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Government
Publications



Fourth Report

October 1977 — March 1978

Ombudsman/Ontario
Volume I



Fourth Report

October 1, 1977 — March 31, 1978

**Ombudsman/Ontario
Volume I**





The Ombudsman | Ontario

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July 24, 1978.

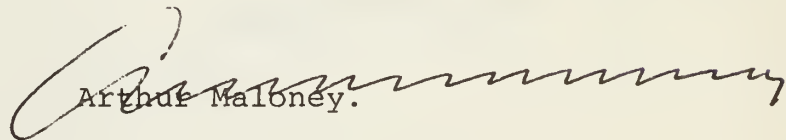
The Speaker,
Legislative Assembly,
Province of Ontario,
Queen's Park,
Toronto, Ontario.

Dear Mr. Speaker:

I have the honour to present the Fourth Report of the Ombudsman for the period October 1, 1977 to March 31, 1978. Summaries of this Report in the French language will be available in the near future.

This Report is submitted pursuant to Section 12 of The Ombudsman Act, 1975.

Yours faithfully,


Arthur Maloney.





L'Ombudsman | Ontario

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le 24 juillet 1978.

Monsieur le Président
Assemblée législative
Province de l'Ontario
Queen's Park
Toronto (Ontario)

Monsieur,

J'ai l'honneur de vous présenter le Quatrième rapport de l'Ombudsman pour la période du 1^{er} octobre 1977 au 31 mars 1978. Le résumé en français de ce rapport sera disponible prochainement.

Ce rapport est soumis conformément à l'article 12 de la Loi sur l'Ombudsman, 1975.

Veuillez agréer, Monsieur le Président, l'expression de mes sentiments les plus respectueux.


Arthur Maloney

TABLE OF CONTENTS

CHAPTER ONE

Introductory Remarks	1
Correctional Report	2
Evaluative Study of the Social Therapy Unit Program-- The Mental Health Centre, (Oak Ridge Division)	
Penetanguishene	2
Budget	5
Management Study	8
Statistical Highlights	13
Regional Facilities	16
Private Hearings	18
Correctional and Psychiatric Services	19
Case Summaries	22
Recommendations Denied	28
Rent Review	36
Conclusion	42

CHAPTER TWO

General Comments	44
Social Assistance Review Board	44
The Workmen's Compensation Board	46
Psychiatric Facilities	49
Ontario Home Buyers Grant Program	50

CHAPTER THREE

List of Tables	53
Complaint Reception	54
Complaint Closings	55
Complaint Disposition	56
In Progress Complaint Files	60
Tables 1 - 17	61

CHAPTER FOUR

Ministry of Agriculture and Food	103
Ministry of the Attorney General	104
Ministry of Colleges and Universities	107
Ministry of Community and Social Services	113
Ministry of Consumer and Commercial Relations	122
Ministry of Correctional Services	139
Ministry of Education	152
Ministry of Energy	156
Ministry of the Environment	162
Ministry of Government Services	171

CHAPTER FOUR (continued)

Ministry of Health	172
Ministry of Housing	200
Ministry of Labour	202
Ministry of Natural Resources	208
Ministry of Revenue	217
Ministry of the Solicitor General	221
Ministry of Transportation and Communications	226
Ministry of Treasury Economics and Intergovernmental Affairs	235
Workmen's Compensation Board	237
Non-Jurisdictional	290
Samples of Letters Sent to Complainants in Non-Jurisdictional Cases	293

CHAPTER ONE

INTRODUCTION

I am pleased to present the Fourth Report of the Ombudsman covering the period October 1, 1977 to March 31, 1978.

As in our previous Reports to the Legislature, we have provided detailed statistics concerning the number of complainants who approached our Office for assistance, as well as the number of individual complaints they brought to our Office. A complaint-by-complaint summary of all grievances dealt with and completed during this reporting period is contained in Volume II of this Report.

Volume I of this Report as well as providing detailed statistics covering the period from October 1, 1977 to March 31, 1978, also summarizes in depth 100 complaints. Included in these 100 Detailed Summaries are nine cases in which having investigated the complaint, we made a recommendation in favour of the complainant which was rejected by the governmental organization concerned. Excluding those cases concerning the complaints of the former landowners in North Pickering, these nine cases bring to a total of 18 the number of cases in which our recommendations in favour of complainants were rejected by the governmental organizations involved. I urge the Select Committee on the Ombudsman to deal with all of these outstanding cases at the earliest date possible. These nine cases which are also highlighted in this Introduction are being brought to the attention of the Legislative Assembly through this Report.

In addition, there are four cases involving the Residential Premises Rent Review Board and Program which were not closed during this reporting period in which our recommendations were rejected by the Board. These four cases are also highlighted in this Introduction so as to bring them to the attention of the Legislature.

Chapter Two of this Report contains a number of comments and suggestions concerning the Social Assistance Review Board, the Workmen's Compensation Board, the Psychiatric Hospitals Branch of the Ministry of Health and the Ontario Home Buyers Grant Program. The comments and suggestions contained in this Chapter are made with a view to improving the service which is provided to citizens by these various organizations.

CORRECTIONAL REPORT

In my Third Report to the Legislature, I stated that my Report on the Province's Adult Correctional Institutions was delivered to the Minister of Correctional Services on December 20, 1977, and was made public by him on February 9, 1978.

On June 13, 1978, I received the Ministry's response to my Report and recommendations. My staff and I are presently studying the Ministry's response and I will have a statement to make concerning this response sometime in the near future.

EVALUATIVE STUDY OF THE SOCIAL THERAPY UNIT PROGRAM -- THE MENTAL HEALTH CENTRE, (OAK RIDGE DIVISION) PENETANGUISHENE

Prior to and following my appointment as Ombudsman on October 30, 1975, I received and continued to receive a number of complaints concerning the program being carried on within the Social Therapy Unit of the Mental Health Centre at Penetanguishene.

This psychiatric hospital complex includes the Province's only maximum security treatment unit (Oak Ridge), housing upwards of 300 men who are sent there by the courts, having been found 'Not Guilty by Reason of Insanity' or 'Unfit to Stand Trial.' They may also be remanded to the hospital by a court for assessment or observation. This facility also houses some involuntary patients under The Mental Health Act. Oak Ridge is divided into three units: the Activity Treatment Unit, the Forensic Unit and the Social Therapy Unit. The complaints which necessitated this investigation concerned the program in the Social Therapy Unit.

When the practical applications of this program were first described to me by present and former Oak Ridge patients, I found some aspects profoundly disturbing. I directed that particular attention be paid to the circumstances of these patients by my investigators who visited Oak Ridge in early 1976.

In their reports to me, my investigators described this program which commenced in 1965 and consists of four 38-bed wards as a "therapeutic community." Specialists working in this field recognize that patients admitted to the program often suffer from mental disorders which defy traditional therapies and therefore the unique milieu of the Social Therapy program was developed. It incorporated unusual and perhaps controversial treatment processes.

According to my investigators' report, this program provides an opportunity for patients to deal with their problems using their own initiatives and abilities. The program features bilateral communications, confrontation, decision-making by consensus, multiple leadership and living/learning groups. A complex committee system made up of the patients themselves exists which incorporates security functions, ward management, group therapies, staff-patient liaison and individual treatment programs, the latter including a broad spectrum of defence-disrupting drugs, intensive encounter groups and videotape playback. My staff reported to me their perception that patients were coerced into participating in this program since their release into the community was, in fact, dependent on their successful participation in the program.

My staff also advised me that the Social Therapy program employed a minimum of professional staff and that all treatment processes included and involved patients who were viewed as primary therapists. They explained that attendant staff, in addition to their security functions, acted as secondary therapists and that a small multi-disciplinary professional group assumed a supervisory and advisory role.

Because of the number of complaints and the nature of these grievances, a serious investigation was called for. I retained the services of two experienced psychiatrists and a clinical psychologist to assist me in investigating the complaints which I had received and also to investigate and study the Social Therapy Program itself. The two psychiatrists who assisted with this investigation were Dr. Pieter Rowsell and Dr. Peter Butler. The clinical psychologist retained by me was Dr. Alan Long.

These three experts, after having conducted a thorough, in-depth study of the program, submitted a draft report to me on June 12, 1977. This draft report was studied by members of my staff and by Dr. Barry Boyd, immediate past Medical Director of the Mental Health Centre. Following a number of lengthy meetings with members of my staff, the three doctors submitted their final report to me in the late fall of 1977. Dr. Boyd studied their final report and made several helpful suggestions to me.

I forwarded a copy of their report to the Deputy Minister of Health, Mr. W.A. Backley, on December 20, 1977, and asked for his Ministry's comments and suggestions before I finalized my Report. In my letter of December 20, 1977 to Mr. Backley, I stated that it was my view that nothing in the Report could possibly be construed as

adversely affecting the Minister, Deputy Minister, the Ministry or any of its officials or any other person within the meaning of section 19(3) of The Ombudsman Act, 1975.

On March 31, 1978, the Deputy Minister advised me that the Ministry of Health intended to use the Report as "useful background information for our program assessment from which we may hope to effect major improvements." The Deputy Minister further advised me that the Report would not be made public.

Having studied the doctors' report to me in conjunction with the views expressed by Dr. Barry Boyd and the officials of the Ministry of Health, I forwarded my final Report to the Ministry on May 25, 1978.

In my Report, I advised the Ministry that I had decided to adopt in its entirety the report of Doctors Rowsell, Butler and Long. I stated that I was in complete agreement with their findings and recommendations. In my Report, I stated as follows:

"The Report of the three specialists retained by the Office of the Ombudsman is a document the value of which cannot be underestimated. It is clear that our consultants have not only vindicated the Social Therapy Program at the Mental Health Centre, but they have found it to be one of the most forward-thinking programs in the world. In their Report to me Doctors Butler, Long and Rowsell state at page 28,

'Here, the impossible is apparently happening--psychopaths are being treated with success. Thus, after absorbing this notion, we were not surprised to learn that Sturup and Jones visited recently, and the Hospital attracts attention, and observers from around the world.'

On the last page of their Report, they say:

'We were satisfied that the men we saw and had known prior to their admission to the hospital, had benefited greatly from the S.T.U. experience. We were quite sure that the program itself was of considerable benefit not only to the patients, but to the hospital as a whole and to the country.'

The Report has enabled me to come to a conclusion on many of the cases which were brought to my attention, including those of the above-named complainants. It will, in the future allow the Office of the Ombudsman to come to conclusions respecting complaints involving the Program at Oak Ridge more quickly and with a much more informed understanding of the subject-matter of such complaints.

Because I am adopting the Doctors' Report in its entirety, and because their Report is so supportive of the Social Therapy Program which was the subject-matter of complaint, it is clear that I do not find the complaints of the above-named complainants, as they related to the Program, to be supported.

Notwithstanding their unanimous approval for the Program, our consultants made the above set out Findings and Recommendations because they felt the Program would be enhanced and its effect broadened if these Recommendations were put into effect and we urge the Ministry to give careful consideration to their implementation."

Since our investigation of this program was not completed within this reporting period, it is not reported in detail in Chapter Four. Our Fifth Report to the Legislature will contain a more detailed report of this investigation.

BUDGET

On February 1, 1978, the Office of the Ombudsman submitted its estimates for 1978/79 to the Board of Internal Economy. The estimates submitted to the Board amounted to \$4,116,000. On March 13, 1978, we were pleased to learn that the Board of Internal Economy had approved the total amount requested. This amount was subdivided by standard account classification as follows:

Salaries and Wages	\$2,496,000
Employee Benefits	401,000
Transportation and Communications	283,000
Services	706,000
Supplies and Equipment	<u>230,000</u>
	<u>\$4,116,000</u>

At the beginning of the fiscal year 1978/79, the salary ranges of the staff in the Office of the Ombudsman were increased by 5%. This increase conforms with the Anti-Inflation Board's guidelines.

We included a figure of \$104,000 for the hearings being conducted before Mr. Keith Hoilett of the Office of the Ombudsman concerning the complaints of former landowners in North Pickering. This figure of \$104,000 was based on our estimate that these hearings would be completed by June 30, 1978. This estimate was unduly optimistic. We presently anticipate that these hearings will continue until the end of August, 1978.

The sum of \$45,000 was included in our estimates to cover the cost of a film that we plan to produce. This film will explain the jurisdiction, role and function, and operation of the Office of the Ombudsman in Ontario. The film will be comparable to similar films released by the Ministry of Correctional Services and the Ministry of Natural Resources. It is my view that a film of this sort will greatly enhance our ability to explain to the citizens of Ontario the role of the Ombudsman and how this Office can serve them, and will do so in a most cost-effective manner.

Also planned is the printing of Ombudsman brochures which would be for general distribution to the public. The purpose of both the brochures and the proposed film is to heighten public understanding and awareness of the jurisdiction of the Ombudsman and of the procedures to be followed when registering a complaint with our Office. These brochures will be distributed to the public in the same way as pamphlets and brochures produced by other ministries, boards and agencies of the Province. We included an amount of \$17,000 in our estimates to cover the cost of printing and distributing these pamphlets.

As I stated in our Third Report to the Legislature, the Board of Internal Economy approved an amount of \$25,000 to be used for a management study. Since this amount was not used in the fiscal year 1977/78, it was again included in our 1978/79 estimates.

The following is a breakdown of the total estimates for the Office of the Ombudsman for the fiscal year 1978/79:

OFFICE OF THE OMBUDSMAN

ESTIMATE BREAKDOWN

1978-79

(000's)

Salaries and Wages

Regular Complement	\$2,217	
Unclassified	148	
Temporary Help	22	
Student Programs	<u>109</u>	\$2,496

<u>Employee Benefits</u>	<u>401</u>	401
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Transportation and Communications

Travel	174	
Communications & Mailing	<u>109</u>	283

Services

Communications Services	103	
Rental Services	342	
Data Processing,		
Insurance, Personnel		
& Reception Services	55	
Professional Services	156	
Special Services	4	
Purchased Repair and		
Maintenance	<u>46</u>	706

Supplies and Equipment

Purchase of Machinery		
and Equipment	25	
Personal & Household		
Goods	49	
Office Supplies and		
Devices	55	
Books, Maps, Publications		
(including printing of		
reports)	67	
Federal Sales Tax on		
Supplies & Equipment	17	
Miscellaneous Goods and		
Utilities	<u>17</u>	
		<u>230</u>
		\$4,116

MANAGEMENT STUDY

During the latter part of 1976 questions arose from time to time concerning the salaries that were being paid to members of the staff of the Ombudsman. There was a very clear suggestion so far as the Board of Internal Economy was concerned that many of our salaries were too high and that some of the increases that were being requested during the supplementary estimates in 1976 were contrary to AIB guidelines.

In December of 1976 as a result of an undertaking that I had given to the Board of Internal Economy, the Office of the Ombudsman engaged the firm of Hickling-Johnston Limited to carry out a salary review of all positions in the Office of the Ombudsman. Following an in-depth study of all positions within the Office, the Management Consultants presented the Office with a Salary Administration Program. This Program was implemented by me.

Basically, the Hickling-Johnston Report showed that the majority of our salaries were in line or comparable with the public service generally. Some were in excess and in these cases I directed that such salaries be red circled. Some were below the minimum and in these cases such salaries were raised to the appropriate minimum.

Following the salary review, I had discussions with Donald Fowke, Chairman of Hickling-Johnston. I explained to him that our Office had now reached a plateau as far as staff members and budget were concerned. I felt that both staff complement and budget were sufficient to enable this Office to provide the people of Ontario with a first-class Ombudsman function. Having arrived at this stage I wanted to make sure that all our human and financial resources were being utilized in the most efficient and expeditious manner.

I expressed my concern that I did not want to see any appreciable increase in staff and I wanted to keep the lid on our budget. I expressed concern too about the backlog of cases and the delay in processing them and in the number of personnel on staff that a citizen was required to go through as his complaint was being processed.

I also expressed concern about the extent to which the Ombudsman himself was getting involved in pure administration. The result would be, if this were to continue, a certain impairment of the effectiveness with which he could address himself to the problems of the citizens who complain to this Office--which, after all, is his real function.

Mr. Fowke agreed with me that the Office's administrative and managerial functions should be scrutinized with a view to streamlining the organization so as to make the best use of our resources.

In my Second Report to the Legislature, I stated the following at Page 35:

"It appeared to be sensible and desirable to me that with the Office of the Ombudsman entering its third year of operations it should be subjected to objective scrutiny by a professional consultant group. I reached this conclusion in light of my concern that despite the ever-increasing demands being made on the Office by the public, it was necessary to restrain our expenditures, especially in the area of full-time staff complement, and it was therefore imperative that our internal procedures ensure that the most efficient complaint-handling methods were being used."

On March 8, 1977, I requested that the Board of Internal Economy approve sufficient funds to conduct a study. I made the following letter dated February 25, 1977 from Hickling-Johnston Limited available to the Board:

"Dear Mr. Maloney:

The next year will be an important one for the Office of the Ombudsman, because it will be one of consolidation of the roles and functions developed over the past year and one half, and one of careful planning of future development of the Office.

It is important to recognize that the problems of management inherent in a new and untried organization of some 120 people are of major proportions. You need the assurance that administration of the Office is efficient, that you have the ability to plan staff and facilities according to projected case volume, and that your administrative procedures are consistent with the best practice in government and private organizations. Substantial changes in the way you are organized, in systems and procedures, and in methods of planning are required.

These needs have been clearly evident in our review of your salary administration. Indeed, many of your officials have described difficulties they face in their day-to-day affairs which reflect weaknesses in coordination and in reporting relationships. There is widespread agreement that basic questions of organization need to be faced, and faced soon.

We have formed the opinion, as well, that management problems are placing nearly impossible demands on you as Ombudsman. These threaten to overwhelm you with the details of administration and impair your ability to provide leadership to the evolution of the Office.

It must be clearly recognized that the management problems described here are entirely consistent with a new function and a new organization. But simply put, now is an appropriate time to address them directly and comprehensively.

There are five specific areas which require substantial adjustment. The first is salary administration which will be firmly in hand by the end of March. The second is the adoption of a set of administrative standards which ensure that your practices are consistent with those of comparable organizations. The third is the efficiency with which your office processes complaints. The fourth is the way in which you approach priorities in complaint treatment. This is particularly critical to the future pattern of expenditures, because increases in the volume of complaints inevitably entail increases in costs--regardless of how efficiently they are processed. And the fifth is the pattern of reporting relationships and delegation of responsibilities through which the first four items are routinely addressed. This is a matter of organization.

Each of these areas could be addressed in a piecemeal fashion but that would not be, in our opinion, the most efficient and effective way. One of the most important lessons learned in public administration in this decade is that management improvement works

best when it fully involves middle and senior managers. What this means in practice is that analysis of administrative problems and the implementation of corrective measures can proceed at the same time.

The program of management improvement I have discussed with you will give the Office of the Ombudsman the ability to decide among the various priorities available within the Act, and permit the Office to manage the flow of complaints thereby arising in a manner consistent with the financial limitations the Legislature may approve. This will give both you and Members the assurance that the Ombudsman is addressing the most important needs of the Ontario community, and doing so in the most efficient manner.

Sincerely,

Donald V. Fowke,
Chairman."

The Board of Internal Economy referred the question of a management study to the Select Committee on the Ombudsman for review.

In the Third Report of the Select Committee on the Ombudsman, the Committee made the following recommendations concerning the management study for the Office of the Ombudsman:

- "4. An amount be received and approved as part of the Ombudsman's estimates required to fund a complete management study for the Office of the Ombudsman by a firm or individual chosen by the Ombudsman in accordance with the required proposal and tendering procedures of the Manual of Administration." (Page 21)

By letter dated November 29, 1977, the Board of Internal Economy approved Supplementary Estimates for the Office of the Ombudsman in the amount of \$633,500 including \$25,000 for a Management Study.

Accordingly as I indicated in my Third Report to the Legislature, I decided that the Finance Committee in the Office of the Ombudsman should prepare terms of reference for a Management Study to be performed within the financial limits imposed by the Board of Internal Economy and would

consult with the Board upon such terms of reference with a view "to agreeing thereon before requesting tenders for the study."

On February 15, 1978, members of the Finance Committee of the Office of the Ombudsman met with Mr. Robert Fleming, Secretary to the Board of Internal Economy, to discuss the general approach of the proposed management study.

On February 17, 1978, a Management Study Committee was established within the Office of the Ombudsman. This Committee was composed of the three members of the Finance Committee and two staff members elected by the Investigators, Interviewers, Researchers and Support Staff within the Office of the Ombudsman.

On March 1, 1978, nine management consulting firms were requested to forward proposals for a management study to the Office. In order to assist the management consultants with the preparation of these proposals, a meeting was held in the Office of the Ombudsman on March 9, 1978. This meeting was attended by the Management Study Committee in the Office of the Ombudsman and all nine management consulting firms.

On March 17, 1978, seven proposals had been submitted to the Office. These proposals were studied and considered by the Management Study Committee.

On March 28, 1978, the Management Study Committee met with me to discuss their recommendations concerning the various proposals. Following this meeting, I conducted interviews of senior members from three firms which the Management Study Committee had recommended to me.

Having considered the recommendations made to me by the Management Study Committee and following my interviews with the three consulting firms, I selected the firm of Hickling-Johnston Limited to conduct the management study.

Following an in-depth study which included close consultation with my staff, the firm of Hickling-Johnston Limited presented to me, on May 26, 1978, their Report, "Organization for Ombudsman Effectiveness."

We are presently experimenting with the implementation of the recommendations contained in the Report. I am hopeful that the changes recommended by the firm of Hickling-Johnston Limited will do a great deal to improve the efficiency and effectiveness of the Office of the Ombudsman in this Province.

THE COMPLAINTS

Since May of 1975 until the cut-off date for this Report, March 31, 1978, the Office of the Ombudsman received complaints for which a total of 16,875 files were opened. In addition, during this period the Office dealt with 20,311 informal inquiries. We have closed a total of 14,784 files since May of 1975; 5,037 (34%) of these files involved complaints which were within the Ombudsman's jurisdiction to investigate.

During the period covered by this Fourth Report, October 1, 1977 to March 31, 1978, we opened a total of 3,313 new complaint files and also dealt with over 3,800 informal inquiries which did not necessitate the opening of formal complaint files.

Although I estimated in our Third Report that the Office of the Ombudsman receives complaints at a rate of about 6,000 per year, the statistics collected for this Fourth Report indicate that the rate at which the Office receives complaints for which files are opened is closer to 6,500 per year. On the basis of our most recent data, it appears that this rate of 6,500 complaints per year will represent the average number of complaints received by the Office of the Ombudsman each year.

Of the 3,313 new files opened during this six-month reporting period, 57% were mailed to our Office from complainants, 28% were brought to our attention through personal interviews at our Office in Toronto, and 15% came from complainants who attended our private hearings.

Even though budgetary constraints necessitated the cancellation of private hearings from December 1977 until the end of this reporting period, the percentage of complaints received at our private hearings is almost identical to that reported in the past. This suggests that the citizens of Ontario are increasingly recognizing our hearings as an integral facet of the Ombudsman operation. This recognition of the hearings when considered in conjunction with the 8% rise in complaints received through office visits in Toronto, seems to confirm that the public not only wishes to deal with the Ombudsman's Office on a personal basis, but, also that citizens perceive this Office as one which they can approach on a very personal and individual basis.

The following table highlights some of the statistics contained in this Report:

HIGHLIGHTS

FILES: OPENED 3,313 INFORMAL 3,842 COMPLAINTS 3,606*
 CLOSED 3,226 INQUIRIES: CLOSED:

BY JURISDICTION		BY ORGANIZATION	
1,225	within jurisdiction	2,284	involved Ontario Government Ministries or Agencies
328	information requests		
40	jurisdiction undetermined	663	involved private agencies, firms or individuals
2	multiple organizations**	290	involved municipalities or local police forces
1,395	outside jurisdiction	194	involved federal government departments or agencies
618	premature	153	involved courts
		24	involved international, other provinces or unspecified
3,608	Reported Line Summaries	3,608	Reported Line Summaries

* Some files involved more than one complaint

** Some complaints involved more than one organization

Of the 3,240 complaints dealt with during this period in which jurisdiction was determined, 1,225 or 38% were complaints within the jurisdiction of the Ombudsman. This is a substantial increase from the 30% which were within the Ombudsman's jurisdiction as reported in our Third Report to the Legislature. It will be recalled that I stated in my Third Report that the fact that only 30% were within the Ombudsman's jurisdiction was definitely not an indication that the Office of the Ombudsman is dealing with an increasing number of non-jurisdictional complaints.

This increase confirms my belief that an increasing number of citizen complaints brought to our Office will fall within the jurisdiction of the Ombudsman and, in fact, an analysis of the 2,116 "in progress" files as of March 31, 1978, shows that 1,415 or 67% fell within the jurisdiction of our Office. This is an increase of 3% over the comparable figure reported in our Third Report.

With close to three years now behind us, a few general comments on emerging trends are perhaps in order. One very clear trend is the growing proportion of complaints that are prematurely brought to our attention, and which section 15(4)(a) of The Ombudsman Act precludes us from investigating. The proportion of outside jurisdiction complaints falling under this section has steadily increased from 17% in the First Report, to 24% and 29% in the next two Reports, respectively. In this Fourth Report, 31% of the complaints falling outside of our jurisdiction were premature.

As noted in previous Reports, these premature complaints would fall within our jurisdiction if the appeal procedures were exhausted. In fact, if one excludes premature complaints from all others which are outside of our jurisdiction, the percentage of complaints within our jurisdiction rises from 38% to 47%. It is clear that the rising proportion of premature cases is partially "masking" the increasing percentage of complaints being brought to us that are within our jurisdiction.

This increase in premature complaints is accompanied by marked downward trends in the percentage of complaints against private individuals and organizations and complaints against federal and municipal authorities.

While the percentage of all complaints against the provincial governmental administration hovered around 54% for the first three Reports, we find a dramatic jump in the percentage of these complaints to 63% in this Fourth Report.

All of these patterns suggest that the public is becoming ever more aware of the jurisdiction of the Ombudsman and what the Office can and cannot do. This reaffirms my view that future reports will show a steady growth in the proportion of complaints that fall within the jurisdiction of the Ombudsman.

Our Office will continue, however, to make every reasonable effort to assist those citizens who come to the Office of the Ombudsman for assistance with problems that do not fall within the Ombudsman's jurisdiction. A review of the sample non-jurisdictional letters contained in this Report illustrates how the staff in the Office of the Ombudsman

attempts to provide complainants with information and advice which will assist the citizen in resolving his or her problem.

As in each of the preceding reports, Northern Ontario again had the highest complaint-to-population ratio, as well as the single largest volume of complaints of our nine regions. The Ontario North Region accounted for 478 (16%) of all complaints for which a geographical determination was possible. We receive about 62% more complaints from the north than one would expect on a population-basis alone. Whatever the reasons for this, it has been clear since our First Report that the Ontario northland uses the Ombudsman's Office more regularly than the rest of the province.

The question of regional facilities for the Office of the Ombudsman is one that I have considered with great care for a long period of time. I have canvassed the views of hundreds of people from every section of the Province. There is no pressing demand for regional facilities in any part of Ontario except the North. I was impressed by the number of people from Southwestern and Eastern Ontario who disclaimed the need for a regional facility in their area of the Province but lent their support to the creation of such a facility to serve the needs of the people of Northern Ontario.

The more I see of Northern Ontario; the more I meet with its people; the more familiar I become with its special problems, especially problems of access to Toronto, the more impressed I become with the need for a regional facility to serve the needs of the people of this part of the Province.

My view is that such a facility should be made available at an early date in the future. A central office, in my opinion, would be most appropriately located in the City of Sault Ste. Marie. Satellite offices should at the outset be located in North Bay, Sudbury, Timmins, Thunder Bay and Kenora. The staff required to serve these new facilities is something that can easily be determined after study of the present case load from the North.

The creation of such facilities, as I have mentioned, would reduce the budget presently needed for hearings and transportation in that part of Ontario by the Ombudsman staff. It would not eliminate these hearings but the responsibility for them would be carried out by the staff recruited to serve the North.

Elsewhere, the concept of branch offices has been tried frequently, often with considerable success. In Canada, the Quebec office has a branch facility located in Montreal; the Alberta office, centered in the capital city of Edmonton, has a branch office operating in Calgary; in Saskatchewan the

central office is located in Regina, the capital, while a branch office has been established in Saskatoon. Experience in this regard is not confined to Canada. Looking internationally, jurisdictions such as France, Israel and New Zealand have elected to decentralize their operations through the use of branch facilities.

My Office is increasingly impressed by the excellence of the service provided to the people of Northern Ontario by the representatives of the Ministry of Northern Affairs. They perform an incredibly useful function and they extend the fullest possible cooperation to this Office. Were it not for the existence of this branch of the Ministry of Northern Affairs, a more elaborate and more extensive type of regional facility would be needed. My view is that we should initiate talks with the Minister of Northern Affairs, the Honourable Leo Bernier, and his Deputy Minister, Mr. Tom Campbell, to ensure the efficient coordination of the facilities of the Ministry of Northern Affairs with the proposed establishment of regional facilities of the Office of the Ombudsman in the North. The fact that the officials of the Ministry of Northern Affairs are members of the Civil Service and that under The Ombudsman Act our staff have imposed upon them certain obligations of confidentiality appears to me not to present a problem that cannot be resolved.

Section 8 of The Ombudsman Act authorizes the Ombudsman with the approval of the Lieutenant Governor in Council to:

"employ such officers and other employees as the Ombudsman considers necessary for the efficient operation of his office . . ."

Because of the importance of the step that I am proposing, before undertaking any action whatsoever in this regard, I propose to write to the Premier to communicate this part of my Report and recommendation to him so that he can launch such study into the subject as he feels the circumstances warrant.

In each of my earlier Reports, I have repeatedly commented upon the number of complaints directed against the justice system. Complaints against the provincial judicial system--the Ministry of Correctional Services, the Ministry of the Attorney General, and the Ministry of the Solicitor General--comprised 40% of all complaints directed against governmental organizations of the Province. I am disappointed that the downward trend in these complaints noted in my last Report has not continued.

We closed 491 complaints against the Workmen's Compensation Board, a considerable increase over the 386 closed

during the last reporting period. Although the proportion of Workmen's Compensation Board cases has risen slightly to 21% of all complaints directed against governmental organizations, I wish to again stress that the Board itself deals with almost one-half million claims annually, and only a very small fraction of these citizens ever choose to contact the Office of the Ombudsman.

PRIVATE HEARINGS

During the period covered by this Report, we held private hearings in the following thirteen municipalities:

October 12, 1977	-	Windsor
October 13, 1977	-	Wallaceburg
October 14, 1977	-	Sarnia
November 8, 1977	-	Kenora
November 9, 1977	-	Thunder Bay
November 22, 1977	-	Ottawa
November 23, 1977	-	Arnprior
November 23, 1977	-	Hawkesbury
December 6, 1977	-	Sault Ste. Marie
December 7, 1977	-	Thessalon
December 7, 1977	-	Chapleau
December 8, 1977	-	Sudbury
December 12, 1977	-	Owen Sound

A total of 447 private interviews were conducted during these hearings which gave rise to 482 separate complaints.

The excellent response that we have received from the citizens of Ontario to our private hearings confirms my strong belief that these hearings are an integral and important part of our Office's operation. The Members of the Legislature whose constituencies are visited by members of our staff during our hearings are always invited to attend the hearings and very often do unless their Legislative duties make it impossible. It is our practice to forward to the Members of the Legislature a detailed report concerning the number of complaints received from the citizens who reside in their constituency and the nature of the complaints. In cases where we receive the permission of the complainant, we also identify the constituents who complain to us. I am pleased that increasing numbers of Members of the Legislature have written to me to express their approval of our private hearings and the manner in which they are presently being conducted.

In my view, our private hearings have, over the last 2½ years, proven to be a most valuable service to those citizens of the Province who do not find it easy or feasible to meet

with members of our staff at our Office in Toronto. It is my intention to continue our series of private hearings around the Province particularly in those areas that are not easily accessible to Toronto.

CORRECTIONAL AND PSYCHIATRIC SERVICES

During this reporting period, we received a total of 789 complaints concerning the Ministry of Correctional Services. Chapter 4 of this Report contains Detailed Case Summaries of 14 correctional cases our staff dealt with during this reporting period. Obviously, it is not feasible to report in detail on all of the complaints dealt with by the staff of our Directorate of Correctional and Psychiatric Services. However, I believe it is important to recognize the very important function that the staff of the Office of the Ombudsman performs vis-a-vis the interplay of an inmate's milieu and his emotions. Over the past 2½ years, it has become apparent to me that the staff of the Office of the Ombudsman provide Ontario inmates with a safe vehicle for the release of recurring tension.

In my Report on Adult Correctional Institutions, delivered to the Honourable Frank Drea, Minister of Correctional Services, on December 20, 1977, and released to the public by him on February 9, 1978, I included through the presentation of reports on separate institutions, several variables that have a direct effect on how all inmates respond to the system in which they are incarcerated. I relayed that some of the factors, including over-crowding, limited or non-existent inmate programming, variations in the application of rules and regulations, little or no privacy, poor showering facilities, and inmate concerns regarding problems their family may be facing, have all in combination or singularly contributed to the creation of tension within the individual.

Inmate tension can present severe problems to institutional authorities when it is released in variations of behaviour commonly described as "acting out". When one considers the situation inmates who are on remand find themselves in, one can easily envisage how with a minimum of provocation, the pent-up hostilities and tensions of these inmates can erupt in inward or outward aggression. This type of conduct on the part of remanded inmates is understandable when one considers that they are uncertain about their futures because they have not yet been to trial, are unable to participate in the Temporary Absence Program and are unable to enjoy some of the activity programs designed for sentenced inmates. Both detention centres and jails, although not originally intended to house inmates for great lengths of time, have been forced to do so due to circumstances beyond

their control. The longer an inmate on remand or a newly sentenced inmate has to remain confined in these types of facilities, the more restless and tense that inmate can become. An additional factor which adds to this tension is the fact that maximum security facilities such as jails and detention centres are also required to house inmates from the federal penitentiary system, usually because of parole violations or because they have been remanded on outstanding charges.

In the 2½ years that the staff of the Office of the Ombudsman have been handling the problems of inmates in Ontario, I have found that although the complaints brought to us by inmates range from minor to major, almost all inmates firmly believe that their complaints demand the most immediate attention from institutional authorities. Often, inmates have little realization of the limitations imposed on the officials of the Ministry of Correctional Services that may prevent them from acting to resolve these problems. Nevertheless, the inmates' concerns remain uppermost in their minds. This is especially so when one considers that an inmate must live in a very controlled and restricted environment.

Many inmates bring complaints to our Office concerning matters that are outside the jurisdiction of the Ombudsman. Regardless of whether the complaint falls within the Ombudsman's jurisdiction or not, it is the policy of our Office that the inmate's problem be responded to either by way of a letter outlining the course of action that the inmate should follow or in cases where the complaint appears to be within the jurisdiction of the Ombudsman, by a visit from one of our investigators and an investigation is conducted.

A large number of inmates across the Province have expressed their gratitude to the members of my staff for the attention paid to their complaints. Often, even though the complaint is outside of the Ombudsman's jurisdiction, the inmates express their thanks when the mandate of the Office and possible courses of action that may solve their problems are outlined by our investigators. Many inmates discuss with our staff matters such as marital problems or difficulties their spouses have experienced in receiving welfare or family assistance. Many simply wish to reflect on how psychologically tense they are because they are housed in an environment with little or no privacy and because they are required to share quarters with complete strangers and to adapt to a controlled way of life. At the conclusion of many interviews, inmates often express their thanks to our investigators simply for having taken time to "lend an ear".

In one case, for example, an inmate contacted my Office regarding his denial of bail and other legal matters and

after receiving a visit from one of our investigators, wrote expressing thanks to the investigator for listening to his concerns. In another situation, a federal prisoner complained regarding a problem with his mandatory supervision. Even though the matter was clearly outside the jurisdiction of the Ombudsman, our investigator informally discussed the matter with the institutional officials who were able to take action on behalf of the inmate to assist him in rectifying some aspects of his complaint. The inmate contacted our Office by letter thanking the investigator for his "fair and efficient manner". At one institution, inmates wrote to our Office expressing their thanks for the presence of our staff at the institution at a time when tensions were high. They stated in their letter that it was their view that we had played a major role in helping to alleviate a "severe" situation. Letters expressing these very sentiments have been received in my Office time and again over the course of the last 2½ years.

I was gratified in December of 1977 when the Honourable Frank Drea when speaking to members of the press acknowledged this informal but essential function that our staff performs. Mr. Drea in referring to the presence of the Ombudsman's Office in the Province's correctional system stated:

"It does prevent unrest. The prisoner knows there's somebody on the outside to listen to him and that he's not being held in communi-
cado."

Mr. Drea went on to say:

"Prisoners (especially those on remand awaiting trial) have little to do and are often bored and restless. Letting the Ombudsman accept their grievances helps them to get out bottled-up frustrations and prevents serious physical damage to correctional institutions."

Our experience in the field of corrections convinces me that the service provided by the Directorate of Correctional and Psychiatric Services in the Office of the Ontario Ombudsman is a most essential and valuable one, both to the inmates of the Province and to the many dedicated men and women who work for the Ministry of Correctional Services. I wish once again to express my sincere appreciation for the cooperation that is consistently extended to our Office by both the Minister of Correctional Services, the Honourable Frank Drea, and his Deputy Minister, Mr. Glenn Thompson. It is my intention to continue to provide this service that sees inmate and correctional worker tension and frustration reduced and which

ensures that both of these groups are provided with an independent and, above all, objective functionary to whom they can turn.

CASE SUMMARIES

Chapter IV of this Report contains Detailed Case Summaries of 100 cases which were closed during this reporting period. Among the cases reported in Chapter IV are situations such as:

--The case of a complainant whose well went dry in 1974 after the Ministry of Transportation and Communications extended a highway near the complainant's property. After her complaint to the Ministry, it agreed to dig a new well, but before the project began the complainant decided to have her home connected to a local municipal water supply. From the time of the disruption of her water source until the connection to the municipal supply, she purchased water for her domestic use. In late 1975, the Ministry offered the complainant \$750 as compensation for her well, but the complainant rejected this offer and claimed the Ministry owed her \$1,555. The Ministry said, however, that it did not feel obliged to pay the costs of connecting her home to the municipal water supply and refused to increase its offer. After the complainant contacted the Ombudsman, she told our investigator that she would be prepared to accept \$1,323 as compensation. Ministry officials subsequently raised their offer to \$1,000 to take into account the water purchased by the complainant and the inconvenience caused her by the loss of her well. Our investigator relayed this information to the complainant who said the Ministry's offer was acceptable. (Included under Ministry of Transportation and Communications, Detailed Summary #72)

--The complaint of a former member of a Police Department who said he had been unfairly affected as a result of the incorporation into a Regional Municipality of the town for which he had worked. The complainant informed the Ombudsman that had his employment continued with the town, he could have worked until he was 65 years old. However, the Regional Municipality had a compulsory retirement age of 60. Because of his forced retirement, the complainant's pension was lower than it would have been had he been able to continue working. When he retired, he had accumulated 17.8 years of continuous service, but he required 20 years of such service in order to obtain further benefits. Our investigators reviewed the legislation creating the Regional Municipality as well as provisions of The Municipal Act and held meetings with officials of the Regional Municipality. As a result of these meetings,

the Regional Municipality paid into the Ontario Municipal Employees Retirement System a sum which provided the complainant with an additional \$66.62 per month for life. Should he be survived by his wife, she will receive a 50% survivor's benefit. (Included under Ministry of Treasury, Economics and Intergovernmental Affairs, Detailed Summary #74)

--The case of the Chief of a Volunteer Fire Department in a small northern Ontario town. He complained to the Ombudsman that the town, an unorganized municipality, was unable to obtain Government funding to help buy firefighting equipment and also that he had been unable to obtain a retail sales tax exemption on the purchase of such equipment. In response to our notice of intention to investigate, officials of the Ministry of the Solicitor General advised that there were no Government policies allowing provincial funds to be used for the purchase of firefighting apparatus. With respect to the second aspect of the complaint, we learned that the Ministry of Revenue exempted from retail sales tax only firefighting equipment purchased by a municipality, hospital or university. An unorganized municipality did not qualify for the exemption. After further contact with Ministry officials, they informed us that the legislation governing the granting of retail sales tax exemption was broad enough to encompass the Volunteer Fire Department. The complainant was subsequently advised that the unorganized municipality would not be charged retail sales tax on the purchase of a fire truck. (Included under Ministry of the Solicitor General, Detailed Summary #67)

--The case of a homeowner who had been ordered to repay his Ontario Home Buyers Grant. The Ministry of Revenue had originally approved the complainant's application and had given him both the initial and supplementary grants. Later, during an audit of the program, Ministry officials contended that because the complainant had owned a mobile home prior to his application for the grant, he was ineligible to receive the funds. The complainant admitted that he had owned a mobile home, but said that since this information had been made known to the Ministry when he first applied for a grant he should not be penalized for the Ministry's error. After further consultation with Ministry officials by the Ombudsman's staff, the Ministry indicated that it would not take legal steps to recover the funds from the complainant. The Ombudsman felt that the Ministry's position was most reasonable since its original request for repayment was correct despite the fact that the complainant's ineligibility could have been determined before grants were made to him. (Included under Ministry of Revenue, Detailed Summary #65)

--The problems encountered by a complainant whose family had resided on, made improvements to and paid taxes on property since 1917. The complainant contended that although the former Department of Lands and Forests had already issued the Crown Patent for the property to another party in 1908, his application to buy it was accepted some years later. Since learning of the problem, the complainant had spent many years attempting to secure title to the land, but to no avail. At one point, the complainant's lawyer had written to the Minister asking him to exercise his authority to cancel the existing Crown Patent but the Minister had advised that legally he was unable to do so. After a thorough investigation, the Ombudsman wrote to the Deputy Minister outlining his possible conclusions in the case. The Ombudsman pointed to various actions by members of the Ministry and former Department which would tend to lead the complainant to believe that provision would be made for him to obtain title to the property. The Deputy Minister responded that the Ministry would cooperate with the complainant in a future forfeiture of provincial land taxes and a subsequent re-grant of the property to the complainant. We informed the complainant of the Ministry's position and advised him to contact his lawyer to ensure that the necessary procedures were carried out which would enable him to obtain title to the property. (Included under Ministry of Natural Resources, Detail Summary #59)

--The problem of a complainant who opened a tent and trailer park in 1975 near a government-owned campsite. He contended that while he was required to fulfill various regulatory provisions of the Ministry of Natural Resources' permit, campers on the uncontrolled Crown land were not required to observe the same standards. In his view, he was locked into an unfair competitive position with the Government site. After our investigation commenced, the Deputy Minister informed us that a review of recreational land use in the area in question was being undertaken and that, in the interim, he would be prepared to close the Government site to camping if the local municipality approved of the action. The complainant was informed of this response and our investigator contacted members of the local Municipal Council. The complainant subsequently collected signatures for a petition which he presented to the Council and the Council passed a resolution calling for a ban on overnight camping at the Government site. The resolution was forwarded to the Ministry which then closed the site to camping and thus eliminated the competition to the complainant's business. This is just one of a number of cases involving the Ministry of Natural Resources

that demonstrates how the Minister, the Honourable Frank S. Miller, and his Deputy Minister, Dr. J.K. Reynolds, do their utmost to cooperate with the Office of the Ombudsman. (Included under Ministry of Natural Resources, Detailed Summary #62)

--The concern of an inmate's mother who complained that because of an indentifying stamp on an envelope containing a letter from her son, her neighbours in a small central Ontario town would know of her son's imprisonment. She felt that the use of the stamp--which named the correctional institution--would cause embarrassment to her family. Our investigator contacted officials at the institution and the Ministry of Correctional Services and found that use of such a stamp was contrary to Ministry policy. Ministry officials ordered a new stamp and gave instructions that until the new non-identifying stamp was available, the name of the institution was to be blocked out on all out-going mail. (Included under Ministry of Correctional Services, Detailed Summary #29)

--The complaint of an inmate of a correctional institution who contended that his discharge date had been incorrectly computed. The complainant had requested a recalculation of his sentence by institutional officials, and was of the opinion that he was being required to serve more time than legally necessary. Our investigator brought the matter to the attention of a senior official of the Ministry of Correctional Services who examined the inmate's complex series of sentences. The official concluded that an error had been made in calculating the length of the inmate's sentence and the complainant's discharge date was advanced 30 days. (Included under Ministry of Correctional Services, Detailed Summary #28)

--The complaint of a resident of a northern Ontario town who said he had been refused a permit to operate a Liquor Control Board agency store outlet on three occasions. He contended that he had received no reasons from the Liquor Control Board for the rejection of his applications. After his first application, the complainant was informed that if he upgraded his facilities his application would be granted. However, after the complainant had done so, he still did not receive a licence. A second application was then submitted, as was a third, but both were rejected by the Board. After we notified the Board of our intention to investigate, we were

informed that as a result of an investigation conducted by a member of the Ontario Provincial Police and because there was another outlet only 17 miles from the complainant's lodge, it had been concluded that the complainant should not receive a permit. The Ombudsman, taking into account that the complainant had fulfilled an upgrading condition made by a Board employee after the first application, advised the Board that in his opinion the Board had acted in accordance with a practice that was unreasonable and unjust. He recommended that in the future applicants be advised that notwithstanding the views of a Board employee, the Board's members were the only licensing body. He also recommended that the Board reconsider the complainant's application and that both the complainant and all unsuccessful applicants for agency outlets be given reasons for the Board's decisions in the future. The Board agreed to accept the three recommendations. The Board subsequently granted a permit to the complainant to operate an agency store outlet. Since the inception of the Office of the Ombudsman, this Board under the chairmanship of Mr. W.J. Bosworth has consistently extended every co-operation to the Office. (Included under Ministry of Consumer and Commercial Relations, Detailed Summary #22)

--The dispute between a complainant and the Ministry of Government Services concerning payment for surveys made by the complainant, who contended that he had received oral instructions to proceed with two surveys in 1975 but had never received payment. Our investigator interviewed the complainant and Ministry officials and learned that the Ministry's position was that it had authorized the complainant to provide estimates only, not to proceed with the surveys. A hearing was held and both the complainant and a Ministry official gave evidence under oath. After reviewing the transcript of the hearing, the Ombudsman concluded that the complainant should be paid for the first survey but not the second. Subsequent to the Ombudsman's decision, we were informed by the Ministry that a settlement had been reached whereby the complainant was paid \$3,000 in full settlement of his claims. (Included under Ministry of Government Services, Detailed Summary #44)

--The case of a driver who was informed that his driver's licence had been suspended. Our investigation showed that he had been mistaken for his brother whose outstanding traffic fines had not been paid. Within 24 hours of our intervention with the Ministry of the Attorney General and the Ministry of Transportation and Communications, the complainant's licence was reinstated. (Included under Ministry of the Attorney General, Detailed Summary #3)

--The contention of a complainant that he had been misled by the Motor Vehicle Accident Claims Fund. The complainant had been involved in a multi-vehicle accident and, some months later, when he informed the Ministry of Transportation and Communications of his change of address, he was advised that his licence had been suspended because of a \$100 claim against him by the Fund. The complainant contended that he had never been notified of the outstanding claim. In order to reinstate his licence, he paid the \$100 claim and asked at that time if there were further outstanding claims against him. The complainant was told there were no other claims, but he subsequently learned that a further \$559 was being claimed against him. He told the Ombudsman that had he been informed of the claims, he would have disputed them. Our investigation revealed that the Ministry of Consumer and Commercial Relations had sent two registered letters to the address shown on his licence--his mother's home--and that both had been returned by the Post Office marked "Moved. Address Unknown." The complainant's mother told our investigator that she had completed a change-of-address card and that the Postmaster had forwarded it to the Post Office. The Postmaster, however, said she had only sold the form to the complainant's mother and recalled that the complainant's mother had said she would forward the card herself. Upon further investigation, our investigator learned that the card had not been received by the Post Office until some months after the claims notifications had been sent to the complainant. Our investigator also spoke with the official who had informed the complainant that there were no further outstanding claims against him. The official said that she had no recollection of the complainant, but that had he asked about further claims, she would have made appropriate enquiries. The Ombudsman found the complaint to be unsupported. There was some doubt about the date on which the change-of-address card was forwarded to the Post Office, the complainant had not notified the Ministry of Transportation and Communications of his change of address immediately after his move, and officials of the Motor Vehicle Accident Claims Fund had settled the claims in accordance with the legislation governing them. Although this complaint was not supported, the Ombudsman recommended that motorists who pay the Uninsured Motor Vehicle Fund fee should be advised of the consequences of failure to notify the Ministry of Transportation and Communications of a change of address. The Ministry agreed with this recommendation and undertook to include such a warning in the next reprinting of the Fund's pamphlets. (Included under Ministry of Consumer and Commercial Relations, Detailed Summary #16)

RECOMMENDATIONS DENIED

During this reporting period, there were nine cases closed where, upon completion of our investigation, I made recommendations pursuant to Section 22 of The Ombudsman Act which were rejected by the governmental organization involved. I am outlining highlights of these cases in this Introduction. In addition, these nine cases are reported in detail in Chapter IV of this Report.

As I stated in my Third Report to the Legislature, I am of the view that the Select Committee on the Ombudsman can properly consider, report on, and make recommendations with respect to cases such as these which are reported in my Reports to the Legislature made pursuant to Section 12 of The Ombudsman Act. It is my view that cases such as these deserve top priority with the Select Committee and I urge the Committee at the earliest date possible to give consideration to these cases.

In all nine cases referred to in this Report in which my recommendations were denied by the governmental organization concerned, I have sent a copy of my report and recommendation and a copy of any comments made by the governmental organization affected to the Premier pursuant to Section 22(4) and 22(5) of The Ombudsman Act. In all nine cases, the Premier has responded to my report and recommendation indicating that the governmental organization is unable to alter its decision not to follow my recommendation. The nine cases involved:

--The problems encountered by a physician attempting to obtain an appointment to the medical staff of a hospital. The physician, who had made his first application to the hospital in 1966, approached the Ombudsman after he had exhausted all existing remedies, including court action. During his attempts, the physician's application had come under review by the then newly-created Hospital Appeal Board and the complainant alleged bias on the part of the Board members. Following a lengthy investigation, the Ombudsman forwarded to the affected parties his possible conclusions and recommendations. In them, he commented that admissions to hospital staff might be characterized as "improperly discriminatory" and that, more particularly, the complainant's application may have been dealt with in such a manner. The Ombudsman pointed out that he might conclude that provisions governing the composition of a quorum of the Hospital Appeal Board might negate the representativeness of the Board as intended by the legislation creating it. The five-member Board was to be composed of two physicians, one member of the legal profession or the judiciary, and two members to represent the public interest, one of whom was to be a member of a hospital board. As the Ombudsman indicated, "In (the com-

plainant's) case, at all times during the hearing before the Hospital Appeal Board, all members present were members of hospital boards." The Ombudsman advised the affected parties that he might recommend that the Ministry consider a review of the legislation prescribing appointments of physicians to hospital staffs and that he might recommend that the Ministry consider amending The Public Hospitals Act with respect to the number of members on the Hospital Appeal Board and the number of members required for a quorum. After receiving representations from the affected parties, the Ombudsman reviewed his possible conclusions and recommendations and reported to the Ministry. Pointing out that the complainant had contended that the application of the legislation was improperly discriminatory at the hospital at which he had applied, the Ombudsman outlined three basic aspects to the question of the Board's alleged bias against the complainant. The Ombudsman reported that (a) there would be no finding as to whether there had been bias on the part of the Board during the hearing on the complainant's application, (b) since appointments to the Hospital Appeal Board were made by the Lieutenant Governor in Council, they were outside the jurisdiction of the Ombudsman, and (c) that with respect to the issue of the statutory composition of the Board there appeared to be grounds to suggest a review of the quorum and the statutory composition of the Board or the quorum by the Ministry. The Ombudsman felt that such a review would enable the Ministry to give better effect to the principle of a widely distributed membership on the Board, even if it were reduced to a quorum for a hearing. The Ombudsman concluded that in his view the current statutory provisions could be described as appearing to be "improperly discriminatory" in certain circumstances. In making his report, the Ombudsman noted that of the three general surgery positions to be filled at the hospital to which the complainant had applied, all were filled by doctors who had worked under the Chief Surgeon of the hospital. The complainant's lawyer had stated at the hearing before the Hospital Appeal Board, "I am saying that equal consideration was not given to applicants who were not known or not friendly with or who had not served under members of the Medical Advisory Board of the hospital." In suggesting a review of the statutory provisions, the Ombudsman stressed that because of the need for public participation in the review, the Ministry should consider making it a joint enquiry by the Ontario Council of Health and the Ontario Law Reform Commission or other similar bodies. In January, 1978, the Deputy Minister replied to the Ombudsman's report and stated that since, in his opinion, decisions of hospital boards and the Hospital Appeal Board were not within the jurisdiction of the Ombudsman, the Ombudsman's comments and recommendations would be treated as informal observations and suggestions only. In February, 1978, the Ombudsman forwarded a copy of his report to the Premier pursuant to The Ombudsman

Act. The Premier replied in April, 1978, stating, in part, "I appreciate your advising me of this matter, and that you are of the opinion that the governmental agency concerned has not taken what you consider to be adequate and appropriate actions." (Included under Ministry of Health, Detailed Summary #45)

--The case of the family of a man who had been injured in an accident at his place of employment in 1964. The workman had suffered a back injury at that time and was away from work so frequently because of continuing pain that his physician recommended that he seek lighter work. He was unable to do so, however, and his employer laid him off permanently in 1967. In 1968, he was awarded a 10% permanent disability pension by the Workmen's Compensation Board which, at the same time, discontinued his temporary benefits. The workman was dissatisfied with the amount of the pension and appealed through the various appeal stages of the Board, but without success. However, in early 1970, the Board reassessed his condition and awarded him a 15% permanent disability pension retroactive to 1968. The workman again appealed through the appeal stages, but in 1971 the Board concluded that the 15% was commensurate with the remaining physical disability. In 1975, the workman wrote to the Ombudsman, but before our investigation could begin, we were informed that the complainant had died. Our file was then closed, but in 1976 an MPP wrote the Ombudsman on behalf of the deceased's family. He requested that we re-open our investigation as any additional benefits which might have been secured for the complainant would be payable to his estate. We accordingly notified the Board of our intention to investigate and upon examining the Board's file, we noted that there was an apparent inconsistency in the Board's decision to make the increase in pension to 15% retroactive to 1968 instead of the date of the original temporary benefit award in 1965. The Chairman of the Board, after being informed of the Ombudsman's possible conclusion, responded that the 1968 date was chosen because of medical information which indicated a deterioration in the workman's back condition. Our review of the medical report referred to by the Chairman, however, did not in our view provide any evidence of a deterioration in the complainant's condition. The Ombudsman concluded, therefore, that the Board was unreasonable in choosing 1968 as the retroactive date for the pension increase and the Ombudsman recommended that the increased pension be made retroactive to the original award in 1965. The Board declined to give effect to this recommendation and, therefore, a copy of the Ombudsman's report and recommendation was forwarded to the Premier pursuant to The Ombudsman Act. (Included under Workman's Compensation Board, Detailed Summary #75)

--The problem of an injured worker who was unable to obtain sufficient funds from the Board for an infra-red lamp which would help ease the back pain from which he had suffered since 1971. The complainant had fallen in that year and suffered a back injury which required surgery and many years of physiotherapy and medication. Since the accident, he had been unable to maintain steady employment except for two periods and had undergone rehabilitation programs as well as an upgrading program at a community college. Throughout this period, he received the appropriate benefits from the Board, but in 1975 the complainant's doctor prescribed an infra-red lamp for the workman's use and so notified the Board. The Board subsequently agreed to provide \$25 for a lamp, but the complainant requested \$249 for an upright and adjustable model which had been prescribed by his doctor. The Board, however, refused the complainant's request and, after exhausting his appeal rights at the Board, the workman brought his complaint to the Ombudsman. Our investigation revealed that the amount allowed by the Board was insufficient to purchase the type of lamp required by the complainant and the Ombudsman informed the Chairman of the Board of his possible conclusion that the Board had acted in an arbitrary manner. The Ombudsman said, in part, "It is open to me to conclude that an additional \$225 at this time, is a relatively minor expenditure in comparison with that which may well be spent in future for physiotherapy treatment." In his reply, the Chairman noted that the Ombudsman's comments had been reviewed by the Appeal Board panel which had originally dealt with the complainant's appeal. He informed the Ombudsman that the panel's view had not changed and that the \$25 lamp was more than adequate for the complainant's needs. As a result, the Ombudsman forwarded a report to the Chairman and the Minister of Labour outlining his conclusion and recommendation in this case. He subsequently received a reply from the Chairman indicating that the Board did not intend to implement the Ombudsman's recommendation. Pursuant to The Ombudsman Act, a copy of the report and recommendation was forwarded to the Premier. (Included under Workmen's Compensation Board, Detailed Summary #76)

--The case of an injured municipal worker who sustained two injuries to his lower back. The complainant, whose problem was brought to the Ombudsman by an MPP, suffered an injury to his back in 1967. Although he was treated for back strain at the time, he did not report the incident and no claim was submitted to the Board. Approximately three months later he was diagnosed as suffering from a congenital spinal condition, and three years later he injured his back again while

lifting a bundle of steel bars. He was hospitalized and a claim was submitted to the Board. He subsequently received temporary total disability benefits for a four-week period. In 1971, fifteen months after the second accident, the complainant suffered another injury to his back and received benefits for a two-week period. After the third accident, however, he was forced to lay off work on a number of occasions and the Board granted him temporary benefits during each period. The complainant contended that the Board should have accepted responsibility to compensate him for his congenital spinal condition. He felt that the deterioration of his back condition was triggered and compounded by his compensable injuries. Our investigation, which included interviews with the complainant and various physicians involved in the case as well as a review of the Board's file, led us to the possible conclusion that the complainant should be considered for a permanent partial disability award for the residual disability he suffers as a result of the two compensable injuries. This possible conclusion, along with a possible recommendation that the award, if granted, should be retroactive to the worker's first compensable injury, was forwarded to the Board. The Board subsequently informed the Ombudsman that in its opinion there was no medical evidence to support the worker's contention or our possible conclusion and recommendation. After reviewing the Board's reply, the Ombudsman concluded that sufficient medical evidence existed to support the probability that a relationship existed between the complainant's injuries and his on-going disability. It was the Ombudsman's opinion that the Appeal Board was unreasonable in rejecting the worker's request for further benefits. A copy of the Ombudsman's report and recommendation was forwarded to the Board and the Minister of Labour. The Board subsequently replied that it would not give effect to the Ombudsman's recommendation and, therefore, a copy of the report and recommendation was forwarded to the Premier pursuant to The Ombudsman Act. (Included under Workmen's Compensation Board, Detailed Summary #77)

--The problem faced by a 63-year old rack washer for a bakery who injured his back in a fall. The Board granted temporary benefits for approximately 18 months and the complainant was then assessed for a permanent disability award which was rated at 15%. The worker appealed the amount of the award and also requested that a special supplement of 35% be paid to him pursuant to section 42(5) of The Workmen's Compensation Act for the period between the time of his award and the commencement of his pension at age 65, some seven months hence. The Board rejected both appeals. The complainant's case was then brought to the Ombudsman by the Injured Worker's Consultants. Our investigator carried out a full investigation

and it was the Ombudsman's opinion that the complainant's age at the time of the accident (63), his back injury, illiteracy and inability to speak English combined to make him unemployable within the meaning of section 42(5). This opinion was supported by an orthopaedic specialist who stated, "The man was not fit to return to work because of his training, level of education and back pain which rendered him virtually non-rehabilitable." A doctor employed by the Board at the Rehabilitation Centre confirmed this view, stating, "It may well be that this man has come to the end of his working life." The Ombudsman then forwarded to the Board his possible conclusion that the Board had made an incorrect decision respecting the complainant's case and that he should be awarded the 35% special supplement until he became eligible for Canada Pension Plan benefits. The Board responded indicating that in its opinion the complainant was not eligible for the supplement in spite of the Ombudsman's interpretation of the appropriate section of the Act. As a result, the Ombudsman forwarded a report to the Board and to the Minister of Labour recommending that the Board award the complainant the supplementary benefits. The Board responded that it could not give effect to the Ombudsman's recommendation and a copy of the report and recommendation was therefore forwarded to the Premier pursuant to The Ombudsman Act. (Included under Workmen's Compensation Board, Detailed Summary #78)

--The claim of an injured woman who had fallen while employed with a large food chain and injured her wrist, buttocks and low back. The day following her injury, her employer closed its operation and her employment was terminated. Although the complainant began receiving treatment for her back injury shortly after the accident, the Board provided her with medical cost benefits only. It was the Board's view that she was not entitled to compensation benefits. After exhausting the appeal avenues of the Board, the complainant contacted the Ombudsman. Our investigator learned that before the complainant's Appeal Board hearing, an orthopaedic surgeon had examined her and concluded that her injury had aggravated a pre-existing symptomless disc degeneration in the neck and low back and that she would not have been able to return to work following the accident. This report had not been presented to the Appeal Board and, at the Ombudsman's request, it was considered by the Board. However, the Board once again denied the complainant compensation benefits. After further investigation, the Ombudsman informed the Board of his possible conclusion that the Board's refusal to make benefits available was unreasonable. The Board responded by stating that it could not agree with the results of our investigation. The investigation was reviewed once again, the Ombudsman then sent a final report and recommendation to the Board and to

the Minister of Labour. The Ombudsman recommended that the complainant receive temporary total disability benefits until she was fit to return to work. The Board subsequently informed the Ombudsman that it did not intend to implement the Ombudsman's recommendation and, therefore, a copy of the report and recommendation was sent to the Premier pursuant to The Ombudsman Act. (Included under Workmen's Compensation Board, Detailed Summary #79)

--The case of a 58-year old workman who began working on a lathe and grinding down rollers made of natural and synthetic rubber and polyurethane. About 10 months after commencing this assignment in 1965 with his employer of 13 years, he experienced respiratory problems which persisted even after he was assigned to other duties. In 1968, he wrote to the Board asking for its consideration, and in June, 1968, he resigned his position. The Board awarded him temporary total benefits for the acute episodes in 1967 and 1968 and paid all medical costs but refused to consider providing permanent disability benefits because the respiratory problems disappeared after he had left his workplace. The complainant appealed the Board's decisions through 1970 when he was 63 years of age and only 16 months away from receiving his Canada Pension Plan benefits. His employment background, though remarkably stable, had not equipped him with any particular trade qualifications and his own efforts to find employment as well as those offered through the Board's Rehabilitation Centre proved fruitless. After the worker contacted the Ombudsman and after our investigation, we reached the possible conclusion that the Board could have allowed the complainant benefits under section 42(5) of The Workmen's Compensation Act had it viewed him as suffering from a "permanent disability." The Board's negative response to our tentative conclusion did not alter our view of the case and we therefore concluded that the Board's decision in this matter was wrong. A final report and recommendation was forwarded to the Board and to the Minister of Labour in which the Ombudsman recommended that benefits be paid to the worker until he reached his 65th birthday. The Chairman of the Board subsequently informed the Ombudsman that the Board would not give effect to the recommendation and the Ombudsman, therefore, forwarded a copy of the report and recommendation to the Premier pursuant to The Ombudsman Act. (Included under Workmen's Compensation Board, Detailed Summary #80)

--The complaint of a worker who had been employed for 17 years as the Chief Engineer in the boiler room of a large hotel. Until 1972, he was in good health but he then developed

a cough and eventually stopped working on medical advice in 1975 because he developed bronchial asthma, emphysema and chronic bronchitis. His physician felt that the complainant's condition was related, at least in part, to his working conditions. From 1957 to 1970, the hotel's heating system burned bunker oil which caused sulphur fumes and sulphur dust deposits and the boiler room was also the repository of cigarette smoke drawn into it by a number of exhaust fans. The complainant was a non-smoker. In 1974, he made a claim to the Board and was granted a 25% life pension. On appeal, this was increased to 50%, but the complainant, dissatisfied with the award, appealed through the Board's appeal levels without success before bringing his case to the Ombudsman. During our investigation we noticed an apparent discrepancy between various medical reports and we therefore had the complainant examined by a specialist in respiratory disease. The consultant concluded that the complainant could not pursue active employment because of his condition and recommended that the worker receive additional compensation. "I think then that a compensation figure of 75 to 80% could be more suitable in this case," he reported to the Ombudsman. When our consultant's report was made available to the Board, the Board could not agree with his conclusions. We then reported to the Board our possible conclusion that the Board's decision was unreasonable and/or unjust. However, the Board, while agreeing that the complainant was 100% disabled, argued that the percentage of his disability directly attributable to his employment at the hotel was no greater than 50%. In the Ombudsman's final report, the Ombudsman recommended a substantial increase in the complainant's pension. The Board replied that it saw no reason to change its previous decision and, therefore, a copy of the Ombudsman's report and recommendation was forwarded to the Premier pursuant to The Ombudsman Act. (Included under Workmen's Compensation Board, Detailed Summary #81)

--The case of a miner who had injured his knee in 1967 and who underwent surgery to correct the injury. In late 1967, however, he was still suffering pain and left his employment. Despite his doctor's view that there was nothing further wrong with the knee, the complainant stated that his pain persisted, but no other local doctor would treat him as he was still a patient of the original treating orthopaedic specialist. The complainant, frustrated by the ongoing pain and lack of treatment, was hospitalized in early 1968 for two months for an acute period of reactive depression. After a number of years, the complainant was treated by another specialist in Toronto who concluded that the original surgery had been incomplete. Another operation was carried out in 1975. The Board had originally awarded the complainant

benefits for the period he was off work after the accident and following his layoff in 1967 he received 50% benefits for one month and 25% benefits for one year. The complainant contended that he should have received 100% benefits for a six-month period and 50% for the remaining period. His appeals to the Board were unsuccessful, however, and he then contacted the Ombudsman. Our investigation included a complete review of the Board's file as well as interviews with the doctor who performed the surgery in 1975. It was his opinion that the complainant would have been unable to work as a miner because of the symptoms that existed after the original incomplete surgery in 1967. We concluded that the complainant had suffered from both physical and psychiatric disabilities related to the accident and that the Board should have compensated him further. We therefore upheld the complainant's contention that he deserved additional benefits. In its reponse, the Board said it could not accept our recommendation and a copy of the Ombudsman's final report and recommendation was sent to the Premier pursuant to The Ombudsman Act. (Included under the Workmen's Compensation Board, Detailed Summary #82)

RENT REVIEW

In our Third Report to the Legislature we reported in detail on a case in which we found that a hearing conducted before the Residential Premises Rent Review Board had been unsatisfactory. In this case the Board accepted our recommendation that in the event that the complainant applied for judicial review of the Board's order, the Board would not oppose such an application and would agree to an order that the complainant's costs be paid by the Board on a solicitor and client basis. [See Detailed Summary #11, p.135, Volume I, Third Report.]

In another case reported in detail in our Third Report the Minister of Consumer and Commercial Relations agreed to accept our recommendation that the Ministry pay the legal costs of all parties involved in having orders of the Residential Premises Rent Review Board and of the Rent Review Office quashed. [See Detailed Summary #15, p.140, Volume I, Third Report.]

A third case was reported in Volume II of our Third Report. In this case, the Residential Premises Rent Review Board had reduced a rent increase awarded by a Rent Review Officer by 3%, allowing only an increase of 9.5%. The complainant who was the landlord, complained that this award was unreasonably low and claimed that the Board had disregarded justified costs

including increased financing charges and capital expenditures. After an investigation which included a review of the Board members' work sheets, we formed the possible conclusion that certain allowable expenses, such as advertising costs and management fees had not, in fact, been considered by the Board. [See Line Summary #356, p.30, Volume II, Third Report.]

We wrote to the Chairman of the Residential Premises Rent Review Board on July 22, 1977, advising him of our possible conclusion that the Board had exercised its discretion improperly in not allowing certain justified expenses. We also informed him of our possible recommendation that in the event that the complainant decided to apply for judicial review of the Board's decision, the Board should not oppose the application and should pay the costs of all parties to the application on a solicitor-client basis.

In response to our letter pursuant to section 19(3) of The Ombudsman Act, the Acting Chairman of the Residential Premises Rent Review Board wrote to us on July 28, 1977, as follows:

"Referring to your letter of July 22nd, I have reviewed [the complainant's] complaint.

While I disagree that the Board members exercised their discretion improperly in view of [the former Chairman of the Board's] letter of February 2nd (a copy of which is enclosed) should the complainant apply for judicial review, the Board will not oppose the application. The Board will further recommend to the Attorney General that an order be issued with respect to this matter on consent. I believe this procedure will remedy the situation."

In light of the two cases mentioned earlier in which the Board agreed to pay the complainant's legal costs in the event they applied for judicial review, we interpreted the Acting Chairman's letter to mean that the Board in this case as well would pay the complainant's costs. Consequently, on September 8, 1977, we wrote to the Acting Chairman of the Residential Premises Rent Review Board stating, in part, as follows:

"You indicated in your response of July 28, 1977 that you did not agree that the Board members had exercised their discretion im-

properly. However, you further stated that in view of [the former Chairman's] letter to [the complainant] of February 2nd, 1977, that the Residential Premises Rent Review Board would not oppose an application for judicial review or an order for payment of his legal costs and that the Board would recommend to the Attorney General of Ontario that an order be issued with respect to an application for judicial review on consent."

We advised the complainant of what we believed to be the result in his case and closed our file. We subsequently reported this case in Volume II of our Third Report as follows:

"Inadequate rent increase allowed--Assisted resolution in favour of complainant."

On November 3, 1977, we received a letter from the Acting Chairman of the Residential Premises Rent Review Board which stated in part:

"I note [the complainant] is under the mistaken impression that the Board will consent to his costs of an application for judicial review on a solicitor-client basis.

My letter of July 28th, 1977 does not refer to a consent with respect to costs, the file nowhere indicates such a consent and the Board does not say consent. I am of the opinion that while it may be that the panel wrongly exercised its discretion, the matter is arguable. As it is my opinion that the panel did not make a gross error, I am not prepared to consent to costs."

Upon receipt of this letter, the complainant was immediately advised that the Board had taken the position that it would not pay his legal costs of an application for judicial review. Members of our staff entered into discussions with members of the Board and the Rent Review Program on the issue of payment of legal costs. At the same time that these discussions were being conducted, our investigations of three other complaints in which the same issue was raised were concluded.

In one of these cases the Board had not given effect to a tenancy agreement between the landlord and one of his tenants. The landlord had complained that the Board's decision was unfair because no consideration had been given

to this agreement. Our investigation disclosed that in his application for a hearing by the Board, the landlord had clearly asked for recognition of the agreement. We concluded that the Board had exercised its discretion improperly in not permitting the rent increase sought by the landlord and which the tenant had agreed to in a tenancy agreement dated January 13, 1976 as provided for in section 4(5) of The Residential Premises Rent Review Act. We therefore recommended that if the complainant applied for judicial review of the Board's decision, the Board should not oppose the application and should pay the costs of all parties on a solicitor and client basis. The Acting Chairman responded by saying that the Board agreed not to oppose an application for judicial review and that it would recommend to the Attorney General that an order be issued on consent, but the Acting Chairman stated that the Board would not agree to payment of costs.

In another case involving the Board, a tenant complained that in awarding a 60 percent rent increase to the landlord, the Board had not taken into account that the landlord had over-extended himself financially. The investigation disclosed that the Board had decided to conduct a hearing notwithstanding the tenant's contention that the landlord had failed to notify her properly of his application for rent review, and without making a finding of fact that she had been properly notified. We concluded that the Board had erred in law in considering the landlord's application on the merits without a finding of fact being made that the tenant had been properly notified. We therefore recommended that if the tenant were to apply for judicial review, the Board should not oppose the application and should pay the legal costs of all parties to the application on a solicitor and client basis. The Acting Chairman responded by saying that in his opinion the Board had found as a fact that the tenant had been properly notified and that the Board could therefore not agree not to oppose an application for judicial review or to pay legal costs of the parties to it.

In the case involving the Residential Premises Rent Review Program, a tenant complained that he had not received a notice of justification of rental increase within the time required by The Residential Premises Rent Review Act and that the Rent Review Officer should not have permitted a rent increase higher than the increase applied for by the landlord. Our investigation disclosed that the tenant, because of a vacation, had not appeared at the hearing before the Rent Review Officer and had therefore lost his right to appeal to the Board. We concluded that the tenant should have raised the argument that he had not been properly notified by the landlord prior to or at the hearing. However, we concluded that the Officer had erred in law in

exceeding his jurisdiction under section 7 of The Residential Premises Rent Review Act in granting an increase in excess of the amount requested by the landlord, and that this was unfair to the tenant. We therefore recommended that if the tenant were to apply for judicial review of the Rent Review Officer's order, the Program should not oppose the application. Since the tenant had deprived himself of the right of appeal, we recommended that only the landlord's legal costs of the application should be paid. The Executive Director of the Program responded by saying that the Program would not oppose any party applying for judicial review, but would participate in the application for full clarification of legal issues that might affect the Program's procedures or authority. The Program would not agree to payment of the landlord's legal costs.

During the discussions that took place between the members of our staff and officials from the Rent Review Program and the Board, the Program and the Board argued that they had no statutory authority and no funds to enable them to pay such legal costs. They felt that if the party other than the complainant opposed the application, his costs should not be paid. They were concerned that in agreeing to pay costs they might prejudice themselves if they wished to develop or amend the legal proceedings later. They were concerned that the legal costs might mount up unreasonably, and that vexatious, frivolous or ill-founded complaints might be encouraged. They also felt that they should not pay costs where no "gross" error had been made or where the application for judicial review was consented to in order to obtain clarification of new points of law.

The Program and Board did indicate that in appropriate cases they might be willing to forego costs against an unsuccessful party to an application for judicial review. They stated that they would cooperate with the Ministry of the Attorney General in an effort to minimize legal costs to the complainant and other party.

We carefully considered these arguments. We also considered that in every case where we had made a recommendation for payment of costs, the Program or Board had committed an error or injustice that led to the order complained of. In a case where the Program or Board agreed an error had been made and judicial review would not be opposed, agreement to pay costs would be in accordance with the general rule of practice that the unsuccessful party must pay the costs of the successful party. Our view is that even where a landlord or tenant opposes the application, his costs should be paid because the application was necessitated by the error of the Board or Program. We do not agree that an agreement to pay costs

might prejudice the Board or Program later in the legal proceedings. The amount of costs to be borne could be agreed upon in advance, and in the event of dispute, application could be made to a Taxing Officer.

The distinction between "gross" and small errors does not appear to be decisive, because in all cases the only way to correct the decision or order is by way of judicial review. The fact that the Program or Board would obtain clarification of new points of law from the judicial review seems all the more reason for them to pay the landlord's and tenant's costs. Frivolous, vexatious or ill-founded complaints would be found to be so by our Office and those complaints would not be supported; we would make such a recommendation only in those cases we find to be supported.

We have been especially sensitive to the fact that in monetary terms it would almost never be worthwhile for a tenant to apply for judicial review, and rarely so for a landlord. This means that even though their complaints to us have been supported, they are effectively without a remedy in the face of an unjust order of the Program or Board.

We do not agree that there is no legislative authority for agreement to payment of legal costs by the Program or Board. Section 9 of The Ministry of Treasury, Economics and Intergovernmental Affairs Act provides:

"(1) The certificate or order of the Attorney General or Deputy Attorney General that a sum of money is required to be paid out of the Consolidated Revenue Fund on account of the investigation, detection or punishment of any offence against the laws of Ontario or of Canada, or on account of special services of disbursements in connection with the administration of justice in either civil or criminal matters, is sufficient authority for the issuing of a cheque by the Treasurer for the amount named in the certificate or order, and the officer or other person to whom the cheque is issued shall account to the Attorney General for the proper disbursement of the amount received by such officer or other person."

In our view the payment of legal costs by the Program or the Board--which would be incorporated in the order of the court in the application for judicial review--would be "on account of ... any purpose connected with the administration of justice" in a civil matter, as provided for in section 9. It would therefore be open to the Program or Board to obtain

a certificate to that effect from the Attorney General or Deputy Attorney General. This procedure would also overcome the practical argument that the Program and Board have no funds to pay costs.

In one of the cases mentioned earlier [Detailed Summary #14, p.140, Third Report] we also recommended that The Residential Premises Rent Review Act be amended,

"to provide that the Board be empowered to reconsider any decision, order, declaration, or ruling made by it and vary, amend or revoke any such decision, order, declaration or ruling. If such a recommendation is acceptable to the Minister, I would suggest that it be made retroactive so that others finding themselves in circumstances similar to that of these complainants would not have to go to the expense of seeking judicial review."

Although the Act was amended in 1977 to empower the Board on its own motion within 30 days of its order to decide to rehear an appeal and confirm, rescind, amend or replace its decision or order where in its opinion there has been a serious error, it is apparent from these cases that the power presently given the Board is insufficient.

We therefore recommend that the Board should have an unlimited right to rehear appeals and rescind and amend its orders. If the Board were given this power it would not be necessary for a complainant, whose complaint is supported by the Ombudsman, to have only the remedy of judicial review. If this were the case, there would be no need for the Board to agree to pay the legal costs of complainants whose complaints are found to have merit by the Ombudsman. Without such a power vested in the Board, the ability of the Office of the Ombudsman to assist persons who have valid complaints against the Rent Review Program and the Board is seriously restricted.

CONCLUSION

As these introductory pages have shown--and as the following chapters will make even clearer--the Office of the Ombudsman in Ontario is engaged in an increasingly important, vibrant and concerned association with the Executive, the Legislature and the Civil Service designed to ensure good government for all citizens.

This Introduction has given a comprehensive, but not exhaustive, review of the scope of the Ombudsman's caseload. I remain immensely impressed by the excellence of the service provided to the people of this Province by the men and women

who serve on the staff of the Ombudsman's Office. Their dedication and hard work have enabled us to handle a large caseload to the general satisfaction of the citizens who call upon us for help. Hopefully, the efficiency with which we serve the people in the future will be enhanced by the implementation of the recommendations contained in the Report of the management consulting firm of Hickling-Johnston Limited.

I wish to re-iterate also my sentiments of respect and admiration for the men and women who serve the Province in the Civil Service. Their acceptance of the Ombudsman's Office and their willingness to co-operate with it have been of the utmost importance in the evolution of this Office in the Province.

I was gratified on the occasion of my last appearance before the Board of Internal Economy when our estimates for the present fiscal year were under review that no problem arose concerning their approval. As earlier indicated, the amount approved for the present fiscal year is \$4,116,000.

The total budget of the Province of Ontario is in the vicinity of \$14.5 billion dollars. The amount set aside to enable the Ombudsman to discharge his responsibilities is 0.000283 of this very large total. It is less than 1/35 of 1% of the total budget. When one considers the many millions of dollars that must be spent every year to enable the Government to investigate the citizen, this is not too much to set aside so as to enable the citizen to investigate those agencies of Government which he feels, rightly or wrongly, may have been unfair to him. This view is shared by increasing numbers of citizens.

CHAPTER TWO

GENERAL COMMENTS

Matters are often brought to my attention in my capacity as Ombudsman which deserve special mention or comment. The Ombudsman is a functionary who is privileged in having a general overview of the operation of the many boards, agencies and commissions of the Province. This general overview of the Provincial bureaucracy enables the Ombudsman to recognize problems and suggest to the various Provincial organizations means of improving the service which is provided to the citizens of Ontario.

This Chapter of the Fourth Report of the Ombudsman contains a number of observations I have made over the past 2½ years and a number of suggestions I feel are warranted. The comments contained in this Chapter are not recommendations made pursuant to Section 22 of The Ombudsman Act. They are more in the nature of general suggestions which I feel should be brought to the attention of the Legislature through this Report and which I hope will be given careful consideration by the governmental organizations concerned.

SOCIAL ASSISTANCE REVIEW BOARD

It has come to my attention that The Family Benefits Act, as presently drafted, does not give to the Social Assistance Review Board the power, on its own motion, to reconsider and vary its own decisions. The Board's power to reconsider and vary its decisions is defined by Section 12(11) of The Family Benefits Act, which reads as follows:

"The Board of Review may, on application of any party, reconsider and vary any decision made by it after hearing the parties to the proceedings in which the original decision was made, and the provisions of this section, except Subsection 4, apply mutatis mutandis to the proceedings on such reconsideration."

Having discussed this subsection with the members of my legal staff, I have come to the conclusion that while the Board clearly has the power under Section 12(11) to reconsider and vary its decisions, that power is limited in two ways:

- (1) The Board's power to reconsider and vary can only be exercised upon the application of one of the parties to the proceedings

in which the Board's original decision was made.

- (2) The Board's power to reconsider and vary can only be exercised after it holds a new hearing in which all the parties to the original proceedings are given the opportunity to participate.

It is my view that the combined effect of these limitations on the Board's power to reconsider and vary its decisions precludes the Board from implementing any recommendations made by the Ombudsman which call for the variation of one of the Board's decisions, even if it wished to do so, without first receiving an application for reconsideration from one of the parties to the original proceedings and then holding another hearing. However, assuming that the complainant has applied for reconsideration and a new hearing is held, I am unable to come to any conclusion as to what, if any, weight a report and recommendation of the Ombudsman should be given by the Board at such a hearing.

It is disturbing that although The Ombudsman Act gives to the Ombudsman the power to investigate a complaint against the Social Assistance Review Board, the Board cannot give effect to any resulting recommendation made by the Ombudsman, even where it is persuaded that it ought to, without first receiving an application for reconsideration from one of the parties to the original proceedings and without holding yet another hearing in which all the parties to the original proceedings are given the opportunity to participate.

There are currently two cases which have been investigated by my Office and in which the Social Assistance Review Board has taken the position that it has no power to reconsider and vary its decisions except upon an application for reconsideration filed by one of the parties to the original proceedings. In one of these cases, we forwarded to the Deputy Minister of Community and Social Services a letter pursuant to Section 19(3) of The Ombudsman Act wherein we stated in part:

"It may be that the only satisfactory solution to this problem is an amendment to The Family Benefits Act which would give the Social Assistance Review Board the power of its own motion to reconsider and vary its decisions where it considers it advisable to do so."

The Deputy Minister responded to this letter in part as follows:

"I am advised that the Board cannot hold a rehearing and vary its decision of its own volition. The Board has no powers

other than those set out in The Family Benefits Act (particularly in section 12(11)) The Ministry Act and The Statutory Powers Procedure Act, in so far as it is applicable. There is no provision whatever in the legislation for the Social Assistance Review Board to implement your recommendations and in that regard the Board is in no different a position from any other tribunal created by statute, in that it has only the powers conferred by statute. The role of the Social Assistance Review Board as envisaged by the legislation is that of an appellate tribunal and not an investigative one. If the amendment that you have suggested was made to The Family Benefits Act, then there would be serious implications as regards the function and purpose of the Board."

There are approximately ten other similar cases currently under investigation in which I would fully expect that the Board would take the same position should I see fit to recommend a variation to the Board's original decision.

I appreciate that The Family Benefits Act was enacted long before the Statute which created the Ombudsman's Office and, consequently, this is most likely the main reason why the two enactments are difficult to integrate in some areas. The only satisfactory solution to this procedural difficulty in my view is an amendment to The Family Benefits Act which would give to the Social Assistance Review Board the power on its own motion to reconsider and vary its own decisions. Such a power is possessed by a number of other tribunals such as the Workmen's Compensation Board, the Ontario Labour Relations Board and the Ontario Municipal Board.

If such an amendment were to be enacted, the Social Assistance Review Board could then vary its decisions in any case where it was in agreement with the report and recommendation of the Ombudsman without insisting upon receiving an application for reconsideration from a party and without the necessity of holding another hearing. Such an amendment, however, would not preclude the Board from holding another hearing in any case where it wished to do so; it would only remove the necessity of the Board's holding another hearing.

THE WORKMEN'S COMPENSATION BOARD

Since May of 1975, the Office of the Ombudsman has closed a total of 1,598 complaint files concerning the Workmen's Compensation Board. I have stated in past reports that although

this forms a substantial portion of our work in the Office of the Ombudsman, these complaints reflect an extremely small percentage of the total number of claims processed by the Board every year.

In dealing with these complaints against the Workmen's Compensation Board, I have become concerned that claimants before the Board have no means of informing themselves of the "operative law" which governs their cases.

The Workmen's Compensation Act is a particularly "skeletal" statute in that it confers a great deal of discretion in the disposition of claimants' cases on the Board. However, the Board does not publish either its adjudicative policies or its past decisions.

During the course of the investigation of complaints against the Workmen's Compensation Board, the investigators in the Office of the Ombudsman have encountered numerous issues concerning the entitlement to Workmen's Compensation benefits which are not dealt with by the provisions of The Workmen's Compensation Act. These issues are, however, invariably dealt with by what can only be referred to as "Board policy." Examples of "Board policy" with which our Office has had occasion to become familiar are:

- (1) Board policy on the assessment of and compensation for permanent disabilities; in particular, the rating schedule compiled under Section 42(3) of The Workmen's Compensation Act.
- (2) Board policy on the assessment of and compensation for permanent disability where an injury is superimposed on a pre-existing condition.
- (3) Board policy on the assessment of and compensation for psychiatric disability.
- (4) Board policy on the adjudication of heart attack cases.
- (5) Board policy on the assessment of and compensation for permanent disability where there is an "enhancement factor."
- (6) Board policy on entitlement to compensation for "industrial diseases."
- (7) Board policy on the interpretation and application of the following sections of The Workmen's Compensation Act:

- (a) Section 42(5) dealing with pension supplements.
- (b) Section 51(1)(a) dealing with medical aid.
- (c) Section 51(1)(c) dealing with attendance allowances.
- (d) Section 51(3) dealing with clothing allowances.
- (e) Section 44(3) dealing with concurrent employments.
- (f) Section 41 dealing with temporary partial disability.

I should stress that officials at the Workmen's Compensation Board have always been most co-operative with the members of my staff when we have found it necessary to obtain information about Board policy. Officials at the Board have on numerous occasions taken a great deal of time to explain to our investigators the policy of the Board or, where possible, have provided our Office with written statements outlining Board policy.

I am most grateful to the Workmen's Compensation Board for providing our Office with this assistance. However, I am concerned that the information which our Office is able to obtain is not made available in any organized fashion to those persons and groups who are most affected by or interested in it, namely claimants before the Board and their representatives. In my view, this is a fundamentally unacceptable situation and I suggest that the following remedial steps should be taken:

- (1) The Workmen's Compensation Board should publish and make available to the public its adjudicative policies and manuals.
- (2) The Workmen's Compensation Board should publish and index (without reference to the names of parties or witnesses) its Appeal Board decisions and reasons therefor.

It is my belief that the publication of Board policies and past decisions will permit claimants and their representatives to inform themselves and to address their evidence and arguments to points and issues which the Board will consider relevant when adjudicating their claims. The publication of Board policies and past decisions will assist claimants and their representatives in ensuring that the Board is operating within the limits of and fulfilling the purposes of The Workmen's Compensation Act. It is my hope that the publication of Board policies and past decisions will help to remove ignorance of the "operative law" of Workmen's Compensation.

I should make it clear that I am not suggesting that Board policies be promulgated in the form of Regulations under The Workmen's Compensation Act. I note with interest that the 1973 Task Force on Workmen's Compensation recommended that Regulations be published in order to remove confusion about the Board's criteria for setting pension benefits and its procedures for pension reviews and medical consultation. I am not of the view that Regulations are required or appropriate; my concern is that Board policies and past decisions be made available to those who are most affected by them.

I am, of course, aware that there may be some practical difficulties associated with the implementation of this suggestion. The problem of the expense of initial publication and the frequent updates and alterations that would be required could be overcome by issuing the publications on a subscription basis to law libraries and other interested groups. I am advised that the Workmen's Compensation Board in the Province of British Columbia publishes its claims and adjudication manual and its past decisions in this way and it is found to be quite a workable arrangement.

PSYCHIATRIC FACILITIES

Detailed Summary No. 47 under the Ministry of Health deals with the cases of three persons detained in a maximum security psychiatric facility whose recommended transfers to a medium security unit could not be effected because such a unit had not been established.

In that investigation and other investigations which have since been completed into the complaints of four other persons detained in a maximum security psychiatric facility, I was advised that funding was not available to establish regional referral units (physically secure wards) in regional psychiatric hospitals, as had been proposed by a Ministry of Health Steering Committee in March of 1977.

Reports of my investigations of these complaints have been sent to the Ministry of Health. In each case, we found that the complainant should have been transferred from the stringent maximum security environment to secure wards in regional psychiatric hospitals. In all of these cases, I was compelled to find that there was no alternative to the continued detention of the complainants in a maximum security facility due to the lack of medium security facilities.

Based on these investigations, I suggest that the Ministry of Health should give serious consideration to expediting the establishment of regional referral units in regional psychiatric hospitals.

ONTARIO HOME BUYERS GRANT PROGRAM

Since the spring of 1976, our Office has investigated 126 Ontario Home Buyers Grant complaints and we are currently investigating another 41 cases. The complaints fall into several categories such as the denial of the grant due to the late registration of a deed, the purchasing of a housing unit at less than fair market value, failure to reside in one's own-built home within the eligibility period and failure to "own" a definable housing unit within the eligibility period. However, the subject of this suggestion concerns the issue of ineligibility due to previous ownership of a home.

Section 2(2) of The Ontario Home Buyers Grant Act, 1975 states that:

"No grant shall be made to a person applying therefor where, at any time prior to the 8th day of April, 1975,

- (a) that person or the spouse of that person owned, whether jointly with another person or otherwise, a housing unit that was ordinarily inhabited as the principal residence by that person or his spouse; or
- (b) any other person who has an interest in the housing unit in respect of which the application for the grant is made, or the spouse of that person, owned, whether jointly with another person or otherwise, a housing unit that was ordinarily inhabited as the principal residence by that person or his spouse."

As I have indicated in many of my reports in these cases, the intention of the Legislature was to award the grant to applicants who purchased housing units for the first time between April 8th and December 31st, 1975. The words "in Ontario" were intentionally deleted from Section 2(2)(a) of the Act in order to relieve a potentially discriminatory situation. These words were excluded from the section so that immigrants, Ontarians and other Canadians would all be treated in the same manner.

This section of the Act is reflected in the certification section of the Ontario Home Buyers Grant application form. The appropriate clause reads as follows:

"Neither I nor my spouse nor any co-owner or the spouse of any co-owner of the Housing Unit has previously been an owner of a Housing Unit anywhere, either jointly with another person or otherwise, that was used by any of us as a Principal Residence."
(emphasis added)

It is also portrayed in the brochure entitled "How to apply for the \$1,500.00 Ontario Home Buyers Grant." Page 2 of this brochure states in part:

"The home must be the first dwelling unit owned and occupied as a principal residence, in Ontario or elsewhere, by the applicant, the applicant's spouse, a co-owner or the spouse of any co-owner."

Twenty-seven cases or over 20% of the cases investigated by my Office involved the issue of previous ownership. Invariably the complainants who approached my Office had interpreted the words "anywhere" and "elsewhere" as they appeared in the application form and the brochure as meaning anywhere or elsewhere "in Ontario or Canada" but not "in the world." The Ministry of Revenue has interpreted "elsewhere" and "anywhere" to mean "anywhere in the world." I should point out that I have found no evidence to suggest that the Ministry has not applied its interpretation accurately, consistently and equitably.

I have had immigrants from England, United States, Italy, Denmark, Hungary, Holland, Portugal, Korea, Singapore, Trinidad, Jamaica, and other West Indian Islands as well as Canadians from New Brunswick, Quebec and Ontario complain to me about their failure to receive a grant or the requirement that their grant be returned because the Ministry of Revenue learned that they owned a home prior to April 8th, 1975. These complainants maintain that they acted in good faith in applying for the grant and complained to me that it was unfair for the Ministry either to reject their application or recover the grant simply because of their misinterpretation of the meaning of "anywhere."

As the plight of these complainants has been of particular concern to me, I have made my decision on this issue with some reluctance and after very careful consideration of the facts and the pertinent law. In my reports, I have concluded that the words "elsewhere" and "anywhere" ought not to have caused confusion in the public's mind. Although the word "elsewhere" is not so clearly exhaustive as the word "anywhere", I determined that the meaning of the latter word is clear and unambiguous. I have concluded that the word "anywhere" does not require the addition of the phrase "in the world" as in my view it encompasses such a phrase.

After much deliberation, I have determined that it is incumbent upon any governmental organization to simplify and clarify all aspects of a program such as the Ontario Home Buyers Grant program in order that participants in the scheme can accurately assess their eligibility. Although my investigations to date have revealed that the Ministry of Revenue administered the Ontario Home Buyers Grant program properly and in a way for which it ought to be commended, I suggest that a governmental organization should attempt to define its terms in a simplistic manner even

at the risk of being redundant. Such action would hopefully ensure that recent immigrants who may not be totally familiar with the English language and those who may be relying heavily on the grant to carry the cost of their housing unit, would comprehend more fully their chances of qualifying for such a grant.

In conclusion, therefore, it is my suggestion that in the future any governmental organization that is establishing a public program should attempt to do so in the simplest and clearest fashion so that persons of all social and economic backgrounds will be able to understand the program and its eligibility requirements.

CHAPTER THREE

COMPREHENSIVE STATISTICAL
SUMMARY

October 1, 1977 to
March 31, 1978

LIST OF TABLES

Table Number

1	COMPLAINTS BY REGION AND ONTARIO ELEC- TORAL DISTRICT
2	REGIONAL COMPARISON OF COMPLAINTS AND POPULATION
3	COMPLAINTS AND POPULATION BY RURAL/URBAN DESIGNATION
4	COMPLAINT FILE OPENINGS AND COMPLAINT FILE CLOSINGS BY MONTH
5	COMPLAINT FILE CLOSINGS BY DURATION CATEGORY
6	AVERAGE DURATION DAYS TO CLOSING BY MONTH
7	MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE
8	COMPLAINTS BY ORGANIZATION
9	OUTSIDE JURISDICTION COMPLAINTS BY REASONS
10	AVERAGE DURATION TO CLOSING BY MONTH AND BY JURISDICTIONAL DETERMINATION
11	FINAL ACTION ANALYSIS/ASSISTANCE TO COM- PLAINANTS
12	FINAL ACTION/AVERAGE DURATION TO CLOSING
13	COMPLAINT SETTLEMENT STATUS
14	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION
15	STATUS OF IN PROGRESS COMPLAINT FILES/ OFFICE WIDE SUMMARY
16	COMPLAINT DISPOSITION SUMMARY
17	DEFINITION OF TERMS

CHAPTER THREE

The previous three reports to the Legislature included comprehensive statistical summaries, which, when taken together, cover the period from May, 1975 to September 30, 1977. This Fourth Report provides a comprehensive statistical summary for the period from October 1, 1977 to March 31, 1978.

In addition, this chapter contains a section headed "IN PROGRESS COMPLAINT FILES". This section summarizes the status of all complaints that were in progress at the end of the period covered by this report.

COMPLAINT RECEPTION

HOW MANY COMPLAINTS WERE RECEIVED?

From October 1, 1977 to March 31, 1978 we received 2,954 complaints for which we opened new files. In addition, there were 359 new complaints which necessitated the re-opening of a complainant's file. Therefore, in total we received complaints relating to 3,313 files. In addition the Office received 3,842 telephone inquiries for which we did not open a file. Therefore, as we reported in our Third Report, on an annual basis the Office is receiving over 14,000 citizen inquiries and complaints.

HOW WERE COMPLAINTS RECEIVED?

57% by mail
28% by office interview
15% by hearing interview

The percentage of complaints received through interviews at our private hearings remained unchanged at 15% for the period covered by the Report.

DID COMPLAINTS COME FROM ALL REGIONS OF THE PROVINCE?

Complaints were received from all regions of the Province. As shown in TABLE ONE, more complaints (478) originated from REGION NINE, ONTARIO NORTH than any other region. As shown in TABLE TWO, REGION NINE also had the highest complaint-to-population ratio. On the other hand REGION EIGHT, OTTAWA EAST was the source of the fewest number of complaints 202. As noted in previous reports the existence of correctional facilities in a particular area and the scheduling of private hearings in a particular area have a significant impact on the number of complaints received from a region. For example, electoral districts with correctional facilities accounted for 48% of all closed complaint files, whereas these districts constitute only 30% of the provincial population. Similarly, electoral districts where private hearings were held accounted

for 20% of all closed complaint files whereas these districts constitute only 6% of the provincial population.

All electoral districts in TABLE ONE are designated with the letter (R), (U), or (M), depending on whether the preponderance of the polled population resides in a rural or urban setting. Where neither the rural nor the urban population exceed 66% of the total riding population, the electoral district has been designated as mixed (M). TABLE ONE shows that there were rural, urban and mixed electoral districts where the number of complaints were either disproportionately high or low in relation to its population. Nevertheless, TABLE THREE shows that the rural, urban or mixed character of electoral districts does not appear to be a significant factor affecting the number of complaints received.

COMPLAINT CLOSINGS

HOW MANY COMPLAINT FILES WERE CLOSED?

There were 3,226 complaint files closed during the period from October 1, 1977 to March 31, 1978. The monthly rate of complaint file closings (538) is comparable with the previous reporting periods. The complaint file closings (3,226) almost equalled complaint file openings (3,313). The number of in progress files has decreased by 239.

The disposition analysis of these closed complaint files indicates that there were 380 instances where the complainant's concern involved more than one complaint. As a result, the disposition statistics and the number of capsule case summaries exceed the number of closed files. Also, there were 378 complaint files closed which involved new complaints from citizens whose complaints were included in previous reports to the Legislature.

HOW LONG DOES IT TAKE TO CLOSE A COMPLAINT FILE?

The 3,226 files closed during this reporting period required an average of 111 days to close. Jurisdictional complaint files required an average of 196 days, whereas complaints that were outside the Ombudsman's jurisdiction required an average of 67 days.

Again, the majority (76%) of complaints were closed within a 90-day period. TABLE FIVE shows that 778 complaints were closed within a one month period. The majority of these complaints were non-jurisdictional. For example, TABLE SEVEN shows that during the month of October, there were 115 non-jurisdictional complaints that were opened and closed within that month.

The average duration to closing for jurisdictional complaint files includes 555 complaints which required more than nine months to complete. Many (670) jurisdictional complaints were closed within 90 days.

ORGANIZATIONS

WHICH GOVERNMENT AND PRIVATE ORGANIZATIONS WERE INVOLVED WITH THE COMPLAINTS RECEIVED?

TABLE EIGHT shows the organizations grouped in eight major categories:

- I Government of Ontario
- II Courts
- III Federal Government
- IV Private
- V Municipalities/Local Authorities
- VI Other Provinces
- VII International
- VIII No Organization Specified

The table also shows the jurisdictional determination for all complaints.

A significant change from previous Reports is the increased percentage of all complaints that were directed against the provincial governmental administration. While this major category again accounted for the greatest number (2,284) of all complaints, the important fact is that this figure now represents 63% of all complaints to our office--an increase of 9% over the Third Report. The other major categories experienced substantial, although less dramatic decreases. The private sector accounted for 663, or 18%, of all complaints. In addition, municipalities and local authorities accounted for 290 or 8% of all complaints. The Federal Government accounted for 194 or 5% of all complaints.

The Ministry of Correctional Services accounted for 789 or 35% of the Province of Ontario complaints. The Workmen's Compensation Board was involved with 491 or 22% of the Province of Ontario complaints. Overall, 65% of the complaints against the Province of Ontario were directed at ministries; the remaining 35% involved complaints against agencies, boards and commissions of the Province of Ontario.

COMPLAINT DISPOSITION

HOW DID YOU DISPOSE OF COMPLAINTS?

The disposition of closed complaints is summarized in the following paragraphs under the major headings:

- (i) Jurisdiction
- (ii) Final Action
- (iii) Settlement

All complaint disposition figures are based on an examination of 3,606 complaints dealt with during this reporting period. Thus, each capsule case summary in Volume Two has been represented statistically in this chapter.

(i) JURISDICTION

HOW MANY COMPLAINTS WERE WITHIN YOUR JURISDICTION?

There were 1,225 (38%) complaints within our jurisdiction as defined by The Ombudsman Act, 1975. Conversely there were 2,013, complaints which were outside our jurisdiction. These figures do not include either the 40 instances where abandonments and withdrawals precluded a jurisdictional determination or 328 situations involving information requests and information submissions.

WHY WERE COMPLAINTS OUTSIDE YOUR JURISDICTION?

TABLE NINE shows the number of complaints associated with the various non-jurisdictional categories. These complaints fall into five major groupings.

The first group includes the 236 non-jurisdictional complaints involving municipalities, local authorities and private organizations such as universities which are funded either in whole or in part by the Province of Ontario.

The second group includes the 618 premature complaints where the complainants had not exhausted the appeal remedies associated with their problem. These complaints fall into a special non-jurisdictional category in that the complaint would become jurisdictional in the event that the complainant returns to our office having exhausted his or her appeal remedies.

The third group includes the 189 complaints directed at the Federal Government of Canada and the 18 complaints involving other provinces and countries.

The fourth group includes complaints which are not within the Ombudsman's jurisdiction because investigations in these areas would constitute interference with the judicial, legislative or executive functions of government. These include complaints involving the Courts (176), a legal advisor to the Crown (22), or the Cabinet (74). Also included in this group are 80 instances relating to Section 15(1) of The Ombudsman Act, 1975, where a "governmental organization" was not involved or where the complainant was not affected in his or her personal capacity.

Finally, the fifth group includes those non-jurisdictional complaints involving private individuals and self-funding private organizations. There were 600 complaints in this category.

(ii) FINAL ACTION

WHAT FINAL ACTION DID YOU TAKE ON COMPLAINTS?

There are nine action categories which define the extent of the action taken by the Ombudsman. These action categories, as set out below, are defined in TABLE SEVENTEEN:

- (i) "Listen"
- (ii) "Explain"
- (iii) "Advise"
- (iv) "Refer"
- (v) "Inquire/Refer"
- (vi) "Inquire"
- (vii) "Suggest"
- (viii) "Recommendation"
- (ix) "Refuse to Investigate or Further Investigate"

The definitions and headings associated with the action categories have not changed for this Report.

The number of complaints in each action category is outlined in TABLE ELEVEN. The figures under the heading "All Complaints" include information requests, information submissions and complaints where the jurisdiction was not determined. The "Refer" (1,123) and "Inquire/Refer" (531) action categories include a large number of complaints because these actions are associated with the 2,013 outside jurisdiction complaints. There were a large number of "Inquire" actions (1,239), because this action category encompasses all jurisdictional investigations except where a "Suggest" or "Recommendation" action is involved.

In addition, TABLE ELEVEN shows the assistance-related action provided to complainants. There is no assistance associated with the "Listen" and "Refuse to Investigate or Further Investigate" action categories. On the basis of assistance-related action categories, 96% of all complainants received assistance. Assistance was provided in 92% of the jurisdictional complaints and 98% of the non-jurisdictional complaints.

TABLE TWELVE shows the average duration to closing for each action category. The "Refer" (52 days) and the "Advise" (71 days) action categories had the lowest average duration to closing. This is consistent with our objective of providing a prompt and efficient referral service to complainants with problems that are not within our jurisdiction. Naturally, "Inquire" (179 days), "Suggest" (351 days) and "Recommendation" (605 days), which are action categories associated with complex jurisdictional complaints, have much longer average durations to closing.

(iii) SETTLEMENT

HOW MANY COMPLAINTS WERE RESOLVED?

TABLE THIRTEEN shows that 985, (27%) of the 3,606 complaints were resolved. Seventy-seven percent (754) of these complaints were resolved as a result of the assistance of the Ombudsman. TABLE FOURTEEN shows that the majority of complaints where the Ombudsman assisted in the resolution occurred with respect to ministries and agencies of the Province of Ontario.

TABLE THIRTEEN also shows that a large number of complaints (2,621) could not be resolved. With the exception of the few complaints (16) where the Ombudsman decided to "Refuse to Investigate or Further Investigate", the complaints which were not resolved involved factors which precluded a complaint resolution. In 1,906 unresolved cases, the complaint was outside the jurisdiction of the Ombudsman. In the remaining cases the complaint was abandoned, withdrawn or circumstances changed in the course of the investigation.

HOW MANY RESOLVED COMPLAINTS WERE SETTLED
IN FAVOUR OF THE COMPLAINANT?

There were 396 complaints resolved in favour of the complainant. A significant number of these complaints (165) were resolved through the assistance of the Ombudsman. Additionally, there were 231 complaints that were independently resolved in favour of the complainant. Some of these complaints were categorized as independently resolved even though there was involvement on the part of the Ombudsman's staff. However, it was not certain that our involvement was predominantly responsible for the settlement in favour of the complainant.

The 165 complaints which were resolved in favour of the complainant as a result of the Ombudsman's assistance fell into three categories.

(a) There were 136 complaints that were resolved in the course of the investigative process when previously unknown information was brought to the attention of the complainant and the officials of the organization complained against.

(b) There were 25 complaints where, in the course of an investigation, a suggested settlement scheme was found to be acceptable to all parties.

(c) There were 4 complaints where, upon the completion of an investigation, the Ombudsman made a recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975, which was accepted by officials of the "governmental organization".

In addition, there were 10 complaints where the Ombudsman supported the complainant's allegation but the recommendation pursuant to Section 22(3) of The Ombudsman Act, 1975 was not accepted by officials of the "governmental organization".

On the other hand, the 579 complaints which were resolved in favour of the "governmental organization" occurred as a result of the assistance provided by the Ombudsman when a decision was made to support the position of the "governmental organization". Thus the Ombudsman assisted in the resolution of these cases to the extent that the settlement result in favour of the "governmental organization" was based on the Ombudsman's finding.

IN PROGRESS COMPLAINT FILES

HOW MANY COMPLAINT FILES WERE IN PROGRESS AT THE END OF THE PERIOD COVERED BY THIS REPORT?

There were 2,116 in progress complaint files as of March 31, 1978. This represents a decrease of 239 from the 2,355 in progress complaint files at the end of the previous reporting period.

TABLE FIFTEEN shows the status of all in progress complaints. A total of 1,415 of these files were within the jurisdiction of the Ombudsman. This constitutes 67% of all in progress complaint files. This suggests that, notwithstanding the handling of a large number of non-jurisdictional complaints, the preponderance of staff resources has been assigned to jurisdictional complaints involving substantial investigative and legal research work.

TABLE NO.: 1

TITLE: COMPLAINTS BY REGION AND
ONTARIO ELECTORAL DISTRICT

<u>REGION</u>	
<u>NUMBER</u>	<u>NAME</u>
1	Toronto-Centre
2	Toronto-Suburbs
3	Golden Horseshoe
4	Ontario West-Central
5	Ontario Western-Ring
6	Toronto North-East Corridor
7	Ontario North-Central
8	Ottawa-East
9	Ontario North

Note: The designations below apply to the schedules found in this table.

- (1) An asterisk -* indicates a constituency where a correctional facility is located.
- (2) The notations (R), (U) or (M) designate the constituency as (R) Rural, (U) Urban or (M) Mixed Urban-Rural. Population figures are based on the number of names on the polling list as taken from Pages 26-29 "1975 Ontario Election Summary From The Records".
- (3) This table is based on 3250 closed files where a constituency determination could be made.

TABLE NO.: 1 (i)

TITLE: COMPLAINTS BY REGION AND
ONTARIO ELECTORAL DISTRICT



THE PROVINCE OF ONTARIO

TABLE NO.: 1 (11)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION ONE: TORONTO CENTRE

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Beaches-Woodbine	37,974 (U)	19	6.8	5.0
Bellwoods	20,127 (U)	19	3.6	5.0
Don Mills	49,885 (U)	40	8.9	10.5
Dovercourt	22,943 (U)	18	4.0	4.7
Eglinton	47,801 (U)	17	8.6	4.4
High Park-Swansea	37,484 (U)	20	6.7	5.2
Oakwood	31,975 (U)	17	5.7	4.4
Parkdale	27,496 (U)	21	4.8	5.5
Riverdale	30,811 (U)	12	5.5	3.1
Scarborough West	39,456 (U)	9	7.0	2.3
St. Andrew-St. Patrick	35,582 (U)	23	6.3	6.0
*St. David	39,712 (U)	84	7.1	22.1
St. George	43,547 (U)	51	7.7	13.4
York East	46,639 (U)	15	8.3	3.9
York South	41,107 (U)	14	7.4	3.6
T O T A L S	552,539	379	100.0	100.0
Percentage of Population	11.2			
Percentage of Total Closed Complaints		12.7		

TABLE NO.: 1 (iii)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION TWO: TORONTO SUBURBS

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Amourdale	48,372 (U)	14	7.6	6.2
Downsview	33,656 (U)	21	5.2	9.3
Etobicoke	35,977 (U)	41	5.6	18.2
Humber	55,985 (U)	21	8.8	9.3
*Lakeshore	42,889 (U)	27	6.7	12.0
Oriole	47,063 (U)	7	7.4	3.1
Scarborough Centre	39,608 (U)	13	6.2	5.7
Scarborough East	44,552 (U)	12	6.9	5.3
Scarborough-Ellesmere	40,264 (U)	13	6.3	5.7
Scarborough North	54,568 (U)	16	8.5	7.1
Wilson Heights	43,935 (U)	7	6.8	3.1
York Mills	53,081 (U)	15	8.4	6.6
York West	50,544 (U)	10	7.9	4.4
Yorkview	41,081 (U)	8	6.5	3.5
T O T A L S	631,575	225	100.0	100.0
Percentage of Population	12.5			
Percentage of Total Closed Complaints		7.5		

TABLE NO.: 1 (iv)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION THREE: GOLDEN HORSESHOE

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Brampton	52,419 (U)	43	6.8	12.8
Brock	34,818 (U)	5	4.6	1.4
Burlington South	53,842 (U)	7	7.1	2.1
*Halton-Burlington	38,791 (U)	80	5.1	23.8
Hamilton Centre	37,667 (U)	17	4.9	5.1
Hamilton East	47,379 (U)	7	6.2	2.1
Hamilton Mountain	45,488 (U)	6	5.9	1.8
*Hamilton West	42,021 (U)	34	5.5	10.1
Lincoln	30,211 (U)	18	3.9	5.3
Mississauga East	39,500 (U)	9	5.1	2.7
Mississauga North	46,153 (U)	11	6.0	3.3
Mississauga South	40,104 (U)	10	5.3	3.0
Niagara Falls	43,455 (U)	19	5.7	5.7
Oakville	38,103 (U)	12	5.0	3.6
St. Catharines	48,885 (U)	22	6.4	6.6
*Welland	38,401 (U)	14	5.0	4.2
Wentworth	37,090 (U)	9	4.8	2.7
Wentworth North	45,145 (U)	12	5.9	3.6
T O T A L S	759,472	335	100.0	100.0
Percentage of Population Percentage of Total Closed Complaints	15.4	11.2		

TABLE NO.: 1 (V)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION FOUR: ONTARIO WEST CENTRAL

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Brantford	42,504 (U)	33	8.3	9.6
Brant-Oxford-Norfolk	37,299 (R)	17	7.3	4.9
Cambridge	44,253 (U)	9	8.7	2.6
Erie	30,615 (U)	10	6.0	2.9
*Haldimand-Norfolk	43,013 (R)	60	8.5	17.4
Kitchener	46,096 (U)	30	9.1	8.7
Kitchener-Wilmot	38,026 (U)	5	7.6	1.5
Oxford	49,055 (M)	20	9.7	5.8
*Perth	43,411 (M)	14	8.6	4.1
Waterloo North	40,726 (U)	13	8.0	3.8
Wellington-Dufferin-Peel	43,105 (R)	18	8.5	5.2
*Wellington South	45,387 (U)	115	8.9	33.4
T O T A L S	503,490	344	100.0	100.0
Percentage of Population	10.2			
Percentage of Total Closed Complaints		11.5		

TABLE NO.: 1 (vi)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION FIVE: ONTARIO WESTERN RING

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Chatham-Kent	37,789 (U)	19	5.5	4.8
Elgin	38,030 (M)	22	5.6	5.5
Essex North	32,187 (M)	7	4.7	1.8
Essex South	34,568 (R)	25	5.0	6.3
Grey	35,278 (R)	24	5.1	6.0
*Grey-Bruce	33,974 (M)	68	4.9	17.1
Huron-Bruce	33,810 (R)	13	4.9	3.3
Huron-Middlesex	29,030 (R)	18	4.2	4.5
Kent-Elgin	32,306 (R)	14	4.7	3.5
Lambton	29,457 (R)	23	4.2	5.8
*London Centre	47,178 (U)	15	6.9	3.8
London North	46,103 (U)	9	6.7	2.3
London South	55,388 (U)	30	8.0	7.6
Middlesex	31,201 (R)	8	4.4	2.0
*Sarnia	44,332 (U)	39	6.4	9.8
Windsor-Riverside	45,232 (U)	18	6.6	4.5
*Windsor-Sandwich	36,957 (U)	20	5.3	5.0
Windsor-Walkerville	37,326 (U)	25	5.4	6.3
T O T A L S	680,146	397	100.0	100.0
Percentage of Population	13.8			
Percentage of Total Closed Complaints		13.3		

TABLE NO.: 1 (vii)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION SIX: TORONTO NORTH-EAST CORRIDOR

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
*Dufferin-Simcoe	45,357 (M)	29	11.3	9.9
Durham East	43,634 (U)	9	10.8	3.1
Durham North	38,674 (R)	39	9.5	13.3
*Durham West	40,207 (U)	20	10.0	6.8
Oshawa	39,463 (U)	18	9.8	6.1
*Simcoe Centre	49,521 (M)	94	12.3	32.1
Simcoe East	42,628 (M)	31	10.5	10.6
York Centre	52,939 (U)	16	13.1	5.5
York North	47,747 (M)	37	11.8	12.6
T O T A L S	400,170	293	100.0	100.0
Percentage of Population	8.1			
Percentage of Total Closed Complaints		9.8		

TABLE NO.: 1 (viii)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION SEVEN: ONTARIO NORTH-CENTRAL

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Frontenac-Addington	32,924 (R)	4	7.6	1.2
Hastings-Peterborough	32,223 (R)	29	7.5	8.8
Kingston & The Islands	38,525 (U)	23	9.0	6.9
Muskoka	23,459 (R)	17	5.4	5.1
*Northumberland	41,399 (M)	33	9.7	10.0
*Parry Sound	27,506 (R)	22	6.4	6.6
*Peterborough	57,575 (U)	42	13.5	12.7
*Prince Edward-Lennox	29,322 (R)	28	6.9	8.5
Quinte	42,649 (U)	25	9.9	7.6
*Renfrew North	28,186 (M)	21	6.6	6.3
Renfrew South	34,050 (R)	32	8.0	9.7
*Victoria-Haliburton	35,617 (R)	55	8.3	16.6
T O T A L S	423,435	331	100.0	100.0
Percentage of Population	8.6			
Percentage of Total Closed Complaints		11.1		

TABLE NO.: 1 (ix)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION EIGHT: OTTAWA-EAST

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Carleton	47,599 (U)	14	9.8	6.9
*Carleton East	50,143 (U)	27	10.4	13.4
*Carleton-Grenville	34,510 (R)	23	7.1	11.4
*Cornwall	33,392 (U)	22	6.9	10.9
*Lanark	28,646 (M)	17	5.8	8.4
*Leeds	33,936 (M)	15	7.0	7.4
Ottawa Centre	45,908 (U)	19	9.5	9.4
Ottawa East	46,387 (U)	7	9.6	3.5
Ottawa South	50,649 (U)	5	10.5	2.5
Ottawa West	50,969 (U)	13	10.6	6.4
*Prescott & Russell	36,606 (R)	23	7.5	11.4
Stormont-Dundas-Glengarry	30,002 (R)	17	6.2	8.4
T O T A L S	478,747	202	100.0	100.0
Percentage of Population	9.7			
Percentage of Total Closed Complaints		6.8		

TABLE NO.: 1 (x)

TITLE:

COMPLAINTS BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION NINE: ONTARIO NORTH

CONSTITUENCY	POPULATION	NUMBER OF COMPLAINTS	PERCENTAGE OF REGIONAL POPULATION	PERCENTAGE OF REGIONAL COMPLAINTS
Algoma	17,789 (R)	24	3.6	5.0
Algoma-Manitoulin	18,593 (R)	15	3.9	3.1
Cochrane North	24,492 (R)	13	5.2	2.7
*Cochrane South	33,966 (U)	35	7.3	7.3
*Fort William	39,048 (U)	52	8.4	10.9
Kenora	27,254 (M)	39	5.8	8.2
Lake Nipigon	18,046 (R)	17	3.9	3.6
*Nickel Belt	23,577 (R)	17	5.0	3.6
Nipissing	41,173 (U)	49	8.9	10.3
*Port Arthur	37,144 (U)	48	8.0	10.0
*Rainy River	17,718 (M)	23	3.7	4.8
*Sault Ste. Marie	48,133 (U)	52	10.4	10.9
Sudbury	43,143 (U)	44	9.3	9.2
Sudbury East	43,185 (M)	25	9.3	5.2
*Timiskaming	29,022 (M)	25	6.3	5.2
T O T A L S	462,263	478	100.0	100.0
Percentage of Population Percentage of Total Closed Complaints	9.4	16.0		

TABLE NO.: 2

TITLE:

REGIONAL COMPARISON OF COMPLAINTS AND POPULATION

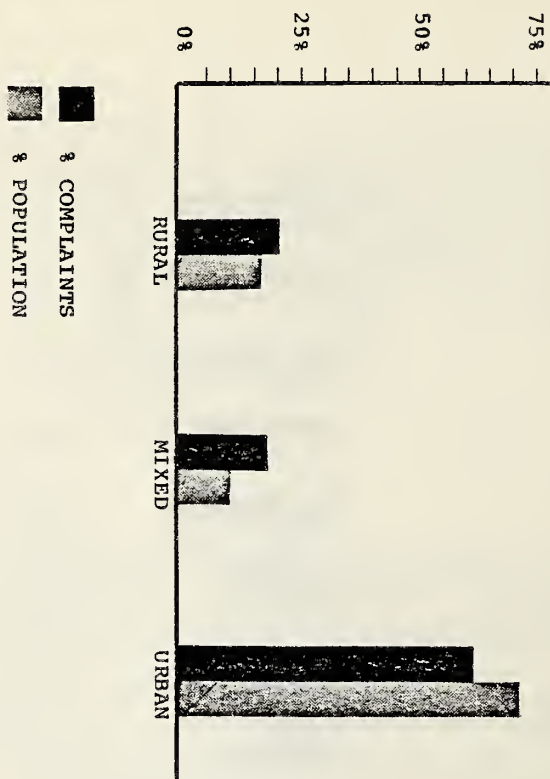


Regions	Closed Complaint Files	Complaint Files	Population	% Complaint Files Population
1 Toronto-Centre	139	12.7	11.2	1.1
2 Toronto-Suburbs	125	7.5	12.5	.6
3 Golden Horseshoe	135	11.2	13.4	.7
4 Ontario West-Central	102	11.3	10.2	1.1
5 Ontario Western-Ning	115	11.5	11.5	1.1
6 Toronto North-East Corridor	137	9.6	13.7	1.2
7 Ontario North-Central	102	11.1	10.2	1.3
8 Ottawa East	102	16.0	10.2	.7
9 Ontario North	131	16.0	13.1	1.7
Total	2984	1000		

TABLE NO.: 3

TITLE:

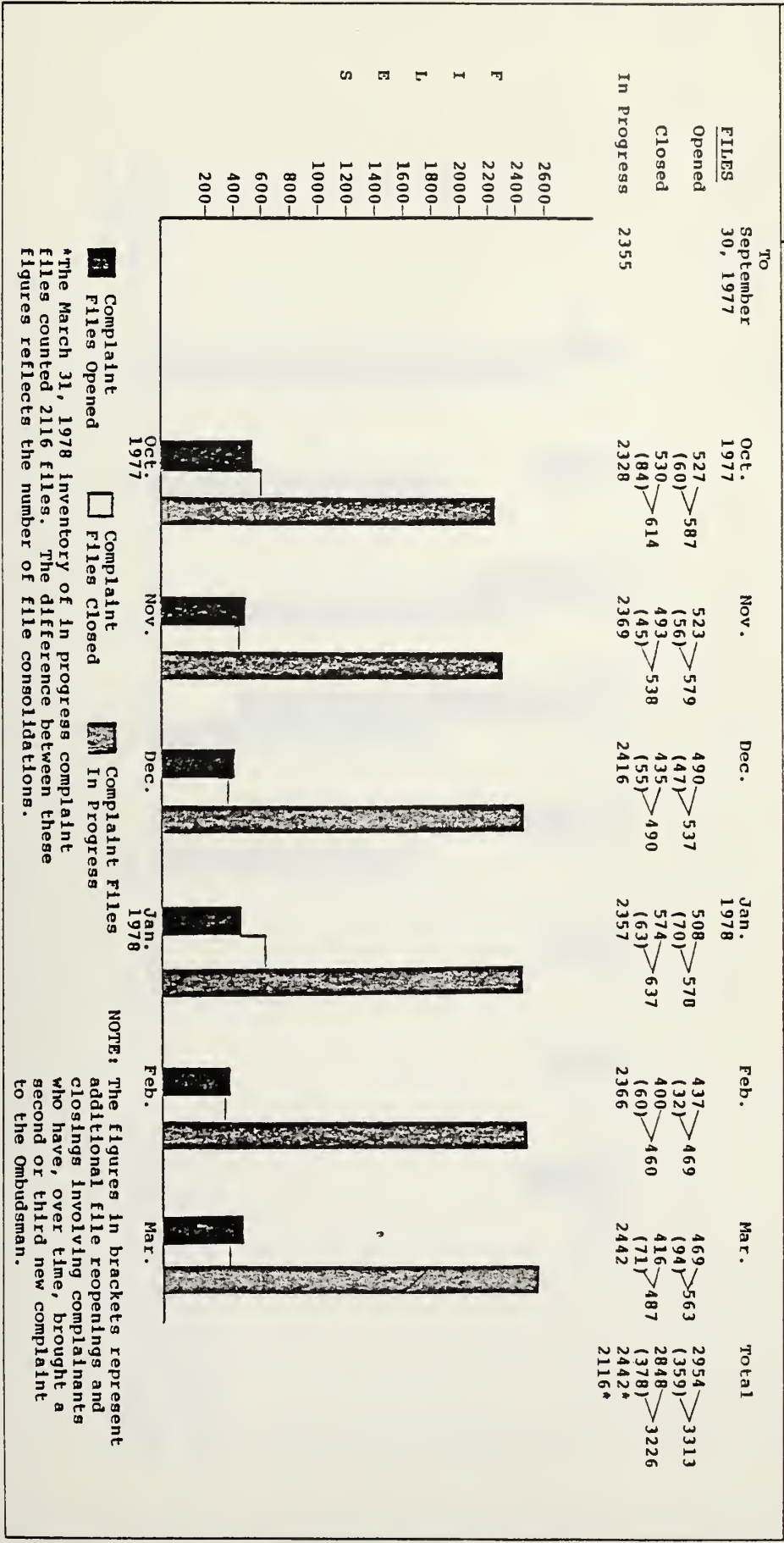
COMPLAINTS AND POPULATION BY RURAL/URBAN DESIGNATION



	CLOSED COMPLAINTS	% CLOSED COMPLAINTS	% POPULATION
Rural	595	20%	16.4%
Mixed	520	17%	12.9%
Urban	1869	63%	70.7%
TOTAL	2984	100%	100%

The percentages do not include closed complaints where the constituency could not be determined.

TABLE NO.: 4 TITLE: COMPLAINT FILE OPENINGS AND COMPLAINT FILE CLOSINGS BY MONTH



Complaint Files Opened
Complaint Files Closed
Complaint Files In Progress

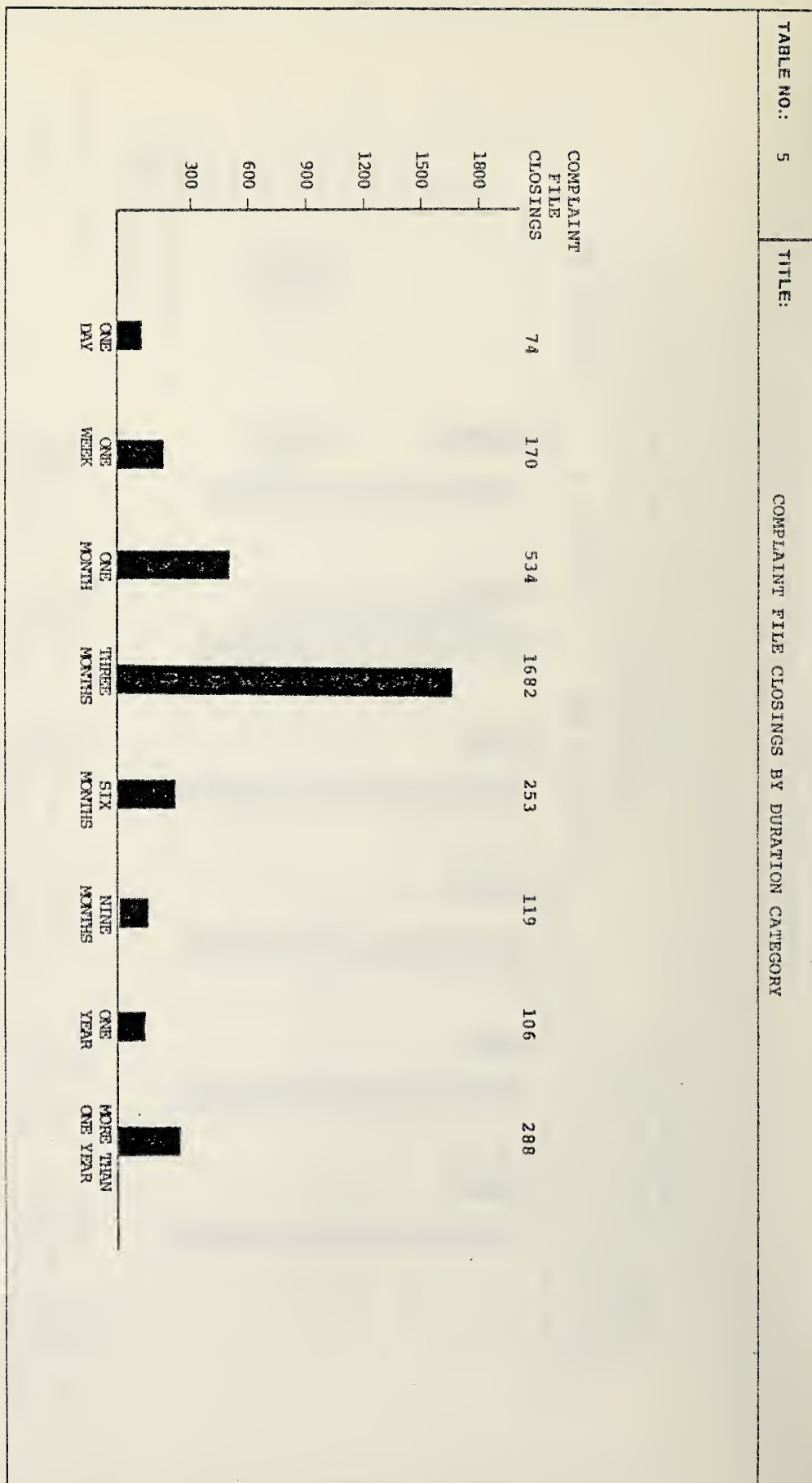
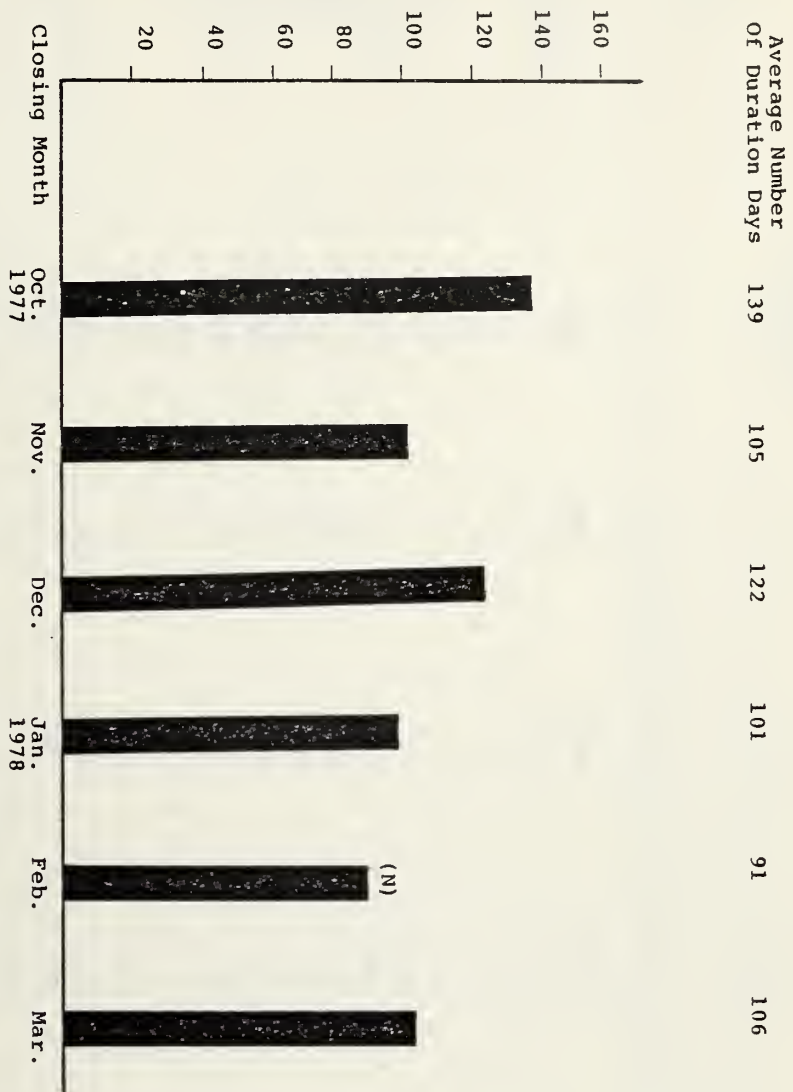


TABLE NO.: 6

TITLE:

AVERAGE DURATION DAYS TO CLOSING BY MONTH



(N)ote: Each column represents the average number of duration days to closing for all complaints which were closed during the month indicated.

* To March 31, 1978

TABLE NO.: 7

TITLE:

MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE

	Closing Month October 1977	November	December	January 1978	February	March	Total File Closings
Opening Month							
May/75 to January 31, 1977	89	46	42	77	39	38	331
February 1977	19	9	7	13	4	8	60
March	25	11	11	14	10	5	76
April	12	8	11	5	5	5	46
May	33	14	8	13	3	6	77
June	35	11	8	4	12	8	78
July	34	17	10	9	5	7	82
August	58	19	20	16	9	10	132
September	181	56	29	32	11	3	312
October	128	188	62	38	17	12	445
November		159	184	97	41	17	498
December			98	188	60	41	387
January 1978				131	162	67	360
February					82	168	250
March						92	92
Total File Closings	614	538	490	637	460	487	3226

All figures include file closings which result from the re-opening of a file.

TABLE NO.: 7 (1)		TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/WITHIN JURISDICTION							
	Opening Month	Closing Month		November	December	January 1978	February	March	Total Complaints
		October 1977	October 1977						
May/75 to January 31, 1977		68		40	37	56	35	39	275
February 1977		15		12	7	14	3	7	58
March		17		8	12	12	9	5	63
April		5		8	14	5	6	5	43
May		25		15	7	12	3	6	68
June		16		6	5	1	12	8	48
July		19		9	8	4	5	8	53
August		31		11	18	17	9	8	94
September		23		20	23	24	12	1	103
October		8		18	34	22	15	3	100
November			7		23	31	31	6	98
December					6	31	26	29	92
January 1978						11	40	32	83
February							6	30	36
March								11	11
Total Closed Complaints		227		154	194	240	212	198	1225

All figures include closed complaints which result from the re-opening of a file.

All figures include closed complaints which result from the re-opening of a file.

TABLE NO.: 7 (ii)		TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/OUTSIDE JURISDICTION							
		Closing Month October 1977		November	December	January 1978	February	March	Total Complaints
Opening Month									
May/75 to January 31, 1977	25		8		13	23	6	2	77
February 1977	4				1	2	1	1	9
March	7		2		1	5	3		18
April	6		2		8	1			17
May	9		4		4	2			19
June	18		7		1	1	2	3	32
July	17		7		3	5	1	1	34
August	23		6		5		4	1	39
September	146		35		13	11	2	1	208
October	115		168		36	16	6	7	348
November		146			145	58	20	8	377
December					85	138	42	13	278
January 1978						121	136	32	289
February							69	124	193
March								75	75
Total Closed Complaints	370	385	315	383	292	268			2013

All figures include closed complaints which result from the re-opening of a file.

All figures include closed complaints which result from the re-opening of a file.

TABLE NO.: 8		TITLE:		COMPLAINTS BY ORGANIZATION							
GOVERNMENT OF ONTARIO Ministries/Agencies											
		WITHIN JURISDICTION		OUTSIDE JURISDICTION		NOT DETERMINED		INFORMATION REQUESTS/ SUBMISSIONS		TOTAL	
Agriculture and Food		2		1				1		4	
Crop Insurance Commission				1						1	
Ontario Apple Producers' Marketing Board				2						2	
Ontario Flue-Cured Tobacco Grower's Board				1						1	
Ontario Milk Marketing Board				6				1		7	
Attorney General		9		40		2		8		59	
Criminal Injuries Compensation Board		2		4				2		8	
Land Compensation Board		1						1		1	
Ontario Municipal Board		1		19				4		24	
Colleges and Universities		8		8		1		1		18	
Colleges of Applied Arts & Technology		5		4		1				10	
Community and Social Services		26		42				21		89	
Centres for Developmentally Handicapped		6		3		1		2		9	
Training Schools		6		3						12	
Total		38		48		1		23		110	
Social Assistance Review Board		13		1						14	
Consumer and Commercial Relations		25		10		2		5		42	
Liquor Control Board		4		2						6	
Liquor Licence Board		1		1						2	
Ontario Securities Commission		1		1				2		2	
Pension Commission of Ontario		2		1				3		3	
Residential Premises Rent Review Board		12		5		2		2		21	
Correctional Services		34		75				14		123	
Correctional Centres		197		43		2		42		284	
Detention Centres		65		6				6		77	
Jails		255		19		2		27		303	
Community Resource Centres		2								2	
Total		553		143		4		89		789	

TABLE NO.: 8 (1)		TITLE:		COMPLAINTS BY ORGANIZATION				INFORMATION REQUESTS/ SUBMISSIONS		TOTAL	
		WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED							
Ontario Board of Parole		8	2				3		13		
Culture and Recreation											
Ontario Lottery Corporation		2	2	1			1		3		
Royal Ontario Museum Board of Trustees			1						1		
Education											
Teacher's Superannuation Commission		6	3	1			3		13		
		4					2		6		
Energy											
Ontario Energy Board			1				1		2		
Ontario Hydro		12	1		1		7		1		
			9						29		
Environment		13	7				1		21		
Government Services		6	3				1		10		
Health											
Psychiatric Hospitals		21	9	1			4		35		
OHIP		65	21	2			10		98		
		11	4	1			8		24		
Total		97	34	4			22		157		
Advisory Review Board for Psychiatric Facilities											
Alcoholism and Drug Addiction		3	2						5		
Research Foundation		3	1						4		
Board of Ophthalmic Dispensers		1							1		
Health Disciplines Board		1							1		
Review Board for Psychiatric Facilities		1							1		
Housing											
Ontario Housing Corporation		10	10	4			3		27		
		26	14	1			18		59		

TABLE NO.: 8 (ii)		TITLE:		COMPLAINTS BY ORGANIZATION				
				WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Ontario Mortgage Corporation				4	1		1	1
Industry and Tourism				2				6
Ontario Development Corporation								2
Labour				18	8		2	28
Ontario Human Rights Commission				1	1		2	4
Ontario Labour Relations Board				1	1			2
Workmen's Compensation Board				185	253	4	49	491
Natural Resources				32	10	1	8	51
St. Lawrence Parks Commission				1				1
Revenue				65	21		4	90
Solicitor General				1	4		1	6
Ontario Provincial Police				2	25		1	27
Ontario Police Commission				7	1			9
Transportation and Communications				28	20	1	11	60
Ontario Highway Transport Board					2			2
Ontario Telephone Service Commission					1			1
Treasury, Economics & Intergovernmental Affairs				3			1	4
Ontario Municipal Employees Retirement Board				2	1			3
Total				1222	738	31	278	2269
<u>Government of Ontario Other</u>								
Management Board								
Civil Service Commission				2	1			3
Grievance Settlement Board				1				1
Public Service Grievance Board				1				1

TABLE NO.: 8 (iii)	TITLE:	COMPLAINTS BY ORGANIZATION				
		WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Office of the Assembly Office of the Premier/Cabinet Office Office of the Ombudsman Executive Council			2		1 1 4	3 1 4
Total		4	5		6	15
Government of Ontario Total		1226	743	31	284	2284
<u>Courts</u>						
Total			148		5	153
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>						
Canadian Penitentiary Services			17		1	18
Central Mortgage and Housing			5			5
Consumer and Corporate Affairs			1			1
Health and Welfare			24		1	25
Indian Affairs and Northern Development			5			5
Justice			2			2
Manpower and Immigration			17			17
National Parole Board			18			18
Post Office			5			5
Revenue Canada - Taxation			20			20
Royal Canadian Mounted Police			6			6
Transport			3			3
Unemployment Insurance Commission			28		1	29
Veterans Affairs			10			10
Federal Government - Other			26		4	30

TABLE NO.: 8 (iv)	TITLE:	COMPLAINTS BY ORGANIZATION				
		WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Total		187	7			194
<u>PRIVATE</u>						
Associations/Groups		37	1			38
Children's Aid Society		5				5
Catholic Children's Aid Society		4				4
Complaint Bureaus		1				1
Doctors - Patients		19				19
Hospitals		14				14
Lawyers - Clients		81			3	84
Law Society of Upper Canada		28			2	30
College of Physicians and Surgeons		2		2		2
Other - Private		70		1	15	87
Private Business		292			3	296
Private Individual		74			2	76
Universities - Private		7				7
Total		634	3		26	663
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>						
Municipal Conservation Authority		8				8
Municipal Boards of Education		19			1	20
Municipal Governing Body		45			1	46
Municipal Hydro		6				6
Municipal - Other		61			1	62
Municipal Police		67				67
Municipal Public Health		2				2
Municipal Roads		18				18
Municipal Sewers		11				11
Municipal Taxes		14				14

TABLE NO.: 8 (v)		TITLE:		COMPLAINTS BY ORGANIZATION				
		WITHIN JURISDICTION		OUTSIDE JURISDICTION		NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Municipal Transit Municipal Water Municipal Welfare Committees of Adjustment			4	1			3	4
				18				1
				10				21
								10
Total			284				6	290
INTERNATIONAL				5				5
Total				5				5
OTHER PROVINCES				13				13
Total				13				13
NO ORGANIZATION SPECIFIED					6			6
Total					6			6
OVERALL TOTAL		1226	2014	40		328		3608*

*This figure exceeds the total number of closed complaints (3606) because some complaints involve more than one organization

TABLE NO.: 9	TITLE: OUTSIDE JURISDICTION COMPLAINTS BY REASONS	
<u>REASONS</u>	<u>Number of Complaints</u>	<u>Percentage of Complaints</u>
Not a Governmental Organization	3	.1%
Not Affected in Personal Capacity	77	3.8%
Cabinet	74	3.7%
Premature	618	30.7%
Judges/Court	176	8.7%
Legal Advisor or Counsel to Crown	22	1.1%
Private	625	31.0%
Municipal/Local	211	10.5%
Other Provinces/Countries	18	.9%
Federal	189	9.3%
OUTSIDE JURISDICTION COMPLAINT TOTAL	2013	100.0%

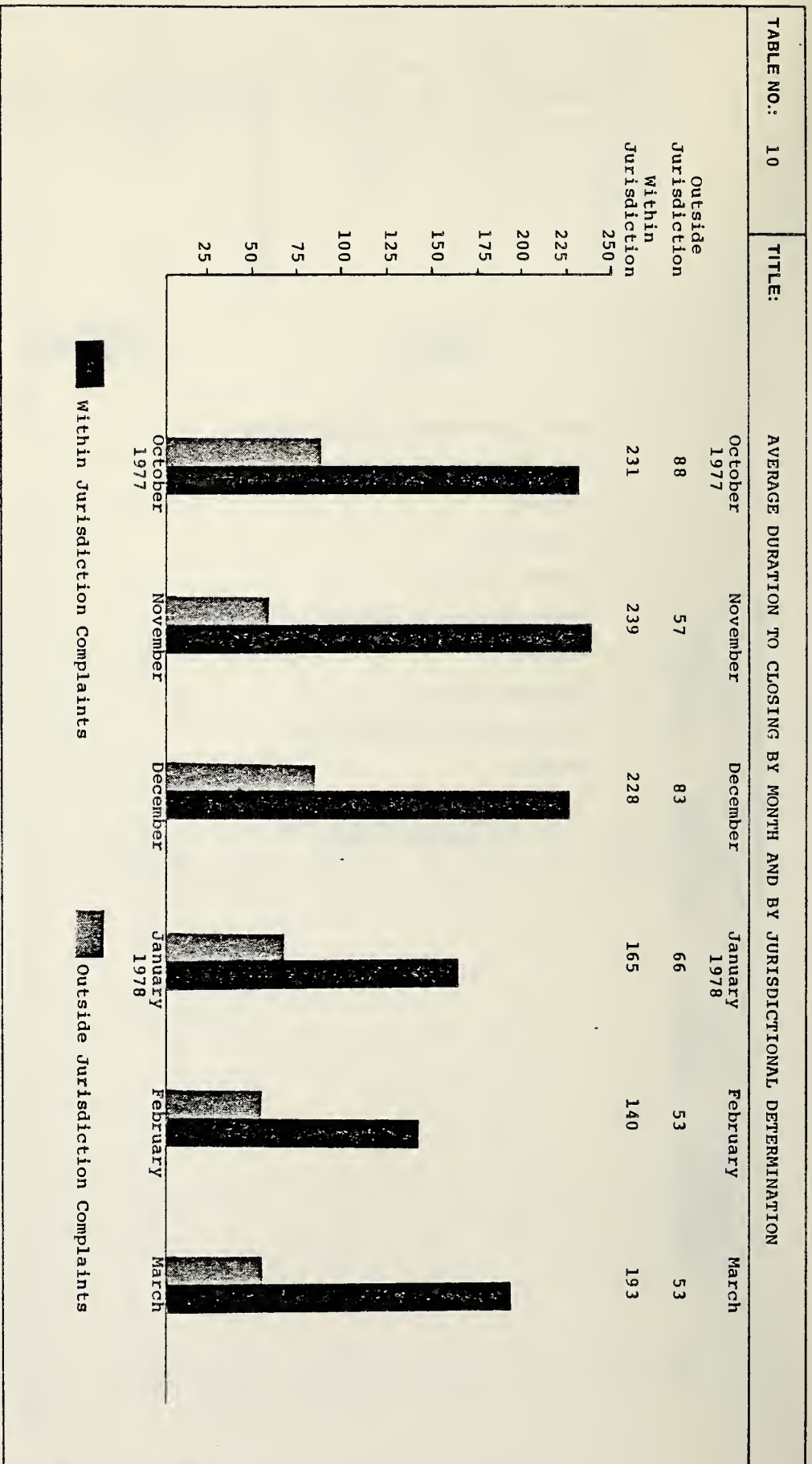


TABLE NO.: 11

TITLE: FINAL ACTION ANALYSIS/
ASSISTANCE TO COMPLAINANTS

ALL COMPLAINTS

<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	17	No Assistance 4%
Listen	130	
Explain	305	
Advise	222	
Refer	1123	
Inquire/Refer	531	
Inquire	1239	
Suggest	25	Assistance 96%
Recommendation	14	
TOTAL	3606	

WITHIN JURISDICTION COMPLAINTS

<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	17	No Assistance 7.7%
Listen	77	
Explain		
Advise	13	
Refer		
Inquire/Refer	9	
Inquire	999	Assistance 92.3%
Suggest	25	
Recommendation	14	
TOTAL	1225	

OUTSIDE JURISDICTION COMPLAINTS

<u>Action</u>	<u>Number of Complaints</u>	
Listen	30	No Assistance 1.5%
Explain	185	
Advise	179	
Refer	1066	
Inquire/Refer	440	Assistance 98.5%
Inquire	113	
TOTAL	2013	

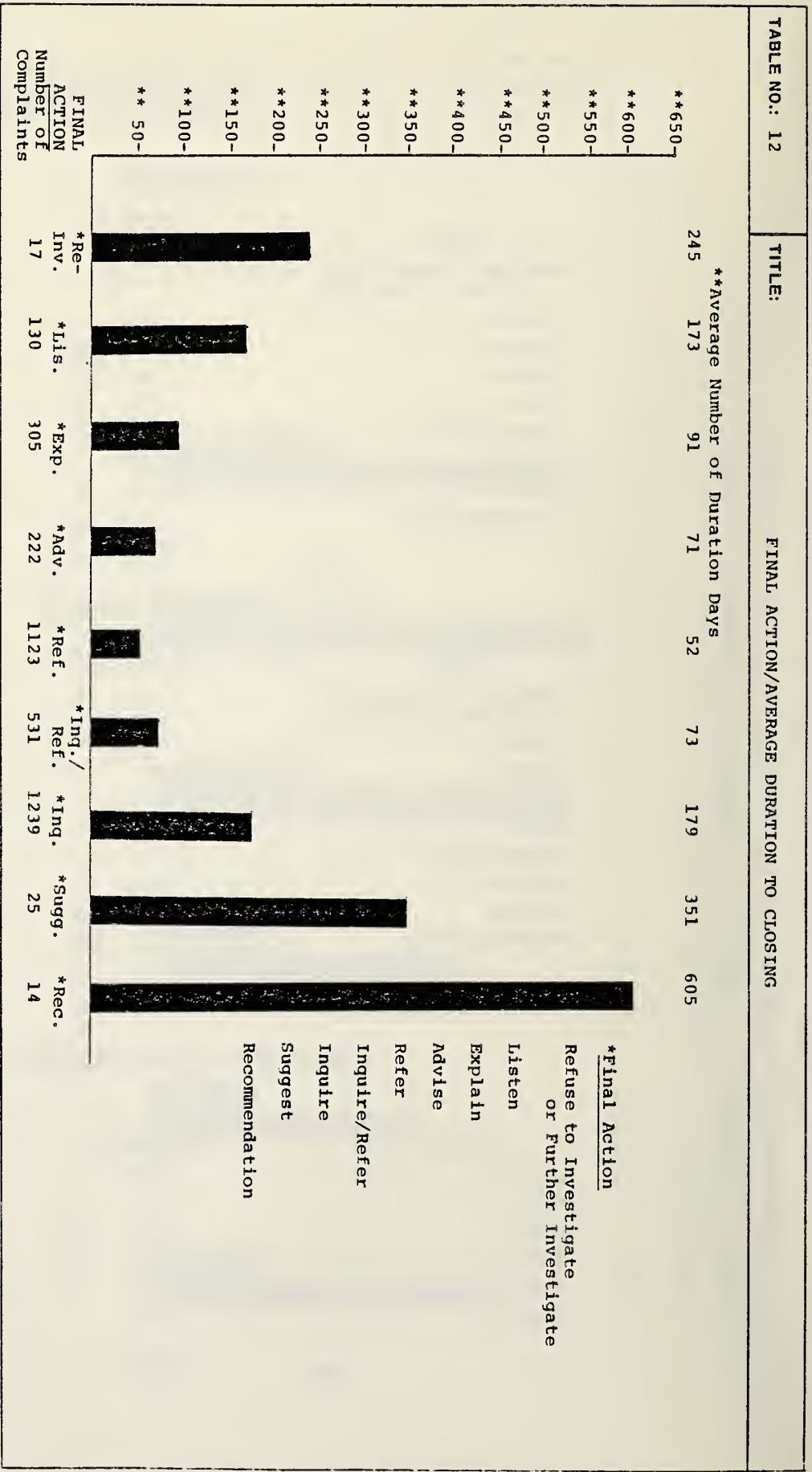


TABLE NO.: 13	TITLE: COMPLAINT SETTLEMENT STATUS																		
<table> <thead> <tr> <th data-bbox="406 516 585 546"><u>STATUS</u></th><th data-bbox="963 497 1192 546"><u>NUMBER OF CLOSED COMPLAINTS</u></th></tr> </thead> <tbody> <tr> <td data-bbox="406 586 649 616">Resolved/Assisted</td><td data-bbox="1056 586 1106 616">754</td></tr> <tr> <td data-bbox="406 636 692 665">Resolved/Independent</td><td data-bbox="1056 636 1106 665">231</td></tr> <tr> <td data-bbox="406 695 606 725">Total Resolved</td><td data-bbox="1056 695 1106 725">985</td></tr> <tr> <td data-bbox="406 745 578 775">Not Resolved</td><td data-bbox="1042 745 1106 775">2621</td></tr> <tr> <td data-bbox="406 805 635 834">Total Complaints</td><td data-bbox="1042 805 1106 834">3606</td></tr> </tbody> </table>		<u>STATUS</u>	<u>NUMBER OF CLOSED COMPLAINTS</u>	Resolved/Assisted	754	Resolved/Independent	231	Total Resolved	985	Not Resolved	2621	Total Complaints	3606						
<u>STATUS</u>	<u>NUMBER OF CLOSED COMPLAINTS</u>																		
Resolved/Assisted	754																		
Resolved/Independent	231																		
Total Resolved	985																		
Not Resolved	2621																		
Total Complaints	3606																		
<table> <thead> <tr> <th data-bbox="492 874 806 904"><u>REASONS (Not Resolved)</u></th><th></th></tr> </thead> <tbody> <tr> <td data-bbox="435 924 564 954">Abandoned</td><td data-bbox="1056 924 1106 954">193</td></tr> <tr> <td data-bbox="435 974 564 1003">Withdrawn</td><td data-bbox="1056 974 1106 1003">159</td></tr> <tr> <td data-bbox="435 1023 749 1053">No Solution Identified</td><td data-bbox="1085 1023 1106 1053">2</td></tr> <tr> <td data-bbox="435 1073 735 1103">Circumstances Changed</td><td data-bbox="1071 1073 1106 1103">17</td></tr> <tr> <td data-bbox="435 1123 892 1153">Information Requests/Submissions</td><td data-bbox="1056 1123 1106 1153">328</td></tr> <tr> <td data-bbox="435 1172 721 1202">Outside Jurisdiction</td><td data-bbox="1042 1172 1106 1202">1906</td></tr> <tr> <td data-bbox="435 1222 778 1272">Refuse to Investigate or Further Investigate</td><td data-bbox="1071 1222 1106 1252">16</td></tr> <tr> <td data-bbox="435 1292 692 1322">Total Not Resolved</td><td data-bbox="1042 1292 1106 1341">2621</td></tr> </tbody> </table>		<u>REASONS (Not Resolved)</u>		Abandoned	193	Withdrawn	159	No Solution Identified	2	Circumstances Changed	17	Information Requests/Submissions	328	Outside Jurisdiction	1906	Refuse to Investigate or Further Investigate	16	Total Not Resolved	2621
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TABLE NO.: 14	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION			
GOVERNMENT OF ONTARIO		<u>Assisted</u>		<u>Independently</u>	
<u>Ministries/Agencies</u>		<u>Favour Complainant</u>	<u>Favour Governmental Organization</u>	<u>Favour Complainant</u>	
Agriculture and Food			1		
Attorney General		5	3	2	
Criminal Injuries Compensation Board			1		
Ontario Municipal Board				2	
Colleges and Universities					
Colleges of Applied Arts & Technology			4	4	
Community and Social Services		14		9	
Centres for Developmentally Handicapped		2	4	2	
Schools		3	2		
Social Assistance Review Board			5	2	
Consumer and Commercial Relations		5	12	2	
Liquor Control Board		2	2		
Liquor Licence Board			1		
Ontario Securities Commission		1			
Pension Commission of Ontario			2		
Residential Premises Rent Review Board		1	7		
Correctional Services					
Correctional Centres		5	16	4	
Detention Centres		13	91	32	
Jails		1	29	18	
Community Resource Centres		19	119	47	
Ontario Board of Parole			1		
			4		

TABLE NO.: 14 (i)	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION			
		<u>Assisted</u>		<u>Independently</u>	
		<u>Favour Complainant</u>	<u>Favour Governmental Organization</u>	<u>Favour Complainant</u>	
Culture and Recreation Ontario Lottery Corporation			2		
Education Teacher's Superannuation Commission		2	2 2	1 1	
Energy Ontario Hydro		2	5	2	
Environment		3	5	3	
Government Services		2	1	1	
Health Psychiatric Hospitals OHIP Advisory Review Board for Psychiatric Facilities Review Board for Psychiatric Facilities		3 5 2	12 30 4 2 1	1 6 4 1	2RD
Housing Ontario Housing Corporation		5	6 9	1 4	
Industry and Tourism Ontario Development Corporation			3 1		

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 14 (11)	TITLE:	COMPLAINT SETTLEMENT RESULT BY ORGANIZATION		
		<u>Assisted</u>	<u>Independently</u>	
		<u>Favour</u> <u>Complainant</u>	<u>Favour</u> <u>Governmental</u> <u>Organization</u>	<u>Favour</u> <u>Complainant</u>
Labour				
Workmen's Compensation Board		35	9 96 8RD	1 50
Natural Resources		9	12	1
St. Lawrence Parks Commission			1	
Revenue		3	50	5
Solicitor General				
Ontario Provincial Police		1	2	1
Ontario Police Commission			6	
Transportation and Communications		9	6	5
Ontario Highway Transport Board				1
Treasury, Economics & Intergovernmental Affairs		1	1	1
Ontario Municipal Employees Retirement Board			1	
Total		<u>153</u>	<u>577 + 10RD</u>	<u>214</u>
Ontario Government Other				
Civil Service Commission			1	
Grievance Settlement Board			1	
Public Service Grievance Board			1	
Total			3	
Government of Ontario Total		<u>153</u>	<u>580 + 10RD</u>	<u>214</u>

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 14 (iii)		TITLE:		COMPLAINT SETTLEMENT RESULT BY ORGANIZATION			
		<u>Assisted</u>		<u>Independently</u>			
		<u>Favour Complainant</u>	<u>Favour Governmental Organization</u>	<u>Favour Complainant</u>	<u>Favour Governmental Organization</u>		
Courts							
Total		2		1			
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>							
Health and Welfare		1		1			
Indian Affairs and Northern Development		1					
Manpower and Immigration		1					
Revenue Canada - Taxation				2			
Unemployment Insurance Commission				3			
Total		3					
<u>PRIVATE</u>							
Lawyers - Clients		1		1			
Law Society of Upper Canada		2		2			
Private Business		2		5			
Total		5		8			
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>							
Municipal - Other		2		3			
Municipal Welfare				2			
Total		2		5			
OVERALL TOTAL		165	580 + 10 RD	231			
Note: "RD" indicates "Recommendation Denied"							

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 15	TITLE: STATUS OF IN PROGRESS COMPLAINT FILES/OFFICE WIDE SUMMARY
<u>IN PROGRESS STATUS CATEGORIES</u> 1 Not assigned 2 Assigned/No action taken 3 Under review to determine jurisdiction 4 Legal research underway to determine jurisdiction 5 Inquiries underway for non-jurisdictional letter 6 Non-jurisdictional letter being prepared 7 Preparing 19(1) letter 8 Awaiting response to 19(1) letter 9 Preparing guidelines pursuant to 19(1) response 10 Under investigation pursuant to 19(1) response 11 Under investigation without 19(1) letter 12 Undergoing legal research during investigation 13 Awaiting Case Conference 14 Section 19(3) preparation/letter/response 15 Section 22(3) preparation/letter/response 16 Section 22(4) preparation/letter/response 17 Section 18 preparation/letter 18 Being prepared for closing 19 Ready to be submitted to Records for closing 20 North Pickering/Consumers Road 21 North Pickering Commission 99 Others Explanation: The number at the top of each column represents the status category most appropriate to the file. See page (i) of this table.	

TABLE NO.: 15 (i)			TITLE:		STATUS OF IN PROGRESS COMPLAINT FILES/OFFICE WIDE SUMMARY																			
DIRECTORATE	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	99	Directorate TOTAL	
C. A. P. S.	36	12	1			12	1	9	4	16	56		2	1	3			208	11				372	
D. S. S.	4	1	7		9	3	26	5		205	22	7	10	16	10	3		42	2				372	
Interview Services		3	1		1														3				8	
Investi- gations		4	3		1	1	1	1	3	117	8	6	19	5	2	1	4	32	21		26	59	316	
R. A. M. S.			45		6	4	1	3	2	38	1		1	2	4			9	9				125	
Research		4	8	14	1	4	3	1	25	15	1	16		9	10	2		12	4				129	
S.A. & L.O.	132	27	85	26	13	70	50	14	73	23		9		5	2		3	174	17				723	
Consumers Road																				67			67	
Ombudsman Group		1																3					4	
OFFICE WIDE TOTAL	172 8%	52 2%	150 7%	40 2%	31 1%	94 4%	82 4%	33 2%	107 5%	414 20%	88 4%	38 2%	32 2%	38 2%	31 1%	6 1%	7 1%	480 23%	67 3%	67 3%	26 1%	59 3%	2116 100%	

TABLE NO.: 16		TITLE:		COMPLAINT DISPOSITION SUMMARY	
NUMBER OF COMPLAINT FILE OPENINGS/CLOSINGS		SETTLEMENT STATUS:		NUMBER OF COMPLAINTS	
OPENED 3313 CLOSED 3226 IN PROGRESS 2116		RESOLVED/ASSISTED RESOLVED/INDEPENDENT TOTAL RESOLVED		754 231 985	
JURISDICTION		FINDINGS:		67	
WITHIN 1225 OUTSIDE 2013 NOT DETERMINED 40 INFORMATION REQUESTS/SUBMISSIONS 328		SUPPORTED NOT SUPPORTED NOT RESOLVED:		579	
FINAL ACTION		REASONS:		193 159 2 17 328 1906 16*	
LISTEN 130 EXPLAIN 305 ADVISE 222 REFER 1123 INQUIRE/REFER 531 INQUIRE 1239 SUGGEST 25 RECOMMENDATION 14 REFUSE TO INVESTIGATE 17* OR FURTHER INVESTIGATE		ABANDONED WITHDRAWN NO SOLUTION IDENTIFIED CIRCUMSTANCES CHANGED INFORMATION REQUESTS/SUBMISSIONS OUTSIDE JURISDICTION REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE		396 579 10	
3606		RESULTS: (ONLY RESOLVED COMPLAINTS) FAVOUR COMPLAINANT FAVOUR "GOVERNMENTAL ORGANIZATION" RECOMMENDATION DENIED		3606	

*NOTE: THESE FIGURES DIFFER BECAUSE ONE COMPLAINT WITH THIS FINAL ACTION WAS RESOLVED.

TABLE NO.: 17	TITLE: DEFINITION OF TERMS
<u>GENERAL</u> "DURATION" The number of calendar days from the date the complaint is received to the date on which the complaint file is closed. <u>COMPLAINT DISPOSITION</u> "JURISDICTION" A determination of whether the Ombudsman is empowered to investigate a complaint. The jurisdictional determination is based on an evaluation of the complaint in the context of the provisions of <u>The Ombudsman Act, 1975</u>, in particular, Section 15(1) which requires that a complaint be directed against a "governmental organization" as defined in Section 1(a) of the Act. Other sections of the Act specifically limit the Ombudsman's jurisdiction to investigate complaints. "FINAL ACTION" The extent of the action taken on a complaint as determined at the time of the closing of a file. The final action possibilities are: "Listen" "Explain" "Advise" "Refer" "Inquire/Refer" "Inquire" "Suggest" "Recommendation" "Refuse to Investigate or Further Investigate"	

TABLE NO.: 17 (i)

TITLE:

"LISTEN"

The extent of the action taken when a complaint is received and no further action is possible, such as when a complaint is abandoned or withdrawn.

"EXPLAIN"

The extent of the action taken when a complainant is offered an explanation of his or her circumstances.

"ADVISE"

The extent of the action taken when a complainant is offered general advice concerning his or her problem.

"REFER"

The extent of the action taken when the complainant is directed to a specific organization.

"INQUIRE/REFER"

The extent of the action taken when the complainant is directed to a specific organization as the result of contacts between the Ombudsman's staff and the staff of the organization to which the referral is made.

"INQUIRE"

The extent of the action taken when contacts are made on behalf of the complainant, but there is not a referral or a suggestion or recommendation. All inquiries include either advice or an explanation.

TABLE NO.: 17 (ii)

TITLE:

"SUGGEST"

The extent of the action taken when an inquiry results in a proposed course of action for resolving the problem. A "Suggest" action may involve organizations which are not "governmental organizations" within the meaning of The Ombudsman Act, 1975.

"RECOMMENDATION"

The extent of the action taken when, pursuant to Section 22(3) of The Ombudsman Act, 1975, an investigation results in a recommendation to a "governmental organization".

"REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE"

The extent of the action taken when the Ombudsman decides not to investigate or further investigate a complaint. This action category applies only to complaints within the jurisdiction of the Ombudsman.

"SETTLEMENT"

A set of determinations which describe the finalization of a complaint in terms of the following considerations:

- (i) Was the complaint resolved?
- (ii) For those complaints that were resolved:
 - (a) Was the complaint resolved as a result of the Ombudsman's assistance or was the complaint independently resolved?
 - (b) Was there a finding that the complaint was supported or not supported?
 - (c) Was the complaint resolved in favour of the complainant or was the complaint resolved in favour of the "governmental organization"?

TABLE NO.: 17 (iii)	TITLE:
"SETTLEMENT STATUS" A determination of whether a complaint was resolved. "FINDING" A decision by the Ombudsman that the complainant's contentions were founded or unfounded. The former are designated as "Supported" complaints, and the latter are designated as "Not Supported" complaints. "RESOLVED COMPLAINT" A complaint which culminates in a settlement result which favours either the complainant or the organization complained against. All resolved complaints include a determination of whether the complaint was resolved with the assistance of the Ombudsman or independently. "NOT RESOLVED COMPLAINT" A complaint which does not culminates in a settlement result for one of the following reasons: (a) The complaint was abandoned. (b) The complaint was withdrawn. (c) An appropriate solution could not be identified. (d) The relevant circumstances changed in the course of an investigation. (e) The complaint constituted a request for information. (f) The complaint was outside the jurisdiction of the Ombudsman. (g) The Ombudsman refused to investigate or further investigate.	

TABLE NO.: 17 (iv)	TITLE:
"SETTLEMENT RESULT" A determination of whether the complaint was resolved in favour of the complainant or the "governmental organization" complained against or a recommendation was denied by a "governmental organization.	

CHAPTER FOUR

DETAILED CASE SUMMARIES

MINISTRY OF

AGRICULTURE AND FOOD

(1)

SUMMARY OF COMPLAINT

The complainant and her husband, both senior citizens, maintain a farming operation consisting of 19 beef cattle in Southwestern Ontario. In 1976 and 1977, the complainants received a grant from The Ontario Beef Calf Income Stabilization Program. This program was established in July, 1975, and the complainants felt that they should also have received a grant for that year. They contend that since they were not aware of the existence of the program in 1975, they should be awarded the grant retroactively.

Our investigation consisted of determining whether the Ministry adequately publicized and administered the program equally throughout the Province. The Beef Calf Income Stabilization Program was established by Order-in-Council and introduced officially on July 3, 1975. It is a voluntary program designed to stabilize the income of recognized beef calf producers in Ontario and to encourage a continuing, steady supply of Ontario-produced beef stocker calves. It establishes a minimum amount of money a producer may expect to receive in years of poor calf prices. Under this program, the Provincial Government contracts to make a grant per cow to participating producers if the average market price for Ontario-produced stocker calves falls below the 1975 stabilized price of 50¢ per pound.

The complainants indicated in a letter to our Office that their neighbour had received the grant while they had not. Our investigator contacted this farmer as well as the Ministry's agricultural representative. The Branch that conducted the advertising placements confirmed the Ministry's position that the program was widely advertised, not only on local radio and television programs but also in the local county papers. A general meeting to explain the program was held at a local secondary school by the Ministry and a newsletter was sent to all members of the local cattlemen's association.

Unfortunately, the complainants missed these various forms of publicity since they do not belong to the association and rarely see their neighbours. As a result, they only applied for the grant after the extended deadline period of September 12, 1975. As in the case of 100 or more farmers who were also late in applying, the Ministry placed these names on a mailing list for contact the following year.

A careful review of the facts in this case revealed that the Ministry had adequately advertised the program and that it could not be faulted for the fact that the complainants had failed to notice the publicity. As a result, the Ombudsman was not able to support the complaint.

MINISTRY OF

THE ATTORNEY GENERAL

(2)

SUMMARY OF COMPLAINT

This complaint was initiated by the president of a construction company. The company enlarged its accounting staff to include an accountant who was refused an appointment as a commissioner for taking affidavits. It was essential that the company have a commissioner as it dealt with government contracts which require a sworn statutory declaration stating that all accounts have been paid. The company has a minimum of five declarations per month and it is therefore inconvenient to go to a lawyer's office for each one. The company had employed its own commissioner since 1967.

We contacted an official in the Ministry who indicated that in 90 percent of the cases where an applicant applies a second time, the application is accepted.

Following our notice to the Ministry of our intention to investigate this complaint, the company appointment was granted.

(3)

SUMMARY OF COMPLAINT

This complainant requested assistance in having his suspended driver's licence reinstated. He had been mistaken for his brother who had an outstanding fine which had not been paid and therefore his licence was suspended.

Our investigator contacted the Ministry of the Attorney General and the Ministry of Transportation and Communications to straighten out this matter. Following our intervention, the complainant's licence was reinstated within 24 hours and the suspension was removed from the computer record.

(4)

SUMMARY OF COMPLAINT

This complainant approached our Office with a complaint concerning certain actions of officials of the Public Trustee's Branch with respect to their management of her aunt's estate. The complainant's aunt had been declared mentally incompetent with the result that the Public Trustee had been declared statutory committee of her estate.

In the spring of 1971, arrangements were made by the Public Trustee to rent the patient's home and to have her household belongings and personal effects placed in storage. At the request of the Public Trustee, the complainant attended at her aunt's home in order to have the various items arranged in groupings and identified by three differently coloured tags. One such grouping included items which were to be permanently

stored as they were 'bequeathed' to various members of the patient's family pursuant to an undated memorandum constituting her "expression of wishes." The other two groupings included items which were to be delivered to the patient's nursing home when she obtained a private room and items which were eventually to be auctioned.

In early February of 1973, at the request of the Public Trustee, a group of the items was removed from storage, sold by auction, and the proceeds were credited to the patient's estate. In May of the same year, the other grouping of items was moved to the patient's nursing home.

Approximately three years after this, when the complainant was asked by officials of the Public Trustee's Branch to assist with the removal of the remaining goods in storage in order to avoid any further storage costs, she noticed that several items were missing. The estates officer in charge was advised of this and when he reviewed the Statement of Goods Sold which had been provided by the auctioneer, he realized that the items had been sold in error three years earlier. His subsequent efforts to locate these items with the aid of the auctioneers proved unsuccessful.

It was the complainant's contention that the Public Trustee had mishandled her aunt's estate. She contended that since officials of the Public Trustee's Branch had requested her help in this and other matters associated with the management of her aunt's estate, they should have also notified her when they decided to auction off some of the goods in storage.

It was not possible to ascertain when and how the patient's property was confused so that it was auctioned in error. We learned that the usual policy of representatives of the Public Trustee's Branch is to advise relatives of their intentions with respect to such actions as the sale of chattels and real estate. Nevertheless, in this case, the decision to auction the items was based on the mounting storage costs and the probability that the patient would never have any use for these items at her nursing home. Since the complainant was aware that there would be an auction, it was felt that there was no need to give her further notice.

Officials of the Public Trustee's Branch felt that the confusion concerning the patient's property may have been caused by the storage company. After discussions with our staff, the Public Trustee's officials, in an effort to compensate the complainant, managed to obtain payment in the amount of \$50 from the storage company. This money was paid to the complainant.

In view of the efforts on the part of the representatives of the Public Trustee's Branch in attempting to recover the items auctioned in error with the aid of the auctioneers and in obtaining payment from the storage company, we concluded that we

could not support the complainant's claim that the Public Trustee should render her an apology or any other form of acknowledgement of mismanagement or wrongdoing. We were therefore unable to support the complaint.

MINISTRY OF

COLLEGES AND UNIVERSITIES

(5)

SUMMARY OF COMPLAINT

This complainant objected to the decision of the Industrial Training Branch to deny him a Certificate of Qualification as a heavy duty mechanic.

He wrote the examination for a Certificate of Qualification on five different occasions. On each of these occasions, the complainant failed, obtaining a mark of 34% or less. The complainant stated that during one examination there was a considerable amount of noise caused by someone hammering close by. He complained and as a result, an argument ensued between an official of the Ministry and himself. He alleged that during this argument, the official informed him that as long as he was in that department, the complainant would never be granted a certificate. The complainant was of the opinion that he had passed his last examination and that he was being persecuted by this official.

The complainant alleged that following one unsuccessful on-the-job inspection conducted at his place of employment by another Ministry official, it was agreed that a second inspector would conduct a re-assessment in approximately one month but this did not occur.

Our investigator interviewed officials of the Administration and Enforcement Services, Industrial Training Branch, and the Examination Development Section, Program Resources Branch. It was determined that the complainant's examination had been correctly marked and that the complainant did not pass his examination.

It was further determined that the official he complained about was a training information officer and, as such, did not preside over examinations. It was determined that there was no evidence to support the complainant's allegations against this official. Our investigator then interviewed an official of the Training Enforcement Branch and the training information officer about whom the complaint was made. It was determined that an on-the-job assessment is only conducted when an applicant has been employed for a few months. In the complainant's case, the Ministry official visited him after he had been employed only for a few days. The Ministry official did not go there to conduct an assessment but rather to ascertain from the employer what functions were being performed by the complainant and whether the employer would consider making a recommendation.

Telephone contacts with the employer confirmed that the complainant had only been there a few days at the time of this visit and also that the complainant could not be considered for a recommendation until he had overhauled engines completely and had been tested on-the-job for 90 days. A practical test of the complainant's work was not conducted as he was no longer employed by the company.

Our investigation indicated that the Ministry had been more than fair with the complainant. Under Sections 17 and 18 of the regulations under The Apprenticeship and Tradesman Qualification Act, the complainant was entitled to write an examination three times; however, he had been permitted by the Ministry to write the examination on five different occasions. He had also been given an additional hour and one-half to write one examination and his wife acted as a translator for a second examination.

It was further determined that the complainant had been given a provisional certificate of qualification by the Ministry to assist him in finding employment. In addition, the Ministry advised that if the complainant were to take a course in the heavy duty equipment trade, the Ministry would consider allowing him to rewrite the examination.

We contacted a college for information concerning the heavy duty equipment course and we were advised by this college that the complainant required a referral from the Ministry in order to take the course. After a telephone call from our Office, the Ministry arranged to provide the complainant with a referral for this course.

Although the course that the complainant wished to take was cancelled, he did obtain a referral from the Ministry which would entitle him to take the course as soon as one was available. We concluded that we could not support the complaint.

(6) SUMMARY OF COMPLAINT

A College of Applied Arts & Technology refused to grant the complainant sick leave gratuity upon his retirement. In 1968, the complainant had transferred from a board of education to the college under the Ontario Manpower Retraining Program Amalgamation.

At the time of his retirement in August, 1976, the complainant was advised that only those who had taught at the college for a minimum of ten years were entitled to the sick leave benefits. However, the complainant re-applied on the basis of a Ministry memorandum dated December 12, 1974, which stated in part:

"The Colleges are obliged to honour the individual school board terms and conditions attached to sick leave credits and to the retirement service credits prior to the time of the O.M.R.P. Amalgamation. The Ministry will reimburse the College for Retirement gratuity based on the terms of the Retirement Gratuity Plan (1968) of the predecessor school board, providing the employee has not accepted a cash settlement for sick credits."

The complainant had been employed by three different boards of education. He believed that any retirement gratuity that accrued to him from predecessor schools should be integrated with any college payment on retirement and that not just the school board which was the employer immediately prior to his employment with the college should be included in the interpretation of the Ministry's memorandum.

Our investigator contacted officials of the Ministry's Student Staff Relations Branch, the Superintendent of Personnel Office of two boards, and the personnel of the College of Applied Arts & Technology.

It was learned that the complainant never requested a statement of, nor transfer of, his sick leave credits to his standing with any of the boards at the time of the termination of his employment with these boards. It was learned that the onus is on the transferee to obtain a statement of sick leave credits accrued to him upon termination and to inform the next employer as to what sick leave credits he had with the predecessor board.

It was determined that the college had provided the complainant with yearly statements of sick leave credits to his standing, that is, sick leave credits accumulated with the college and credits to his standing with the board of education at the time of the O.M.R.P. Amalgamation. The complainant had signed these statements and returned them to the Personnel Officer but he did not make any inquiries as to sick leave gratuity until he retired in 1976.

A review of the terms of the Sick Leave Gratuity Plan of the board from which the complainant transferred to the college indicated that no gratuities were paid to an employee upon retirement unless the employee had ten years of employment with the board. Therefore, even if the complainant had transferred all the sick leave credits to his standing from other boards to his last board, he would not have been paid retirement gratuity unless he had ten years of employment with this board upon retirement.

It was learned that the college advised all transferees that they would be transferring to the college under the exact terms of employment which they had with the board; in other words, the college was honouring the individual school board's terms and conditions attached to sick leave credits and to retirement service credits.

In the complainant's case, the college accepted the sick leave credits to his standing from the board, but in accepting them, the college could not pay the complainant retirement gratuity unless he met the ten years service credits requirement. At the time of his retirement from the college, the complainant did not have a total of ten years service and could not have

retirement gratuity even if all of his sick leave credits from all the boards had been transferred to the college.

It was determined that the Ministry's memorandum clearly stated that the Ministry would accept only the terms of the Retirement Gratuity Plan (1968) of the predecessor school board. It was therefore determined that the college had honoured the terms of the predecessor board and thus the complainant's contention could not be supported.

(7)

SUMMARY OF COMPLAINT

The complainant in this case wrote to us concerning the administration of a real estate course given by a College of Applied Arts and Technology. The complainant stated that the course which he attended at the college in the fall of 1975 was inadequate and improperly administered because:

- 1) the instructor of Segment II of the course did not meet proper teaching standards;
- 2) only 14 of the 15 lessons contracted for were provided;
- 3) the requirement of completing the "Respac" form prior to completing the course was an invasion of privacy in view of the personal nature of the questions asked.

The investigation included interviews with the Divisional Director, Business and Commerce Division, School of Continuing Education of the College, and the instructor involved. Another instructor of the real estate education course at the College and the Educational Administrator of the Ontario Real Estate Association were also contacted.

Inasmuch as the completion of the "Respac" was, as of September, 1977, no longer a requirement to enter Level II of the Introduction to Real Estate course, the complainant agreed that our investigation should focus on his two other concerns.

It was determined that the instructor who taught the complainant from October, 1975 to December, 1975, was one of seven teachers on a list submitted to the college by the local Real Estate Board as certified and qualified to teach the various levels of the real estate course. The instructor was hired by the college to teach Segments I and II.

We learned that the instructor taught strictly from the manual provided by the Ontario Real Estate Association. In reviewing the contents of this manual, it was noted that each lecturer was to develop his own method of encouraging rapport

with the students and that the lecturer was not to teach so much as to assist in learning.

Although the complainant stated that all of the students in this instructor's class complained about the quality of instruction received, the complainant would not provide our Office with names of those students who were dissatisfied because he felt that none "would want to get involved." The complainant alleged also that the instructor did not give extra help to the students and was not available to students after classes. However, the complainant himself at no time requested additional assistance nor did he request to speak with the teacher after class.

On a review of the records at the college, it was noted that the college had received no other complaints other than that of the complainant concerning the instructor's method of teaching. In fact, one of the complainant's classmates had written to the college indicating that he found the instructor to be well qualified and he stated that each student in the class was given due consideration and time.

The complainant contended that the teacher could not have taught the course properly since half the students who took the class failed the Segment II examination on the first attempt.

Our Office determined that out of an initial class of 33 students, 19 passed on the first attempt. This was approximately a 59 per cent pass rate which, upon review of figures provided by the Ontario Real Estate Association, was slightly better than the Ontario average pass rate for evening classes.

In addition, our investigation revealed that the complainant could have rewritten the Segment II examination but he chose not to do so since he felt it would be useless to enter into Segment III when he did not really understand Segment II because he alleged that he had not been properly taught.

We learned that 30 students in the complainant's class who passed Segment II went on to Segment III. Twenty-one passed the examination for Segment III on the first attempt and of the nine failures, six were successful on the second attempt.

With respect to the complainant's contention that only 14 of 15 classes were given, the records of the college were reviewed. These records indicated that all 15 lessons were given and that the complainant attended all of them. In addition, another student in the complainant's class confirmed that all 15 lessons were given. The instructor advised that the last lesson was not "taught" but was used as a review of the course.

The complainant indicated that he wanted a refund of the monies which he paid for Segment II. From documentation provided by the complainant, it was noted on a form entitled "School of Continuing Education Student Information" that no refunds were

to be given after the third official class. In view of the fact that the complainant had not requested a refund until the course was completed, we concluded he was not entitled to a refund.

On the basis of our investigation, we found that the complainant's contentions could not be supported.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

(8)

SUMMARY OF COMPLAINT

This complainant's lawyer contacted our Office and advised us that he had been retained on a Legal Aid Certificate to represent the complainant before the Criminal Injuries Compensation Board. The complainant who had been stabbed by her husband was awarded \$8,000 by the Criminal Injuries Compensation Board for her pain and suffering. After receiving this award, the complainant was advised that her Family Benefits would be suspended until such time as the \$8,000 had been reduced or spent in an acceptable manner. Her lawyer felt that it was a waste of money to provide a Legal Aid Certificate in a situation of this kind if, as a result of a successful application, the victim was financially no further ahead. The complainant was contacted and she assured the investigator that she was very happy to have the Ombudsman look into the complaint.

Inquiries were made immediately with the Provincial Benefits Branch of the Ministry of Community and Social Services and although there was a great deal of sympathy for the complainant's situation, the Director felt that the \$8,000 had to be considered as income, under the Act.

The complaint itself was premature and not within the jurisdiction of the Ombudsman because the complainant still had an opportunity under The Family Benefits Act to appeal the decision of the Director of Provincial Benefits to the Director again and if no change was made, to the Social Assistance Review Board. This was explained to the complainant but at the same time it was the view of our investigator that it might be helpful to have further discussions about the case with senior civil servants in the Provincial Benefits Branch.

After further discussions with the Provincial Benefits Branch, we wrote to the complainant suggesting some of the ways in which the \$8,000 could be used.

We pointed out that the complainant was entitled to assets of \$2,500. The complainant had told the investigator that she was extremely run down and very nervous and that she and her daughter would like to take a vacation. We told her that if her doctor agreed that she required such a vacation and advised her so in writing, this would be considered a legitimate expense by the Provincial Benefits Branch.

When her husband attacked her, he also smashed most of the furniture and she was advised by us that replacement of it would be an acceptable expense. It would appear that she had very few household goods to her name and she now had an opportunity to obtain them. Neither the complainant nor her daughter possessed good winter overcoats and again, it was suggested that she might want to spend some money on those as well as boots and other apparel so necessary in our winter climate.

In making these suggestions, we advised her to obtain and retain receipts for everything that she purchased so that she could account for all the money that she spent. We concluded, bearing in mind the liquid assets of \$2,500 to which she was entitled plus the various expenditures that she was going to make, that in all likelihood, she would be eligible for Family Benefits within five months.

Due to the co-operation of the Provincial Benefits Branch it was possible to provide the complainant with the advice and assistance which she desperately needed at that time.

(9)

SUMMARY OF COMPLAINT

The complainant who is a farmer had been on Family Benefits since July, 1972. In July, 1974, he became eligible for Family Benefits - GAINS, as a disabled person.

His complaint, which he brought to our attention at a private hearing in March, 1977, concerned a decision by the Director of the Provincial Benefits Branch to suspend his Family Benefits Allowance and the Social Assistance Review Board's decision to uphold the Director's decision.

On October 25, 1977, a letter was sent to the Deputy Minister pursuant to Section 19(1) of The Ombudsman Act, advising him of our intention to investigate the complaint.

It appeared from the Social Assistance Review Board's decision of April 21, 1977, that it reached its conclusion on the ground that the complainant owned property other than the property on which he resided. The Board suspended his benefits pursuant to the regulations under The Family Benefits Act.

In 1975, the complainant severed part of his farm with the intention of paying off the mortgage on the remaining property. The severed portion, which he conveyed to his wife, had a market value of approximately \$16,500. It was originally listed with a real estate firm but the complainant later withdrew the listing because he felt that he should be able to sell it on his own without having to pay a commission to a real estate agent. Although the property was not listed for sale as of the date of the hearing, the Social Assistance Review Board appeared to have accepted the complainant's willingness to sell it and noted that a close relative of his who works for a real estate company was seeking to sell it on the complainant's behalf. Since it appeared clear to the Social Assistance Review Board that attempts were being made to sell the severed property, its conclusion, resulting in a denial of further benefits to the complainant and his wife, would appear to have been unreasonable.

However, our investigation also considered two brief paragraphs in the Social Assistance Review Board's decision dealing with an increase in his farm income since 1975, and a resulting overpayment. Also studied was a report of the Director of Provincial Benefits to the Chairman of the Social Assistance Review Board, dated February, 1977. This report outlined the severance of the farm in 1975 and the conveyance of the severed portion to the complainant's wife. The file also revealed that information concerning the value of the property was obtained late in 1976 from the field worker who reported that the market value of the lot was \$16,500, and added that the property was not listed for sale, nor was it advertised. As a result, his cheque for January, 1977, was held and cancelled and the complainant was advised that

"your interest in real property other than the property in which you reside precludes eligibility under the Family Benefits legislation."

In a subsequent report in January, 1977, the field worker advised that the property was up for sale for the sum of \$16,500, but was not listed. At the same time, the Director of Provincial Benefits was provided with a farm report for the period July 1, 1975 to December 31, 1976, showing that the gross farm revenue was considerably above the originally estimated amount. This resulted in a monthly net chargeable farm income increase of over \$300. In February of 1977, the field worker also advised the Director of Provincial Benefits that the complainant's Workmen's Compensation pension had been increased in January of that year.

In February, 1977, the Director of Provincial Benefits wrote to the complainant again to confirm that the complainant was making efforts to sell his vacant lot. However, the Director indicated that he could not be considered eligible for assistance since his income exceeded any amount that could be provided under the legislation.

These findings were discussed with the complainant who advised us that he disagreed with the Ministry's assessment of his farm income. He provided us with additional documentation which was studied by our investigator who came to the conclusion that the Ministry's assessment of the complainant's farm income was correct.

As a result of our investigation, we were satisfied that the termination of the complainant's Family Benefits was directly related to his excess income and not to the fact that he continued to own a part of his property which he had severed in August, 1975. Although it would appear from the Social Assistance Review Board's decision that the existence of the severed portion of the property made him ineligible to receive Family Benefits, the termination of such benefits was related to a combination of Workmen's Compensation, farm and boarder income. Therefore, the complaint was found to be unsupported.

(10)

SUMMARY OF COMPLAINT

This complainant had been trying unsuccessfully to obtain a Family Benefits Allowance as a permanently unemployable person for a number of years and finally wrote to our Office in September, 1977, to complain about this matter. He had appeared before the Social Assistance Review Board which had confirmed the decision of the Director of Provincial Benefits not to allow him benefits.

At the time of writing to the Ombudsman, the complainant was in receipt of a Disability Pension from the Canada Pension Plan, and General Welfare Assistance of \$90 per month.

In October, a letter was sent to the Deputy Minister of Community and Social Services, advising her that the Ombudsman intended to investigate the complaint. The Director of Provincial Benefits replied in November and advised that after reviewing the file further, an Allowance effective December 1, 1977, had been granted to the complainant under The Family Benefits Act. The amount mentioned in the Director's letter was smaller than the one which the complainant had received through General Welfare Assistance. Since the complainant had some difficulty in getting around, the investigator contacted the Director of Provincial Benefits once more and suggested that consideration be given to providing him with a monthly allowance of \$15 towards travel and transportation. That suggestion received favourable consideration and \$15 was added to the Family Benefits Allowance.

The complaint was therefore resolved without any further investigation.

(11)

SUMMARY OF COMPLAINT

The complainant had three complaints on behalf of her son who was in receipt of Family Benefits - GAINS. Her complaints were as follows:

- 1) That her son's drug benefit and medical cards had not been received even though it was now five months since the commencement of his Family Benefits;
- 2) That her son's Family Benefits should have commenced one month earlier than the date agreed to by the Provincial Benefits Branch;
- 3) She objected to the attitude of and statements made by the member of the Social Assistance Review Board who chaired the hearing concerning her son's Family Benefits. The statements to which she objected were also contained in the Notice of Decision.

All three complaints were within the jurisdiction of the Ombudsman.

The first complaint was cleared up very quickly. It was ascertained that there had been a mix-up in O.H.I.P. numbers and a new one had to be issued. This invariably causes a delay of at least three months, but during this period use can be made of a general O.H.I.P. group number. The complainant was advised of that number and was also told to charge to that number any medical or hospital bills which had been incurred since her son first became a Family Benefits recipient.

On October 26, 1977, the Deputy Minister of Community and Social Services and the Chairman of the Social Assistance Review Board were notified, pursuant to Section 19(1) of The Ombudsman Act, of our intention to investigate the complaints. In that letter, the two unresolved complaints were set out in some detail.

On November 21, 1977, a response was received from the Director of the Provincial Benefits Branch of the Ministry of Community and Social Services advising that the file had been reviewed and that it had been decided to authorize payment of the Allowance for one month prior to the original commencement date. That decision was based on the fact that medical information was completed in time to advance the commencement date.

On December 22, 1977, the Chairman of the Social Assistance Review Board forwarded to the Ombudsman a copy of a memorandum he had sent to the Deputy Minister of Community and Social Services. In that memorandum, the Chairman indicated that he felt that some of the statements that had been made by the Board member who chaired that hearing were inappropriate and stated that the Board would be prepared to entertain an application for reconsideration of the decision should the complainant wish to re-apply.

The complainant was advised of the acceptance of her complaint by the Director of Provincial Benefits and the statement made by the Chairman of the Social Assistance Review Board. She agreed that the latter constituted an apology and since the commencement date of her son's Family Benefits Allowance had been advanced by one month, she felt that no useful purpose would be served by holding still another hearing.

On January 18, 1978, a letter was sent to the complainant, outlining the various steps taken by the Ombudsman which resulted in the resolution of her complaints.

(12)

SUMMARY OF COMPLAINT

Shortly before Christmas, 1977, the complainant telephoned the Office of the Ombudsman to advise that she had made an application for Family Benefits - GAINS, but had not been able to find out what had happened to her application. Our investigator

discovered that the complainant's disability forced her to use a wheelchair and that she has a young son who is retarded and crippled and a daughter still in school. The complainant was also taking care of a six-month old grandchild who was under a doctor's care. Another grandchild was being looked after by a daughter in the same city. It seemed that the parents of the children had separated and neither parent was prepared to look after them.

When the complainant contacted the Office of the Ombudsman, she was in receipt of a Survivor's Pension under the Canada Pension Plan, a Special Allowance for her retarded son, and a General Welfare Assistance Allowance. She was not in receipt of any allowance for her grandchild and to make matters worse, she and her daughter had been unable to obtain a Family Allowance from Health and Welfare Canada for the two children that had been left with her.

On December 20th, we were advised by the Provincial Benefits Branch that Family Benefits - GAINS had been granted to the complainant and her family as of December 1. In addition, a \$100 per month Foster Mother Allowance had also been granted.

Contact was also made with the Family Allowance Office of Health and Welfare Canada and a four-month adjustment cheque was forwarded to the complainant before Christmas.

(13)

SUMMARY OF COMPLAINT

The complainant in this case was a ward in one of the juvenile training schools. The substance of the complaint was that since the ward had been returned to the training school due to his involvement in a number of delinquencies, he had not been allowed to communicate with the foster family he had been living with in the community. The Superintendent had decided that due to the uncertainty of the ward's next placement, further communication between the foster family and him should not be encouraged. The ward had been involved in a number of serious delinquencies ranging from taking of the family car to offences relating to alcohol and drugs. The severity and frequency of these acts caused the Juvenile Training School and Aftercare staff to question the benefits of the placement. The foster placement was not seen as being successful and, therefore, alternative placements would be sought by the Aftercare Officer.

On being interviewed by our investigator, the ward admitted that he had committed a number of serious delinquencies. He also stated that he had grown close to his foster mother but had not tried hard enough to develop a positive relationship with his foster father.

The complainant had met the foster mother while she was a volunteer tutor at the juvenile training school and had helped

him with his academic pursuits. The ward stated that while he was living with the foster family, he would try to manipulate his foster mother and antagonize his foster father.

The ward expressed a desire to return to the foster family after he graduated from the Training School since he now realized that for the first time in his life he had found a family who genuinely cared for him. For this reason, the complainant did not want to be isolated from the foster family and he felt that the Superintendent's decision to impose a restriction on communication with the family would result in a further breakdown between the foster parents and himself.

Our investigator spoke with the Superintendent on a number of occasions. The Superintendent indicated that he had reached his decision to stop communication between the ward and the foster family only after he had discussed this matter with the Probation and Aftercare staff and the staff at the Training School. The Superintendent was uncertain where the ward would be placed when he graduated and during the initial period of investigation, he felt that the foster family was not a possible alternative. The Superintendent feared that the ward's difficulties in adjusting to a family setting had greatly handicapped the placement from the beginning. For these reasons, any contact with the foster family could be detrimental since it could continue a relationship which he felt should be terminated. The Superintendent admitted that the foster placement could be considered but only as a last resort.

The foster parents were interviewed to ascertain information regarding the ward's behaviour and development while he lived in their home. The foster parents were greatly concerned about the delinquencies which he had committed and indicated that they could have used more support from the local Probation and Aftercare Office as well as from the Training School.

Since the complainant had been a ward of the Children's Aid Society from the age of 5 and had stayed in a number of training schools and group homes, the foster parents felt he had not matured in a way which would allow him to benefit from a family setting. They felt ill-prepared to handle him and believed that closer contact with the Probation and Aftercare Office would have been beneficial.

The foster parents were genuinely concerned for the boy and requested an opportunity to meet with the Superintendent and the Aftercare staff. They hoped to explain the development of the ward in their home by discussing the sequence of events surrounding the acts of delinquency as well as the periods between each when the ward was properly behaved and interacted successfully within the family setting. The foster parents wanted to give as complete a picture as possible so that the ward's future placement would benefit from his previous one.

The Supervisor of the local Probation and Aftercare Office and the ward's Aftercare Officer were interviewed regarding the foster placement. A number of difficulties were cited which indicated that a breakdown in communication had developed between the foster parents and the Aftercare staff. While there was some reluctance expressed about the boy returning to the same foster placement, the Aftercare Officer agreed to meet with the foster parents to review the developments of the previous placement.

A number of conversations were held with the Superintendent who had agreed also to meet with the foster parents. During that meeting, the dynamics of the previous placement were discussed and the foster parents were informed that while the boy would not be automatically returned to their home, the foster parents would be given consideration as a possible foster family for the ward.

Approximately six weeks after the ward had been returned to the training school, the foster parents were allowed to visit with him. These visits were continued as long as both the foster parents were present, thus reinforcing the idea that both foster parents are an integral part of the foster placement. Subsequent to these visits, the boy was allowed to send and receive mail and he made a number of visits to the foster family when he had earned his weekend passes from the school.

Meetings between the Superintendent, the Training School psychiatrist and the foster family were continued in order to develop a program which would be advantageous for the ward when he returned to the community. The Probation and Aftercare Office was kept up to date on all of the developments.

A letter was sent to the complainant from this Office which summarized these facts. He was informed that the representative of the Children's Services Division, the Superintendent, the psychiatrist and the Probation and Aftercare staff were all working with his best interests in mind and that they had not done anything which was outside of their authority.

It was explained to the complainant that it appeared that a breakdown in communication had developed between the concerned parties and that at the time of this letter, these parties were in the process of making plans for his graduation and a return to the community setting. At that time, the actual community placement was not finalized since the Superintendent and the Probation and Aftercare Officer were still reviewing a number of possibilities.

During our last conversation with the Superintendent, our investigator was informed that the ward was to return to the earlier foster placement. He would be enrolled in a community school and would be seen by a family counsellor to help him adapt to a family setting. The foster parents, the Probation and Aftercare Office and the Superintendent were to communicate with each other on a regular basis, in order to keep the lines of

communication open and to assist each other in developing a strong community program for the ward.

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

(14)

SUMMARY OF COMPLAINT

This complainant wrote to our office alleging that the Superintendent of Insurance had not adequately investigated his complaint against an insurance company. The complainant alleged that after his employment had been terminated by the company as an agent, the company had breached The Insurance Act in its handling of two of his clients' accounts, in that the company took these clients from him and renewed their policies with the company. The complainant contended that the insurance company back-dated the letters authorizing the transfer of agents and alleged therefore that the letters were forgeries. He expressed particular concern with the fact that the Ministry did not interview the two policyholders involved, and further that the Ministry had not checked the date on the letters authorizing the transfer of agents.

Our investigator met with the Superintendent of Insurance and two Ministry investigators to discuss this complaint. The initial position of the Superintendent of Insurance was that this was simply a dispute between an agent and his principal, and therefore did not necessitate a lengthy investigation. The Ministry's investigator had determined that there were letters of authority to transfer agents on file and believed that this was quite sufficient. The Superintendent of Insurance did not feel that his investigator should be interviewing members of the public such as the two policyholders involved, when they had not made a complaint to his office.

The complainant presented documentation which indicated that there had been a number of questionable acts by the insurance company which did warrant further investigation.

As a result of this preliminary investigation, we were of the opinion that the Superintendent of Insurance may not have adequately investigated the complainant's allegations. Accordingly, our investigator met with the Superintendent of Insurance, and advised him of our possible conclusions to determine whether his office might be willing to re-investigate this complaint. The Superintendent of Insurance agreed with our suggestion, and further investigation was undertaken by the Ministry. Our office held the file in abeyance until this investigation was terminated.

The Ministry's investigator met with the two policyholders, and took sworn statements from them, as well as met with officials of the insurance company and photocopied their file. Unfortunately, six years had elapsed since the time of the alleged offences and not all the documentation that would have been useful to the investigation was available. A thorough investigation was conducted by the Ministry investigator and a lengthy report was submitted to the

Superintendent of Insurance. This report was also given to our investigator who then met with the Ministry's investigator and the Superintendent of Insurance to discuss the findings. This report did not support the allegations as put forward by the complainant, and concluded that the letters of authority were not forged as claimed by the complainant. As a result of the thorough re-investigation undertaken by the Superintendent of Insurance, we felt that no further investigation on our part was necessary.

(15)

SUMMARY OF COMPLAINT

The complainant's wife attended a private hearing to discuss in general two problems which had developed as a result of a change in their property boundaries under The Boundaries Act. She indicated that this informal discussion would be followed by the lodging of an official written complaint by her husband and a detailed letter to this effect was received from the complainant on December 17, 1976. The first complaint was against the Property Rights Division of the Ministry of Consumer and Commercial Relations. The complainant alleged that a survey conducted between 1966 and 1971 had resulted in a reduction in his property area. The complainant was of the opinion that some of the information on which the new boundaries had been established was false. The second complaint was against the Niagara Escarpment Commission and concerned the granting of development approval to change the use of a property from residential to commercial because the site plan attached to the application contained false information.

The facts concerning the first complaint were as follows. In 1971 the village in which the complainant resided applied to have land within the village brought under the Land Title System and to have the boundaries of the land surveyed and confirmed under The Boundaries Act. To this end a survey of the village was prepared by a recognized Ontario Land Surveyor. A hearing was held to consider the objections to the application. Although not represented by counsel, the complainant made his submissions to the Director of Titles as to why he felt the survey prepared was incorrect. The owner of the property adjoining that of the complainant also gave evidence before the Director of Titles for the purpose of defeating the complainant's objection. By written Order under The Land Titles Act, dated January 10, 1973, the Director of Titles denied the complainant's objection. After considering all the evidence before him, the Director felt that the complainant had failed to refute the evidence by the surveyor that he had re-established the southeasterly limit of the complainant's property by the best available evidence of its true location.

Nevertheless, the complainant took issue with the Order made by the Director of Titles. It was his position that the hedge of evergreens used by the surveyor in assisting him to determine the southeasterly boundary of his lot line had never existed. The complainant also contended that he could adduce evidence of occupation in support of the claim that the driveway was totally on his property. Section 11(3) of The Boundaries Act provides that any person aggrieved by an Order of the Director of Titles in such a case may appeal to a judge of the Supreme Court who may annul, or with or without modification confirm the Order. The complainant was not able to take advantage of this appeal procedure for health reasons and that his work takes him to the United States for much of the year.

However, on January 13, 1975, the complainant, through his lawyer, made application to a County Court Judge for an Order setting aside the Order of the Director of Titles to amend the survey and plan, to seek an extension of the time allowed for appeal from the Order, and an Order directing a new trial of the issue. The complainant supported this motion with an affidavit indicating that he had attempted personally to launch an appeal and objection within the statutory twenty days and had unfortunately proceeded on the wrong basis, with the result that no formal appeal of the Order had been taken. The County Court Judge, before whom the application was heard, granted an Order extending the time for filing and serving a Notice of Appeal from the Order of the Director of Titles to January 15, 1975. The lawyer for the complainant also made application to the Supreme Court of Ontario for the identical relief sought in his previous application to the County Court, since he felt that the application should more properly have been made in the Supreme Court in view of the requirements of The Boundaries Act. The affidavit of January 13, 1975 was filed in support of the application which was adjourned on the consent of both parties. It appears that the application was never proceeded with.

The Director of Titles was entitled to certify his confirmation of the Plan of Survey pursuant to section 13 of The Boundaries Act in mid-February, 1973. However, as a result of a number of requests by both the complainant and his counsel, the Director delayed confirming the plan in order to give him sufficient opportunity to make application to extend the time for appealing. It was only when it became clear that the complainant would not proceed with his application to extend the time for appeal that the Property Rights Division advised on March 19, 1975, that in fairness to all parties, the confirmation was to be certified. This in fact was done on April 8, 1975.

On September 3, 1976, the complainant attempted to meet with the then Director of Titles to argue once again his case with respect to his property boundaries, but was advised that the Director of Titles could only make his decision based upon the evidence produced at the Hearing, and since the Order had been made he had no further jurisdiction to adjudicate the matter.

Our investigation proceeded in the following manner. After examining the documents which the complainant enclosed with his letter of December 17, 1976, our Investigator contacted a lawyer from the Property Law Program, Legal and Survey Standards Branch to discuss the complaint. We received the tapes of the Hearing held May 11, 1972 before the then Director of Titles. The tapes were transcribed by our Office. We reviewed the transcript in conjunction with the written Order made by the Director of titles under The Land Titles Act. Our investigator met with the complainant and his wife and subsequently received further material in support of their complaint. Contact was also made with the complainant's former lawyer and copies of all relevant Court documents were also obtained.

Although the complainant may have had evidence to support the alleged inaccuracy of the survey prepared by the Ontario Land Surveyor, it is clear from the transcript of the Hearing that he was unable to present any evidence before the Director of Titles as to the true position of the disputed boundary. The complainant did provide our Office with a number of statements signed by former owners and tenants of both his property and the neighbouring one, in support of his position respecting the hedge of evergreens and the driveway. It is possible, and our Office has so informed the complainant, that, if these statements had been produced before the Director of Titles at the time of the Hearing, he may well have come to a different decision respecting the boundaries of the complainant's lot. It may also have been that a Judge of the Supreme Court, upon hearing an appeal pursuant to either section 11(3) or 12(1) of The Boundaries Act, might have supported his position and so amended the Plan of Survey. However, the Director of Titles could only come to a decision based on the evidence adduced before him and unfortunately, the complainant did not adduce sufficient evidence to support his objection. Furthermore, with reference to section 14 of The Boundaries Act, since the plan had been certified, the boundaries of the complainant's lot as set out in the Plan of Survey, are deemed to be the true boundaries of the parcel. If the Director of Titles had the authority to do so, our Office might have suggested that he reopen the matter and hear the complainant's objection on the basis of the new evidence the complainant obtained subsequent to the initial Hearing. However, the Plan having been certified, in the absence of special legislation enabling the Director of Titles to do so, the Director of Titles has no such authority to reopen the matter.

Having found the complaint against the Director of Titles to be unsupported, we considered whether we ought to suggest that special legislation be enacted to permit the complainant's objection to be heard again; it was determined that it would not be appropriate under the circumstances to make such a suggestion. Some of the evidence provided to our Office by

the complainant could have been obtained by him or his counsel prior to the Hearing before the Director of Titles and he did have the opportunity to appeal the Order before it was confirmed, even though this appeal procedure was not pursued.

As a result, we reported to the complainant and to the Ministry that in our opinion, the Property Rights Division was more than fair in not taking steps to have the confirmation certified pursuant to section 13 of The Boundaries Act.

The facts with respect to the second complaint were as follows. In April, 1976, an insurance firm purchased a lot immediately adjacent to the complainant's property on the other side of the disputed boundary. The company then applied to the Niagara Escarpment Commission to change the use of the property from residential to commercial and approval was granted. The complainant then received notice of the approval and he appealed to the Commission. The appeal was heard by the Commission and at that time the complainant objected to the development approval by stating that the driveway between the two properties was too narrow to permit commercial use. He stated that in order to use the driveway it would be necessary to trespass on his property. He also contended that the site plan set forth by the applicants contained several false statements. The site plan noted an existing garage at the rear of the property. The complainant alleged that there was no such garage, that it was a utility shed built under a building permit which stated specifically that it was for "a utility shed." He alleged that the notes on the site plan referred to a driveway at the side of the property leading into an existing garage at the rear. The complainant maintained that there was no garage at the rear and there was no gravel driveway leading from the street to the rear of the property.

Our investigation revealed that the Commission staff investigated the complainant's allegation and learned that the site was designated in the official plan for the area as "regional centre." Consultation with the township revealed that the proposed use in the development approval was a permitted use in the former zoning bylaw and therefore, the township did not oppose the application.

With respect to the complainant's allegation that the building at the rear of this property could not be used as a garage without bylaw infringement, the hearing officer stated in his report to the Minister that

"the building at the rear of the subject property was constructed after the issuance of a building permit by the municipality to the property owner for an accessory building to a residential use."

Contact with the township indicated that this accessory building might be used for purposes of a garage and/or a storage shed. The description of this building as a garage in the site plan drawing was therefore an accurate description of that building.

With respect to the complainant's allegation that there was no existing driveway leading from the street to the rear of the property, the complainant took this position on the basis of his belief that the boundaries as established and confirmed under The Boundaries Act in 1973 were wrong. Further, his understanding was that zoning bylaw no. 791 required a 9-foot minimum width for a new driveway, two feet more than the available space beside the building in question. Although the senior planner of the Commission explained to the complainant in his letter of July 5, 1976 that the bylaw only applied to new structures or buildings from August, 1968 on, the complainant remained unconvinced that this was correct. Our investigation indicated that the building on the lot in question had existed prior to the passage of this new bylaw and therefore the 9-foot requirement did not apply to the lot.

The complainant had also objected to the proposal for asphalt paving at the rear of the property for the purpose of parking. The investigator reviewed the site plan drawing and application but did not find any indication or use of the word "asphalt". Further, the senior planner for the Commission replied to the complainant in his letter dated July 5, 1976, that "I am unaware that the applicants are intending to completely pave the whole rear of the lot for parking use." Discussion with the complainant revealed that he had misunderstood the use of the word asphalt on the site plan. This referred to the applicant's choice of asphalt shingles for exterior roof finish.

We reported to the complainant after thoroughly reviewing the information submitted, as well as reviewing the submission made by the Niagara Escarpment Commission in its files and letters to him, that we concluded that the Commission's actions with respect to the issuance of the development approval could not be faulted. In accepting the response of the hearing officer, it did not appear that the Minister of Housing had exercised the discretion vested in him by the Act in an improper manner and as a result, the complaint could not be supported.

(16)

SUMMARY OF COMPLAINT

The complainant wrote to us complaining that he had been misled by officials of the Motor Vehicle Accident Claims Fund,

with respect to an outstanding claim against him. The complainant alleged that as a result of the misleading information he was not given an opportunity to dispute the claim.

According to the complainant, he was involved in a multi-vehicle accident in the summer of 1976. During the summer the complainant had been living in Toronto at his mother's home; however, in September he returned to complete his degree at a University outside of Toronto. At that time he did not submit a change of address to the Ministry of Transportation and Communications. The address on his licence at the time was that of his mother's home where he had been living. At the end of September his mother sold her home in Toronto and moved out of the city. She submitted the usual change of address card to the Post Office at that time. In December of 1976, the complainant submitted his change of address for his licence to the Ministry of Transportation and Communications. In January of 1977, the complainant received a Notice of Suspension of his Driver's Licence. Apparently, the Motor Vehicle Accident Claims Fund had satisfied a claim against him in the amount of \$100. The complainant stated that he had not been notified by the Ministry of Consumer and Commercial Relations of the claim. He indicated that had he been notified, he would have disputed the claim. When the complainant received a Notice of Suspension, he went to the Motor Vehicle Accident Claims Fund in Toronto. Although he felt he was not responsible for the claim, he paid the \$100 in order to have his Driver's Licence re-instated.

When he was present at the Fund's offices, he asked if there were any other claims outstanding against him and he was advised by a Ministry official that there were none. There was in fact a claim of \$559 outstanding against him. The complainant indicated that if he had been advised of the further claim against him he would have disputed it at that time. The complainant felt that because he was misled by the Ministry official into believing that there were no other claims, he should not now be responsible for the payment of that claim and he should have his licence re-instated.

We outlined the substance of the complaint to the Deputy Minister when we informed him of our intention to investigate this complaint. The Ministry stated that registered letters notifying the complainant of the impending claims against him were mailed to his last known address in October and November of 1976. Both were returned by the Post Office marked "moved, address unknown." Ministry officials indicated that the complainant did not notify the Ministry of Transportation and Communications promptly of his change of address. They went on to add that as officials of the Fund were unable to contact the complainant and consequently they were unaware of any dispute of liability, the Claims Examiner handling the file proceeded to settle the claims. The first claim settled was

for \$100. This was paid on February 1, 1977 by the Ministry. The complainant attended the Fund's office on February 10 and repaid the money to the Ministry.

Our investigation proceeded in the following manner. Our investigator spoke to the complainant's mother in Toronto, to verify whether or not she had sent in the change of address information to the Post Office. She indicated that she had given the information to the Postmaster at the Community College where she was working. The investigator then contacted the Postmaster who indicated that she did not send in the change of address card and that she only sold the change of address card to the complainant's mother. The Postmaster further recalled that the complainant's mother had indicated that she would be sending in the card herself. The investigator then contacted the complainant's mother once again and she reiterated that she did not send in the change of address card. She distinctly recalled that the Postmaster sent in the change of address card.

Our investigator then contacted the Post Office and spoke to an investigator from the Investigations Department, who indicated that the Post Office had not received a change of address card until February of 1977. The change of address card remained on file with the Post Office until May of 1977.

The official to whom the complainant alleged he spoke in the early months of 1977 was contacted by our investigator in November of 1977. She indicated that she had started work with the Motor Vehicle Accident Claims Fund a few weeks before the date on which the complainant alleged that he appeared at the Fund's offices. The official indicated that she was being trained for work on the counter at the time and went on to say that she had no recollection whatsoever of the complainant or of the meeting. She stated that had she been asked by the complainant if there were any other outstanding claims, she would have checked the file and asked for assistance from the supervisor who was nearby and supervising her work.

As a result of our investigation, the complaint was found to be unsupported. There was some doubt about whether the change of address card had been sent in as the complainant had originally stated. There was some question in the minds of both the complainant's mother and the Postmaster as to who exactly sent out the change of address card. Furthermore, the Post Office informed us that the change of address card was not received until February of 1977. Also, the change of address information should have been sent to the Ministry of Transportation and Communications at the time of the complainant's move in the Fall of 1976. He did not do this until December of 1976. Section 5(3) of The Motor Vehicle

Accident Claims Act authorizes payment out of the Fund if a person to whom a notice is sent at his last address on file with the Ministry of Transportation and Communications does not reply within thirty days of the date upon which the notice was sent. The notices were sent in November of 1976 and the complainant did not have the conversation with the official until February of 1977. Therefore, more than thirty days had passed since the time that the notice was sent to him and the Fund quite properly paid out the money.

Although we found this particular complaint to be unsupported, we recommended that motorists should be advised at the time they pay the Uninsured Motor Vehicle Fund Fee of the possible consequences if they fail to notify the Ministry of Transportation and Communications of a change in their address. In response to our recommendation, the Superintendent of Insurance wrote to us saying:

"Your recommendation that uninsured motorists be advised at the time of paying the U.M.V.F. Fee of the possible consequences, under The Motor Vehicle Accident Claims Act, of their failure to notify M.T.C. of a change of address has considerable merit and will be included in the next reprinting of the Fund's pamphlets. A copy of the present pamphlet is enclosed for your reference.

I appreciate your interest and the time you have taken to make a most worthwhile recommendation."

(17)

SUMMARY OF COMPLAINT

This complainant was employed at an outlet of the Liquor Control Board of Ontario for approximately three years prior to his release in May of 1977. The complainant claims that he was told his release was for neglecting to stamp a passenger's receipt for Customs approval; however, the complainant was not satisfied with this reason and contacted a representative of the Civil Service Association. He was advised by this official that the Civil Service Association could not be of assistance to him since he had not been a full-time employee and therefore was not a member of the Association. However, the official did refer him to the Chief of Staff with the Liquor Control Board

of Ontario, who in turn referred him to a member of his staff. The complainant claims that this official told him the reason for his release was not as originally stated, but rather, that it was due to the fact that business had slowed down and his presence as a part-time employee was no longer required.

The complainant questions this latter reason as he is aware of other part-time employees with less tenure who have not been released. He contends that the reasons given for his dismissal were unjustified and he therefore feels that he should be reinstated.

Our investigator contacted officials of the Liquor Control Board of Ontario. The investigator was informed by the Chief of Staff of the Liquor Control Board that an offer of employment in another store was to be forwarded to the complainant in the near future. Our investigator then contacted the complainant and informed him of this development.

A month later, the complainant contacted our investigator and informed him that he had not yet received the offer of employment from the Liquor Control Board. The investigator again contacted officials at the Liquor Control Board of Ontario, and was informed by an official that such an offer of employment would be forwarded to the complainant, with a copy to the investigator.

Three weeks later, the investigator again contacted the complainant and learned that he had not yet received the offer. The official at the Liquor Control Board was again contacted, at which time, he indicated that he would check to find out the reason for the delay respecting the offer and ensure that it was sent out promptly.

Two weeks later, the complainant contacted the investigator again and informed him that he had still not received this offer of employment. Our Director of Investigations then sent a letter to the official concerned at the Liquor Control Board, and asked him to make the necessary inquiries and take appropriate action to ensure the offer was sent out, as earlier indicated.

A week later, our Director of Investigations received a response from the official, which indicated that he had been advised by Store Operations that the complainant had been instructed to report for temporary employment at a particular store three days later. This was confirmed with the complainant by a member of our staff. This complaint was resolved to the satisfaction of the complainant.

(18)

SUMMARY OF COMPLAINT

This complainant wrote to our office complaining that the Superintendent of Insurance had not adequately investigated his complaint against a private insurance company. The complainant contended that his insurance company failed to notify him properly that his theft insurance was being reduced. As a result, the complainant has been unable to obtain sufficient indemnification for a property loss he suffered as a result of a previous theft. The complainant brought this matter to the attention of the Superintendent of Insurance, but is of the opinion that the Superintendent did not properly investigate his claim.

During the course of this investigation, our investigator met with the Co-ordinator of the Automobile Casualty Insurance Division, the Superintendent of Insurance, as well as with the complainant. The insurance company's position as presented to the Ministry was that it had advised all insured of the reduction in the policy whereas the complainant claimed that he had not been so advised. The insurance company stated that it had included in all renewal policy forms a pamphlet detailing changes in coverage. The Ministry's original position was that this was a matter of credibility that it was not in a position to resolve. The complaint was accordingly dismissed by the Superintendent of Insurance.

When our investigator met with the Superintendent of Insurance, it was suggested that his staff try to resolve the question as to whether the complainant actually received this brochure. The Superintendent agreed to take the complainant's evidence under oath and then approach the insurance company. Our file was held in abeyance during this period.

We were later informed by letter from a Ministry official that the Ministry had presented the insurance company with a statutory declaration signed by the complainant to the effect that he had not received the brochure setting out changes in the home owner's policy. However, despite this, the official indicated that the insurance company had remained adamant and had refused to change its position. We received a letter from the Superintendent of Insurance giving detailed reasons why no further action on the part of the Ministry against the insurance company was justified.

He pointed out that there was no statutory obligation on insurers to advise their insured of changes in policies when they were reissued at the time of renewal. He further indicated that, after carefully considering the question, there was insufficient basis for the Ministry to proceed under the "unfair and deceptive acts and practices" part of The Insurance Act. The Superintendent concluded that in his opinion, there

was not sufficient evidence to warrant a Hearing. On the facts, we were in agreement with the Superintendent of Insurance.

The complainant was informed that it was our opinion that the Ministry had done all that it could be reasonably expected to do under the circumstances. As a result, we were unable to find the complaint supported.

(19) SUMMARY OF COMPLAINT

The complainant wrote our office complaining that the Business Practices Division of the Ministry had not adequately investigated her complaint to its office. The complainant contends that a real estate agent acted illegally and improperly in connection with an Agreement of Purchase and Sale offered by a prospective purchaser.

When the complainant initially brought this complaint to the attention of the Business Practices Division, she received a response which stated that "we have found no violations of The Real Estate and Business Brokers Act, and we are unable to pursue this matter any further on your behalf." Furthermore, the Ministry advised her that if she wished to commence legal action against the real estate agent for not completing the transaction, she should consult with a lawyer and follow his advice.

The complainant was aware when she came to us that she must obtain legal advice to pursue any claims for compensation for damages suffered by reason of this aborted transaction. However, she was very concerned with the conduct of the real estate agent, and in particular, that appropriate measures be taken to insure that it not be repeated.

The complainant alleged that her real estate agent forged the name of the purchaser on the Offer to Purchase. She arrived at this conclusion by comparing the two signatures which appear on the Offer to Purchase purportedly as the purchaser's signature. These signatures are clearly different in spelling and style. Furthermore, the complainant's lawyer, after speaking with the purchaser's solicitor, advised the complainant that the purchaser denied ever having signed any agreements or papers, nor did the purchaser authorize any monies to be paid. It appeared from the Ministry's correspondence that it did not direct its investigation to the issues which most troubled the complainant, those being, that the real estate agent may have forged the purchaser's name on the Offer and that he may have lied to the complainant and engaged in unethical practices.

Our investigator met with the Registrar of The Real Estate and Business Brokers Act with regard to this complaint. Upon reviewing the Ministry's file, it was evident that a thorough investigation of this complaint had been undertaken after we had informed the Ministry of our intention to investigate. The Ministry's investigator took sworn statements from the complainant, the purchaser, and the real estate agent. The conclusion of this investigation was that the salesman concerned did everything possible to negotiate and finalize the transaction between the complainant and the purchaser. In so doing, the Ministry was of the opinion that the agent was guilty of sloppy practice. However, the Ministry's investigator was also of the opinion that the purchaser suffered "buyer's remorse" after entering into the transaction, and did everything possible to frustrate the agreement. The Registrar concluded that the salesman had not acted in accordance with The Real Estate and Business Brokers Act. Accordingly, the real estate agent was reprimanded by the Registrar for his practices, particularly with regard to signing the purchaser's name acknowledging receipt of his copy of the agreement.

Our investigator then spoke with the complainant by telephone and informed her of the results of the further investigation conducted by the Ministry. The complainant expressed her satisfaction with the action taken by the Ministry. As this complaint was satisfactorily resolved, the file was closed.

(20) SUMMARY OF COMPLAINT

The complainant was interviewed at one of our Private Hearings. His complaint concerned an investigation conducted by the Motor Vehicle Dealers Branch of the Ministry into his complaint against a motor vehicle dealer.

In April of 1975, the complainant submitted a complaint to the Ministry concerning the failure of a motor vehicle dealer to honour its warranty on a truck he purchased in June, 1972. Following its investigation, the Ministry advised the complainant that it had attempted to mediate his dispute with the dealership involved but was unable to resolve his complaint. The complainant was, as a result, advised by a Regional Inspector of the Motor Vehicle Dealers Branch, that there was nothing further that he could do on his behalf since The Motor Vehicle Dealers Act does not empower him "to force the dealer to give rebates or to make redress" in matters such as his. It was this decision and the Ministry's investigation that the complainant was questioning.

During the course of our investigation into this complaint, the Ministry was contacted and advised of the complainant's contentions. Subsequently, the Ministry's file was

reviewed and discussed with the Registrar of The Motor Vehicle Dealers Act, the Regional Inspector involved, and a complaints officer of The Motor Vehicle Dealers Act. It was found that the complaint was received by the Ministry on April 17, 1975, and referred to the Motor Vehicle Dealers Branch. It was then referred to the Regional Inspector for investigation. In a letter dated May 7, 1975, the Regional Inspector advised the General Manager of the dealership of the complaint. The General Manager was asked to forward to the Ministry all information pertaining to this matter. On May 25, 1975, a reply was received from the General Manager including copies of all work orders. The position of the dealership was that it had repaired the complainant's vehicle to the best of its ability. In a letter dated June 2, 1975, the Regional Inspector informed the complainant of the dealership's position. The Regional Inspector requested the complainant's comments and agreed to contact the dealership on his behalf. On July 3, 1975, the Regional Inspector wrote to the dealership again after inspecting the complainant's vehicle and attached a copy of the complainant's letter of June 8, 1975. The Regional Inspector requested that the dealership supply the Ministry with a statement of its further comments and intentions. On July 15, 1975, a reply was received from the dealership. The dealership advised the Ministry that in its view the complainant had received all of the free service and warranty repairs to which he had been entitled. The dealership further advised that it could not overrule the car manufacturer on warranty and that, according to his records, bills that were charged to the complainant were legitimate. In a final letter dated July 2, 1975, the Regional Inspector informed the complainant that the Ministry could not resolve his complaint due to the position taken by the dealership.

We reviewed The Motor Vehicle Dealers Act and found that when the Registrar receives a complaint in respect of a used car dealer, he can request that the dealer furnish him with such information respecting the matter complained of as the Registrar requires. There is no provision in the Act to empower the Registrar to direct the dealership to correct the problem. If there has been no violation of the Act, the most the Registrar may do is to attempt to mediate the dispute. Our investigation disclosed that the Regional Inspector did attempt to mediate the complainant's dispute with the dealership; but, due to the stand taken by the dealership, he was not able to resolve the matter.

The Motor Vehicle Dealers Branch also keeps files on every registered dealership. These files contain a record of complaints received by the Ministry against dealerships. The files are kept and monitored so that in the event that the Ministry receives a number of similar complaints against any particular dealership, it may order an inspection to be carried out. Our investigator reviewed the dealership's file in order

to determine the nature and number of complaints received by the Motor Vehicle Dealers Branch against it. Our review found that there were few complaints against the dealership and no serious contraventions of the Act.

We concluded that the Motor Vehicle Dealers Branch reached its determination in the complainant's case in accordance with The Motor Vehicle Dealers Act. In letters dated November 10, 1977, the Ministry and the complainant were advised of our conclusion that the complaint was unsupported. The complainant was also advised to consult a lawyer with a view to determining whether he might have a cause of action against the dealer or the manufacturer.

(21) SUMMARY OF COMPLAINT

The complainant alleged that the Motor Vehicle Accident Claims Fund did not give him notice of a claim against him and consequently he was unable to dispute his liability. He therefore felt that the ensuing payment out of the Fund for the damage he allegedly caused was improper.

The complainant advised us he was driving a car in Kingston and was involved in a motor vehicle accident with a truck. It appeared that the complainant's car was still registered in his brother's name, although the complainant believed his brother had sold the car previously to the complainant's cousin. At the time of the accident, the car was uninsured.

We notified the Ministry of our intention to investigate this complaint and we received full cooperation from the Ministry's officials during the course of this investigation.

Our investigation concluded that the Ministry had acted properly by forwarding a notice to the complainant that a request for payment out of the Fund had been made. This notice was sent to the complainant's last noted address with the Ministry of Transportation and Communications. Regrettably, the complainant had moved and had failed to notify the Ministry of Transportation and Communications immediately thereafter of this change of address. Moreover, the complainant did not take any steps to ensure that his mail would be sent on to his new residence.

Both the complainant and the Ministry were advised of the result of our investigation and of the fact that the complaint could not be supported.

(22)

SUMMARY OF COMPLAINT

This complainant attended at the Ombudsman's private hearings in a Northern Ontario town. At that time, he brought to our attention his complaint against the Liquor Control Board of Ontario.

The complainant alleged that he had made three applications for a Liquor Control Board agency store outlet, all of which were denied without reasons being given to him. The initial application was made in 1972 by the complainant's M.P.P. As a result of this application, the Board instructed the District Supervisor to prepare a survey of the area to determine if service should be provided to this location. The M.P.P. was advised by an official of the Board that the complainant would be granted an agency store permit provided he brought the premises up to suitable standards which were acceptable to the Board. The complainant did not receive a permit for an agency outlet at that time and made a second application. A further survey was completed and the application was again denied. With the assistance of his solicitor, the complainant then submitted his third application. After the complainant was refused for the third time, he contacted our Office expressing his concern that adequate reasons had not been given for these refusals.

On December 20, 1976, the Board was notified of our intention to investigate this complaint. The Chairman of the Board replied by letter dated December 23, 1976. He advised that there was an outlet only 17 miles away and there were three other applicants who had applied for a similar permit and consideration would be given to each applicant. He also stated that as a result of an investigation conducted by the O.P.P. in the area, it had been concluded that it would not be favourable to establish a liquor agency at the complainant's lodge.

Our investigator contacted a number of officials from the Board as well as the Police Officer responsible for the O.P.P. investigation. On July 20, 1977, a letter pursuant to section 19(3) of The Ombudsman Act was sent to the Board outlining the Ombudsman's possible conclusions and recommendations and affording it an opportunity to make representations to our Office. Written representations were received on August 9, 1977 from the counsel to the Board.

Based on the investigation of this complaint and the Board's response to our section 19(3) letter, it was our opinion that the Board did not exercise its discretionary power not to grant the complainant an agency outlet for "an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations" within the meaning of section 22 of The Ombudsman Act. However, it did by its servant advise

the complainant that an outlet would be approved subject to a condition being fulfilled. The Board then decided to deny the complainant the outlet after he had fulfilled this condition. It was our opinion therefore, that the Board in so doing, had acted in accordance with a practice that was unreasonable and unjust. It was also felt that reasons should have been given for the Board's denial.

Accordingly, three recommendations were made in our report to the Board pursuant to section 22(3) of The Ombudsman Act. The Minister of Consumer and Commercial Relations also received a copy of our report.

The three recommendations were:

1. That in the future, any applicant for an agency outlet be advised that, notwithstanding the views expressed by any servant of the Board, a final decision to grant such an agency outlet is made by the members of the Board alone;
2. That given the finding [the complainant] was misled by a servant of the Board, the Board should further consider [the complainant's] application;
3. That the Board give [the complainant] reasons for its decision, and that reasons be given to any applicant for an agency outlet if he is so denied.

By letter dated October 21, 1977, the Chairman of the Liquor Control Board of Ontario responded to our report and recommendations. The Board agreed to accept the three recommendations contained in our report and by letters dated November 9, 1977, both the complainant and his M.P.P. were advised of the Board's acceptance of our recommendations.

MINISTRY OF

CORRECTIONAL SERVICES

(23)

SUMMARY OF COMPLAINT

This complainant wrote to us from a provincial jail in Eastern Ontario requesting an interview with the next Ombudsman representative to visit the institution. When seen, he complained that his discharge date had been incorrectly computed by the jail authorities.

The complainant advised that he had appeared in court and had been sentenced on July 13, 1977. A short time after his return to the correctional facility he requested his discharge date and was advised that his sentence had not been deemed to commence until August 2, 1977, the date that the Certificate of Conviction had been received by the authorities at the jail.

Our investigator discussed this case with the Clerk of Records at the facility and suggested that consultation be held with the Manager, Client Information Systems and Records, as it was probable that the effective date of sentence was the date the complainant had appeared in court and not the date the Certificates were received at the jail. This suggestion was supported by the Manager and the complainant's discharge date was varied accordingly, giving him credit for the additional three weeks.

(24)

SUMMARY OF COMPLAINT

This complainant expressed concern initially that he had been denied a transfer from a correctional centre to another institution of lesser security to serve the remainder of his sentence. In addition, he complained that activities for inmates in his corridor were unduly restricted. Following a personal interview with the complainant, our investigator reviewed the complainant's institutional file and discussed his situation with one of the senior officials at the correctional centre. It was learned that the complainant had received several past misconducts during his stay at the correctional centre and was, in fact, at that time undergoing punishment for breach of institutional rules. In view of the complainant's poor institutional behaviour, institutional authorities felt that the complainant did not meet the criteria for transfer to a less secure institution. Based on the information available concerning the complainant's past conduct, the decision of the institutional authorities did not appear unreasonable and therefore the complaint could not be supported.

Concerning the complainant's contention that activities for inmates in his corridor were unduly restricted, discussion

with senior officials at the institution disclosed that the complainant was then being held in a corridor reserved for inmates undergoing punishment for breach of institutional rules. Therefore, as the complainant was undergoing punishment and as restriction of certain privileges normally enjoyed by inmates was part of this punishment, it did not appear unreasonable that activities for inmates in this corridor would be somewhat restricted.

In his subsequent correspondence following his transfer to one of the Ministry's jails, the complainant indicated that he had become involved in an altercation with other inmates after they had threatened him. The complainant was concerned for his safety as he feared further attacks against him as a result of this incident. He also complained that the Minister of Correctional Services refused to speak to him while on a visit to the jail. The complainant felt that the Minister should have granted his request for an interview.

As a result of these letters, our investigator interviewed the complainant at the jail. At that time, he complained that he had been threatened by other inmates at the jail whom he did not wish to name, concerning the possible outcome of his trial. He claimed that when he refused to plead guilty to the charge as suggested by the other inmates, he was attacked and in the process of defending himself, he fractured one inmate's nose and as a result, was placed in segregation. While he claimed that he was merely defending himself, his primary concern was that he be allowed to remain in segregation until the conclusion of his trial at which time he could be transferred back to the correctional centre.

Based on the information provided by the complainant, our investigator discussed his concerns with a senior official at the jail. While this senior official indicated that due to limited space available in the segregation area of the jail, it was impractical and undesirable to keep the complainant confined to segregation for any lengthy period of time, he indicated that due to the complainant's concerns about his safety, jail staff would ensure that the complainant received proper protection from other inmates until such time as his trial was concluded and he could be transferred to a correctional centre. With respect to the complainant's transfer from the jail following disposition of his charge, the senior official indicated that the complainant would be transferred to a correctional centre once the charge was disposed of but that until such time as the outcome of the trial was known, no guarantee could be made that the complainant would be returned to the same facility where he had been previously incarcerated.

The complainant's contention that the Minister of Correctional Services refused him an interview while on a visit to the jail was researched and it was determined that no inmate is entitled by right to an interview with the Minister. The only right to interview for an inmate is contained in section 31(2) of the Regulations made pursuant to The Ministry of Correctional Services Act, 1970, which states that:

"An inmate shall be given the opportunity to complain to the Superintendent or to an inspector in the course of his inspection, of any act on the part of another inmate or of an employee that he alleges affects his right or privileges."

It therefore appeared that the complaint could not be supported as the inmate had in law no right to an interview with the Minister.

A letter was sent to the complainant outlining in detail the findings of our investigation into his complaints. He was apprised of his right to an interview with the Superintendent and/or an inspector and, in addition, he was made aware that it was open to him to write directly to the Minister to complain about his actions in denying him an interview. He was further advised that his concerns for his safety while at the jail had been relayed to senior officials at the jail.

(25) SUMMARY OF COMPLAINT

This complainant wrote to us from a correctional centre in Western Ontario, contending that his request for a transfer to a detention centre in eastern Ontario had been unreasonably denied. He stated that he wished the transfer to facilitate his receiving an interview with a psychiatrist in charge of an Addiction Research Foundation program at a psychiatric hospital in the same town as the detention centre.

Our investigator spoke with the psychiatrist who had been working with the complainant in the correctional centre who advised that he had arranged for the complainant to be interviewed by the psychiatrist in the hospital and had subsequently advised the Assistant Superintendent in charge of transfers at the correctional centre of his recommendation. The investigator then contacted the Co-ordinator of Inmate Classification to determine why the request had been denied. The latter advised that the request had been deferred some two weeks earlier because he wished clarification

on the nebulous nature of the request received from the correctional centre. Our investigator indicated that the request had been made to facilitate the afore-mentioned interview. It became apparent that no clear reason for the request had been forwarded to the Main Office of the Ministry of Correctional Services. The Co-ordinator contacted personnel at the correctional centre and subsequently advised our investigator that the complainant would be transferred to the detention centre. This transfer was dependent upon the results of the interview with the Director of the A.R.F. program. If the complainant was not admitted, he would then be returned to the Correctional Centre.

Four months later we contacted the detention centre authorities and were pleased to learn that the complainant was attending the treatment program on a weekly basis, having been accepted as an out-patient.

(26)

SUMMARY OF COMPLAINT

An inmate of an institution in the western region asked that we assist him with several concerns, namely, that the city police were harassing him, that he did not understand why he was moved from the minimum security section of the institution to the maximum security section, and that on six occasions, he was refused an interview with the institutional doctor to discuss a vegetarian diet.

Our investigator learned that the complainant had been transferred to another institution in the western region and consequently visited the complainant at this institution. At that time, the complainant restated his concerns in more detail. During the interview, it was explained to the complainant by our investigator that his complaint against the city police department was premature and outside the jurisdiction of the Office of the Ombudsman. The complainant was advised that it did not appear that he had exhausted all avenues of appeal open to him. During the interview, it was suggested to the complainant that it was open to him to address his concerns initially to the Chief of Police. In addition, the complainant was advised that should he not be satisfied with the results of the investigation by the Chief of Police, it was open to him then to direct his complaint to the local Board of Police Commissioners. He was also told that should he not be satisfied with their investigation, his complaint could then be addressed to the Ontario Police Commission. He was advised that after the Ontario Police Commission had looked into his concern, if he was still dissatisfied, he could complain to our Office about the decision of the Ontario Police Commission.

Subsequent to the conversation with the complainant, our investigator contacted the Deputy Superintendent of the institution referred to by the complainant, with reference to his concern about his transfer to the maximum security section of the institution. According to the Deputy Superintendent, the complainant was not moved to the maximum security area of the facility, but was placed in the maximum security area immediately upon being admitted to the facility. Our investigator was also advised that the complainant had been incarcerated at this facility many times in the past and had been considered to be in need of such security. According to the institutional authorities, in the past this complainant had threatened and attacked other inmates while incarcerated and had attempted to commit suicide. Consequently, for his own protection and the protection of others, the complainant was located in the maximum security section of the institution.

Regarding the complainant's second concern, as to why he was not seen by an institutional physician while incarcerated at the facility when he claimed he had requested to see a doctor six times regarding a vegetarian diet, our Investigator reviewed the complainant's medical file and discussed his concerns with the institutional and medical authorities. Our investigator noted that during the period from the date of the complainant's admission to the date of his transfer, he put in eight requests to see the doctor. None of these written requests gave any indication that the complainant desired a vegetarian diet. Out of these eight requests, the complainant was seen a total of seven times, four times by the nurse on duty and three times by the institutional physician. On these three occasions two request forms were signed, not only by the doctor, but by the complainant. The only record which related at all to the issue of food, was a request form dated many months prior to the complainant's present admission in which he asked to visit with the doctor "re - meals." Apparently, the complainant was seen at that time by the institutional doctor but what decision was made, if any, was not evident from the file.

The complainant was advised of the results of our inquiries. The complainant's concerns were found to be unsupported.

(27) SUMMARY OF COMPLAINT

An inmate of an institution in the Western region requested us to assist him in obtaining a transfer to a minimum security institution in the central region or in obtaining an Employment Temporary Absence Pass. A subsequent

letter was received by our office from the complainant who indicated he had been transferred to a maximum security institution in the central region.

Our investigator visited the complainant at the institution in the central region. At that time, the complainant repeated his concerns and indicated that although he had applied for both an Employment Temporary Absence Pass and a transfer to a minimum security institution, his first priority was to be transferred. The complainant told our investigator that his reclassification was presently under consideration by Ministry officials but that he felt that he would be transferred to another maximum security institution.

After the conversation with the complainant, our investigator contacted the Assistant Superintendent of the institution to discuss the complainant's concerns. According to the Assistant Superintendent, the authorities were prepared to approve the complainant's application for an Employment Temporary Absence Pass as well as a transfer and advised our investigator that they would keep our office informed as to the complainant's status. Our investigator advised the Assistant Superintendent that the complainant's first priority was to be transferred.

Several days after the interview with the Assistant Superintendent, our investigator was advised that since the complainant was no longer interested in a Temporary Absence Pass for employment purposes, he would be transferred to a minimum security institution. Our investigator was subsequently advised by Ministry officials that the complainant had been transferred to such an institution.

(28)

SUMMARY OF COMPLAINT

This complainant wrote to us from a correctional institution in western Ontario contending that his sentence had been incorrectly calculated by the institutional authorities. When interviewed, the complainant advised that he had requested a recalculation of his sentence, however, he was still of the opinion that he was being required to serve more time than legally necessary.

It should be noted that this computation was complicated by the intricacy of the sentence structure. The sequence of events included: the initial imposition of a definite/indeterminate sentence; the release of the complainant on Ontario Parole; a cancellation of the Parole; a consecutive definite sentence for a new conviction; the complainant's escape from custody and a subsequent criminal charge; a

resulting new consecutive sentence of 10 days; the release of the complainant on National Parole; the subsequent suspension and revocation of the National Parole; and the imposition of a new sentence of five months consecutive and 18 months concurrent.

The matter was brought to the attention of the Manager, Client Information Systems and Records for the Ministry of Correctional Services who examined the complainant's sentence structure, verified with the R.C.M.P. the dates the complainant had been arrested on the National Parole suspension, and determined that the discharge date had been incorrectly calculated by the institutional authorities.

At the conclusion of the investigation, the complainant's discharge date was varied by 30 days resulting in an earlier release date.

(29) SUMMARY OF COMPLAINT

This complainant wrote to us from a small town in central Ontario with a complaint which fell within the jurisdiction of the Ministry of Correctional Services. She contended that her son, an inmate in a new detention centre in central Ontario, had written to her in an envelope which was pre-stamped with the name of the correctional facility. She complained that her neighbours would therefore be aware of her son's incarceration, thereby causing embarrassment to her family.

Our investigator approached officials of the detention centre and the Main Office of the Ministry of Correctional Services to determine the general policy regarding the identification of institutions on inmate mail. It became apparent that the new stamp being used at the facility was incorrect and a new one was ordered to conform with the policy of the non-identification of correctional facilities.

Until such time as a new stamp was received, the name of the institution was blocked out on all existing envelopes from the time of the inquiry.

(30) SUMMARY OF COMPLAINT

This complainant wrote to us from a maximum security institution in central Ontario requesting an investigation regarding his contention that several cells in a corridor

could not be properly manually keyed and therefore would present a possible hazard to the inmates confined therein in the event of an emergency. When interviewed, he advised our investigator that he wished this matter to be immediately brought to the attention of the institutional authorities for their action. Our investigator relayed the concern of the inmate to senior institutional staff who, after conducting an examination of several locks in the corridor, concluded that some of these locks were deficient and that there was some difficulty encountered in unlocking them manually. Institutional authorities indicated to our office that an examination would be conducted of all locks within the institution and if any were found to be deficient, they would be repaired or replaced. A letter confirming the results of our investigation and the action taken by the institutional authorities was forwarded to the complainant.

(31)

SUMMARY OF COMPLAINT

This complainant indicated that he was experiencing difficulties in seeing a physician at a detention centre and that he was therefore not receiving proper medical care. In his subsequent correspondence, he again complained that he was not receiving proper medical care at the detention centre and also raised complaints concerning medical treatment which he had received at a public hospital.

In view of the nature of the complaint, our investigator contacted a senior official at the detention centre by telephone to determine the complainant's current medical status. The investigator was advised that since his admission, the complainant had seen the institutional physician on several occasions and was, in fact, presently awaiting admission to a public hospital for treatment of a fractured nose, the result of an altercation with another inmate. Subsequently, our investigator attempted to interview the complainant at the detention centre but learned that he had since been released on bail.

Even though the complainant was unavailable for comment, our investigator reviewed his institutional file and medical records and discussed his medical treatment with the nursing staff and senior officials at the centre. From the medical records, it appeared that during the two-month period in question, the complainant had been examined on at least 12 occasions by qualified medical practitioners while incarcerated at the detention centre. In addition, it was noted that he had been admitted for treatment at two public hospitals during this period. From this evidence, it appeared that the complainant's contentions that he had experienced

difficulty in seeing a physician and had not received medical attention could not be supported and therefore no fault was attached to the authorities at the detention centre.

With respect to his complaint against the medical staff at one of the public hospitals in question, this concern was found to be outside of the Ombudsman's jurisdiction by virtue of section 15(1) of The Ombudsman Act. However, review of the complainant's medical record indicated that the complainant voluntarily and in writing declined the surgery offered to him at the hospital in question when he refused anesthetic even after being given the assurances of the surgeon scheduled to perform the operation. As we had no jurisdiction to pursue this matter further, the complainant was referred to the College of Physicians and Surgeons.

(32)

SUMMARY OF COMPLAINT

This complainant indicated that he had been unfairly dealt with with respect to his recent demotion from the position of Supervisor of Juveniles 4 to the position of Correctional Officer 2. He further indicated that he had been advised by the Ministry's personnel branch that he would not be granted an interview with the Civil Service Commission concerning his demotion.

When interviewed by our investigator, the complainant indicated that he had experienced medical and emotional difficulties which affected the performance of his duties as a Supervisor of Juveniles 4 in one of the Ministry's juvenile institutions. As a result, he had agreed to accept a position as a Correctional Officer 2 in one of the Ministry's adult institutions on the understanding that his salary would be "red-circled" for six months pursuant to the provisions of The Public Service Act. Following the six-month period, in which he performed his duties as a Correctional Officer 2 in a satisfactory manner, the complainant was advised by the Ministry that his demotion to the position of Correctional Officer 2 was finalized and that his salary would be adjusted downward accordingly. The complainant argued that he had not been properly reassessed with a view to being returned to his former job classification although he indicated clearly that he did not wish to return to his former position at the juvenile institution as his doctors had indicated that his work there had contributed to his medical and emotional difficulties previously.

With the complainant's consent, our investigator reviewed his personnel file and discussed his situation with a senior official at the institution and the local representative of the Ontario Public Service Employees' Union. From

the information available, it appeared that the complainant was originally assigned to a lower classification for medical reasons and that this demotion was finalized on the basis that the complainant appeared able to handle the responsibilities of the lower job classification. Further research determined that the complainant's demotion to the classification of Correctional Officer 2 automatically brought him bargaining unit status under the Ontario Public Service Employees' Union. Discussion with the local OPSEU representative and review of the Working Conditions Collective Agreement then in force, between OPSEU and the Government of Ontario, revealed that the issue in question was one for which the complainant had recourse to a grievance procedure under the Collective Agreement. It was therefore determined that the Ombudsman had no jurisdiction to investigate further as the complaint was clearly premature within the meaning of section 15(4)(a) of The Ombudsman Act.

With respect to the complainant's contention that he was denied an interview with the Civil Service Commission concerning his demotion, documentation on his personnel file indicated that the Ministry had replied to his request by indicating that an interview with the Civil Service Commission would not be granted on the basis that the complainant had available to him a grievance procedure through OPSEU under the Working Conditions Collective Agreement.

A letter was sent to the complainant outlining the results of our research into his complaint. Subsequently, the complainant responded to this letter, indicating that he had never been and was not a member of the Ontario Public Service Employees' Union. In view of the position taken by the complainant, additional legal research was undertaken and it was determined that the complainant was mistaken and that he was, in fact, a member of OPSEU.

Further research of The Public Service Act indicated that by virtue of his demotion to Correctional Officer 2, the complainant automatically became a member of the Bargaining Unit. Since there was no indication that the complainant had been exempted from membership in this union and since a right of grievance existed for the complainant from the position to which he was demoted, it was clear that section 15(4)(a) of The Ombudsman Act applied in this case and that the Ombudsman had no jurisdiction to investigate the complaint until such time as the complainant had availed himself of the grievance procedure available to him under the Working Conditions Collective Agreement then in force between OPSEU and the Government of Ontario.

A letter to this effect outlining the additional research undertaken by our Office was forwarded to the complainant. This complaint was found to be premature.

(33)

SUMMARY OF COMPLAINT

The complainant and three fellow inmates wrote to us from a jail in western Ontario complaining about the shampoo being issued at the facility.

Our investigator visited the complainant who advised her that no formal request for a change in the shampoo had been made to the Superintendent. Accordingly, the investigator suggested that such a request would afford the institutional authorities the opportunity to deal with the complaint.

Upon returning to Toronto, the investigator telephoned the Superintendent who advised her that he had spoken with the complainant. A discussion ensued between the investigator and the Superintendent regarding the advantages and disadvantages of permitting the inmate population to purchase shampoos. The Superintendent subsequently made the decision to allow the population to purchase those shampoos which would conform with the security restrictions at the jail.

(34)

SUMMARY OF COMPLAINT

This complainant expressed concern that some other inmates had labelled him as a sex offender and had been verbally harassing him. The complainant denied ever having been charged or convicted of this type of offence and was seeking the assistance of the Ombudsman in clearing his name.

Although the complainant had never been physically assaulted, he feared for his safety, particularly since he had approximately six months remaining on his sentence. He maintained that he had never been convicted of a sex-related offence and was seeking our assistance in confirming this fact as other inmates refused to take his word that he was not a sex offender.

With the complainant's consent, our investigator reviewed in detail his institutional records. A copy of the complainant's most recent RCMP record of criminal convictions was reviewed. This record indicated that while the complainant had previous convictions for fraud and theft, there was no indication that he had ever been charged or convicted of a sex-related offence. In addition, there was no other indication from his institutional record which would appear to warrant the label of sex offender attached to the complainant by his fellow inmates. In view of this, a summary of our findings was sent to the complainant confirming that the Ombudsman had been unable to find any

indication that he had ever been charged or convicted of a sex-related offence. It was anticipated that this letter could be used by the complainant to demonstrate to the other inmates that he was, in fact, not a sex offender. Other cases of this nature were resolved by us in this manner.

(35)

SUMMARY OF COMPLAINT

We received a letter signed by eight inmates of a correctional centre in Central Ontario which stated that the complainant had been assaulted by correctional staff. The complainant was subsequently interviewed by our investigator at which time he confirmed the complaint made by the original correspondents.

Our investigator visited the institution where the assault was alleged to have taken place and also visited a local jail where she took statements from four of the signatories and the complainant.

A letter pursuant to section 19(1) of The Ombudsman Act, 1975, was forwarded to the Deputy Minister of Correctional Services, advising him of the Ombudsman's decision to proceed with an investigation into the complainant's contention that he had been assaulted by staff members of the correctional centre while the complainant had been an inmate in that institution.

The Ministry responded that no such assault had taken place. The Ministry's response indicated that the complainant had been removed from a section of the jail and placed in a segregation cell after being placed on a misconduct for two infractions. Its investigation revealed that the complainant had gone willingly to the segregation area and further, that he had appeared before a Deputy Superintendent as a result of the misconduct at which time he did not make a complaint. According to the Ministry, there were no records to indicate that any force had been used against the complainant.

Our investigation included an examination of the statements which were provided by the complainant and his fellow inmates. It became apparent that the statements were not consistent in outlining the details of the circumstances surrounding the alleged assault. Our investigator visited the section of the correctional centre to examine the view from the location where the witnesses stated that they had observed the complainant being assaulted. This examination demonstrated that it would not have been possible for a number of people to have seen clearly into the area where the complainant stated he had been assaulted.

We found the complaint unsupported for several reasons. The complainant did not advise any party of the assault until some three weeks after the alleged occurrence. There was no documented evidence supporting the complainant's contention on the Ministry's files and there was no medical evidence available to support the complainant's contention. Contradictory evidence was provided by the witnesses to the alleged assault and it was questionable whether the witnesses could have clearly observed the activity in the area where the complainant alleged the assault took place. The correctional officers denied that an assault took place.

The complainant and the Deputy Minister were advised accordingly of our findings.

(36)

SUMMARY OF COMPLAINT

This complainant spoke to one of our investigators visiting a detention centre in Central Ontario and raised a concern regarding the Superintendent's policy that male and female inmates could neither correspond nor visit with each other. The complainant was particularly concerned as his common-law wife was a resident of the female section of the institution.

Following the interview, our investigator spoke with the Superintendent who confirmed that this policy existed in the institution. The investigator pointed out that the complainant and his common-law wife had been involved in an ongoing relationship for a number of years and suggested that it might well be in the interests of their rehabilitation to be permitted visits.

After consulting with the senior staff, the Superintendent advised our investigator that he had amended the existing policy regarding visits between married inmates and persons involved in common-law relationships. Fifteen-minute visits are now permitted upon the approval of any such request.

MINISTRY OF

EDUCATION

(37)

SUMMARY OF COMPLAINT

This complaint concerned the Teachers' Superannuation Commission's system of collecting superannuation underpayments and interest. The complainant, a teacher, received a letter from the Teachers' Superannuation Commission in October of 1975 informing him that in 1973 he had underpaid his superannuation by \$80. At that time, he was advised that he owed the Commission \$80 plus accrued interest from 1973. The complainant paid the underpayment plus interest but he felt that the Commission should have "an improved system" of calculating the amount of underpayments and interest due and that notification of these amounts should be sent at the time they are incurred.

The complainant also stated that he received a letter from the Teachers' Superannuation Commission in August of 1977 regarding a tentative calculation of the amount required to complete the payment for his teaching at a school from September, 1975 to June, 1976. This amount was with interest and calculated to September 15, 1977 but was only tentative since the Teachers' Superannuation Commission required the complainant's 1976-1977 final rate of salary. The complainant felt that the Commission should have a method of determining his final salary.

Our investigator contacted officials of the Teachers' Superannuation Commission and the Ontario Teachers' Federation. It was learned that underpayments to the Teachers' Superannuation Fund occur as a result of the integration of the Fund with the Canada Pension Plan. Before that plan came into operation in 1966, the contribution rate to the Fund was 6% of salary. The decision at that time was that the two plans would be integrated rather than stacked. This meant that the 6% contribution would continue but would be divided between the Teachers' Superannuation Fund and the Canada Pension Plan.

Section 20(1) of The Teachers' Superannuation Act provides the formula for the deductions:

20.(1) Every person who is employed and who contributes to the Canada Pension Plan shall contribute to the Fund from salary for the calendar year

- (a) Six percent of the part thereof which is below the year's basic exemption as prescribed by the Canada Pension Plan;
- (b) 4.2 percent of the part thereof which is between the year's

basic exemption and the year's maximum pensionable earnings as prescribed by the Canada Pension Plan; and

- (c) Six percent of the part thereof which is in excess of the year's maximum pensionable earnings.

Knowing that it would be difficult to obtain its proper contribution while maintaining integration of contributions, the Commission proposed in 1970 that The Teachers' Superannuation Act be amended to provide for a straight 5.2% contribution for all ranges of salaries. However, the Ontario Teachers' Federation asked that it be deleted from the amending legislation of that year and this was done and thus the underpayments continued.

An official of the Ontario Teachers' Federation advised that the Federation was opposed to the Commission's suggestions because it would have created a situation whereby the more poorly paid teachers would pay slightly more to the Fund and the better paid teachers slightly less.

It was determined, however, that the complainant had been given more than adequate notice that underpayments would occur. He was also provided with information whereby the interest on underpayments could be avoided.

In December of 1973, the Teachers' Superannuation Commission sent out individual notices to teachers who were employed by two or more boards during the same period of time, indicating that there were underpayments of contributions to the Fund because of the integration of the Fund with the Canada Pension Plan. The complainant received this notice.

In addition to these notices, on April 15, 1974, the Director of the Commission issued a memorandum to principals of private schools advising that underpayments would continue as long as there was the three-step calculation as provided under the Act. However, he indicated that the underpayment to the Fund was the same amount generally as the overpayment to the Canada Pension Plan. Therefore, it was possible for an individual teacher to determine the amount of the underpayment at the time of completing the annual income tax return. He also stated that if any of the teachers on the staff wished to avoid the interest payment on underpayments for the calendar year of 1973, that it could be done by sending a cheque in the amount of the overpayment to Canada Pension to the Commission any time before the end of June, 1974.

The memorandum further advised that the Teachers' Superannuation Commission could not determine what the underpayment would be until the Commission received and processed all reports from the Boards.

This information was conveyed to the complainant by a letter from the Director's Assistant in February, 1974.

It was further learned that if the Commission received these reports in April when they were due, a calculation could be made and billing given at an earlier date. The Commission stated that it could not determine the complainant's final salary without a report because the complainant may not always work a full year or may work different periods for different Boards. On the other hand, the complainant knows his final salary when he receives this information so that he may complete his income tax form before April.

The complainant suggested that the Boards look after this matter by working out the amounts of underpayments to the Fund and overpayments to the Canada Pension Plan. We advised him that he should discuss this matter further with his Federation.

From the results of our investigation, we determined that the complainant's contentions could not be supported.

(38)

SUMMARY OF COMPLAINT

For the years 1947-1953 and 1962-1965, this complainant had credited to his account with the Teachers' Superannuation Fund a certain sum of money. He felt that when he withdrew these contributions, he should have received more than the 3% interest which was provided for under The Teachers' Superannuation Act. He was of the opinion that the rate of interest should have been a minimum return of the average cost of long-term government bonds. He felt he should have received what the Ontario Government has to pay in order to borrow money on the open market inasmuch as the Ontario Government, that is, the Teachers' Superannuation Commission, was making use of his money.

A review of the complainant's file and interviews with officials of the Teachers' Superannuation Commission and the Ontario Teachers' Federation determined that the complainant's refund was correctly made under the provisions of section 49 of The Teachers' Superannuation Act. It was also determined that the duty of the Commission was to administer The Teachers' Superannuation Act and to determine the right of every applicant to receive an amount or refund thereof. However, we

learned that the Teacher's Superannuation Commission did not have the power to make changes to The Teachers' Superannuation Act. We learned that the Ontario Teachers' Federation usually requests changes in The Teachers' Superannuation Act by bringing any concerns to the attention of the Minister of Education.

An official of the Ontario Teacher's Federation advised us that the matter of increases in interest had not been brought to the attention of the Minister. However, the Ontario Teachers' Federation indicated its willingness to entertain a brief from the complainant. We were informed that this brief would be presented to a Standing Committee on Teachers' Superannuation which would then determine whether or not the Federation would take a position on this issue. If the Committee felt that amendments should be made, it would write the Minister of Education requesting a change in The Teachers' Superannuation Act.

We were informed that any increases in interest on refunds as envisioned by the complainant would then create an increase in the operating costs. Under The Pensions Benefits Act, 1970, this cost would have to be liquidated within a specified period of time. This cost would be borne by teachers and/or government. This would be a matter of bargaining between the Ministry of Education and the Ontario Teachers' Federation.

Our investigation indicated that the complainant, when he retired from the profession in 1965, did not withdraw his money from the fund because he felt there was a possibility that he would again become a teacher. However, he was aware of the fact that if he withdrew the money, he could later repay the amount which he received as a refund and be reinstated in the Teacher's Superannuation Fund. The complainant advised that he did not do so because he was "afraid that the regulations would change."

In addition, although at the time the complainant left the teaching profession he was of the opinion that the interest rate was too low, he did not make his concerns known.

Having regard to all the evidence, the complainant's contentions could not be supported.

MINISTRY OF

ENERGY

(39)

SUMMARY OF COMPLAINT

This complaint originated as a result of a personal interview with the complainant during a Private Hearing. In her submission to our office, the complainant objected to Ontario Hydro's failure to approve her husband's water heater, and objected also to what, in her view, was Ontario Hydro's secrecy and deception in failing to notify either her husband or her of the results of its tests.

During the course of our investigation, the Ministry of Energy and Ontario Hydro were contacted and advised of the complainant's contentions. Ontario Hydro's files were reviewed and discussed with Ontario Hydro officials. The Canadian Standards Association and a private company were also contacted.

In the Fall of 1966, the complainant's husband submitted a model of a water heater equipped with a chill pipe of his design for evaluation by Ontario Hydro. As the complainant's husband had been a long-time employee of a Hydro Electric Commission located in one of the northern municipalities of Ontario, Ontario Hydro agreed to run some tests on his design at no cost to him. The tests were carried out for evaluation purposes only. Two tests were performed on the unit in December of 1966, and the results reported in a letter to the complainant's husband in January of 1967. In Ontario Hydro's view, the results of the tests indicated that modifications were required to the chill pipe. It was suggested at that time that the device would have more potential in small water heaters (5 to 15 gallons). The unit was then shipped back to the complainant's husband who subsequently modified it and requested that Ontario Hydro test it again. Our review of Ontario Hydro's files and discussions with Ontario Hydro officials confirmed that the modified unit was visually assessed and the modifications were noted. However, the unit did not undergo formal testing. Unfortunately, it appears that this information may have been inaccurately reported to the complainant's husband by an official of Ontario Hydro who has since passed away. Our investigation determined that the complainant's husband's last correspondence with Ontario Hydro was in October of 1967. In a letter addressed to a Supervising Engineer of Ontario Hydro, the complainant's husband requested that the test model be shipped back to him and thanked the official and his associates for the cordial relationship he had experienced with them. Not too long after this, the complainant's husband passed away.

The matter of the water heater was subsequently raised on the complainant's behalf by an interested party in January of 1972 in a letter addressed to the Chairman of the Hydro

Electric Power Commission of Ontario, then by the complainant herself in March of 1972 and again, in September of 1973. As a result of the complainant's letter to the Honourable Darcy McKeough in September of 1973, her proposal for a small size domestic water heater was again referred to Ontario Hydro for assessment. Following that assessment, Ontario Hydro's position did not change. Ontario Hydro continued to be of the view that the unit equipped with the complainant's husband's design would have the greatest application possibilities in small storage compact water heaters and that the trend in the water heater market was toward large capacity water heaters (40 - 60 gallons). Our investigation determined that throughout its involvement in this matter, Ontario Hydro had attempted to give the complainant an assessment of her husband's design indicating both its advantages and disadvantages and had indicated to her the trends in the water heater market.

The complainant continued to express her dissatisfaction with the manner in which this matter was handled by Ontario Hydro. As there appeared to be continued doubt in the complainant's mind regarding the tests carried out by Ontario Hydro on the original unit submitted by her husband, and as there had been a misunderstanding with respect to whether or not the modified unit had been tested or merely assessed, Ontario Hydro agreed to carry out a new test. In November of 1973, the complainant was advised by the Vice Chairman of Ontario Hydro that to assure her that nothing was being held from her, Ontario Hydro's Research Department was prepared to conduct diffusion and delivery tests on a Cascade 40 unit equipped with her late husband's chill pipe in her presence or in the presence of her representative. She was advised that Ontario Hydro would also be prepared to discuss freely with her any aspect of the new tests or previous testing which was carried out. It was pointed out that, in light of the history of the matter, the normal costs associated with laboratory testing would not be charged to the complainant for the final test as, indeed, they had not been charged to her husband for the initial testing.

In January of 1974, a meeting was held in the complainant's home. In attendance at that meeting were: a Supervising Engineer from Ontario Hydro, an official from Ontario Hydro's Toronto office, and the retired Manager of a northern Hydro Electric Commission, who was a former employer and a personal friend of the complainant's husband. The complainant had invited this official to assist her in any technical aspects of the meeting. Although the two Hydro officials indicated that they felt the test results would be far more meaningful if the tests were conducted on the original equipment, the complainant expressed some reservation with respect to having the equipment removed from her home. As a

result, the tests were conducted on a Cascade 40 water heater equipped with the complainant's chill pipe. The test results and the evaluation were sent to the complainant by Registered Mail on June 10, 1974. In a covering letter of the same date, the Parliamentary Assistant to the Minister of Energy advised the complainant that the detailed test results, notes and charts and test water heater would be freely available for examination. It was also indicated to the complainant that Ontario Hydro does not issue Cascade certification or CSA Approval (the complainant had thought that Ontario Hydro did provide this service) but that the Ministry was confident that a water heater equipped with a slightly modified chill pipe would meet both CSA and Cascade requirements. In a letter dated October 18, 1974, the complainant was advised by the Honourable Darcy McKeough that she could initiate the production of her product without CSA or Hydro approval. He also indicated that he had been assured by Ontario Hydro that it would not withhold approval of the water heater on the basis of its safety and engineering feasibility. This information was reaffirmed by the Honourable Dennis R. Timbrell in a letter dated October 20, 1975 to the complainant's Mayor. In November of 1974, the Supervising Engineer wrote to the complainant and indicated that if a production water heater similar to the unit he had tested was submitted for approval, it would probably meet Ontario Hydro requirements for performance.

During our investigation, it was determined that in order to receive approval either from CSA or Ontario Hydro, a production unit must be submitted for testing. Until recently, Ontario Hydro's laboratories had been conducting performance tests for CSA on a contractual basis. The approval, however, depending on the results of the tests, was granted by CSA. That Association is now conducting its own safety and performance tests. Until several years ago, Ontario Hydro was also using its research and laboratory facilities to conduct tests for approval purposes of water heaters it was purchasing for its rental program. Since Ontario Hydro no longer purchases water heaters for rental, the tests are no longer conducted. Our investigator, however, was assured by the Director of Energy Conservation for Ontario Hydro, that although Ontario Hydro no longer normally conducts tests nor grants approval, Ontario Hydro was prepared to honour its past commitments to the complainant and therefore, if the complainant should wish to submit a production unit to Ontario Hydro, it would conduct a test for the purpose of approval on the basis of safety, engineering feasibility and performance. The Director indicated that he did not foresee any difficulty in a production unit equipped with the complainant's chill pipe meeting with approval; however, approval would still be dependent upon the water heater undergoing tests and meeting the requirements.

There was also some concern expressed as to the marketability of the complainant's product considering that the trend in the water heater market is toward large capacity tanks. Ontario Hydro indicated it is not responsible for the marketing of water heaters and that therefore the marketing aspect would be the complainant's responsibility.

After considering the results of our investigation, we concluded that Ontario Hydro had acted reasonably and that we could not find the complaint to be supported. The complainant and Ontario Hydro were advised of our conclusions in letters dated December 12, 1977. The complainant was also advised of whom to contact in the event that she decides to submit a production unit of her water heater to Ontario Hydro for testing.

(40)

SUMMARY OF COMPLAINT

This complainant contended that his election pursuant to section 20 of the Regulation governing the application of the Ontario Hydro Pension Plan was not valid because he had not been fully informed of the financial and legal implications of such an election.

In an attempt to re-elect a more favourable pension program, the complainant retained the services of a lawyer to make submissions on his behalf to Ontario Hydro in order that Ontario Hydro would allow him to re-elect. The complainant advised our Office that Ontario Hydro rejected his submissions and maintained that it was satisfied that every reasonable effort was made to inform him with respect to the pension entitlements and options at the time of his retirement; and, as such, Ontario Hydro was not prepared to allow him to re-elect to receive the pension payment program he now desired.

During the course of our investigation into this matter, Ontario Hydro was contacted in a letter dated November 17, 1976, and advised of the complainant's contentions. In his response to us, the General Manager, Personnel, Ontario Hydro, advised us of Ontario Hydro's position. He indicated that, based on Ontario Hydro records and his understanding of the facts of the case, he was of the view that appropriate and reasonable efforts were made effectively and properly to counsel the complainant prior to his retirement and that, in fact, extra effort was taken in an attempt to ensure that there were no misunderstandings. It was suggested that we should contact the Personnel Officer, Operations Branch, for further information as that officer was the person responsible for counselling the complainant prior to his retirement. Accordingly, our investigator met with the officer to

discuss this case. The officer stated that he had met with the complainant on three occasions prior to his retirement and had on each occasion explained fully the two options available to him. According to the Hydro official, the first meeting took place approximately a year and a half before the complainant's retirement and the last meeting took place on February 18, 1976. It was at this final meeting that the complainant elected the prepayment option and elected also to retire as of March 1, 1976. The official also said that the following persons participated in the final meeting: the Assistant to the Official, the local Union Division Chairman, the complainant and a friend of the complainant. Our investigator was advised that during this meeting both options were again explained to the complainant. All the participants in the meeting were interviewed by our investigator. The Hydro official and the local Union Division Chairman both stated that in their opinion the options were explained very thoroughly to the complainant at that meeting. The complainant's friend was also contacted; unfortunately, his recollection of the meeting was very vague. In a meeting with our investigator on May 30, 1977, the complainant stated that he would be willing to repay the prepayment which he had received if he were allowed to change his pension option. Our investigator contacted Ontario Hydro with a view to determining whether this could be arranged. We were advised that under the current regulations, a retiree cannot change the pension option chosen at the time of retirement.

Our investigation into this complaint determined that the complainant was counselled on several occasions. It was determined that inasmuch as it is Ontario Hydro's policy that a retiree cannot change the pension option chosen at the time of retirement, Ontario Hydro would be acting contrary to policy if it complied with the complainant's request.

The rationale behind this policy was also examined. The rationale as explained to our investigator by an Ontario Hydro official was that primarily it would greatly increase the cost to Ontario Hydro if persons were allowed to re-elect after retirement. Should this be allowed, persons whose personal circumstances were to change after retirement would constantly wish to change their elections to better suit their new condition. In addition, it would greatly increase the administrative work connected with the pension plan. It was determined that this policy was not unreasonable.

In view of what our investigation had revealed, we concluded that Ontario Hydro, in not complying with the complainant's request to re-elect to receive an alternate

pension option, did not treat him in an "unreasonable" or "improperly discriminatory" manner. The complainant's complaint was found to be unsupported. Both the complainant and Ontario Hydro were advised of our findings in letters dated September 2, 1977.

On September 9, 1977, our investigator met with the complainant as he had indicated that he was unhappy with the results of our investigation and wished to discuss his case further. Following this meeting, our investigator met once more with the Personnel Officer of Ontario Hydro. After a review of the positions as outlined by the complainant and Ontario Hydro, it was reaffirmed that a recommendation could not be made in the complainant's favour. The investigator met once again with the complainant on September 22, 1977, in order to explain to him the reason for our decision in his case. Throughout the investigation, we communicated with the complainant in his native language, Ukrainian. In a telephone conversation of November 2, 1977 with our investigator, the complainant expressed his gratitude for our office's involvement even though he was disappointed that we could not make a recommendation in his favour.

MINISTRY OF

THE ENVIRONMENT

(41)

SUMMARY OF COMPLAINT

In this case, our Office was first contacted by the complainant's lawyer who outlined a problem the complainant had encountered respecting a decision of the then Ontario Water Resources Commission which affected property owned by the complainant in a small central Ontario town.

On August 15, 1968 the complainant acquired title to property on the banks of a river in a small town for the sum of \$4,000. Her intentions were to sever the lot into two parcels using the proceeds from the sale of one lot to assist in the construction of a home for herself on the remaining lot. The town's municipal offices issued an approval of location and plan for septic tank installations on August 8, 1968. Sewers were subsequently installed and the village installed sewer hookups on the complainant's property. She had also been informed by the town clerk that she would have no problems in obtaining a building permit for these lots.

The complainant indicated that on June 16, 1971, the Ontario Water Resources Commission "gently pressured" her into signing an option for an easement of a thirty foot strip of land across her property. The complainant stated that she was not advised of the exact location of this easement nor was she instructed to obtain independent legal advice before executing this easement. She further stated that she was assured that all fixtures would be under ground and would not affect her property in any way except that any future buildings would have to be clear of it. The Commission apparently exercised its option by virtue of a notice dated January 20, 1972 and subsequently on March 16, 1972 the Commission advised her that they wished to withdraw their option agreement. Prior to this notice of withdrawal, the Commission had apparently made the installations upon the complainant's land. However, on April 12, 1972 she was advised that the Commission intended to exercise its option.

The complainant alleged that the easement was installed without any consultation with her as to its location on the property. The acquisition and subsequent construction of the easement left her with a piece of property approximately 80' by 50' which she says was of no use to her because the easement separated the balance of her property. She contended that as a result of the Ministry's action the value of her property had been substantially decreased and she was not satisfied with the proposed settlement offers made to her by the Ministry.

On July 6, 1968, she entered into an agreement to purchase the lots and on the same day was told by the local building inspector that a building permit would be assured once the septic tank or sewer facilities were installed. Since the complainant's only income as a disabled and semi-disabled

person was from a second mortgage (she received no support from her ex-husband), her plans were to sell one lot and use the money to build her own home on the second lot. She received an offer to purchase, conditional on receipt of a building permit from an interested party on December 8, 1971. The building permit was withheld and continues to be withheld because the local municipality has designated the zoning for this particular area as a holding zone. The local conservation authority had also designated it as a flood plain as a result of a recent study in the area. No building permits are likely to be issued for these lots unless a project is undertaken to dam the river. It appears that this action is unlikely in the near future.

As a result, the complainant owned two service lots for which building permits would not be issued. However, these matters were determined to be outside the jurisdiction of the Ombudsman since they involved actions and policies of a municipality and a local conservation authority.

The one aspect of the complaint that was investigated was the manner in which an option for an easement was negotiated with the complainant and the final location of the easement on her property established by the Ministry.

On June 16, 1971, a property negotiator from the Ministry acting on behalf of the Ontario Water Resources Commission acquired an option for an easement on a 30' strip of land on the lot. The agreement and option document signed by the complainant at her home and in the presence of her daughter included a clause that states in part:

"The final location of which (referring to the easement) the Commission will determine and notify the owner."

The complainant contended that she was never shown a plan or engineering drawing of the location of the easement by the land negotiator. The only witness to this transaction, the complainant's daughter, supported this statement. The complainant's only concern at the time of signing was that the place of the easement would not hinder any future buildings on the lot and she expressed this concern to the property negotiator. Apparently the negotiator assured her that no matter where the pipe was laid, it would not affect her property or future building potential of the lot in any way. The price offered at this time for the easement was \$53, or \$1 per Lineal foot.

The property negotiator stated that he had shown an engineering plan and drawing to the complainant at the time she signed the agreement.

Our investigation and interviews with the engineering consultant established that despite what the complainant alleged she was told by the property negotiator, that it is not permissible to build a structure on top of an easement. A site inspection of the property by our investigator and her discussions with officials of the Ministry established that the easement could have been placed along the edge of this property which would have provided the needed emergency overflow pipe while causing the least adverse effect to the complainant's property.

The complainant refused to settle with the Ministry and complained to the Minister by letter dated August 22, 1973. She received a response from the Deputy Minister indicating that someone from the property section would be in touch with her. As a result, another property negotiator visited the complainant on November 5, 1973. His report stated that "the compensation offered the complainant was quite inadequate". He recommended that the Ministry offer to obtain a freehold on that portion of the lot suggested for easement purposes. He also recommended that negotiations be commenced with the owner on the basis of \$50 per front foot for an unencumbered strip of 30 feet in width. An alternative solution also suggested by the Ministry was a conveyance in form of an easement at \$2 per front foot for the 30 foot strip. These offers were communicated to the complainant by the property negotiator but she refused to settle.

While these offers may have appeared to be reasonable, the net result of granting a conveyance of this land would have been to leave the complainant with a strip of land which would be useless as it was separated from the balance of her property by the 30' easement.

Since the complainant indicated that a verbal reassurance was given to her by the property negotiator, which was subsequently denied by him, it was decided that in view of the contradictory information obtained during the course of the investigation, it would be necessary to hold a hearing under The Ombudsman Act, 1975 at which the parties would be required to give their evidence under oath. We learned that the property negotiator was in poor health and his doctor advised that such a hearing might harm him.

In an effort to resolve this problem our investigator again contacted the Property Management Branch of the Ministry to determine if some mutually acceptable solution to this complaint could be found. Our investigator was advised that the file had been sent to the Ministry of Government Services, Realty Services Branch for review, with the hope of negotiating a settlement with the complainant.

As a result of this information, our investigator contacted the Ministry of Government Services, reviewed their file on the matter and discussed the problem with the Manager of Negotiations. It was learned that as a result of an appraisal report, the Ministry was interested in reaching some settlement.

In view of these developments, the complainant was contacted by our Office and advised that she would be approached in the near future by the Ministry of Government Services with respect to her property. The complainant indicated that she was interested in discussing a possible settlement and agreed that we should hold her file in abeyance pending the results of these procedures. She was also advised to seek legal counsel and informed of her right to apply for legal aid.

Contact was maintained with the complainant during the course of the negotiations so that our Office might be kept informed of the proceedings. On February 20, 1978, the complainant advised us that she had signed an agreement accepting an offer of \$4,200 for a portion of her property including the easement. She indicated her satisfaction with the results of the negotiations and the settlement offered. Shortly thereafter, the Ministry of Government Services also notified our Office that a satisfactory agreement had been negotiated with the complainant.

(42)

SUMMARY OF COMPLAINT

This complainant first contacted our Office at a private hearing. He is the owner of 5 acres of land and his main complaint was with respect to waste, noise and air pollution emanating from a foundry located on an adjoining property.

The complainant has had extensive contact with the Ministry. As a result of his first inquiry in October, 1972, the Ministry responded that the company was operating in an approved manner as far as the Air Management Branch was concerned. Afterburners were installed on two cupolas in March, 1971 to control air pollution. However, since dustfall and odours were also the subject of complaint, the Branch was to continue its surveillance.

Our investigator contacted the complainant and during a site inspection met with the Superintendent of the foundry. The main visible problem at that time seemed to be with a 6 foot high pile of debris located on the property line between the 2 lots. After some discussion, the Superintendent agreed to level and grade the area, as well as to cover it with top

soil which would later be seeded. This was to be a cosmetic improvement as well as an effective measure to control dust.

The complainant had also alleged that grass fires started in the area were a result of sparks coming out of the foundry stacks. Although this position was not supported by any evidence, the Ministry also considered the need for spark arrestors to be installed by the company. The company indicated its intention to install spark arrestors for each stack. Rain caps are also to be considered but this installation requires the approval of the Ministry. The company was advised of the requirements and indicated it would be submitting drawings for approval. The Ministry did not feel these additions would make any significant difference to emissions. The Ministry had also stated that the amount of fallout was not in contravention of The Environment Protection Act.

The complainant had alleged that his car was being damaged as a result of fallout from the stacks. He was advised that when this occurred he should immediately contact the Ministry's local office so that a sample might be taken. A Ministry official explained to our investigator that a number of samples would have to be taken over a period of time which would then be analyzed. Depending on the results of the tests it would then be up to the district office to conclude whether or not the test results could be linked to the foundry. Once this is established it would be up to the complainant to start a civil suit for damages if appropriate. The Ministry has indicated that its legal staff would be at the complainant's disposal for this purpose, but they would advise him of this avenue only when it was established that the rusting of his car was related to fallout from the foundry.

We reported to the complainant that we were satisfied that all reasonable steps had been taken by the Ministry. We also requested that the Ministry continue to monitor carefully any future developments at the foundry.

(43)

SUMMARY OF COMPLAINT

This complainant first wrote to the Office on behalf of a citizens group from a mid-sized Ontario town with a complaint that their concerns respecting industrial noise and air pollution from a nearby manufacturing plant were not being adequately dealt with by the Ministry. Shortly after receipt of this initial submission, the complainants were personally interviewed at our private hearings held in that town.

The record of complaints registered with the Ministry by various members of this community date back to December of 1969 at which time one complaint was received regarding air emissions. During 1970 it received six air impairment and four noise complaints. It was not until 1971 that the Air Pollution Control Division had any legislative authority to deal with noise problems and it has only been in the past four years that the Ministry has been able to investigate and deal with such problems. Our investigator learned that the initial period was devoted to gaining experience and accumulating knowledge as well as recruiting staff and it has only been in the past two years that legislative authority has applied in such areas.

During 1960 a pollution survey was performed near the plant. The Company was advised to contact various equipment suppliers to correct the problem of fumes from the draw furnace. That same year the source of some emissions was identified and corrective measures were taken.

During 1970, the Ministry received an application from the Company for the installation of an afterburner on the draw furnace exhaust stack to correct the air pollution problem. The proposal was rejected by the Ministry as inadequate and it suggested that outside consultants should be retained. In December 1970 a revised application for an afterburner was presented but the Ministry withheld approval because the proposal was technologically unsatisfactory. An alternative solution to the incineration of stack gases was presented by the Company. In 1971 a water scrubbing system was proposed as a control method and this application was approved by the Ministry in April of 1972 and the system was installed in late 1972.

In 1971 the Air Management Branch received two noise complaints and five air emission complaints. During 1972, 20 air impairment complaints were received. No noise complaints were received in 1972, '73, or '74. There were four air emission complaints in 1973 and three in 1974.

The Ministry underwent a major decentralization in 1974 and local offices attained a higher degree of visibility in various communities, with the expectation of increased accessibility to the public and an improvement in the registration of complaints from citizens. However, along with this decentralization came a degree of disruption in continuity in dealing with some problems while staff familiarized themselves with existing problems in their newly assigned areas.

During 1975 air complaints totalled nine and an investigation into the cause of the emissions revealed that a fire in the plant had caused the scrubber to become totally inoperative. The Company had requested quotations on the rehabilitation of

the scrubber and after meetings between Ministry and Company officials in August and December 1975, the Company requested more time to complete required testing on a conversion program. As an interim measure, the exhaust stack was extended in an effort to minimize the impact on the surrounding community. During the 1976 period, 32 air impairment complaints were received.

Because of adverse effects on the items being produced in the plant, the Company determined that the possible conversion from an oil-based to a water-based quenching solution was not feasible. A consultant was retained to recommend the best control method available to eliminate the oil mist problem. Preliminary discussions of the project took place between the consultant, plant officials and Ministry staff in September 1976 at which technical details of the proposal were reviewed by the Ministry's Industrial Approvals Section and found to be satisfactory.

Further delay in the projected installation date of December 1976 occurred because of an increase in the project's estimated cost which required corporate approval.

The investigator contacted the local Ministry office in May 1977 to inquire about the promised installation and was informed that once again problems had arisen with respect to the date of installation and that this had been extended to the first two weeks of August 1977. Discussions with the Plant Manager confirmed that the announced shut-down by the Company to its major industrial clients resulted in threats by these companies to withdraw their orders for parts which would leave the Company in a financially tenuous position. As a result the Company opted for the next most feasible shut-down which was the first two weeks in August. This time period was a designated vacation period for plant personnel.

The citizen's group were understandably frustrated with this news of further delay and expressed their interest in attending a meeting with officials of the Company to air their concerns and hear first-hand the position of the Company. This meeting was arranged for May 1977 and was attended by representatives of the Company and the citizens group with representatives from our Office involved only as observers.

This meeting proved useful in that the detailed proposal, with respect to the control of oily-mist emissions, presented by the environmental consultant retained by the Company was explained in detail by the Plant Manager. He also outlined a proposal for noise levels in and around the plant. Contact by the investigator with the complainants revealed that a proposed brick wall was under construction and that certain noise-producing machinery had been removed from the plant. Company representatives outlined a scheme that was being implemented

to establish a more effective system to deal with complaints from residents. To this end, two new security officers were hired and briefed by management as to the method of dealing expeditiously with such complaints.

Our file was then held in abeyance with the complainants' permission pending the installation of the proposed equipment and its subsequent results.

The complainants contacted our Office once again on August 30 and indicated that the plant had reopened on August 15 but the oil emissions seemed as serious or even greater than before the installation of the pollution control equipment. On that day, complaints were directed to the local Ministry of the Environment Office by the citizens. Air and noise emission complaints were made on a number of occasions between August 15 and August 26. Samples were taken by the Ministry staff.

Further investigation by our Office revealed that there was a malfunction of the newly installed equipment and the Ministry, having met with plant officials on August 23, was told that although the consulting firm had been called in to improve or modify the installation, nothing could be done to make the equipment operate effectively.

As a result, a supplier of electrostatic precipitators was contacted by company officials for a proposal, which proposal was formally presented to the Company in October 1977. Ministry officials were also involved in examining the details of this proposal.

At a meeting between Company and Ministry officials, the Ministry representative indicated that he strongly urged the Company to make their situation known to the local residents and maintain open communication with the community. To this end, a meeting was held in November 1977 with Ministry officials, the Company and City Council officials. By agreement reached at that meeting, the City Engineer was designated as the local contact for all new developments in the case.

At this time, our investigator contacted the complainants and learned that although the problem was far from resolved, he indicated that visible progress was taking place with respect to the noise problem and that it seemed some solution in the area of air emissions was expected in the near future.

We concluded that there had been some delay on the part of the Ministry in dealing with these complaints over the years with respect to the plant. However, we also felt that the complexity of the problem the relatively recent expansion of the legislative authority of the Ministry and the time lag between the statutory provision and the administrative implementation, as well as the frequent changes of Plant Managers since 1974 had all contributed to the difficulties.

We asked the Ministry to continue to monitor the plant, carefully, and take all reasonable and necessary action with respect to pollution problems. The complainants were advised that if after approaching the Ministry, sufficient action was not being taken, they were always at liberty to renew their complaint to our Office.

MINISTRY OF

GOVERNMENT SERVICES

(44)

SUMMARY OF COMPLAINT

This complainant wrote to our Office concerning two surveys which he had completed for the Ministry of Government Services during the summer of 1975 for which he had never been compensated.

The complainant's contention was that he had proceeded with these surveys on the oral authorization of an official from the Ministry; however, after he submitted his invoice to the Ministry he was informed that these surveys had not been ordered and that no payment would be forthcoming.

Our investigator discussed this matter with the complainant as well as four officials from the Ministry. The complainant's position was that he had proceeded on oral authorization because this procedure had been followed in his only previous dealing with the Ministry, which took place in November 1974. In that instance, the complainant received payment for the survey. The Ministry's position was that the complainant had only been asked for an estimate and he had never been authorized orally or otherwise to proceed with the surveys.

It was our opinion that this was a matter of credibility, and thus a hearing was convened at our Office, and the complainant and the Ministry official, who were both represented by counsel, gave evidence under oath. As a result of this hearing, we were of the opinion that the complainant should be compensated for the first survey, but not for the second one.

After reviewing the transcript of the hearing we then contacted the Deputy Minister to attempt to determine whether the Ministry was prepared at this stage to settle the dispute. Subsequently the Deputy Minister contacted us and informed us that having met with his staff, the Ministry was now prepared to compensate the complainant for the first survey, in return for a complete release from the complainant.

We received a letter from the lawyer for the Ministry which indicated that a settlement had been reached whereby the complainant had agreed to accept the sum of \$3,000 in full and complete settlement of all claims being made with respect to the two surveys completed.

MINISTRY OF

HEALTH

(45)

SUMMARY OF COMPLAINT

The complainant, a medical doctor, complained to our Office that he had been unable to secure an appointment to the medical staff of a public hospital. He had exhausted the appeal procedures to the Ontario Hospital Appeal Board and to the courts, the Ontario Court of Appeal having refused him leave to appeal from the decision of Divisional Court in 1975.

The Deputy Minister of Health was notified of our intention to investigate that part of the complainant's contentions which related to the Ontario Hospital Appeal Board.

The physician had made a formal application to the public hospital seeking staff privileges in 1966. In February 1968, he received a letter of non-acceptance, with no reasons given. In 1970 he made several further attempts to have his application accepted, but he was unsuccessful. In 1972, the physician submitted a new application shortly after the amendment to The Public Hospitals Act which created the Hospital Appeal Board. Some time later that year, the Medical Advisory Board of the public hospital recommended that his application not be accepted; reasons were given after the physician's lawyers requested them. In early 1973, the public hospital's Board of Governors voted to accept the recommendations made by the Medical Advisory Board. The physician then appealed the decision to the newly created Hospital Appeal Board which upheld the decision of the Board of Governors. The physician alleged that the members of the Hospital Appeal Board were biased, in that submissions which they had made to the Grange Commission, according to the complainant, indicated that they were not in favour of an Appeal Board with any decisive powers. The physician contended that the Board members had a very negative attitude towards his appeal.

An informal discussion took place with the Assistant Deputy Minister of Institutional Health Services, regarding the possible recommendations which might be made in the case. The Assistant Deputy Minister expressed a willingness to consider a recommendation regarding statutory composition of the Hospital Appeal Board, but expressed some reservation about a possible broader recommendation on what could be considered to be the underlying issue in the case. A letter pursuant to Section 19(3) of The Ombudsman Act, was then sent to those parties who might be adversely affected by such possible recommendations, namely the Chief of Surgery in the public hospital where the complainant had sought a surgical appointment, the Chairman of the Board of Governors of the hospital and the Chairman and members of the Hospital Appeal Board. We invited them to make representations regarding the Ombudsman's possible conclusions and recommendations which are set out below:

"(a) Possible Conclusions:

- (i) It would be open to me to conclude that it is possible for a hospital to restrict to a few physicians admission to a hospital medical staff, while complying strictly with the requirements of section 43 of The Public Hospitals Act. The investigation has shown that it is possible that such admissions may be conducted on a basis which may be characterized as 'improperly discriminatory' notwithstanding compliance with the Act.
- (ii) It would be open to me to conclude that in the case of the appointments to the general surgery staff at the [public hospital], the result may have been 'improperly discriminatory' in view of the evidence during the hearing that, of the four openings on the surgical staff, three were filled by surgeons who had worked with [the Chief of Surgery] at the [public hospital]. The fourth was filled by the former Chief of Surgery at [a private hospital], which was incorporated into the [public hospital] and would have to be considered an 'ear-marked' position.
- (iii) It would be open to me to conclude that the provisions of The Public Hospitals Act that allow any three members of the Hospital Appeal Board created pursuant to the Act in 1972, to serve as a quorum might have the effect of negating the representativeness apparently intended by section 47(2), namely, of the five members two shall be physicians, one a member of the legal profession or judiciary and two shall represent the public interest, one of whom shall be a member of a hospital board. In [the complainant's] case, at all times during the hearing before the Hospital Appeal Board, all members present were members of hospital boards. I am aware that [the complainant] did not raise the issue of bias once proceedings before the Board had begun, nor was it raised in his appeal to the Divisional Court from the Board's decision.

(b) Possible Recommendations:

- (i) That the Ministry consider a review of the legislation prescribing appointments of

physicians to hospital medical staffs in light of the matters raised by this investigation. Such an inquiry might best be carried out by such a body as the Ontario Council of Health. Alternatively, a joint inquiry could be undertaken by the Ontario Council of Health and another appropriate body.

- (ii) That the Ministry of Health consider the advisability of an amendment to The Public Hospitals Act which would have the effect of increasing the size of the Hospital Appeal Board so that the quorum could be raised to five members who would represent all of the interests described in the Act."

Representations were made to the Ombudsman by the parties who had received section 19(3) letters on May 4 and June 16, 1977. The Ombudsman subsequently reviewed his possible conclusions and recommendations in the light of the representations made and reported to the Ministry of Health. In the report, the Ombudsman pointed out that the complainant had raised an underlying issue, which was central to the complaint. The issue was the question of access by physicians and their patients to the hospitals of their choice. The question turned upon the appointment of physicians to the medical staff of hospitals. Such appointments are carried out in accordance with section 44 et seq. of The Public Hospitals Act. The complainant contended that the application of the legislation was improperly discriminatory at the public hospital involved.

Apart from this basic issue, there were three aspects to the allegation of bias on the part of the Hospital Appeal Board. These were:

- (a) Was bias shown during the hearing by the Board?
- (b) Were appointments to the Hospital Appeal Board improper?
- (c) Is the statutory composition of the Hospital Appeal Board improper?

The report dealt with each of these in turn.

- (a) The decision of the Hospital Appeal Board was upheld by the Divisional Court. Prior to the hearing, the complainant wrote to the Board alleging that one of the members of the Board was biased. The complainant chose not to pursue the matter, however, and did not raise it before the Board nor was it raised by his counsel before the Divisional Court.

While the complainant is unhappy about the outcome of the hearing, the Ombudsman's report concluded that it would be difficult to establish bias on the part of the Board during the hearing. Accordingly, the Ombudsman made no finding with respect to the allegation of bias on the part of the Board, nor was it to be inferred from the recommendation that he found the allegations to be supported.

- (b) Appointments to the Hospital Appeal Board are made under The Public Hospitals Act, section 47(1) by the Lieutenant Governor in Council. As such, an investigation of the appointments themselves was outside of the Ombudsman's jurisdiction under The Ombudsman Act, 1975. Accordingly, no investigation was made of this aspect of the complaint and the Ombudsman formed no opinion and made no recommendation in that regard.
- (c) The final matter was the issue of the statutory composition of the Hospital Appeal Board. Under The Public Hospitals Act, section 47(2), the Board shall be composed of five members, two of whom shall be physicians, one of whom shall be a member of the legal profession or judiciary, and two of whom shall represent the general interest; one of the latter two shall be a member of the hospital Board. Under section 47(4), any three members of the Board shall constitute a quorum. When the legislation was being debated in the Legislature on June 20, 1972, some comments were made relating to the statutory composition:
 - "(i) Dr. Dukszta (p. 3952) refers to the question of whether the quorum would have the effect of negating the desired representation.

He suggests that the quorum should always include the legal or the judiciary representative to ensure that the Board '...does not become too inbred and too much of a closed shop...'"
 - (ii) Dr. Potter (p. 3953 and p. 3954) makes reference to the desirability of a widely distributed membership and of members making an effort to be out in full attendance."

The Ombudsman concluded that an inference could be drawn from this, as well as from the wording of the section, that the intention of the Legislature was that the Board would represent the various interests for each case heard by it.

Also of relevance in regard to the statutory composition was evidence that a senior official of the Ministry of Justice had expressed a personal view that, in the light of the McRuer principles and from a public relations point of view, it was regrettable that two of the appointments to the Board could be alleged to be "tarred with the management brush". Obviously this was related to an interpretation of the statutory composition of the Board. Also relevant was an editorial in the Globe and Mail dated November 29, 1975 headed "The Hospital Appeal Board Doesn't Work". The editorial said in part:

"Its composition - with four of its five members either present or former hospital board trustees - packs the deck against the doctor applicant. Or as Mr. Justice Grange put it: it 'doesn't look right'. It further packs the deck against the doctor applicant in a whole system that is packed against the doctor, and in favour of the closed hospital, in favour of cronyism and mini-monopolies in public hospital staff lists."

During the hearing into the complainant's appeal by the Hospital Appeal Board, the members in attendance initially were two physicians, one member of the legal profession and the one member representing the public interest who was required to be a member of the hospital Board. At the mid-point of the hearing, only a quorum was present and it was composed of one physician, one member of the legal profession and one member representing the public interest who was required to be a member of the hospital Board. Indeed, all the members present were either past or present members of hospital Boards in addition to their statutory qualifications.

In these circumstances, the Ombudsman commented that there would appear to be grounds to suggest that the quorum for the Hospital Appeal Board and the statutory composition of either the Board or the quorum, might be reviewed by the Ministry with a view to suggesting amendments to the legislation to give better effect to the principle of a widely distributed membership, even if reduced to a quorum. The Ombudsman stated that it was his view that the present statutory scheme could be described as appearing to be "improperly discriminatory" in its operation under certain circumstances in that tribunals exist which prohibit membership of certain classes of individuals. The Ombudsman gave as examples the composition of several boards and committees namely: the Health Disciplines Board and the Complaints and Discipline Committees constituted under The Health Disciplines Act; the Medical Review Committee, the Practitioner Review Committee and the Health Services Appeal Board constituted under The Health Insurance Act.

The Ombudsman reported that a statutory limitation should be considered on the appointment of members who were either

past or present members, including ex-officio members, of hospital Boards. Accordingly, the Ombudsman recommended under section 22(3) of The Ombudsman Act that the Ministry consider what changes should be made to The Public Hospitals Act, section 47, to give effect to this. In so recommending, the Ombudsman noted that the present "public" member of the Board had expressed the view to him that the experience of having served on a hospital Board would be advantageous to a member of the Hospital Appeal Board.

In dealing with the underlying issue of access of physicians and patients to hospitals of their choice, the question turns upon the appointment of physicians to the medical staffs of hospitals. This too was the subject of comment during the debate in the Legislature on June 29, 1972.

During the complainant's hearing before the Hospital Appeal Board, evidence was heard which showed that, at that time, there were five positions available for general surgeons on the medical staff of the public hospital. Of these, one was the Chief of the Department and his appointment was not at issue. An additional surgeon was a doctor who was formerly Chief of Surgery at a hospital which was incorporated into the public hospital. Similarly his appointment was not at issue as it was considered reasonable, as part of the incorporation, that a position would be made available to him. This left the three general surgery positions to be filled. Evidence at the Board hearing indicated that the three positions had been filled by doctors who had worked under the Chief Surgeon.

During the hearings in our Office, a representative of the public hospital's Board of Governors stated that:

"The hospital and the Board of Governors prefer a closely knit group to work together to the exclusion of others."

The dangers inherent in such a concept are obvious, and it appeared that it could give rise to improper discrimination. While it is agreed that discrimination is a necessary part of the selection process, it appears that there may have been an element of improper discrimination in the complainant's case. The complainant's counsel summed it up before the Board by saying that:

"I am saying that equal consideration was not given to applicants who were not known or not friendly with or who had not served under members of the Medical Advisory Board of the hospital."

The Ombudsman stated that he wished to make clear that the actions of the hospital and the Hospital Appeal Board were in conformity with The Public Hospitals Act. However, application

of the statute had in the Ombudsman's view led to a situation which could be described as "improperly discriminatory" under The Ombudsman Act, 1975. Therefore, the Ombudsman further recommended that the Ministry inquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from sections 44 to 50 of that Act, which may be improperly discriminatory. He commented that he realized and accepted that such an inquiry would of necessity look at the "open" and "closed" hospital concepts.

The Ombudsman indicated that he had considered the desirability of undertaking such an inquiry himself. He concluded, however, that it was a broad subject and many opinions would have to be sought. Moreover, specialized knowledge would be necessary and this he does not have. For these reasons, the Ombudsman suggested that the Ministry consider assigning the task of such inquiry to an organization such as the Ontario Council of Health. At the same time, he expressed his concern that the voice of the public be heard and that the public participate in the inquiry. He suggested, therefore, that the Ministry consider making it a joint inquiry by the Ontario Council of Health and the Ontario Law Reform Commission, or other similar bodies.

The Deputy Minister replied to the Ombudsman's report in early January 1978. In that letter, the Deputy Minister gave his understanding of our Office's two main concerns as being:

- "1. The opportunity, inherent in the 'closed' hospital, for the exercise of improper discrimination in appointments to the medical staff; and
2. The appropriateness of the statutory provisions for a quorum of the Hospital Appeal Board, insofar as they do not impose any requirement that one or more members not be a present or past member of a hospital board."

The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason, the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions.

On February 20, 1978, pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975, the Ombudsman wrote to the Premier, enclosing a copy of his report and recommendation and a copy of the Deputy Minister of Health's letter of reply. He also wrote to the complainant on the same date advising him that he had sent the material to the Premier, and advised the Deputy Minister of Health on the same date.

The Premier replied on April 3, 1978 as follows:

"Thank you for your letter of February 20 in which you brought to my attention your report and recommendation resulting from your investigation into a case involving [your complainant].

"I appreciate your advising me of this matter, and that you are of the opinion that the governmental agency concerned has not taken what you consider to be adequate and appropriate action."

(46)

SUMMARY OF COMPLAINT

A letter of complaint was received from the complainant who was detained on a warrant of the Lieutenant Governor at a maximum security psychiatric facility in Central Ontario. The complainant contended that he should be able to leave that facility, notwithstanding the opinion of the staff that he should undertake a further treatment program.

When first interviewed in January 1976, the complainant advised that in 1955 he had been found not guilty on a charge of murder by reason of insanity. The complainant admitted that in 1967 an attempt to gradually return to the community had failed when the authorities became concerned about his relationships with women. However, he had not been in any active treatment programs since 1969 and had not taken any medication for at least 18 years. The Warrant of the Lieutenant Governor was "loosened" in 1972, permitting the complainant's transfer to a retraining unit and he was subsequently employed in the local community. However, an incident occurred in 1973 in which another patient was injured. The complainant understood that this was viewed by the staff as a serious act of violence on his part. He contended it was an accident. Nonetheless, he was returned to the maximum security unit.

Our inquiries revealed that the staff discussed the complainant's current status at a hospital conference in January 1976, and were divided in their opinions, proposing that he spend a period in a unique therapeutic community within the maximum security facility where he could prove he was "safe". The complainant was opposed to this suggestion, considering it "blackmail". He stated he had no confidence that this treatment program would be of benefit. He feared that some methods employed in the program might be harmful to him. He contended that he should be given the benefit of an independent psychiatric assessment and be considered for transfer to a regional hospital where he could continue his rehabilitation program and eventually establish his home with a

close relative who lived in the city where the regional hospital was located.

Our investigator studied the hospital file and discussed aspects of the complainant's case with the medical director of the psychiatric facility. The Deputy Minister of Health was then advised of the Ombudsman's intention to investigate this complaint.

Our investigation included a home visit with the complainant's close relative, a thorough scrutiny of the hospital file and an interview with the alleged victim and a witness to the incident reported as having occurred in 1973. The complainant's lawyer was also consulted. The director of the unit to which the complainant had been admitted, and the attending physician, were also interviewed. Frequent dialogue and correspondence was exchanged with the medical director who advised, in the fall of 1976, that the complainant would be assessed by personnel from the regional hospital to which he sought a transfer.

Meanwhile, the complainant's case was the subject of a hearing conducted by the Advisory Review Board, as provided for on an annual basis under The Mental Health Act. An Order-in-Council was subsequently issued which provided for the complainant's transfer to the regional hospital at the discretion of the respective administrators. Simultaneous with his receipt of this Order-in-Council, the complainant was told he had been found unsuitable for admission to the open setting of the regional hospital.

Our further inquiries revealed that his case would be given special consideration by the Advisory Review Board in June 1977. The complainant advised this Office that the hospital staff were proposing to recommend him for transfer to a medium security facility. He pointed out that this facility was in another part of the province, far removed from his immediate family. Meanwhile, he had qualified for a veteran's pension which he considered an asset to his future rehabilitation program.

Based on our investigation, this complaint appeared to have some merit but it was difficult to proceed with any recommendation which could be adequately supported without obtaining an independent psychiatric opinion. An expert in forensic psychiatry, consulted by our investigator, expressed his interest in evaluating the complainant and reporting his opinion to the Ombudsman.

Through further discussions and a cooperative exchange of information between our investigator, the hospital's medical director and the Advisory Review Board in June 1977,

the Board recommended the complainant's transfer to a psychiatric institute for a full thirty day assessment, this recommendation being embodied in an Order-in-Council. In due course, the forensic psychiatrist reported to the Ombudsman that, based on his assessment, a very graduated program for the complainant's release into the community could be proposed and the psychiatric institute with which he was affiliated was willing to implement this program. The assessing psychiatrist had also discussed the results of his assessment with the complainant.

The complainant's case was given its regular review by the Advisory Review Board in the fall of 1977 when, with the complainant's consent, the consultant presented his findings and program proposals at the Board's hearing. The Board recommended that the proposed rehabilitation program be implemented. An appropriate Order-in-Council ensued, and the complainant was transferred in the new year to the psychiatric institute. The complainant sent a letter of thanks to the Ombudsman for the interest he took in his case.

(47)

SUMMARY OF COMPLAINT

In the spring of 1977, five persons detained in a maximum security psychiatric facility under Warrants of the Lieutenant-Governor wrote to us concerning a situation which personally affected them. They could not be transferred from the maximum security unit to a medium security unit as recommended by the Advisory Review Board and ratified by Orders-in-Council. Ministry of Health officials advised the complainants that effect could not be given to the Board's recommendations because funds to establish a medium security unit were not available due to a budgetary constraint program announced by the Minister. The complainants contended that this was unfair inasmuch as there was no indication that their cases would be further considered by the Advisory Review Board that year to determine whether they could be transferred to alternative accommodation.

Although only five persons made complaints to our office, our informal inquiries revealed that a total of fourteen patients on Warrants of the Lieutenant Governor had received similar Orders-in-Council. However, only two of them could be transferred by virtue of their placement within a secure unit established for women. The Ombudsman, in his letter of intent to investigate, pursuant to section 19(1) of The Ombudsman Act, 1975 suggested to the Deputy Minister of Health that he may wish to review the cases of all those persons affected.

Our Office was advised that seven of the fourteen persons affected would have their cases considered further in a special hearing by the Advisory Review Board in June 1977. One of the complainants was included in this group and the investigation of his complaint was therefore discontinued. A second

complainant withdrew his complaint. The Ombudsman's investigation was continued with specific reference to the remaining three complainants whose cases were not to be considered further that year by the Advisory Review Board.

Our investigator interviewed each of the complainants and reviewed their individual clinical records. Discussions were held with the Administrators of the two psychiatric hospitals concerned. Our investigator also interviewed the Director of the Psychiatric Hospitals Branch and his Executive Assistant to canvass their views.

Our investigation revealed that in the Spring of 1976, it was proposed by a "Warrant of the Lieutenant-Governor Patient Workshop" that:

"There be a study with a view to implementation of a programme which would provide necessary medium security facilities in a limited number of regional psychiatric hospitals designed specifically to relieve the overflow of the Lieutenant-Governor's Warrants from [the maximum security unit]."

A steering committee was established and in the Fall of 1976, the Director of the Psychiatric Hospitals Branch requested that a proposal be submitted for the establishment of a medium security and/or forensic unit in the Southwestern region. By January 1977, it was proposed that a 30-bed medium security unit be established, utilizing existing buildings within a Provincial psychiatric hospital complex in Southwestern Ontario. However, this proposal was contingent upon an increase in staff complement and additional funds being available. By April 1977, it was apparent that this contingency would not be met.

Therefore, our investigation showed that when the Advisory Review Board considered the cases of the three complainants in the Fall of 1976, in fact, no medium security unit existed. The Southwestern psychiatric facility had been operating a medium security unit for women. A total of four patients from the maximum security psychiatric unit (two under Warrants of the Lieutenant-Governor) had been accepted on transfer. These patients were familiar with a therapeutic community concept in the maximum security setting and they were to assist with the introduction of this treatment method both in the existing and proposed medium security settings in the Southwestern facility.

We were advised by the Deputy Minister that work was proceeding toward an application to Management Board to obtain additional funding for regional referral units, which were in fact, security units, in some of the regional psychiatric hospitals. We understood from our investigation that the

proposed 30-bed unit at the Southwestern facility could be put into operation immediately if funds became available.

Our investigation clarified the apparent understanding of the Advisory Review Board that medium security accommodation would be available at the Southwestern facility to receive the patients on Warrants of the Lieutenant-Governor whom the Board recommended for transfer. The Administrator of the Southwestern facility, who was a member of the steering committee concerned with the establishment of the proposed 30-bed medium security unit, had advised the Chairman of the Board on progress being made in this matter. This took the form of an inquiry made by the Chairman when the Advisory Review Board was considering cases at the maximum security facility in the Fall of 1976. We were also advised that there was no established practice for the Psychiatric Hospitals Branch (having responsibility for providing direct service programs in provincial psychiatric hospitals) to be advised of the nature of recommendations made by the Advisory Review Board.

Following the Ombudsman's review of all of the information obtained in the course of our investigation, he concluded that the decision not to include the complainants in the Board's special hearing in June 1977, was not unreasonable. The opinions put forward by the Multi-disciplinary clinical staff from the two facilities concerned indicated that the complainants were not suitable candidates for transfers to other than a secure unit. It was understood, as of December 1977, that there were no other secure units providing long-term treatment programs in the provincial psychiatric hospital network.

However, the Ombudsman felt that an unintentional hardship, had been imposed on the complainants in that their hopes for transfers out of a maximum security unit had been unrealistically raised. Two of the complainants had spent approximately six years in the maximum security milieu. The third complainant had been unsuccessful in obtaining admission to an open psychiatric hospital on transfer in 1974 and his recommended placement in a medium security unit would have provided him a further safeguarded opportunity towards his reintegration into society. The intense disappointment of the complainants, when their recommended transfers could not be effected, was evident in their complaints to this Office.

The Ombudsman made a report to the Deputy Minister of Health and, in view of the subject-matter of the investigation, a copy of this report was forwarded to the Chairman of the Advisory Review Board. The Ombudsman suggested that the situation affecting the complainants, which had precipitated their complaints, could very likely be avoided in the future if consideration was given to the implementation of a specific process, proposing:

"That a system be devised whereby, in advance of any recommendations of the Advisory Review Board being transmitted to the Lieutenant-Governor in Council, there be direct communication with the Assistant Deputy Minister, Institutional Health Services, Ministry of Health, to determine that the facility to which it is recommended the person be transferred has the physical capability of accepting that person according to the proposed terms of the transfer."

The Ombudsman's suggestions were accepted by both the Deputy Minister of Health and the Chairman of the Advisory Review Board. This result was then fully reported to the complainants.

(48)

SUMMARY OF COMPLAINT

The complainant wrote to our Office in November 1976 objecting to the decision of the Ontario Hospital Insurance Plan not to pay for expenses incurred on behalf of a member of his family for acupuncture treatment. O.H.I.P.'s decision was subsequently confirmed in part by the Health Services Appeal Board.

The claimant had been severely injured in a car accident and as a result had received acupuncture treatments in a large city in the United States. They were recommended by a medical practitioner and were actually performed by an individual who was not a medical doctor but was a licensed practitioner in that jurisdiction. The General Manager of O.H.I.P. denied the claim on the ground that acupuncture was not considered to be an insured service. However, the Health Services Appeal Board denied payment for acupuncture on the ground that the person who performed the acupuncture was not a medical practitioner or a practitioner within the meaning of section 1 of The Health Insurance Act .

During the course of our investigation we obtained a letter from the medical practitioner who had recommended the acupuncture indicating that the individual who performed the services was entitled to do so under the law in that state. Members of our legal staff met with members of the Legal Department of the Ministry of Health in September 1977. At that time, it was pointed out that the definition of insured services in section 1(h) of The Health Insurance Act is such that services rendered by a physician which are not excluded by the Regulation are considered insured services. However, services performed by a practitioner who is not a physician are not insured services unless they are specifically prescribed by the Regulation. Therefore, the fact that acupuncture was not explicitly excluded as an insured benefit by the Regulation until after the services were performed on the complainant's

family member did not affect this particular case, as the person who had performed the services was not a medical practitioner.

In November 1977, the Ombudsman advised the complainant that we could not support the complaint as it was his view that the Ministry's position with respect to the acupuncture services not being insured services was correct.

(49)

SUMMARY OF COMPLAINT

This complainant stated that he had approached the Ministry in September 1973, for a medical laboratory licence, through his corporation. The application showed two alternate locations, in or near a major urban centre in Central Ontario. The Ministry declined to issue a licence on the ground that there was:

"... no public need for a medical laboratory in either of those areas."

The complainant appealed the decision to the Laboratory Review Board, but a Ministry lawyer objected that the corporation lacked the necessary objects in its articles of incorporation and thus was not legally authorized to carry on a laboratory operation. The complainant alleged that this was a deliberate attempt to postpone the hearings on irrelevant grounds. As the complainant's lawyer was about to seek another date for the review, he was informed that a licence had just been issued to another applicant. The complainant said that this latter application was not complete when he had applied in September 1973. He alleged that his application was dealt with unfairly and that the Ministry had unduly delayed the appeal to the Review Board so that the other application could be approved.

In a personal interview, the complainant said that he had applied for the two areas as alternates and that he had options to lease either location, valid for several months. He maintained that the other application which was approved was a general application and even though it may have been submitted before his, was not specific and should not have been approved. The complainant alleged that he had had a meeting with the then Assistant Deputy Minister who had refused to give reasons for the rejection of the application or the criteria for which licences were approved.

When our investigator interviewed the complainant's lawyer, the lawyer stressed that licences were given only to large corporations and he hinted at racial prejudice in the decision. He also said that, during the meeting with the Assistant Deputy Minister, the latter had admitted that the handling of the complainant's application had been "botched".

The investigator could not verify that the complainant had options on two properties. The real estate agent said that one property was held for 14 days from September 13, 1974 and that there was no other option.

Regarding the allegation of the award of licences only to large corporations, the investigator found out from the Ministry of Consumer and Commercial Relations that the operation which was awarded the laboratory licence by the Ministry was similar to or smaller in size than the operation of the complainant. In the same vein, a thorough search through successful applications for laboratory licences revealed no evidence of improper refusal of the complainant's application, based on racial prejudice.

Our investigator undertook an exhaustive review of the Ministry files relating to the successful applicant and the complainant. The files showed that the successful applicant had made his initial proposal on May 8, 1973, followed by a formal application on July 4, 1973. An oral approval in principal was given to the applicant under the authority held by the Director at that time. The complainant submitted an application for one site on September 11, 1973 and an application for the alternate site on September 25, 1973. The successful applicant had submitted a complete and viable application. There was a delay within the Ministry due to internal processing and discussion, until it was approved in April 1974. We could establish no connection between that application and its approval and the application of the complainant.

However, there was a need for only one laboratory to be established in one of the two areas and, when the successful applicant's application was approved, the need was met. The complainant admitted that a letter which he had received from the Director on September 18, 1973, told him that other applications had priority.

Evidence from Ministry officials and documents showed that there was no need for any further laboratories in the Province. The Deputy Minister emphasized this fact. He also admitted to having used the term "botched" as an indication that the Ministry might not have been too successful in its attempts to inform the complainant of the prior application and of the general climate of restraint, financial cutbacks and limitations on growth.

The Ombudsman noted that the application to the Review Board was still outstanding and that, should the complainant wish to pursue the matter further, an appeal would seem to be the obvious course of action. He indicated that the Ministry objection to the objects of the corporation could probably be resolved shortly, leaving the main issue to be decided. He

pointed out that the Ministry objection was proper as the Board may review the entire application which has been appealed, and that the legal capacity of an applicant to carry on a laboratory business is relevant. He added that should the complainant not be satisfied with the decision of the Review Board, he has the right of appeal to the Supreme Court.

The Ombudsman concluded that the complainant received fair treatment by the Ministry of Health. The application appeared to have been rejected on proper grounds and it appeared that no improper considerations had entered into the rejection. As a result the Ombudsman was unable to support the complainant's contention.

(50)

SUMMARY OF COMPLAINT

This complainant, a physician in a Northern Ontario town, applied for an incentive grant under the Underserviced Area Programme of the Ministry. He stated that he was doing general practice as well as obstetrics and gynaecology. His application was not approved on the ground that the grants were intended for general practitioners but not specialists.

The complainant contended that he subsequently learned that two surgeons in a neighboring community had received incentive grants. He wrote to the Ministry in February 1977, and he received the reply that the application could not be considered because he is "... now and (was) in practice ..." in the community before the request was made. The physician complained that he should be eligible for the grant and that, by changing the rules for the rejection, the Ministry was applying the rules unfairly.

Subsequently, the complainant alleged that two other general practitioners who started with him in the same town in September 1973, were awarded the incentive grants although they had started work before they applied for the grants.

The Deputy Minister stated that it was a rigid rule that applicants had to be approved in advance of establishing a practice. In addition, he stated that the complainant was ineligible for the program as he was working as an obstetrician/gynaecologist and there was no need to assist the establishment of such a specialist in that community. The Deputy Minister regretted that the complainant was led to believe that the rules were being changed and that all the reasons why the complainant was ineligible were not specified by the Ministry official.

When our investigator interviewed the Ministry official, he explained that there had been an unmet need for surgeons in three northern communities, (one of these was the neighboring

community) for which assistance had been extended under the Program. The official said that there had been no need to subsidize an obstetrician/gynaecologist in our complainant's town.

The complainant gave details of the two general practitioners who had started with him in September 1973, and who had received incentive grants after they started their practice. Our investigator spoke to the two general practitioners and obtained their confirmation of these facts. Subsequently he spoke to the Ministry official who admitted that applications were received and grants were paid to those two doctors after they had started their practice in the complainant's community. The official said that he had overlooked these two cases due to inadvertence.

The Ombudsman determined that the complainant could not be supported in his request for payment of a grant as there was no need for an incentive grant to attract an obstetrician/gynaecologist to the town. Turning to the question of the alleged changing of the reasons for his rejection, the Ombudsman concluded that the Ministry had misled the complainant and that the complainant was entitled to an adequate explanation for his rejection as well as an apology. Accordingly, the Ombudsman recommended that a complete letter of explanation and an apology in accordance with section 22(3)(f) of The Ombudsman Act, 1975, be sent to the complainant by the Ministry, including a full explanation of the incentive grant policy, of why grants were paid to the four doctors and of why they could not be paid to the complainant. The Ombudsman accepted that the oversight of the Ministry official was due to inadvertence.

On October 11, 1977, a report was sent to the Deputy Minister, Ministry of Health, making such recommendations in accordance with section 22 of The Ombudsman Act, 1975. On November 7, 1977, the Deputy Minister replied, stating that he had acted upon the recommendations. The Ombudsman then informed the complainant of the report and the action taken by the Ministry.

(51)

SUMMARY OF COMPLAINT

The superintendent of a hospital complained that the Ministry had not approved semi-private use of two four-bed wards for the period October 1971 to March 1976. The complainant alleged that because the Ministry of Health had not made the necessary classifications on its records, Blue Cross had withheld the sum of \$8,000 which the hospital would have otherwise received.

The Ministry's response to our notice of intention to

investigate stated that the hospital had signed a Loan Agreement on November 10, 1969, and indicated that the Ontario Hospital Services Commission (O.H.S.C.) had anticipated recovery of three-eighths of the differential on the new preferred accommodation. The Deputy Minister stated that in 1970 the complainant proposed to designate seven of the new two-bed rooms as standard accommodation. This was accepted reluctantly by O.H.S.C. provided that the complainant would designate alternative beds on which the differential would be payable. In November 1970, the complainant was asked to submit room measurement sheets but these were not received. In October 1971 a Ministry official visited the hospital and found that the two-bed rooms in the new wing were classified as public accommodation and three four-bed rooms in another wing as semi-private. The Manager of Hospital Grants wrote the complainant in February 1972, stating that the designation of the four-bed rooms as semi-private was inappropriate. The complainant responded but changed the designation of two additional four-bed rooms from public to semi-private; these two rooms were the two wards in question. In March of 1973 the Ministry advised the complainant by letter that this was not acceptable.

The Ministry concluded by stating that revised room measurement sheets were finally accepted on March 31, 1976, showing all two-bed rooms, except Pediatrics, as semi-private and all four-bed rooms as public.

An official from the Grants Section and the Institutional Planning Branch outlined to our investigator the system for control of preferred accommodation in hospitals and the control exercised by the Ministry. They stated that when the complainant designated the older four-bed wards as semi-private he did not remit the differential from them to the Ministry. The Ministry considered that this problem with Blue Cross was of his own making and had never agreed that the two four-bed rooms were semi-private.

The complainant indicated to our investigator that he interpreted the Ministry letter of November 27, 1970, as his authority for claiming that the two four-bed rooms were semi-private. He confirmed that one section had remained a standard ward, that the Ministry had deducted three-eighths of the differential expected from the hospital's cash flow starting in 1973 and that no letter had been sent to the Ministry reflecting the terms of the November 27, 1970 letter. He maintained that the hospital should not have to pay three-eighths of the differential on eight of the beds, as of the 14 beds, only six were new while eight were replacements. He maintained that this was approved by the Ministry. The complainant stated that the bed allocation of October 1971 contained a clerical error showing the two four-bed wards as standard wards.

From the author of the Ministry letter of November 27,

1970, our investigator learned that this letter was written after legal advice had been obtained and all of the conditions of this letter had to be met for approval, but no response was received from the hospital. He stated that the hospital was trying to keep the differential from the two four-bed wards and, according to the Loan Agreement, the Ministry proceeded to collect the differential from the hospital cash flow. He confirmed that at no time did the Ministry give a final approval to class the two four-bed wards as semi-private. All documentation amassed by the investigator confirmed these accounts.

Having regard to all these findings, the Ombudsman was unable to support the complainant's contention.

(52)

SUMMARY OF COMPLAINT

This complainant wrote to our Office alleging inadequate action by the Ministry in connection with injuries sustained by his wife while on duty in a Ministry ambulance. The complainant's wife is a Registered Nursing Assistant and was overcome by carbon monoxide gas and burned while transporting a patient in the ambulance. The ambulance was apparently being operated for the Ministry by a private operator.

Upon discovering that the ambulance in question had a seriously defective exhaust system, the complainant wrote to the Director of the Ambulance Services Branch. This Branch conducted an investigation but the complainant contended that inadequate corrective action had been taken against the operator of the Ambulance Service.

A transcript of the decision regarding a charge against the Supervisor of the Ambulance Service, under section 57 of The Highway Traffic Act, was obtained from the Court Administrator.

Ministry officials confirmed that the Ministry owned the ambulance but that it was operated by a local hospital. Under section 1 of The Ambulance Act, and section 22 of the Regulations issued pursuant to the Act, the hospital is classed as the "operator". Maintenance standards are set through the Act and there is a suggested maintenance program. There was no such program initially, but, starting with ambulances purchased in 1976, manuals were issued with all new ambulances. These were prepared in cooperation with the manufacturer and they suggested the detailed maintenance program. Prior to 1976, the manufacturer's operator's manual always went out with the

vehicle and a maintenance guide was available to the operator on request. The Ambulance Services Regional Coordinator did not normally inspect vehicle maintenance documents as this was the operator's responsibility and in addition, semi-annual safety certificates were provided by the operator.

Inspectors reporting directly to the Ambulance Services Branch checked documents, road tested vehicles and checked for apparent fitness of the vehicles and qualifications of personnel. In 1976, the Inspection and Control System was still being introduced gradually throughout the Province and the main thrust was to get staff out to visit and to become knowledgeable about all the operators before any meaningful degree of control could be exercised. There were over 500 Ministry ambulances in service in the Province, among the various operators.

Ministry officials said that a logical and progressive system of control over operators was employed. This system consisted of reports, letters, meetings, restrictions on cash flow, and ultimately, revocation of a licence and/or prosecutions under section 23 of The Ambulance Act. Prosecution under section 23 is the last resort and, to date, it has not been necessary to use it. Officials pointed out that it could not be used indiscriminately. If used, however, it might well be allied with revocation of an operator's licence. There are problems connected with the possible use of section 23. If used in conjunction with revocation, for example, there would be an immediate problem of arranging for an alternative operator. As a result, it has been found to be more satisfactory to clear up the situation by securing corrective action on the part of the operator.

Interviews with the staff at the hospital indicated that the decision to continue to use the ambulance in which the incident occurred resulted from an error in judgement. Our investigator was informed that the complainant's wife had been hired as a part-time Nursing Assistant, and that she had only worked two shifts before the incident in which she was injured. Information concerning the operation of the Ambulance Service, was obtained from the operators. The investigator obtained independent confirmation of the progress of the hospital in this regard.

The operator (the hospital), attended a conference where the problem of maintenance at the hospital was explored. Initial discussions focused on the problems associated with the vehicles of this Ambulance Service. Both the Ambulance Services Branch investigation of the incident and the service inspections verified that adequate maintenance for the ambulances was not being provided. The hospital agreed to institute a maintenance program for the vehicles which included daily maintenance checks, regular garage servicing, cursory inspection by a local service station on a monthly basis, and

the required six month inspection at any Motor Vehicle Inspection Station licensed under The Highway Traffic Act. The Ministry officials stated that the hospital program of improvement would be monitored and evaluated by the Ministry until they are satisfied that the program is appropriate and continuous. This is being done in part through more frequent inspections and more frequent visits by the Regional Coordinator. Investigation by our Office indicated that this program of inspections seems to have had the desired effect on this service and there now appears to be no grounds for complaint against it.

Formal investigations in the matter were undertaken by the Ministry and by the Ontario Provincial Police. A charge was laid against the Ambulance Service supervisor at the hospital for operating an unsafe vehicle. The charge was dismissed by a Provincial Court Judge, and in accordance with section 15(4)(b) of The Ombudsman Act, 1975, our Office could not investigate the complaint against the Crown Attorney. Similarly, we were prevented from investigating the complaint against the Ontario Provincial Police in accordance with section 15(4)(a), which provides that all levels of appeal must be exercised prior to bringing the matter to our Office. The complainant was informed of the existing procedure for complaints against the Ontario Provincial Police.

The complainant stated to our investigator that his wife's health was ruined and that she could not work and had shown little improvement since her injuries. The complainant's wife provided releases to permit contact with her attending physicians. Subsequently, a number of other physicians were canvassed for their opinion of the complainant's wife's condition. Medical opinion indicated that his wife could probably return to the same part-time work at which she was employed at the time of the accident and that shortly thereafter she would be able to return to full time work. These opinions did not support the contention that the complainant's wife's health was ruined and that she could not work.

The Ombudsman was impressed by the efforts that were made to make the Ambulance Service at the hospital more efficient and noted that the control over the Ambulance Service was still in the organizational stage when the unfortunate incident occurred. The Ombudsman further noted that charges were dismissed against the supervisor of the Ambulance Service at the hospital. The Ombudsman was of the opinion that a mistake in judgement by an employee of the hospital led to the incident, that the corrective actions by the Ministry of Health have been timely, effective and appropriate, considering the circumstances, and that no further corrective action was necessary.

Therefore, the complaint was found to be unsupported.

(53)

SUMMARY OF COMPLAINT

This complainant contended that from the time he purchased a funeral home business in 1972 he has been forced to compete with a funeral home which still runs an ambulance service. Consequently, he has suffered serious financial loss.

In 1968, the Ministry of Health began to become involved in ambulance services in Ontario, and a meeting was held near the complainant's city, which resulted in a decision by the then Department of Health to allow both of the funeral homes operating ambulance services to continue their services until such time as operation of ambulances was established at the nearby hospital. The complainant contended that the Director of the Emergency Health Services Branch also at that time stated that all funeral homes would be eliminated from ambulance service, and that he hoped that the city would have only hospital ambulance service within a couple of years. The complainant contended that the onus was on the Ministry to fulfill its promise to eliminate the double operation of funeral homes and ambulance services by the same business. In addition, the complainant maintained that when he purchased the funeral home operation in 1972, he was forced to give up the ambulance standby service which the funeral home had been providing.

Our investigator met with the complainant, the Administrator of the general hospital affected, an official of the Ambulance Services Branch, the former Director of the Ambulance Services Branch as well as the Executive Secretary of the Ontario Funeral Service Association.

An official at the Ambulance Services Branch indicated that when the Ambulance Act was introduced, control over ambulance operators, was centralized and operators who were giving satisfactory service were permitted to continue, their licences being renewed annually. The Act did not provide for the transfer of licences on sale, however. The former Director of the Ambulance Services Branch also indicated that he did not state to the complainant that funeral home operators in the province would be eliminated from operating ambulance services. In fact, before he purchased the funeral home, the complainant was warned by officials of the Branch that he would not be able to continue the ambulance operation.

The Executive Secretary, Ontario Funeral Service Association, said that he had no complaints regarding the unfairness of one funeral director in an area having the ambulance contract while others in the same area did not. The Association has taken no position on the question.

When interviewed by the investigator, the complainant

agreed that he had been warned by Ministry officials that the licence would not be transferred when he bought the funeral home operation. He maintained however that he made his purchase only on the basis that it was Ministry policy to eliminate funeral directors from the ambulance service.

The investigator then reviewed files in the Toronto office of the Ambulance Services Branch as well as in the Regional office. A letter dated April 6, 1972 to the complainant from an official of the Ambulance Services Branch stressed that two licences would not be considered for that particular area and that it had not been policy to force licensed operators who would comply with the regulations to relinquish this service. If a licensed operator relinquished the service, however, it was policy to ask the nearest hospital to establish an operation. The official concluded by stating that he was not convinced that operation of an ambulance service by one funeral director conferred any advantage upon him over his competition.

The General Manager, Direct Services Division was also interviewed and he confirmed that it was never the policy of either the Ontario Hospital Services Commission or of the Ministry to transfer all ambulance operations to hospitals. If anything was stated in 1968 by an official of the Ambulance Services Branch, it could only have been an expression of his own desires or preferences at that time, rather than an expression of official Ministry policy.

It was evident from this investigation, that it had never been the intention of the Ministry to force satisfactory ambulance operators to relinquish their licences. It also appeared evident that it was not Ministry policy to transfer ambulance operations to hospitals, even though the former Director of the Emergency Health Services may have had a preference for such arrangements. It also appeared that the limited ambulance licence held by the former owner could not have been transferred to the complainant when he purchased the funeral home operation in 1972, and that the complainant had been aware both of that fact and that there was no guarantee the existing ambulance service in that city would be terminated.

Having regard to these circumstances the Ombudsman was unable to support the complainant.

(54)

SUMMARY OF COMPLAINT

This complainant, a young native Canadian man, complained by letter to this Office on June 2, 1977, and was interviewed the same day by one of our investigative staff who was visiting at the maximum security unit of a central Ontario psychiatric facility, where the complainant was a patient.

The complainant stated that in January 1977, he had been found not guilty by reason of insanity on a charge of break and enter which arose over his entry into a church in a Northern Ontario city where he made himself a cup of coffee and ate some doughnuts. After his arrest, he was remanded to a Northern Ontario psychiatric hospital. He admitted to a history of unlawful behaviour over the course of eleven years in connection with alcohol consumption.

The complainant said he had intended to plead guilty to the charge of break and enter. He stated further that the Judge appointed Legal Counsel. The complainant contended that he was not advised by his counsel that a plea of not guilty by reason of insanity would be entered and that, if it was explained to him, he did not understand that as a result he could be admitted for an indefinite period to a psychiatric hospital.

The complainant wished to appeal the verdict at trial and he applied for Legal Aid but his application was rejected. He then made an unsuccessful appeal to the Director of the Legal Aid Plan for Ontario, following which he consulted Duty Counsel attending at the hospital and completed a Notice of Appeal with the intention of presenting his own case in court. The complainant's Social Worker wrote to our Office on June 16, 1977, stating that he had discussed with the complainant his ability to defend himself in court and believed that he would have difficulty.

We sought further information, contacting the complainant's Social Worker and the psychiatrist who assessed him at a northern psychiatric hospital prior to his trial. In addition, we telephoned the lawyer who represented the complainant at trial who submitted a letter explaining his involvement with the complainant's case, forwarding copies of psychiatric reports introduced at trial. Our investigator also discussed this case with the Director of the Unit to which the complainant was admitted.

The complaint, as it pertained to the complainant's wish for a new trial and his inability to obtain a Legal Aid Certificate, was clearly not within the jurisdiction of our Office. Insofar as his detention in a psychiatric facility was concerned, this was a matter which would have to be dealt with by the Advisory Review Board. However, we decided to make immediate inquiries in view of the complainant's predicament and a concern expressed by hospital staff that the complainant might not be an appropriate candidate for a Lieutenant-Governor's Warrant, and doubts expressed as to the complainant's ability to make himself understood at his appeal.

The complainant was said to suffer from a mental disorder diagnosed as schizophrenia of an undifferentiated type with

drug and alcohol abuse, and was considered to have a secondary personality disorder of an anti-social and immature type. The records indicated that he came from a poor family background and since 1967 had been charged with some twenty criminal offences for which he had served various sentences - some of them in psychiatric hospitals. These charges ranged from common assaults and break and enters to assault causing bodily harm and robbery with violence. The psychiatrist who assessed him prior to his trial reported that on admission to the hospital in October 1976, he was mentally ill and refused medications and meals. It had been necessary to certify him as an involuntary patient under The Mental Health Act in order to institute treatment, with the consent of the court. Within two months, he was fit to stand trial. The assessing psychiatrist was of the opinion that the complainant was mentally ill at the time he was charged with break and enter.

The lawyer who represented the complainant at trial advised our Office that he purposely engineered the verdict of not guilty by reason of insanity from which the complainant wished to appeal. He described the offence as:

"a very inconsequential break and enter in that in a moment of delusion, [the complainant] had entered a local church where coffee and donuts were often served during Alcoholics Anonymous gatherings. The door was closed though unlocked and there was no one in the basement. [The complainant] almost naturally proceeded to make himself a cup of coffee and help himself to donuts. He was then seen and asked to leave and continued on eating. Eventually, the police came and arrested him."

This lawyer was of the view that if the matter had been dealt with in the normal course, the complainant would have received about a three year sentence because of his past record of criminal convictions. He therefore chose to do as follows:

"... to plead him not guilty by reason of insanity and hope that he would obtain the treatment which he needed and to which he was entitled to. I arranged for the doctor to be called as a witness and my cross examination of him was to fill the gaps left by the Crown Attorney to insure that the verdict would be a sound one. I had a number of times discussed this approach with [the complainant] and I believe that he understood what it meant and that he agreed with it. I do, however, note that neither he nor myself realized the minimum length of time that would be necessary for him to remain in the institution before a review board would look at his case. I operated on the knowledge of the medical information available

to the effect that though [the complainant] was still in need of treatment, he was now sane."

Since the complainant's admission to the maximum security unit, he had been taking medication and had completed a behaviour modification program. He had been tried in various occupational programs and was working in the laundry at his own request. He was said to be doing well, had not been assaultive or aggressive in the hospital, and had not been overtly psychotic although he had been initially "withdrawn" following his trial. The hospital staff were of the opinion that he did not require maximum security but that he needed ongoing psychiatric care. They were skeptical that he would stay in an open setting, noting that he was not aware of his need for treatment. However, it was their intention to recommend to the Advisory Review Board that the Warrant of the Lieutenant-Governor be changed to enable his continued treatment on a voluntary basis.

We reviewed the facts of this case with the Chairman of the Advisory Review Board just prior to the Board's convening for its annual review of patients detained on Warrants of the Lieutenant-Governor at the maximum security unit. The Chairman of the Board subsequently advised our Office that, subject to Cabinet approval, he was recommending that the complainant be returned to his regional psychiatric hospital in Northern Ontario. Cabinet approved this recommendation and the complainant was transferred forthwith.

The Board's Chairman agreed with our view that, despite the complainant's criminal record, a sentence of three years (as had been predicted by the lawyer representing the complainant at trial) would never have been warranted by the facts of the case. We agreed that some efforts should be made to have the original disposition appealed to the Court of Appeal.

Our further inquiries revealed that the complainant's appeal rights were protected, an Appeal having been filed at The Mental Health Centre, Penetanguishene, on March 21, 1977. However, because these documents were misplaced, the appeal was not filed in the Court of Appeal until August 23, 1977.

On October 28, 1977, we sent a confidential letter to the Director of the Legal Aid Plan for Ontario, stating the facts of the case as revealed by our investigation. In response, the case was referred back to the local area committee for further consideration. As a result, a Legal Aid Certificate was issued and the complainant retained counsel to take his appeal. In view of the complainant's access to an adequate avenue of appeal having thus been established, his file in our Office was closed.

(55)

SUMMARY OF COMPLAINT

The complainant's lawyer contacted our Office by telephone. He advised that his client, an 18-year-old male, was an involuntary patient under The Mental Health Act in a maximum security psychiatric unit in central Ontario. His transfer to a psychiatric facility in his home region had been requested by the unit's clinical staff four months previously, but his admission to this facility had recently been refused.

The complainant had not made an application for his case to be reviewed pursuant to section 28 of The Mental Health Act, as was open to him. However, our research indicated that the Review Board did not have jurisdiction to decide where a patient should be hospitalized. It was felt that the Act made transfers the responsibility of the psychiatric facility therefore this complaint was deemed to be within the jurisdiction of the Ombudsman.

The complainant and his lawyer were interviewed within a week, during a visit of our investigative staff to the maximum security unit. The hospital file was reviewed and memoranda pertaining to the requested transfer were copied. It was stated in these memoranda that the complainant did not live in the "catchment area" for the facility to which his transfer was sought, this being the reason given by the authorities at that facility for denying his admission. The complainant stated that his home was in that "catchment area" and that a former probation and after care officer in that district had offered him further assistance. He contended that the denial of his transfer was unfair because he had complied with all the requirements of a behaviour modification program and the staff in the maximum security unit had felt, for some months, that he was suitable for a transfer to a regional hospital.

A letter pursuant to section 19(1) of The Ombudsman Act, 1975 was sent to the Deputy Minister of Health. Five weeks later, the complainant's lawyer advised us that his client "acted out his frustrations" at not being transferred by smashing objects in his room at the maximum security unit. Our investigator arranged to meet with the Medical Director of the regional facility which had denied the complainant's admission. The Medical Director disputed that the complainant should be an involuntary patient in a psychiatric facility. He questioned whether his diagnosis of epilepsy, explosive personality and borderline intelligence met the criteria for involuntary hospitalization under The Mental Health Act. He was of the opinion that the complainant presented a social problem, not requiring psychiatric treatment and therefore his transfer to that facility was inappropriate.

In view of this opinion, the complainant's lawyer was advised to make an application for his client's case to be

reviewed pursuant to section 28 of The Mental Health Act, the mandate of the Review Board being "to inquire into whether the patient suffers from mental disorder of a nature or degree so as to require hospitalization in the interests of his own safety or the safety of others."

Our investigator continued her inquiries, meeting again with the complainant in the process and obtaining further data from the hospital file specific to his involuntary hospitalization. It was suggested to the officials of the Psychiatric Hospitals Branch that a meeting be arranged wherein the factors contributing to this complaint could be further discussed. This meeting was deferred in view of advice received that an assessment team from the regional facility in question would visit the maximum security unit and interview the complainant, speak to the staff and examine his clinical record. Our further inquiries revealed that as a result of this specific assessment, the complainant would be accepted by the regional facility on transfer from the maximum security unit.

The complainant thus achieved a satisfactory resolution of his complaint three and a half months after bringing it to the attention of the Ombudsman, through effective action taken by the Ministry in the course of the Ombudsman's investigation. It was felt that this case illustrated the divergence of opinion which exists among mental health professionals concerning diagnostic categories which constitute "mental disorder" within the meaning of The Mental Health Act.

MINISTRY OF

HOUSING

(56)

SUMMARY OF COMPLAINT

The complainants, who live in a northeastern Ontario community, complained about the manner in which their newly purchased house was built. Their house was purchased from a construction company under the Ministry of Housing's H.O.M.E. plan. The complainants contended that a window leaked, that a support post at the bottom of the cellar stairs was improperly positioned and that a wall in the cellar was cracked.

We advised Ontario Housing Corporation (OHC) of the substance of the complaint and our investigator interviewed a number of Ministry of Housing and OHC officials, reviewed the Ministry's file and inspected the complainants' house.

Officials of the Ministry outlined the general arrangements for purchase of a house under the H.O.M.E. plan. OHC, which is a Crown corporation, purchased the land, developed it, and received approval for a plan of subdivision. Its product was a fully serviced building lot.

In this case, the lots were leased by OHC to a construction firm which submitted building proposals. The proposals were assessed by OHC based on a number of factors, including appraisal value, architectural aspects and engineering. The construction firm then built the houses, selling them to whomever was approved. During construction, four inspections were carried out by OHC on behalf of the Ontario Mortgage Corporation (OMC).

The complainants purchased their house from the construction company, and a review of the Agreement of Purchase and Sale indicated that there was no contractual relationship with OHC.

The complainants contacted the construction company to complain about the leaky window. The company replaced the window; however, the complainants were not satisfied with the replacement nor with the damage caused by leaks from the previous window, and we suggested that they seek restitution from the construction company.

When our investigator viewed the crack in the basement wall, the complainants advised him that they did not wish to pursue this aspect of the complaint since it was only a hairline crack and was not leaking.

Regarding the improperly positioned stairs, our investigation revealed that the construction company's drawings of the stairs to the cellar were not to scale due to a draftsman's error, and this problem was overlooked by OHC in its inspections. As a result, when the home was constructed, the bottom steps ended up close to a telepost. When advised of this problem OHC

officials decided that the best way of solving it was to install a landing, thus altering the direction of the stairs. While this solution was in compliance with the Building Code, the complainants did not wish to accept the solution. They insisted upon two new teleposts, which involved breaking into the concrete floor and repouring footings for them. OHC found this solution to be unnecessarily expensive and pointed out that of approximately 20 homeowners, some 13 accepted the landing solution, while, of the balance, some decided to leave the post as it stood and some moved the post themselves. Complicating the issue was the fact that the complainants refused to admit OHC or the construction company officials to their home.

The Ministry of Housing's legal position was that OHC reviewed plans solely for its own purposes and not for the reassurance of purchasers. However, in an effort to assist other homeowners OHC agreed to pay the construction company \$80 for each house in which the landing solution was accepted.

Having considered the Ministry's proposal, we were of the opinion that the plan for the telepost was mistakenly accepted leading to it's improper positioning.

Accordingly, we recommended that the Ministry of Housing make a payment of \$80 to the complainants, upon receipt of proof that they had corrected the telepost problem. The Ministry accepted our recommendation, as did the complainants.

MINISTRY OF

LABOUR

(57)

SUMMARY OF COMPLAINT

The complainant was interviewed at a Private Hearing and presented a complaint arising out of an investigation conducted by the Employment Standards Branch of the Ministry as a result of her submission to them respecting her place of employment.

The complainant was employed as a secretary by a sanitation services company in a southeastern Ontario community from September 1, 1974 until September 11, 1976. She resigned over a salary dispute and her main complaint was that she was actually on duty during her lunch hours but was never paid for this time. As a result she quit her job and filed a claim with the Employment Standards Branch on September 13, 1976.

The claim was investigated, however, the Branch's findings did not totally support her claim. The award amounted to \$74.72 which represented \$28.54 for salary on a statutory holiday and \$46.08 for overtime pay covering her first eight weeks of employment. When she learned the results of this investigation the complainant contacted the Regional Manager of the Branch and complained that the investigation had not been a thorough one. The Branch reviewed the case and another investigator was assigned to make further inquiries. This investigator reported on October 14, 1976 that his findings were the same as those of the previous investigator so that there was no change in the original decision.

The complainant felt that she was entitled to 2 1/2 hours of overtime per week for a period of two years. She based this claim on her contention that she was not given the required minimum of 1/2 hour lunch period per day. Therefore, on a five day week she felt that she had accumulated 2 1/2 hours per week of overtime.

The complainant was advised that our investigation was limited to determining whether the Branch conducted an adequate investigation of her complaint and whether it reached proper conclusions.

A review of the first investigation conducted by the Branch revealed the following. The issues that were considered were:

- 1) provision for eating periods as set out under section 22 of The Employment Standards Act;

- 2) claim for overtime for hours worked in excess of 44 hours per week as set out in section 25 of the Act;
- 3) a half hour of unpaid wages with respect to her final day of work, section 7 of the Act;
- 4) non-payment of one public holiday which fell during the complainant's vacation.

The Branch's findings were as follows:

- 1) that the claimant was, in fact, (and this was supported by interviews of other employees) provided with the required eating period for lunch each working day from Monday to Friday;
- 2) that when the complainant first started work in August 1974, there was an overtime situation for a period of 6 - 8 weeks. This was stated in the claimant's letter. The investigative officer arranged correction on the basis of adjustment for 4 1/2 hours at the overtime rate for 8 weeks. After the 8 week period the claimant's hours were adjusted to 44 hours per week and remained so until termination;
- 3) after allowing for 1/2 hour eating period, records show that the claimant's final pay for September 10 and 11, 1976 is correct at 12 hours, for the two days and that the claimed shortage of 1/2 hour could not be supported;
- 4) the claim for payment for the public holiday, July 1, 1975, is correct and this was adjusted. The resultant settlement was \$74.72.

The Ministry explained that the claimant had arrived at her claimed overtime figure on the basis of her contention that she was not allowed an eating period of at least 1/2 hour. The duties of the claimant were found to be that of a clerk, gatekeeper and logkeeper of trucks entering the

landfill site. Examination of the log showed many hours of free time at her disposal. Because of the location of the site it was not feasible for the claimant to go home or into town for her lunch break. These conditions were understood when she accepted the position.

When the complainant objected to the Ministry's original determination, the investigation was reopened and the original conclusions were supported.

Our Office's review of the Ministry's involvement in this case revealed that the Branch conducted an adequate investigation of the complaint and reached proper conclusions. We were accordingly unable to support the complaint.

(58)

SUMMARY OF COMPLAINT

This complainant operates a variety store adjacent to his seed store. The substance of his grievance is his objection to an order made under The Employment Standards Act awarding back wages to several persons who had been employed in the variety store. His position is that one of the claimants was in fact the manageress of this store, and that he was not responsible for her arrangements with the part-time staff.

His objections to the order were as follows:

- 1) He felt that the Employment Standards Officer (and subsequently the referee as the matter went to appeal) was wrong in finding that the manageress was an employee within the meaning of the Act.
- 2) The complainant stated that the referee failed to allow him the proper opportunity to cross-examine witnesses for the employees and failed to allow his company to call its own witnesses and present arguments and submissions.
- 3) The complainant also maintained that the Employment Standards Branch adopts a biased attitude towards employers in general. He also alleged that the Branch's lawyer was biased against him. However, this aspect of the complainant's grievance

was outside our jurisdiction to investigate due to section 15(4)(b) of The Ombudsman Act which reads as follows:

Section 15(4)(b): "Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission of any person acting as legal counsel to the Crown in relation to any proceedings."

The definitions of an employee and employer in The Employment Standards Act are relevant. They are as follows:

Section 1(c): "'employee includes any person who,

- (i) performs any work for or supplies any service to an employer for wages,
- (ii) does homework for an employer or
- (iii) receives any instruction or training in the activity, business, work, trade, occupation or profession of the employer, and includes a person who was an employee;"

Section 1(d):

"'employer' includes any person who as the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control or direction of, or is directly or indirectly responsible for, the employment of the person therein, and includes a person who was an employer;"

Our investigation into this matter consisted of a review of documentation on file with the Employment Standards Branch. In addition to discussing this matter with the complainant, our investigator contacted his lawyer, the referee, the Ministry's investigating officer, and the Ministry's lawyer.

On review of the Ministry's file, it was discovered that in December 1974, a former employee of the variety store wrote to the Employment Standards Branch to complain that she was not receiving the minimum wage. This matter was investigated and on January 15, 1975, the investigating office issued the notice of requirement to pay. In a letter

dated January 28, 1975, the complainant advised the Director of the Employment Standards Branch of his intention to appeal the order. However, sometime in March 1975, the complainant withdrew his request for an appeal and the money was paid out to the employee.

Subsequently, in July 1975, as a result of claims received from five employees of the variety store, the investigating officer issued an order to pay on July 30, 1975. However, in a letter dated August 12, 1975, the complainant advised the Director of the Employment Standards Branch of his intention to appeal that order.

The matter went to appeal and on page three of the referee's determination, he stated:

"Following my finding of the employer-employee relationship between the clerk and [the company], I turned to the question of hours worked and salaries to be paid. Under the provisions of The Employment Standards Act, there is no question that the minimum wage is deemed to be the salary; however, the records concerning the hours worked could not be exactly substantiated and in many cases lengthy gaps were observed, some of which covered several months. As a consequence, I suggested to both parties that they attempt to come to some agreement as to the money owing, and it was eventually agreed by all parties that a fair settlement would be 65% of the total wages owed and that the money be distributed to the employees on the same percentage basis, which was used by the Ministry to calculate the original figure. As well, the penalty of 10% would also be assessed."

Therefore, the result of the appeal was that the notice of requirement to pay was upheld in the reduced amount of \$4,058.59, as compared to the previous amount of \$6,244.01.

Our investigator learned that as far as the complainant's lawyer was concerned, the hearing could not have been conducted any better than it was. The complainant's lawyer stated that this was a difficult case due to the precedent-setting nature of the payment which was made previously in the early part of 1975, which established an employer-employee relationship.

On the basis of our investigation, we concluded that the complainant's contentions could not be supported. His lawyer was given every opportunity to present whatever witnesses he chose, and to question and cross-examine whoever was testifying. Also, it was clear from the determination that the referee took into consideration all relevant facts. Furthermore, the referee's conclusions on the facts were reasonable in light of the relevant case law. Finally, there was nothing disclosed by our investigation to indicate that the Employment Standards

Branch officials had maintained a biased attitude towards employers in general.

This complaint was therefore found to be unsupported.

MINISTRY OF

NATURAL RESOURCES

(59)

SUMMARY OF COMPLAINT

This complainant's lawyer wrote to our Office in June, 1975 complaining of the actions of the Ministry (formerly the Department of Lands and Forests) in contributing to the difficulties his client had experienced in obtaining title to the parcel of farmland on which he had resided since 1917. He blamed for part of the difficulty the absence of helpful provisions in The Land Titles Act.

The complainant contended that representatives of the then Department of Lands and Forests made misrepresentations of fact to him regarding the ownership of certain lands in the district. He alleged that in 1915 he was permitted and encouraged to apply for the purchase of a Crown Patent for a particular parcel of land and that his application was accepted, but that in 1919, he learned that the land was in private hands, since the Crown Patent had already been issued for the same land prior to 1915.

The complainant said that he was subsequently given erroneous information by a land agent of the Department and that the Department itself acted improperly in accepting his application to purchase property it no longer owned. He still pays taxes on the land and farmed it actively until his recent retirement.

The lawyer also pointed out that when he had written to the Minister of Natural Resources, requesting that he exercise his authority under section 34(1) of The Public Lands Act to cancel the existing Crown Patent, the Minister replied that:

"I am advised by my legal staff that I have no jurisdiction to grant the relief which you have sought."

We canvassed with the complainant's lawyer the possibilities of utilizing The Public Lands Act or The Quieting of Titles Act. We concluded that neither would be appropriate under the circumstances.

We notified the Deputy Minister of our intention to investigate this complaint and asked for the Ministry's views. The Ministry responded and enclosed a copy of the summary of the complainant's file with the Ministry. The Ministry's file was reviewed by our Office, and further information was supplied by the complainant. Following the review of the Ministry's file, we concluded that the Ministry ought to be given an opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975, in view of a

possible adverse report and recommendations. First, however, members of our legal staff met with the Supervisor of the Public Lands Section in the Land Administration Branch of the Ministry of Natural Resources, who expressed the Ministry's willingness to cooperate in remedying the complainant's problem. In December, 1977, we wrote to the Deputy Minister of Natural Resources outlining the Ombudsman's possible conclusions as follows:

1. It appeared open to me to conclude that the former Department of Lands and Forests had erred in 1919 when it approved the sale of the property in question to the complainant's father, even though the property had been granted to third parties by Crown Patent in 1908.
2. It also appeared possible to me that the Department had erred in 1922 in advising the complainant's mother that she could protect her interest in the property by having an adult son apply to purchase it.
3. I felt I could conclude from further correspondence between the Department and the complainant's father that the Department had further misled the family about the status of the property, in that after the complainant continued to express interest in the property, the Department wrote to his father in 1928 giving him 15 days to state his intentions regarding the property.
4. It appeared open to me to conclude that the family had resided on, made improvements to and paid taxes for the property in question in the belief that the land was available for purchase by them from the Department although in 1931 the Department advised the complainant that the land had been patented. Further, it appeared that this belief was created and reinforced by the Department's actions and statements to the family over the years.
5. In 1944, the complainant attempted to obtain title to the property by forfeiting payment of provincial land tax so that the land was forfeited to the Crown. It appears that it was agreed that on payment of arrears by the complainant, the property would be conveyed to him. However,

as a result of an apparent misunderstanding of the history of the title to the property and/or a misappreciation of the effect of the cancellation of the forfeiture, the forfeiture was cancelled having the effect of revesting the property in the original titled owner.

6. Further correspondence from the Ministry since the purported sale has made reference to the complainant as "owner" and it is open to me to conclude that this has contributed to his impression that he finally had title to the property. The complainant continues to pay taxes on the land.

In the same letter, we advised the Ministry of the Ombudsman's possible alternative recommendations, as follows:

1. The Ministry ought to cooperate in a future forfeiture of the property for arrears of public land taxes and to regrant the property, this time to the complainant.
2. The Ministry ought to arrange to purchase the property from the present registered owner, or his heirs-at-law, as the case may be, and then transfer the title to the complainant.
3. The Ministry ought to expropriate the property and then transfer it to the complainant.
4. In the event that no means are to be found to vest title to the property in the complainant's name, the Ministry ought to pay him compensation in an amount to be arrived at.

In response to the possible conclusions and recommendations, the Deputy Minister indicated that his Ministry was interested in cooperating in a future forfeiture of arrears of provincial land taxes and a re-grant of the property to the complainant.

In January, 1978, we wrote to the Deputy Minister confirming the Ministry's willingness to cooperate in resolving the problem. At the same time, we wrote to the complainant enclosing a copy of the report on the investigation conducted. We suggested to the complainant that he contact his

lawyer to ensure the proper arrangements for the forfeiture were made.

(60)

SUMMARY OF COMPLAINT

This complainant wrote to our Office with a complaint against the Ministry. In his letter, he enclosed a transcript of his trial on charges of trespassing as well as a copy of a letter he had sent to his M.P.P.

The complainant had been convicted in 1976 of trespassing on a portion of a river which he believed was a navigable body of water and accordingly public property. The court ruled that the river was in fact not a navigable body of water and convicted him of trespassing.

The complainant was of the view that the Ministry of Natural Resources was not properly administering The Beds of Navigable Waters Act, in that it had not prepared any guidelines with respect to the posting of "no trespassing" signs on what are generally believed to be beds of navigable waters. He also felt that the Ministry should prepare and make available to the public, literature so that any misconceptions or misunderstandings with respect to what is or is not a navigable waterway would be dispelled.

In response to our notice of intention to investigate this complaint, the Deputy Minister advised us that decisions regarding navigability made by the Ministry are made only for administrative purposes and are subject to confirmation in a court of law. Legal research was conducted into the matter and it was determined that the Ministry's actions had been appropriate in this case.

A report was subsequently prepared and sent to both the complainant and the Ministry advising that the Ombudsman could not support the complaint. However, in the report, we suggested that the Ministry of Natural Resources consider publishing a pamphlet to be offered to canoeists, fishermen, etc., advising them to ascertain the ownership of a piece of property before entering it and informing the public of how to do so.

We subsequently received from the Deputy Minister a memorandum dealing with the pros and cons of the suggestion that the Ombudsman had made. With the Deputy Minister's consent, we advised the complainant of the comments made in the memorandum.

(61)

SUMMARY OF COMPLAINT

In early 1973, this complainant purchased certain lands in a municipality in Northern Ontario. The original Crown Patent reserved:

"An allowance of 5 per cent on the acreage of the lands hereby granted for roads and the right of the Crown to lay out roads where necessary."

The parcels of land had gravel roads running through them. The gravel road through one parcel of land led to a mining company, a Ministry fire tower which was no longer in use, as well as to a number of fishing lakes located north of the property.

The mining company took the position that the road leading to the mining company was constructed by the Crown and is a public road. The complainant took the position, through his lawyers, that the road was not constructed by the Crown and therefore he attempted to block the road leading to the mine.

In mid-1973, the complainant's lawyer wrote to the then Assistant Deputy Minister of Natural Resources, offering to convey certain lands together with the 66 foot right of way for those parcels of land over which the road in question crossed in return for certain other lands, timber rights and obligations. However, in early 1974, the complainant received notice pursuant to section 67 of The Public Lands Act, that the Minister of Natural Resources intended to rely upon the 5 per cent road allowance reserved to the Crown in the original patents for both parcels of land.

Subsequently, the complainant's lawyer wrote to the then Minister of Natural Resources, again offering the exchange of lands proposed in mid-1973. The Minister again declined to accept this offer for exchange of the lands and he declined once more in late 1974. In addition, the complainant advised our Office that the Ministry of Natural Resources had recently registered a Plan to widen the gravel road from 66 feet to 100 feet. With this in mind, the complainant questioned:

- a) the right of the Ministry of Natural Resources to take over a road which he contended was illegally constructed by some other individual or corporation;
- b) the necessity of widening the road leading to the mine and the lack of notice of such widening; and

- c) whether the Ministry could resort to similar action in regard to a road through another parcel of land owned by the complainant.

We felt that the Ministry of Transportation and Communications could assist in this matter, and accordingly, we notified that Ministry as well as the Ministry of Natural Resources of our intention to investigate this complaint. Subsequently, our investigator met with the then Regional Lands Administrator of the Ministry of Natural Resources, to discuss this complaint and to obtain the relevant documentation from the Ministry file. During the course of this investigation, information was obtained which revealed when the original road to the Ministry fire tower was built, who built it and how much money was expended. Our investigator also obtained pertinent information from the Ministry of Transportation and Communications and from the complainant.

After a careful examination of all the available evidence, we found the road in question was originally constructed in the mid-1950's by the then Department of Lands and Forests to serve a fire tower which was in operation. Around 1961, the mining company came into existence and used the road to serve its mining operation.

We determined that the mining company improved and maintained the road with financial assistance from the Northern Ontario Resources Transportation (N.O.R.T.) Committee. Public funds in variable amounts were provided by the N.O.R.T. Committee as a subsidy to the mining company for reconstruction of the road and for maintenance purposes.

Our investigation disclosed that the road in question not only serves the mine, but also cottagers and hunters and general public recreation needs in the area.

The original Letters Patent for the parcels of land in question contained a reservation of 5 per cent for roads, and they reserved to the Crown the right to lay out the road allowance where necessary. We found that the Ministry exercised the 5 per cent reservation right in the public interest and such action was in keeping with Ministry policy.

After considerable research, we concluded that the Ministry had direct and independent authority under Section 67 of The Public Lands Act to take over and improve the existing road crossing the complainant's lands.

With respect to the issue that the complainant raised regarding the necessity of widening the road from 66 feet to 100 feet, we found that the Ministry has the right to widen

the road to 100 feet because the acreage used was well within the 5 per cent limit that it had reserved. We also noted that in a March, 1974 letter, the complainant was formally notified by the Ministry of Natural Resources that it was proceeding with the exercising of the 5 per cent road reservation on the parcels of land pursuant to Section 67 of The Public Lands Act. A copy of this letter was sent to the complainant's lawyer.

We wrote to the Ministry of Transportation and Communications, the Ministry of Natural Resources, and the complainant, advising them of our findings.

This complaint was found to be unsupported.

(62)

SUMMARY OF COMPLAINT

This complainant initially brought his complaint concerning the Ministry to the attention of our Office at a private hearing.

The complainant explained that he had opened a tent and trailer park in 1975 which was located near an unlicensed government-owned campsite. It was his feeling that it was unfair for him to be required to fulfill the various regulatory provisions of the Ministry's operating permit while the campers on the uncontrolled Crown land were not required to observe the same standard. It was his contention that he was locked into an unfair competitive position with the government site.

In response to our notice of intention to investigate this complaint, the Deputy Minister provided us with some general information related to the recreational use of the river area where these camping sites were located. He also indicated that a complete review of this subject was being undertaken by the Ministry, but that in the interim in an attempt to assist in the resolution of the problem he would be prepared to close the government site to camping if the local municipality was in support of this action.

Subsequent to this, representatives of our Office contacted officials of the local Municipal Council, and the complainant.

The complainant then collected a number of signatures for a petition to present to the Council to ban overnight camping at the government site. When the petition was presented to the Municipal Council, the resolution was

passed, and it was later submitted to the District Office of the Ministry. The Ministry subsequently closed the site to camping thus eliminating the complainant's competition.

(63)

SUMMARY OF COMPLAINT

This complainant's contention on behalf of a group of cottage-owners was that land near their properties, which had been purchased by the Ministry in 1972, was not being used for the purpose originally intended as stated by the Ministry.

In 1972, the complainant and her husband, as well as a number of their neighbouring cottage-owners, offered to purchase a certain nearby lot. This group's purchase of the lot would have ensured their privacy.

However, the Ministry entered into negotiations with the owner, and eventually purchased the lot at a substantially higher price. The Ministry's stated intention at that time was to use the lot to provide an access for duck hunters to the marsh situated behind it, and a point from which Ministry staff could service the area.

According to the complainant, however, the property was being used instead as a thoroughfare for the public to park its cars and to launch its boats in the channel which passed by the lot in question as well as the complainants' and their neighbours' cottages. Consequently, they felt that their property rights were being infringed upon.

In response to our notice of intention to investigate, the Deputy Minister outlined all of the steps which the Ministry had taken in an effort to resolve the problems in the area. He also mentioned that in a further effort to resolve the matter he would be prepared to recommend the sale of the lot to the group of cottage-owners subject to the selection of an alternate access point to the public marsh.

Our investigator then visited the complainants at their cottage in order to view the area in question and to view several other sites which they felt would be better access points than the one currently in use near their property.

Following this, the investigator contacted a Ministry official at the Regional Office in order to discuss the matter further. After these discussions, the Ministry representatives confirmed that they were prepared to discontinue the use of the property in question, and to recommend that it be declared

surplus to the needs of the Ministry. They also indicated that following the acceptance of this recommendation, the Ministry of Government Services would be called upon to dispose of the property.

The complainants were then notified and given this information. They were also advised that the Ministry would probably be offering the lot in question for sale, and that they should indicate their interest in purchasing it to the Ministry of Government Services.

Subsequent to this, we received a letter from the complainants thanking us for our efforts on their behalf, and indicating that they would keep us informed as to any further developments.

MINISTRY OF

REVENUE

(64)

SUMMARY OF COMPLAINT

This complaint was presented to our office by two local Hydro Commissions, which contended that during the years 1968 to 1974, the Retail Sales Tax Branch of the Ministry of Revenue collected tax wrongfully from the Commissions pursuant to section 5(1), paragraph 60 of The Retail Sales Tax Act. In December, 1974, a tax specialist with the Retail Tax Branch, Ministry of Revenue, informed a seminar held by the Association of Municipal Electrical Utilities that a new interpretation had been placed on this section. This meant that certain tangible property should have been exempt from Sales Tax during these years. During the seminar, it was also indicated that there was no avenue for giving refunds. As a result of this information, the complainants did not seek a refund until after April 8, 1975, when new legislation had been passed which only allowed refunds for overpayments of tax for a period of two years, ending April 8, 1975. One complainant contends that the Ministry owes them \$20,789.77, and the other complainant contends the sum owing to them is \$8,599.12.

During the course of this investigation, our investigator interviewed officials of the Ministry of Revenue and the Ministry of Treasury, Economics & Intergovernmental Affairs and received copies of documents on Ministry files. In addition, our investigator interviewed the Administrator of the Association of Municipal Electrical Utilities (A.M.E.U.).

In response to our notice of intention to investigate this complaint, the Deputy Minister replied that prior to April 8, 1975, no time limit existed in law for filing of claims for refunds but there was no obligation on the part of the government to refund taxes, which was at the Minister's discretion. For some time, professional associations of accountants and lawyers had made submissions seeking more certainty by making refunds mandatory. Such a move would have had to be accompanied by the imposition of a limitation period, as is customary in other jurisdictions.

With the introduction of his April 8, 1975 budget, the Treasurer announced the imposition of a two year limit on mandatory refunds. Tax administrators in the Ministry were unaware of this budgetary move. Subsequently, the Minister of Revenue obtained from Cabinet a regulation which permitted him to waive the two year limit where his officials had not completed approval of an application on hand at that time, or where his officials had specifically requested the submissions of applications separately for different periods of time, all of which had been finalized at that date.

Due to the extreme difficulty of ascertaining the facts necessary to administer the regulations mentioned above, the Ministry enlisted the assistance of the Taxation Committee of the A.M.E.U. to ensure that all utilities were provided with a fair hearing. This cooperation appears to have been successful.

In the case of the first complainant, the Deputy Minister said that the claim was received on August 6, 1975. He admitted that telephone contact had been made by the complainant to obtain the application form for the refund, in March, 1975, but said that he was unable to ascertain whether any discussion other than the request for the forms occurred with any Ministry official after the beginning of March and prior to April 8, 1975. The Deputy Minister concluded by stating that the facts did not provide a basis for the Ministry to extend the two year limit and authorize payment of the portion of the claim beyond the two year limit.

When the investigator interviewed the first complainant, he was informed that the official who had given the seminar was rather vague, and had advised the Commissions to contact the local Retail Sales Tax Branch office. The complainant did this on behalf of the Commission, but the application forms did not arrive until after April 14, 1975, although they were post-marked April 4, 1975. Our investigator was informed by the Administrator of the A.M.E.U. that the Commissions that submitted their claims promptly after the seminar and before April 8, 1975, were reimbursed in full.

Our investigator learned from the Executive Director of the Fiscal Policy Division of TEIGA, that the thrust in TEIGA had been to bring Ontario policy on Retail Sales Tax Refunds into line with policy in other jurisdictions and he obtained a number of documents confirming this direction in a significant number of Canadian and American jurisdictions. Furthermore, the two year limitation on mandatory refunds had been recommended by the Institute of Chartered Accountants of Ontario and the Ontario Tax Section of the Canadian Bar Association. As a result of this investigation, it was concluded that officials of the Ministry of Revenue could not be faulted for their action in denying the refund to the first complainant.

With regard to the other complainant, the Deputy Minister said that the claim was received on April 18, 1975. The Deputy Minister was unable to ascertain that Ministry officials had been instrumental in causing the Commission to delay filing the claim beyond April 8, 1975. He noted that the claim and the circumstances surrounding its submission were reconsidered a number of times by Ministry officials

and the whole question was reviewed by the A.M.E.U. Taxation Committee. The Retail Sales Tax Branch officials concluded that the Ministry of Revenue had no authority under the legislation to pay the portion of the claim extending beyond the two year limit amounting to approximately \$8,600. We concluded in this case that on the basis of the facts of the case, and the existing law, there were not sufficient grounds to make a recommendation to the Ministry of Revenue for payment.

(65)

SUMMARY OF COMPLAINT

This complainant first contacted the Office of the Ombudsman at a private hearing and submitted a complaint respecting a decision of the Ministry of Revenue to rescind his Ontario Home Buyers Grant. The decision by the Ministry was made known to him in a letter dated October 19, 1976.

The complainant applied for the grant outlining that he had owned a "trailer" prior to applying for the grant. Nevertheless, the grant was approved. The applicant received the initial grant plus the first supplementary grant. However, upon audit the Ministry discovered that the "trailer" was a type of mobile home that was considered a housing unit under The Ontario Home Buyers Grant Act. The complainant was requested to return the grant. He maintained that since he was unable to gather the necessary information at the time he applied for the grant and since he informed the Ministry of "all the facts" at the time of his application, he should not now have to return the money.

The complainant stated in a letter to the Ministry that:

"Every effort was made by me to obtain a C.S.A. number through telephone calls to the dealer manufacturer, the Canadian Standards Association in Toronto, and a thorough inspection of the trailer and guarantee papers that were with it. When these sources failed to provide a C.S.A. approval number, I applied for your grant. As substantiated by the letter attached to my original application, your office was made fully aware of the fact that I did own a trailer."

We held meetings with the Appeals Officer of the Ministry and discussions were also held with the Legal Services Branch of the Ministry.

Information relevant to this complaint was also received from a representative of the Canadian Standards Association as well as the manufacturer of the mobile home. This information established that the mobile home received C.S.A. certification on November 27, 1972. As a result, the complainant's mobile home fulfilled the criteria for this type of housing unit as defined under the Act.

After careful examination of the available evidence, we found that the complainant "owned" this housing unit as he had acquired a legal proprietary interest in it. Consequently, he was not entitled to the Ontario Home Buyers Grant because he purchased a housing unit prior to April 8, 1975 and therefore did not comply with section 2(2)(a) of The Ontario Home Buyers Grant Act.

Further, while it was clear that he was not eligible for a Home Buyers Grant, it was also clear that the information confirming the mobile home certification was readily available as our investigator discovered, although the complainant claimed he experienced difficulties in obtaining this information.

On the other hand, it appeared that the Ministry could have made further inquiries to determine the designation of the applicant's trailer following receipt of his letter of September 19, 1975 which accompanied his application for the grant. This information would have established his non-eligibility for the grant and he would not have been paid any money.

While we found that we would not support this complaint, as a result of our intervention, the Ministry indicated that it would not commence legal action to recover the grant. We commended the Ministry for its most reasonable treatment of the complainant in this case.

MINISTRY OF

THE SOLICITOR GENERAL

(66)

SUMMARY OF COMPLAINT

This complaint was received in writing in August, 1975, and concerned a decision of the Ontario Provincial Police not to accept the complainant's attempted retraction of a resignation and the refusal by the police to rehire him.

The complainant had written a letter of resignation in September, 1973 with respect to his employment as a police officer with the O.P.P. One week later, he wrote another letter, attempting to retract his letter of resignation. However, four days after the second letter was written, the officials of the O.P.P. decided not to accept the retraction and also decided that the resignation would stand.

We notified the Chairman of the Ontario Police Commission of our intention to investigate this case. Our investigator met with a number of officials of the O.P.P. and the Ontario Police Commission in the course of the investigation of this complaint. It appeared that the complainant's basic contention was that he ought to have been allowed to withdraw his resignation within two weeks as a result of section 19(1) of The Public Service Act. Legal research disclosed that this section only applied when two pre-requisites were met: (1) no person can have been appointed to the position resigned from; and (2) the person seeking to withdraw his resignation must obtain the prior approval of the Deputy Minister.

The Deputy Minister's right of approval in this case has been delegated, pursuant to section 23 of The Public Service Act, to a number of officials within the O.P.P. This authority is also delegated to the Commissioners Committee. It was this Committee that decided to deny his request to retract the resignation. Therefore, we determined that the actions taken were within the law. We found as well that there had been some degree of dissatisfaction with the officer's performance while with the O.P.P. and it appeared that this had some bearing on the decision not to accept the withdrawal of his resignation.

The complainant was advised that his complaint would not be supported, and the Commissioner of the O.P.P. and the Chairman of the Ontario Police Commission were similarly advised.

(67)

SUMMARY OF COMPLAINT

This complaint was brought to our attention at a hearing in a northern Ontario city in the summer of 1976. The complainant was the Chief of the Volunteer Fire Department

in a small town in northern Ontario. The complainant's concerns were that he was not able to obtain funding to assist in purchasing fire fighting equipment for the town, which was an unorganized municipality, and also that he was encountering difficulties in obtaining an exemption from retail sales tax in purchasing fire fighting equipment for the unorganized municipality.

The response of the Ministry to our notice of intention to investigate this complaint was that there is no government policy enabling provincial funds to be given for the operation of a volunteer or permanent fire department or for the acquisition of apparatus.

A member of our staff met with the complainant while in northern Ontario and received from him documentation regarding the second aspect of his complaint. The complainant had been advised by the Ministry of Revenue that the purchase of a fire fighting vehicle was exempt from retail sales tax only when it is purchased by a municipality, university or public hospital. An unorganized territory does not fall within these categories.

Our legal research indicated that the position taken by the two Ministries involved was correct under the existing legislation.

We forwarded a second notice of intention to investigate the second aspect of the complaint, to the Ministry of Revenue. In the response from that Ministry, an indication was given that the policy with regard to unorganized territories was going to be changed. The Ministry now considers that paragraph 35 of section 1 of Regulation 75, made pursuant to The Retail Sales Tax Act is sufficiently broad to include a Volunteer Fire Department operating in an unorganized territory, providing the Reeve and/or Council of the area have officially approved setting up such a Fire Department. It was also stated that the Fire Department's application for exemption would be approved if they met the above criteria.

The complainant was advised of this outcome and later informed us that the unorganized municipality had been exempted from retail sales tax. The complainant decided not to pursue the first aspect of his complaint further.

(68)

SUMMARY OF COMPLAINT

This complainant's letter to our office stated that officers of a Municipal Police Force had searched his property

without proper search warrants, recovered some stolen property, and caused unnecessary damage to his property. The complainant also stated that some articles not connected with the criminal charges which later followed had been removed from his farm by the police officers. With the help of his lawyer, he complained to the local Police Commission and was refused compensation. He then complained to the Ontario Police Commission and was advised to consult his lawyer with a view to lodging a civil suit.

The Ontario Police Commission also decided not to proceed with an investigation pursuant to section 56(1) of The Police Act.

We notified the Commission of our intention to investigate and upon receiving the Commission's position, a meeting was held with the Chairman and a member of the Commission. The Commission's file was reviewed by our investigator and contact was made with the complainant's lawyer.

Our investigation revealed that before the Commission decided not to proceed pursuant to section 56(1) of The Police Act, the members of the Commission reviewed the pertinent documentation including the report of the Municipal Police Complaint Bureau and the results of the complainant's interview with an official of the Ontario Police Commission. A review of the Municipal Police Complaint Bureau report indicated that a thorough investigation had been conducted by the Bureau.

Investigation further revealed that the police officers did have proper search warrants at the time that the searches were conducted. Since the complainant questioned the legality of the warrants, it was open to him to bring an application to quash the warrants and he was so advised.

The alleged damage to the complainant's property was denied by the police officers involved. This denial was supported by the evidence of an individual, not a police officer, who stated that the complainant's property had been left in the manner in which it had been found prior to the search. The only items which appeared to have been removed from the complainant's property by the police officers were those required and held for evidence for presentation in court.

After reviewing all the findings of the investigation by the Municipal Police Complaint Bureau, we were unable to find that the Commission exercised its discretion improperly in deciding not to proceed with an investigation pursuant to section 56(1) of The Ontario Police Act. For the Commission to have held a full-scale investigation after reviewing the

Complaint Bureau's findings would have resulted in duplication of work. The same parties would have been interviewed again and there appeared to be very little likelihood that the Commission's findings would have been different from that of the Complaint Bureau.

It did come to our attention, however, that the Ontario Police Commission had not advised the complainant of the reasons why it concluded that an investigation pursuant to section 56(1) of The Ontario Police Act was inappropriate. In our report to the Commission, we stated that the complainant's attitude might have been different had he been advised of the Commission's reasons for deciding not to conduct an investigation.

We also suggested to the Ontario Police Commission that it consider adopting a policy of advising members of the public, who wish to commence civil action at the time complaints against the Police are lodged with the Commission, of the limitations imposed by virtue of section 11 of The Public Authorities Protection Act.

(69)

SUMMARY OF COMPLAINT

The complainant, who resides in a western Ontario city, wrote to our office complaining about the results of an investigation conducted by a City Police Department into the events surrounding the death of his daughter.

The complainant had registered three specific complaints with the Police Department. The first complaint concerned the driver of the automobile who struck and killed the complainant's daughter while she was walking with her sister and another girlfriend along a darkened road with their backs to the traffic. The driver was charged with careless driving. It was the complainant's contention that the driver of the automobile should have been charged with a more serious offence.

The second complaint was that the driver of the automobile should have been charged with speeding since one of the girls had been thrown approximately one hundred feet. The third complaint was that the police officer at the scene did not conduct a thorough investigation of the accident and that the exact location of the accident was not stipulated on the summons to the driver of the automobile.

Not satisfied with the investigation of the complaints conducted by the local Police Department, the complainant submitted a written complaint to the Ontario Police Commission.

The Ontario Police Commission, after conducting its own investigation, advised the complainant of the results of its

findings and concluded that unless the complainant had conclusive evidence to offer which would disprove the O.P.C.'s summary of facts, the O.P.C. would consider the investigation closed.

Having exhausted the available administrative appeal procedures, the complainant then approached our Office.

Our investigation focused on the Ontario Police Commission's investigation of the complaint. Our investigator visited the offices of the O.P.C. and reviewed its file regarding the investigation.

From our investigation, we noted that the Ontario Police Commission had advised the complainant, by letter, that its review and investigation of the complaint had failed to disclose any evidence of improper investigation or action on the part of members of the local City Police Department. The Ontario Police Commission had subsequently responded to the complainant in detail outlining and explaining the facts of its investigation.

After a thorough review of the Commission's investigation, we advised the complainant in a letter that we were satisfied that the Commission acted properly in deciding not to take any further action.

We concluded our report by stating that we were not of the view that the decision complained of was "unreasonable, unjust, oppressive, or improperly discriminatory." This complaint was therefore found to be unsupported.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

(70)

SUMMARY OF COMPLAINT

This complainant is an elderly widow who operated a successful tourist business on property which she owned and which adjoined a highway. The complaint was submitted to our Office on her behalf by her son.

In 1969, the Department of Highways needed some of her property to effect a widening of the highway. The complainant entered into an agreement with the Department of Highways. This agreement involved the purchase and sale of a portion of land for the sum of \$400 with the following conditions:

1. That the Department of Highways would construct a private entrance to the complainant's property at the time of construction in accordance with Departmental standards.
2. That the Department of Highways would relocate her drilled well within her new property limit and the necessary plumbing work in connection thereto.

The well was the source of water supply for the business and it was realized that it would be affected by the construction work.

When the property was surveyed by the Department of Highways the complainant claimed her property line had been altered by the surveyors causing her to lose some of her property.

The Deputy Minister of Transportation and Communications was advised of our intention to investigate this complaint.

After receiving the Ministry's position with respect to the complaint, we held several meetings with those persons within and without the Ministry who had been connected with the original negotiations.

The Department of Highways maintained that its survey was correct. In an attempt to satisfy the complainant the Department of Highways advised her by letter that if she so wished, she could have her property surveyed by an independent surveyor and that if by this action the Department of Highways proved to be incorrect, then the Department would bear the cost of such a survey. If, on the other hand, the new survey confirmed the Department of Highways survey, the complainant would have to bear the cost.

The complainant asked her lawyer to secure the services of an Ontario Land Surveyor to have her property re-surveyed. In the meantime, construction got under way.

The Department of Highways made several attempts to find the complainant an alternative water supply. Four wells were drilled but the water was not suitable for drinking purposes. As a result, the local medical office of health issued an order closing down her tourist business in April, 1971. That development made it necessary to negotiate a new agreement with the Department of Highways. After several months of negotiations the complainant entered into an agreement with the Department. During these proceedings the complainant was represented by a lawyer.

In the new agreement, dated November 1, 1972, the complainant received \$50,000 plus a small parcel of land and she released the Department of Highways from all claims or demands for damages, compensation or detrimental effects in any way arising from the construction, including the elimination of a suitable water supply.

During the Department of Highways' attempts to drill the new wells, some damage was done to a tennis court owned by the complainant. Moreover, with the establishment of a new property line by the Department of Highways part of the tennis court was shown to be located on the property adjoining that of the complainant.

The complainant asked that her tennis court be repaired by the Department of Highways and the Department agreed. However, there was concern over the issue of trespassing. For this reason the Department gave the complainant two choices. The first was an offer of a cash settlement to cover the cost of repairs to the tennis court and the second was to wait until the property was re-surveyed, at which time the Department would undertake the repairs should the tennis court prove to be on the complainant's property. The cash settlement was not accepted.

An Ontario land surveyor had been retained for the complainant by her lawyer during the latter part of 1974. In the Spring of 1977, the lawyer contacted the complainant and advised that the new survey appeared to show that she was entitled to 200 feet more lake front than was shown on the previous survey. Since it was necessary to have a hearing before the Master of Titles in order to have the registered title amended, the lawyer inquired of the complainant as to whether she wished him to proceed with an application pursuant to The Boundaries Act.

The complainant stated that she made several attempts to contact the lawyer afterwards but to no avail. By the time

the lawyer was contacted, the land surveyor had sold his business and had not made available to the lawyer or the complainant a copy of the new survey.

In March, 1977, after considerable effort, a copy of the plan and field notes of the survey was obtained by our office and a copy was also shown to the complainant. She was dissatisfied with it and claimed that it did not show the full amount of property owned by her.

The only solution that remained was for the complainant to retain the services of another surveyor.

In a letter from our Office the complainant was furnished with the address and telephone number of the Association of Ontario Land Surveyors. We suggested that she obtain a list of Ontario Land Surveyors from them. She was also advised of the necessity to give the surveyor of her choice explicit instructions as to how she wished him to prepare the survey.

We concluded that the Department of Highways, now the Ministry of Transportation and Communications, could not be faulted until such time as a new survey proved it wrong.

(71)

SUMMARY OF COMPLAINT

This complainant had been an employee of the Ministry of Transportation and Communications for four years. He wrote to us contending that his resignation from the Ministry in 1976 was a result of a series of administrative decisions and harassment by Ministry officials. Particulars of such decisions, as outlined to us by the complainant are as follows:

1. In September, 1972, he was summarily dismissed from the position of Director of a particular Division, for not "fitting in" after the Departments of Transportation and of Highways were integrated. He states that there is no record of this dismissal in Personnel Records.
2. In October, 1973, his responsibilities and classification were reduced. No reduction in salary was made at that time.
3. In October, 1973, he unsuccessfully applied for an executive opening in the Ministry of Energy. The failure to obtain this position he attributes to unfavourable reports from the Ministry of Transportation and Communications, with the exception of one which was sent by the incumbent Deputy Minister.

4. In March, 1976, he was told that his Executive title was only a courtesy, and his classification was again reduced resulting in a \$1,965 per annum loss in salary. The proper month's notice for this loss was given, but retroactively. The "red circling" as required, as he states, by The Public Service Act was not allowed.
5. In July, 1976, he was informed that his position at that time was being eliminated and no other was available. He, therefore, resigned that day.

The complainant alleged that the harassment resulting from such decisions caused him to decide in January, 1976, not to transfer his federal pension, at considerable financial loss, and to commence looking for outside employment.

In view of the above, the complainant came to the Ombudsman in the hope that he would recommend to the Ministry that:

- a) the salary for the PE 4 classification in existence to April 1, 1976, be "red circled" for a period of twelve months in accordance with The Public Service Act; and,
- b) a fair and acceptable settlement be made to the complainant's provincial superannuation account, to cover the loss in pension he believes he has incurred.

During the investigation of this case, several past and present senior Ministry officials, as well as a personal reference submitted to this Office by the complainant, were interviewed. In addition, officials of the Civil Service Commission were interviewed and the Ministry's personnel file on the complainant was carefully reviewed.

A meeting with the Director of Personnel at the Ministry established that in September, 1972, the complainant's position with the Ministry was reduced from that of Director to Project Manager, with no change in classification or salary. It was suggested by the Ministry that the complainant might adjust more ably in a purely research capacity without the added administrative responsibilities associated with a directorship. Following this in November, 1972, the classification of the position held at that time by the complainant was reduced from a Program Executive 5 to a Program Executive 4 without a change in salary. The Ministry's files indicated that the complainant was transferred in May of 1974 from his position as Project Manager to the position of Executive Research Engineer without a change in classification and salary. This salary was maintained until April, 1976, at which

time his salary was reduced to the maximum of a Research Officer 5, the classification to which his position had been allocated.

It was learned from the Director of Personnel that records of a demotional nature concerning a transfer of an employee are not usually retained on file for the reason that records with regard to an employee's less than perfect performance may adversely affect the employee's chance of obtaining a further position within the Provincial service. We agreed that it is probably within the employee's best interests not to have specific references of a detrimental nature retained on file.

No evidence was found in the Ministry's file to suggest that Ministry of Transportation and Communications officials interviewed by Ministry of Energy officials in 1973, concerning the complainant's past performance at the Ministry of Transportation and Communications, were negative. It was found that only two of the seven references contacted by the Ministry of Energy were officials from the Ministry of Transportation and Communications.

An interview with an official of the Civil Service Commission confirmed the Ministry's view that the complainant had in fact received "red circling" protection in accordance with The Public Service Act. Evidence on the complainant's personnel file revealed that the Ministry had in fact made conscientious efforts to find a suitable position for the complainant within and outside the Ministry.

With regard to the complainant's submission that he was told on July 12, 1976 that no position was available for him at that time, it was learned from the Ministry that although the complainant's position may have been declared redundant at that time, employees who find themselves in such a position are in time re-allocated to other relevant positions within the Ministry.

Our investigation revealed no evidence to suggest that the complainant had been harassed or dealt with in an unfair manner. It was found that the complainant resigned from the Ministry of his own volition in July of 1976. In view of this, his request that the Ministry compensate him for the loss of his pension, which he felt he incurred due to an early departure from the Ministry, was unreasonable.

Having considered the facts of the case, we supported the position taken by the Ministry of Transportation and Communications. The complainant was notified that no evidence was found to suggest that he had been treated inequitably.

(72)

SUMMARY OF COMPLAINT

In 1974, the Ministry of Transportation and Communications extended a highway near this claimant's property. The complainant alleged that as a direct result of road construction and the laying of sewer and water lines her well went dry. She complained to the Ministry of Transportation and Communications and was told to forward her complaint in writing. She did so and received no action. In 1975, after an exchange of correspondence, the Ministry agreed to dig the claimant a new well. The Ministry was never actually called upon to dig the new well, as the complainant decided to have her home hooked-up up to the Municipal water supply. From the time the well went dry until April 1976, the complainant purchased water for domestic use.

In August, 1975, the Ministry, knowing the complainant's intention to hook-up to the Municipal supply when the Municipal project was extended near her property, offered her \$750 as compensation for her well. She refused to accept this amount as it was felt to be insufficient. She was of the view that the Ministry should give her \$1,615 which was broken down on the following basis:

1.	Repair to pump	\$119
2.	Water purchased	204
3.	Water Meter connection	570
4.	Water & sewer connection	<u>722</u>
	Total	<u>\$1,615</u>

The Ministry considered her request for compensation but maintained that its offer of \$750 would have covered the cost of securing a new well for her. The Ministry advised us that it did not consider itself responsible for the costs she incurred for hooking up to the Municipal water supply. The complainant requested that we investigate her claim that the Ministry had been unfair in its offer to her of only \$750 as compensation for her well.

Our investigation consisted of interviewing the complainant, obtaining a copy of the Ministry's file related to this claim, as well as meeting with Ministry officials from the Insurance and Claims Branch.

During our investigator's meeting with the complainant on September 21, 1977, it was learned that she would consider \$1,323 from the Ministry as adequate compensation for

her claim. This was to be broken down in the following manner:

1.	For loss of well and inconvenience	\$1,000
2.	For pump repairs	119
3.	For water purchased	204
	Total	\$1,323

On October 28, 1977, our investigator met with an official of the Ministry to discuss the contents of the complainant's file and to explain that her request for compensation had been somewhat modified. It was determined that the Ministry had not considered the full costs of the purchase of water to the complainant or the inconvenience caused to her. The Ministry official advised that the Ministry would reconsider its offer and contact our investigator in the near future.

Subsequent to this, on November 29, 1977, our investigator was advised by the Ministry that it had reconsidered its initial offer of compensation and would be willing to offer the claimant \$1,000. This figure was comprised of:

1.	Cost of water	\$ 204
2.	Repairs to pump	119
3.	Cost of replacing well	551.49
4.	Inconvenience	125.51
	Total	\$1,000.00

Following this meeting, our investigator contacted the complainant and advised her of the Ministry's most recent offer of \$1,000. The complainant advised that this offer was acceptable to her. On December 1, 1977, our investigator advised the Ministry of the complainant's response.

On February 27, 1978, the complainant received her cheque from the Ministry. Therefore, this complaint was resolved to the satisfaction of both the Ministry and the complainant.

(73)

SUMMARY OF COMPLAINT

This complainant was interviewed at a private hearing and submitted two complaints. Her first complaint concerned the construction of a highway by the Ministry of Transportation and Communications. She claimed that the construction of this highway past her property in the late 1960's had caused water seepage into her basement. Her second complaint concerned the parking of transport trucks on the shoulders of the highway in front of her commercial property. She claimed that the trucks' idling motors cause exhaust fumes to seep into her building with resulting discomfort to the occupants.

She first complained to the Ministry in May of 1970. The last letter on file dated September 13, 1971, was from the Minister. The complainant's first letter indicated interest in the extension of a proposed sidewalk in front of the store. There is no mention in this letter of water seepage into their basement. As a result of this letter, the Ministry agreed to extend the new sidewalk an additional 150 feet, thereby extending it past the complainant's store. The Ministry also decided to place sod on the area between the store and the sidewalk with a 6-inch diameter pipe under the entrance to provide drainage. The Ministry's engineer also indicated that although he felt the drainage would be satisfactory when the work was completed, he would have his assistant check the situation again. The occupants of this building expressed dissatisfaction with the further work done by the Ministry and their concern that the construction of the highway had caused the front door of the store to be lower than the sidewalk. This problem was resolved by the construction of steps from the sidewalk to the front door. When the complainant continued her representations to the Ministry that the sod had not assisted the drainage problem the Ministry replaced the sod with asphalt to prevent any further water seepage. The Ministry also visited the complainant in July 1970 to discuss the problems concerning the property and the drainage patterns and explained that the drainage pattern diverts runoff in two directions, parallel to the sidewalk, and sloping from the sidewalk toward the road. The Ministry's response to our notice of intention to investigate provided background information and also indicated that officials would check the location in the spring and take any corrective action needed. The complainant was notified by us of the Ministry's proposal and agreed to wait until this action occurred to decide whether or not to pursue the complaint any further.

The District Engineer personally investigated the situation in March, 1977 and submitted photographs to substantiate his conclusions. On the day the site inspection was carried out, the engineer noted considerable runoff but there was no problem at that time associated with the pooling

of water and seepage into the building at the front. However, he did note an area at the back of the building which he felt might cause problems. The outlet for the roof runoff was at the back door of the store and on the day that it was observed, the water appeared to be running under the back door. However, this situation had no bearing on the Ministry's previous work, but rather was directly associated with design on the lot at the back of this building and the poorly graded slope of the backyard.

Our investigation revealed that the complainant had not experienced water seepage into the basement of the store prior to the installation of the sewers in 1964. The original submission was that the store had never experienced water seepage before the highway was constructed in the late 1960's. However, there was some indication that drainage had been a problem following the installation of the sewers, which was well before the building of the highway. Since we could not find any conclusive evidence linking the actions of the Ministry of Transportation and Communications and the problem of water seepage, this complaint could not be supported.

It was determined that the second contention dealing with the parking problem was in fact outside of our jurisdiction. Regulations dealing with parking matters fall within the jurisdiction of the local municipal authority. However, our investigator learned that the complainant had approached the municipality about this problem in June, 1973. As a result of her representations, the town clerk and an official from the Ministry visited her to inspect the situation and they indicated that they could pass a bylaw and install "No Parking" signs in front of the store along the length of the highway to prevent any further problems with respect to exhaust fumes. The complainant was not satisfied with this action because her preference was to have selected parking which would allow customers' cars to be parked in front of the store, but not transport trucks. She felt that if a strict "No Parking" bylaw was enforced, that it would detract from her business. Although we did not have jurisdiction in this matter, enquiries were made and our investigator learned that the store did have parking spaces at the side and at the back. Although an avenue of redress was available to the complainant, it appeared that she had chosen not to pursue it. However, she was informed of the procedure available to her to have the parking banned on a highway.

The town clerk had indicated to our investigator that he could see no problem with accommodating a "No Parking" request, provided the proper procedures for instituting such a bylaw were followed.

MINISTRY OF

TREASURY ECONOMICS AND INTERGOVERNMENTAL AFFAIRS

(74)

SUMMARY OF COMPLAINT

This complainant came to us because of hardships he had experienced as a result of the formation of a Regional Municipality.

The complainant advised that he had been a member of the local Police Department since 1955; however, on January 1, 1971, the town was incorporated into a Regional Municipality and, therefore, the complainant was transferred to a Regional Police Department.

The complainant stated that had he continued his employment with the town, he could have worked until he was 65 years of age but because of the transfer to the Regional Municipality the compulsory retirement age was set at 60. Therefore, his number of years of service was determined from January 1, 1955 until his retirement on October 31, 1972, giving him a total of approximately 17.8 years of continuous service.

The complainant had corresponded with a number of Cabinet Ministers and the Chairman of the Ontario Police Commission. The complainant learned in a letter addressed to him from a former Treasurer of the Province that he was unable to receive further pension benefits because he did not have 20 years of continuous service, and did not enter the service of the local Municipality before January 1, 1948. Therefore, he did not qualify for retirement allowance.

In 1973, An Act to amend The Regional Municipality of Niagara Act was enacted. The opening few lines state:

- "1. Section 26 of The Regional Municipality of Niagara Act, being chapter 406 of the Revised Statutes of Ontario, 1970, is amended by adding thereto the following subsection:

(11a) Where, under the provisions of this section, any employee, in the opinion of the Minister, experiences any difficulty or hardship with regard to the transfer of any pension rights or sick leave credits, the Minister may by order do anything necessary to remedy or alleviate such difficulty or hardship."

The complainant was told that before the Minister could exercise his discretion, he would have to bring himself within the provisions of section 239 of The Municipal Act. This section states:

"This section does not apply to an employee who has entered or enters the service of any municipality or local board after the 1st day of January, 1948."

However, the complainant felt that because of section 26(1) of The Regional Municipality of Niagara Act, he had suffered a hardship and, therefore, brought himself within section 11(a). The complainant felt that the Minister should exercise his discretion to alleviate the hardship he had suffered. Section 26(1) of The Regional Municipality of Niagara Act states that section 239 of The Municipal Act applies mutatis mutandis to the Regional Corporation. The complainant's argument was that this section brings in the barriers from The Municipal Act, and therefore creates the hardship for him because of the formation of the Regional Municipality of Niagara in that the retirement age was reduced from age 65 to age 60.

During the course of the investigation, a member of our investigative staff met with representatives from the Ministry and the Regional Municipality of Niagara to discuss this matter further. At this meeting, it was agreed that steps would be taken to try to resolve this matter. As a result, although the complainant did not qualify for a retirement allowance under the local bylaw #166-112-71, the Niagara Regional Board of Commissioner of Police, nevertheless, agreed to pay the maximum amount of \$1,200 plus the prevailing interest rates during the five year period of 1972 to 1977. The Ontario Municipal Employees Retirement System has accepted the lump sum payment of \$7,640 from the Commission and has since established an annuity whereby the complainant is receiving a capital sum of \$799.44 per annum, or approximately \$66.62 per month, in order to supplement his pension from OMERS. This annuity came into effect on November 1, 1977. In addition to the above, our investigative staff learned that the complainant will be paid this amount for the rest of his life and should he be survived by his spouse, there will be a 50% spouse survivor's benefit.

As a result, the complainant's problem was resolved to his satisfaction.

THE WORKMEN'S COMPENSATION BOARD

(75)

SUMMARY OF COMPLAINT

The complainant suffered an injury to his lower back while lifting a piece of metal weighing approximately 150 pounds in October, 1964, during the course of his employment. At that time, he had been with the company for approximately 15 years. The accident was reported and accepted by the Board as compensable. Workmen's Compensation benefits were paid.

The original diagnosis was low back strain; however, he was able to continue working for a few days and then he laid off for six months.

The complainant returned to work in March, 1965, but found that he was frequently forced to lay off because of continuing low back pain. From the company's attendance records, it appears that the complainant was absent from work approximately one half of the time.

In May of 1967, his family doctor advised the complainant to seek lighter work which would not involve lifting. This suggestion was later confirmed by a specialist in August, 1967. With the assistance of his union, the complainant attempted to secure modified employment with his employer; however, he met with no success. Finally, the company laid off the complainant as it appeared that he was unable to carry on with his regular duties and there was no suitable alternative employment available. In February of 1968, the complainant was seen by the Workmen's Compensation Board for the purposes of assessing his permanent disability. Temporary benefits were discontinued and the complainant was awarded a 10% pension. He was dissatisfied with the amount of his pension, and appealed the award through the entire appeal process. The Appeal Board concluded in August of 1968 that the complainant had received his full entitlement under the terms of The Workmen's Compensation Act and the appeal was therefore denied.

However, in February, 1970, he was again assessed by the Pensions Department and his pension was increased to 15%. This increase was made retroactive to November, 1968.

By this time, the complainant had not worked for almost two years. He maintained that he was totally disabled and could not do even the lightest jobs. He again expressed his dissatisfaction concerning his pension to the Workmen's Compensation Board. The decision to limit his pension to 15% was then appealed by the complainant to the Appeal Board. The Appeal Board in June of 1971 denied the appeal concluding that the pension of 15% was commensurate with the remaining physical disability.

In June, 1975, the complainant wrote to us registering a complaint against the Workmen's Compensation Board. It was his contention that his Permanent Disability Award rated at 15% did not adequately compensate him for the residual disability he suffered as a result of his compensable accident. Before our investigation could be completed, we were informed by the complainant's family that he had died. Our file was then closed.

On September 9, 1976, we received a letter from an MPP written on behalf of the complainant's surviving family, requesting that we reopen our investigation as any benefits which might arise from our investigation and recommendation would be payable to the estate.

Accordingly, pursuant to section 19(1) of The Ombudsman Act, we notified the Chairman of the Workmen's Compensation Board by letter dated September 23, 1976, of our intention to investigate this complaint.

Upon receipt of a photocopy of the Board's file on this complainant, the history of his claim with the WCB was studied.

A careful review of the medical evidence contained in the Board's file indicated that the complainant had been suffering from a relatively minor low back disability, a slight degree of accident neurosis and obvious exaggeration of symptoms since the time of his accident. A psychological consultation was arranged by the Board and it was concluded by the psychiatrist that whatever psychological problems the complainant did have had a minimal relationship to the industrial accident of 1964.

It was, of course, not possible to arrange for any further assessment to see if the 15% award was or was not commensurate with the degree of earning impairment which could be attributed to the accident.

However, from our investigation, it appeared that there may have been some inconsistency on the part of the Board with respect to the pension increase from 10 to 15%. Our investigation revealed that the date in 1968 was chosen because it was three months prior to a report from the man's family doctor. However, this report appeared to be simply a progress report from the family doctor and did not seem to constitute any new medical evidence in the case.

Accordingly, letters were sent on June 21, 1977, pursuant to section 19(3) of The Ombudsman Act to the Chairman of the Workmen's Compensation Board and to the complainant's

employer. These letters suggested that a possible conclusion we might arrive at was that we could not determine why the pension increase was made effective November, 1969. In this letter, we outlined our possible recommendation that the permanent disability award should be increased from 10 to 15% retroactive to the same date that the original award was made effective.

The Chairman of the Board made representations with respect to the Board's position on this matter and indicated that the complainant had not raised the issue of a retroactive pension increase at his last Appeal Board hearing in 1971. We considered this matter and concluded that although this was true, a previous Appeal Board following a hearing in 1968 had concluded that the complainant had received his full entitlement to benefits under the terms of The Workmen's Compensation Act.

The Chairman also referred us to the Board's policy with respect to pension increases which, in part, reads as follows:

"A pensioner has the right to request review of an assessment if, since the time of original rating there has been an unforeseen aggravation of the pensionable condition. Should it be decided that such an aggravation has occurred, the assessment may be revised by the Permanent Disability Rating Officers from what date considered appropriate. However, it should not be earlier than three months prior to the date of the claimant's application for review."

The Chairman therefore suggested that the reason that the date in 1968 had been chosen was because it was three months prior to a report received by the Board from the man's family doctor. Furthermore, the Chairman suggested that the increase in pension had been granted because of a deterioration in the compensable condition.

The employer requested further clarification on this matter before preparing a statement. It was later determined that any additional costs arising out of the possible recommendation would not adversely affect the employer's assessments and the employer was notified of this.

We found that the family doctor's report did not provide any new medical evidence and did not give any indication of any deterioration of the complainant's condition.

After reviewing the facts and representations made by the Board, we concluded, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Workmen's Compensation Board was unreasonable in choosing November, 1968 as the effective date of the increased pension. The report from the family doctor dated February, 1969 did not appear to have added substantially to the information available in this case. Therefore, the decision to make the increased pension effective three months prior to this report seemed arbitrary and unreasonable.

We recommended pursuant to section 22(3) of The Ombudsman Act that the increase in the level of the Permanent Disability Award from 10 to 15% should have been made retroactively to March, 1965, the same date that the original award was made effective.

The Board, however, declined to implement this recommendation, for the reasons outlined in its representations made earlier in response to our letter pursuant to section 19(3) of The Ombudsman Act, 1975.

Pursuant to sections 22(4) and 22(5) of The Ombudsman Act, a copy of our report and recommendations was then sent to the Premier and to the complainant.

(76)

SUMMARY OF COMPLAINT

In the Fall of 1971, this complainant, then a transport truck driver, was adjusting the tarpaulin on his truck when he fell six or seven feet to the ground. His back unfortunately was injured when he landed. The injury was initially diagnosed by the complainant's family physician as a trauma to the low back, however, when conservative treatment failed to relieve him of his symptoms, the orthopaedic surgeon to whom he was referred conducted a myelogram which revealed a herniated lumbar disc. A discotomy and spinal fusion at the L5-S1 level were carried out four months following the accident.

Following his surgery, the complainant took physiotherapy treatments for his back, both at the Workmen's Compensation Board's Hospital and Rehabilitation Centre and at independent clinics under the supervision of his family physician and orthopaedic surgeon, until the Spring of 1976. He also took medication for his back pain during this time.

In the Fall of 1975, the complainant's family physician submitted a report to the Board which indicated that the

complainant still suffered from chronic backache which had not changed over the years since his surgery in spite of the physiotherapy and the analgesics. The family physician referred the complainant for more physiotherapy treatments which lasted until the Spring of 1976. In the late fall of 1975, however, the physician prescribed an infra-red lamp for the complainant's use at home and notified the Board of this prescription. Again, in January of 1976, the physician made the submission to the Board that the complainant would benefit from the use of an infra-red lamp at home, rather than continuous physiotherapy.

The Board, after checking with various suppliers, found that a lamp could be purchased for about \$23 and agreed to allow the complainant \$25 for the purchase of an infra-red lamp.

The complainant appealed the amount of the allowance, requesting that the Board pay \$249 for an up-right and adjustable infra-red lamp since that is what the doctor prescribed. The Workmen's Compensation Board consistently denied the complainant the additional allowance to purchase the more costly of the two lamps on the basis that the physician had not specified the type of lamp prescribed and that, according to the Board's policies and regulations, the Board could not pay for treatment items of this nature which are classified as commercial equipment.

The complainant then brought his complaint to us. As the complainant had exhausted all of the appeal rights open to him at the Workmen's Compensation Board, it was determined that his complaint was within the Ombudsman's jurisdiction to investigate. Accordingly, pursuant to section 19(1) of The Ombudsman Act, the Workmen's Compensation Board was informed by letter dated February 11, 1977 of the Ombudsman's intention to investigate the worker's complaint against the Board. The Board responded by forwarding to the Ombudsman a complete copy of the complainant's Board file.

Our investigator conducted a number of personal interviews with the complainant, his family physician, his physiotherapist and the senior medical aid consultant at the Workmen's Compensation Board who supplied us with a statement outlining the Board's policy regarding the supplying of infra-red lamps. The investigation revealed that, as a result of his injury, the complainant has not returned to work since his accident except for a few weeks in the Fall of 1973 as a radio dispatcher and for a 14-month period between the summers of 1974 and 1975 as a taxi driver. He was awarded Temporary Total Disability benefits for lost time from work until the fall of 1972 at which time, his benefits were reduced by 50% until the Spring of 1973 when

his permanent residual back disability was assessed at 15%. From that date on, in addition to his pension, the complainant was awarded Special Temporary Supplements ranging from 70-85% until the Spring of 1976 when he began an upgrading program at a local Community College and, pursuant to section 53 of The Workmen's Compensation Act, he began receiving the equivalent of Temporary Total Disability benefits until the following Spring when he completed his course.

Following his surgery, the complainant sought treatment and took physiotherapy in the form of heat treatments for his back until the Spring of 1976. As mentioned above, upon the recommendation of his attending physician and his physiotherapist, the complainant requested that the Workmen's Compensation Board supply him with an infra-red lamp with which he could administer treatments he had been receiving at the physiotherapy clinic, in his home. The Board allowed him \$25 to purchase a sun lamp. The complainant then attempted, unsuccessfully, to have the Board allow him entitlement to purchase a much better model which would retail for \$249, but was consistently denied through the entire Workmen's Compensation Board appeal process on the basis of a Board policy which reads as follows:

"The policy regarding the supplying of infra-red lamps to injured employees is included under the classification of equipment purchased over the counter in ordinary retail outlets which, in many cases, is standard household equipment. This includes such things as clinical thermometers, etc.

An infra-red lamp is available for purchase in many retail stores and is usually in a standard goose-neck lamp. It is simply one of many means of supplying surface heat and, as such, is not usually paid for under the medical aid provisions of the Act. Occasionally, under exceptional circumstances, this item may be allowed. There is no allowance, however, for the supply of the much more expensive commercial model of an infra-red lamp in the upright stand."

Our investigation revealed that the lamp for which the Board allowed the complainant entitlement to purchase and which is basically a sun lamp, is inadequate as it is not adjustable in terms of increasing and decreasing heat intensity. As well, this model does not have a solid base. Our investigation revealed, further, that the commercial model

has the solid base which prevents the lamp from tipping over, and a long goose-neck used to adjust the degree of heat applied. The commercial model also allows the patient to lie, rather than sit, while the heat is being applied, a feature which was thought to be an important consideration for someone with a disc lesion, as sitting tends to compress the vertebrae.

Our investigator's interview with the complainant's family physician revealed that the complainant has a chronic back problem, evidenced by the fact that he took physiotherapy following his back surgery, until the Spring of 1976 and that the treatments did not render him asymptomatic, although they relieved his pain for the short term. The physician added that the complainant suffers exacerbations of back pain as frequently as two or three times per year which vary in intensity and duration. The physician pointed out that the complainant had suffered one of these exacerbations recently and although he should have attended physiotherapy, the complainant felt he could not afford to miss time from school in order to attend the sessions at the clinic. Instead, the complainant took large doses of 292's and Valium.

We were of the view that it appeared that the Workmen's Compensation Board had not acted reasonably and that the Appeal Board's decision of October 29, 1976 should be altered or varied. Accordingly, pursuant to section 19(3) of The Ombudsman Act, the Chairman of the Workmen's Compensation Board and the complainant's former employer were informed by letters dated August 11, 1977 that, based on the Ombudsman's investigation thus far, it appeared that there were sufficient grounds for the making of a report or recommendation which could adversely affect them. The Board and the accident employer were invited to make representations respecting the possible adverse report or recommendation and it was suggested that, when making such representations, they should relate to the following possible conclusions and possible recommendations:

"A. POSSIBLE CONCLUSIONS

1. At the present time, based on our investigation so far, it would appear open to me to conclude that the complainant has a chronic back disability for which, to date, the Workmen's Compensation Board has accepted full responsibility in terms of compensating him for his loss of earnings, and paying the medical expenses accrued as a result of the

treatment he sought for his compensable back injury.

2. It is open to me to conclude that the \$25 variety of heat lamp is not effective for the nature of the complainant's back disability, and the commercial model better meets his needs.

3. It is open to me to conclude that the basis of the Workmen's Compensation Board's decision to deny [the complainant] entitlement for the more expensive model was an arbitrary one, and that the decision ought to be varied to take into consideration [the complainant's] special circumstances.

4. It is open to me to conclude that an additional \$225 at this time is a relatively minor expenditure in comparison with that which may well be spent in the future for physiotherapy treatment. For example, compare this amount with the medical aid paid on behalf of [the complainant] during the period from September of 1975 to March of 1976 when [the complainant] attended [a private physiotherapy clinic] 89 times at a cost of \$5.05 per visit plus car fare, an expenditure on the part of the Board in excess of \$800.

5. At the present time, based on our investigation so far, it would appear open to me to conclude that [the complainant] has a chronic back disability for which he will require physiotherapy treatment for the rest of his life.

B. POSSIBLE RECOMMENDATION

The Workmen's Compensation Board's decision should be reconsidered and varied to allow [the complainant] entitlement under the medical aid provisions of The Workmen's Compensation Act to purchase an infra-red lamp which would better meet his needs than does the \$25 variety which the Board previously allowed. The type of infra-red lamp should include a solid base,

and a goose-neck to allow the adjustment of heat intensity and to allow the patient to administer his heat treatments in a supine position."

The Chairman, in his response to this letter, informed the Ombudsman by letter dated September 15, 1977, that the members of the Appeal Board panel who had originally heard the complainant's appeal had carefully studied the Ombudsman's letter of August 11, 1977, and had concluded that they were in agreement that the issue was whether or not the complainant was entitled to the more expensive model of heat lamp. His response indicated that the opinion of the Appeal Board was that the expensive type of lamp was unnecessary for the complainant's needs and that the \$25 heat lamp was more than adequate for the purpose indicated. The Chairman accordingly advised us that the Appeal Board had concluded that it would not exercise its power and revoke the original Appeal Board decision.

We reviewed this case in light of the Board's response. A report, pursuant to section 22(3) of The Ombudsman Act was forwarded containing the above-noted recommendation to the Chairman of the Workmen's Compensation Board and the Minister of Labour, who were invited to make comments concerning the recommendation. The Chairman responded by letter dated January 24, 1978 that, having considered the report and recommendation of the Ombudsman, the Appeal Board panel and the Appeal Board did not propose to take any steps to give effect to our recommendation as the Board's position on the matter remained as set forth in its response to our letter pursuant to section 19(3) of the Act. Accordingly, pursuant to section 22(4) and 22(5) of The Ombudsman Act, a copy of our report and recommendation was then forwarded to the Premier.

(77) SUMMARY OF COMPLAINT

This complaint against the Workmen's Compensation Board was brought to our attention by the complainant's MPP. In his initial letter, the MPP informed our Office that the worker was dissatisfied with the benefits that he had received from the Workmen's Compensation Board as a result of two compensable injuries sustained in 1970 and 1971.

On October 28, 1976, the Chairman of the Board was notified in accordance with the requirements of section 19(1) of The Ombudsman Act of our intention to investigate this complaint. A copy of the Workmen's Compensation Board

file was requested and received. As part of our investigation, the worker was interviewed a number of times for additional information pertaining to his case. In addition, our investigation included interviews with some of the consulting doctors involved in this case. The Board's file was reviewed in its entirety with special attention given to the medical reports.

Our investigation revealed that the complainant suffered an injury while employed as a labourer with a municipality in northern Ontario. The injury occurred while the complainant was assisting his colleagues to move a large steel frame. Following this injury, the complainant was treated for low back strain. According to our reports, the complainant did not report this injury to his employer nor was a claim submitted to the Workmen's Compensation Board. This injury did not involve any time off work and the employee continued on with his normal duties.

Approximately three months following this injury, the complainant was still experiencing low back pain. Following a medical examination, it was established that he suffered from a congenital spinal condition. Although he was troubled with continual aggravations of this condition, he did not require any layoffs and remained with his employer performing his normal duties.

Approximately three years following the diagnosis of this spinal condition, the complainant suffered a second injury to his lower back while lifting a bundle of steel bars. He was hospitalized and a claim was submitted to the Workmen's Compensation Board. As a result of this injury, the complainant received Temporary Total Disability benefits on an aggravation basis only for a four week period.

In 1971, 15 months following the second injury, the complainant suffered a third injury to his lower back and received Temporary Total Disability benefits for a two-week period. Due to this third injury, he was forced to lay off work on a number of different occasions. During each of these layoff periods, the Workmen's Compensation Board awarded him disability benefits on an aggravation basis. It was the opinion of the Board's medical consultants that following each of the complainant's layoffs, he had fully recovered and was fit to return to work.

The complainant's contention was that the Board should have accepted responsibility to compensate him for his congenital spinal condition. He believes that the progressive development of his spinal condition was triggered off and compounded by his compensable injuries. The complainant states that prior to his injuries he was free from any back

discomfort. Our investigation revealed that a number of outside medical consultants supported his contention. In addition, it was noted that in a number of similar cases the Board awarded permanent disability pensions. During the course of our investigation, we formed a possible conclusion that the worker should be considered for a permanent partial disability award for the residual disability that he suffered as a result of his compensable accidents.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, the complainant's employer and the Chairman of the Board were informed by letter, dated July 18, 1977, that based on the investigation to date, there existed sufficient grounds for the making of a report or recommendation that could adversely affect the Board. The parties involved were invited to make representations respecting the possible adverse report or recommendation. It was suggested that, if they chose to make such representations they should address themselves to our possible conclusions and possible recommendations as follows:

"POSSIBLE CONCLUSIONS:

- (1) It would appear open to me to conclude that the Appeal Board would be fair and just in denying the worker continued entitlement for the progressive development of his congenital spinal condition.
- (2) It would appear open to me to conclude that, in view of the medical evidence, the worker should be considered for a permanent partial disability award for the residual disability that he suffers as a result of his two compensable accidents.

POSSIBLE RECOMMENDATIONS:

The Appeal Board should vary its decision and order that the complainant receive a permanent partial disability award for the residual disability of his compensable accident. This award should be retroactive to the date of the worker's first injury excluding the periods in which the worker was in receipt of total temporary benefits."

The complainant's employer wrote a letter to our Office, dated August 8, 1977, and informed us that they did not wish to make further representations with respect to our possible

conclusions and possible recommendations. On November 9, 1977, we received a reply to the section 19(3) letter from the Workmen's Compensation Board which stated that the Board saw no reason to deviate from its original position regarding this worker's claim. Before stating its position, the Board requested that the worker's case be reviewed by their medical consultants. The consultants reported to the Board that the worker's back pain was produced by stress rather than by actual physical accident. In addition, the consultants stated that the worker had experienced minor stresses producing temporary aggravations of the underlying disease, and in each case, the aggravation had subsided. In their response, the Board informed us that there was no medical evidence to support the worker's contention that his back disability had been significantly altered by his compensable injuries. The Board added that any disability which might be present and measurable at this particular time would be a result of the underlying disease and not the work related injuries.

Having received the representations made by the employer and the Workmen's Compensation Board, we concluded that a recommendation pursuant to section 22 of The Ombudsman Act, 1975 was warranted.

This decision was based primarily on the medical facts of this case. It was our opinion that sufficient medical evidence existed to support the probability of a relationship between the complainant's injuries and his on-going disability. It was also our opinion that the Board did not present sufficient evidence to the contrary.

On January 18, 1978, a final report was forwarded to the Chairman of the Board which contained our conclusion and recommendation. It was our conclusion that the Appeal Board was unreasonable to deny the complainant further benefits. Accordingly, we recommended, pursuant to section 22(3)(c) of The Ombudsman Act, that the complainant should receive a permanent partial disability pension. A copy of this report was forwarded to the Minister of Labour.

On January 30, 1978, the Workmen's Compensation Board forwarded a response to this report. The response stated that the Board would not give effect to our final recommendation. Accordingly, on March 3, 1978, a copy of our report and recommendation was forwarded to the Premier, pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975.

(78)

SUMMARY OF COMPLAINT

While working as a rack washer for a bakery, this 63-year old complainant fell down some steps, landing on the basement floor. He sustained a soft tissue injury to his low back.

The accident was reported to the Workmen's Compensation Board and temporary benefits were paid for approximately 18 months. The complainant was then assessed for a permanent disability award which was rated at 15%. The complainant appealed the amount of his permanent disability award and also requested that a special supplement of 35% be awarded pursuant to section 42(5) of The Workmen's Compensation Act for the period from the time the permanent disability award was granted until his 65th birthday, some seven months later.

The Appeal Board ruled that his disability was not significantly greater than usual for the nature and degree of his injury and, therefore, concluded that he was not entitled to benefits under section 42(5). The Appeal Board also concluded that the 15% adequately compensated him for the residual disability resulting from his compensable accident, in the absence of medical information to the contrary.

The complainant's case was then brought to the attention of our Office on August 24, 1976 by the Injured Workers' Consultants. As it was clear that the complaint was within our jurisdiction, the Chairman of the Board was notified in accordance with section 19(1) of The Ombudsman Act.

After contacting the complainant and receiving further information relative to this complaint, the entire Workmen's Compensation Board file was reviewed. A staff member of the complainant's former employer and his rehabilitation counselor with the Board were also interviewed.

During the course of our investigation, we came to the possible conclusion that the Appeal Board wrongly concluded that the complainant was not entitled to the benefits of a section 42(5) Special Supplement. It was our opinion that the complainant's age at the time of the accident (63), his extended history of work-related and compensable back injuries, his illiteracy and his inability to speak English, all in addition to the most recent injury for which he was receiving a 15% permanent partial disability benefit, combined to render him non-employable within the meaning of section 42(5). This opinion was supported by the reports of an orthopaedic specialist who confirmed the relatively minor degree of organic back problems. He stated:

"The man was not fit to return to work because of his training, level of education and back pain which rendered him virtually non-rehabilitatable."

This opinion was also confirmed by a doctor employed by the Board at the Rehabilitation Centre who concluded:

"It may well be that this man has come to the end of his working life."

This view was also confirmed by the Rehabilitation Counselor who found that:

"No work existed with the pre-accident employer and noted that it was his hope that the Claims Department would consider reinstating full compensation benefits until the worker achieved financial sufficiency."

It was also open to us to conclude that the Appeal Board had reached an erroneous conclusion concerning the complainant's former job with the bakery. This was confirmed by the notes of the Rehabilitation Officer who reported that no work was available for the complainant. We therefore concluded that while the complainant's pre-accident job was light in nature and may well have been within his capabilities, it could not be said that he failed to cooperate in returning to work for which he was deemed to be suitable, given that his former employment was no longer available. Accordingly, we also made the possible recommendation that the Appeal Board should reverse its decision and grant a 35% Special Supplement until the complainant was eligible for Canada Pension Plan benefits.

We gave the Board the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act. Representations were received by letter dated June 24, 1977. In its response, the Appeal Board noted that no entitlement existed for a psychological neurosis with hysterical symptomology and therefore this factor did not enter into the argument for a Special Supplement. The Board also noted that the complainant was barred for consideration for a Special Supplement under this section because he insisted that he was not 100% disabled.

We also received verbal representations pursuant to section 19(3) by the employer's legal representative.

These representations were carefully considered and our investigator carried out further investigations. In the statement of policy furnished by the Claims Service Division relative to supplementary awards under section 42(5) of The Workmen's Compensation Act, a section was devoted to a supplement for those approaching retirement age. The following section of the policy statements appears to apply directly to someone in circumstances similar to those of the complainant who was only seven months from retirement age:

"In those cases where the workman is approaching retirement age, and his employment prospects are substantially limited because of his age and disability ... then a temporary supplement award would be favourably considered ... consideration is had for the employee's age, his disability and other socio-economic factors ... In actual practice, we are generally looking at the employee in his early 60's."

After giving due consideration to all the representations and the comments, we came to the conclusion pursuant to section 22(1)(b) of The Ombudsman Act that the Board's refusal to grant a Special Supplement Award to the complainant under section 42(5) of The Ombudsman Act was "unreasonable." Accordingly, we recommended pursuant to section 22(3)(c) of The Ombudsman Act that the decision of the Workmen's Compensation Board be revoked and that benefits be made payable to the complainant in order to compensate him more appropriately for the seven months prior to his eligibility for Canada Pension Plan benefits. This recommendation was forwarded to the Workmen's Compensation Board and a copy sent to the Minister of Labour, on March 3, 1978.

The Workmen's Compensation Board notified us that they were not in a position to implement our recommendation.

We then forwarded a copy of our report and the Board's response to the Premier pursuant to section 22(4) and 22(5) of The Ombudsman Act on March 31, 1978.

(79) SUMMARY OF COMPLAINT

This complainant brought her complaint against the Workmen's Compensation Board to our Office in March, 1976. In her initial letter, the worker informed us that she had

received an adverse decision from an Appeal Board Panel which, in effect, denied her continuing benefits for low back and cervical disorders.

On May 25, 1976, the Chairman of the Board was informed pursuant to section 19(1) of The Ombudsman Act, of our intention to investigate this complaint. The investigation of this complaint included interviews with the worker and a number of senior representatives of the Workmen's Compensation Board. The complainant's entire compensation file was reviewed.

Our investigation revealed that the complainant suffered a compensable injury while employed with a large food chain. She tripped over a skid and fell backwards, injuring her wrist, buttocks and low back. The day following the injury, the employer closed its operation and the complainant's employment was terminated. Shortly after her injury, she began to receive medical treatment for the injury and has not returned to work since the accident date. A claim was submitted to the Workmen's Compensation Board and the complainant was awarded medical costs. It was the Board's opinion that the complainant was not disabled following her injury and, therefore, not entitled to compensation benefits. The complainant appealed this decision but was denied benefits at all levels of appeal.

The medical evidence examined indicated that approximately one month after her injury, the complainant began receiving continuous treatment by a local chiropractor. Reports obtained from the chiropractor indicated that she was suffering from injuries attributable to an accident, as there was no suggestion of prior spine or back problems. Before the Appeal Board hearing, the complainant was examined by an Orthopaedic Surgeon for a complete medical evaluation. This doctor's report stated that the complainant's accident aggravated a pre-existing symptomless disc degeneration in the neck and low back and that she would not have been able to return to work following the injury. For no apparent reason, this physician's report was not presented at the complainant's Appeal Board hearing. In December, 1976, we requested that the Appeal Board reconsider its final decision in light of this new evidence. Although the Board acceded to our request, the decision to award the worker further entitlement was again denied.

In June of 1977, we concluded that it appeared that the Workmen's Compensation Board's decision to deny this worker further entitlement for a compensable injury was possibly unreasonable.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, the complainant's employer and the Chairman

of the Board were informed that, based on the investigation to date, there existed sufficient grounds for the making of a report or recommendation that could adversely affect them. The two parties were invited to make representations respecting the possible adverse report or recommendation and it was suggested that, in making such representations, they should address themselves to the following possible conclusion and recommendation:

"POSSIBLE CONCLUSION

It would appear open to me to conclude that the worker aggravated a pre-existing symptomless condition at the time of her injury and was disabled to the extent of not being able to perform her normal duties."

The Ombudsman's letter, dated July 20, 1977, continued:

"POSSIBLE RECOMMENDATION

The Appeal Board should alter its original decision and award the worker Temporary Total benefits for the period in which she was unable to work."

The employer in this case did not wish to make any further statements regarding this matter.

On August 10, 1977, the Board forwarded a letter of response to our possible conclusion and possible recommendation. The Board stated that it could not agree with the results of our investigation to date. The Board's response stated that insufficient medical evidence existed to conclude that the complainant was disabled as a result of her injury.

The facts of this case, including the Board's letter of August 10, 1977 were once again reviewed. Having carefully considered the representations made, we concluded that a formal recommendation, pursuant to section 22(3) of The Ombudsman Act would be forwarded to the Board. This report recommended that the Appeal Board Panel reconsider its decision and vary its order so that the complainant would be entitled to receive temporary total disability benefits from the date of her injury until such time as it was medically established that she was fit to return to employment within her capabilities. This report was forwarded to the Board on January 6, 1978. A copy of the report was also forwarded to the Minister of Labour.

On January 27, 1978, we received a letter from the Chairman of the Board which stated that the Board did not intend to implement the recommendations contained in our report. On March 5, 1978, a copy of our report was forwarded to the Premier.

(80)

SUMMARY OF COMPLAINT

Some time in 1965, when the complainant was 58 years old, his duties with his employer became that of a lathe operator. In this capacity, he was called upon to grind down rollers made of natural and synthetic rubber and polyurethane. About 10 months after commencing these duties, the complainant developed respiratory problems. Job transfers were arranged in an effort to reduce his problems at work, but a report received by our Office from the complainant's family doctor indicates that the complainant continued to have problems after May, 1967.

The complainant wrote to the Board on May 27, 1968, stating:

"I have been advised by two doctors to stop work, but due to my circumstances I [have] had to persevere. However, I am now at the stage where continuing is impossible. I would be grateful for your consideration of this case."

The complainant resigned his job on June 5, 1968 and sent an accident report to the Board. The doctor's first report to the Board was dated July 5, 1968, and the diagnosis portion of the report contained the following words:

"Recurrent allergic bronchitis aggravated by inhalents at work."

The Workmen's Compensation Board decided to deal with the complainant's claim by providing:

1. temporary total benefits for the acute episodes only in 1967 and 1968 up to the date of retirement;
2. all medical costs relating to the complainant's respiratory disability;
3. no consideration for any permanent or continuing disability.

The complainant was denied permanent disability benefits because his allergic symptoms abated and disappeared once he was removed from the workplace.

The Board paid the complainant temporary total benefits up until September 5, 1968 when he was examined by a Board doctor. The Board's refusal to award the complainant continuing benefits under The Workmen's Compensation Act was confirmed by the Appeal Board in their decision dated September 9, 1970.

At the time of this decision, the complainant was 63 years old and would be 65 in 16 months; his employment background consisted primarily of 27 years as a coal miner in Nova Scotia and 13 years with the accident employer. Apart from some handyman's skills, he had no particular trade qualifications. The complainant's experience with the Board's Rehabilitation Branch, which commenced in May, 1970, and lasted until November, 1970, did not produce a job which both he and the Rehabilitation Branch could agree was suitable for him. His own efforts to obtain suitable employment also proved unsuccessful.

The complainant complained to us and we notified the Board of our intention to investigate the case.

After initial investigation, it appeared open to conclude that the Appeal Board wrongly decided that the complainant did not have a "permanent disability" within the meaning of section 42 of The Workmen's Compensation Act. We therefore advised the Board and the accident employer through letters pursuant to section 19(3) of The Ombudsman Act that we were tentatively of the opinion that the words "permanent disability" covered the complainant's case, notwithstanding the fact that the complainant had no "physical disability" once removed from his accident employment. We advised the Board that it appeared open to us to conclude that the Appeal Board did not consider the possibility that the complainant's "permanent disability" was his inability to pursue his accident employment and we further advised that it appeared open to conclude that the Appeal Board placed undue emphasis on the possibility of the complainant's obtaining alternative employment. We therefore advised the Board of our tentative opinion that it would have been "more equitable" within the meaning of section 42(5) of The Workmen's Compensation Act, as it then read, to award compensation:

"Having regard to the difference between the average weekly earnings of the employee before the accident and the average amount that he is earning or is able to earn in some suitable occupation after the accident and the compensation may be a weekly

or other periodic payment of 75% of such difference, and regard shall be had to the employee's fitness to continue in the employment in which he was injured or to adapt himself to some other suitable occupation."

Written responses were received from both the Workmen's Compensation Board and the accident employer and they were carefully and fully considered. They did not contain any information or contention which caused us to alter our tentative opinions. We found unconvincing the Board's contention that the complainant's respiratory sensitivity pre-existed his accident employment in view of the absence of evidence pointing to such sensitivity prior to exposure to polyurethane products. Moreover, we noted that the sensitivity did not manifest itself immediately upon his being exposed to the products, but developed some ten months after he encountered the offending subject. This history, in our opinion, was inconsistent with the hypothesis that the complainant's sensitivity pre-existed his accident employment. We therefore concluded that the Board was wrong in allowing the complainant's claim on an aggravation basis only.

Accordingly, we made a recommendation under section 22(3) of The Ombudsman Act, 1975, that the decision of the Appeal Board should be varied to grant the complainant retroactive entitlement beyond September 5, 1978 under section 42(5) of The Workmen's Compensation Act as it then read. We further recommended that these benefits should cover the period up to the date of the complainant's 65th birthday in January, 1972.

By letter dated January 24, 1978, the Chairman of the Board advised us that the Appeal Board Panel and the Board did not propose to take any steps to give effect to our recommendation.

In accordance with section 22(4) and 22(5) of The Ombudsman Act, we sent a copy of the report and recommendation in this case to the Premier.

(81)

SUMMARY OF COMPLAINT

This complainant disputed the amount of a partial permanent disability pension which had been awarded to him by the Board for a chest condition. He contended that this did not adequately reflect the degree of his disability.

The complainant had been employed for seventeen years as Chief Engineer in a large hotel, working mostly in the boiler room. The hotel's heating system, installed in 1957, burned bunker oil, causing sulphur fumes and sulphur dust deposits in the boiler room. This heating system was converted from bunker oil to natural gas between the winter of 1970 and the fall of 1971. The complainant also described a fan exhaust which, since its installation in 1969, drew cigarette smoke from the hotel's meeting rooms into the boiler room.

The worker enjoyed good health until the summer of 1972 when he developed a cough. He stopped working on medical advice in 1975 because he developed bronchial asthma, emphysema and chronic bronchitis which were related by his physician, at least in part, to his working conditions. In 1975, he developed glaucoma, possibly caused by prednisone which he was taking for his asthma.

A claim with the Workmen's Compensation Board was instituted on February 15, 1974. The complainant was granted a 25% life pension, effective October 25, 1974. On appeal this was increased to 50%, effective February 25, 1975. Entitlement for the complication of glaucoma was also included under this claim.

The complainant made a further appeal and on January 21, 1976, the Board ruled that the disability award was commensurate with the degree of disability directly attributable to the employment exposure. This was the decision which the complainant disputed when, having exhausted the Board's appeal process, he made his complaint to us.

The Board was advised, pursuant to section 19(1) of The Ombudsman Act, 1975, on June 15, 1976, of our intention to investigate this case. The Board's file was reviewed with particular reference to the medical reports. There appeared to be a disparity in the opinions of the specialist in internal medicine who had attended the worker since 1973, and the Board's consultant in chest diseases.

Therefore, we sought a further medical opinion and the complainant was examined by a specialist in respiratory disease, who arranged x-ray, pulmonary function and blood tests. In addition, our consultant had the benefit of the medical reports on file with the Board.

"[The complainant], aged 64 years, has moderate to severe airways disease, mainly due to chronic bronchitis and emphysema, but with a significant asthmatic or reversible component. My findings are in agreement with those of [the complainant's

attending physician] in that [the complainant] is unable to pursue active employment owing to his pulmonary disease. During his seventeen years of employment at [the hotel] he came into contact with significant amounts of exhaust (sic) cigarette smoke, sulphur dioxide as well as oxides of nitrogen, hydrocarbons, vanadium, nickel, carbon monoxide and dioxide. It is known that smoke and sulphur dioxide cause chronic bronchitis. It may be that vanadium and nitrogen oxides do as well, at least there is experimental evidence for saying so. Nickel causes a pulmonary hypersensitivity syndrome and this and the other products were not thought to be significant in this case.

[The complainant], a non-smoker since 1946, has chronic bronchitis and emphysema which is probably attributable, at least in part, to his occupation at [the hotel]. His asthma probably arose "de novo" but of course it is impossible to state what part the inhaled noxious (sic) agents played. It is known for instance that nickel, during acute exposure, can cause asthmatic symptoms. The effect of prolonged low dose contact is unknown, as in the case of this man. Thus, in part, I agree with [the Board's Consultant in Chest Diseases] in finding that compensation should be paid to [the complainant]. However, I think compensation should be set higher than 50%. I base this on the fact that he has definite irreversible airways disease, which must be attributed to his work environment, since he is a non-smoker. There is an asthmatic element which we cannot state with certainty was or was not caused by or exacerbated by his employment. I think then that a compensation figure of 75 to 80% would be more suitable in this case."

When our consultant's report was made available to the Appeal Board for comment, on February 10, 1977, the Board could not agree with the conclusion reached.

On May 2, 1977, we forwarded letters pursuant to section 19(3) of The Ombudsman Act, 1975 to the Chairman of the Board, the Board's Consultant in Chest Diseases, and the complainant's former employer. They were advised, that although we had not reached a final conclusion in this case, it was possibly open to us to conclude that the Board's decision was unreasonable and unjust and to recommend that the Board's decision be varied to allow the complainant's pension to be substantially increased. All parties were invited to

make representations with respect to these matters. The Board responded by letter on May 16, 1977, stating that the Appeal Board reaffirmed its previous decision. The Board's consultant in Chest Diseases and the complainant's former employer did not choose to make representations in response to our letter.

It was recorded in the Board's file that, in addition to bronchial asthma, the worker was said to suffer from high blood pressure, continuing back problems (from a previous compensable injury), chronic hepatitis, and rheumatoid arthritis with a ruptured left Baker's cyst. The Appeal Board conceded that the worker was no doubt 100% disabled from any gainful employment but determined that the percentage of the disability directly attributable to his employment exposure was no greater than 50%. The Board considered that this was a generous award under the circumstances. The Board pointed out that neither chronic bronchitis nor emphysema were recognized as industrial diseases and normally this claim would not have been allowed. However, entitlement was granted on the basis that the intrinsic asthma may have been aggravated by the conditions of the worker's employment, extending the benefit of the doubt.

In our final report dated October 6, 1977, we stated:

"While it is recognized that bronchitis and emphysema are not diagnoses included in Schedule 3 of The Workmen's Compensation Act as industrial diseases, I would suggest that they are diseases characteristic of the employment exposure described throughout the material on the complainant's file i.e., gases, dust, and smoke, which were part of his work environment over a number of years. The recognition of bronchitis and emphysema as industrial diseases would seem to be permitted by the definition of "Industrial disease" in The Workmen's Compensation Act:

"Industrial diseases means any of the diseases mentioned in Schedule 3 and any other disease peculiar to or characteristic of a particular industrial process, trade or occupation."

Under these circumstances, notwithstanding that the claim was initially allowed on the basis of aggravation of asthma, I feel that the medical evidence supports that the other related chest disorders from which [the complainant] is reported to suffer, namely bronchitis and emphysema, in the absence of other causes, are due to his working conditions.

"In considering the merits of [the claimant's] claim, the Board has noted other medical conditions from which he suffers, as contributing to his total disablement. In my opinion, the weight of medical evidence shows that these conditions are not relevant to [the complainant's] inability to pursue active employment. It has been stated by both the complainant's attending physician and our consultant that he cannot continue to work because of his chest condition alone. That is, while he could probably have continued to engage in gainful employment with high blood pressure, back problems and chronic hepatitis, it is his chest condition which rendered him incapable of working. It has been emphasized in our previous correspondence with the Board that "Rheumatoid arthritis with a ruptured left Baker's cyst" is an additional medical condition which has been attributed to the complainant in error, and references to this must be expunged from his records.

In my letter of May 2, 1977, reference was made to the statement of [the Board's consultant in chest diseases] when he considered the medical aspects of the complainant's claim in February, 1975, that he was not able to make up his mind in an impartial fashion. It was not our intention in bringing this to the Board's attention, of placing this consultant's professional integrity in question. Rather, we would question in the light of such a straightforward statement, why the Board did not seek another medical opinion to give the complainant the benefit of an impartial medical review, particularly since the opinion already on file from [the complainant's attending physician] was in opposition to that of [the Board's consultant in Chest Diseases]. Although the Board's consultant in Chest Diseases was not a member of the Appeal Board, his "medical report" was before the Board and provided the basis for the Board's decision.

Having regard to all the circumstances I have described above, and based on the report made by [our consultant], in my opinion the position taken by the Board in [the complainant's] case was unreasonable and unjust."

Accordingly, we recommended, pursuant to section 22(3) of The Ombudsman Act, 1975, that the amount of the claimant's pension should be substantially increased and, further, that since it appeared from the medical evidence that his chest condition had remained constant, any increase in his pension

should be paid retroactively, from October 25, 1974. A copy of this report was also sent to the Minister of Labour.

By letter dated November 17, 1977, the Chairman of the Board informed us that the Board's consultant in Chest Diseases had been asked to review this matter once more and that the Appeal Board Panel accepted their consultant's opinions and conclusions. The Board saw no reason to change its previous decision in this matter.

The Board's consultant in Chest Diseases concluded:

"The inducement of a chronic occupational bronchial condition with obstruction and/or asthma is a dynamic process. The manifestations of which would always be clearly evidence (sic) during the exposure. Latency or delay such as is present in this case (and as is seen in occupationally induced lung cancers) is not a part of the reaction to irritating aerosols, especially in a subject who would almost certainly have a hyper-reactive bronchial tree due to his inheritance.

One can certainly assume that after the completion of the change over in October, 1971, there would be no significant exposure to the combustion of fuel oil.

I note that the Ombudsman has suggested "that the amount of [the complainant's] pension be substantially increased." I disagree. The chronology of events and the lack of adverse reaction to the working environment while in exposure, rules out the conclusion that the work environment in my opinion was a significant cause in this claim and I repeat what I have said previously that this man has been treated generously by the Board and I can find no evidence to lead me to change my opinion, and can see no justification for any such increase."

On January 6, 1978, a copy of our report was sent to the Premier pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975.

(82)

SUMMARY OF COMPLAINT

This complainant injured his right knee in April, 1967, while working as a miner. It was originally diagnosed

that he had a ruptured right knee meniscus. Surgery was performed in June, 1967, to correct the situation. Following the surgery the complainant returned to work in October, 1967, and continued underground until December 1967.

The complainant left his job on December 11, 1967 because of ongoing pain. He attempted to see the doctor on December 13 but was unsuccessful and did not, in fact, see the doctor until January 15, 1968. At that time, the complainant was told there was nothing wrong with his knee. Despite the doctor's opinion, the complainant stated that his pain persisted.

The complainant continued to seek appropriate medical treatment for his ongoing pain after his lay-off in December, 1967. However, no other local doctor would treat him as he was still a patient of the original treating orthopaedic specialist. The complainant became frustrated because of the ongoing pain and the lack of medical treatment. In March, 1968, he was hospitalized for an acute reactive depression. This hospitalization lasted until the end of May, 1968.

After years of ongoing pain, the complainant was again treated by another orthopaedic specialist in Toronto. At that time, it was noted that the original surgery had been incomplete and further surgery was necessary. This surgery was carried out.

The Board had awarded the complainant benefits from the date of the accident until his initial return to work. Following his lay-off in December, 1967, the complainant received 50% benefits until he saw the doctor on January 15, 1968. He was then awarded 25% benefits from January 16, 1968 to January 9, 1969, when he eventually returned to work.

It was the complainant's contention that he should have received 100% benefits from December 12, 1967 to May, 1968 and 50% benefits from May 23, 1968 to January 9, 1969. This complaint was appealed to the Appeal Board which denied further entitlement.

The complainant registered his complaint with our Office by letter dated March 10, 1976. It was clear from the information presented by the complainant that the issue had been dealt with by the Appeal Board and was, therefore, in the jurisdiction of the Ombudsman.

On April 12, 1976, the Chairman of the Board was notified of our intention to investigate this complaint. After receiving a photocopy of the file we reviewed it in its

entirety. The complainant was contacted for further information. We also contacted the surgeon who performed the operation in 1975.

During the course of our investigation we gave careful attention to the medical reports and opinions available.

We learned after contacting the doctor who performed surgery in 1975 that in his opinion the complainant would have been disabled from working underground as a miner because of the symptoms that existed due to the incomplete original surgery.

We also noted the report of a psychiatrist presented to the Appeal Board by the complainant's M.P.P. at the time of the hearing which, in part, stated:

"It would be reasonable to consider that the injury, surgery and subsequent symptomology may well have been factors in his depression ... the subsequent litany of complaints which terminated in further surgical procedure in 1975 would seem to me to vindicate the patient and support his continued effort to be compensated."

We concluded that the complainant suffered from physical and psychiatric disabilities during this period which were related to his accident. We also concluded that it was reasonable to assume that the frustrations concerning his medical treatment and ongoing pain were major factors contributing to the complainant's period of acute depression and, therefore, that the Board should have compensated him during this period. Concerning the increase of benefits from 25% to 50% for the period after the complainant was released from the sanitarium until his return to work, it would appear that it was the usual practice of the Board to compensate a worker at the rate of 50% if he was fit for light work, until he was able to find suitable employment, return to normal duties, or was assessed for a pension. This interpretation of practice or policy was confirmed with the Secretary of the Board during a telephone conversation with the Investigator.

We, therefore, recommended that the complainant receive 100% benefits from December 12, 1967 through May 22, 1968 and 50% for the period from May 23, 1968 to June 29, 1969.

The Board noted in its response there being no measurable physical disability during the period in question, it would seem reasonable to conclude that under the then existing psychological policy the complainant was dealt with fairly.

In its response, the Board stated that while many [workers] did get 50% there were a great number who only received 25% depending on the circumstances. However, it was important to note that the 25% paid to the complainant for the period was for the psychiatric portion of disability attributable to his accident and not the physical. The Board stated that it could not accept our recommendation.

The Board was again contacted by us and provided with the opportunity to make further representation pursuant to section 19(3) of The Ombudsman Act, 1975. The Board informed us that it had no further comments except those contained in the response to our original recommendation.

We were also informed by the Assessment Branch at the Board that, if implemented, our recommendation would not adversely affect the employer's rates. We therefore did not consider it necessary to give the accident employer an opportunity to make representation pursuant to section 19(3) of The Ombudsman Act, 1975.

We sent a copy of our report to the Premier on March 31, 1978, in accordance with section 22(4) and 22(3) of The Ombudsman Act, 1975.

(83)

SUMMARY OF COMPLAINT

The complainant in this case contended that he was entitled to further compensation benefits as a result of two separate injuries sustained approximately 30 years ago.

On April 14, 1976, the Chairman of the Workmen's Compensation Board was contacted pursuant to section 19(1) of The Ombudsman Act, 1975, and advised of our intention to investigate this complaint. Our investigator reviewed all the available information found in the Board's file. To obtain a full picture of this complainant's situation, our investigator interviewed the worker, former employers, former colleagues and a number of doctors involved in this case.

The complainant suffered severe hand injuries to both the left and right hand approximately 20 years ago. The right hand injury resulted in the amputation of four fingers. This particular injury occurred in the Province of Quebec and was covered by the Workmen's Compensation Board of that Province. Our investigation revealed that the complainant was awarded a very small pension from the Quebec Compensation Board. The complainant's left hand injuries involved a partial amputation. Despite all these hand injuries, the

complainant continued with gainful employment for approximately 20 years. In 1976, the complainant permanently retired from any form of employment.

In early 1974, the medical reports indicated that this complainant began to develop a form of arthritis in the remaining fingers of the left hand. His Permanent Disability Pension from the Workmen's Compensation Board of Ontario was rated at a disability rating of 6.3%. The complainant contended that he should receive an increase in his pension for the arthritic condition which was now developing. Medical evidence revealed that his arthritic condition could not be related to the compensable injury sustained in Ontario. It was the medical consultant's opinion that his arthritic condition was, for the most part, attributable to the aging process.

Due to this complainant's unfortunate circumstances, we made inquiries with the Quebec Ombudsman to ascertain the possibility of having his Quebec Disability Pension reassessed. In June, 1977, the Quebec Ombudsman's Office wrote to the complainant suggesting that he appeal this case to the Quebec Compensation Board and they would consider a reassessment of his present disability pension. He later informed our investigator that the necessary steps had been taken to have his pension reassessed.

In February, 1978, a final report was forwarded to the worker and to the Workmen's Compensation Board. Our report concluded that after considering the facts of this case, we had come to the conclusion that we could not support the complainant's contention that the Workmen's Compensation Board of Ontario should award further benefits as a result of the injury sustained approximately 30 years ago. It was our conclusion that insufficient medical evidence existed to relate the complainant's present disability to his compensable injury.

This complaint was found to be unsupported.

(84)

SUMMARY OF COMPLAINT

This complainant suffered a back injury at work in 1957, while lifting a pail weighing approximately 75 to 80 pounds. He felt immediate back pain and sought medical attention from the plant physician. Due to this injury, he remained off work for approximately five days. His claim was accepted by the Workmen's Compensation Board.

In June, 1961, while in the process of carrying a bag up a ladder, he slipped and injured his back again. He

sought medical treatment from the company physician who reported that the complainant had low back pain due to an underlying back problem. He remained off work for three days. The Workmen's Compensation Board accepted this injury on the basis of an aggravation of a pre-existing back condition.

The complainant maintained that he experienced a sharp back pain while shovelling at work on January 24, 1962. There was a great deal of conflict of opinion at that time as to whether the shovel he was using actually struck an object causing him to jerk his back, or whether he was simply shovelling and developed a gradual onset of back pain. Although he complained of a sore back to a co-worker on January 24, he did not report anything of an accidental nature to his foreman. The complainant continued to experience back pain and laid off work on February 2, 1962. He was admitted to hospital on February 11 and discharged on March 18, 1962.

He returned to work in April, 1962, but had to lay off again in June, due to back pain.

The Board reviewed his claim for benefits due to the 1962 incident but decided that he was not entitled to receive any benefits as a result of the 1962 incident as his back disability was not the result of an accident in the course of his employment.

Prior to 1963, The Workmen's Compensation Act did not provide for benefits to be awarded as a result of disablement arising out of and in the course of the employment.

In 1969, the complainant maintained that he again injured his back at work on February 26. The information on file revealed that there was some discrepancy concerning the history of the February 26 incident. He contended that he lifted a pipe at the request of his foreman and felt a sharp pain in his low back. The employer however, reported to the Board that the complainant left the job site after being instructed by his foreman to perform work other than his regular duties.

The Board did not recognize the 1969 incident as being compensable. The complainant withdrew his claim for entitlement for this incident before the Appeal Board heard his appeal in 1969. The Appeal Board however, denied entitlement for the 1969 accident and did not accept that his continuing back problems were related to any of the work incidents.

The complainant contacted our Office by letter on February 6, 1976. On June 29, 1976, the Workmen's Compensation Board was notified of our intention to investigate the complaint pursuant to section 19(1) of The Ombudsman Act, 1975. There was some question as to whether or not the Ombudsman had jurisdiction to investigate this complaint. Therefore, it was not until February 10, 1977, that the Workmen's Compensation Board advised our Office, by telephone, that the complaint had been dealt with at the Appeal Board level. His Workmen's Compensation Board file was reviewed thoroughly and the complaint discussed with him.

As part of our investigation and in light of the numerous medical reports in the file, our Office arranged to have an orthopaedic specialist review the file in detail. We requested that this specialist give us his medical opinion on whether the three work incidents aggravated his pre-existing back problem and contributed to the back condition resulting in surgery in 1968, and if the incident in 1969 aggravated his back condition.

After receiving the report from the specialist, we formed the opinion that the complaint against the Board could not be supported. The weight of the medical evidence did not support the complaint. The specialist retained by our Office was not of the opinion that the work incidents were responsible for the complainant's continuing back problems. It was also felt that the Board was not unreasonable in denying him the benefits due to the 1962 incident, as there was no evidence to suggest that anything of an accidental nature occurred at that time. The Board could not consider the incident as disablement arising out of and in the course of employment as this was not incorporated into The Workmen's Compensation Act until after the 1962 incident.

Accordingly, on March 7, 1978, a report was forwarded to the complainant and to the Chairman of the Workmen's Compensation Board. In our report we concluded that we could not support the complaint.

(85)

SUMMARY OF COMPLAINT

In 1964, this complainant commenced work for a municipality in Southern Ontario. Two years later, the complainant was transferred to another department within the municipality. During a one-week period commencing in the latter part of May, 1968, the complainant's duties involved the construction of a meter chamber and included carpentry,

cement work and a great deal of heavy lifting. Although the erection of a meter chamber was not performed every day, it was considered a part of the complainant's duties. On a Friday in late May, 1968, the complainant experienced pain in his lower back; however, he was able to continue work through to the end of the work day.

The following Monday, it was recorded that the pain had become very severe and four days later the complainant reported his ailment to the Department's attending physician. It was the opinion of this physician that the complainant's back strain should be considered as a continuation of the severe lower lumbar strain he had sustained in his previous compensable accident in October, 1967. The doctor related this injury to the heavy manual work to which the complainant had been assigned during the previous week. The complainant was advised by this physician to lay off work for approximately two weeks, at which time it was recommended that he undertake light duty only. In accordance with the doctor's advice, the complainant laid off work for the period of time recommended. When he returned to work some two weeks later, no light duty was available and the complainant was subsequently sent home by his foreman.

A second medical opinion was obtained from an orthopaedic surgeon who diagnosed chronic ligamentous strain and a possible early lumbar disc disease. A statement issued by the orthopaedic surgeon recommended that the complainant could return to work in one month but that his duties were to exclude any heavy lifting for a period of three months.

One month later, the complainant once again returned to his supervisor with the orthopaedic surgeon's note in hand. No light work was available at that time since the work situation had not changed at all within the plant, and the complainant was sent home again by his supervisor. The complainant was re-examined by the orthopaedic surgeon in September, 1968 and this specialist's report to the Municipality's Personnel Department confirmed that the complainant was fit for regular duty in mid-October, 1968. The complainant resumed his regular work with the municipality in mid-October 1968, as recommended by the attending orthopaedic surgeon.

A claim for Workmen's Compensation Benefits was originally denied by the Board. However, in June, 1971, the Commissioners of the Board granted the complainant's appeal and awarded total temporary 100% benefits for a five-week period from June to July, 1968, in recognition of a disability commencing in June of 1968 which had been diagnosed as chronic ligamentous strain and accepted as a sequel to an industrial accident of October, 1967.

In February, 1976, the complainant requested that the Board reconsider its decision of June, 1971, with respect to continuing compensation benefits beyond July, 1968, on the basis of medical evidence concerning restrictions in work activities and evidence which indicated that suitable work was not available. The Appeal Board, in its decision of April, 1976, concluded that all the matters raised by the complainant were clearly before the Board at the time the decision was made and that no additional evidence was presented on which to grant an application to reconsider the decision of the Appeal Board of June, 1971.

In the Fall of 1976, the complainant brought his complaint to our Office at a private hearing.

On October 28, 1976, the Board was notified of our intention to investigate this complaint pursuant to section 19(1) of The Ombudsman Act, 1975. The Board sent us a copy of the complainant's complete file. A review of the complainant's file was undertaken by our Investigator and information presented by the complainant in an interview with one of our investigators was also considered.

In August 1977, we indicated that pursuant to the provisions of section 19(3) of The Ombudsman Act, 1975, we gave the employer and the Board an opportunity to make representations concerning the following possible conclusions and recommendations which might adversely affect them:

A. POSSIBLE CONCLUSION

1. It would appear open to me to conclude that the medical evidence clearly indicates that the worker was not fit to return to normal duties after his compensable accident, by which he was forced to lay off for the time period, June, 1968 until October, 1968. The following facts would appear to substantiate the foregoing tentative conclusion:

a) an orthopaedic surgeon's report written in July, 1968 states, "This man may be returned to work (in July of 68) and to restrict himself from any heavy lifting for three months at which time he will be reviewed again."

b) an orthopaedic surgeon's report dated July, 1968 states, "It is advisable in view of his size and muscular build that he restrict himself from heavy lifting for a period of three months ... he has been advised to return to work (today).

2. It would also appear open to me to conclude that the worker made every effort to obtain suitable work with his pre-accident employer but none was available to him. The following statement would appear to support this second possible conclusion:

a) in January, 1974, the Director of Personnel, for the employer wrote, "We would advise that there was no light work available at that time. This is the reason [the complainant] was not given light work."

B. POSSIBLE RECOMMENDATION

"that the Appeal Board vary its decisions and grant the complainant temporary partial benefits for the period between July and October, 1968 when he was fit for light work only."

The reasons given for this possible recommendation were that, the medical evidence clearly indicated that the complainant was not fit to return to normal duties after his compensable accident by which he was forced to lay off for the time period June, 1968 until October, 1968. In addition, it appeared that the complainant made every effort to obtain suitable work with the pre-accident employer but none was available to him. It appeared to us that the decision of the Appeal Board to deny the complainant benefits for the period July, 1968 to October, 1968 was unreasonable.

The employer made his representation by letter in September, 1977. The Board responded in a letter dated September 12, 1977, which indicated that the Appeal Board which made its decision in July, 1971, had before it, all the information which we had drawn to its attention in our letter of August, 1977. The Board noted that it was upon the orthopaedic surgeon's recommendation that the complainant was able to return to work in July, 1968, that the Board decided to pay benefits up to that date. Accordingly, the Board advised us that the Appeal Board had concluded that it would not exercise its power, pursuant to section 75 of The Workmen's Compensation Act to revoke the original Appeal Board decision.

The Board's response, however, did not address itself to the fact that the orthopaedic surgeon's recommendation dated July, 1968, specifically stated that in view of the complainant's size and muscular build, he should restrict himself from heavy lifting for a period of three months, at which time he would be reviewed.

Upon receipt of the Board's response, and a further review of the complainant's file, we concluded that the medical evidence clearly indicated that after the compensable accident of June, 1968, the complainant was not fit to return to normal duties until October, 1968. In addition, the employer had confirmed that the complainant was available for light work during the three month period in question, but that the municipality had no light work to offer.

It was our opinion that the decision of the Appeal Board to deny this claim was "unreasonable". On January 17, 1978, we wrote to the Minister of Labour and the Chairman of the WCB advising that we had found the complainant to be supported and that we made a recommendation pursuant to section 22 of The Ombudsman Act, 1975.

On February 6, 1978, the Board responded to our letter of January 17, 1978, indicating that the Appeal Board panel and the Board had consequently concluded, on the basis of the available information, to amend the decision of the Board of April, 1976, and to allow the complainant compensation benefits at 50% for the three month period of July, 1968 to October, 1968 when the complainant returned to his pre-accident employment.

(86)

SUMMARY OF COMPLAINT

In June of 1967, the complainant sustained an injury diagnosed as a contusion to the chest. He continued working until September, 1967, when he initially laid off with respect to this injury. Temporary total disability benefits were awarded for a four-week period of time and the claim closed. No residual disability was indicated.

In September of 1968 the complainant received a contusion to the jaw, loosening some teeth. Various periods of benefits were awarded between September 1968 and April 1969. The claim was then closed.

In April, 1969 the complainant injured his foot. Benefits were awarded for a two-week period immediately following the injury and the claim closed.

A further injury occurred in November 1969 in which the complainant sustained a back strain. Subsequent to a period of conservative treatment, including a one-week period of

hospitalization in February, 1970, the complainant was admitted to the Board's Hospital and Rehabilitation Centre. At the time of discharge, the complainant suffered from numerous non-compensable disorders. Treating physicians also felt that an emotional component contributed to the ongoing complaints of disablement.

Medical information contained in the Board's file dated November of 1970, indicated a diagnosis of the complainant's combined disabling conditions to be a combination of degenerative disc disease and a psycho-neurosis.

In June of 1971, the complainant was referred to the Vocational and Rehabilitation Branch of the Board for assistance. In October of 1971, he was placed in an on-the-job training program as a stationary engineer. This training was extended on several occasions and did not actually end until October of 1972. The complainant was then to write his stationary engineer's exam for certification in November of 1972. The Rehabilitation Department made the necessary arrangements for the complainant to take these examinations; however, the complainant failed the test.

Arrangements were made by the Rehabilitation Department on numerous occasions for the complainant to take the stationary engineer's exams again. All these arrangements were fruitless and on almost all occasions, the complainant failed to attend the test due to illness which was not substantiated by medical evidence.

The information on file indicated that the Rehabilitation Department had numerous personality conflicts with the complainant and eventually these conflicts brought the assistance of the Board's Rehabilitation Department to a close.

The complainant's residual back disability was originally assessed at 10% in November of 1971. The Board's file demonstrated that full benefits were awarded from the November, 1969 accident until December of 1972, and at that time, only the permanent disability award continued.

Although the Rehabilitation Department file was to be reopened on two further occasions (1975 and 1976) the on-the-job training programs again proved to be unsuccessful. It was the complainant's contention that he was physically incapable of performing the duties required. Again, the medical information did not substantiate his contention.

In December of 1973, a Pensions Review was conducted. The Board's medical officer concluded "given the benefit of doubt," that the award should be increased to 15%.

In March of 1974, a request by the complainant for a

partial commutation of his permanent disability award was allowed and effectively reduced the amount of his ongoing monthly award.

In August of 1974, an Appeal Board Hearing was conducted. The decision rendered upheld the 15% permanent disability award for an organic back disability and also awarded a 15% disability for psychological entitlement. The effective date of the provisional psychological disability award was two weeks prior to the Appeal Board Hearing.

This complaint was originally brought to our attention when the complainant attended one of our private hearings in Northern Ontario. It was the complainant's contention that all his compensable injuries contributed to a total disablement. It was his contention that the 30% award was inadequate.

The Board was informed, by letter of July, 1976, of our intention to investigate this complaint.

Our investigation involved a review of the Board's file, including the medical reports available with respect to the complainant's back condition. A review of the earlier compensable injuries was made and also the Rehabilitation Branch's involvement subsequent to the back injury. Contact with several employers was also made in an attempt to ascertain the complainant's inability to perform the job. In addition, telephone interviews were conducted with the complainant and the further information obtained was taken into consideration.

The medical information available and review of the Board's file with respect to the injuries of June, 1967, September, 1968 and April, 1969, did not demonstrate that a residual disability had resulted from any of the noted injuries. As such, in not awarding a permanent disability with respect to these injuries, the Board had not acted unreasonably. Further a review of the medical information and the Board's file concerning the complainant's back injury of November, 1969, did not demonstrate that the residual organic disability was greater than the 15% permanent back disability awarded.

On reviewing the information relating to the 15% provisional psychological award, we were unable to determine what criteria was used by the Board in commencing this award in August of 1974. The information on file indicated that such a disability was in evidence from the beginning.

We concluded that this complaint against the Board, with respect to the organic disabilities, was unsupported since it could not be shown that the earlier compensable injuries in any way contributed to a residual organic disability. Further, the percentage of award made for a residual back disability appeared to reflect adequately the complainant's residual disability with respect to his injury of November, 1969.

However, it was our opinion that a letter pursuant to the

provisions of section 19(3) of The Ombudsman Act, 1975, should be forwarded to the Chairman of the Board. This letter dated August 25, 1977, outlined the following possible recommendation:

"The Appeal Board should review, and vary its decision concerning the date of application of the 15% partial disability pension, for an emotional condition, with the view of applying this award to the date when the complainant ceased to be in receipt of temporary total disability benefits. Any retroactive application of the award should be charged to the Second Injury and Enhancement Fund, as the provisional award itself has been allocated to this fund."

In a letter dated September 28, 1977, the Chairman of the Board responded to our letter. This correspondence indicated that the Appeal Board had concluded that the complainant should receive a lump sum payment, at the appropriate rate, representing his psychological impairment from December 19, 1972, (the date on which ongoing temporary total disability benefits had ceased) to August, 1974. This information indicated that the Appeal Board Panel had varied its decision to conform with our possible recommendation. Also, it was noted that the additional costs of this award would be charged to the Second Injury and Enhancement Fund.

A final report was sent to the Chairman of the Board in November, 1977. Also, in a report and covering letter of November, 1977, the complainant was informed of the results of our investigation.

(87)

SUMMARY OF COMPLAINT

On October 27, 1975, this complainant was performing his regular job as a grounds man when he began to experience low back pain. He was able to complete his shift. However, that evening at home, his back pain increased and on October 28, he was admitted to hospital for treatment of his back pain. He remained in hospital for three days when he discharged himself.

He then returned to work on November 3, 1975, but found it necessary to lay off again due to back pain. He did not seek medical attention until December 8, 1975, at which time, the physician felt that he could return to work.

The Claims Department of the Board initially denied him benefits but in January of 1976, the Claims Review Branch granted him entitlement for the October 27, 1975 back injury. He received benefits from October 28 to November 3, 1975. The Board did not feel that he was entitled to benefits subsequent to November 3 as there was no medical evidence to support the further lost time.

The complainant was treated in hospital in March, 1976, for a condition not related to his compensable back problem. He maintained that while receiving medical treatment in March of 1976, he was advised by a physician that he had fractured vertebrae. The complainant related this disability to the accident at work in October of 1975.

During a personal interview at our Office, on June 14, 1976, he expressed his dissatisfaction with the Board's decision not to award him further benefits. However, as he had not completed the appeal process available to him at the Board, he was advised that we did not have jurisdiction to investigate his complaint. The appeal process was explained in detail to him.

He approached us again on June 10, 1977, after receiving the Appeal Board decision of April 27, 1977, which denied his request.

A letter pursuant to section 19(1) of The Ombudsman Act, 1975, was sent to the Chairman of the Board on July 6, 1977, informing the Board of our intention to investigate the complaint.

Our investigation revealed that he complained of low back pain after the work incident in October of 1975. The hospital records for that period did not reveal any fractured vertebrae. He did not complain of pain in the thoracic or cervical areas of his back until after the March, 1976 hospital treatment. The fractured vertebrae, which he contended resulted from the October 27, 1975 accident, was actually a slight compression fracture in the thoracic area of his spine.

Based on the facts of the case, it was our opinion that the Board was not unreasonable in denying the complainant further benefits. Accordingly, on February 8, 1978, a report was forwarded to the complainant and to the Chairman of the Board.

(88)

SUMMARY OF COMPLAINT

This complainant was employed as a sausage maker at a local meat processing factory and was working at her machine in the production department in the summer of 1970, when a pipe blew off the weiner making machine behind her and struck her right leg just below the knee. The initial diagnosis was a sprain and contusion to the right calf.

The complainant never returned to work following this accident and the Workmen's Compensation Board paid her temporary total disability benefits for 19 months following her accident and temporary partial disability benefits to the

summer of 1972, when her permanent residual right leg disability was assessed at 10% and she was awarded a pension for life. In the Fall of 1973, the complainant was awarded a special supplement of 10% for "emotional components" for a two-year period, paid in the form of a lump sum.

Her medical history subsequent to her initial treatment by her family physician, indicated that shortly before her accident, she was referred to an orthopaedic surgeon who, noting that she had developed a mild degree of thrombophlebitis, referred her to a general surgeon who, in turn, recommended corrective surgery.

However, the complainant continued to complain of pain radiating down from the knee into her calf. Her physician advised her to attempt to ignore the pain and discomfort, and return to work.

The complainant then came under the care of another orthopaedic surgeon, whose reports were consistent in the opinion that, with the use of proper support hose, the complainant could return to work and that if she felt unable to persist after sincere and strong effort, then he would suggest she undergo venous surgery, although he felt that this would undoubtedly cause discomfort and that the element of over-concern produced a moderate functional component to the overall picture.

In late Fall of 1971, the complainant was referred to another general surgeon, who documented that the discomfort the complainant noted at that time in the hip and back, was due to gross venous insufficiency, and suggested repeat venous surgery, although this had not, as yet, been carried out. This same general surgeon saw the complainant again, in the early months of 1977, at which time he reported that he was not too sure how much of a functional component there was but felt that there was certainly no significant vascular component. He suggested that the complainant be referred to a neurologist to determine whether the symptoms in her leg could be due to pathology in the lumbar region. The neurologist who examined the complainant in the Summer of 1977 reported that the complainant showed a classical picture of hysteria and anxiety neurosis. He saw no evidence of physical illness in her right lower limb.

The complainant felt that her pension was inadequate, as she considered herself totally disabled and unable to return to any form of gainful employment. She therefore appealed the amount of her pension. At the Appeal Board level, the complainant's case was referred to a Pensions Medical Officer at the Board who, in consultation with the Board's Consultant Psychiatrist, concluded that the complainant was suffering a

minor post phlebitic syndrome which was reasonably rated at 10%. However, he concluded that the complainant was suffering a psychological disability as a result of her industrial accident and recommended a 10% supplement to the physical award for the emotional component. Accordingly, the Appeal Board awarded the complainant a 10% provisional pension covering the period September of 1973 to September of 1975, in a lump sum. The Appeal Board could not, however, conclude that the complainant's residual physical disability which could be related to her industrial accident was greater than that recognized by her permanent partial disability pension previously established on a 10% basis.

The complainant then requested that our Office investigate her claim against the Board. Accordingly, pursuant to section 19(1) of The Ombudsman Act, 1975, the Board was informed of our intention to investigate the worker's complaint by letter dated November 5, 1976.

Our investigation of this complaint involved a thorough examination of the complainant's Workmen's Compensation Board file and a personal interview with the complainant in her home. As well, the complainant's family physician was asked for his opinion on the case.

Following our preliminary investigation, we concluded that, while it appeared that the Board had not acted unreasonably, nor had it in any way acted in a manner that would come within the provisions of section 22(1) of The Ombudsman Act, 1975, with respect to the amount of the complainant's pension for an organic disability it appeared that the Board's decision to award a 10% provisional pension for a psychiatric disability for a two-year period only, and without review was possibly unreasonable.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, the complainant's employer and the Chairman of the Board were informed that, based on our investigation at that point, there existed sufficient grounds for the making of a report or recommendation that could adversely affect the Workmen's Compensation Board and the employer. The two parties were invited to make representations respecting our possible adverse report or recommendation. They were as follows:

"A. POSSIBLE CONCLUSION

1. At the present time, based on our investigation so far, it would appear open to me to conclude that the decision to award the 10% supplement for a two-year period was arbitrary on the part of the Workmen's Compensation Board, and that, based on the medical evidence, it

would appear that the special supplement of 10% for a two-year period would appear to be grossly inadequate. There would appear to have been no justification for discontinuing the supplement after two years, as the complainant's condition has at best stayed the same and, more realistically, has worsened.

B. POSSIBLE RECOMMENDATIONS

1. That [the complainant's] contention to this office cannot be substantiated and that the 10% permanent disability award does appear to have adequately reflected the degree of residual disability.

2. That, however, [the complainant] ought to be given the benefit of another psychiatric assessment, with a view to extending ongoing entitlement for a psychiatric disability, should the up-to-date assessment indicate that her condition has not improved since 1973."

The complainant's former employer made representation by letter dated October 13, 1977, and informed us that the firm was in complete agreement with our possible recommendation that the complainant be given the benefit of another psychiatric assessment. The Board advised us by letter dated November 18, 1977, that the Appeal Board panel had reconsidered the complainant's claim and on November 18, 1977, had varied its previous decision and rendered a new decision which read, in part, as follows:

"The Appeal Board reviewed [the complainant's] case taking particular note of the report from [a psychiatrist] dated July 12, 1977 which confirmed a diagnosis of psycho-neurosis (conversion hysteria) and made an assessment of her total disability from a psychiatric condition from 15 - 20%. He emphasized that other factors responsible for her psychiatric disability were to be found in her basic personality make-up and previous traumatizing experiences plus other factors which had no relationship to her employment. The Appeal Board finds that there is a continuing sequelae through the work incident aggravation and rules the psycho-neurosis conversion hysteria was a pre-existing condition with minimal aggravation from her employment. The Appeal Board concludes that payments are to continue from the date of discontinuance at one-half of the assessed disability, that is 10%. The case is to be reviewed from time to time to determine if there is continuing disability under this entitlement."

(89)

SUMMARY OF COMPLAINT

In June of 1972, this complainant injured his lower back. A myelogram taken three days after the accident provided a diagnosis of a protrusion of the L4-5 disc. The physician concluded in a report to the Board that the complainant's accident had aggravated a pre-existing condition, notably a chronic back discomfort and disc degeneration which had been apparent since at least 1963. A spinal fusion was recommended to alleviate the patient's back pain. However, the complainant refused the surgery, claiming that a surgeon in 1963 advised him against such treatment due to the risks involved.

One year following his accident, the complainant was examined by a Pensions Medical Examiner at the Board. The physician was not convinced that he was totally disabled and a 10% permanent pension was awarded. In September of that year, after another examination, the Board awarded the complainant a 5% lump sum payment on the basis of the workman's continuing disability due to lumbar disease for a period of two years.

In the winter of 1974, the complainant was admitted to the Workmen's Compensation Board Hospital and Rehabilitation Centre where he was examined by a psychologist, a psychiatrist and an orthopaedic surgeon. Upon discharge from the Centre, it was concluded that the complainant's disability award of 10% was a reasonable one. It was also noted that the complainant was suffering from chronic anxiety depression and that, at that time and with his attitude, the Rehabilitation Department would probably be unsuccessful in attempting to get this man to think of getting back to work.

In July of 1974, pursuant to an appeal, the Appeal Tribunal awarded the complainant a 25% provisional pension for two years dating from September of 1973. Although the specific reason for the benefit increase was omitted from the decision, it seemed clear that the provisional pension was for psychological entitlement. The reason for this is that only two weeks before the decision, the complainant was seen by a psychiatrist who concluded in his report that it was his opinion that the complainant's accident of 1972 aggravated his pre-existing nervous disability of a chronic anxiety state.

Since that time, the complainant has been examined by several physicians including a neurologist, a neuro-surgeon, an orthopaedic surgeon, a general practitioner and a number of Board medical examiners, all of whom agreed that the complainant's disability was largely a psychological one and that the physical component was minimal. The complainant's personal physician, however, had assessed the complainant as being 100% disabled.

Subsequent to the latest Appeal Board decision, the Pensions Department, upon a medical examination at the request of the Board decided to make permanent the complainant's 25% provisional pension for his psychological disability.

The complainant was dissatisfied with his 40% pension claiming that he had been rendered totally disabled by his compensable accident and that, therefore, his pension of 40% was inadequate. As the complainant had exercised his full appeal rights at the Board, the complaint was within the Ombudsman's jurisdiction to investigate. Accordingly, pursuant to section 19(1) of The Ombudsman Act, 1975, the Board was informed by letter dated April 12, 1977, of the Ombudsman's intention to investigate the worker's complaint.

Following our preliminary investigation, we concluded that, while it appeared that the Board had not acted unreasonably nor had it in any way acted in a manner that would come within the provisions of section 22(1) of The Ombudsman Act, 1975 with respect to the amount of the complainant's 15% pension for his organic disability, the Board's decision to award him a 25% pension for the psychological component was possibly unreasonable, in view of the fact that the award did not appear to be reflective of or based on a medical opinion with respect to the degree of his psychological disability.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, the complainant's employer and the Chairman of the Board were informed that, based on our investigation to date there existed sufficient grounds for the making of a report or recommendation that could adversely affect the Workmen's Compensation Board. The two parties were invited to make representation respecting the possible adverse report or recommendation. It was suggested that, if they chose to make such representation, they should address themselves to our possible conclusions and possible recommendations as follows:

"A. POSSIBLE CONCLUSIONS

1. A review of the information on file indicates that [the complainant's] present benefits for the psychological component of his disability do not adequately reflect the true degree of compensable, functional impairment.

According to the last Appeal Board decision on July 23, 1976, the Board ruled that the chronic anxiety depression was partially

attributable to the industrial accident and [the complainant] was entitled to one-half of any assessed impairment due to this component." (Emphasis added).

In this case, considering [the complainant's] traumatic childhood (he witnessed the shooting of both his parents and his brother by a neighbour, at the age of 12), it would be reasonable to assume that [the complainant] had a pre-existing psychological condition prior to his industrial accident. Further, entitling [the complainant] to benefits for one-half of his present psychological disability is a fair and just estimate of separating what "anxiety depression" the complainant had before and after the accident.

It is implied, since the Board has upheld [the complainant's] provisional psychological benefits at the 25% level, that the workmen's functional disability is actually 50% (or twice the compensable component). However, nowhere in [the complainant's] file is a 50% figure ever mentioned.

[The complainant] was originally awarded 25% psychological, provisional benefits by the Appeal Tribunal in July of 1974, on the basis of [a psychiatrist's] report in June of that year. The psychiatrist did not express in his report any specific figure with regard to [the complainant's] functional impairment. In memo #35, the Board's psychiatric consultant concluded:

"Information on file indicates that the compensable incident (of June of 1972) aggravated a pre-existing psychiatric disorder. The relationship is considered to fall within the minimal range.

(Emphasis added). [The psychiatrist] did not state a particular percentage with respect to [the complainant's] psychological condition, either. Not until the Appeal Tribunal's review of [the complainant's] case was a 25% figure mentioned, and nowhere in the decision did the Appeal Tribunal explicitly state the reason for this provisional benefit.

[The complainant] contends that he is more than 50% disabled psychologically. He is

of the opinion that he is totally disabled and unable to perform even the lightest work. True, [a surgical consultant at the WCB] in his report (of October of 1972) said the workman was fit for light work, but this diagnosis was made before [the complainant's] psychological condition was medically evaluated. [The independent psychiatrist] has addressed this question and is not convinced of [the complainant's] claim of total disability:

'His mood disorder does not directly limit his capacity to work very much. But it spoils his judgement and makes him unwilling to trust experienced surgeons.'

However, both the Family Benefits Branch and the Canada Pension Plan feel that [the complainant] is totally disabled and the claimant has been entitled to benefits from these respective government agencies on this basis. [The complainant's private physician] also believes [the complainant] is 100% disabled.

If [the complainant] is not totally disabled, he is certainly functionally unemployable. Rehabilitation reports of March of 1974 concluded that [the complainant's] poor attitude about work would make rehabilitation attempts futile.

[The complainant's] poor work attitude is inextricably tied to his psychological condition. He is not a malingering type. The claimant has worked under physical stress since at least 1960, if not as early as 1946. According to both [the psychiatrists], his latest accident of 1972 precipitated his psychological disability. [The independent psychiatrist] did not consider the totality of [the complainant's] functional condition as it relates to his attitude to that work.

B. POSSIBLE RECOMMENDATIONS

It is, therefore, my opinion that [the complainant's] permanent pension for his psychological condition should be reassessed and upwardly revised to a more appropriate level."

The Workmen's Compensation Board responded by letter dated November 17, 1977, and informed us that the Appeal Board panel had no objection to a current independent psychological examination to determine to what extent the complainant is now disabled from a psychological point of view and would proceed to make the necessary arrangements.

Upon receiving notification of this decision, we forwarded a report containing the results of our investigation to the complainant on January 6, 1978. As the Workmen's Compensation Board had agreed to give effect to our recommendation, we decided that no further investigation was required.

(90)

SUMMARY OF COMPLAINT

This case involved a worker employed as a labourer with a sheet metal company. The complaint was brought to our attention during a private hearing. The complainant was dissatisfied with the Board's decision which denied him further entitlement for a back injury.

Following a preliminary investigation, it was determined that this complaint fell within our jurisdiction to investigate. On August 26, 1977, the Chairman of the Board was notified in accordance with the requirements of section 19(1) of The Ombudsman Act, 1975 of our intention to investigate this complaint.

While performing the functions of his job, the complainant tripped over a strip of wire landing on his left hip. He was treated immediately for an aggravation of a condition described as lumbar disc disease. The complainant returned to work for a brief period but, due to continuing back problems, was forced to lay off and was eventually hospitalized. A claim was submitted to the Workmen's Compensation Board, and the complainant received total disability benefits throughout his hospitalization and recuperation period.

Eventually, he returned to work and remained symptom-free for approximately 10 years. In 1975, the complainant began to experience continuous back pains which he felt were related to his compensable injury. A second claim was submitted to the Board, but he was denied further entitlement. This ruling was supported by a final Appeal Board hearing, following which the worker brought his complaint to us.

Our investigation revealed that the complainant had a long history of back related problems. It was also noted that all his disability benefits were awarded on an aggravation basis only. Medical reports indicated that it was not possible to

establish a relationship between the complainant's present disability and his compensable injury, especially in light of the fact that he had remained symptom-free for approximately 10 years. Based on the medical evidence, it was our opinion that insufficient medical evidence existed to support the worker's contention that the Board should compensate him for his continuing back disability.

On March 7, 1978, final reports were forwarded to both the worker and the Board indicating that we could not support the complaint.

(91)

SUMMARY OF COMPLAINT

In 1965, while employed as a labourer with the Armed Forces, this worker suffered a compensable injury. The injury occurred when the worker fell from the rear of a moving dump truck striking the pavement with the right side of his forehead. He was treated immediately for a fractured skull and fracture of a right clavical. A claim was submitted to the Board and he received temporary total disability benefits until he returned to his former occupation. The worker received intermittent disability benefits for a number of further lay-offs, which were caused by his compensable injuries.

Approximately two years following the injury, the worker died. The cause of death, as reported by the coroner, was attributed to a coronary thrombosis. His widow felt that her husband's death was directly attributable to his compensable injury and, therefore, attempted to claim Widow's Benefits from the Board. An Appeal Board hearing conducted in 1977 ruled that insufficient medical evidence existed to establish a relationship between the worker's death and his compensable injury. The Board denied entitlement to Widow's Benefits. The worker's widow then brought this case to our attention.

A letter, pursuant to section 19(1) of The Ombudsman Act, 1975, was forwarded to the Chairman of the Board in April of 1977. This letter informed the Chairman of our intention to investigate this complaint and requested all documents pertaining to the worker's injury.

Our investigation revealed that the worker suffered a number of severe injuries at the time of his accident. Following his discharge from hospital and a brief recuperation period, the medical evidence suggested that the worker was capable of returning to gainful employment. Our investigation

also revealed that the worker was constantly complaining of severe headaches immediately prior to his death. Although the worker attempted to receive disability benefits for lay-offs relating to these headaches, the Board did not relate this condition to the compensable injury and, accordingly, denied further entitlement.

Our investigator found that the worker's file did not contain any medical documents directly relating the worker's coronary thrombosis to his compensable injury. In light of the available medical evidence, we concluded that the Appeal Board's decision to deny Widow's Benefits in this case was not unreasonable.

On March 7, 1978, a final report was forwarded to both the complainant and the Workmen's Compensation Board which indicated that, based on the facts of this case, we could not support the complainant's contention that she should receive Widow's Benefits as a result of her husband's compensable injury.

(92)

SUMMARY OF COMPLAINT

In February of 1977, this complainant attended at our Office on the advice of his M.P.P. and registered a complaint against the Board. It was his contention that he had been wrongfully denied a pension from the Board to compensate him for a disability which he felt was related to an accident which occurred at work in 1975.

After determining that the complainant had completed the appeal process at the Board and, therefore, that the complaint was within our jurisdiction to investigate, we notified the Chairman of the Board of our intention to investigate this complaint.

Our investigation revealed that the complainant had been employed by a small firm, which repaired locks, since 1966. Evidence indicated that he had a very good work record. The nature of the work was such that the complainant worked alone. However, in early 1975, his job was phased out by the company and he was given a job which required that he work in the company of other workers and that he comply with the company rule that all employees wear safety glasses.

The complainant apparently found it impossible to wear safety glasses and was suspended by the company until he was prepared to wear them. He returned to work a few days later, but soon left again and submitted a claim to the Board on the ground that wearing safety glasses caused him anxiety and headaches. This claim was denied by the Board.

The complainant returned to his job but was constantly running into difficulties with the supervisory staff. Finally,

in the Fall of 1975, while in the course of his employment, he was struck on the head with a steel bar which resulted in minor bruising. A claim was submitted to the Board and accepted, and he received full temporary benefits for two weeks until he returned to work. He was then informed by the company that he must either wear safety glasses or be laid off. Three weeks later, after his return to work, the complainant decided he could not comply with the regulation and left his employment. Since that time, he has not worked and has complained of terrible headaches, dizziness and severe depression.

The medical information available indicated that the worker was not suffering from an organic disability as a result of his accident.

The complainant was seen by a number of psychiatrists following the accident. The doctors generally agreed that he was suffering from chronic depression. The doctors also tended to agree that considering the trivial nature of the accident and the severity of the reaction, it was doubtful that a causal relationship existed.

On this basis, we found that the medical evidence did not substantiate the complainant's contention that the Appeal Board should have awarded him a permanent disability award for his ongoing disability.

We therefore concluded that the decision of the Appeal Board was not "unreasonable". The Chairman, the complainant, and his M.P.P. were notified of the results of our investigation in October, 1977.

(93)

SUMMARY OF COMPLAINT

This complainant informed our Office in November of 1977 that he had been off work for four weeks due to a recurrence of a previous compensable back injury. Although he had submitted a claim to the Board, he had not, to date, been compensated for the lost time.

Our investigator's contact with the Board revealed that because the complainant's previous compensable back injury occurred one year prior to his current lay-off, a local investigation had been ordered to obtain the information necessary to determine whether his current back problem was related to the original back injury.

Two days before Christmas, the complainant's Claims Adjudicator contacted our investigator to inform her that the complainant's claim had been allowed and that a cheque was being processed in his favour that day. The Claims Adjudicator pointed out, however, that the complainant would be paid at a temporary rate for the time being as the Board had not yet

received a statement of the complainant's earnings on which his compensation was to be based.

Because the complainant was in need of the money for Christmas, our investigator requested that arrangements be made with the Board's area office in the complainant's city for the complainant to pick up the cheque there. The Claims Adjudicator made the necessary arrangements and the complainant was in receipt of the majority of his entitlement by noon, December 23, 1977. The remainder of his entitlement was mailed to him after Christmas.

(94)

SUMMARY OF COMPLAINT

This complaint was originally registered with our Office on a Sunday in February, 1978, and was taken by the telephone answering service operator. A member of our staff assigned to monitor this service received the message and brought it to the attention of our Directorate of Special Services, which deals with Workmen's Compensation Board complaints, on Monday morning.

The message indicated that the complainant was presently a patient at the Board's Hospital and Rehabilitation Centre. Contact was made with the Director of the Hospital and Rehabilitation Centre and a request was made to have the complainant return the investigator's call.

The investigator also contacted senior officials of the Head Office of the Board to ascertain the present status of the complainant's file.

Later that day, our investigator spoke with the complainant by phone. The complainant's telephone manner indicated that she was most anxious about her admission to the Board's Hospital and Rehabilitation Centre. The complainant raised many issues concerning her compensation claim and the fact that she had left a young family in Nova Scotia. She also indicated that her husband had recently injured his back while working, and was laid off. Arrangements were immediately made to meet with the complainant.

Our investigator attended at the Board's Hospital and Rehabilitation Centre and spoke with the complainant. The complainant's primary concern was the payment of travelling expenses she had incurred when returning to Ontario, from the Eastern Provinces, for back surgery in June of 1977. Subsequent to reviewing the information provided by the complainant, our investigator approached the Claims Branch at the Hospital and Rehabilitation Centre in order to discuss her concerns.

Our investigator was advised that the issue had been discussed with senior officials at the Board's Head Office and

the Board had reconsidered its decision. The complainant would be reimbursed for her travelling expenses.

The Claims Office at the Hospital and Rehabilitation Centre advised the complainant of the Board's decision and therefore the issue which she had brought to our attention was resolved.

(95)

SUMMARY OF COMPLAINT

This complainant was enrolled in a Level I upgrading course at a Community College in central Ontario for the 1976-77 academic year under the auspices of the Workmen's Compensation Board's Rehabilitation Branch and Canada Manpower. Her compensation benefits were comprised of the difference between funds which she received from Canada Manpower and her compensation rate when she was totally disabled. Upon completion of Level I, Canada Manpower terminated its sponsorship. The Workmen's Compensation Board agreed to sponsor the complainant through Level II upgrading for the academic year 1977-78 and to compensate her for the two months between her completion of Level I and her entry into Level II. The Board, however, neglected to take account of the fact that she was no longer receiving benefits from Canada Manpower.

Upon returning to Toronto from central Ontario, where the complainant had brought her complaint to our attention at a private hearing, our investigator brought this administrative error to the attention of the Board. She was informed by the Chairman's Office that the Board had noted its error with respect to the complainant's benefits for the academic year, 1977-78 and had adjusted her rate of compensation to that which she had received while she was totally disabled. When we brought to the Board's attention her problem concerning the two month period between courses, the Board agreed that the complainant was, in fact, entitled to the same full benefits for that period and processed an adjustment cheque in her favour.

(96)

SUMMARY OF COMPLAINT

This complaint, received by telephone in November of 1977, concerned a delay with respect to the Board's allowance for a recurrence of a back disability.

The information presented indicated that the complainant had laid off work in August of 1977, relating her ongoing back problems to an earlier compensable injury. The complainant indicated that the necessary information, concerning the August

lay-off, had been forwarded to the Board but the complainant had not yet been advised of the Board's decision with respect to further entitlement.

Our investigator's contact with the Board revealed that a field investigation was being conducted by the Board's area office.

Our investigator followed up our initial inquiry with senior officials at the Board. The information obtained indicated that the further period of lay-off, subsequent to August 1977, had been allowed and the appropriate benefits awarded.

This information was immediately brought to the attention of the complainant by telephone. The entire action undertaken by our Office with respect to the registering of this complaint was later confirmed in correspondence with the complainant.

(97)

SUMMARY OF COMPLAINT

This complainant stated that, due to a work-related back disability, he was required to perform light duties for a period in October and November of 1977. Further, he had experienced a loss in earnings during the period of light duties and had reported this to the Board. He complained that he had yet to be advised by the Board of his entitlement to benefits.

Our investigator's contact with senior officials at the Board revealed that the Board had been requesting the necessary information to enable it to consider an award for temporary partial disability benefits since November of 1977. The Board had requested its area office to obtain information directly from the employer. Although the necessary information had not been received by the Board's Head Office until late in January of 1978, our contact with the Board prompted the matter to be brought immediately to the attention of the Claims Branch.

Our further contact with the Board two days later revealed that the appropriate award had been made.

NON-JURISDICTIONAL

(98)

SUMMARY OF COMPLAINT

The complainant's lawyer wrote to our Office in January, 1977, outlining a complaint involving his client's loss of the benefit of a restitution order made in his favour. The order was reversed by a Court of Appeal decision without notice to him.

Several years earlier, the complainant had been the victim of a theft. The thief was apprehended but not before he had sold the stolen property for an amount in excess of \$3,000. Upon conviction, the accused was given a sentence that was perhaps somewhat less than might be otherwise expected, but in addition he was ordered to pay to the complainant the amount of money for which he had sold the stolen property.

On appeal of the conviction and sentence, the Court of Appeal upheld the conviction and jail term but revoked the restitution order without notice to the complainant. The lawyer wrote to the Ombudsman requesting that he suggest changes in the Criminal Code to protect the rights of persons who stand to benefit from restitution orders.

In view of the fact that the complaint was clearly outside of the Ombudsman's jurisdiction, as it related not only to a matter determined by the courts but to federal legislation, the Ombudsman obtained the written consent of the complainant and then wrote informally to the Minister of Justice of Canada. In that letter, he outlined the problem facing the complainant. He suggested that consideration be given to an amendment to the Criminal Code which would have the effect of granting to a victim the right to notice of an appeal of a restitution order made for his benefit as well as giving him a right to make representations to the appeal forum. The Minister of Justice replied that there was some question as to the Federal Government's constitutional right to legislate with respect to restitution, but that it was expected that the issue would be canvassed before the Supreme Court of Canada. The Minister of Justice indicated that assuming the Supreme Court of Canada found restitution to be intra vires the Criminal Code, the matter of standing for the victim would be considered by his Department. The complainant was advised of the Minister of Justice's response to the Ombudsman's letter.

(99)

SUMMARY OF COMPLAINT

This complainant is a quadraplegic who receives a Family Benefits allowance of \$270 a month. His mother attended one of our private hearings in Eastern Ontario and advised us that her

son spends approximately \$100 a month on medical supplies which are not covered by the drug cards made available by the Ministry of Community and Social Services. The boy's father is in poor health and has been out of work for the last year and is unable to continue to pay the extra \$100 a month. The mother wondered if it was possible for us to intervene and ask the Ministry of Community and Social Services to pay for the medical supplies which her son needs.

Inquiries were made with the Ministry and the local Social Services Administrator was contacted. He agreed that the municipality would accept the costs of the medical supplies and the family was, therefore, relieved of having to pay approximately \$100 per month.

The complainant was also advised of a Federal Government program which provides for a refund of 10¢ per gallon of gas which is purchased by a handicapped person for his or her car or for any other person's car which is used in transporting a handicapped person. The name and address of the government department were also supplied.

This complaint was outside of our jurisdiction since the requested supplement had to be paid by the municipal welfare office. However, we were instrumental in drawing the complaint to the attention of the local Welfare Administrator, and additional savings to the complainant may also result from the information we supplied concerning the federal gas tax rebate program for the handicapped.

(100)

SUMMARY OF COMPLAINT

This complainant's lawyer wrote to our Office in February, 1978, outlining a problem encountered by his clients. The problem was essentially that the clients did not believe justice to have been done in the trial of a man on charges laid following a traffic accident in which their daughter was fatally injured.

The letter did not specify the charges laid against the man, although it did indicate that they were criminal charges, and that they were dismissed, apparently due to a lack of evidence identifying him as the driver of the other vehicle involved in the collision. The complainants were of the view that the outcome of the trial was untenable as there were several witnesses available to testify as to the identity of the driver, but they were not called upon to give their evidence.

In addition, the complainants believed that the investigating officer, a member of the Ontario Provincial Police, may have acted improperly in that he allegedly removed the driver of the car (the man tried and acquitted) from the driver's seat of the vehicle upon arriving at the scene of the accident. This allegation was made by a witness who did not go to the police but told the complainants. The complainants also believed that there was some kind of a relationship between the driver of the car and the Ontario Provincial Police officer which may be the cause of the latter's alleged improper action.

The complainant himself had telephoned our Office several days earlier and it had been explained to him that the Ombudsman was not authorized to investigate this type of complaint. We suggested several courses of action which might be open to him.

In our letter we pointed out that section 14(a) of The Ombudsman Act, 1975 states that:

"This Act does not apply to judges
or to the functions of any court."

Accordingly, we indicated that it is not open to the Ombudsman to investigate the decision made by the court. We suggested that if it were a criminal charge or charges under The Highway Traffic Act, it would be open to the Crown, and not the complainant, to appeal the dismissal of the matter. We suggested that the complainants may wish to contact the Crown Attorney who handled the prosecution.

We suggested to the lawyer that he might wish to obtain a transcript of the trial to determine for himself if the outcome described by the complainants was accurate. We also suggested that the lawyer could contact the Deputy Director of Criminal Law and Director of Crown Attorneys or the Deputy Director of Crown Attorneys with the Ministry of the Attorney General.

To pursue the complaint against the Ontario Provincial Police officer, we suggested that he contact the Detachment Commander and that if he failed to obtain satisfaction from him, that he contact the Commissioner of the Ontario Provincial Police. Following that, we indicated that our Office would have jurisdiction to investigate the Commission's actions.

We also pointed out that the dismissal of criminal charges does not mean that the complainants are precluded from bringing a civil action, most likely under The Fatal Accidents Act, but that there are stringent time limitations to observe.

SAMPLES OF LETTERS

SENT TO COMPLAINANTS

IN NON-JURISDICTIONAL CASES



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 -

Dear Sir:

This will acknowledge receipt by this Office of a letter dated April 8, 1978 from your sister. Your sister advised us of a problem you are having with the Department of Veterans' Affairs.

According to that letter, you have been receiving allowances from the Department of Veterans' Affairs and the Canada Pension Plan for some time; you are also receiving monies from a disability pension. Recently, however, you were advised by the Department of Veterans' Affairs that your War Veterans' Allowance will be reduced substantially for the remainder of your allowance year in order to prevent an overpayment to you. The reason for this adjustment, apparently, is that D.V.A. only recently noticed, or became aware, that you were also receiving funds from the Canada Pension Plan. Your sister has written to us because she considers this unfair and hopes that the Ombudsman will be able to help you.

Unfortunately, the Ontario Ombudsman does not have the authority to investigate the decisions and operations of the Department of Veterans' Affairs. This Office takes its power from a piece of provincial legislation; its jurisdiction has been limited to the investigation of complaints involving administrative agencies of the provincial government. Federal agencies, of which the Department of Veterans' Affairs is one, are outside the Ombudsman's jurisdiction.

In an effort to be of some assistance, however, a member of our staff has spoken to Mr. J. A. Lowrey, District Director of Veterans' Services in the Toronto District. Mr. Lowrey explained to us that the War Veterans' Allowance is made available on the basis of need to veterans whose monthly income does not exceed a certain maximum figure. The amount of the monthly allowance is calculated to supplement the veteran's other income so that the maximum monthly figure is reached. In cases such as yours, D.V.A., through an error on someone's part or some failure in providing information, assumed that your other income was lower than it is and began your allowance year by giving you more money monthly than your other income justified. It is now necessary to reduce your monthly benefits for the rest of the allowance year in order that the total for the year comes out right.

It is possible, however, that the district authority has made some error of fact or law concerning your allowance; if so, the matter ought to be corrected. If you believe this has happened, you have the right within sixty days of the date on

which you received the letter from the Department to appeal the decision to reduce your benefits for the rest of this year. Mr. Lowrey assured us that the sixty day time limit is not rigorously enforced; nonetheless, if you wish to appeal, you should write to Mr. Lowrey notifying him of your intention as soon as possible. If you have any new information to provide for the Appeal Board, you might include it with your letter of appeal. Mr. Lowrey can be reached as follows:

Mr. J. A. Lowrey
Director of Veterans' Services
Toronto District Office
Department of Veterans' Affairs
4900 Yonge Street
5th Floor
Willowdale, Ontario
M2N 5N3 Telephone: 224-4467

If your concern at bottom is that the maximum income available under a War Veterans' Allowance is too low, that is a matter of federal policy and should be discussed not with Mr. Lowrey, but with your federal representative or with the Minister of Veterans' Affairs, the Honourable Dan Macdonald. Your sister has already written to your Federal Member of Parliament in this connection; you can write to the Minister at his office in the Veterans' Affairs Building, Lyon and Wellington Streets, Ottawa, Ontario K1A 0P4.

We regret that the Ombudsman cannot be of further assistance to you with this matter; we hope at least that the information we have provided will assist in clarifying the situation for you. If other matters come to your attention which do fall within the Ombudsman's jurisdiction and with which you need assistance, please feel free to call on us again.

Yours very truly,



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 -

Dear Sir:

This will acknowledge in writing your personal interview with Mr. Brian Reynolds of our Office on Friday, November 4, 1977, and your subsequent telephone conversations with Mr. Reynolds and Mr. Kerry Wilkins. We understand from your interview and from subsequent information you have made available that your daughter was rushed to the hospital on Sunday, October 2, 1977, because of a severe allergic reaction to peanuts. Your daughter died at the hospital two hours later. No autopsy was performed.

You suspect that your daughter's life could have been saved by proper treatment from qualified medical personnel. Since your daughter's death you have attempted without success to ascertain the names and qualifications of the medical personnel who treated your daughter at the hospital and the kind of treatment she received when she arrived in the emergency room. You have made a number of telephone calls in attempt to arrange an inquest and to gain access to your daughter's medical records at the hospital. These, however, have not produced a result which satisfied you. You have come to the Ombudsman for assistance in obtaining the information you seek.

Unfortunately, the Ombudsman is not in a position at this time to be of much assistance to you. The authority of the Ombudsman extends only to the investigation of complaints against governmental organizations of the Province of Ontario, as defined by Section 1(a) of The Ombudsman Act, 1975. As Mr. Reynolds explained, public hospitals in Ontario do not fall within these terms of reference. We can therefore be of no assistance to you in investigating the treatment your daughter received at the hospital or in helping you obtain access to your daughter's medical records there.

According to Section 11 of The Public Hospitals Act, the medical record compiled for a patient at a public hospital is the property of the hospital; Section 48 of Ontario Regulation 729/70 sets out the circumstances under which a hospital's Board of Governors might make available a patient's medical record. Briefly, the Regulation provides that medical records are to be regarded as confidential, although the Board may exercise its discretion to release them to the attending physician, the administrator of another hospital, the patient or a relative or personal representative of the patient, a member of the hospital's medical staff or some few designated others. A hospital cannot be compelled to release medical records except by a court order, a coroner in the course of an

inquest, or a member of the Council of the College of Physicians and Surgeons of Ontario.

In practice, then, you will not be able to obtain access to your daughter's medical records at the hospital except in the context of a court action against the hospital or a doctor or a coroner's inquest -- providing, of course, that the hospital refuses to release them to you on request. Court action of any kind against a hospital or doctor for negligence or malpractice should be discussed with a lawyer before proceeding. For your information, Section 37 of The Public Hospitals Act, as amended, provides that any action against a hospital or hospital employee must be commenced within two years from the date your daughter ceased to receive treatment; according to Section 17 of The Health Disciplines Act, no physician is liable to action arising out of negligence or malpractice if more than one year has elapsed since you first "knew or ought to have known" the facts on which your allegations are based.

The Ombudsman is prohibited by Section 14(a) of The Ombudsman Act, 1975 from bringing under review the decisions of judges or the functions of any court.

It is possible that the Ombudsman can assist you, though, in dealing with the Chief Coroner's Office with respect to an inquest; the Chief Coroner is a provincial official, and his acts and decisions do fall within the Ombudsman's authority for review. Section 15(4)(a) of The Ombudsman Act, 1975, however, prohibits the Ombudsman from becoming involved in any matter otherwise within his jurisdiction until all opportunities for review already provided by law have been exhausted. From the information available to us, it appears that there are remedies available to you under the law which you have not yet exercised in calling for an inquest; as a consequence, it is beyond our power to intervene on your behalf until it is clear that you have availed yourself of them.

Decisions concerning inquests are covered by provisions of The Coroners Act, 1972; it is the responsibility of the regional coroner to determine whether the circumstances of a death warrant an inquest. Upon making this determination, he must report his findings and his reasons for them to the Chief Coroner in writing. Still, Section 21a(1) of The Coroners Act authorizes a relative or personal representative of the deceased to request that the coroner hold an inquest, irrespective of the coroner's own findings in this matter; the coroner is required by law to consider this request and the evidence supporting it and to advise the person making the request of his final decision in writing within 60 days of receiving the request. If you wish to pursue this opportunity, set out your concerns and suspicions in writing and send them to the regional coroner responsible for this particular hospital:

Dr. E. P. King
26 Grenville Street
Toronto, Ontario
M7A 2G9

If you are not satisfied with Dr. King's final decision, Section 21a(2) of The Coroners Act authorizes you to write to the Chief Coroner, Dr. Cotnam, asking that he review the earlier decision. Any such request should be made within 20 days of receiving the decision of the regional coroner. Dr. Cotnam can be reached as follows:

Dr. H. B. Cotnam
Chief Coroner of Ontario
26 Grenville Street
Toronto, Ontario
M7A 2G9
Telephone: 965-6678

Decisions of the Chief Coroner are usually final; however, Section 19 of the Act provides that the Solicitor General of Ontario may direct any coroner to hold an inquest into any death where he believes the circumstances warrant it. In effect, then, a decision by the Chief Coroner not to hold an inquest can be brought to the Minister's attention for review, as well. Here is the Solicitor General's address:

The Honourable John P. MacBeth, Q.C.
Solicitor General of Ontario
25 Grosvenor Street
Toronto, Ontario
M7A 1Y6
Telephone: 965-2021

If you pursue your concern through all these steps and remain dissatisfied even then with the response you have received, your complaint will fall within the investigative authority of the Ombudsman. You may if you wish keep this Office advised of your progress through these remedies.

We hope this information is of use to you and clarifies, at least, the circumstances under which the Ombudsman may become involved in dealing with your complaint. Please feel free to contact this Office again-- about this or some other matter--if you find it appropriate to do so.

Yours very truly,



The Ombudsman | Ontario

- 298 -

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 -

Dear Sir:

This will acknowledge receipt of your letter to this Office dated September 12, 1977, and also confirm your telephone conversation of November 1st, 1977 with the writer.

I understand from your correspondence that you are having difficulty in securing the transcripts of your trial. Apparently you approached several people in an effort to obtain the transcripts but your efforts have proved unsuccessful. Because you require the transcripts for your appeal, you would like this matter cleared up as soon as possible.

I can well appreciate your concern with regard to this matter. Thus, in an effort to ascertain the exact nature of the problem, a member of my staff telephoned the stenographer for the County Court. The stenographer advised that the reason that you had not received the transcripts was because the Court office had not received payment for same. She further stated that she was not authorized to release anyone's transcripts without first receiving payment.

Unfortunately, because yours is a problem arising from the courts, the Ombudsman regrettably does not have the jurisdiction to deal with it.

The Ombudsman Act, 1975 empowers the Ombudsman

"to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

Governmental organization has been defined to mean

"a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

Further, by virtue of Section 14(a) of The Ombudsman Act, we are precluded from investigating any matter relating to or arising from the courts.

I note from your correspondence that you are receiving benefits from the Ministry of Community and Social Services as a result of your having been robbed in April of 1974. I also note that the legal counsel that you had secured was under the Ontario Legal Aid Plan.

It would appear that if you require the transcripts for your appeal, you may be able to obtain them through your legal aid lawyer. By utilizing this route, the cost of the transcripts would be absorbed into your legal aid costs.

Furthermore, I am most certain that the stenographer would be happy to explain this matter to you again, and I would suggest that you contact her. However, if after you have discussed this matter with her, you remain dissatisfied with the explanation, you might wish to address your complaint to the Courts Administration Office of the Ministry of the Attorney General. The Courts Administration program has a small branch within it that deals with problems relating to court reporters. We therefore suggest that you contact the co-ordinator of this branch, Mr. R. W. Sherman. His address is:

Mr. R. W. Sherman
Co-ordinator
Court Reporters
Courts Administration Branch
Ministry of the Attorney General
18 King Street East
Toronto, Ontario M5C 1C5
Telephone: (416) 965-2848

It is unfortunate that we are unable to offer you further assistance at this time. I hope, however, that you are able to obtain a satisfactory resolution to your problem in the very near future.

In the event of future correspondence with this Office, please be sure to quote the above file reference number.

Yours very truly,



Dear Sir:

Further to your most recent visit to my Office and the correspondence from Ms. Ellen Adams, our Director of Special Services, on December 30, 1977 and January 17, 1978, I offer the following comments with respect to your complaint to the Office of the Ombudsman.

As I understand it, the basis of your complaint, which was initially received by my Office on March 16, 1977, is the contention that the Regional Municipality wrongfully deducted \$4,530.85 (\$4,471.65 plus \$59.20) from an account held in trust by the Municipality for your late mother. I note it is your contention that the total amount which had accumulated in the trust account should have been made payable to your mother's estate at the time of her death. It appears that you do not question the calculations on which the deductions are based, but rather, you believe that the Municipality had no legal right to "manipulate" funds in an account held in trust for your mother.

The function of the Ombudsman, under Section 15(1) of The Ombudsman Act, 1975,

"is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his or its personal capacity."

Governmental organization has been defined to mean

"a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

Your complaint is against the actions of a Regional Municipality and, as such, regretfully, is not within my jurisdiction to investigate. It has been confirmed by a member of my legal staff that a municipal home for the aged is established under Section 3 of The Homes for the Aged and Rest Homes Act and, by virtue of Section 8(1) of the Act, is operated by a committee of management appointed by the Council of the Municipality.

Nevertheless, in order to assist you with your concerns, a number of inquiries were made on your behalf by members of my staff.

As reported to you by letter dated May 9, 1977, Ms. Ellen Adams contacted the Ministry of Community and Social Services in order to request an audited report of your mother's account from the Regional Municipality. Subsequently, on December 21, 1977, in response to a further written request for this information and following a clarification requested by the Ministry concerning our lack of jurisdiction in this matter, our Office received from the Office of the Deputy Minister the following:

- (a) Extracts from the resident's ledger pertaining to your late mother which show in the balance column the actual costs of care; and
- (b) Extracts from the resident's trust account which show the account at date of death and the fact that cost of actual care was deducted from the amount in the account and that the balance was remitted to the resident's estate.

The Ministry also provided us with its point of view with respect to your mother's case which, in substance, does not appear to differ from the information provided by yourself. The Ministry has summarized the facts as follows:

"[The complainant's mother] was a subsidized resident at [the home for the aged], from the date of her admission on March 4, 1969 until the date of the commencement of the extended care program on April 1, 1972. Until the inception of the extended care program, the resident was in receipt of a comfort allowance which was paid into the resident's trust account and the cost of residential care was funded by the province and the municipality in accordance with the provisions of The Homes for the Aged and Rest Homes Act. When the resident became eligible for extended care the situation changed, in that she received her own income derived from government funds and out of that income was required to meet the extended care co-payment. Thereafter the balance remaining was the resident's and was credited to her account."

In addition to Ms. Adams' liaison on your behalf with the Ministry, two members of my legal staff have been involved with your case. Mr. Michael Zacks, my Assistant Director of Research, looked into the matter of our jurisdiction in your case and discussed the case with Mrs. R. McCully, a solicitor with the Ministry of Community and Social Services, in July of 1977.

With respect to your contention that the Municipality unlawfully "manipulated" your late mother's trust account, a member of my legal staff, Mrs. Silja Seppi, researched the law relating to such trust accounts.

For your information, the following legislation pertains to a trust account such as your late mother's.

Section 10 of The Homes for the Aged and Rest Homes Act states:

"Where a municipality that establishes and maintains a home or joint home, or the board of management of a home established and maintained and operated under an agreement with the Minister pursuant to section 9a enters into an agreement approved by the Director with a resident of the home to receive, hold and administer real or personal property of the resident in trust for certain purposes, the municipality or board may receive, hold and administer the property for the purposes of the agreement."

It is the terms of such a trust agreement which is entered into by both the resident and the Municipality which govern the withdrawal of trust funds for specified and limited purposes.

Section 30(1)(gc) of the Act provides that the Lieutenant Governor in Council may make regulations

"providing for the terms and conditions of any agreement entered into under Section 10, upon which a municipality or board of management operating a home or joint home may receive and hold property of a resident in the home or joint home."

Pursuant to that power, Ontario Regulation 439 (as amended) was passed. Sections 33 and 34 deal specifically with the establishing, maintaining and auditing of such trust accounts. They read as follows:

"33. (1) Every board or municipality, as the case may be, establishing and maintaining a home shall establish and maintain a trust account in a chartered bank of Canada, Province of Ontario Savings Office or trust company registered under The Loan and Trust Corporations Act, in which all moneys of residents received by the administrator for safekeeping shall be deposited.

(2) Where a resident has money upon admission to a home or receives money while he is resident in a home, he may request the administrator to deposit it in the trust account.

(3) Where a resident has money deposited for him in the trust account, he may request the administrator to make all or any part of it available to him at any time.

(4) The administrator shall keep a separate book of account showing all deposits to, and withdrawals from, the trust account, the name of the resident for whom the deposit or withdrawal is made, and the date of each deposit or withdrawal.

(5) The administrator shall provide a resident with a written receipt for all moneys received for deposit in the trust account, and a resident shall provide the administrator with a written receipt for all moneys withdrawn from the account by the administrator for the resident.

34. The trust account established under section 33 shall be audited annually by the municipal auditor who audits the books of account and ledgers of the home."

The above statutory provisions and the actual trust agreement between the resident and the Municipality govern the procedures for deposit and withdrawal of funds from the account. As long as the Municipality complies with such provisions, it is acting lawfully in respect of the monies it holds in trust for the resident.

I hope the above information is of some assistance in clarifying this matter for you.

In the future, should you require the services of the Office of the Ombudsman, please do not hesitate to contact us again.

Yours faithfully,



The Ombudsman | Ontario

SUITE 600

65 QUEEN STREET WEST, TORONTO, ONTARIO

M5H 2M5

TELEPHONE (416) 869 -

Dear Madam:

We would like to acknowledge receipt of your letter of January 16, 1978, outlining the problem which you have been experiencing in determining whether or not your grand-daughter is still a ward of the Children's Aid Society of London, Ontario.

We understand from your correspondence that in early 1963, your grand-daughter was placed under the care of the Children's Aid Society by the courts. Following her third birthday, her father placed her in your care and she has lived with you ever since.

We understand further that when her brother was also released to your care in 1976, the Family Court Judge handling the case stated that it would not be necessary to deal with the issue of custody of your grand-daughter since she was still a ward of the Children's Aid Society of London, Ontario. You now request assistance in determining whether or not she has been released from the Children's Aid and if not, whether you are entitled to any allowance to assist you in supporting her financially.

With respect to your request for assistance by the Ombudsman, we should point out that it is the function of the Ombudsman to investigate complaints against governmental organizations of the Province of Ontario. Since the Children's Aid Society is not considered to be a provincial governmental organization, we are unauthorized to provide you with full investigative assistance.

Nevertheless, in order to determine what action you may take with respect to your problem, a member of our staff contacted officials at the Children's Aid Society in London. In response to our request, C.A.S. officials located the file which dating back to the early 1960's, dealt with her case. We were advised that in March of 1965, you wrote to the C.A.S. in London concerning your grand-daughter's status. Officials at that office replied in a letter dated April 6, 1965, stating that she was placed in the care of the Children's Aid Society in January of 1963. However, she was released from their care on September 15, 1964.

We would like to confirm, therefore, for your information that your grand-daughter is no longer in the care of the Children's Aid Society. As a result, it would appear that you are not entitled to any financial support for her care from the C.A.S.

With respect to the status of your grandson, we suggest that you contact C.A.S. officials in New Brunswick, since he was placed with you as a result of a decision reached by a New Brunswick Family Court Judge.

With respect to the possibility of obtaining financial assistance in order to support both grand-children, we would like to suggest that if you are not receiving monthly family allowance cheques from the federal government for both of these children, and if you are fully responsible for their maintenance on a day-to-day basis, you should contact officials at Health and Welfare Canada in Ottawa and make application for receipt of family allowance. If you should choose to do this, you should provide a full explanation of how you came to have the children in your care and you should outline what income you do receive from all sources.

An investigation of your application will be made and you may be eligible for monthly assistance. In this respect, you should write to:

Regional Director of Family Allowance
Health and Welfare Canada
Box 6000, Station "Q"
Toronto, Ontario

A member of our staff also contacted Mr. Stephen Charko of the Child Welfare Branch of the Ministry of Community and Social Services. Mr. Charko advised that you may be eligible for foster care assistance under The Family Benefits Act. Should you wish to be considered for this program, Mr. Charko suggested that you contact your District Director of the Ministry of Community and Social Services. Upon receipt of your application for assistance, the Ministry will conduct an investigation into the matter in an effort to determine your eligibility for benefits. Should you wish to contact the District Director, you should write to:

Dr. Bette Graham
District Director
Ministry of Community & Social Services
713 Davis Drive
Suite 302
Newmarket, Ontario
Telephone: 453-3181

Mr. Charko advised that should you encounter any difficulty with the local District Office of the Ministry, you should contact him directly. In the event that Mr. Charko is not available, you should then contact Mr. Bruce Heath, also of the Child Welfare Branch. These gentlemen can be reached at the following address:

Mr. Stephen Charko
or
Mr. Bruce Heath
Child Welfare Branch
7th Floor, Hepburn Block
Queen's Park
Toronto, Ontario
Telephone: (416) 965-7007

Although your letter does not refer to the circumstances surrounding your son's accident, we would like to point out that if the accident was the fault of someone other than your son, there may be legal action which you may take in order to obtain compensation for the support of the children.

If you presently cannot afford the services of a lawyer, you may be eligible for assistance under the Ontario Legal Aid Plan. The individual to contact in this regard is:

Mr. W. R. Donkin, Q.C.
Ontario Legal Aid Plan
204A Richmond Street West
Toronto, Ontario
Telephone: 598-0200

We sincerely hope the above information will be of some assistance to you in clarifying your present situation. We do hope that your problem is resolved to your satisfaction.

In the event of future correspondence with this Office, please include our file reference number.

Yours very truly,



SEP 13 1983

