Ombudsman because she was dissatisfied that the (former) Ministry of Social Services was unable to find a suitable placement for her son, who is mentally challenged. For a number of years her son resided in her community at a facility funded by the ministry. As the youth approached adulthood, the ministry sought a formal opinion of his needs from a distant assessment centre. The woman agreed to let her son reside at the centre temporarily, provided he would not lose his placement at his previous residence. The ministry assured her that he would not.

The family was pleased that the ministry was tailoring its delivery of services to the needs of their son, and was honouring its previous commitment to the family.

However, by the time his assessment was completed, the ministry had discontinued funding his previous residence. The young man continued to reside at the assessment centre for two years while the ministry tried unsuccessfully to arrange a suitable placement for him closer to home. The man's family was very concerned that his condition was deteriorating and there seemed little promise of his return to their community.

Once we contacted the ministry, staff worked more actively to try to find a new residence to accommodate this young man's needs. They invited his mother to have input into key decisions about the new placement. The family was pleased that the ministry was tailoring its delivery of services to the needs of their son, and was honouring its previous commitment to the family.

This program, Services for People with Mental Handicaps, has been transferred to the newly established Ministry for Children and Families.

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Who Is in Charge?

The Ombudsman announced her intention to continue to monitor the implementation of work preparation programs transferred from the Ministry of Human Resources to the Ministry of Education, Skills and Training.

The Ministry of Human Resources widely advertised a new three-phase program to assist youth with training, job search and work preparation. The program began operation on January 1, 1996. By this time, however, the responsibility for training programs provided directly by the Ministry of Human Resources was transferred to the Ministry of Education, Skills and Training (MoEST). The transition has not always been smooth. Although MoEST administered the training and allocated funding, the review and appeal systems were still operating under the legislation governing income assistance.

Complaint:

A young man responded immediately to information about Youth Works that he saw on TV. However, when he asked for assistance to attend a fire-fighting course, his request was denied. The cost of the course was only $185, a small amount, but significant for the youth who had to survive on $500 a month.

Investigation:

We spoke to several representatives from the Ministry of Education, Skills and Training to understand better the rationale for the decision. We were told that fire fighting did not meet the criteria for funding, because it was a seasonal job. The fact that fires are a yearly occurrence in BC and that fire-fighting crews travel across Canada and the USA to fight forest fires did not seem to make any difference.

Outcome:

As ministry staff refused to reconsider the decision, we advised the man of his right to appeal. It did not make sense to us that while the ministry was spending hundreds of thousands of dollars to help youth to become ready for work, they were refusing assistance to a youth who was motivated to study and prepared to work. Neither did it seem to make sense that, if the youth appealed to a tribunal, the cost to the ministry of fees for the tribunal members would likely exceed the cost of the course.

Complaint:

A young man was found ineligible for further assistance when he failed to attend a Youth Works program to which he had been referred by the Ministry of Human Resources. He appealed the decision to the Area Manager of the MoEST who had responsibility for the Youth Works program in the area. The young man was late for his appointment with the Area Manager to review the situation. When he arrived at the office he was told that his file had been closed. The man complained that he had not been given an opportunity to have his appeal heard.

Investigation:

We contacted the Area Manager of MoEST who did not seem familiar with the BC Benefits legislation nor the policy on appeals. We pointed out that the man's file should remain open while the appeal was being heard. After some discussion, the Area Manager agreed to reopen the file. This was not the end of the story, however. Later we learned that the worker at the Ministry of Human Resources was refusing to accept directions from the Area Manager of MoEST to reopen the file.

We contacted the local Area Managers in both ministries to clarify who had control of the file and who could make decisions.

Outcome:

Eventually, the file was reopened. Even with a fair understanding of the legislation and the bureaucracy, we found it difficult to get correct information, not because the staff members involved were reluctant to co-operate, but because there was confusion about their respective roles and responsibilities, and about the client's rights.

Community, Adult Services & Education

BC Family Bonus

Before the BC Family Bonus was put into effect, the Ministry of Human Resources informed income assistance recipients about the new program through pamphlets, news releases and letters. The information indicated that people receiving income assistance would get two cheques instead of one, but receive the same amount of money as before. In order to receive the benefits, people were required to file their 1995 income tax return, if they had not already done so. The ministry also indicated that if the income tax return had not been filed, a temporary top-up to the income assistance cheque would be provided. This money, however, must be repaid once the person received the BC Family Bonus.

We raised the issue with the ministry that the information given to income assistance recipients did not make it clear that whether or not they borrowed from the ministry while waiting for the bonus, the retroactive bonus payment would be deducted from their cheques.

We heard from the father of three children who was late in filing his income tax return. As a result, his Family Bonus was delayed for three months. He managed to get by for two months while he waited for the bonus, but on the third month he requested a top-up from the Ministry of Human Resources. When his bonus finally came through, he was surprised and angry to discover that the total amount of the retroactive payment had been deducted from his income assistance cheque. He felt that since he had borrowed money for only one month, the ministry should deduct only the equivalent of one month, not the entire amount.

We found that the decision was in accordance with the legislation. We raised the issue with the ministry that the information given to income assistance recipients did not make it clear that whether or not they borrowed from the ministry while waiting for the bonus, the retroactive bonus payment would be deducted from their cheques.

Whoops, Our Mistake?

What a surprise the woman received when she routinely applied to the Student Services Branch for a reassessment of her student loan. The branch agreed that her new situation warranted additional student loan assistance. However, they informed her that an error in the calculation of her original assessment had led to a substantial overaward! When she appealed her circumstances to the relevant Appeals Committee, she was not given any relief from this overaward.

She turned to the Ombudsman. Our investigation identified some problems:

- since she had not been given an adequate explanation of the reason for the overaward, she could not effectively appeal the branch's decision
- interest had been applied immediately to the amount of the overaward, rather than being delayed until six months after the conclusion of her studies.

When we brought these issues to the attention of the branch, they agreed:

- to provide the woman with a comprehensive explanation of what had happened
- to waive the interest until six months after her studies concluded
- to apologize to her for their error
- to have the Appeals Committee available to review her situation again if she was dissatisfied with the overall outcome of the matter
- to examine the information conveyed in its letters to students notifying them of awards, in order to give them an opportunity to check that the branch's calculations are based on the information submitted.

We considered these measures an adequate response to the concerns raised during our investigation.

We subsequently learned that the information included in the branch's explanation enabled this woman to convince the Appeals Committee that the overaward should be waived. She was not required to repay the $3,200 that was by then owing as a result of the error.

A Step in the Right Direction

A student's complaint about a new university led to a commitment to procedural changes in the handling of disputes within the university.

Students arrived at the new university residence in the fall of 1994 to find that all the furniture promised in the brochures had not arrived. The university provided a rebate for a period on the residence fees. However, the student who complained to the Ombudsman argued that the rebate had not gone far enough. Several other students had pursued the matter in small claims court and a subsequent appeal court decision awarded the students in the action an additional $100 for inconvenience and loss of enjoyment. In January 1996, the University Board of Governors extended that award to all affected students. In a letter to the student body announcing the additional rebate in January 1996, the president recognized the difficulties students had experienced in resolving the matter.

We raised a number of questions about the procedures the university had followed in dealing with the concerns of the complainant, who had previously written to the Board of Governors before contacting the Ombudsman. The student felt that the board had not responded to his request for an appeal on the matter. While he did meet with the chair of the board, he complained that he had not received a formal response from the board itself. Both students and administrators seemed unclear about dispute resolution mechanisms and complaint review procedures. Although there were formal appeal structures established for matters involving academic offences, student misconduct and harassment, there were few guidelines for complaints of a non-academic nature.

I am optimistic that the president will move forward to have a designated person responsible for non-academic affairs.

After reviewing our concerns, the president instructed the Manager of Housing Services to give more information in the residence brochure, in contracts and in the new calendar. The revised calendar would outline for students their right to approach the appropriate university official, and ultimately the president on administrative issues. The president also encouraged the Residence Director to establish a consultative process with students.

The board delegated to the president the responsibility of hearing appeals on non-academic matters, but requested that he periodically report to the board on the number and types of appeals heard. Moreover, the president planned to recommend to the board that the right of a formal appeal be extended to all matters involving penalties.

I recognize the challenges and complexities associated with establishing a new university community. I am optimistic that the president will move forward to have a designated person responsible for non-academic affairs.

Rest Assured

A woman with an apneic condition, a serious sleep disorder, contacted the Ombudsman because of delays she was encountering in obtaining a decision from the (then) Ministry of Social Services. She needed a specialized machine to enable her to keep breathing while she was asleep. Since she was on income assistance, she could obtain this machine only if the ministry agreed to fund its purchase. She believed that, because of the urgent nature of her situation, the ministry should not require the additional medical information that it was seeking.

When we talked with the ministry, we learned that the information required was necessary. However, it could not be obtained for over a week because the doctor's office was closed for vacation. We were able to track down the original source of the necessary report and to develop a method by which the information could be shared with the ministry.

With the medical information in hand, the ministry immediately approved the request for the machine, the supplier was contacted, and the woman received the machine the same day. The woman reported the following morning that she had been able to get her first good sleep in some time, thanks to the Ombudsman's intervention.

Safe Haven Saved

The couple were about to lose their property. After the wife's business failed, they had been paying their creditors under an orderly payment of debt arrangement. They had made payments faithfully over a number of years, until the husband unexpectedly lost his job and they were unable to continue the payments. There had been some delay in obtaining money owed the husband from his former employer through the Employment Standards Branch. Both were experiencing health problems, and the prospect of losing the property was causing stress.

We contacted the then Director of the Debtors' Assistance Branch, who was not aware that there was money coming through the settlement with the former employer. The director successfully negotiated with the creditors to accept the funds from the settlement to satisfy the debt. Sale of the property, their safe haven, was not required.

Community, Adult Services & Education Team

Files Open Dec. 31, 1995	82
Files Received in 1996	1,028
Reopened	0
Closed – No Investigation	114
Closed – Investigation	893
Internal Team File Transfers	2

Local Government

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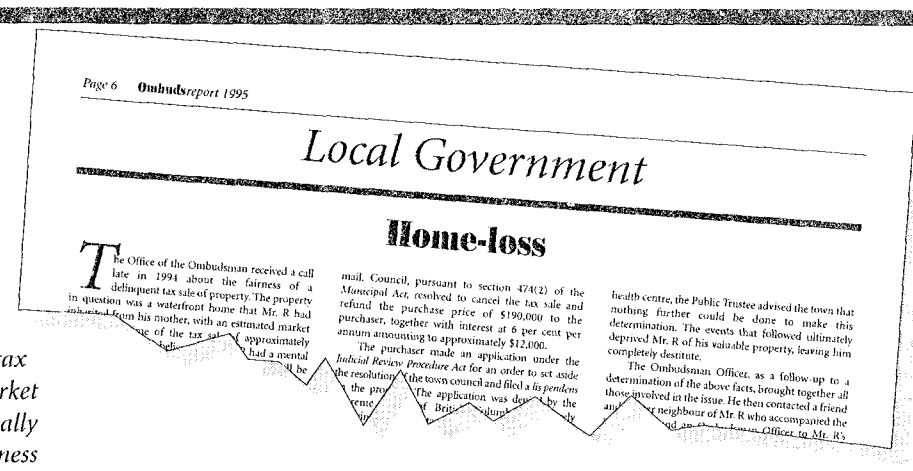
Court Reverses Property Tax Sale

The Ombudsman investigated a delinquent tax sale of a waterfront home having an estimated market value of approximately $350,000. It was eventually determined that the owner, Mr. R, had a mental illness at the time of the tax sale and was under a disability. He had not paid the municipal taxes on his property for a period of some years. Section 457 of the ***Municipal Act*** *provides for recovery of delinquent taxes from sale by public auction of the real property subject to those taxes. The town sold Mr. R's house and land at its 1992 tax sale for $190,000. Mr. R had one year to redeem his home before title became registered in the name of the purchaser in September 1993.*

In August 1993, just prior to the expiration of the redemption period, the town council became aware that the collector's notice of the tax sale had not actually been received by Mr. R, as service had not been successful by registered mail. Pursuant to s. 474(2) of the ***Municipal Act*** *the town council resolved to cancel the tax sale and refund the purchase price of $190,000 to the purchaser.*

The town, however, again placed the property for sale during the September 1993 tax sale and applied for an order for substituted service on Mr. R, which was granted by the BC Supreme Court. The same purchaser bid again and, being the only bidder on this occasion, acquired the property at the upset price of $10,910.98! Mr. R once more failed to redeem his property during the following year, and in September 1994 the tax sale purchaser became the titled owner in ***fee simple*** *of the waterfront home.*

The Ombudsman investigation, as a follow-up to a determination of the above facts, had brought together the authorities and others involved in the issue. Mr. R was finally interviewed by a psychiatrist and declared to have a mental illness and to require hospitalization. Finally, the Ombudsman was able to arrange that the conduct of his affairs be assumed by the Public Trustee who began litigation to recover Mr. R's property or equivalent assets.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Local Government

Home-loss

The Office of the Ombudsman received a call late in 1994 about the fairness of a delinquent tax sale of property. The property in question was a waterfront home that Mr. R had inherited from his mother, with an estimated market value of approximately [illegible] had a mental [illegible] ill be

mail. Council, pursuant to section 474(2) of the *Municipal Act*, resolved to cancel the tax sale and refund the purchase price of $190,000 to the purchaser, together with interest at 6 per cent per annum amounting to approximately $12,000.

The purchaser made an application under the *Judicial Review Procedure Act* for an order to set aside the resolution [illegible] the town council and filed a *lis pendens* [illegible] the pro[illegible] cemet[illegible] The application was den[illegible] by the [illegible] of Briti[illegible]olumb[illegible]

health centre, the Public Trustee advised the town that nothing further could be done to make this determination. The events that followed ultimately deprived Mr. R of his valuable property, leaving him completely destitute.

The Ombudsman Officer, as a follow-up to a determination of the above facts, brought together all those involved in the issue. He then contacted a friend and neighbour of Mr. R who accompanied the [illegible] Officer to Mr. R's

On October 4, 1996 the Supreme Court of British Columbia released reasons for judgment in the case, which went in favour of the Public Trustee on behalf of Mr. R. The court declared the conveyance of title to the property to the purchaser to be void and of no effect as against Mr. R. Mr. R was entitled to the entire legal and beneficial interest in the property, to the exclusion of the purchaser. A counterclaim by the purchaser against the Public Trustee was dismissed without costs to the Public Trustee. The court, however, held that the purchaser was entitled to expenses incurred to maintain the property, with interest at the court registrar's rate. The court also awarded costs to the purchaser against the town for the lawsuit. The judge ruled that the town had failed to take the steps necessary to render the tax sale effective.

The Ombudsman has observed that the story of Mr. R is just one example of the "gross injustice" arising from laws governing municipal tax sales.

On October 28, 1996 the Supreme Court, in rendering supplementary reasons for judgment, awarded the Public Trustee (on behalf of Mr. R) costs of the action against the town. The court further awarded the purchaser special costs against the town of the defence of the proceedings taken against the purchaser by the Public Trustee on behalf of Mr. R, and of a counterclaim by the purchaser against the Public Trustee. In other words, the town paid all of the costs of the litigation.

The Ombudsman has observed that the story of Mr. R is just one example of the "gross injustice" arising from laws governing municipal tax sales. However, this case, more than any other we have encountered to date, seems to illustrate the ultimate impracticality of such legislation when it results in the removal of real property from the possession of an owner. When this occurs it is almost without exception because the owner is in a difficult personal situation that makes it impossible to take care of his or her own affairs. We cannot think of a circumstance where such a sale should not be challenged. The Ombudsman continues to work with the Ministry of Municipal Affairs towards revising the legislation to provide for a system that will protect the interests of residents such as Mr. R, while allowing local government to recover taxes.

Special Report No. 18:

A Complaint Regarding an Unfair Public Hearing Process (City of Port Moody)

In 1995 my Office received complaints about a public hearing process underway in the City of Port Moody. The hearing process related to a potential amendment to the Official Community Plan to allow some proposed developments in the area.

The complainants alleged that the hearing process was affected by conflict of interests. Specifically, they argued that:

- the Mayor had previous professional and business associations with the development industry
- he had been unfair at the hearing process in that he limited the time of submissions for those who opposed the amendment.

They also noted that the husband of one councillor was employed by a development company with land in the general area of the proposed development. Although these properties were not subject to the proposed development, they argued that their value would be increased if further development occurred in the general area.

My Office reviewed tapes of the public meeting and concluded:

- that the mayor had been fair in enforcing a five-minute presentation limit. The rule was clearly announced at the start of the meeting, and was enforced equally for all the speakers.
- that the hearing process was not affected by any conflict of interest on the part of the mayor or the councillor. The mayor had no association with companies having a direct interest in the lands under review, and he had fully complied with the campaign financial disclosure requirements. Any financial interest of the councillor (through her husband) was so remote in the circumstances that it could not, and did not, create any unfairness in the execution of the public hearing.

Because this matter received significant media attention, I released *Special Report No.18* to inform the public of my findings that the complaint was not substantiated.

On the Road Again

As many parents do in their senior years, a couple decided to sell their home and move to an easy-care unit near their children in another community. A terrible shock awaited them. Once their home was on the market, a survey determined that their house was entirely encroaching on unused excess right-of-way of a provincial road!

Unknown to the owners, the house had been built on the right-of-way more than fifty-five years ago, probably because the lot on which it should have been situated was too steep, wet and unstable to support a building. As it was, the house was protected by an elaborate system of ditches and drain tiles, which diverted ground water around, down and away from the home.

The couple applied to the Provincial Approving Officer of the Ministry of Transportation and Highways for permission to purchase enough of the excess road allowance to consolidate their house with their property. The ministry and the Approving Officer were willing to sell the excess land to the couple at fair market value, but ministry policy required them to consult the regional district or local government prior to such a decision.

The road, which was an ocean-front esplanade, had been included in the Official Community Plan for the regional district as an access to a recreational area. The regional board and the planning department objected to the road closure on the grounds that the excess right-of way might eventually be used as a parking lot or a hiking trail. The couple complained to the Ombudsman about the resulting delay in the processing of their application.

Our review of existing geotechnical studies of the general area prompted us to ask the regional district to conduct a site-specific geotechnical examination of the area in front of the couple's property. A report by a geotechnical engineer concluded that the terrain could not be certified as suitable for the use envisioned by the regional district plan.

Once their home was on the market, a survey determined that their house was entirely encroaching on unused excess right-of-way of a provincial road!

The Ombudsman's Office co-ordinated a meeting of several officials and representatives involved with this matter where numerous options were considered. As a result of this meeting, the Ministry of Transportation and Highways decided that, although it was mindful of the regional district's position on this matter, the fairest and most effective solution was to allow the homeowner to purchase a piece of the road allowance.

Local Government

Improvement Districts

Improvement districts are created by Cabinet order with the consent of a majority of landowners in a community in order to provide specific services to that community, usually a rural area. This form of local government is granted specific powers, such as the ability to assess and collect taxes, which enable it to provide the direct service or services for which it was incorporated. Services commonly provided by improvement districts include waterworks, fire protection and street lighting. Areas of land within the boundaries of improvement districts may be classified and taxed differently on the basis that only certain services are provided to landowners in that area.

Improvement districts are independent public corporations. However, their by-laws, audited financial statements and minutes of Annual General Meetings must be reviewed by the Ministry of Municipal Affairs, which also provides them with advice and direction. BC has 281 improvement districts, which vary in size and service responsibility.

The governing body of an improvement district is an elected Board of Trustees. Trustees serve three-year terms for which they may receive an annual honorarium. Day-to-day operations are generally carried out by an employee or employees.

A number of complaints were received by the Ombudsman and the Ministry of Municipal Affairs after a bitter dispute in a large improvement district comprising over fourteen hundred parcels of land. The dispute over levying of taxes and confusing tax notices was heightened by dissension on the Board of Trustees, resignations, and delays in developing a budget. Complaints included allegations of financial mismanagement on the part of trustees, demands that by-laws be rescinded, new tax calculations made and taxes refunded.

The Ombudsman spoke with the ministry's Manager of Improvement Districts, who provided useful background information. The seven-person Board of Trustees had become dysfunctional because of conflicts over financial policy. There were four mid-term resignations by trustees between 1994 and 1996 and three different administrators in as many years. The new administrator, who was our primary contact at the improvement district, had taken office shortly after problematic tax notices went out in July 1995. The new Board of Trustees had been elected at the April 1995 annual general meeting.

Complainants raised the following major concerns:

- they objected to dramatic increases in water tolls and to a new parcel tax for properties in areas with no water service
- they objected that the new parcel tax was unnecessary because the district's annual audited financial statement showed a surplus in the fire protection function
- there were errors in the taxation notices.

About one-third of the parcels of land in the improvement district were non-water-users. Until 1995 the district had directly taxed only those properties that received water service. An annual fire protection levy, collected by the regional district and remitted to the improvement district, had recently been paid. In 1995 the board had decided to levy a new parcel tax against non-water-users. Unfortunately, this decision was not adequately explained and standard forms, entitled "Water Parcel Tax," were sent out to non-water-users. A majority of the complainants objected that they were being taxed for a service they did not receive.

The district had also neglected to send out assessment notices prior to the tax notices, as required by the *Municipal Act,* to enable landowners to appeal the classification of their property. When the tax notices were sent out on July 13, 1995, they stated that the tax was due and payable by June 30 of the current year or ten per cent penalties would be added.

The Ombudsman learned that the board had realized its error and issued public apologies and corrections in a local newspaper and in a newsletter to ratepayers in July 1995. Another apology and an offer to assist ratepayers facing financial hardship was made in an October 1995 newsletter.

Water tolls had remained constant for a number of years prior to the 1995 increases. In its public apologies the board gave several reasons for the increases:

- adequate revenues had not been collected earlier because of delays in preparing budgets and by-laws
- previous rates were inadequate and the new board wished to develop reserves for future expenditures
- funds were needed to cover the unexpected cost of chlorination, mandated by the Ministry of Health.

Rates declined considerably in 1996, although not to pre-1995 levels.

The public apologies also advised ratepayers that:

- the correct date for the addition of penalties was October 1, 1995
- they could request waiver of penalties because of hardship.

Non-water-users were also given an opportunity to appeal the classification of their land for 1995 as well as for 1996, by including reference to both years in assessment notices sent out in 1996. Although this last omission had technically denied landowners the right to appeal the classification of property, there was no indication that classifications were incorrect.

The board's reason for including non-water-users in the levy was that adjustments were necessary to reflect more accurately the administrative cost of fire protection and to develop reserves in the fire protection budget. Staff had been directed to keep records to estimate these costs, which were to be reflected in the next year's fire protection budget.

The administrator agreed to give more detailed explanations to any ratepayers who were interested and to include any necessary consultations with the district's auditors. The apologies, the explanations and this opportunity were considered insufficient by some complainants, who continued to dispute the board's rationale for levying the new tax and to allege financial mismanagement. We advised the complainants and the improvement district that we did not find evidence to support such serious allegations. We acknowledged the positions presented on both sides of the controversy. However, decisions by local government on controversial issues must be respected by this Office, in the absence of adverse findings on issues of administrative fairness. We concluded that the actions taken and explanations provided by the improvement district had adequately addressed the various issues raised in this case.

Time Out

The Ombudsman's 1988 Annual Report recommended to the Ministry of Municipal Affairs that they reconsider the deadlines set in the *Municipal Act* for serving notice of damage and for filing liability claims. Under the Act notice of damage must be filed within two months and liability claims within six months. The Ombudsman noted that:

> *...some people lose out simply through ignorance of the deadline. The arbitrary rejection of claims for failure to meet procedural deadlines imposes certain intangible but real costs on government administration which may be viewed as insensitive or heartless. Further, they create a sense of injustice by those whose otherwise valid claims are rejected for reasons unrelated to their merit.*

The Ombudsman continues to investigate complaints from individuals across British Columbia who feel unfairly treated when their claims are rejected because they are out of time.

Certain types of damage could lead to claims against both a local government and an insurance company. Under the *Insurance Act* the limitation period for filing a claim is one year from the time of the incident. The discrepancy between the two Acts may lead to confusion among persons filing claims against a local government, and lead to unjust and oppressive results.

...we would suggest that individuals filing a claim against a local government be aware of the six-month limitation period, and take the necessary steps to ensure that their claim is filed on time.

The Ombudsman has met with senior officials from the Ministry of Municipal Affairs to discuss this issue.

In the meantime, we would suggest that individuals filing a claim against a local government be aware of the six-month limitation period, and take the necessary steps to ensure that their claim is filed on time.

Follow-up
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page 5

Mail Early!

The Ombudsman stated her intention to look at some systemic issues arising from complaints about the penalty for late payment of property taxes.

During 1996 my Office received several more complaints about the late payment penalty being applied.

I have been in contact with officials at the Ministry of Municipal Affairs concerning this issue. Our investigation indicates a potential concern with administrative fairness, in that there is no formal appeal mechanism in law or policy for a dispute arising from the late payment penalty. The ministry is investigating possible legislative changes that would establish a method of appeal, or a change from a five or ten per cent penalty to an interest-based charge.

Ratepayers are responsible for having property taxes to the local tax collector by the close of business on the day that taxes are due. I suggest that those using the mail to pay their taxes allow adequate time for the postal service to handle the mail. Another possibility is to consider leaving a post-dated cheque with the collector.

Local Government

Guest Comment

First Nations Cross-cultural Training

by Patrick Kelly
Training and Special
Projects Coordinator
Aboriginal Relations
BC Hydro
at the invitation of the Ombudsman

BC Hydro is committed to building mutually beneficial relationships with aboriginal people, since the corporation and First Nations share common interests in land and water resources. Thousands of kilometres of Hydro transmission and distribution lines are located on five hundred reserves belonging to one hundred fifty First Nations. In 1992 the corporation established an Aboriginal Relations Department to work with aboriginal people to resolve outstanding disputes, to develop mutually beneficial opportunities and to plan jointly for the future.

The focus is on ensuring that the company has continued access to the land and other resources needed to provide electrical service to its customers. Hydro considers defined First Nations objectives of equal importance to its main objectives of operating certainty and profitability.

The company equips employees with the knowledge and skills needed to build a foundation for business relationships with aboriginal people. Through a competency-based aboriginal cross-cultural awareness program, employees throughout the province learn about the diverse First Nations cultures and languages, and key aboriginal issues.

The program was developed in collaboration with aboriginal people and is delivered by competent First Nations trainers who are familiar with the aboriginal community as well as corporate and government operations. The three levels of the program, ranging from half a day to two days, deal with such issues as:

- historical and cultural information about BC's diverse aboriginal population
- an overview of tribal and political structures
- major issues and approaches to their resolution
- implications of judicial decisions
- background and reasons for the treaty-making process
- an introduction to protocol.

In the two-day session, an aboriginal group is both host and faculty in its community setting. A reciprocal session may follow in which the aboriginal group is invited to the business setting. At the conclusion of the training, both parties have a better understanding of each other and the basis for an improved working relationship. Community cross-cultural events have been held at Alkali Lake, Musqueam (Vancouver), Quadra Island, Soda Creek, Songhees (Victoria), Squamish Nation (North Vancouver), St. Mary's Band (Cranbrook), and the Sto:lo Nation (Sardis).

Over four thousand Hydro employees have attended aboriginal cross-cultural awareness sessions since 1993. When I joined BC Hydro in April 1993 as a First Nations trainer, I experienced resistance and backlash. However, over time, I have seen employees reconsider their views of aboriginal people once they have reliable and factual information to replace myths and misunderstanding. I believe that the initiative to build and sustain a new relationship between Hydro and aboriginal communities is moving well and in the right direction and can serve as a model for all British Columbians.

"She-Wolf" logo design by Art Thompson.

Respect for Local Democracy

Winston Churchill observed that democracy is the worst form of government – except for every other form of government. The strengths and weaknesses of democracy are clearly evident in the functioning of local governments. Local governments serve the needs of a diverse group of residents. They operate close to home and their decisions affect taxpayers directly. Government officials must sometimes make difficult choices between conflicting needs and values.

The Ombudsman's mandate is to provide a valuable adjunct to the democratic system, not to interfere with the integrity of decisions, properly made, by elected local representatives.

People who bring complaints to the Ombudsman about actions of local governments sometimes couch their grievances in terms of administrative fairness, in the hope of enlisting the Ombudsman in a cause that they believe to be just. The complainants' underlying agenda, as local governments are quick to point out, may differ from the specific issues that are being presented. For example, complainants may have strong positions on contentious local issues, such as opposition to increased development.

Each complaint must be individually assessed to determine whether the issues raised are within the Ombudsman's jurisdiction. The Ombudsman's mandate is to provide a valuable adjunct to the democratic system, not to interfere with the integrity of decisions, properly made, by elected local representatives. The distinction between jurisdictional complaints and issues that properly belong in the political arena can be difficult to accept for complainants who have invested great energy in pursuing a cause. When local governments appreciate this distinction and co-operate in achieving fair resolutions of problems, the Ombudsman's effectiveness is greatly increased.

Flat Tax or User Pay?

The Ombudsman learned something of the difficulties faced by local government in drafting equitable by-laws about rate structures when she investigated a complaint in a small tourist community.

The co-owner of a local family business complained that utility bills for the "mini-mall" leased by the business were disproportionately high. A total of four to six employees, who shared one washroom, operated four businesses in the mini-mall. The district billed each business a flat fee for water, sewage and garbage. The woman had contacted the district before leasing the space in 1993, but was unsure how utility charges would be made until she received the bills.

She discovered that other businesses in the community paid lower utility bills, although they employed more persons and occupied larger premises. However, the number of employees and the total floor space were not the only relevant criteria. The demand on municipal utilities is also affected by the customers of a business and each operating business brings its own unique clientele.

The woman took her issue to a local newspaper, arguing that she should be billed on the basis of usage, not for each separate business. A proposal to create a new mini-mall category in the utility rate structure was subsequently denied by council, in a three-two vote. Following this decision, the woman contacted the Ombudsman.

The Administrator also confirmed that the owner of the family business would be given an opportunity to have input into the committee's deliberations.

The District Administrator advised us that water meters for businesses would likely be installed in 1997, resulting in a "user-pay" system and major changes to rates for the following year. He opposed making individual exceptions in the interim and gave us some examples of inequities that are inevitable in a "flat-rate" system. He acknowledged that a number of other businesses shared the complainant's concerns.

In 1996 there was a substantial increase in utility rates for restaurants and laundromats. The increase was based on a user-pay policy adopted by council, in response to complaints by local businesses about inequities in the existing flat-rate structure. The local Chamber of Commerce had formed a Utilities Committee at the time and council subsequently resolved the rate increase issue. Council granted the committee's request to participate in discussions about the 1997 rates.

The District Administrator gave the committee all relevant information and asked them for recommendations on the rate structure. The Administrator also confirmed that the owner of the family business would be given an opportunity to have input into the committee's deliberations. Since the situation was being dealt with at the local level, the Ombudsman discontinued her investigation.

In January 1997 we learned that the committee had made recommendations to the district on the 1997 rate structure, some of which were subsequently accepted by council. A recommendation to add a new mini-mall category to the rate structure was approved by council this time in a three-two vote. This new category will result in an annual reduction of $360 in utility fees for the woman ($90 per business). However, other changes to the 1997 rate structure accepted by council increased rates or created new obligations.

Complaints Prototype

A major thrust of the Ombudsman's work is to promote with public bodies effective methods of handling complaints internally. In 1995 the Ombudsman held discussions on this subject with the Municipal Officers' Association, an organization intended to promote the professionalism of local administrators. She requested that they assist local governments by establishing Fair and Explicit Administrative Procedures that provide for fair, equitable and timely dispute resolution.

The association responded by forming a "Fairness Committee" to draft a prototype policy on administratively fair internal complaint-handling mechanisms. A draft entitled "Customer Service Policy" will be sent to members of the association early in 1997. Each local government can then consider instituting or amending a policy to suit its jurisdiction.

Local Government Team

Files Open Dec. 31, 1995	102
Files Received in 1996	409
Reopened	0
Closed – No Investigation	113
Closed – Investigation	267
Internal Team File Transfers	19

Finance & Employment

Safety in Notice

The Criminal Injury Compensation Program is administered by the Workers' Compensation Board on behalf of the Attorney General. The program is funded by the provincial government's Consolidated Revenue Fund and managed by the Criminal Injury Compensation section of the WCB.

Many of the complaints the Ombudsman receives are about delays in the adjudication of claims and difficulties in communication. Although the Workers' Compensation Board has appointed an internal executive Ombudsman, the mandate of that office does not extend to the Criminal Injury Compensation section of the board. However, we have found the staff of the section very responsive to our inquiries on individual cases we have brought to their attention. We also frequently make direct referrals to the manager of the section when a complainant, for various reasons, has found it difficult to contact the section.

In the recent past we have looked into some other systemic issues relating to the program.

Child Victims

An Ombudsman-initiated complaint focused on the policy of the section regarding child victims of sexual abuse. At the time, the standard letter advised claimants, their parents or guardians that counselling would be provided and related benefits would be paid. However, no mention was made of the right, upon reaching maturity, to make a further application for pain and suffering. The Ombudsman found that this practice of failing to notify was unjust and improperly discriminatory. She recommended that notification of the right to an award be provided in writing at the time the claim of a child victim was accepted. She further recommended those who were not previously advised be notified of their right.

An Ombudsman-initiated complaint focused on the policy of the section regarding child victims of sexual abuse.

The Criminal Injury section agreed with the Ombudsman's recommendation and amended the letter sent to the guardians and children to include the requested notification. The section has since also advised us that the pain and suffering award is adjudicated at the outset and paid in trust to parents or guardians.

In the Meantime

In her 1992 Annual Report, the Ombudsman stated that the Criminal Injury section did not always give interim or temporary awards to assist the applicant until a final decision was made, although the *Criminal Injury Compensation Act* did allow for this kind of partial payment. There were only nine interim awards granted in 1991. We believe that the section has since better informed applicants of the possibility of an interim award, since it has reported 130 interim awards in 1995.

Amendments to the Criminal Injury Compensation Act passed in 1995 now allow non-dependent, immediate family members of murder victims to claim compensation.

What is the Policy?

For some time the Ombudsman has expressed concern about the lack of a policy and practice manual for the use of the adjudicators and also for the information of applicants and the public in general. The section has also for some time acknowledged the need to publish such a manual. Although we understand that a draft manual has been prepared, we are deeply concerned that its approval and publication have again been postponed.

Grieving Families

In 1993, following receipt of a complaint, the Ombudsman requested that the general issue of awards for family members of murder victims be reviewed. Amendments to the *Criminal Injury Compensation Act* passed in 1995 now allow non-dependent, immediate family members of murder victims to claim compensation. The Ombudsman applauds these changes to the legislation.

Settled in BC - Now Pay Up!

Two recent arrivals to British Columbia contacted the Ombudsman with similar problems. One person moved here in 1993 but left in his home province a car he had purchased in 1972. Two years after his arrival he brought the vehicle to BC and sought to register it. To his alarm, he learned that because he had not brought the car within six months of moving to the province, he had to pay provincial sales tax (PST) on it. He had already paid sales tax at the time of purchase. As well, he had antiques and paintings that he could not afford to move earlier and that he would like to bring now, but feared the tax consequences.

The second individual, a nurse who had moved from the same province the same year, went to work for the federal government in an isolated settlement. As the weight of goods she could bring was limited to two thousand pounds, she left her truck with her parents in her home province. Later she decided to keep the truck in a large town in BC where she visited once a month. She too was shocked to discover that she was subject to PST on a vehicle she had owned for several years.

...we informed the complainants that they could submit a claim for refund of any tax paid on goods they had brought into the province as part of their settlers' effects.

According to section 3.12 of the *Social Services Tax Regulation*, persons who moved to this province were exempt from paying tax on household goods and equipment provided they had owned the goods for thirty days and moved them here within six months of establishing residence. There was no provision for extending the exemption beyond six months.

The Ombudsman maintained that the intent of imposing PST was not to double-tax any person. Provided an individual could prove previous ownership, why should the period for the tax-free admission of personal possessions be limited to six months? Why should a time limit exist at all? The Ombudsman recommended to the Ministry of Finance that the regulation be amended to exempt BC residents from such tax payments provided they could prove that they had owned the items in question for thirty days prior to taking up residence in BC. This procedure would place the onus on persons seeking tax relief to provide proof of the timing of their ownership by submitting a bill of sale or a previous registration. The Ombudsman further recommended that the two complainants, and any other persons the ministry considered appropriate, be reimbursed for taxes paid.

The Ombudsman maintained that the intent of imposing PST was not to double-tax any person.

In response to the report, the Deputy Minister raised this matter with the minister outside of the regular policy review process. Subsequently, the province enacted a change to the Regulation that provided relief if it was impractical for persons to bring goods into the province within six months of becoming residents, provided they met the other requirements to qualify for the exemption. The change was given retrospective effect so that the two complainants would be covered. At the ministry's request, we informed the complainants that they could submit a claim for refund of any tax paid on goods they had brought into the province as part of their settlers' effects.

Guest Comment

Putting Fairness First at WCB

by Peter Hopkins
WCB Ombudsman
at the invitation of the Ombudsman

As part of a study of the Workers' Compensation Board in 1991, the provincial Ombudsman recommended that WCB consider establishing an internal executive ombudsman to deal with complaints about unfairness in its decisions and activities. In 1993 the current Ombudsman approached WCB President, Dale Parker, and rekindled the idea. The Senior Executive Committee created the office in the fall of 1995. Peter Hopkins, a seventeen-year staff person with the board, was appointed the first WCB Ombudsman.

The doors and telephone lines opened on April 16, 1996. The office handles complaints from workers, employers or service providers who believe they are being treated unfairly by the WCB. As at the end of December, approximately one thousand complaints have been directed to the office. Activity is forty per cent above expected volume levels and there is only a small backlog of complaints at any given moment. To date, 80 per cent of all activity has centered on compensation issues.

The office handles complaints from workers, employers or service providers who believe they are being treated unfairly by the WCB.

The WCB Ombudsman employs an informal dispute resolution process. He is not part of the appellate system (Review Board, Appeal Division or Medical Review Panel). He is also not an advocate for individual workers or employers; he is an advocate for fair practice and fair process. The activity of the office will be detailed as part of the WCB Annual Report.

info To contact WCB Ombudsman:

(604) 276-3053 (Vancouver)
1-800-335-9330 (toll free)
(604) 276-3103 (fax)

P.O. Box 5350
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V6B 5L5

Finance & Employment

Superlong

The Ombudsman's attempts to resolve complaints with the Superannuation Commission over the past few years have been difficult on occasion. On the one hand we receive excellent co-operation from middle management and line staff. We could commend several within the commission's ranks for the efforts they have made to provide us with information or even to come up with practical and helpful solutions to issues we have raised.

On the other hand, our experience when cases become more difficult is that senior levels of the commission have difficulty moving a matter in a timely fashion to an effective outcome. When it takes over fifteen months for an authority to reply formally to a tentative recommendation made by this Office, one wonders how seriously the views of those working for the authority are considered by senior decision makers. When we are required to fax after e-mail after telephone inquiry requesting documents needed to resolve long-standing complaints, we begin to feel frustrated in our efforts to serve the citizens of this province. We realize that the Superannuation Commission is an exceedingly busy operation and faces many demands on its staffing and other resources. However, it is not alone in this situation and other authorities do manage to communicate with us in a more timely and result-oriented fashion. We look forward to an improved response time in the year ahead.

Come to the Head of the Line

Fairness sometimes requires that a later applicant should be given priority over an earlier one. The Superannuation Commission recognized this when the Ombudsman contacted them regarding a complaint. A woman whose long-term disability benefits had ended was facing the prospect of having to seek income assistance. She had applied for her pension contributions refund and the time prescribed by regulation for the commission to respond to her request had passed. To make matters worse, the commission was so back-logged that it looked as if it might be another few months before she would receive any money.

The commission had given some priority to hardship cases in the past, but generally held to the position that each refund application should be dealt with in the order in which it is received. After a brief discussion with the Ombudsman, the responsible manager decided to deal with this woman's account immediately. Since her only source of income had been long-term disability benefits and there seemed little likelihood of any other income appearing in the immediate future, it made little sense that she should have to seek income assistance when she could realize funds from a pension contributions refund. This seemed like an appropriate common-sense response under the circumstances.

Building a Better Contract

An investigation of a complaint against the Pacific National Exhibition (PNE) had unexpected results. The Ombudsman could not support the claim of a professional consultant that the PNE had unfairly terminated her contract. We did, however, become concerned about a number of features of the PNE's contracting process. We proposed to Exhibition officials that more specific information could be provided to contractors and that their method of concluding agreements and signing contracts could be tightened up.

We commend the PNE for taking the initiative to implement these progressive steps and for its co-operation during the course of our investigation.

The provincial government has recently been concerned about the issue of suitability of contracts and has taken steps to ensure that government contracts are appropriately drafted. The goal is to develop contractual documents that:

- set out a comprehensive description of the work to be performed
- make patently clear the expectations held of the contractor
- stipulate the auditing process by which fulfilment of the contract will be measured.

Subsequently, we were notified that the PNE had reviewed its practices and procedures regarding contracts. They made a number of significant changes, including a more thorough description of contractor responsibilities and a better assurance that employees or contractors would be unlikely to begin work prior to the execution of contracts. We commend the PNE for taking the initiative to implement these progressive steps and for its co-operation during the course of our investigation.

A Story of Little Interest

A retired teacher had pension benefits coming to him from BC and from another province where he had previously taught. Although his pension credits from the other province were transferred here, they sat in general revenue for 189 days before he derived any benefit from them. He received a lump-sum payment when the Superannuation Commission finally factored his out-of-province contributions into his pension payment, but the man argued that he was entitled to interest to cover the period he was without use of these out-of-province funds.

In his submission to the Ombudsman, he calculated this interest, based on a rate of six per cent over the time the funds were held by the government, to be over $3,200. The Ombudsman pointed out that pension funds accumulate interest on deposits to provide a future benefit. He would realize the benefit of the interest accruing on his transferred credits in his future pension cheques. What he had actually lost was the interest he could have received from his own bank on the delayed payments, a much more modest sum close to $150. Nevertheless, although the amount in question was relatively small, we believed that the issue was important and recommended to the Superannuation Commission that they pay this smaller amount.

The commission had followed standard procedure by beginning payment of the man's BC pension no later than the month following his entitlement. The commission justified the delay in dealing with his transferred pension credits by noting the extraordinary demands on staff resources. Since the man was receiving some pension income, they believed he could wait for the additional amount until they had addressed other claims. While the Ombudsman recognized that the commission's resources were strained, she maintained that citizens should not be disadvantaged by the government's failure to process claims in a timely fashion, and that the delay in this case had been unusually long. In reply to the Ombudsman's recommendation, the commission claimed that it had no legislative authority to pay interest and that the man was not the only one who had to wait for an amendment to his monthly pension benefit. We pointed out that:

- payment could be made on an *ex gratia* basis
- if the commission was aware of others similarly affected, their cases could be addressed when or if they came forward.

The commission refused to accept the recommendation.

Public bodies must bear in mind that the Ombudsman makes recommendations only after an independent, impartial and objective investigation. The Ombudsman does not advocate for the complainant, but rather recommends what the investigation has led her to conclude is administratively fair in the circumstances. Authorities, in general, have complied with recommendations of the Ombudsman even though they may not necessarily have been in full agreement with them. The Superannuation Commission did not comply in this case.

...the commission's revised approach will mean that such matters will be dealt with more equitably in the future.

The commission did, however, negotiate a new reciprocal agreement between the Teachers' Pension Plan of BC and that of the other province, to permit a transfer of funds before retirement. As a result, the problem faced by this man will not likely occur again. The commission also advised us that the number of late payments had been significantly reduced, and that the question of paying interest in certain extraordinary situations was now being considered by the commission's advisory bodies. Although this investigation resulted in no personal benefit for the complainant, the commission's revised approach will mean that such matters will be dealt with more equitably in the future.

Down with Harassment!

BC Buildings Corporation has an excellent internal anti-harassment policy. However, when the Ombudsman investigated a complaint, it appeared that the corporation had not given its supervisory staff specific directions on how to deal with harassment issues involving contracted workers. The complaint was from a contractor who maintained that he had not been allowed to bid on a janitorial contract because of harassment allegations raised against him within a ministry office where he held another contract. However, the evidence showed that the man had likely not lost out monetarily in this situation. There was no guarantee that he would have won the contract in question, and, in fact, he had been successful in securing a different contract from the corporation.

Nevertheless, the Ombudsman was still concerned that contractors could be adversely affected by harassment complaints from clients without being given an opportunity to defend themselves or have the complaint investigated. When we pointed this out, the corporation amended its service contract to include specific reference to its *Preventing Workplace Harassment* policy. It also held a series of workshops with BCBC's supervisory personnel to reinforce the point that the corporation's harassment prevention policy applies to the contract community as well. Bravo BCBC!

Finance & Employment

Apology?

It seemed a simple matter. A school psychologist with many years experience was being moved from his office in a school to an office in a portable. He did not wish to go and believed that he was being treated unfairly.

For many years Mr. G had enjoyed an office in a Vancouver school. Early in the school year, his principal visited with the news that the school had secured the services of a District Resource Teacher. As office space was limited, she intended to have the new person share Mr. G's office. Mr. G did not think this was appropriate as he dealt with highly confidential information about students. His arguments to his principal did not alter the planned move. Mr. G wrote to the College of Psychologists with his concerns. Their response confirmed that he might be placing both the confidentiality of his students and his professional standing in jeopardy. He began talking and writing to his immediate superior in the district asking for assistance. He wrote many letters over a period of months but received no written response. Meanwhile, the situation at the school deteriorated to the point that the principal wrote to her superior asking that Mr. G be moved. At this point some action was taken. A meeting was held and a decision made to move Mr. G. He contacted the Ombudsman with his complaint.

A lengthy investigation ensued. We met with the Registrar of the College of Psychologists and many members of the school district. The issue of confidentiality was clarified and new locking file cabinets were offered to school psychologists.

The Ombudsman expects schools not only to teach those qualities that express our values, but to demonstrate them.

I concluded that the district had treated Mr. G unfairly. Although he was a valued member of the district, his reasonable concerns about his professional and ethical situation were essentially ignored. I recommended that the district apologize to Mr. G for the way he had been treated. They refused. The school district did not see any need to offer Mr. G an apology for the fact that their failure to address his reasonable concerns in a timely manner had led to a deterioration of the working relationships in his school and of the morale generally. Nor did the school district see a need to apologize for failing to respond to Mr. G's frequent requests for a solution to his problem.

The Ombudsman expects schools not only to teach those qualities that express our values, but to demonstrate them. We teach our children that when they make a mistake they must accept responsibility and try to make things right. If this is so for our children, is it less so for the administrators of the school system? The district owes Mr. G an apology for its treatment of him. By refusing to apologize, the district shows that it fails to understand its role in modelling fair behaviour.

Unfair Dismissal

Mr. B was the Chair of a large governmental organization. One day, without his knowledge, a former acquaintance approached the ministry to which his organization was responsible. The acquaintance made allegations that Mr. B was misusing his position as Chair and engaging in conduct that would discredit the government. The ministry conducted a secret investigation of these allegations but was unable to substantiate them. However, during the course of the investigation, it discovered some incidents that caused concern. Mr. B was not advised of the allegations nor of these concerns.

Following its investigation, the ministry called Mr. B to a meeting with the minister that lasted less than half an hour. Mr. B was asked to account for his actions, with no prior notice, nor an opportunity to access his records. He was told that his responses were not adequate and was immediately handed a drafted letter of resignation for his signature. The minister responsible then made a public announcement of Mr. B's resignation and the reasons why he had requested it.

Mr. B believed that he had not been given an opportunity to present his side of the story and, as all attempts to contact the government proved fruitless, he came to the Ombudsman. We investigated the situation leading up to his dismissal to determine whether the government had followed fair process.

The rules of natural justice state that everyone is entitled to know the case against him or her and to be given the opportunity to respond.

It became clear to us that prior to the meeting with the minister, the ministry had decided to dismiss Mr. B. As he had alleged, he was offered less than half an hour to respond to the allegations, of which he had no prior knowledge. The rules of natural justice state that everyone is entitled to know the case against him or her and to be given the opportunity to respond. Mr. B was given neither. This was clearly a case of administrative unfairness.

Pursuant to s.22 of the *Ombudsman Act*, I recommended:

- that the government pay Mr. B an amount equal to the salary he would have earned had he continued in his position until his appointment expired
- that the government issue a formal apology to Mr. B for the manner in which he was treated, and express regret for the harm done.

The final response from the government was wholly unsatisfactory in that it did not respond to the fairness concerns but simply indicated that Mr. B could contact a lawyer.

A Rose by Any Other Name...

In these days of job scarcity many people are starting their own businesses. A woman who decided to establish her own housecleaning business ran into an unexpected snag. She registered her business and her business name. Receiving approval of her proposed company name from the Registrar of Companies, she then proceeded with advertising, marketing and the printing of business cards and stationery.

Shortly after her newly formed business was up and running she received a letter from a law firm. They advised her that her company's name was too similar to that of their client's firm, and if she continued to use that name she would be sued. Prudently, she changed her company's name.

She thought it unfair that she should have to pay again to register under her new name, along with the added expense of advertising, marketing and reprinting of business cards. When she contacted the Ombudsman, we advised her to state her concerns in writing to the Registrar of Companies with a copy to our Office. The Registrar reviewed the matter and recommended to the Attorney General that she be reimbursed for the costs of changing her business name as a result of potential confusion in the market place. The public officials at the Registrar's Office were willing to work in this way in order to resolve her problem.

Follow-up
Ombuds*report 1994*
page 19

An End to Unjust Delay

Until 1993 benefits for women whose husbands died in the line of work while covered by Workers' Compensation were terminated when widows remarried or entered a common-law relationship.

The 1993 ***Workers' Compensation Amendment Act*** *permitted the resumption of benefits to a widow if:*

her husband died ***after*** *July 1, 1974 and*
she remarried ***on or after*** *April 17, 1985, the date the equality provisions of the* ***Canadian Charter of Rights and Freedoms*** *were proclaimed.*

A 1994 amendment permitted resumption of benefits if:

her husband died ***before*** *July 1, 1974 and*
she remarried ***on or after*** *April 17, 1985.*

The Ombudsman's position was that spouses of deceased workers who remarried or entered common-law relationships ***before April 17, 1985*** *should be entitled to resumption of benefits. These women were no less entitled to the administrative fairness codified in the* ***Canadian Charter of Rights and Freedoms*** *than those who remarried after the Charter was proclaimed.*

I made my concerns known to the then Minister of Women's Equality. The minister referred the Ombudsman's concern to the then Minister of Labour, urging him to take action. The Minister of Labour, in his response, simply reiterated that the government was standing firmly behind the principle of its decision not to make the benefit reinstatement any more fully retroactive.

In March 1995 a group of widows who claimed discrimination based on age, sex and marital status initiated a court action against the government. In August 1996 the BC Supreme Court upheld the claim of discrimination based on marital status. The provincial government is abiding by the decision of the Supreme Court. As a result, surviving widows who lost benefits because they remarried or entered new relationships before April 17, 1985 are now eligible for survivor benefits retroactive to April 1985.

Where Credit Is Due

A woman owned thirty-one acres of land that was classified as industrial. The Assessment Authority, at her request, reclassified the larger part of her property as residential, since only three of these acres were actually used for industrial purposes. Because the taxes were greater on industrial land, the woman sought reimbursement of taxes previously paid. The Assessment Authority decided that she was eligible for the six-year refund permitted by legislation. However, she found that the refund she received fell one year short of the six-year prescription. She brought her concern to the Ombudsman.

The authority argued that the six-year time frame should include the current year. However, we pointed out that the reassessment had occurred before the current year's taxes were paid and these had been paid on the adjusted and appropriate assessment. Therefore, the refund incorporated only taxes paid over a five-year period and the woman really should have an additional year's refund. The authority finally accepted the Ombudsman's calculations. At the property owner's request, the additional amount was credited to her account as prepayment for the upcoming tax year.

Finance & Employment

Employment Standards

The Employment Standards Branch is bound by a statutory requirement to consider claims only if registered within six months of the event giving rise to the claim, or six months after a person ceases work with the relevant employer, whichever happens last. The requirement is a practical one. Investigation of very old complaints could prove unwieldy, since documents disappear and memories of witnesses fade. The branch has little room for discretion to alter the time restrictions.

The Employment Standards Tribunal began operation November 1, 1995. Its enabling legislation followed recommendations made by the Thompson Commission. In order to enhance the independence of appeal proceedings from the Employment Standards Branch, it hears appeals of decisions of the branch, previously heard by the Director. All indications are that the Employment Standards Tribunal is following the same high standards of adjudication established by the province's Labour Relations Board.

Extra Consideration

Complaint:

An employer had missed the deadline to appeal an Employment Standards decision against him, since he was off work, totally disabled by a lengthy illness. He became aware of the determination against the company only when a demand notice seeking company funds was issued. By then the appeal deadline had passed and he sought an extension, which was refused by the Employment Standards Tribunal.

Investigation:

The chair of the tribunal pointed out that the tribunal could extend the time limit for an appeal, but only for very good reasons. Time limits were necessary if the tribunal was going to operate efficiently and effectively.

Outcome:

The tribunal agreed to consider information from the employer that they had not had before. They needed particular information such as concrete medical evidence of the employer's disability, and an explanation as to why no agent was acting earlier on his behalf. With this information, they would be in a position to review the request to extend. We passed the information on to the employer for him to take advantage of the proposed procedure.

What a Difference a Day Makes

Complaint:

A worker was obliged to appear before the Employment Standards Tribunal with his former employer to attempt to get back pay from him. At the request of the former employer's lawyer, the tribunal hearing was rescheduled for a day the worker would not be able to attend. When he found that he could not get that day off, he informed the tribunal. By registered letter he was advised that the hearing would proceed on the unsuitable date. When he phoned the tribunal to protest, he was told the hearing would go ahead on that date with or without his being present. This arrangement left him with no certainty that his side of the story would be adequately presented, and with no opportunity to cross-examine the employer.

Investigation:

The tribunal took the position that the worker had initially agreed to the new date. However, the chair of the tribunal had not been aware of the worker's full story. When we presented it to him, he ordered a postponement. He felt that, in the face of conflicting information, fairness required that the worker be given the benefit of the doubt and be enabled to attend.

Outcome:

The worker later advised us that a satisfactory date had been decided upon, and thanked us for our intervention.

Six-month Warning

Complaint:

A worker with complaints about his employer left work in May. He picked up a claim form from the Employment Standards Branch in July, but continued to try to work things out with the employer. When he did submit his claim form in December, he was told he was too late to file a complaint. He said that he had never been told about the time limit and felt it was unfair that the employer would not have to account for repeated infractions of employment standards legislation.

Investigation:

The Ombudsman explained the situation to the branch. They agreed that the man could seek a review of the decision before the Employment Standards Tribunal.

Outcome:

The branch altered the employee claim form to make a specific reference to the six-month time limit.

Finance & Employment Team

Files Open Dec. 31, 1995	259
Files Received in 1996	981
Reopened	1
Closed – No Investigation	411
Closed – Investigation	657
Internal Team File Transfers	4

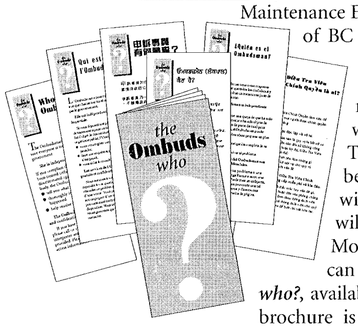
How Files Were Closed in 1996

Section of the Schedule to the *Ombudsman Act*	Enquiries	No Investigation	Investigation	Total
1. Ministries	2131	3746	3300	9177
Ministry for Children and Families	42	90	140	272
Ministry of Aboriginal Affairs	3	0	3	6
Ministry of Agriculture, Fisheries and Food	1	2	10	13
Ministry of Attorney General	1241	468	1210	2919
Ministry of Education, Skills and Training	60	27	157	244
Ministry of Employment and Investment	5	2	8	15
Ministry of Environment, Lands and Parks	31	28	110	169
Ministry of Finance and Corporate Relations	45	18	76	139
Ministry of Forests	19	11	50	80
Ministry of Health	115	82	181	378
Ministry of Human Resources	34	815	201	1050
Ministry of Labour	193	27	103	323
Ministry of Municipal Affairs	20	11	21	52
Ministry of Small Business, Tourism and Culture	9	0	8	17
Ministry of Social Services	226	2128	856	3210
Ministry of Transportation and Highways	87	37	165	289
Ministry of Women's Equality	0	0	1	1
2. Commissions and Boards	441	791	485	1717
Workers' Compensation Board	168	676	161	1005
Other Commissions and Boards	273	115	324	712
3. Crown Corporations	76	507	186	769
BC Hydro	6	133	54	193
ICBC	44	360	71	475
Other Crown Corporations	26	14	61	101
4. Municipalities	22	213	171	406
5. Regional Districts	11	54	49	114
6. Islands Trust	4	2	6	12
6.1 – 6.14 Improvement Districts, Library Boards, etc.	9	7	27	43
7. Schools and School Boards	49	50	146	245
8. Universities	18	6	27	51
9. Colleges and Institutions	19	8	27	54
10. Hospitals and Hospital Boards	27	45	57	129
11. Professional Associations	286	37	108	431
12. Regional Health Boards	5	1	0	6
Jurisdictional Files	3098	5467	4589	13154
Non-jurisdictional Files				3652
Total Files Closed in 1996				16806

The Ombuds Service

STEP 1 Receiving the Complaint

When you call the Ombudsman you may hear a recorded message that will give you information about how to access Enquiry BC, a federal information service and the complaint and appeal processes of the Workers' Compensation Board; the Family Maintenance Enforcement Program; the Insurance Corporation of BC and the Ministry of Human Resources. If you wish to register a complaint with the Ombudsman you will be connected with a member of the Intake Team. Your complaint will be recorded in a computerized Case Tracking system. If the complaint appears to be about an authority and a matter that falls within the Ombudsman's jurisdiction you will be referred to an Ombudsman Officer. More information about Ombuds services can be found in the brochure, ***the Ombuds who?***, available from the Ombudsman's Office. The brochure is also available in condensed form in English, French, Chinese, Punjabi, Spanish and Vietnamese.



STEP 2 Obtaining Relevant Information

The Officer will review the opening information in your file and contact you to get further details about your complaint, the public body and the relevant parties involved. The Officer will confirm whether the matter falls within the Ombudsman's jurisdiction and whether an investigation should proceed.

Section 10
(1) The Ombudsman, with respect to a matter of administration, on a complaint or on her own initiative, may investigate
(a) a decision or recommendation made;
(b) an act done or omitted; or
(c) a procedure used
by an authority that aggrieves or may aggrieve a person.

Section 15
(1) The Ombudsman may receive and obtain information from the persons and in the manner she considers appropriate and in her discretion may conduct hearings.

STEP 3 Notifying the Authority

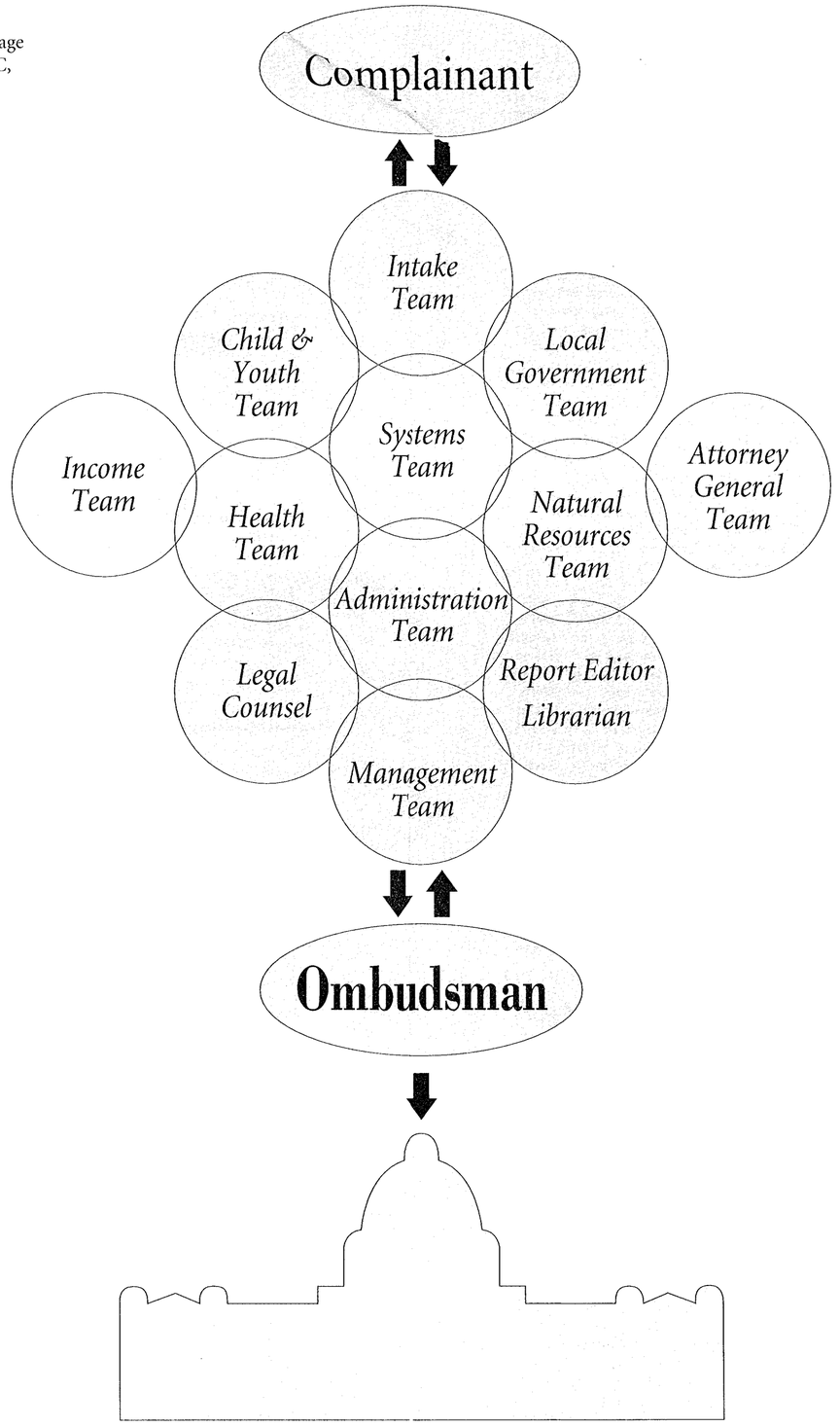
If an investigation is to proceed, the Officer will notify the public body against whom your complaint is registered. She or he will also request relevant information, and will interview appropriate officials from the authority.

Section 14
(1) If the Ombudsman investigates a matter, she shall notify the authority affected and any other person she considers appropriate to notify in the circumstances.

STEP 4 Attempts to Mediate a Settlement

During the course of the investigation the Officer will try to find some means of resolving the dispute through consensus, and may consult with anyone involved at any time in order to do this. If the matter is resolved in this way, your file will be closed and you will be informed of the outcome. If it cannot be resolved the investigation will proceed.

Section 14
(2)The Ombudsman may at any time during or after an investigation consult with an authority to settle the complaint, or for any other purpose.



STEP 5 Testing the Case

After obtaining all required information the Officer will assess your complaint to determine whether the public body's actions were, among other things, unfair, contrary to law or improperly discriminatory. In order to determine this, he or she will review the authority's conduct in relation to the applicable laws and policy. It may be necessary to consult other parties at this stage to obtain further information or responses to relevant arguments, in order to clarify the situation.

Section 22
(1) Where, after completing an investigation, the Ombudsman believes that
(a) a decision, recommendation, act or omission that was the subject matter of the investigation was
(i) contrary to law;
(ii) unjust, oppressive or improperly discriminatory;
(iii) made, done or omitted pursuant to a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory;
(iv) based in whole or in part on a mistake of law or fact or on irrelevant grounds or consideration;
(v) related to the application of arbitrary, unreasonable or unfair procedures; or
(vi) otherwise wrong;
(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
(i) did so for an improper purpose;
(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter; or
(iii) was negligent or acted improperly; or
(c) there was unreasonable delay in dealing with the subject matter of the investigation,
the Ombudsman shall report her opinion and the reasons for it to the authority and may make the recommendation she considers appropriate

STEP 6 Reaching Conclusions

If the Ombudsman Officer determines that your complaint cannot be substantiated, she or he will notify both you and the public body of the reasons for the decision. The Officer will also try to give you other options to follow.

If the Officer believes your complaint can be substantiated, she or he will report the result of the investigation to the Ombudsman. The Ombudsman will give the authority a final, formal chance to respond if she feels there is merit to the complaint, and will then make her final decision as to whether the complaint is substantiated.

If the Ombudsman determines that your complaint is substantiated, she may make recommendations to remedy the situation. The Ombudsman's findings are not binding on the authority, but if they are not followed the Ombudsman can report such to the provincial Cabinet and also the Legislative Assembly. The entire investigation is done in confidence. Only the Ombudsman may comment publicly on a case if she wishes. You will receive a report at the end of the investigation process.

Section 9
(3) The Ombudsman and every person on her staff shall, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in the performance of their duties under this Act.

STEP 7 Commitment to Fairness

The Ombudsman monitors her own services to be sure they comply with the principles of administrative fairness, the rules of natural justice and the Guiding Principles of the Office:

- Respect
- Education
- Commitment
- Inclusiveness and Accessibility
- Empowerment
- Co-operation
- Leadership

If you are dissatisfied with the service you receive, you may ask to be referred to the Ombudsman's internal review process.

Attorney General

The New Human Rights Code

On January 1, 1997 the *Human Rights Code* came into force, replacing the former *Human Rights Act.* The section on "Discriminatory Practices Prohibited" is unchanged, but the structure of human rights services is altered significantly. The former Act had created a single administrative umbrella, the BC Council of Human Rights, for all services from intake through to adjudication. The new Code establishes three bodies:

- the **Human Rights Tribunal**, an independent body to hold hearings and decide on complaints referred to it
- the **Human Rights Commission** to cover all of the services that precede a formal hearing
- the **Human Rights Advisory Council**
  - to inform the public about the work of the commission
  - to ensure that the concerns of the public are brought to the attention of the commission
  - to advise the commission and the minister on matters relevant to the administration of the Code.

The Human Rights Commission is made up of three commissioners, each with a specific area of responsibility.

The Chief Commissioner is the chief executive officer of the commission, responsible for:

- supervising and directing the work of the commission and staff except that she or he *must not direct or interfere with the exercise of any power granted to or duty imposed on the commissioner of investigation and mediation under this Code (s.10(8))*
- developing and conducting a program of public education and information designed to promote an understanding and acceptance of the Code (s.1.3)
- submitting an annual report to the minister responsible, currently the Attorney General.

The Deputy Chief Commissioner serves as the backup for the Chief Commissioner. She or he has specific powers under the Code to file a complaint with the Commissioner of Investigation and Mediation on his or her own initiative and may require that commissioner to add the Deputy Chief Commissioner as a party to a complaint.

The Commissioner of Investigation and Mediation appoints and manages Human Rights Officers who investigate complaints. He or she has the power to decide whether complaints should be:

- accepted or refused
- disposed of without an investigation
- assigned for an investigation
- referred to the Human Rights Tribunal for a hearing.

In addition to the new bodies and commissioners noted above, the *Human Rights Code* contains several procedural provisions that were not contained in the previous *Human Rights Act.* Three of the more significant are:

- A group of persons may file a complaint and the Commissioner of Intake and Mediation may proceed with two or more complaints together if satisfied that it is fair and reasonable in the circumstances (s.16(6)).
- The Commissioner of Investigation and Mediation or a Human Rights Officer may:
  - demand the production of any documents or records that may relate to a complaint and make any inquiry in writing or orally
  - apply to the Supreme Court for an order requiring a person to comply with such a demand or respond to an inquiry.
- Settlement agreements reached through mediation and other means are filed with the Human Rights Commission and may be enforced in the same manner as an order of the Human Rights Tribunal under the Code.

info For more information about the new *Human Rights Code* and to file a complaint, contact:

BC Human Rights Commission
306 – 815 Hornby Street
Vancouver, BC
V6Z 2E6
(604) 660-6811

P.O. Box 9209, Stn Prov Gov
Victoria, BC
V8W 9J1
(250) 387-3710

1-800-663-0876 toll free

Human Rights in Transition

This year was a challenging one for human rights administration in British Columbia. Early in the year, as I noted in my 1995 Annual Report, the BC Council of Human Rights assumed direct responsibility for investigating human rights complaints using its own staff. This change ended the referral of such complaints to Industrial Relations Officers (IROs) of the Employment Standards Branch, who had performed this service for many years in addition to their other duties. However, the Employment Standards Branch agreed to complete the over six hundred investigation files previously assigned to its IROs. A substantial number of these files had been "under investigation" for more than a year. To speed their closure, my Office encouraged the establishment of a transition team made up of the council's Manager of Investigation and two Regional Managers from the Employment Standards Branch. The team met regularly throughout the year, monitored by an Officer from my Office, and will continue to meet in 1997 until the last IRO investigation has been completed. The team appears to have been effective in speeding up the completion of investigation reports and facilitating clear communication between the agencies during the final days of their working relationship. As of the end of 1996, just over one hundred investigation files remained to be completed by the Employment Standards Branch.

1996 was also a year of uncertainty about the changes to work procedures and job descriptions that would result from the re-engineering process initiated by the Ministry of Attorney General. It was a year of waiting for the proclamation of the new *Human Rights Code*, which was rescheduled from October 1, 1996 to January 1, 1997 to allow more time for the selection and appointment of the new Commissioners. All these changes, combined with a delay in acquiring enough new staff to handle the additional responsibilities, resulted in a further deterioration of the "unreasonable delay" we have observed in recent years. By the end of 1996 the backlog of cases waiting to be assigned for investigation had risen to over nine hundred. Clearly, one of the most challenging tasks facing the new Human Rights Commission will be to find a way of eliminating this backlog, while developing more efficient ways of managing new complaints. I will continue to monitor the progress of the new administrative structure and to offer constructive observations on administrative fairness issues as they arise.

Ombuds-*editorial*

The Human Rights Code: a Missing Link to Fair Process

I was disappointed that the government decided not to proclaim s. 24 of the *Human Rights Code,* which provides for an independent review of a decision of the Commissioner of Investigation and Mediation to dismiss a complaint. Section 24 reads in part:

24. (1) The deputy chief commissioner or any party aggrieved by the dismissal of all or part of a complaint under section 22 (1) may, within 60 days of being notified of the dismissal, apply to the chair of the tribunal for a review of that dismissal.

Section 24 appears to be based in part on the recognition that the Deputy Chief Commissioner would be hampered in his or her role as initiator of complaints and as intervenor in complaints filed by others, without also having the power to apply for a review of a decision of the Commissioner of Investigation and Mediation. Unless the Deputy Commissioner reviews all investigation files just before a decision is made, she or he is more likely to learn about cases requiring intervention after a complaint is dismissed. In addition to denying a remedy for individual parties, the failure to proclaim s.24 has also removed the opportunity for the Deputy Chief Commissioner to follow through with independent initiatives against those she or he believes have contravened the Code. Furthermore, the Human Rights Commission itself will also lose the benefits that a properly implemented review process could have brought. These include directives to correct errors in procedure and judgment, and standards to enhance the quality of investigations and decision making.

In the absence of s.24, the regular flow of complaints and requests for review from individuals who feel they have been treated unfairly will likely continue. Consequently, the Human Rights Commission will still need an internal procedure to deal with the concerns of complainants, conveyed directly or through advocacy groups, offices of MLAs or the Ombudsman. Without a s.24 remedy, resolutions to some issues will undoubtedly be more difficult to achieve and some cases will have nowhere else to go but to court for judicial review. Over the coming year I will be monitoring the possible impact of not having access to this review mechanism.

In the Public Interest

With great sadness we said farewell to three of our valued colleagues this year. All three took early retirement after serving the public for many years in various capacities. **Keith Henders** has been with the Ombudsman's Office since its inception. **David Staples** came from the RCMP and **Dave Taylor** from the Ministry of Social Services. Their service to the public went beyond their commitment to the Office of the Ombudsman and will continue with their volunteer efforts in the community. Congratulations on jobs well done!

Attorney General

Cutting Costs with Respect

Cost cutting in government because of financial pressures has wide-ranging effects on programs. Ending established programs or restructuring them to reduce costs can significantly reorder priorities in the implementation of policy. During 1996 I monitored instances of program changes within the Corrections Branch for fairness.

Pay Scales

In mid-summer the branch reduced adult inmate pay scales fifty cents across the board and standardized the incremental increases. However, the cost of canteen goods continued to be set by market prices. What inmates could buy suddenly decreased dramatically in relation to what they could earn. Applying the new wage to incoming inmates and phasing out the old wage scale as people left the system reduced the impact of the change. The Ombudsman received very few complaints about it.

Reduction of Free Postage

We received numerous complaints on the decision of the branch to limit free postage for inmates to one letter per week, instead of the previous limit of seven. I am happy to report that when I wrote to the Assistant Deputy Minister about the decision, he reconsidered this restriction. He reinstated the former policy, which assists inmates to maintain contact with their families and to plan for release.

Food Services

Surprisingly, changes to the food service in the Fraser Region generated next to no complaints to my Office. The inmates still receive a balanced diet and the same number of calories per day. The branch was considering introducing similar cost-cutting measures in other areas of the province.

Remand Centres

On a wider scale, building projects that had been under discussion in the Fraser Valley, Kelowna and Port Coquitlam areas were halted. Because the number of individuals entering the system is too great for the two lower mainland remand centres to handle, inmates on remand are moved from Vancouver and Surrey to Fraser Regional Correctional Centre to await trial. This move puts a heavy load on the Fraser centre, which was not designed for remand inmates. Many individuals require a lengthy remand because of delays in the courts. The whole system is taxed beyond its designed capacity, and reducing the budget in one program area impacts on every other area. Inmates complain about being treated as objects to be transferred to fill spaces, and the inevitable loss of personal effects in transit. Repeated transfers make it difficult to schedule parole hearings, participate in programs or establish release plans.

Yet we must respect the rights of individuals in custody for they are people from our communities, perhaps even our sons and daughters, our friends or our neighbours.

The Corrections system is unique because, while it is subject to the same difficulties as other areas of government, it lacks strong community support for its inmates and custodians. Yet we must respect the rights of individuals in custody for they are people from our communities, perhaps even our sons and daughters, our friends or our neighbours. Prison administration and staff are generally doing well within the financial and personnel limits imposed on them. In dealing with inmate complaints amid the cost-cutting measures we have seen this year, my Office strives to ensure that everyone continues to be treated with dignity and respect.

Ombudsman Re-dresses Inmates' Concerns

Complaint:

To reduce the possibility of inmates using clothing as a means to take their own lives, inmates who were in segregation, observation or in separate custody rooms were issued a garment made of stiff, durable material that looked like a gown and fell to about mid-calf, and a blanket of similar material. They were given no underwear. The inmates complained that:

- many who were not suicidal and had given no indication of being so, felt badly treated for being made to wear the gowns, which they considered feminine, uncomfortable and degrading
- the gowns were unsanitary, as they were not always washed twice a week as intended
- the gowns were hot and the material irritated the skin
- at night inmates suffered from cold, as the blankets did not conform to the body.

Investigation:

The director's motive was to protect staff from offending behaviour and inmates from the trauma of suicide. Similar gowns, though modified, had been in use in Alberta prisons. However, inmates were required to wear the gowns in their units, but many opted to wear nothing in their cells instead; others wore them half off and tried to roll up the hem to keep from tripping on the unyielding cloth.

Outcome:

I recommended a number of changes that were implemented:

> that the director revise the local policy and restrict the use of the gown to those inmates who are clearly at risk of self-harm
>
> that segregated inmates be issued regular clothing unless there is a demonstrated safety need to have them in a gown.

Appealing Behaviour

Complaint:

A man had lost remission for two consecutive months and believed that his release date was wrong. He wanted to appeal the assessment that resulted in a failure to earn remission.

Investigation:

A monthly assessment considers how co-operative inmates have been in doing their assigned work, getting along with other inmates and following the routine programs of the centre. Behaviour assessed as below the average for inmates results in the loss of remission, that is, time off their sentence.

We first confirmed the man's release date and showed him how the sentence was calculated.

Outcome:

We discovered that the approved forms put out by the Corrections Branch provided a clear statement of what an inmate could do to appeal an assessment decision, but the local forms did not. When we brought this discrepancy to the director's attention, he had the local forms corrected.

We advised the man of his right to appeal his assessment to the district director, and he did so.

Blowing in the Wind

Complaint:

In mid-summer a number of native inmates complained that their sweat lodge had been closed and no alternative had been found.

Investigation:

The chaplain at this new regional Correctional Centre had encouraged native inmates to find meaning through cultural contacts and ceremonies that could be performed within the prison. Through the auspices of the chaplain's office, native elders and sweet grass carriers began visiting the centre. The next step to assist native spirituality was the building and operation of a sweat lodge.

We found that the location of the lodge, along with the elements of nature, had caused severe problems on the upper floors of the prison. Wind currents were taking the smoke from the heating fires and blowing it directly into the building through the air intake ducts. Staff working on the upper floors found the smoke intolerable and were prepared to walk out in protest. Inmates, who could not walk out, were also suffering. Various attempts to find an alternative site were unsuccessful, and the lodge remained closed for the remainder of 1996.

Outcome:

Currently, the Director of Programs is seeking to resume the use of the sweat lodge by having the visiting native elders heat the rocks outside the perimeter fence and carry them into the lodge for the ceremony.

Not Double Jeopardy

Complaint:

An inmate believed that he was being punished twice for the same act. He was convicted in provincial court for escape and given a consecutive sentence, which extended his time in custody. When he returned to prison after the escape, he was also charged under the *Regulation* to the *Correction Act.*

Investigation:

We pointed out to the inmate that the Supreme Court of Canada had examined this issue in the case of *R. v. Shubley* on January 19, 1990. The Court made a distinction between a criminal proceeding and an internal disciplinary matter:

> *the appellant as a consequence of his (actions) is answerable to the State for his crime; to the victim for injury caused; and to the prison officials for breach of discipline.*

The rules of evidence, the purposes and the punishments available in these processes are different. The Corrections Branch amended its approach to dealing with escapees in light of the Supreme Court decision.

We found that inmates tend to think of a disciplinary hearing as more like a court than like an administrative hearing. We also discovered that the Corrections Branch Manual of Standards, which is available to inmates through the prison libraries, still contained a section stating that no internal charges would be laid against an inmate for an offence that was also brought before an outside court.

Outcome:

The Ombudsman could not substantiate the inmate's complaint. Corrections staff took steps to remove the inaccurate section from the manual.

Attorney General

Pride and Professionalism

Correctional centres today are housing more inmates than ever before. Larger numbers, held often in overcrowded facilities, inevitably lead to an increase in tensions and problems, and an increase in complaints to the Ombudsman.

Grievance procedures for inmates are provided for in the *Correctional Centre Rules and Regulations.* A written complaint may be directed to an officer, a director, a district director or a regional director. The Regulations state that a response is to be given within seven days. An inmate may also make a written complaint to the Director of the Investigation, Inspection and Standards Office of the Ministry of Attorney General. These procedures provide many remedies, which can, when staff are co-operative and responsive, work effectively.

The Ombudsman encourages inmates to try to resolve problems through the internal grievance procedure. However, we have learned that many have little faith in the internal system, and only reluctantly agree to make the attempt. Some do not believe a grievance form or letter addressed to a district director will be treated as privileged mail. Occasionally an inmate claims to have seen a unit officer tear up a complaint form. We can only say that some complaints, which inmates say they have submitted, seem to have disappeared without trace. We have also seen some responses to internal grievances that are superficial, cavalier or that miss the main issue. The large number of minor complaints made to the Ombudsman by inmates, many of whom should be using the internal grievance procedure, prevents us from dealing promptly and thoroughly with complaints that are urgent or that concern systemic issues.

The number of minor grievances or complaints could be reduced if all staff assisted inmates at the outset. Unfortunately, some staff regard such assistance as a nuisance or beneath their dignity. Other staff will willingly make an inquiry on an inmate's behalf or help him or her to put a request in writing. This professional attitude can often prevent a minor difficulty, easily resolved, from becoming a major and lengthy problem for many.

A case in point is an inmate who complained to the Ombudsman that he was unable to obtain a grievance form after making a written request for one. He wanted to complain that:

- he could not obtain slippers to wear in the segregation unit, where shoes are not allowed
- he had been served a plate of cold spaghetti and staff would not warm it in the microwave oven
- an officer removed the portion of a library book the inmate was reading, because the officer said a damaged book was considered contraband; the inmate said all the books in the segregation area save two were ripped or damaged.

We asked the director to address the major issue specifically, and advise us of the policy on access to grievance forms. We also asked him to have someone deal with the other issues. It seems highly probable that the three minor issues could have been dealt with quickly and informally by staff other than the director, had the inmate been given a grievance form when he asked for one.

The Ombudsman encourages inmates to try to resolve problems through the internal grievance procedure.

At one correctional centre, an officer, designated a Case Management Co-ordinator, acts as an internal post office for requests, inquiries and complaints. The officer deals with some matters directly, and routes others to the appropriate person, keeping a running register of what is passed to whom. This system appears to work very well.

Complaints about disciplinary hearings are in another category and are not appropriate subjects for grievances. An inmate may be charged with a disciplinary offence if she or he breaches the rules governing inmate conduct. Those who believe the outcome of a disciplinary proceeding is unfair, or who think they should not have been charged at all, are routinely advised at their hearing of their right to request a review by the Director of the Investigation, Inspection and Standards Office of the Ministry of Attorney General. In most instances, the Ombudsman declines to investigate disciplinary matters while that right of review is still available or being pursued.

The number of minor grievances or complaints could be reduced if all staff assisted inmates at the outset.

Nevertheless, from our many contacts with inmates and correctional centre staff on disciplinary issues, it seems clear to us that not all officers follow the *Correctional Centre Rules and Regulations,* which stipulate that an officer shall attempt to resolve a breach of the rules whenever this is feasible. We believe that if this policy were followed consistently, there would be fewer disciplinary charges, fewer inmates put in segregation cells, less remission lost, and senior staff would spend less time conducting hearings and doing the accompanying paper work. Investigation, Inspection and Standards would be required to conduct fewer disciplinary reviews, and there would be fewer complaints to the Ombudsman. We have noted over the years that some officers, far from attempting to resolve problems before they escalate, rush to fill in charge papers. While serious or repeated breaches cannot be overlooked, failure to nip a problem in the bud can increase rather than alleviate the tensions in an overcrowded facility.

Not all these shortcomings are characteristic of every centre, or of any centre on a constant basis. Nevertheless, we would strongly encourage senior staff throughout the system:

- to ensure that staff do not file unnecessary charges
- to encourage unit staff to deal effectively with minor difficulties in a timely fashion
- to provide complaint forms on request
- to maintain an internal grievance procedure that is a real avenue to resolving problems, such as having a designated Case Management Co-ordinator
- to provide adequate reasons on the occasions when resolution of a problem is not possible.

Solomon Could Not Have Done Better

Whether or not an inmate was released late from prison, as he alleged to the Ombudsman, was a complex matter to decide.

The facts of the case:

- July 19, 1995 the Court sentenced the man to serve thirty days in prison in default of payment on a $500 fine, and gave him until December 14, 1995 to pay, later extending this date to July 19, 1996.
- August 29, 1996 a warrant for arrest was issued for failure to pay.
- October 2, 1996 the warrant was executed and the man went into custody.

Our investigation showed that the staff were confused over this man's release date because they were unsure whether the new or old law applied to him.

The complexity arose because the method of calculating default sentences was changed on September 3, 1996 by the federal *Bill C-41.* Prior to *Bill C-41,* an inmate with a default judgment of thirty days would have had to serve twenty days. Under the new law, the person would serve only six days in custody. The new law calculates the time by taking the amount owing on the fine plus the cost of conveying the person to prison and dividing by eight times the provincial minimum hourly wage.

Our investigation showed that the staff were confused over this man's release date because they were unsure whether the new or old law applied to him.

The *Canadian Charter of Rights and Freedoms* states that:

> *Any person charged with an offence has the right, if found guilty of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.*

The Ombudsman concluded that this clause did not apply to the inmate's circumstances, since the change to the law came after sentencing but before the date when the punishment was executed. In actual fact the man was, in our opinion, released seven days early if the sentence were calculated under the old system, and exactly seven days late if it were calculated under the new system. When we informed the man of our opinion, he did not reply.

Follow-up
Ombudsreport 1995
page 10

Inmate Complaints

Burnaby Correctional Centre for Women houses inmates serving both provincial and federal sentences. Inmates were confused over the role of the Correctional Investigator of Canada. The Ombudsman recommended that a readable but comprehensive brochure be prepared for federal inmates who wish to register a complaint or an appeal.

Rather than produce a separate brochure, the centre included the necessary information in a new, updated version of its comprehensive *Inmate Information Guide.* Inmates had a good deal of input into the guide. We applaud the centre for making easily available such a comprehensive and easy-to-read package for its inmates to ensure that they know how to proceed when they have a grievance.

Attorney General Plus Team

Files Open Dec. 31, 1995	271
Files Received in 1996	1,662
Reopened	2
Closed – No Investigation	347
Closed – Investigation	1,263
Internal Team File Transfers	10

Children & Youth

After Fair Schools ☆

In *Public Report No. 35-Fair Schools,* the Ombudsman emphasized the need for appeal processes within the school system to meet the standards of administrative fairness.

Section 11 of the *School Act* provides for an appeal procedure for students and parents:

(2) Where a decision of an employee of a board... significantly affects the education, health or safety of a student, the parent of the student or the student may, within a reasonable time from the date that the parent or student was informed of the decision, appeal that decision to the board.

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

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

However, the *Ombudsman Act* states in s.10(2):

The powers and duties conferred on the Ombudsman may be exercised and performed notwithstanding a provision in an Act to the effect that

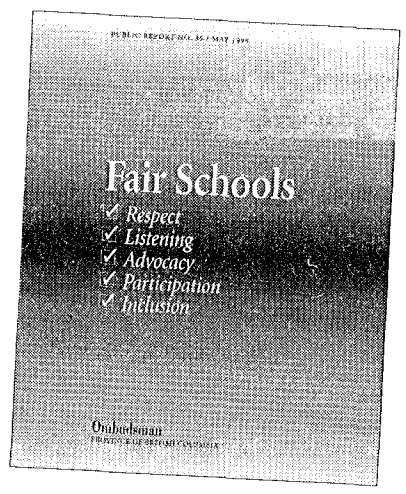
(a) a decision, recommendation or act is final;...

The Ombudsman will, under exceptional circumstances, review a decision of a school board if the following criteria apply and the board declines to re-hear the appeal:

- new information regarding the matter under appeal has arisen; and/or
- it can be clearly shown that the decision was inconsistent with the principles of administrative fairness and natural justice.

The following case example demonstrates the willingness of a school board to reconsider a decision made under s.11 of the *School Act.*

A youth who was permanently suspended from her high school was particularly upset because it meant that she would not graduate with her life-long friends and classmates. She and her parents appealed the suspension to the school board because they believed it was unfair. However, the school board upheld the suspension. The youth and her parents then contacted the Ombudsman.



...the superintendent of the school district ... agreed to meet with the student and her advocates to review the new information.

The Ombudsman was advised that new information had come to light that was not available at the time of the appeal. The student believed that the new information was compelling and said that it shook her confidence in the school's investigation and the decision made by the school board.

We spoke to and subsequently wrote the superintendent of the school district who agreed to meet with the student and her advocates to review the new information. Following this meeting, the superintendent agreed to review the new documentation with the school board. The school board did not agree that their investigation had been flawed. However, in light of the new information, they agreed to reconsider their decision to suspend the student permanently. The board's decision was that the student could transfer to the school of her choice the following term. The student was satisfied, as it meant she could graduate with her friends and former classmates.

The superintendent's willingness to meet with the youth and to consider the new information meant a fair result.

Serving Young People

Several of the Ombudsman's staff, as a team, focus their time and attention on children and youth. They answer inquiries and investigate complaints about public services for children and youth, including:

- school boards
- youth custody centres
- mental health services
- Child, Family and Community Services (including child protection, services to children in care, support services, adoptions, services to children and youth with mental handicaps)
- under-age income assistance
- the Public Trustee
- the Child and Family Review Board
- hospitals
- public health services to children and youth
- youth probation services
- alcohol and drug services for youth
- the Children's Commissioner.

NEWSFLASH

The All Party Special Committee of the Legislature on the Response to the Gove Report has requested that the Ombudsman present to the committee when it reconvenes in April 1997. The Ombudsman will be reporting on her role as the monitor of Judge Gove's recommendations and her understanding of the work currently underway by the Ministry for Children and Families and the Children's Commissioner. Copies of the Ombudsman's presentation are available on request by phone, fax or mail and on the Internet at www.ombud.gov.bc.ca or through the Hansard.

A Child's Right to Decide

The Ombudsman dealt with two cases in 1996 about the right of youths to make decisions regarding their own medical care.

Complaint:

Students in grades eight through twelve at three different schools within the same school district were given hepatitis B vaccinations without parental consent. The complaint concerned the lack of parental consent, the procedures employed by the health unit and whether the youths had given informed consent.

Investigation:

Medical health professionals are not required to inform parents when they perform a medical intervention upon children or youths. The *Infants Act* sets out the rights and responsibilities of medical professionals. It confers the right to proceed without parental consent and sets out the conditions and responsibilities that medical professionals must meet.

As the medical professionals were correct in law to rely on the consent of the youths, the Ombudsman focused upon the following questions:

- had the youths been given full information that was timely and understandable
- did the medical professionals ensure that the youths understood the nature and consequences and the foreseeable benefits and risks of the health care
- did the medical professionals make reasonable efforts to determine that the health care was in the best interests of the youths?

Our investigation considered:

- the content of the information given to the youths and how it was transmitted
- how medical professionals made sure that youths understood the use of the vaccine
- what steps had been taken to ensure that peer pressure would minimally impact the decision making of the youths
- what opportunities youths had to discuss their concerns before inoculations were given
- whether the health professionals presented the information in an understandable format appropriate to each individual's age and developmental stage.

Our investigation revealed that the process and procedures were thorough in all respects.

Outcome:

The Medical Health Officer, in the spirit of respect and partnership, committed that in future the health unit would send a letter to parents and guardians informing them about the vaccine, requesting that they discuss the immunization with their child or children but not with a view to giving or withholding their consent.

Complaint:

A sixteen-year-old girl met with her doctor and consented to a medical procedure, which was subsequently performed. The young woman was in the care of the Ministry for Children and Families under a Voluntary Care Agreement. Her social worker was instructed by both her supervisor and area manager that the youth's parents must be informed of any medical treatment. The youth agreed to speak with her parents rather than have the social worker call them. However, she believed this to be an unfair invasion of her privacy and legal rights.

Investigation:

The Director of Child, Family and Community Service, from whom both the supervisor and the area manager receive their authority, reviewed the matter. He concluded that staff were wrong to insist that the information be disclosed to the parents. He acknowledged that the wording of the Voluntary Care Agreement may have been unclear regarding this obligation.

Outcome:

The wording of the agreement is being amended to include the limitations on the director and others under his or her authority concerning the disclosure of information when a child in care consents independently to health care under s.16 of the *Infants Act.* The area manager agreed to meet with the young woman and offer both a verbal and written apology.

Ministry staff are receiving ongoing training to help them understand the new and complex requirements related to the *Freedom of Information and Protection of Privacy Act* and the *Infants Act* when dealing with children in care.

Children & Youth

Guest Comment

Jericho Compensation Panel Up and Running

by René de Vos
Director
Jericho Individual Compensation Program
at the invitation of the Ombudsman

In June 1995, the British Columbia government established the Jericho Individual Compensation Program to financially compensate former students of Jericho Hill School for the Deaf who were sexually abused while attending the school.

The program became fully operational on December 1, 1996 and potential claimants will have up to November 30, 1997 to apply for compensation. Applications are now being received and claims are being prepared for the Compensation Panel.

A committee made up of representatives of the deaf community and the ministries of Attorney General and Health selected both a Compensation Consultant and a Compensation Panel. The consultant, who is fluent in American Sign Language (ASL), is available to assist claimants to prepare their claims for the Compensation Panel. The panel is made up of three members: one deaf therapist and two hearing lawyers. The Compensation Panel makes decisions to validate claims and to fix an amount of compensation.

The Terms of Reference of the program outline the essentials of the claim process, and emphasize that the compensation process will be as fair, compassionate and efficient as possible for the claimant. The Terms of Reference are available upon request from the program office.

The Compensation Panel has stated that its decisions will:

- be based on relevant, thorough and accurate information
- be fair to all claimants
- give claimants a respectful place in the compensation process.

The individual compensation process is not a court process and is not approached as a dispute. Program staff are striving to make the claim process as responsive as possible to the needs of the claimant. For example, the program will provide qualified visual language interpreters and/or intervenors at no cost to the claimant. The interpreters will be of the individual claimant's choice, whenever possible.

The program is using a variety of media to contact all potential claimants. Both English text and ASL videos have been developed in order to reach potential claimants and to make them aware of their eligibility to apply for compensation.

The individual claim process is designed to be the best route for individuals to obtain an acknowledgment of government's responsibility for the pain and suffering they endured. Government is committed to providing validated claimants with:

- financial compensation
- an individual apology to each claimant who accepts compensation
- continued access to therapy services.

The belated acceptance by government of responsibility for individuals who were in its care, commits government to assist survivors to begin or to continue their healing.

info 1-888-711-2211 (toll free TTY)
1-888-311-2211 (toll free voice)

Local numbers:
(604) 660-0319 (TTY)
(604) 660-0300 (voice)

(604) 660-0315 (fax)

Address:
JIC Program Office
Metrotower II
Suite 628
4720 Kingsway
Burnaby, BC
V5H 4N2

Ombuds and Advocates: Working Together for Children

Children and youth in British Columbia now have toll-free access to two separate and distinct services: the Ombudsman, and the Child, Youth and Family Advocate. The Ombudsman's Office ensures that government is fair when it is dealing with all people, including children and youth. Some of the complaints from youth that come to the Ombudsman's Child and Youth Team clearly include concerns that:

- no one is listening to them
- decisions are being made without their involvement
- they are not being given an opportunity to present their views
- even when they are given a chance to speak, their views seem to be ignored when the decision is being made.

A fundamental requirement for fairness is the right to be heard when a decision is being made about you. Sometimes decisions about children or youth are made without their views being considered. Since it can be difficult for children or youth to be sure that their views are heard, they may need an advocate for advice and support. Parents, friends, family members, teachers or social workers can all be advocates. When young people tell the Ombudsman that they need help to present their positions, we often refer them to the Office of the Child, Youth and Family Advocate, who can provide an advocate for them. We may tell the youth how to reach the Advocate's office or we may contact the office directly on their behalf. The mandate of the Child, Youth and Family Advocate is to ensure that children and youth have a voice when they are dealing with services provided by the Ministry for Children and Families. She also ensures that the rights of children in care are respected by those providing services to them.

Children and youth in British Columbia now have toll-free access to two separate and distinct services: the Ombudsman, and the Child, Youth and Family Advocate.

The Ombudsman's Child and Youth Team has now investigated several complaints from young people involving matters of administrative unfairness, after being assured by the Advocate's office that the youth has an advocate. The Advocate also refers to the Ombudsman young people who have concerns that are not within the Advocate's jurisdiction. These two Offices, working in parallel, make it easier for young people to state their complaints and concerns, to be supported and to be assured of being heard.

info Ombudsman:
1-800-567-3247 (toll free)

Child, Youth and Family Advocate:
1-800-476-3933 (toll free)

Follow Your Dream?

In British Columbia, under the *Child, Family and Community Services Act,* the Ministry for Children and Families assumes guardianship of a child or youth who is in its permanent care. The Office of the Public Trustee assumes guardianship of the child's estate and protects the child's legal interests in accordance with the *Public Guardian and Trustee Act.* Provisions in the *Infants Act* require the Public Trustee to submit a review of a contract involving a minor to the court. Once the court is satisfied that it is legitimate and not onerous on the child, it can permit a minor in the care of the ministry to enter into a legal contract.

A sixteen-year-old youth who was living in a foster home in the care of the Ministry of Social Services (now the Ministry for Children and Families), wanted to be a model and an actor. She had auditioned for an agency that was willing to represent her and put her to work as an actor almost immediately if her guardian signed a contract. The young woman took the contract to her social worker for permission. When it appeared that the social worker was denying permission for her to sign the contract, her foster parent contacted the Ombudsman on the youth's behalf.

Provisions in the Infants Act require the Public Trustee to submit a review of a contract involving a minor to the court.

After speaking with the young woman, we agreed to review her complaint. The social worker believed that she had clearly explained to the youth that the Public Trustee had to review the contract and decide whether or not to approve it.

However, after reviewing this contract, the Public Trustee concluded that each clause benefited the agency and none benefited the youth. The Public Trustee informed the social worker of the assessment and critique of the contract and explained why the court refused to authorize the young woman to enter into the agreement. She was permitted to sign the contract on her own, but it would not be enforceable until she turned nineteen.

This case pointed out once more how important it is, when more than one public authority is involved in protecting the interests of children, that the authorities work together and include the youth in the process.

In the meantime, the youth was becoming more and more frustrated when the talent agency refused to help her without a signed contract. Her social worker told her that the Public Trustee would not authorize the contract, but did not have the time to give her the reasons for the decision. Without knowing the reasons, the young woman believed that the social worker and the Public Trustee were being unreasonable in preventing her from pursuing her dream.

As a result of the Ombudsman's intervention, the social worker agreed to give the youth a copy of the letter from the Public Trustee, which detailed her critique of the contract, clause by clause, and described the process by which a minor is given capacity to enter into a legal contractual agreement. The staff at the Public Trustee agreed to discuss the matter in detail with the young woman. She was satisfied once she understood the process and the role of both the social worker and the staff at the Public Trustee in protecting her interests.

This case pointed out once more how important it is, when more than one public authority is involved in protecting the interests of children, that the authorities work together and include the youth in the process.

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After Gove

In a Guest Comment the Honourable Judge Thomas J. Gove summarized the work and recommendations of his ***Inquiry into Child Protection****, occasioned by the death of five-year-old Matthew Vaudreuil. His complete report comprises two volumes,* ***Matthew's Story*** *and* ***Matthew's Legacy****. The concluding words of his comment were: I am calling for radical change. I have no illusions about how difficult this will be...The choice is clear. We can tinker, knowing that tinkering cannot restore a flawed system. Or we can, together, build a new child welfare system that puts children in the centre. This would be Matthew's Legacy.*

In November 1990 the Ombudsman released *Public Report No. 22: Public Services to Children, Youth and Their Families. The Need for Integration.* The report was the result of an investigation into the death of a youth who was in care. The first of the Ombudsman's seventeen recommendations was:

> ***That a single authority within government be established with a formal mandate, executive powers and an adequate resource base to ensure uniform, integrated and client-centred provincial approaches to policy setting, planning and administration of publicly funded services to children, youths and their families.***

Other recommendations included the need for integration of services, consistent practices and standards, explicit complaint resolution procedures that are easy to use and the creation of an independent advocate.

Five years later, Judge Gove issued the *Report of the Gove Inquiry into Child Protection.* He identified that public services to children were fragmented and that the lack of integration meant children "fell through the cracks." He made over one hundred recommendations to bring about significant changes in the way the government delivers services to children. He recommended a complete restructuring of public services to make them principle-based, universal, accountable, efficient and child-centred. Central to this new child welfare system was integration. Judge Gove recommended that a Minister for Children and Families be appointed to co-ordinate integrated services for children.

He also recommended that government appoint a Transition Commissioner to oversee the implementation of his recommendations over a three-year period. The Ombudsman agreed to his recommendation that she monitor government's progress in implementing these proposed reforms.

One of the first steps the Ombudsman took was to ensure that government appoint the Transition Commissioner within the time frame established by the report. On January 29, 1996 Ms. Cynthia Morton, former Deputy Minister of Education, was appointed for a term of three years, to take the province through the transition to an integrated child welfare system.

On September 17, 1996 Ms. Morton submitted a report to Premier Glen Clark, recommending that changes not wait for the three years. She detailed some changes that could be, must be, put into place immediately to ensure the safety and well-being of children. The Premier reacted decisively and promptly. He appointed Ms. Morton to be the Children's Commissioner with a mandate to review immediately deaths of children, past and present. Ms. Morton will also ensure that any death or serious injury to a child that raises public policy questions will be investigated, that we might learn how to prevent future tragedies.

On September 23, 1996, nearly six years after the release of the Ombudsman's report recommending integration of public services for children, the Premier announced the creation of the first Ministry for Children and Families. Under the leadership of The Honourable Penny Priddy, the ministry will be responsible for the delivery of services for children formerly provided by the Ministries of Health, Education, Attorney General, Women's Equality and Social Services. These include:

- community health services
- youth forensic psychiatric services
- mental health services for children and youth
- alcohol and drug services
- public health (hearing, speech and language, nutrition)
- Kids at Risk
- school meal program
- summer school programs including the deaf-blind summer program
- youth custody centres
- youth probation
- child care programs
- child, family and community services program (including child protection)
- children in care services
- adoptions
- services to people with mental handicaps or multiple disabilities.

The death of a child is always devastating. The actions taken by government in 1996 demonstrate that we can learn from tragedy. Although the creation of a ministry responsible for the integrated delivery of services to children is long overdue, it is a courageous and challenging step. The Ombudsman has heard from those who reject the changes and are threatened by them, and those who embrace the changes and are excited by them. Regardless of how we view the transformation, it is now with us and will, we hope, benefit the children and youth of British Columbia.

The death of a child is always devastating. The actions taken by government in 1996 demonstrate that we can learn from tragedy.

The Ombudsman will continue to monitor the way in which government responds to the remaining recommendations of Judge Gove's Inquiry.

Guest Comment

Children's Commission

by Cynthia Morton
Children's Commissioner
at the invitation of the Ombudsman

On September 23, 1996 Premier Clark announced a massive restructuring of government to better serve the needs of children and families. The Ministry for Children and Families (MCF) was created and a Children's Commissioner, responsible to the Attorney General, was appointed.

The Children's Commission has four main roles:

- **To review all children's deaths and critical injuries and to investigate suspicious or unusual deaths of children known to or in the care of the ministry.**
  By reviewing or investigating all deaths the Children's Commissioner will be able to see patterns and trends that will provide information concerning risk factors. In this way child-serving agencies will be able to make necessary changes in service delivery.
- **To ensure the new ministry establish fair and adequate processes for receiving, investigating and responding to complaints.**
  The Children's Commission is working extensively with the Ministry for Children and Families to develop internal complaint processes.
- **To integrate complaint and review processes for children.**
  We will be working with the Ombudsman and other partners to develop a "single window" external complaint and review process. We will be going to Cabinet with recommendations for streamlining complaint processes to ensure they are accessible to children.
- **To ensure annual reviews of children with continuing care orders.**
  The Children's Commission has an important role to play in preventing foster care drift. We are working with MCF to develop a process for regular, consistent and in-depth review of case files to ensure services are appropriate and timely for children in care.

Another role of the Children's Commission is to complete detailed, consistent, timely and independent research in every area of its mandate. Such research will enable the Children's Commission to make recommendations on a regular basis so that the system can respond more quickly to issues of service delivery and standards, and promote better practice.

I will report out regularly in the first year of operation. The regular reports will be used as a tool to better understand areas of success and areas needing improvement in the child- and family-serving system. I will also provide an annual report that will analyze the successes and challenges experienced by the child-serving ministry as we begin to implement a more child-centred system.

I look forward to continued work with the Ombudsman and with the Ministry for Children and Families, the Child, Youth and Family Advocate and our shared communities of children and families, as we move towards a system that ensures children receive the services they need to grow and develop into healthy, happy and productive citizens.

The Young and the Needy

The Ombudsman has reported previously on problems young people encounter when they apply for income assistance. Youth under the age of nineteen years may apply for assistance for a number of reasons. They may be unable to reside at home because of abuse or irresolvable conflict. They may have been living independently for some time and for various reasons find they are unable to support themselves. Whatever the reason, when they apply for benefits it is not unusual for young people to complain to the Ombudsman that they were not treated fairly or that they were told that they could not apply for benefits solely because of their age.

The Ombudsman hopes that the provisions in the *Child, Family, and Community Services Act* that enable young people to enter into an independent agreement with the Ministry for Children and Families will address the current problems. Until that section of the Act is proclaimed and in effect, the Ombudsman will continue to investigate complaints that youth are not being treated fairly when they apply for income assistance benefits.

Children & Youth Team

Files Open Dec. 31, 1995	367
Files Received in 1996	1,205
Reopened	0
Closed – No Investigation	361
Closed – Investigation	948
Internal Team File Transfers	44

Health

Regionalization of Health Care

The Ministry of Health planned to transfer responsibility for health care to regional health authorities in mid-1996. The Ombudsman's Health Team was preparing to arrange its activities to coincide with the scheduled transfer when the minister announced that the regionalization initiative would be halted pending a review by a Caucus Committee.

The Committee, or Regional Assessment Team, reported to the minister in October. She made public in late November an amended plan for regionalization. Some key changes are:

- the number of Regional Health Boards (RHBs) will be reduced from twenty to eleven by limiting them to only the more urban areas of BC and amalgamating some RHBs (for example, Richmond with Vancouver)
- rural regions will be served by forty-five Community Health Councils (CHCs)
- non-hospital services in rural areas will be provided through Community Health Services Societies
- in all areas of the province, there will be only one level of regional governance (an RHB or CHC), rather than two.

The transfer of funding and governing authority is now scheduled to occur on April 1, 1997. The changes brought about by regionalization will pose challenges for many individuals and agencies. These include the Ombudsman's Office. Complaints will now arise on a regional basis rather than being directed against centrally organized programs of the Ministry of Health. Our goal in 1997 is to get to know the regional authorities and work with them to ensure they develop mechanisms to respond fairly to concerns raised within their regions.

Time to Mend ☆ Depends Who Asks

One of the Ombudsman's major undertakings is to encourage authorities to develop their own processes for handling complaints. When the Ombudsman receives a complaint against a hospital, for example, she refers the complainant to the hospital's review process. The Ombudsman also contacts the hospital and asks them to investigate the case and report back to both the complainant and the Ombudsman. The outcome is usually satisfactory, as the following example illustrates.

A woman was admitted into a day-care program to have a mass removed from her breast. She states that she was in surgery for possibly twenty minutes and in the recovery room for approximately another ten to fifteen minutes.

After her brief stay in the recovery room, she was sent back to the day-care room, where she had an ice pack placed on the incision for approximately fifteen minutes. She was then sent home with only a butterfly bandage over her incision.

By that evening, she was hemorrhaging and was rushed into a hospital close to her home. This hospital placed a pressure bandage on her incision and sent her home.

The woman stated that she became badly infected as a result of her treatment and has experienced a great deal of pain and emotional stress. She was very upset by the poor level of care she received at the hospital that carried out her day surgery and the neglect and lack of concern she experienced.

After listening to her account, we contacted the hospital and asked them to investigate the complaint. We told the complainant that if she was unhappy with the outcome of the hospital's investigation, she could contact our Office again.

In order to clarify the woman's statement that she experienced "poor quality care," a hospital representative phoned her to discuss the issue. The woman said that she was very happy with her pre-operative care, but was unhappy about feeling rushed out of the day care after thirty-five minutes post-op.

The hospital representative explained to her that she had actually spent fifty minutes in the operating room, and because she was given a local anaesthetic that produced mild sedation, she was transferred to day care. Hospital policy dictates that patients who undergo a local anaesthetic in the main operating room are transferred immediately to day care for their recovery phase, not to a recovery room.

During her stay of approximately thirty-five minutes in day care, her breast dressing was intact and an ice pack was applied to her breast as requested by the physician in charge of her operation. Ice packs are applied to a site for fifteen minutes and removed for twenty minutes. Since the woman was discharged after thirty- five minutes, she had the ice pack on for only fifteen minutes. The hospital records showed that no untoward bleeding or bruising associated with the surgical site was noted. The woman had steri-strips applied over her incision, according to her surgeon's instructions, and not a "butterfly bandage."

According to the hospital's "Criteria for Discharge" from day care, a local anaesthetic patient must stay for a minimum of thirty minutes. The hospital's scoring system for discharge rates a number of indicators. The minimum discharge score is seven. The woman was rated as twelve on the scoring system, hence was discharged after thirty-five minutes.

When this process was explained to the woman, she understood that she had met the discharge criteria. However, she felt that, since she was still dizzy from the mild sedation, she was not ready to leave within the time established by the hospital. The hospital representative apologized to her for this and clearly indicated that the hospital did not intend to rush their patients out.

The hospital representative also told the woman that she had reviewed her letter of complaint and her chart with the nurse who gave her post-op care. She was assured that her concerns had been noted, so that others would not have her bad experience.

Since the woman was admitted with a diagnosis of chronic infection, she agreed with the hospital representative that the care she received in day care actually had nothing to do with her recurrence of infection nor with the bleeding incident.

After talking with the hospital representative the woman was satisfied with how the hospital had dealt with her complaints about care. The Ombudsman's Office followed up to ensure a satisfactory outcome for our complainant.

A woman complained to the Quality of Medical Performance Committee of the College of Physicians and Surgeons because she believed that her sister's cancer should have been diagnosed earlier. The committee considered the medical opinion of a gastroenterologist, even though the woman had objected to the admissibility of the document. She felt that, in doing this, the committee had breached the rules of administrative fairness. She then contacted the Ombudsman. She explained that she had contacted the specialist to request an opinion regarding her sister's care, but the physician had refused. She objected to the fact that the committee had obtained the same specialist's opinion without her approval, especially as the opinion was detrimental to her case.

The Ombudsman found that this committee was investigative in nature, and not a quasi-judicial tribunal, as the woman appeared to believe. The rules of administrative fairness for an investigative body are somewhat different from what is expected in the more formal hearing of a quasi-judicial tribunal. We also noted that the committee had asked for the specialist's opinion because the woman had requested help to obtain the opinion when the specialist refused her request. Having obtained the opinion, the committee would have acted improperly if it then refused to consider the evidence. We explained to the woman that the committee was expected to consider all available evidence before coming to any conclusion regarding the quality of care provided. We found their action to be administratively fair.

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The College Responds

Ombudsman Special Report No. 16 dealt with an investigation of the College of Physicians and Surgeons regarding its handling of the complaint of sexual assault brought by Ms. Nikki Merry against a physician, a member of the College. Two recommendations remained outstanding at the end of 1995.

Regarding the recommendation

> *that the Ministry of Health and the Attorney General keep the College apprised of all proposed and proclaimed amendments to their governing statute:*

procedures are now in place to ensure that the College of Physicians and Surgeons is informed by government of all proposed and proclaimed amendments to their governing statute in an efficient and timely manner.

Regarding the recommendation

> *that the Office of the Crown Counsel should include, as part of their review of the policy entitled "Professional Organization – Allegations of Criminal Offenses by Members," an examination of ways to achieve an improved exchange of information among the investigating police agency, the Criminal Justice Branch, and the College of Physicians and Surgeons, in order to ensure that the College is able to fulfill its obligation to investigate all complaints received from the public in a timely manner. Any protocol developed in this regard should clearly identify the process to be followed to establish if the College should cease investigating a matter pending any criminal investigation and/or prosecution of which they are made aware:*

the Office of the Crown Counsel has agreed to develop a protocol and is waiting for clarification of how the *Freedom of Information and Protection of Privacy Act* will affect the exchange of information, before finalizing the protocol.

Health

In with the Old

Very often change, even for the better, is difficult and confusing. Pharmacare discovered this when its new program, PharmaNet, went on-line in September 1995. During the start-up period, many manual claims still had to be processed. As well, many beneficiaries waited until the year end to forward their claims for the period prior to the implementation of PharmaNet, and many included claims that had already been adjudicated electronically on PharmaNet. Staff spent many extra hours carefully considering each claim submission.

Unaware of all this, a woman contacted our Office on April 19, 1996 because she had not yet received payment for a claim submitted in early December 1995. Although she had moved nine years earlier, a friend now living at her former address had told her that an envelope from Pharmacare had arrived, and that she had forwarded it to the woman's current address. The woman was concerned that the cheque had been issued, mailed to the wrong address, and then returned to Pharmacare by Canada Post. However, she was unable to reach the plan by telephone to inquire about the cheque because of busy phone lines.

When we contacted Pharmacare, we were aware that there was more involved than delay in processing. The plan confirmed that the woman's cheque had been issued on April 1, 1996, and mailed to the wrong address. The cheque had then been returned to the Ministry of Finance. Pharmacare advised that in the process of transferring information to PharmaNet, the woman's old address had mistakenly been entered. The plan forwarded a new cheque to the woman, along with a letter of apology for the delay. The woman was pleased to receive both her money and the apology, although she remained mystified at the sudden reappearance of an address now nine years out of date, since she had been receiving mail from the plan at her new address.

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Mental Health Advocate

The Ombudsman reported on the success achieved in having virtually all ninety-four recommendations from ***Public Report No. 33 – Listening: A Review of Riverview Hospital*** *(May 1994) accepted and implemented. She was pleased in particular to report the commitment of the Ministry of Health to appoint a provincial Mental Health Advocate as outlined in Recommendation 10-1 of* ***Listening****.*

Unfortunately, as 1996 came to an end the commitment had still not been fulfilled. It appears that the momentum developed through the consultative process, which led to drafting a mandate and terms of reference for the Advocate, has stalled.

The Ombudsman urges the Minister of Health to go forward with this important initiative. The role of advocacy in promoting the interests of persons with mental illness in BC and their families, has been recognized only in recent years. Advocates need to be supported if their role is to become firmly established in the delivery of mental health services. The Ombudsman believes appointing a Mental Health Advocate is a necessary part of that support.

In Whose Best Interest?

The Office of the Public Trustee of BC (OPT) had managed a woman's estate in the last years of her life, acting as her "Committee" under the *Patients Property Act.* After her death, her son complained to the Ombudsman about a potential conflict of interest on the part of the Public Trustee. When he reviewed the statements of account, he discovered that the Committee had failed to collect Guaranteed Income Supplement (GIS) payments for her for a two-year period. The loss from the missed payments was calculated at over $10,000.

As the named Executor in her will, he made a claim to the OPT for compensation to the estate for the loss. The OPT offered to pay approximately 40 per cent of the amount then owing, including interest. He was told that the alternative to settling the claim was litigation. He agreed to the offer, and signed a release on behalf of the estate.

The son later realized that at the time of the settlement, he had not yet been appointed Executor by the court in probate, and the OPT was continuing in its role as Committee. He raised with the Ombudsman the question of whether it was appropriate for the OPT to negotiate the compromise of a claim against it for financial mismanagement, while it still had obligations to act in the best interests of the estate.

The Ombudsman concluded that the fiduciary or "trust" obligations of the Public Trustee as Committee of an estate meant that it was not free to merely resist a claim made against it by the estate, as if it were dealing at arms-length with a third party. That is, the Committee cannot place its own interests ahead of those of the client's estate. For one thing, the Committee has detailed knowledge, not generally available to other persons, of the actions it has taken on behalf of the client's estate. If the OPT acting as Committee does not believe it is responsible for a loss to a client's estate, or disputes the amount of a loss, it still needs to ensure:

- that it has made fair disclosure of its actions
- that the estate is independently represented and advised.

In this case the OPT was aware that a mistake on its part had caused a loss of an ascertained amount to the estate. The Ombudsman concluded that it was inappropriate for the OPT to use the costs and inconvenience of litigation as "leverage" to induce a complainant to compromise the claim.

We proposed to the Public Trustee that the balance of the claim, with interest, be paid to the estate. The Public Trustee agreed, and the matter was resolved.

Really a Canadian?

How important is it to be able to prove that you're a Canadian citizen? For a woman who moved to BC from Alberta with her thirteen-year-old son, it was critically important. The woman began work in BC in November 1995, and her employer applied for Medical Services Plan coverage in May 1996. In June, she was notified that the application had not been processed, pending receipt of birth certificates for her and her son. The woman explained to the Ombudsman that she had lost both birth certificates in the move, and had not obtained replacement copies. She had included copies of her Alberta medical card, Social Insurance Number card, along with identification related to her Metis background. While she agreed that none of this identification established Canadian citizenship, she felt that the plan was unfair in refusing to grant coverage. As she was now six-and-a-half months pregnant, at the age of forty-one, she was very concerned at the lack of medical coverage.

The *Medicare Protection Act* restricts medical coverage to a resident of British Columbia, defined as a person who:

- is a citizen of Canada or is lawfully admitted to Canada for permanent residence
- makes his or her home in British Columbia
- is physically present in British Columbia at least six months in a calendar year.

The Medical Services Plan is unable to grant coverage to those who do not meet these three criteria. A birth certificate was required in order to clearly establish citizenship. Alberta does not link coverage to citizenship, and so proof of past medical coverage from that province was unhelpful. Social Insurance cards indicate a right to work only, and can be issued to refugees awaiting clarification of their immigration status. Identification related to the woman's membership in various Metis and aboriginal organizations similarly failed to document citizenship. The Ombudsman was concerned that the woman had allowed both herself and her son to go without coverage for so long, since obtaining replacement birth certificates would have taken about a month. Nevertheless, we remained concerned that the woman and her son were without coverage, especially considering the woman's pregnancy.

When we contacted the Medical Services Plan, they agreed to provide coverage for ninety days, pending receipt of birth certificates for the woman and her son. The woman was relieved to learn that she finally had coverage. She planned to apply for the replacement birth certificates immediately, allowing plenty of time to obtain them before the expiration of the ninety-day period.

Come Visit

Hospital staff have to deal with more than medical issues. Often family dynamics require therapeutic attention, as this case illustrates.

Grandmother was a resident in an extended care unit. Her granddaughter contacted the Ombudsman because she and her family were being restricted to only sporadic visits. The problem seemed to centre on an ongoing dispute between her family and the grandmother's husband. The granddaughter had raised her concerns with numerous staff at the hospital, including the head nurse on her grandmother's ward and the hospital's director. She did as requested and wrote to the hospital explaining the problem. The hospital promised to set up a meeting between her and the step-grandfather in an attempt to reach a solution.

Since the woman had some doubts about the process, she asked if our Office could monitor the negotiations for fairness. We agreed to become involved in a limited fashion and had numerous conversations with both the woman and the hospital staff about how we might assist in the process.

But prior to our involvement in a meeting, we were told that the parties had already met. The meeting resulted in a reasonable schedule being set up for the granddaughter and her family to be able to visit their grandmother. We confirmed with the woman that she was satisfied with the result. She was, and thanked us for our involvement.

Health

How Much Care?

The Ombudsman is neither an advocate for persons nor a "fixer." She is concerned with fair treatment, and often cannot change unhappy situations for the better. The following case illustrates this point.

A woman had been in the extended care unit of a regional hospital for four years. She felt she was at a disadvantage because she was a young person in a "geriatric" facility that seemed to be tailored to the elderly. She contacted the Ombudsman and outlined her complaints as follows:

- the care plan the hospital staff had designed for her was not effective
- she had been told there was not enough funding or staff to take care of her needs
- she was warned that she had too much "stuff" in her room
- she was told she would have to see a geriatric psychiatrist and was worried that she would be moved to the psychiatric wing of the hospital
- staff seemed to want to "dump" all their dissatisfaction and stress on her shoulders.

She acknowledged that she was opinionated and confrontational, but said she simply wanted to ensure that things were done correctly, since the place was her home.

We contacted the hospital and requested that they review the situation and report back to us with the results. The hospital's Director of Residential Care Services sent us a comprehensive report.

Regarding her care plan:

- All disciplines, including nursing, pharmacy, food services, social services, physician, medical co-ordinator, consultants and administration, had worked together to develop and maintain the woman's extensive and detailed care plan.
- The Resident Care Co-ordinator met with the woman for half an hour weekly to discuss her care and attempt to solve any problems she had.
- A consultant from the extended care hospital programs division of the Ministry of Health visited the facility at their request. The consultant found that the woman's care plan far exceeded the average expectations of care in extended care facilities.

Regarding scheduling and staffing changes:

- The hospital had recently undergone major organizational changes. Scheduling of staff, including many additional casual staff, was done by the scheduling office for all units within the hospital.
- Frequently there were new staff on duty in the woman's unit who were not familiar with her care plan. In order to facilitate her care, staff had made up a booklet that clearly outlined the duties of each shift in relation to the woman's care. In addition, supervisors and charge nurses on night shift were instructed to check personally with casual staff to prevent problems.

Regarding the "stuff" in her room:

- The woman's private room had become so crowded with things she had brought from home that it was difficult to clean and created extra work for the housekeeping staff.

Regarding shortage of staff:

- Although the level of care required for the average patient has increased, the staffing levels have not increased to meet the demand. Staff are hard pressed to keep up. Unfortunately, the woman's demand for care exceeded what was provided all the other residents. She was already receiving more hours of care than any other resident in the facility.

Having considered the responses of the hospital, the Ombudsman's questions were:

- did the hospital respond to the woman's complaints in a reasonable and fair manner
- was the level of care provided by the hospital both appropriate and adequate?

The answer to both questions was yes.

We could not substantiate the young woman's view that she had been treated unfairly by the hospital's dispute resolution processes. The hospital had apparently responded to all of her concerns in a fair and appropriate manner.

Her care plan had been painstakingly developed by the care staff and every effort had been made to familiarize appropriate staff with its specifics. Although the hospital suffered from shortage of staff, the woman had received more hours of care than any other resident.

The fact that staff had suggested to her that there were possible alternatives for her care, was not, in our view, unreasonable, given her continued dissatisfaction with the level of care she received. Staff felt they were giving her the best care possible, under the circumstances.

We advised the young woman, after she had voiced some concerns about staff taking some type of punitive action against her for having involved our Office, that s.15.1 of the *Ombudsman Act* made it illegal for them to take any such action.

In our closing letter to the woman, we told her that while we empathized with her and could realize some of her frustration, we had, by necessity, limited our review of the situation to whether or not she had been treated unfairly by the hospital staff or its processes. Any consideration of her medical treatment or the diagnostic aspects of her care were beyond our jurisdiction. After a thorough review of all of the information available, we were unable to substantiate her complaint of unfair treatment and inadequate care.

We encouraged the young woman to continue working with the staff at the facility to maintain an effective and appropriate care plan and, if necessary, demonstrate a willingness to consider other alternatives.

The Ideal Helper

A woman with Lou Gehrig's disease, who required round-the-clock help, had an ideal home care worker provided by the Ministry of Health. The worker not only provided excellent care but also became a family friend. When she had to return to Chile for a short period for family reasons, a new worker was provided who could not give the level of care the woman needed. The husband took time off work to care for his wife himself.

When the former worker returned to the province, she was laid off because of a recent strike. The husband felt his only recourse was to stay home and care for his wife, as no one was found to provide the quality of care of the first worker. He contacted everyone he could in the ministry, with no success, and finally came to the Ombudsman.

When we contacted the local Continuing Care Manager, we were told that a new care plan for the woman was awaiting approval. We reported this development to the husband, discovered that he was aware of the proposal and was satisfied with the new arrangements. We invited him to call the Ombudsman again if things did not work out as planned, but we did not hear from him again.

NEWSFLASH

Serving Our Seniors

The Ombudsman can investigate many agencies serving seniors in the community. Many seniors move to intermediate or long term care facilities when they are no longer able to manage in their own homes or after discharge from an acute care hospital following an illness. Many people continue to live in their own homes and to receive some services from government. Some, like Pharmacare, are provided through the provincial Ministry of Health. Others that were historically provided by the province are being devolved to the new health delivery system "closer to home." Much about what the new model looks like for seniors is unknown and to many people somewhat confusing.

My Office has an ongoing commitment to systemic reviews, is concerned when here is public confusion in a particular sector and is especially interested in those groups who may not be in a position to come forward to my Office with a complaint. For these reasons, I intend to produce a report in 1997 on how we can better meet the needs of our seniors.

Follow-up
Ombuds*report 1995*
page 21

RNABC Gives Reasons

In May 1995, as a result of an investigation of an appeal denied by the RNABC board, the Ombudsman recommended:

- *that the board hearing an appeal give adequate and appropriate reasons for denying an appeal*
- *that the quorum (for the purpose of appeals only) be reduced from a simple majority to five members to facilitate hearing appeals and giving reasons for decisions.*

The RNABC accepted both recommendations. An amendment to the by-laws incorporating the recommendations was passed by the membership at its annual meeting on April 11, 1996. The amended by-law received Order in Council approval on August 15, 1996.

Health Team

Files Open Dec. 31, 1995	267
Files Received in 1996	530
Reopened	1
Closed – No Investigation	187
Closed – Investigation	366
Internal Team File Transfers	2

Natural Resources

Bear-aucracy

In 1993, Mr. C purchased a hunting territory from a guide outfitter. Attached to the licence and associated certificate were some administrative guidelines restricting the numbers and species of wildlife that could be harvested during given periods of time. Prior to the purchase Mr. C made every effort to find out from ministry officials what changes might be coming regarding the administrative guidelines and how those changes would be dealt with under the terms of the *Wildlife Act.* Based on information he received, he proceeded to advertise and book hunting activity through various trade shows in North America and Europe.

This case served to highlight an often difficult distinction between legal liability for administrative action and responsibility for administrative unfairness.

Mr. C complained to the Ombudsman that in 1994 his business activities were abruptly curtailed by questionable ministry action. He objected to conservation measures taken by the ministry in conjunction with an apparently unlawful imposition of a quota for grizzly bear upon its licensed activities. Mr. C alleged that the imposition of the quota, along with a questionable request to attend a discipline-type hearing pursuant to the *Wildlife Act*, had resulted in extensive and irreparable damage to his business reputation and the future viability of his company, notwithstanding that the ministry rescinded the quota three weeks after imposing it.

The investigation into this matter was lengthy. There was extensive consultation and I made final recommendations as provided for by the *Ombudsman Act.* Concurrent with our investigation, Mr. C sued the ministry for illegal exercise of authority, abuse and/or negligent use of authority and bad faith on the part of the Wildlife Branch. These issues failed at trial.

The Ombudsman's investigation dealt with issues different from those in the legal action. Even though the ministry participated in mediation in an attempt to settle the matter, the Ombudsman issued potential findings pursuant to s.16 of the *Ombudsman Act.* The ministry's response was to await the outcome of legal proceedings, whereupon it extended an offer of compensation if the plaintiff would abandon the right of appeal and sign a release regarding future legal activity. It appeared that the province, although not legally liable in this matter, did recognize some "moral culpability" for the consequences of its actions. I acknowledged the ministry's attempts to settle the matter prior to trial and supported that effort from the outset. I acknowledged also that the ministry remained open to settling the matter with the complainant in consideration of abandoning his right of appeal.

The Ombudsman's investigation dealt with issues different from those in the legal action.

This case served to highlight an often difficult distinction between legal liability for administrative action and responsibility for administrative unfairness. Although an authority might conduct itself according to the legislation and regulations governing its activity, there remains an element of its conduct for which it must be accountable, which may or may not be subject to review by the courts. The issues addressed by the courts in this case were different from the issues investigated by this Office. Consequently, I issued findings pursuant to s.22 of the *Ombudsman Act* and recommended that the settlement offer be increased. As the complainant subsequently accepted the ministry's post-trial offer I had no choice but to close the file.

Hydro with a Heart ☆

A physician was forced to discontinue his profession prematurely because of deteriorating health. In 1994 he came to the Ombudsman because of difficulties he was having obtaining tax deferment on his property. In an effort to meet his financial obligations, Dr. R had exhausted all the resources he had built up during his professional life and had indebted himself considerably to friends and family.

His attempt to have his property taxes deferred was one of many efforts he was making to satisfy his financial responsibilities. In fact, his application to the Property Tax Deferral Program had been dealt with professionally and thoroughly by the ministry responsible. Staff had determined that the relevant legislation had been interpreted correctly and that he did not qualify for tax deferment under the program. One of his financial responsibilities was a very considerable debt which had accumulated with the BC Hydro and Power authority.

We acknowledge the accommodation made by BC Hydro. It clearly illustrates the corporation's ability to respond sensitively when difficult circumstances confront one of its customers, without compromising its need to remain accountable.

Having determined that there was no opportunity for property tax deferment and that this decision had been arrived at fairly, the Ombudsman approached BC Hydro to explore what alternatives might be available so that the accumulated debt could be satisfied. BC Hydro was well aware of Dr. R's circumstances and, since most alternative arrangements available under its regulations had been explored, there appeared to be no choice but for BC Hydro to satisfy its statutory obligation and seek resolution of the debt by taking severe measures. This meant that Dr. R's electricity would be disconnected with no possibility of reconnection until the outstanding debt had been satisfied.

BC Hydro recognized that there would be no benefit to the corporation nor any business reason to disconnect the service. In an extraordinary attempt to satisfy its statutory mandate, BC Hydro made an arrangement with Dr. R that would permit him to continue receiving electrical service. The arrangement stipulated that the outstanding debt, which was a substantial sum, would be held in abeyance until such time as the corporation could stand as a creditor to the doctor's estate. A condition of the agreement was that all future electricity would be paid for by way of Hydro's "equal payment plan" and that Dr. R would keep that account current.

... his application to the Property Tax Deferral Program had been dealt with professionally and thoroughly by the ministry responsible.

We acknowledge the accommodation made by BC Hydro. It clearly illustrates the corporation's ability to respond sensitively when difficult circumstances confront one of its customers, without compromising its need to remain accountable.

A Molehill Out of a Mountain

Before issuing a septic permit, the Ministry of Health required a homeowner to construct a large berm in his yard. The ministry maintained that the berm was necessary to raise the elevation of the field above the two hundred year floodplain level, to protect against possible flooding. The homeowner argued that all other houses in his neighbourhood had ground level septic systems and it would be absurd to have a large berm in his front yard.

Having reviewed the matter with numerous ministry personnel over a period of several years, and being unable to resolve his concerns, the homeowner contacted the Ombudsman.

The Ombudsman investigated the situation and consulted with the Chief Environmental Health Officer. The ministry acknowledged that, according to the terms of its policy, sufficient flood protection would be achieved by a modest elevation in the disposal field. The homeowner was quite prepared to make this adjustment, and the matter was resolved to the satisfaction of everyone involved.

Safe Aboard

Many people who frequently travel on BC Ferries believe that "time is money." They are prepared to pay an up-front cost of over $500 to purchase ALT (Assured Loading Ticket) booklets to guarantee a place on the ferry. But the **actual** cost of each trip is also important for many travellers.

As of October 1996, customers who make the request when presenting ALT tickets will receive a receipt showing the $20 surcharge.

One customer called the Ombudsman after trying unsuccessfully to convince BC Ferries that the ticket booth receipts should reflect the real cost of using an ALT, the cost of transport for vehicle and passenger and, in addition, a $20 surcharge. The caller is a self-employed consultant who uses the tickets while on business, then bills his actual disbursements under his contract. When he used an ALT that cost $52.50, the receipt would show $32.50. He had no way to recover the extra $20 without a receipt. After some discussion the Ferry Corporation agreed to modify its practice. As of October 1996, customers who make the request when presenting ALT tickets will receive a receipt showing the $20 surcharge.

Natural Resources

Not in My Front Yard

An owner of lakefront property in a remote location objected when the Ministry of Transportation and Highways expropriated some of his property. The ministry took the action in response to requests of citizens for lake access and recreation space. The area the citizens wanted to use was very near to the owner's home and within his view of the lake. The purpose was to add to a historic road to allow a sixty-six foot right-of-way.

The property owner felt that the expropriation was for an improper purpose, that is, to allow the public to use his property not only for access to the lake but also for picnicking etc. The ministry argued that the expropriation was for valid road operation and maintenance reasons.

When contacted, the Ombudsman investigated the situation and held numerous meetings with the property owner, the citizens who had sought access and the ministry. They reached a compromise solution. The ministry agreed to install an alternate access point in a less controversial location, and the property owner agreed to dedicate another part of his property for this purpose. The ministry also agreed to take measures to ensure that the public used the access only for legitimate and intended purposes.

The Ombudsman and her staff commended all parties, including ministry officials, for their willingness to work towards a consensual resolution.

Hazardous Waste

The disposal of toxic and hazardous waste products is regulated in BC. Firms transporting wastes must be licensed; wastes must be delivered only to approved handling and disposal sites; and at every step along the way forms must be filled in. These forms document the passage of waste from source to terminus, recording what types and volumes of waste are produced and what is taken out of BC for "disposal." This information alerts the government about any wastes not accounted for. Some of the industry is hi-tech, but there are still one-person-one-truck operators, collecting and hauling some of the less hazardous wastes, such as bunker oil.

We suggested, and the ministry agreed, that it would be unfair to continue to monitor this licensee without information that his performance differed significantly from industry norms.

One such licensee called the Ombudsman to complain that the Ministry of Environment, Lands and Parks staff were "picking on" him, reading every one of his delivery manifests and "hassling" him if the numbers did not total and cross-reference properly. He was particularly incensed because his manifests showed him to dispose safely of more waste than he collected. He thought it should be obvious to everyone that he wasn't "dumping."

When we investigated this complaint we learned that the ministry investigated licensees only on receipt of a complaint from the public. In this case, because the investigation had revealed inaccurate manifests, the ministry was reviewing each new manifest and calling the licensee about every inconsistency. The licensee believed that this was destroying his credibility in the industry. We reviewed this complaint not to determine if the licensee was at fault, but to analyze whether the ministry was in fact treating him unfairly, and differently than it was treating other licensees. We discovered that the ministry has no program to audit manifests and no standard against which to measure a licensee's performance. The operator who complained to the Ombudsman might be breaching the legislation, but so might all the other licensees. We suggested, and the ministry agreed, that it would be unfair to continue to monitor this licensee without information that his performance differed significantly from industry norms.

Natural Resources Team

Files Open Dec. 31, 1995	399
Files Received in 1996	492
Reopened	0
Closed – No Investigation	82
Closed – Investigation	437
Internal Team File Transfers	42

Your Reports on Our Report

Since 1993 the Ombudsman's Annual Report has been published in a tabloid format of 28 – 32 pages. The rationale for shifting to this format was twofold: to make the report more accessible to more people, including our 2,800 authorities, and to save money. The cost saving was evident. In 1995 we distributed 10,000 copies at a small fraction of the cost of previous reports. To find out how the report was accepted we sent a survey to a random group, including deputy ministers, CEOs of Crown Corporations, local government officials and heads of self-governing bodies, asking for their feedback on several aspects of the report. Most found that it met their needs overall, and found it educational for both management and staff. A selection of their responses is summarized below. Some of the comments apply exclusively to the Ombudsman's annual report, and specifically the 1995 report, but others are equally applicable to annual reports from any government ministry or public body, so have been included.

Format

- *I applaud your efforts at making the report more readable and useful to bodies that relate to the Ombudsman's Office.*
- *I am very impressed with the content and layout of the report.*
- *A traditional "book" format is preferred to the "newspaper" format. We found the newspaper format "busy" and less convenient to store and to photocopy for staff, media and clients.*

Expectations of the Ombudsman's Annual Report

- *A report on investigations relating to ministries and other agencies within the Ombudsman's mandate, and some anecdotal case reports.*
- *Some indication of the nature of the complaints and whether they are changing over time. Recognition (explicit or implicit) of the constraints and limitations of program and policy development in times of restricted resources.*
- *Guidance on policy issues. Information on good resources.*
- *Provide leadership through examples of creative responses to issues of administrative fairness and the prevention and successful resolution of complaints.*
- *Educate government, the public and MLAs about the kinds of challenges and accomplishments around administrative fairness experienced in various program areas.*
- *How we might improve our response to minimize and better deal with complaints in future.*
- *An explanation of future plans and current activities, along with historical information on the previous reporting fiscal year.*
- *Identify policies in an agency that have generated a number of complaints.*

Length

Most found the report neither too long nor too short, but other readers commented:

- *The substantial length of the report is understandable given the wide range of investigations and matters that your Office is involved with. However, a shorter newsletter version might be appropriate for specific audiences.*
- *Fifteen to twenty-five pages would be a better length.* (N.B. the 1996 issue has been reduced to 28 pages from 32 pages in 1995.)

Comments/Suggestions

- *Make your (Ombudsman) title gender neutral and enable consistency throughout the report on this issue.*
- *Include gendered statistical information to highlight patterns of complaint and to monitor issues. Examples include, statistics showing the number of complaints your Office has received from single parents regarding Income Assistance, or tracking the type of complaint to the Employment Standards Branch by gender.* (N.B. neither gender, racial origin nor marital status are asked of complainants.)
- *Provide more information on forward-looking intentions and expectations of your Office, perhaps an article on plans, special initiatives or targets for the forthcoming year would be helpful and of interest to us as we proceed with our own plans to provide better service at decreased costs.* (N.B. The 1997 Annual Report will detail the new Strategic Plan for the Office.)
- *Add a section outlining how complaints are investigated.* (See pages 14,15.)
- *We liked the continuity in coverage of issues as they develop over time.*
- *I find the "thought" pieces (e.g. Saying You're Sorry, elements to consider on conflict of interest, principles of public involvement) of substantial use. I am less interested in the "stories" and have mixed feelings about their impact. The "victim-villain-hero" scenario (with occasional pats on the head to the villain for improving) is a fairly prominent theme and may undermine confidence in public authorities in a way that is not especially healthy. On the other hand, the "stories" add life and a sense of really making a difference. Perhaps fewer of them?*
- *We like the positive articles which focus on the way various offices have implemented changes to resolve issues in their program areas and how the Ombudsman's Office has assisted in this process. We would prefer not to see negative comments such as the Report Card on the Securities Commission which draw attention to delays in implementing recommendations.*
- *In addition to the statistical review, I found the guest contribution articles very interesting and informative.*

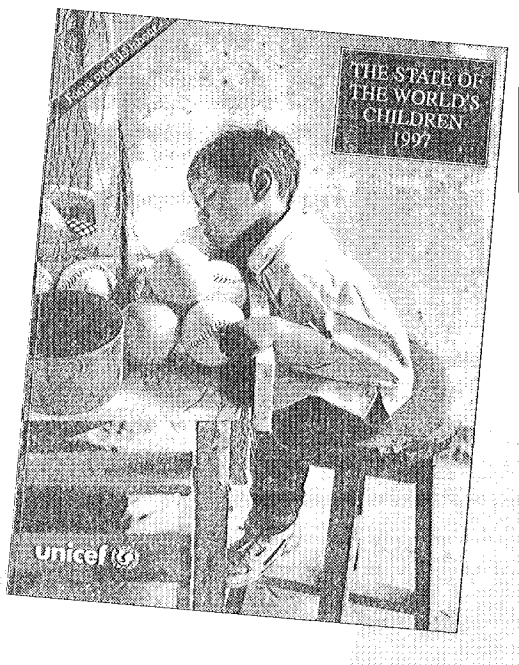
Ombuds World at a Glance

Speech

Improving Children's Lives: Child and Youth Labour in North America

excerpts from speeches given at a conference under the auspices of the North American Agreement on Labour Cooperation.

by Brent Parfitt, Deputy Ombudsman



I am defining child/youth as persons from birth to twenty-four years of age. Child labour is work that ranges from that which is beneficial, promoting the child's physical, mental, spiritual, moral or social development without interfering with schooling, recreation and rest, to that which is destructive, exploitative, hazardous and intolerable.

In its 1997 report, "The State of the World's Children," UNICEF determined that child labour is exploitative if it involves, among other elements:

- full-time work at too early an age
- too many hours spent working
- work and life on the streets in bad conditions
- work that hampers access to education
- work that undermines children's dignity and self-esteem, such as slavery or bonded labour and sexual exploitation.

The nature of the problem in British Columbia:

- More children and youth die from unintentional injuries than from any other cause; 90 per cent of the deaths and injuries are preventable.
- Youth aged fifteen to twenty-four, and predominantly males, have consistently accounted for a greater proportion of work-related accidents and injuries than workers aged twenty-five and over.
- Children under fifteen years of age may not be hired without permission from a director of the Employment Standards Branch. Two issues of concern are children in the film industry and children hired to sell chocolates on the street for "for profit" businesses.
- The commercial sexual exploitation of children.

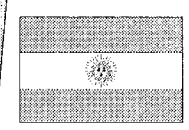
There are significant numbers of children involved in exploitative child labour that either do not have the protection of law or are neglected through lack of enforcement of existing laws. In some instances they are specifically excluded from the protections and safeguards available to other workers.

For the last decade the Office of the Ombudsman for British Columbia has had as a major focus, children, youth and other vulnerable groups in society, including persons with disabilities. The Office has taken great inspiration from the *UN Convention on the Rights of the Child.* Of specific interest is Article 32 of the Convention, which reads as follows:

> *States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*

The Office has used the Convention successfully in advocating for legislative and policy changes and views the Convention as a tool for social change.

International Ombudsman Institute



One hundred twenty-one Ombudsmen, representing eighty-six countries from around the world, attended the Sixth International Conference of the International Ombudsman Institute, October 20 – 24 in Buenos Aires, **Argentina**. The Ombudsmen are organized in six regions: Africa, Asia, Australasia and Pacific, Europe, Latin America and the Caribbean, and North America.

In a common declaration they reaffirmed the essential characterisitics of these Ombudsman institutions as:

- Independence
- Flexibility
- Accessibility
- Credibility

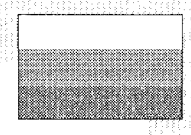
These institutions investigate complaints from the people about violation of human rights, injustice and other forms of maladministration by government and public services. Their role is also to monitor the administrative activities of governments and public services, to improve public administration and make their actions more transparent and accountable to the people.

As a result there is increasing emphasis on the necessity to develop effective national institutions for the promotion and the protection of human rights and fairness in treatment by governments and public services. These institutions should place a particular emphasis on the position of women, indigenous peoples and other groups who are disadvantaged.

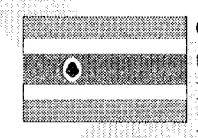
(Please see page 1 for excerpts from a paper delivered at the conference by Sir Brian Elwood, chief Ombudsman for New Zealand.)

VI CONGRESO INTERNACIONAL DEL INTERNATIONAL OMBUDSMAN INSTITUTE
VI INTERNATIONAL CONFERENCE OF THE INTERNATIONAL OMBUDSMAN INSTITUTE

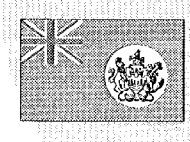
Russia and the UN Convention on the Rights of the Child



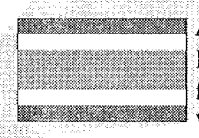
The UN Development Programs team visited Moscow in 1996 and proposed that Russia design a curriculum for its elementary schools around the *UN Convention on the Rights of the Child* in a way that incorporates and supports positive aspects of the culture and heritage of Russia. The target date for the completion of the project is the end of 1998, the fiftieth anniversary of the Declaration of Human Rights, and the due date for Russia's second report on implementation of the Convention.



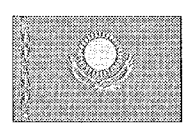
On February 24, 1997 the Congress of the **Republic of Costa Rica** elected Licda. Sandra Piszk Feinzilberg as Defensora de los Habitantes de la República de Costa Rica (Ombudsperson of the Republic of Costa Rica). She is the successor to Rodrigo Alberto Carazo.



Recently in **Hong Kong** the title, Commissioner for Administrative Complaints, has been changed by statute to Ombudsman. (See **Ombuds***report* 1995, page 16 for a report on the work of the office.)

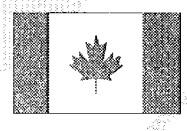


A journalist with the Bangkok Post e-mails from **Thailand**, "your Web site was very helpful to me in researching the office of Ombudsman in relation to the constitutional reform process which has just started here in Thailand. I will be interviewing one of the members of the constitutional drafting assembly and will show him the information contained on your site."



A UN delegation to **Kazakstan**, one of the newly independent republics of the former USSR, is assisting the government to move towards a democratic system. One of the focuses of the delegation was assisting in the building and strengthening of the Human Rights Commission. The Commission, established by Presidential decree, is charged with protecting the rights of the citizens of Kazakstan enunciated in the Constitution, domestic laws and ratified Conventions.

The delegation also offered assistance to the Commission to create an Educational Centre for Women, Children and Persons with Disabilities. These three groups are accorded special protection by both the Constitution of the country and the *UN Convention on the Rights of the Child.*

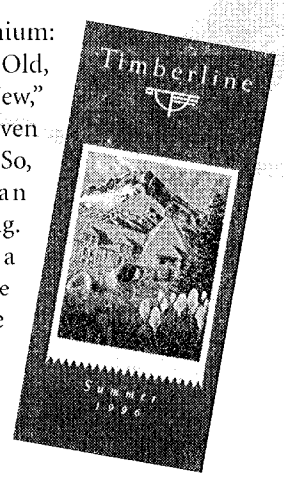


The Canadian International Development Agency (CIDA) has invited my Office to develop a proposal with a partner in Brazil under the Canada-Brazil Technology Transfer Fund. The purpose of the fund is to transfer expertise, including regulatory approaches, technical methodologies and/or institutional models to partner institutions in Brazil. CIDA is particularly interested in social development issues and public sector reform.

I have found a partner in the Ombudsman for Parana, a province of Brazil. We are currently developing a joint proposal to CIDA for funding. The Ombudsman of Parana wants to promote the "Little Ombudsman," to develop an educational process in the state public schools to teach citizenship concepts to children. I look forward to reporting on the progress of this project in 1997.

The Times They Are a Changing

The Twentieth Annual US Ombudsman Association Conference will be held at Timberline Lodge, Mount Hood, Oregon, May 28 – 31, 1997. The fact that the conference is being held in Oregon makes it possible for many Canadian Ombudsman staff to attend and to share with their US counterparts. Both the Ombudsman and the Deputy Ombudsman will be making presentations at the conference. Sessions on meeting the challenge of serving all members of the public will be conducted by Dr. Steve Kline of St. Paul's Hospital, Vancouver. The closing plenary address, "Entering the New Millenium: Something Old, Something New," will be given by Andrew So, Ombudsman of Hong Kong. Mr. So has a unique perspective on change as Hong Kong moves into its new status.



All Enquiries and Complaints Received by Year

Calling All Ombuddies

To say
I volunteer
for lack of
something
better to do
is to say
my time
has no value.
To say
I volunteer
therefore
I work for you
for nothing
is to say
the work
is worthless.
But to say
I choose to give
my time
to your work
is to say
we both
have value.

Volunteers recognize and respect the dignity of others; they are catalysts to improve the conditions and quality of life for individuals and communities; they contribute to "common-unity."

These values closely relate to the guiding principles of my Office. During the coming year I will be exploring the use of volunteers in Ombuds work. I would like to consider volunteers as part of an outreach program to groups that are not traditionally aware of Ombuds services, and as "Ombuddies" to those wishing to make complaints to the Ombudsman. Watch for more information in your local newspaper.

Giving Voice

Donner la parole

A follow-up to the **Stronger Children-Stronger Families Conference** held in Victoria in 1993 is now available. A CD-ROM, **Giving Voice, the Interactive Edition** updates the proceedings of the conference to include the UN's 1997 *Report on the State of the World's Children.* A copy of the CD-ROM will be provided to every school in British Columbia.

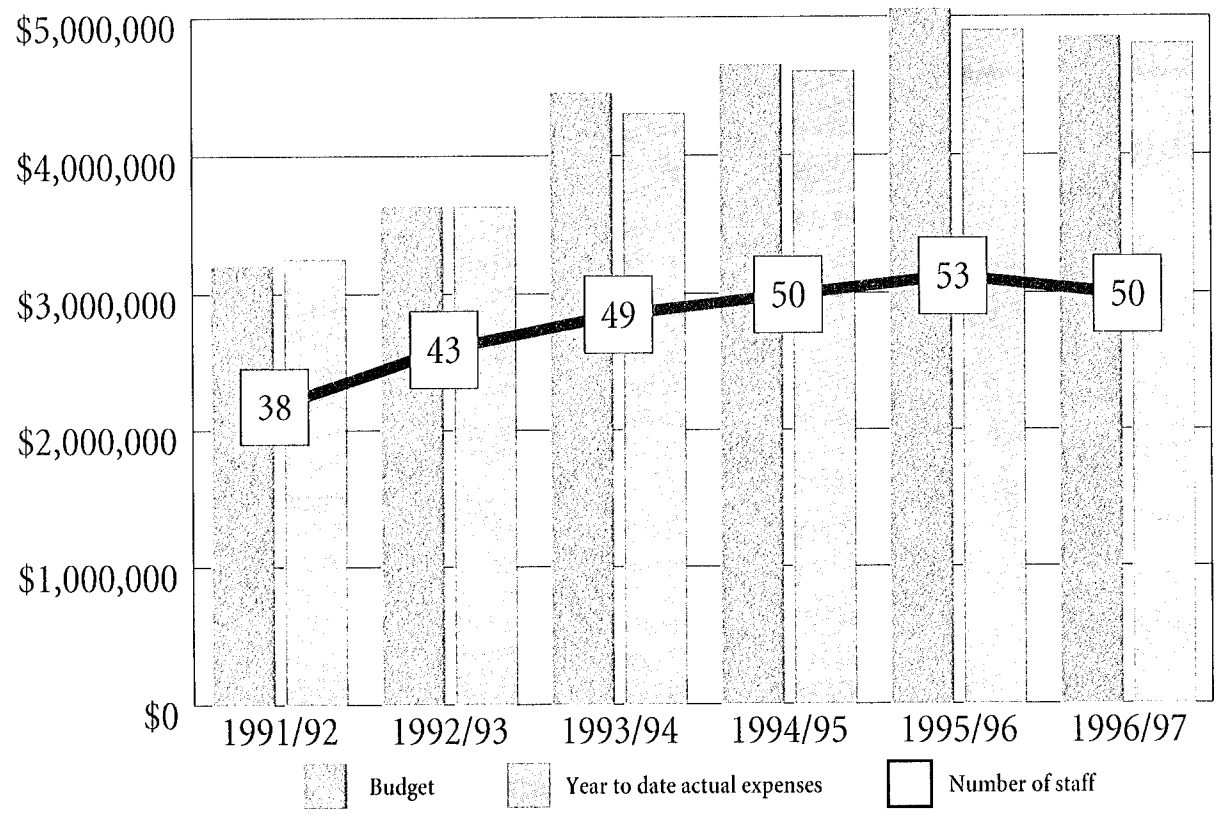
Investigative Policies and Procedures Manual

A comprehensive manual contains detailed policies and procedures governing Ombudsman investigations. Compiled by the Office of the Ombudsman for British Columbia.

To order send cheque or money order for $75 (Canadian funds) made out to the Office of the Ombudsman.

Mail to: 931 Fort Street, Victoria, BC V8V 3K3

Growth in the Office



Ombudsman Publications

Annual Reports 1979-1996

Special Reports

1. Garibaldi Case, 1981 (Environment)
2. Lotteries Case, 1981 (Government Services)
3. Cuthbert Case, 1981 (Harbours Board)
4. Certificate of the Attorney General, 1982 (Attorney General)
5. Reid Case, 1982 (Transportation and Highways)
6. "A Matter of Administration" : B.C. Appeal Court Judgment, 1982
7. Shoal Island Case, 1984 (Forests)
8. Workers' Compensation Board (No. 1)
   Vol. 1 – WCB, 1984
   Vol. 2 – An Investigation by the Ombudsman into Eleven Complaints about the WCB, 1984
9. Supreme Court of Canada Judgment, 1985
10. Section 4 of the *Highway Act*, 1985 (Transportation and Highways)
11. The Cobb Case, 1985 (Forests)
12. Workers' Compensation Board (No. 2)
    Vols. 1&2 – WCB, 1985
13. Willingdon Case, 1985 (Corrections Branch)
14. Hamilton Case, 1985 (WCB & Attorney General)
15. Workers' Compensation Board (No. 3)
    Vol. 1 – WCB, 1985
16. Nikki Merry Case, 1994 (College of Physicians and Surgeons)
17. Regulation of Newport Realty Incorporated by the Superintendent of Brokers, February 1996
18. A Complaint Regarding an Unfair Public Hearing Process (City of Port Moody), February 1996

Public Reports

1. East Kootenay Range Issues, 1981 (Environment; Forests; Lands, Parks and Housing)
2. Ombudsman Investigation of an Allegation of Improper Search for Information on Five Individuals on the Part of the Ministry of Human Resources, 1982
3. Expropriation Issues, 1983 (Transportation and Highways)
4. The Nishga Tribal Council and Tree Farm Licence No.1, 1985 (Forests)
5. The Use of Criminal Record Checks to Screen Individuals Working with Vulnerable People, 1987 (Social Services and Housing)
6. Liquor Control and Licensing Branch Fairness in Decision Making, 1987 (Liquor Control and Licensing Branch)
7. WCB System Study, 1987
8. Skytrain Report, 1987 (B.C. Transit; Municipal Affairs)
9. Practitioner Number Study, 1987 (Medical Services Commission)
10. B.C. Hydro's Collection of Residential Accounts, 1988
11. Pesticide Regulation in British Columbia, 1988
12. Investigation into the Licensing of the Knight Street Pub, 1988 (Labour and Consumer Affairs)
13. Abortion Clinic Investigation, 1988 (Attorney General)
14. Investigation into Complaints of Improper Interference in the Operation of the British Columbia Board of Parole, Particularly with Respect of Decisions Relating to Juliet Belmas, 1988
15. Aquaculture and the Administration of Coastal Resources in British Columbia, 1988 (Crown Lands)
16. Police Complaint Process: The Fullerton Complaint, 1989 (Matsqui Police)
17. Willingdon Youth Detention Centre, 1989
18. The Septic System Permit Process, 1989 (Municipal Affairs, Recreation and Culture)
19. The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation)
20. An Investigation into Allegations of Administrative Favouritism by the Ministry of Forests to Doman Industries Ltd., 1989
21. Sustut-Takla Forest Licences, 1990 (Forests)
22. Public Services to Children, Youth and their Families in British Columbia, 1990
23. Graduates of Foreign Medical Schools: Complaint of Discrimination in B.C. Intern Selection Process, 1991 (Health)
24. Public Response to Request for Suggestions for Legislative Change to *Family and Child Service Act*, 1991 (Social Services and Housing)
25. Public Services for Adult Dependent Persons, 1991 (Social Services and Housing)
26. Access to Information and Privacy, 1991
27. The Administration of the *Residential Tenancy Act*, 1991 (Residential Tenancy Branch)
28. The Sale of Promissory Notes in British Columbia by Principal Group Ltd., 1991
29. A Complaint about the Handling of a Sexual Harassment Complaint by Vancouver Community College, Langara Campus, 1992 (Vancouver Community College)
30. Court Reporting and Court Transcription Services in British Columbia, 1992 (Attorney General)
31. Administrative Fairness of the Process Leading to the Clayoquot Sound Land Use Decision, 1993
32. Abuse of Deaf Students at Jericho Hill School, 1993 (Education)
33. Listening: A Review of Riverview Hospital, 1994
34. Building Respect: A Review of Youth Custody Centres in British Columbia, 1994 (Attorney General)
35. Fair Schools, 1995 (Education)
36. Respecting Our Elders, 1997 (Health)

Discussion Papers

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

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