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Fifth Report

April 1978 — September 1978

Ombudsman/Ontario

Volume I





Fifth Report

April 1978 — September 1978

Ombudsman/Ontario

Volume I



The Ombudsman | Ontario

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December 22, 1978

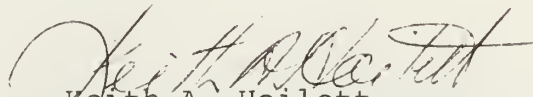
The Speaker
Legislative Assembly
Province of Ontario
Queen's Park
TORONTO, Ontario

Dear Mr. Speaker:

I have the honour to present the Fifth Report of the Ombudsman for the period April 1, 1978 to September 30, 1978. Summaries of this Report in the French language are available.

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

Yours faithfully,


Keith A. Hoilett
Temporary Ombudsman



L'Ombudsman | Ontario

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Le 22 décembre 1978

Monsieur le Président
L'Assemblée Législative
Province de l'Ontario
Toronto, Ontario

Monsieur le Président,

J'ai l'honneur de vous présenter le Cinquième Rapport de l'Ombudsman pour la période du 1er avril 1978 au 30 septembre 1978. Le résumé en français de ce document est désormais disponible.

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

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



Keith A. Holett
Ombudsman par intérim.

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CHAPTER ONE

INTRODUCTION

As Temporary Ombudsman I am pleased to present the Fifth Report of the Ombudsman. This report covers the final period that Arthur Maloney, Q.C., served as Ombudsman of Ontario. The effective date of Mr. Maloney's resignation was October 9th, 1978, and this report covers the period of April 1st, 1978 to September 30, 1978. Mr. Maloney announced his intention to resign as Ombudsman of Ontario in a letter to Premier William Davis, Q.C., dated August 15th, 1978 (see Appendix A). Mr. Maloney's resignation was accepted with regret by the Premier in the following letter dated September 12th, 1978:

"Dear Arthur:

This will acknowledge your letter of August 15th in which you confirmed your intention to submit to Mr. Speaker on October 9th, your letter of resignation as Ombudsman of Ontario. While Mr. Speaker will, I am sure, express the feelings of all of us in the Legislature in saying we are loath to see the Government and people of Ontario lose the services of a public servant of your calibre, we must, of course, defer to your wishes and, with regret, accept your decision as firm.

I think it is fair to say that traditionally it has been felt the role of Ombudsman does not fit easily into the parliamentary system. It is therefore a tribute to your impressive background, to your many fine personal qualities, and to the private citizens, that in a relatively short period of time the Office of Ombudsman in Ontario became well and solidly established, effective, and accepted. In the intervening three years you have accomplished much, not only by reconciling just grievances but also, and perhaps just as important, by making supplicants aware of those appropriate agencies of the Government or of the judicial system through which they may at any time seek redress.

Your task has not been easy, but I can scarcely conceive of Arthur Maloney embarking on any mission which would be without a challenge. There have at times been disagreements between your Office and those ministries and agencies whose decisions you questioned or opposed. But these

disagreements were between honest men and women who each in his or her own way was committed to serving the people of this province, and they were resolved quickly and amicably in an atmosphere of mutual respect and goodwill.

It is therefore a matter of considerable satisfaction to me that you leave your Office with a favourable impression of the men and women in the Civil Service. Your observations as to their talent, knowledge, expertise and dedication will, I am sure, be appreciated by those whose labours in the smooth administration of government are all too often unacknowledged.

There can be no doubt as to the respect in which you hold elected parliamentarians and your understanding of the role they perform. Members of the Maloney family have served with honour and distinction in both our national and provincial parliaments and, while you have been in the forefront of those reform movements you deemed necessary, you have also eloquently supported the finest traditions of our parliamentary heritage.

As you have indicated, you are leaving with several of your objectives and recommendations remaining in abeyance. While I cannot, of course, give you any assurance that any or all of these will be implemented in strict accordance with your wishes, I can assure you that your views will weigh heavily in the deliberations.

As I have said, I am sorry to see you leave, but I am not surprised that you are returning to what, I believe, was your 'first love' - the practice of law. Your letter makes very clear that there are many challenges to be faced, many battles to be fought, many rights and freedoms to be protected; and it is more than a little reassuring to know that the legendary oratorical skills, the brilliant mind, the fervour, and the absolute commitment of Arthur Maloney will continue to be a formidable force in the continuing quest for justice tempered with mercy that should be the hallmark of any judicial system.

Again may I extend a heartfelt 'thank you' for all that you have accomplished as Ombudsman, for all your efforts in presenting us with blueprints for extending the authority of the Office, and for laying a solid foundation for those who will

follow you in this great Office. May I also, on behalf of the Government and on my own behalf, wish you well in whatever you may undertake in the years to come.

Warmest regards.

Sincerely,

William G. Davis."

Dr. Stuart Smith, Leader of the Opposition, had the following to say, in part, concerning Mr. Maloney's resignation:

"As you will have noticed from the public press, I expressed very sincere regrets at your resignation from the Office of the Ombudsman. In my view, you are an exceptionally able man and Ontario has benefited greatly from your willingness to assume these difficult but important duties back in 1975."

Mr. Michael Cassidy, Leader of the Ontario New Democratic Party, made the following comments:

"Along with my colleagues and many other citizens of Ontario, I deeply regret your decision to step down after only three years in office. The difficulties of finding a successor are one indication of how ably you have filled the post of first Ombudsman of Ontario. I have had reservations at times about certain aspects of the operation of your office, but the overall judgment of the office as you have created it, cannot help but be favourable."

The sentiments expressed in these letters were repeated time and again by many other Members of the Legislative Assembly, citizens of Ontario, and other Ombudsmen throughout the world.

The Office of the Ontario Ombudsman over the past three years has gained an excellent reputation throughout the international Ombudsman community. Mr. Maloney, who participated actively in the First International Ombudsman

Conference which was held in Edmonton, Alberta in September of 1977, was appointed by the International Ombudsmen to be one of three members representing North America on the International Ombudsman Steering Committee. Two of the very important contributions made by this Committee to date have been the establishment of the First International Ombudsman Institute at the University of Alberta and the selection of the State of Israel as the host country of the Second International Ombudsman Conference to be held in Jerusalem in 1980.

As word of his resignation travelled throughout the world, Mr. Maloney received a great number of letters from Ombudsmen of other countries expressing their regret that his talents would be lost to the international Ombudsman movement and paying tribute to his achievements with the Office of the Ombudsman concept in the Province of Ontario.

Dr. I.E. Nebenzahl, State Comptroller of Israel and Commissioner for Complaints from the Public, upon learning of Mr. Maloney's resignation, had the following to say:

"Although the warm words in your letter of August 24 were an encouragement, the main news that that letter conveyed, that you will soon be resigning your appointment, filled me with deep regret. Over three years that have passed since you undertook office, the international Ombudsman community has witnessed an attempt, in your own words, 'to bring into being an Office of Ombudsman for Ontario that would be second to none in the world.' This approach has brought its struggles and successes, but at all times the progress has been instructive, stimulating and challenging.

Already when I had the privilege of visiting Toronto in 1976, on the eve of the International Conference in Edmonton, I was convinced that you were well on the way to achieving the target you had set yourself, and reports received afterwards confirmed this opinion. You have staffed the Ontario Ombudsman Office with a group of men and women, whose thoughtfulness and energy deserve all admiration. Dedication to serving the public is the trademark of the Ombudsman Office doing its job properly, and this is the quality that has most characterized yours. In their

every action the inspiration of your leadership could readily be felt."

When the news of the resignation reached Sweden, the birthplace of the Ombudsman concept, Mr. Ulf Lundvik, the Swedish Ombudsman, wrote:

"A few weeks ago I was visited by Perry Bullard, state representative in Michigan. He was interested in questions concerning Ombudsmen and I asked if I could mention any Ombudsman in North America whom he could contact in order to get information about how the office works in the New World. I mentioned your name and added that you were certainly the most dynamic Ombudsman in Northern America, perhaps the whole world. I tell you this, not as a flattery, but because it has been and still is my firm opinion. The way you conduct your affairs has inspired me to no little extent and I have learnt much from your reports. And that's why I deplore your decision to leave your post."

Mr. Gordon Combe, the Ombudsman for South Australia also paid tribute to Mr. Maloney:

"The stature which the Office of the Ombudsman in Ontario has achieved is recognised throughout Canada and indeed internationally and the benefits which the people of your province have derived in such great measure, from your operations as Ombudsman, are an eloquent tribute to the Maloney genius."

THE COMPLAINTS

Volume I of this Report as well as providing detailed statistics covering the period from April 1 to September 30, 1978, also includes detailed case summaries of 75 complaints which were closed during this reporting period. Included in the 75 in-depth summaries are seven cases in which, having investigated the complaint, we made a recommendation in favour of the complainant which was rejected by the governmental organization concerned. These seven cases which are also highlighted in this Chapter are being brought to the attention of the Legislative Assembly through this Report.

As in our previous two Reports, a complaint-by-complaint summary of all grievances dealt with and completed during this reporting period is contained in Volume II of this Report.

Since the inception of the Office of the Ombudsman in May of 1975, until the cut-off date for this Report, September 30, 1978, the Office received complaints for which a total of 20,485 files were opened. During this period the Office also dealt with close to 24,000 informal inquiries for which no follow-up action was required and for which no file was opened. A total of 18,381 files were closed since May of 1975; 6,401 (34%) of these files involved complaints which were within the jurisdiction of the Office of the Ombudsman to investigate.

During the period covered by this Fifth Report, April 1, 1978, to September 30, 1978, we opened a total of 3,610 files. The percentage of complaints received during this period exceeds the comparable figures for the two previous six month reporting periods by 9%. This pattern suggests that our previous estimate of 6,500 complaints per year may have been conservative, since the 3,610 complaints received during this reporting period, if taken on an annual basis, would exceed 7,200 complaints. Also, during the six-month period covered by this Report we dealt with approximately 3,500 informal inquiries which did not require follow-up action on our part, and for which we did not open a file.

Of the 3,610 files opened during this six-month reporting period, 55% were mailed to our Office from complainants, 19% were brought to our attention through personal interviews at our Office in Toronto, and 26% came from complainants who attended our private hearings held throughout the Province. The fact that the percentage of complaints received through personal interviews was 45%, compared with 43% during the previous reporting period, supports our view that citizens perceive this Office as one which they can approach on a very personal and individual basis. Also, the percentage of complaints (26%) received at private hearings is testimony to the need for the Office to continue the program of scheduled hearings in communities outside of Toronto.

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

HIGHLIGHTS

FILES: OPENED 3,610 INFORMAL 3,500 COMPLAINTS 4,224*
 CLOSED 3,597 INQUIRIES: CLOSED:

BY JURISDICTION		BY ORGANIZATION	
1,367	within jurisdiction	2,625	involved Ontario Government Ministries or agencies
469	information requests		
56	jurisdiction undetermined	753	involved private agencies, firms or individuals
1,791	outside jurisdiction	345	involved municipalities or local police forces
547	premature	287	involved federal government departments or agencies
		183	involved courts
		37	involved international, other provinces or unspecified
<hr/> 4,230	Reported Line Summaries in Volume II	<hr/> 4,230	Reported Line Summaries in Volume II
<hr/>		<hr/>	

* Some files involved more than one complaint

Of the 3,705 complaints dealt with during this period, for which jurisdiction was determined, 1,367 or 37% were complaints within the jurisdiction of the Ombudsman. This figure is consistent with the higher percentage of complaints within our jurisdiction that was evident during the period covered by the Fourth Report. This reconfirms our view that an increasing number of citizen complaints brought to our Office will fall within the jurisdiction of the Ombudsman.

A review of the 1,858 "in progress" files as of September 30, 1978, shows that 1,433 or 77% fell within the jurisdiction of our Office. This represents a significant increase of 10% over the comparable figure reported in the Fourth Report.

In this Fifth Report, 23% of the complaints falling outside of our jurisdiction were premature as a result of the application of the provisions of section 15(4)(a) of The Ombudsman Act, 1975.

As noted in our 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 37% to 43%. It is clear that these premature cases are partially "masking" the higher percentage of complaints being brought to us that are within our jurisdiction.

When the percentage of jurisdictional complaints is examined in conjunction with the decline in the number of "in progress" files from 2,116 on March 31, 1978, to 1,858 on September 30, 1978, and also considering that the average duration to deal with a complaint declined from 111 days for the Fourth Report to 97 days for this Report, we are drawn to the conclusion that, notwithstanding the number of complaints received, the Office is demonstrating an increasing capability to serve the needs of the citizens of Ontario more efficiently and effectively. From the citizens' perspective, the fact that the percentage of all complaints that were directed against the provincial governmental administration was 62%, reinforces the view expressed in our previous report that the public is becoming more aware of the jurisdiction of the Ombudsman. As noted in previous reports, our Office will continue to make every reasonable effort to assist those citizens who come to the Ombudsman with problems that do not fall within the Ombudsman's jurisdiction.

As with all previous reports, Northern Ontario had the highest complaint-to-population ratio, as well as the single largest volume of complaints from our nine regions. The Ontario-North Region accounted for 536 (16%) of all complaints where a geographical determination could be made. Again, it has been clear since our First Report that residents from Northern Ontario avail themselves of our services more regularly than citizens in the rest of the province. Therefore, we continue to see the need for regional facilities to be located in the North in order to meet the needs of the citizens who reside in this part of the Province.

PRIVATE HEARINGS

In the Ombudsman's Fourth Report to the Legislature, Mr. Maloney stated:

"In my view, our private hearings have, over the last 2 1/2 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."

In keeping with the Office's commitment to continue Private Hearings throughout the Province, I am pleased to report that during the period covered by this Fifth Report, the Office of the Ombudsman held Private Hearings in the following 26 communities:

Apr. 4, 1978	-	Gravenhurst
Apr. 5, 1978	-	Meaford
Apr. 6, 1978	-	Barrie
Apr. 24, 1978	-	St. Thomas
Apr. 25, 1978	-	Woodstock
Apr. 26, 1978	-	Welland
Apr. 27, 1978	-	Stoney Creek
Apr. 28, 1978	-	Burlington
May 16, 1978	-	Pembroke
May 17, 1978	-	Ottawa
May 18, 1978	-	Perth
June 6, 1978	-	Little Current (Manitoulin Island)
June 7, 1978	-	Blind River
June 8, 1978	-	Parry Sound
July 11, 1978	-	Cobalt
July 12, 1978	-	South Porcupine
July 13, 1978	-	Kapuskasing
Aug. 1, 1978	-	Red Lake

Aug. 2, 1978	-	Kenora
Aug. 3, 1978	-	Dryden
Aug. 29, 1978	-	Hearst
Aug. 30, 1978	-	Smooth Rock Falls
Aug. 31, 1978	-	Iroquois Falls
Sept 19, 1978	-	Wingham
Sept 20, 1978	-	Kincardine
Sept 21, 1978	-	Orangeville

A total of 845 private interviews were conducted which gave rise to 895 separate complaints. Orangeville, the last municipality visited during this reporting period, represented the 108th time members of the staff of the Office of the Ombudsman held Private Hearings.

VISITS TO INDIAN RESERVES AND SETTLEMENTS

During the past six months, we have continued to provide the services of the Office of the Ombudsman to the native people living on reserves and in settlements in Ontario.

We hope to visit regularly a total of 112 reserves and communities over a two year period. To date, over half of the communities have been visited by members of our staff.

These visits are conducted by two members of our staff. Those persons who visit with the Indian bands have up to twenty years experience in dealing with the native population of Ontario, understanding the culture of the people, and the problems which Ontario's first citizens face. Although most of the contacts that the status Indian people have with the non-Indian government is at the federal level, there is still a need for the services provided by the Provincial Ombudsman. Indian policing, welfare, game and fish legislation and some of the self-help programs of the Native Community Branch of the Ministry of Culture and Recreation are only a few of the ways in which the Indian people encounter the Provincial bureaucracy.

In visiting with the Indian people, we make our initial contact with the Chief, and then meet with the Chief and Council to explain the role and function of the Office and to hear any problems which the band has experienced. For the most part the contacts which the Indian people have with the Ontario government administration are on a band level, rather than on an individual basis. However, we are always available to meet with individual members of the band if they wish to bring problems to our attention.

Most of the southern reserves are accessible by road, and we are usually able to visit two communities a day. Our staff often meet with band councils in the evenings, as many

of the Chiefs and band council members are employed throughout the day.

In visiting the more northerly communities and reserves, particularly those accessible only by air, it is sometimes necessary to spend a full day with each band or in each settlement. We are grateful for the co-operation extended to us by the federal departments of Indian Affairs and National Health and Welfare in making accommodation available to our staff. We also acknowledge with thanks the kindness of the Roman Catholic missions and other residents in the north for the hospitality extended to us.

INDIAN RESERVE AND COMMUNITY VISITS
(April 1 to September 30)

April 3, 1978	-	White Fish River Indian Band Birch Island
April 4, 1978	-	Sheshegwaning Indian Band Sheshegwaning (Manitoulin Island)
April 5, 1978	-	Sucker Creek Indian Band Sucker Creek (Manitoulin Island)
April 5, 1978	-	West Bay Indian Band West Bay (Excelsior, Manitoulin Island)
April 6, 1978	-	Sheguiandah Indian Band Sheguiandah (Manitoulin Island)
April 6, 1978	-	Wikwemikong Indian Band Wikwemikong (Manitoulin Island)
September 5, 1978	-	Gull Bay Indian Band Gull Bay
September 6, 1978	-	Pays Plat Indian Band Pays Plat (Rossport)
September 8, 1978	-	Lac des Milles Lacs Indian Band Lac des Milles Lacs (Upsala)
September 18, 1978	-	Moosonee
September 19, 1978	-	Moose Factory Indian Band Moose Factory
September 20, 1978	-	Fort Albany Indian Band Fort Albany
September 20, 1978	-	Kashechewan Indian Band Kashechewan
September 21, 1978	-	Attawapiskat Indian Band Attawapiskat
September 22, 1978	-	Winisk Indian Band Winisk

MANAGEMENT STUDY

As stated in our Fourth Report, the management consulting firm of Hickling-Johnston Limited presented its report entitled, 'Organization for Ombudsman Effectiveness' (See Appendix B) to the Ombudsman on May 26, 1978. In our Report, we indicated that we were experimenting with the implementation of the recommendations contained in the Hickling-Johnston Report. On June 13, 1978, a general meeting of all staff in the Office of the Ombudsman was held and the Ombudsman announced his acceptance of the Hickling-Johnston Report and made the following staff appointments:

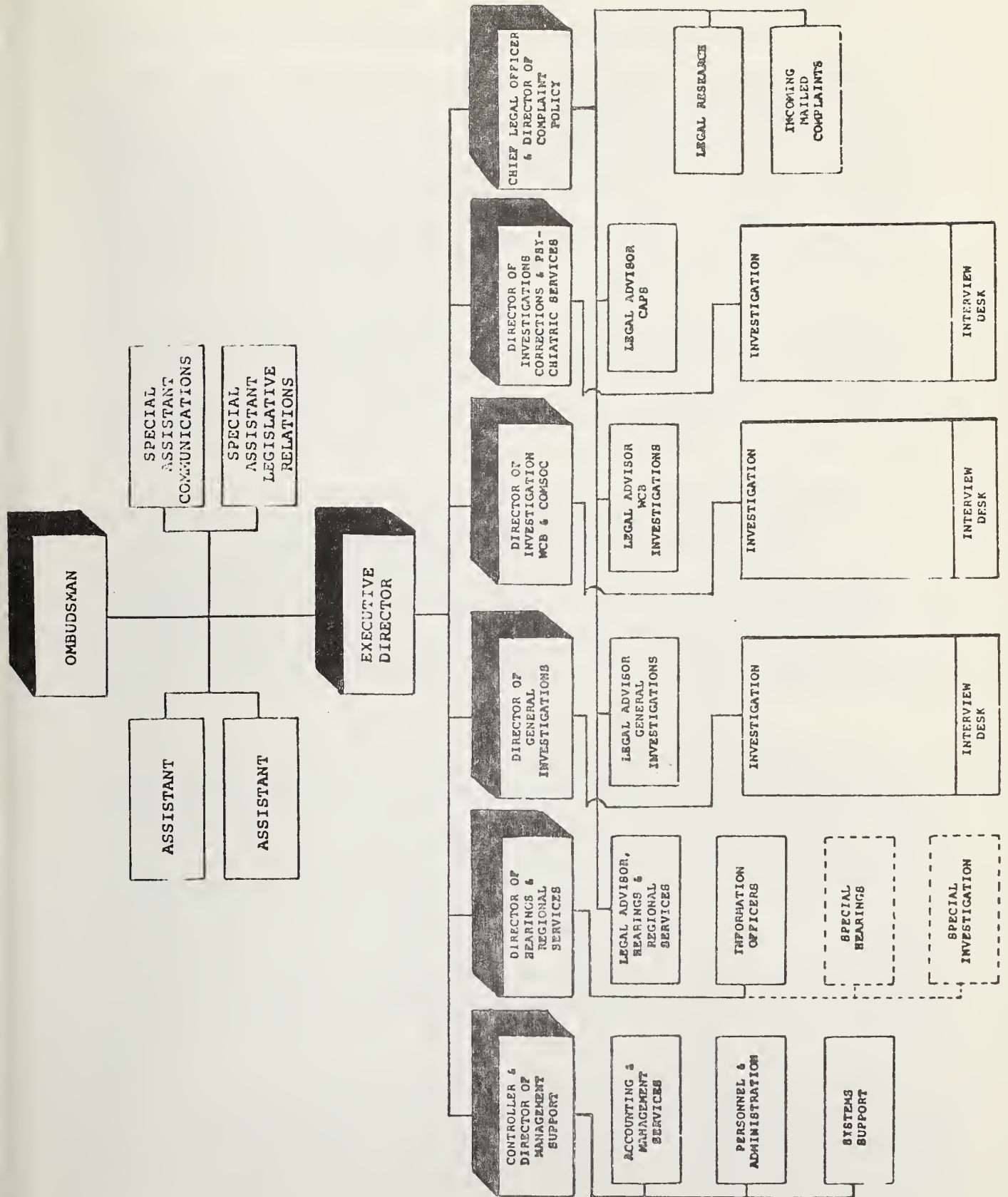
Executive Director	-	Mr. Keith Hoilett
Director of Special Services	-	Ms. Ellen Adams
Director of Correctional and Psychiatric Services	-	Mr. Philip Patterson
Director of General Investigations	-	Ms. Kathryn Cooper
Director of Regional Services	-	Mr. Gilles Morin
Director of Legal Services and Complaint Policy	-	Mr. Brian Goodman
Controller and Director of Management Support	-	Mr. Allan Mills

The creation of the position of Executive Director introduces a new level of management into the Office of the Ombudsman. According to the Report,

"The Executive Director is seen as directing, administering and coordinating the activities of the Office of the Ombudsman in accordance with the policies, objectives and intent established by the Ombudsman. He assists the Ombudsman in the development of policies and goals that cover operations, personnel and financial performance."

The Executive Director chairs the Management Committee which comprises himself and the six Directors. As well, Mr. Maloney invited his Executive Assistant and the Assistant Director of Legal Services and Complaint Policy to sit on the Management Committee.

The following Organization Chart reproduced from the Hickling-Johnston Report indicates, substantially, the present organization of the Office of the Ombudsman.



THE CORRECTIONAL REPORT

In our Fourth Report to the Legislature, we stated that the Office of the Ombudsman had received the Ministry of Correctional Services' response to our Report and Recommendations on the Province's Adult Correctional Institutions on June 13, 1978. At the time our Fourth Report was published, the Ombudsman was still reviewing the Ministry's response. However, we indicated at that time that we would have a statement to make concerning the Ministry's response in the near future.

After a careful review of the Ministry's response to our Report and Recommendations, we determined that further updated information was required from the Ministry of Correctional Services in respect of a number of our recommendations. Therefore, a letter requesting this material was sent to the Ministry on August 8, 1978. To date, we are still awaiting the Ministry's further response.

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

As we promised in our Fourth Report to the Legislature, we have included a detailed report of our Office's investigation into the program being carried on within the Social Therapy Unit of the Mental Health Centre at Penetanguishene. This detailed report is contained in Chapter Two.

JUVENILE TRAINING SCHOOL STUDY

Even before the Ombudsman was officially appointed, complaints were received alleging physical and psychological abuse of children in Ontario Training Schools. Such complaints were received from the training school wards, from former Ministry of Correctional Services staff and from concerned citizens. In addition, we received a referral from a county sheriff in connection with a Grand Jury report regarding one particular training school. The first few complaints were dealt with on an individual basis. When further complaints, letters from concerned citizens, and news articles came to his attention, the Ombudsman formed the opinion that a general investigation of the training school system was warranted.

The investigation was commenced on June 29, 1976, by a letter written pursuant to section 19(1) of The Ombudsman Act and addressed to Mr. Glenn Thompson, Deputy Minister of Correctional Services. The investigation was to focus on allegations of physical and psychological abuse of wards of juvenile training schools and also to consider related

issues which might be raised by the wards, staff or anyone else knowledgeable about the training school system.

Fourteen university students were engaged during the summer of 1976 to work with the Coordinator of the Juvenile Training School Study who was an investigator with the Office of the Ombudsman. Prior to the summer students' involvement the Coordinator prepared an outline of the investigation, methods of data collection and questionnaires. He also completed a list of names and addresses of former wards of training schools. The investigation was intended to be a comprehensive one and plans were made to have the students interview present wards within the training school system, former wards, staff members of selected training schools, group home staff members and wards, probation and aftercare officers, Juvenile Court Judges, members of the Training School Advisory Board, and senior Ministry officials. It took the better part of 12 months to conduct all of the interviews and to collate the information obtained from them.

Meanwhile, a number of changes in the training school system took place. The Ministry of Correctional Services decided to regionalize the training schools so that wards could be accommodated closer to their homes. However, the most important change took place on July 1, 1977, when the entire Juvenile Division, including probation and aftercare services, was transferred to the newly created Children's Services Division of the Ministry of Community and Social Services, headed by Associate Deputy Minister, George Thomson.

During the course of our investigation, it became apparent that the splitting of services to "problem" children between four Ministries (Ministry of Health, Ministry of Community and Social Services, Ministry of the Attorney General, and the Ministry of Correctional Services) had caused a number of problems. However, with the amalgamation of these services under the one Ministry in July, 1977, it appeared that the problems caused by the splitting of such services had been substantially eliminated.

Soon after the establishment of the Children's Services Division, meetings were arranged between Ombudsman staff and the Associate Deputy Minister and his staff to discuss our investigation into the juvenile training school system. At that time, a preliminary draft report of the Ombudsman's investigation had been prepared. It was apparent from these discussions that the Division intended to establish task forces or make changes in most of the areas where we felt changes or improvements should be made. It was decided, therefore, that the interests of the wards within the

juvenile training school system would best be served by our postponing further action on our report for 12 months in order to give the Children's Services Division an opportunity to come to grips with the problems within the juvenile training school system. In August of this year (1978) a further draft report was submitted to the Associate Deputy Minister for discussion and comment. The draft report contained 65 possible recommendations dealing with issues such as:

1. the establishment of a central facility for psychiatric cases,
2. the need for a grievance procedure for wards in training schools and group homes,
3. the need for programs which recognize the cultural and language barriers faced by wards from francophone and native communities,
4. the establishment of group homes for such wards close to their own communities,
5. the need for a uniform policy for group homes,
6. the need for expansion of the present foster home system, and
7. the need for better utilization of probation and aftercare officers.

All of these recommendations were based on our investigation conducted in the summer and fall of 1976 with the last few interviews being completed in early 1977. During our final discussions with the Children's Services Division, it became clear that the recommendations based on our 1976 investigation had either been implemented or were well on the way to being implemented by the Ministry.

The Ombudsman therefore decided that no useful purpose would be served in issuing a report with recommendations based on a situation which no longer existed. Both the Ministries of Correctional Services and Community and Social Services were therefore advised by the Ombudsman pursuant to Section 18(1)(b) of The Ombudsman Act, 1976 that he did not intend to proceed further with the investigation of the juvenile training school system and that there will be no special report with recommendations; but rather that reference to the investigation would be made in our Fifth Report to the Legislature.

CORRECTIONAL AND PSYCHIATRIC SERVICES

In our Fourth Report, we commented on the role of the Office of the Ombudsman in the area of Correctional Services. The Ombudsman stated in that Report:

"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 co-operation 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."

In keeping with the Office of the Ombudsman's commitment to be of assistance to both inmates throughout the Province and to the Ministry of Correctional Services, I take pleasure in reporting on the following developments in the relationship between our Office and the Ministry of Correctional Services.

From the inception of the Office of the Ombudsman in Ontario, thousands of letters have been received from inmates incarcerated in provincial correctional institutions. Section 17(2) of The Ombudsman Act states:

"Notwithstanding any provision in any Act, where any letter written by an inmate of any provincial correctional institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school or facility."

This provision has been instrumental in creating a feeling among inmates that they can write in complete confidence on any subject matter to the Ontario Ombudsman without in any way feeling that their correspondence will be read by any Ministry employee. This sense of secure communication with the Office of the Ombudsman is of the utmost

importance to the philosophy of our office. Unfortunately, over the course of the last three years incidents have been brought to our attention in which Ministry employees had inadvertently opened letters between inmates and our Office. In each of these cases, we confirmed that the Ministry employee had opened the correspondence inadvertently.

In order to protect the privilege of communication with the Ombudsman, and to assist Ministry employees in conforming with the requirements of The Ombudsman Act, we decided to introduce coloured envelopes which are pre-addressed to the Ombudsman and clearly marked "Confidential." The envelopes are given to inmates of provincial correctional institutions upon request. In addition, all of our correspondence to inmates in provincial correctional facilities is also forwarded in brightly coloured envelopes which are clearly marked "Confidential." These envelopes alert officers assigned to open incoming mail to the fact that the correspondence is from the Office of the Ombudsman and should not be opened.

After consultation with the Ministry of Correctional Services, and with their agreement to act as the distribution mechanism, a supply of these envelopes was provided to all jails, detention centres, and correctional centres. The system went into effect on September 5, 1978.

In conjunction with the introduction of these pre-addressed envelopes, and in an attempt to inform the inmates of this new procedure and of their right to correspond confidentially with the Office of the Ombudsman, we introduced printed bilingual signs which refer to the availability of the envelopes. These signs are posted in a prominent place in every Ministry facility in the province.

Although it has only been a short time since the introduction of our confidential envelopes, we feel that this mechanism has, and will, positively assist in ensuring privileged communication between inmates and the Office of the Ombudsman.

Over the course of the last three years, we have had an opportunity to work closely with many employees of the Ministry of Correctional Services, both in the field and at the Ministry's Main Office in Toronto. Many of our closest dealings have been with the Superintendents of the Ministry's various correctional facilities. It is our impression that the people of the Province of Ontario are well served by a dedicated group of individuals who are entrusted with the superintendency of Ontario's jails, detention centres and correctional centres. We have been most fortunate to be able to deal with people of such high calibre.

In particular, we would like to commend Mr. Dennis Phillipson, Superintendent of the Hamilton-Wentworth Detention Centre, and Mr. Allan Roberts, Superintendent of the Ottawa-Carleton Detention Centre. Mr. Phillipson, as Superintendent of the old "Barton Street Jail" and of the new detention centre, has demonstrated consistent leadership in his ability both to identify and deal with actual problems and potential problems within his institution.

In the case of Mr. Roberts, the same comments are fitting. He has a clear and direct approach to the running of the Ottawa-Carleton Detention Centre and the confidence and competence that he exudes has, in our view, had a direct beneficial effect upon both inmates and staff and has resulted in a smooth running institution. We would like to commend him for the introduction of a telephone system at the Ottawa-Carleton Detention Centre whereby an inmate on remand can talk directly to his lawyer on the telephone. Mr. Roberts informs us that the system has worked extremely well. It has allowed his staff members to devote their time to other tasks within the Centre, and it has satisfied the inmates because of the direct link with their legal counsel. We would suggest that this telephone system be expanded to those institutions where its implementation would be practicable.

FILM ON THE OFFICE OF THE OMBUDSMAN IN ONTARIO

It was mentioned in our Fourth Report that it was the intention of the Office to have a film produced which would depict the operation, jurisdiction, role, function and public involvement of the Office of the Ombudsman. The sum of \$45,000 was approved by the Board of Internal Economy for this purpose. Tenders were requested and received from eight film producing companies for a 16mm colour and sound motion picture of approximately 30 minutes in length. Intercom Films Ltd. of Toronto was chosen and filming commenced on December 5, 1978, at the Private Hearings conducted by the Office of the Ombudsman in Atikokan and Fort Frances.

It is proposed that the film will be available for showing to Ministry and citizen groups and schools, and will be accompanied by a brochure describing in detail the availability of the services of the Ombudsman and his staff to the people of Ontario. Our Sixth Report to the Legislature will contain a more detailed report on the film.

CONFERENCE OF CANADIAN LEGISLATIVE OMBUDSMEN

Our Office participated in the Conference of Canadian Legislative Ombudsmen held in Winnipeg, Manitoba, September

24 to 27, 1978. The Conference host was George W. Maltby, Ombudsman of the Province of Manitoba.

Three representatives of our Office attended the Conference: Philip Patterson, Director of Correctional and Psychiatric Services; Milan Then, Queen's Park Assistant; and Linda Bohnen, Legal Officer. Ombudsmen from seven provinces, the federal Commissioner of Official Languages, the federal Correctional Investigator, and representatives of the International Ombudsman Institute were delegates to the Conference.

Our representatives actively contributed to the Conference activities. Philip Patterson delivered an address on complaints from prisoners, which was well received by Conference delegates and publicized on national television. Linda Bohnen participated in panel discussions analyzing and comparing provisions of the various provincial Ombudsman Acts.

A highlight of the Conference was an address on the function of the Canadian Human Rights Commission by Gordon Fairweather, Chief Commissioner.

In 1979, the Ombudsman of New Brunswick, Mr. Joseph Berube, Q.C. will be host to the Conference of Canadian Legislative Ombudsmen.

INTERNATIONAL BAR ASSOCIATION
OMBUDSMAN COMMITTEE

The Seventeenth Biennial Conference of the International Bar Association was held in Sydney, Australia from September 11th through September 15th, 1978. Brian Goodman, Director of Legal Services and Complaint Policy for the Office of the Ontario Ombudsman attended as a Conference delegate. The proceedings of the Conference included a meeting of the Ombudsman Committee of the International Bar Association on September 12th. Mr. Goodman is a member of the Committee, as are Mr. Thomas P. O'Connor, Q.C., Assistant Director of Legal Services and Complaint Policy, and Mr. Glenn Hainey, Executive Assistant to the Ontario Ombudsman.

Mr. Goodman attended the meeting of the Ombudsman Committee, chaired by Mr. Alex B. Weir, Vice-Chairman of the Committee and solicitor to the Alberta Ombudsman. The Ombudsman Committee meeting was attended by 23 persons from eight countries. In addition to Messrs. Goodman and Weir, Ms. Inger Hansen, Canadian Privacy Commissioner, Judge A. S. McMorran, and Professors Peter Freeman and Karl Friedmann, both of the University of Alberta, were also present from Canada. Professor Freeman has become the Executive Secre-

tary of the International Ombudsman Institute, situate at the University of Alberta in Edmonton.

At the closed business session of the Committee on the morning of September 12th, Mr. Goodman presented a brief which he co-authored with Mr. Charles Ferris, solicitor to the New Brunswick Ombudsman, and Mr. Gordon Mayer, solicitor to the Saskatchewan Ombudsman. The purpose of the brief was to provide material for the assistance of lawyers and judges in relation to legal actions involving Ombudsman Offices. Mr. Goodman was appointed by the Committee to chair a special Sub-Committee which will undertake initial plans for the participation of the Ombudsman Committee and component Ombudsman and Academic Advisory Boards at the 1980 Conference of the International Bar Association which will be held in Berlin. The other members of the Sub-Committee are Dr. Bernard Frank, Chairman of the Ombudsman Committee, and its Vice-Chairman, Mr. Alex Weir.

Mr. Kenneth Smithers, Ombudsman for New South Wales, Australia, addressed the Committee members at a luncheon which followed the business session. In the afternoon, two extremely interesting panel discussions took place, The first considered "The Suitability of the Ombudsman Institution or Similar Institutions for Emerging Nations," while the second discussed the "Relationship Between the Ombudsman Institution and the Legal Profession." The open afternoon session of the Committee was attended by a sizeable number of interested delegates to the I.B.A. Conference.

Mr. Smithers was a most gracious host in Sydney, and Mr. Goodman had an opportunity, along with the other members of the Committee, to visit Mr. Smithers' office and meet with some of the members of his fine staff. Mr. Goodman also visited the offices of Mr. John Dillon, Ombudsman for Victoria, while in Melbourne en route to the Conference in Sydney.

The Conference provided Mr. Goodman with an opportunity to exchange ideas about the Ombudsman Institution and procedures with Ombudsman representatives from many countries. Mr. Weir is to be congratulated for the excellent job which he performed in organizing and chairing the meeting of the Committee.

APPLICATION PURSUANT TO SECTION 15(5)
OF THE OMBUDSMAN ACT CONCERNING
COMPLAINTS AGAINST THE HEALTH
DISCIPLINES BOARD

During this reporting period, we commenced an application to the Supreme Court of Ontario for a declaratory order

respecting our jurisdiction over the Health Disciplines Board. The application was made pursuant to section 15(5) of The Ombudsman Act which states:

"If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question."

The questions to be determined in the application were:

1. Is the Health Disciplines Board of the Province of Ontario a governmental organization of the Province of Ontario within the meaning of The Ombudsman Act?
2. Does the Ombudsman have jurisdiction pursuant to section 15(1) of The Ombudsman Act to investigate a review and decision made by the Health Disciplines Board of Ontario in respect of the case in issue and other cases within the same class?

The need to apply for a declaratory order arose after we notified the Health Disciplines Board of our intention to investigate a complaint against it. The complaint was made by a woman who was dissatisfied with the review conducted by the Board of a decision of the Complaints Committee of the College of Physicians and Surgeons of Ontario. She had complained to the College about the conduct of two physicians, but her complaints were not supported by the Complaints Committee. Under The Health Disciplines Act, she was entitled to request the Health Disciplines Board to review the Complaints Committee decision. The Board conducted a review and confirmed the decision of the Committee. She contended that the Board had failed to consider certain relevant evidence, and that it acted on evidence untested by cross-examination.

The Board notified us that it did not concede that it is a "governmental organization" as defined in The Ombudsman Act, and it declined to acknowledge our jurisdiction to investigate its review and decision concerning this complaint, and other complaints within the same class.

We disagreed with the Board. Although in the past we had investigated complaints against the Board, and had received the Board's co-operation in doing so, we felt that we could not proceed with the investigation of this complaint until all doubt about our jurisdiction was dispelled. We retained Mr. Eric Murray, Q.C., as our counsel to apply

for a declaratory order pursuant to section 15(5) of The Ombudsman Act. The Health Disciplines Board and the Attorney-General were respondents in the application.

Subsequently, the Farm Products Marketing Board and the Milk Commission of Ontario notified us separately that they dispute our jurisdiction to investigate complaints against them, and asked that all investigation of complaints against them be postponed pending the outcome of the Health Disciplines Board application.

The application was argued before The Honourable Mr. Justice Labrosse on December 13, 1978, and judgment was given orally on December 14, 1978. Mr. Justice Labrosse answered both questions set out in the application in the affirmative. He held that the Health Disciplines Board is a governmental organization within the meaning of The Ombudsman Act, and he held that the Ombudsman does have jurisdiction under section 15(1) of the Act to investigate the review and decision of the Health Disciplines Board which were the subject of the complaint. However, he struck out the last words of the second question, "and other cases within the same class," on the ground that the words were confusing.

REPORT ON THE DEVELOPMENTS
IN THE NORTH PICKERING CASE

In our Second Report to the Legislature, we reported on the developments in the North Pickering Land Acquisition case. It will be recalled that the Ombudsman sent a report of his opinions and recommendations concerning the North Pickering Project to the Minister of Housing of June 22, 1976. It was the Ombudsman's recommendation that in order to compensate the complainants for whatever losses they might have incurred by relying on either inadequate appraisals or misleading statements made by Land Acquisition Agents, their cases should be referred to the Land Compensation Board for the purpose of enabling that tribunal to determine the compensation the complainants would have received had they held out for expropriation.

On July 7, 1976, the Minister of Housing released the Report of the Ombudsman to the public. Although the Minister rejected the Ombudsman's conclusions he was prepared to recommend to the Cabinet that an independent tribunal be established to examine under oath those former landowners who wished to pursue their complaint. After negotiations were conducted among the Minister of Housing, counsel for several of the Land Acquisition Agents and the Ombudsman, an agreement was executed by these parties to take effect on October 1, 1976. This agreement was approved by the Select Committee on the Ombudsman. However, without any consulta-

tion with the Ombudsman, a Commission of Inquiry was appointed under Order-in-Council 2959/76.

Major difficulties arose with respect to the Commission of Inquiry which ultimately led to the decision by the twenty-three landowners to take no further proceedings before the Commission of Inquiry but without in any sense withdrawing their complaints. This position was set forth in a letter dated May 17, 1977 from Ian Scott, Q.C., the counsel for the landowners to the Honourable J. F. Donnelly, Chairman of the Commission. On June 16, 1977, Mr. Scott, on behalf of his clients, set out some of their complaints and asked the Ombudsman to investigate or further investigate their complaints and to treat his letter as a complaint on behalf of his clients pursuant to section 17 of The Ombudsman Act.

The Minister of Housing wrote to the Ombudsman on June 27, 1977 and raised the question of whether in view of the agreement of October 1, 1976, the Ombudsman had the jurisdiction to act on Mr. Scott's request. On July 27, 1977, the Minister of Housing advised the Ombudsman that it was his position that the Ombudsman had no jurisdiction to investigate or reinvestigate these complaints.

In the Third Report of the Select Committee on the Ombudsman dated November 25, 1977, the Committee stated that the Commission of Inquiry into the North Pickering land sales could not submit a substantive report on all the issues contained in the agreement between the Ombudsman and the Minister of Housing because of the way the proceedings were being conducted and because of the withdrawal of the claimants. The Select Committee stated:

"Any reports submitted by the Commission will be of little or no assistance to the Government or the Legislature for any purpose related to the matter affecting the former landowners and the Property Acquisition Agents."

The Committee went on to say that the Commission of Inquiry fell far short of its purpose as intended by all those involved and recommended to the Legislature that a new Commission be appointed to inquire into the issues. To date, no such Commission has been appointed.

The Report of the Commission of Inquiry into North Pickering Land Sales dated December 5, 1977 was released to the Legislature on March 10, 1978. On the issue of the overall merits of the claims by the former landowners for additional compensation, the Commission felt it was unable to recommend and report on this matter because of the

withdrawal of the claimants from the proceedings of the Commission, notwithstanding that the Commission itself did not subpoena any of those claimants to give evidence nor appoint Commission counsel.

On April 13, 1978, the Ombudsman wrote to the Minister of Housing, the Honourable Claude Bennett to advise of his intention to refer to the Supreme Court pursuant to section 15(5) of The Ombudsman Act the question of whether or not he had jurisdiction to investigate further the complaints of those landowners who were before the Commission of Inquiry. In response to the Ombudsman's letter of April 13th, the Minister of Housing wrote on June 23, 1978 and advised the Ombudsman that in light of his response to the Commission of Inquiry's Report and his proposed intention to make an application under section 15(5) of The Ombudsman Act, the Ministry of Housing no longer considered itself bound by the agreement of October 1, 1976. The Ombudsman replied to the Minister of Housing on July 31, 1978 that in his opinion the agreement had not been breached and that the application under section 15(5) was only for the purpose of clarifying the Ombudsman's position with respect to the request by the Pickering landowners for a further investigation.

An application has been made to the Supreme Court which requests the court's assistance in determining the Ombudsman's jurisdiction to reinvestigate or further investigate these complaints. As well, the court will be asked to determine whether the agreement of October 1, 1976 would be breached by such a further investigation. Although the application has been served upon all the parties involved in this matter and filed with the Registrar of the Supreme Court, a date has not as yet been set for the hearing of the application.

NORTH PICKERING HEARINGS BEFORE
MR. KEITH HOILETT

Except for minor details, the formal taking of evidence in relation to the North Pickering Hearings being conducted by our Office was concluded on the 30th day of October, 1978. As of that date there have been 350 days of sitting during which some 230 witnesses gave evidence under oath, several of whom appeared on more than one occasion.

The hearing is scheduled to reconvene on January 31st. 1978, when written arguments by counsel will be exchanged. Following that a reasonable period of time will be allowed for replies to the arguments, following which the Chairman will formally commence the writing of his report. It is difficult at this time to forecast how much time that will require, but six months is not an unreasonable approximation.

CASE SUMMARIES

Chapter Four of this Report contains Detailed Case Summaries of 75 cases which were closed during this reporting period. Among the cases reported in Chapter Four are situations such as:

--The plight of an elderly couple who were without food or money due to a delay in receiving Provincial supplementary old age benefits. The complainant had transferred from Family Benefits - GAINS to the Federal Old Age Security program, but until receiving the Provincial supplement he and his wife were forced to live on \$160 a month instead of the \$430 a month which had been provided under Family Benefits. Neither the complainant nor his wife had eaten supper the night before their visit to the Ombudsman's Office and there was no food nor money available to them on the eve of a three-day long weekend. Through contact with a senior civil servant with the Family Benefits Branch and with an official of Health and Welfare Canada, the Ombudsman's staff was able to obtain immediate approval of the complainant's wife's application for Family Benefits and a special cheque was made available to them the afternoon of the day of their complaint. (Included under Ministry of Community and Social Services, Detailed Summary #3.)

--The problem of a truck driver who was incorrectly held responsible for an accident involving a motorcycle. The complainant had witnessed a motorcycle skid off the road and had given an account of the incident to police and had later received a subpoena to appear in court. Since the complainant had been driving his employer's truck at the time of the incident, he spoke with his employer who advised that the firm's lawyer would look after the matter. The complainant heard nothing more until he was stopped by police much later and told that his licence had been suspended because of a payment made out of the Motor Vehicle Accident Claims Fund in the amount of \$1,990. Apparently, the motorcycle driver had claimed that the complainant was responsible for the accident and the Fund, in the absence of the complainant's testimony, had held him responsible for the accident and subsequent payment. The Ombudsman's review of The Motor Vehicle Accident Claims Fund Act with respect to such a finding against the complainant was underway when we were informed that the Fund had received a statutory declaration from the complainant outlining his version of the accident in which he denied responsibility for it. In view of this development, the Fund withdrew its claim against the complainant and notified the authorities that his driver's licence could be reinstated. (Included under Ministry of Consumer and Commercial Relations, Detailed Summary #11.)

--The complaint of an inmate being held in a Provincial jail concerning his inability to obtain a transfer to a correctional facility. Our investigation revealed that a former Clerk of Records at the jail had made an error regarding a report on the complainant and subsequent inquiries showed that three other inmates had been similarly adversely affected. Our investigator then contacted the Chief Provincial Bailiff and advised him of the error and the four men were transferred to a correctional facility within two days. (Included under Ministry of Correctional Services, Detailed Summary #18.)

--The problem concerning an involuntary patient being held under The Mental Health Act who sought information about his proposed repatriation to his country of origin. Our investigator contacted the patient's social worker and a representative of the Consulate involved and learned that the complainant's citizenship was not in question and that he held a valid passport. However, the complainant had served a penitentiary sentence and would be subject to mandatory supervision under the National Parole Service were he to be discharged from the hospital and there were also concerns centering around the complainant's paranoia related to his estranged family still living in Canada. Originally, hospital staff had proposed transferring the complainant to a psychiatric facility in his country of origin, but subsequent discussions between the hospital staff, the complainant's lawyer and Consular staff led to the conclusion that he might be returned to live with relatives in his home country provided sufficient precautions were taken to ensure that he could not return to Canada. Arrangements were made with the National Parole Service and Immigration authorities to facilitate the complainant's move and the hospital provided a small amount of money to add to the complainant's funds for the purchase of air fare. After the complainant's family was notified of his pending departure, the complainant, accompanied by two hospital attendants, was escorted to the flight which took him home and ended his involuntary hospitalization. (Included under Ministry of Health, Detailed Summary #34.)

--The concern of a recipient of Old Age Security payments who had been requested to repay \$3,000 to a local welfare department and \$800 to the Ministry of Community and Social Services. Through an administrative error, the complainant's receipt of his Canada Pension had been delayed for 15

months. While awaiting benefits, he applied for and received General Welfare Assistance and Family Benefits, but another error resulted in his obtaining an overpayment of which he was unaware and which he used to pay back taxes on his home and to purchase much-needed winter clothing for his children. Our investigator consulted with the Municipal Welfare Administrator who agreed not to recover the inadvertent overpayment since the funds had been spent in the complainant's family's long-term interest. After further contact with the Provincial Family Benefits Branch, our investigator was able to arrange that the \$800 overpayment from that Branch would be recovered by deducting only \$10 a month from the complainant's future monthly benefit cheques. (Included under Ministry of Community and Social Services. Detailed Summary #4.)

--The allegation of 10 French-speaking inmates in a Detention Centre who said discrimination existed against Francophone inmates. They contended that there was a delay in processing inmate requests submitted in the French language; that some inmates experienced difficulties in communicating with Correctional Officers; that there was an inadequate amount of French reading material available; that the Centre's institutional rules and regulations were posted in English only; that signs and posters in the Centre were not bilingual and that conflicts arose between English and French-speaking inmates over the selection of television programs. Our investigator spoke with eight of the inmates and senior Detention Centre officials as well as several Correctional Officers. We found that there was an adequate number of bilingual staff members to meet the requirements of the French-speaking inmates and encountered no unwillingness on the staff's part to converse in the French language. Requests from Francophone inmates were always dealt with, but our investigator found that the speed with which they were handled depended on which Correctional Officer received the request. The question of television programs was being handled among the inmates themselves, but a problem arose with regard to obtaining French-language copies of the Criminal Code. The Office of the Ombudsman made two copies of the Code available to the Centre for inmate use and the Ministry issued instructions that two copies of the Code in the French language were to be made available in all institutions. The Superintendent of the Centre informed our investigator that he was in the process of converting interior signs to French, but because of administrative delay in obtaining translations, the Office of the Ombudsman offered its translation services to the Centre. This proposal was accepted and the Centre was soon equipped with

institutional rules and regulations as well as signs for visitors in the French language. Other institutional signs were prepared by the Superintendent's staff in the French language and, as a result of our investigation, the Ombudsman concluded that the Centre's personnel were doing their utmost to ensure the linguistic rights of all inmates. (Included under Ministry of Correctional Services, Detailed Summary #22.)

--The complaint of a patient in the maximum-security unit of a provincial psychiatric hospital. The complainant was being detained as a result of having been found not guilty by reason of insanity of two criminal charges and was being held under a Warrant of the Lieutenant-Governor. The complainant contended that he had been placed in an intensive therapy program and that he felt compelled, during the therapy, to admit that he had committed crimes. From the outset, however, the complainant had maintained his innocence of the charges against him and had appealed the original court decision. The appeal resulted in the ordering of a new trial. During our investigation, we formed the opinion that we might make a report or recommendation to the Ministry that could adversely affect the clinical staff members who had made the decision to place the complainant in the therapy program. The staff members were given an opportunity to make representations to the Office of the Ombudsman and they maintained that their decision was made in the context of their clinical judgment and in the best interests of the complainant. They suggested that, in future, should they receive written notice that a patient had an appeal pending before the courts, the patient would be asked to sign a "Consent to Intensive Treatment" form should he wish to remain in therapy. Otherwise, he would be moved to a less intensive program. After considering the staff's representations, the Ombudsman concluded that they had acted unreasonably since the complainant was appealing the original verdict which had resulted in his detention in the hospital. With respect to the form which the staff suggested might be signed by patients awaiting appeal decisions, the Ombudsman concluded that since the courts had not recognized any privilege of communication in respect of the doctor-patient relationship, such a request was dangerous to patients. In addition, statements made by a patient to other patients and staff members in the context of the coercive therapy milieu in a maximum-security setting would not be privileged and could be used against him in a subsequent trial. The Ombudsman recommended that no patient in the maximum-security unit should be exposed to intensive therapy programs if an appeal of his case had been launched

unless the patient had specifically requested such therapy and his legal counsel concurred with the proposed program. The Ombudsman also recommended that the Ministry place before the joint Federal-Provincial Task Force on Evidence Reform a proposal which would confer upon a person placed in a coercive psychotherapeutic milieu a privilege against the disclosure in any proceedings, civil or criminal, of any statement made by the person concerned. The Ombudsman subsequently received a letter from the Deputy Minister of Health in which he agreed with the recommendations and said that the Psychiatric Hospitals Branch had been directed to implement them as soon as possible. (Included under Ministry of Health, Detailed Summary #37.)

--The difficulties that a church-affiliated youth entertainment group had encountered concerning a Wintario grant. The group had applied for a grant to help finance a concert tour of Iran and had received an assurance of a \$5,000 travel allowance which, together with the \$22,136 which had been raised by the group through 23 different fund-raising projects such as bake sales, teas and raffles, was to pay for the trip. However, due to timing requirements, the group's money had to be sent to the New York travel agency handling the travel arrangements before it had received the \$5,000 Wintario grant. According to the complainant, a Ministry of Culture and Recreation official had informed him that taking out a bank loan was a customary procedure while awaiting the grant, which still required the approval of the Minister. As a result of this advice, the complainant and a colleague each obtained a short-term loan of \$2,500 from a trust company. Shortly after the group had forwarded the required funds to the travel agency, it learned that due to political unrest in Iran, the tour could not take place. However, the group could not obtain a refund of its money from the travel agency. The Ministry subsequently cancelled its promised \$5,000 grant and the complainant contended that the Ministry should assume some responsibility for the \$5,000 personal debt he and his colleague had taken on as a result of the advice received from a Ministry official. The Ministry maintained that the loans were not its responsibility. We brought the special circumstances of this situation to the Minister's attention and recommended that a payment be made in the Minister's discretion on compassionate grounds. Meanwhile, members of the group had raised enough money to pay off the trust company loan, but since the group members were still in a financially disadvantaged position, negotiations continued which resulted in the Ministry agreeing to match dollar-for-dollar any donation made to the group by the trust company. Subsequently, the group received \$2,000

of which \$1,000 was a Wintario grant. The Ministry pointed out that it had no control over the amount donated by the trust company and took the position that it had a responsibility to maintain the integrity of the Wintario grant program. Although the amount was not the full amount of the loans, we felt that the most satisfactory possible solution had been arrived at. (Included under Ministry of Culture, Detailed Summary #27.)

--The case of an inmate in a correctional facility who had been assaulted by other inmates and who alleged that he had been unable to obtain proper medical treatment for injuries to his nose. The complainant said he had been assaulted by two inmates, that as a result his nose was noticeably crooked and that, at times, he had difficulty breathing through one nostril. He alleged that a doctor at one correctional facility had assured him that surgery would be carried out to correct the problem but that a doctor at the facility to which he was subsequently transferred had refused to arrange such surgery. The complainant felt that since the injury had been sustained while he was incarcerated, and since he could not afford to have the surgery performed, the Ministry should be held responsible for the cost of the operation. Our investigation confirmed that an assault had taken place but there was no evidence that the complainant had voiced concern about his nose until three months later. The Ministry's Senior Medical Consultant was contacted and through the complainant's Probation and Parole Officer (the complainant having been placed on parole) he was referred to an ear, nose and throat specialist. Subsequently, the Ministry authorized payment for surgery performed on the complainant's nose. (Included under Ministry of Correctional Services, Detailed Summary #21.)

--The problem of a patient in a provincial psychiatric hospital who contended that he should be released as he was not dangerous and that he was not receiving treatment at the hospital. Our investigator learned that the complainant was being detained by virtue of a Warrant of the Lieutenant-Governor since his having been found not guilty by reason of insanity of a criminal offence. Since his confinement, the Advisory Review Board had recommended to the Administrator of the hospital that the complainant be allowed visits outside the hospital with his sister and son - in the company of hospital personnel - and that a program of treatment be developed to aid in the complainant's rehabilitation. However, due to staff perceptions that the complainant was not

suffering from an active mental illness, no treatment program was being given. In addition, staff shortages at the hospital had meant that only a limited program of home visits was possible. Thus, the recommendations of the Advisory Review Board were not being carried out. Our investigation revealed that a local community program could help the complainant and that a local clergyman was prepared to assume responsibility for the complainant during his visits to the community. Since neither the clergyman nor the members of the group were hospital staff, however, they did not meet the Advisory Review Board's criteria to allow the complainant home visits. The Office of the Ombudsman obtained agreement that the hospital would request that the Warrant be changed to authorize the complainant to be released into the company of anyone approved by the hospital Administrator. We subsequently learned not only that the complainant's Warrant had been vacated by the Advisory Review Board, but also that prior to his discharge from hospital, he had been allowed to leave the hospital grounds on a daily basis in company with the local clergyman and designated volunteers. (Included under Ministry of Health, Detailed Summary #35.)

--The problem of a widow who had been ordered to remove her late husband's cottage from Crown land. The complainant's husband had erected the cottage in 1958 and had subsequently received a Land Use Permit in 1974 entitling him to use the land during his lifetime. After his death in 1977, the Ministry of Natural Resources informed his widow that the cottage would have to be removed from the Crown land since the Land Use Permit could not be assigned or transferred to her, despite the fact that she had taken legal steps to have the permit transferred to her and despite the fact that she had continued to pay the necessary taxes on the property. The complainant's appeals to her Member of Provincial Parliament and to the Minister had not resulted in a satisfactory settlement and, in early 1978, she was informed that the cottage had to be removed by January, 1979. Our investigation revealed that the complainant's late husband had a life expectancy, when he signed the Land Use Permit, to the year 2011. We also learned that the decision to have the cottage removed was brought about to prevent pollution to the Great Lakes and land speculation in recreational properties. Ministry officials conceded, however, that the cottage's septic tank system posed no pollution threat to the Great Lakes. The Ombudsman's view was that a new Land Use Permit in the name of the complainant would ensure the Ministry's control over the final disposition of the land and would also take into account the complainant's expectations that

she would be able to enjoy the use of the land as had been planned before the unforeseen death of her husband. In late 1978, the Ombudsman was informed by the Deputy Minister that, on humanitarian grounds, the complainant would be offered a conditional lifetime permit so as to enable her to use the cottage. The complainant subsequently informed us that she had taken advantage of the Ministry's offer. (Included under Ministry of Natural Resources, Detailed Summary #45.)

--The complaint of a Northern Ontario resident concerning his request for additional benefits from the Workmen's Compensation Board. The complainant alleged that although he had successfully appealed a decision concerning his claim, he had not received the additional benefits. Our investigator contacted a senior Board official who found that due to an oversight no payment had been made to the complainant. Shortly after our inquiry, the complainant received a cheque for \$3,660. (Included under Workmen's Compensation Board, Detailed Summary #62.)

RECOMMENDATIONS DENIED

During this reporting period, there were ten cases closed where, upon completion of our investigation, the Ombudsman made recommendations pursuant to Section 22 of The Ombudsman Act which were rejected by the governmental organization involved. Three of these cases were reported in our Fourth Report to the Legislature at page 36 under the heading "Rent Review." All three cases involved a recommendation to the Residential Premises Rent Review program and the Rent Review Board.

These cases were thoroughly considered by the Select Committee on the Ombudsman in August of 1978. The Committee had the following to say concerning these cases in its Fifth Report to the Legislature at pages 45 - 48:

"In this Fourth Report, pages 36-42, the Ombudsman referenced two issues which have arisen during the course of his office's investigation of various complaints referable to the Rent Review Program and the Rent Review Board.

In the first instance, the Ombudsman is of the opinion that where the Rent Review Program or the Rent Review Board agrees that an error has been made by one or the other in the administration of the Act, the legal costs of the complainant upon an application for

judicial review to vary, amend or set aside the decision complained of, should be borne by the Program or the Board, as the case may be. It is understood that the circumstances wherein judicial review is necessary are limited to those cases wherein the Rent Review Board has not on its own motion within 30 days of its original order decided to re-hear an appeal therefrom. The Ombudsman referenced two complaints reported by him in this Third Report wherein the then Chairman of the Rent Review Board agreed that the Board would not oppose an appropriate application for judicial review and would further recommend to the Attorney General that an order be issued with respect to this matter on consent. However, the Chairman of the Board and representatives of the Rent Review Program have since changed their position on the question of costs. They believe that neither the Board nor the Program have any statutory authority or any funds to enable them to pay legal costs. They feel that if any party other than the complainant opposes an application, those costs should not be paid. They were further concerned that in agreeing to pay costs, the rights of either the Board or the Program might be prejudiced if they wish to develop or amend the legal proceedings later. The Ombudsman does not agree with the Program or the Board on these reasons for refusal to pay legal costs.

The Ombudsman is also of the opinion that the Rent Review Board should have an unlimited right to re-hear appeals and rescind and amend its orders. The Ombudsman noted that the Act was amended in 1977 to empower the Board on its own motion within 30 days of its order to decide to re-hear an appeal and confirm, rescind, amend or replace its decision or order where, in its opinion, there has been a serious error. The Ombudsman notes that if the Board were given unlimited power as he recommends, the discussions and difficulties on the question of legal costs and on the question of judicial review would disappear.

The Committee considered the issues raised by Complaint Nos. 11 and 15 in the Ombudsman's Third Report to determine whether there is evidence of any general practice or procedure by the Rent Review Board which might cause the type of complaints referenced therein to recur in a more general way. The Chairman of the Rent Review Board advised the Committee of the reduced numbers of Board members actively and continuously hearing appeals; the continuing education sessions made available to Board members; and the administrative procedures both before and after a Board

hearing to ensure a full consideration of all relevant issues and to ensure a decision of the Board most correct in law and most consistent with the facts available. The Committee commends the Chairman and the Board for these procedures and urges it to continue to scrutinize its procedures with a view to improving them even further. In the circumstances, the Committee chooses not to make any recommendations to the Board in this regard.

The Committee understands the position of the Board and the Program on the questions of costs to be that any general agreement to pay costs on an application for judicial review in respect of a Board order would place the Board in a position wherein it was stopped from altering or amending its position upon the hearing of the application and/or wherein it was funding a great many applications to the Divisional Court which ought not to be brought in the first instance.

The Committee concurs with the Program and Board on the question of costs to the extent that it applies to applications for judicial review wherein issues are raised which the Board either disagrees with or seeks the guidance and interpretation of the Court on some point of law or procedure. However, where a situation exists that the Program or the Board agrees that an error has taken place with respect to a Board decision and that the decision should be altered, varied or amended in some way, but the only remedy available is judicial review, then the Program or Board should pay the legal costs of the parties who are affected by the order or decision.

The Committee considers the procedure to alter vary or amend the Board's order by judicial review to be cumbersome and an unnecessary boon to the legal profession. However, unless and until alternate remedies are provided by statute, this procedure must be utilized. When the Board is the cause of the error in the first place and acknowledges that it is, it should not expose the parties to any further hardships by refusing to pay the appropriate legal costs.

Accordingly, the Committee recommends that where the Ombudsman, as a result of a complete investigation of a complaint, formulates the opinion that a decision of the Rent Review Board comes within one of the subheadings of Section 22(1) of The Ombudsman Act and he recommends that the decision be altered, varied or

amended in some way in accordance with Section 22(3) of The Ombudsman Act, and where the only means available in law is an application for judicial review, the Rent Review Board, if it agrees with the Ombudsman's opinion and recommendation, should hereafter, to implement the recommendation, consent to the appropriate order in the Divisional Court which consent shall include all reasonable costs of the complainant on a solicitor and client basis.(22)

In the Committee's opinion, the procedure referenced above for judicial review is unnecessary and unwarranted. The Committee commends the Ministry for causing an amendment to be made to Section 13(7) of The Residential Premises Rent Review Act. However, by imposing a 30-day time period for the Board to decide on its own motion to re-hear an appeal, it is in the Committee's opinion, overly restrictive, notwithstanding the procedures implemented by the Board to effectively extend that 30-day period. The Board, by having reserved to itself, the discretion to re-hear an appeal should not be fettered with a relatively short time period. The key is the Board's discretion to re-hear, not the time limit for it to decide if to re-hear.

In the event, if by forthcoming legislation, the Rent Review Board is continued and perhaps given wider authorities, it will become further entrenched as an effective administrative tribunal in this Province. With the passage of time, so do the experience and abilities of the Board increase. In order that justice can be serviced to those persons who have already appeared before it and who may be adversely affected by decisions in the future, the 30-day time period should be removed.

Accordingly, this Committee recommends that the Ministry of Consumer and Commercial Relations cause an amendment to be made to Section 13(7) of The Residential Premises Rent Review Act by removing therefrom the phrase 'within thirty days after making an order'.(23)"

In view of the recommendations of the Select Committee, we do not feel it is necessary once again to report on these three Rent Review cases in detail and consequently, they are included as capsule case summaries in Volume II.

We have outlined highlights of the other seven cases wherein the Ombudsman's recommendation was denied in this

Introduction. In addition, these seven cases are reported in detail in Chapter Four of this Report.

In six of the seven cases, the Ombudsman sent a copy of his 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 seven cases, the Premier responded to the report and recommendation indicating that the governmental organization is unable to alter its decision not to follow the recommendation. The seven cases involved:

--The complaint of a worker who had been injured when he fell backwards and apparently struck a steel post behind him upon which he may have hit his upper back and neck. The injury occurred in July, 1976, but the worker did not feel pain until about two weeks after the incident and at that time he consulted his family physician. Soon after, he was admitted to hospital for treatment and upon his discharge he reported the accident to his employer who forwarded the necessary information to the Workmen's Compensation Board. The Board initially rejected his claim, stating there was no evidence of an accident at his place of work, but on appeal the claim was rejected because "The relationship between the accident of July 16, 1976 and the disability commencing on July 27, 1976 has not been established." The complainant felt that, from the wording of the Board's latest letter, there was no question regarding accident recognition and the complainant then brought his problem to the Office of the Ombudsman. During our investigation we questioned the Board's view of the accident and were assured that the Board no longer entertained doubt about the accident having occurred. Our investigation proceeded on that basis and we discovered that during the worker's stay in hospital, he had been treated by a noted neurosurgeon who wrote in a report, "I would think it is likely that this is a work-related injury." This opinion was repeated in a follow-up report and referred specifically to July 16, 1976--the date upon which the complainant had said he had fallen and hit himself. It was based on this physician's opinion that the complainant was awarded life insurance disability benefits for his on-going disability. The Ombudsman formed the tentative conclusion that the Board had been unreasonable in denying the worker's claim for temporary total disability benefits and informed the Board of that possible conclusion as well as his possible recommendation that the Board grant the worker benefits. The Board's response referred to the worker's "alleged accident" and stated that the Board "... did not and does not accept that (this worker) suffered an accident in employment ..." The Ombudsman's opinion was that it was unfair of the Board at that point in the pro-

ceedings, to raise anew the question of the accident's recognition by the Board and he completed his report which followed substantially the tentative conclusion and recommendation first formed. The Board, in its reply to the Ombudsman's final report stated that it would not give effect to the recommendation to grant the worker benefits ". . . as a result of his compensable injury of July 16, 1976." Subsequent to the Board's response, a copy of the Ombudsman's final report was forwarded, pursuant to The Ombudsman Act, 1975, to the Premier. In his reply, the Premier did not state that any steps would be taken to implement the Ombudsman's recommendation. (Included under Workmen's Compensation Board, Detailed Summary #61.)

--The complaint of a seasonal labourer who was injured in a motor vehicle accident during the course of his employment and who was treated for a neck disability as a result. Some 14 months after the accident, he complained of lower back pain and the Workmen's Compensation Board extended the disability award it had been making as a result of his neck injury to take into account his back problem as well. However, the Board's original decision was overruled by its Review Committee after two of its medical consultants gave the opinion that there was no relationship between the accident and the back disability. The complainant appealed the decision without success and then contacted the Office of the Ombudsman. Our investigation included a review of the Board's file and information provided by the complainant. The worker's accident had occurred in early 1972 and except for a brief period of time he had not worked since that time. In 1973, he received treatment at the Board's Hospital and Rehabilitation Centre and it was during his stay there that he first complained of a low back pain. It came to our attention that the two physicians who actually treated the complainant were of the view that a relationship did exist between the back problem and the accident and, on the basis of their opinions, the Ombudsman reached a tentative conclusion that a relationship did exist and that the Board had been wrong to deny the worker additional benefits for his back problem. The Board was informed of the Ombudsman's possible conclusion and recommendation but refused to alter its decision. The Ombudsman subsequently completed his report and quoted from the opinions of the two treating physicians. The first doctor stated that both the neck and back problems experienced by the complainant were a result of the accident and the second doctor stated it was reasonable to suppose that the accident was the cause of the back problem. Although the Board's Surgical Consultants disagreed with these opinions, the Ombudsman pointed out

that they had not treated the complainant on a regular basis for some time, as had the other two doctors. The Ombudsman concluded that the Board had wrongly come to the conclusion that no relationship existed between the accident and the back problem and he recommended that the complainant be granted a permanent disability award. The Board did not change its position in light of the Ombudsman's final report and a copy of the report was therefore sent to the Premier pursuant to The Ombudsman Act, 1975. The Premier's response did not state that any steps would be taken to implement the recommendation contained in the report. (Included under Workmen's Compensation Board Detailed Summary #60.)

--The complaint of a widow that she had been unfairly denied widow's benefits by the Workmen's Compensation Board. Her husband had been employed in underground mining operations for 47 years. Shortly before his retirement at the age of 66 in 1960 he had established a silicosis claim with the Board, but he was not awarded benefits because the Board found that his pulmonary disablement was not industrially-related. After the worker's death in 1972 at the age of 78, his heart and lungs were examined and the pathological report showed acute bronchopneumonia and pulmonary emphysema. The pathologist also reported findings of slight pulmonary silicosis and marked silicosis of the hilar nodes. The worker's widow subsequently applied to the Board for benefits but without success and her case was referred to the Office of the Ombudsman by an M.P.P. Our investigation included a review of the Board's file and the gathering of information from the physicians who had treated the worker prior to his death. Additional material was gathered from a hospital and a sanitarium and all the data was then sent to a specialist in respiratory diseases. Further information was sent to the specialist and we also obtained reports on the dust content of the worker's mine from the Ontario Mining Association. Following our receipt of the specialist's report, the Ombudsman formed the tentative conclusion that the Board had rejected the widow's claim unreasonably and this possible conclusion, together with a possible recommendation were sent to the Board. Both the Board and the worker's former employers made representations to the Ombudsman concerning his possible conclusions and recommendations and the comments of the Board's Medical Advisors were then referred to the specialist first retained by the Ombudsman as well as to a second specialist. The first specialist concluded his report by saying that there was, "... enough evidence in this case for me to recommend compensation to the widow," while the second said the worker's case presented features of a rare syndrome which

had been reported in a British medical journal and that in the event of doubt concerning the relationship between the worker's condition and his work environment, the benefit of the doubt should be given to the patient. Based on those opinions, the Ombudsman then completed his report and recommended that a widow's pension be granted and that the Board consider whether the worker might have been eligible for benefits in his lifetime. The Board responded to the Ombudsman's final report by saying that it saw no reason to change its view of the case in the light of its Medical Consultant's opinion concerning the worker's condition. Subsequently, the Ombudsman forwarded a copy of his report to the Premier pursuant to The Ombudsman Act, 1975. The Premier's response to the report did not state that any steps would be taken to implement the Ombudsman's recommendations. (Included under Workmen's Compensation Board, Detailed Summary #59.)

--The problem of a lumberjack who had been struck by a falling log which had injured his left knee in 1948. He had received medical attention for the accident at the time and was compensated temporarily by the Workmen's Compensation Board. Although the complainant continued working as a lumberjack until 1973, he visited a doctor in 1968 complaining of pain in his left knee. In 1973 he again sought medical treatment for his knee and it was found at that time that the knee was swollen and tender. Two operations were performed soon after, one involving replacement of the entire knee. By March 1975, the treatment was completed and the worker returned to work. although not in the same capacity as before. Throughout his treatment, the orthopaedic surgeon who cared for the complainant submitted reports to the Board on the assumption that the worker's condition was compensable. The complainant has also applied to the Board for benefits, maintaining that the knee problem was related to his 1948 accident. The Board, however, took the view that the recent problems were not related to the accident but were the result of normal wear and tear on the knee joint. The Board asked the specialist who had treated the worker to examine the relationship, if any, between the accident and the subsequent problems. The physician subsequently reported that there was probably no relationship between the two and the Board then concluded that the complainant was not entitled to benefits for the period from June 1973 to March 1975. The worker then contacted the Office of the Ombudsman and after a review of the Board's file and interviews with the complainant we referred the worker's entire medical file to an independent specialist. After receiving his report, the Ombudsman

reported to the Board that he could possibly conclude that the Board had erred in not obtaining an independent assessment of the relationship between the two knee problems, especially in light of the specialist's opinion given to the Board which appeared to be contrary to the opinions he had submitted throughout his treatment of the complainant. The Ombudsman also tentatively concluded that the Board was wrong to deny the worker benefits. The Board was informed of these possible conclusions as well as the possible recommendation that the complainant should be compensated by the Board. The Board responded that it did not intend to vary or amend its original decision. After reviewing the Board's response--particularly its assessment of the independent specialist's opinion--the Ombudsman completed his report and concluded that the Board had been wrong in its decision not to compensate the complainant. The Ombudsman recommended that the worker receive compensation, but the Board informed us that it did not plan to implement the recommendation. Pursuant to The Ombudsman Act, 1975, the Ombudsman's report was submitted to the Premier. The Premier's response did not state that any steps would be taken to implement the recommendation. (Included under Workmen's Compensation Board, Detailed Summary #58.)

--The complaint of a worker who contended that the Workmen's Compensation Board had unfairly denied him an increase in the 20 percent permanent disability award allowed him as a result of two industrial mishaps. The complainant was first injured in 1969 when he suffered a sprain to his right shoulder and neck. He returned to work after treatment but some months later was injured in the right shoulder when a fellow-worker accidentally shot a wedge from a pneumatic drill which hit him. Meanwhile, the complainant had been involved in an automobile accident which aggravated his upper back, neck and shoulder problems and which created a new problem in his lower back. A civil action which resulted from the accident awarded him \$9,242, but the jury found that most of his disability was not related to the accident. Before the complainant brought his problem to the Office of the Ombudsman, he had been assessed a number of times by the Board but despite conflicting medical opinions concerning the complainant's psychological and physical problems, his 20 percent disability award had not been increased. Our review of the Board's file showed that a psychiatrist reported to the Board in 1975 that the complainant was suffering from a traumatic neurosis anxiety with depression and conversion reaction. "I would estimate that this workman's disability from psychiatric causes at the present time is 15% to 20%," the report stated. An Appeals Examiner Inquiry, however,

ruled "... that any on-going psychiatric disability cannot be attributed to the compensable accident." In his possible conclusion and recommendation. the Ombudsman pointed out the divergence in medical opinion and said he might recommend an increase in the complainant's benefits subject to the response of the Board. Soon after, the Chairman of the Board replied that the 20 percent award adequately compensated the worker for the long-term effects of his two industrial accidents. After reviewing the reply of the Chairman, the Ombudsman completed his report containing his recommendation that the complainant's award be increased. This recommendation was rejected by the Board and, pursuant to The Ombudsman Act, 1975, a copy of the Ombudsman's report and recommendation was forwarded to the Premier. The Premier's response did not indicate that any steps would be taken to implement the Ombudsman's recommendation. (Included under Workmen's Compensation Board, Detailed Summary #57.)

--The plight of an elderly woman who was refused assistance under The Ontario Guaranteed Annual Income Act, 1974 (GAINS). The complainant had immigrated to Canada in 1969 and would ordinarily have become eligible for GAINS benefits after residing five consecutive years in Canada, of which the last had to be in Ontario. While in Ontario, the complainant, who is in her 70s, lived with her daughter in a room provided for her but she was out of the country from December, 1974 to August, 1975 while visiting her son who was ill. Her absence was lengthened by the onset of an extreme attack of arthritis in her legs which made it impossible for her to travel and thereby return to Canada. Since the period of time she was absent from Canada exceeded the statutorily allowed maximum of six months, her application for GAINS had been rejected and she sought the assistance of the Office of the Ombudsman. During our investigation, we reviewed the relevant provisions of the GAINS legislation and our legal staff came to the conclusion that notwithstanding the complainant's absence for eight months, case law interpreting the terms "residence" and "actual residence", or variants of them, in a number of different statutes, had established that while "actual residence" connotes physical presence in a place, "residence" need not. Since the complainant's residence in her daughter's home was at all times maintained for her during her absence, and since she had taken with her only those belongings she required for the visit to her son, the Ombudsman concluded that the complainant at the relevant times to be taken into account in deciding on her eligibility for GAINS benefits resided in

Canada. The Ombudsman's possible conclusion and recommendation that the complainant receive GAINS benefits was sent to the Deputy Minister of Revenue who responded that the Ministry disagreed with the Ombudsman's interpretation of the statutory provisions and that the Ministry's view had been upheld on a number of occasions in appeals to the Social Assistance Review Board. The Ombudsman subsequently completed his report on the case, concluded that the Ministry had been "wrong", pursuant to The Ombudsman Act, 1975, in deciding against the applicant and recommended that she be made eligible for GAINS benefits. In response, the Deputy Minister reiterated his previous reply stating, "... the Ministry is unable to accept your recommendation." The Deputy Minister said he felt obliged to accept and apply the decisions of the Social Assistance Review Board which, he said, had ruled on similar cases in the past. "The Ministry has, in my view, a duty to apply the Act consistently and in accordance with the repeated decisions of the Appellate Tribunal to which the Ministry's decision are subject," the Deputy Minister said. In the light of the fact that the Ministry's position was not untenable, the Ombudsman did not refer the case to the Premier but has included it in this Report to the Legislature for its consideration. (Included under Ministry of Revenue, Detailed Summary #46.)

--The complaint of the owner and Dean of a College of Massage and Hydrotherapy concerning a decision by the Board of Directors of Masseurs, operating under The Drugless Practitioners Act, to hold only one examination a year for students wishing to become registered masseurs and masseuses. The complainant contended that the Board's decision was causing the College, its staff and students undue economic harm and that it unfairly reflected upon the 30-week course taught at the College. Our investigation found that there had been friction between the College and the Board prior to this complaint. In 1974, the Board had refused to recognize the College's 30-week course, saying that it was an inadequate time in which to complete the required 1,040 hours of training. At that time, the Board refused to examine the College's students but a court decision ruled against the Board's refusal. Subsequently, the Board decided to hold examinations only once a year, and since the College graduated its students twice a year, and since the Board's decision had been made with little consultation with the College, the complainant approached the Office of the Ombudsman. During our investigation, we noted that the Board had advised the complainant that financial considerations were not a factor in its decision, but that a subsequent letter from the Board's Secretary-Treasurer to our Investigator cited

economic restraint as a reason for the cutback in the number of examinations held. Our investigation revealed no basis for this reasoning. While our Investigator noted that the College's students performed better than average on the Board's examinations, it became apparent that the Board suspected that the College had connections with questionable body rub establishments. However, not only was there no evidence of such connections, but the Superintendent of Private Vocational Schools and the Ministry of College and Universities, Student Awards Branch, had not encountered problems with the College. We found that the College's contention concerning a lack of communication between the College and the Board had merit in that the Board had never visited the College in its nine-year existence nor had it consulted with the College prior to making its examination decision. The Ombudsman determined that the Board's decision to hold but one examination a year was unreasonable and he recommended that the Board revert to its previous procedure. The Board, however, declined to act on the Ombudsman's recommendation commenting that it did not feel the College's program ensured that its students received the necessary 1,040 hours of instruction and that it did not feel the College was making sufficient effort to help upgrade the image of the profession. In view of the Board's decision, the Ombudsman's report and recommendation were sent to the Premier pursuant to The Ombudsman Act together with the Ombudsman's observation that the Board's response had been inadequate in light of the Ombudsman's findings. (Included under Ministry of Health, Detailed Summary #32.).

CONCLUSION

As one can see from the preceding pages which detail the activities of the Office of the Ombudsman in Ontario, the Office is doing a great deal to assist the citizen with problems he or she encounters in dealing with the huge bureaucracy of government in Ontario covering the broad spectrum of his or her daily routine. During my short tenure as Temporary Ombudsman, I have become extremely impressed with the quality of work performed by the talented men and women who staff the Office of the Ombudsman. I cannot help but be impressed that in a little over three years, the Office of the Ombudsman has established itself as an integral part of the machinery set up to protect and assist the citizen in our progressive, democratic society.

In my view, the stature that the Office of the Ombudsman has achieved in and beyond the Province, and the efficient and excellent service it provides to the people of Ontario, in itself, is a tribute to the hard work and dedication of

the Office's first incumbent, Mr. Arthur Maloney, Q.C. It is therefore understandably an honour for me as Temporary Ombudsman in presenting the Office's Fifth Report to the Legislature to pay tribute to the great service provided to the Province by Arthur Maloney. I am joined by each and every member of the staff of the Office of the Ombudsman in expressing our sincerest appreciation for a job well done. It is only because of Mr. Maloney's unequalled dedication to the Ombudsman cause that the citizens of the Province of Ontario, to use Mr. Maloney's words, can boast of having an Office of Ombudsman "second to none in the world."

The departure of Arthur Maloney as Ontario's first Ombudsman marks a significant watershed in the history of the Ombudsman's Office in Ontario and as we pay tribute to him, it is most appropriate that we should welcome as Ontario's second Ombudsman another of the Province's distinguished citizens, The Honourable Donald R. Morand, Q.C., formerly of the Supreme Court of Ontario.

These introductory remarks would be less than complete if I did not take this opportunity, as has the Ombudsman in the past, to pay tribute to the high calibre and dedication of the many public servants who serve the citizens of Ontario so well. It is a tribute to them that what the Ombudsman is called upon to deal with is the exceptional and not the routine.

CHAPTER TWO

CHAPTER TWO

The introduction to the Ombudsman's Fourth Report to the Legislature contained a description of the social therapy program developed in the Oak Ridge Division of the Mental Health Centre at Penetanguishene and employed, since 1965, in the treatment of a segment of the patient population. After the first year of our office's experience, it became apparent that the investigation of complaints of individuals affected by decisions or recommendations made, or actions taken or omitted in the course of the administration of this program, was often hampered by the absence of qualified independent opinions on the application of the program in any individual case. The Ombudsman was also concerned with some aspects of the program at the hospital as related to him by the complaints which he was receiving from patients at the hospital.

The complaint of a particular patient residing in the Social Therapy Unit at Oak Ridge was the catalyst for the decision which was made by the Ombudsman to retain the services of two psychiatrists, Dr. Peter Rowsell and Dr. Pieter Butler, and a clinical psychologist, Dr. Alan Long. After rendering an opinion specific to this complaint, which greatly assisted in its resolution, these experts, commencing in November 1976, undertook a detailed study of the social therapy program at the request of the Ombudsman, so that they could advise him with respect to those elements of the program about which complaints had been received from ten other patients. This investigative study was also commissioned on the Ombudsman's own motion.

With the co-operation and assistance of the administrative authorities at the Mental Health Centre, our consultants, for three consecutive days and evenings, attended in the Social Therapy Unit where they observed the program in operation, participated in groups, conducted interviews with the staff, and met with the general patient population as well as the individuals who had complained to our office. There followed numerous written and personal communications between our consultants and the hospital's administrative personnel. Dr. Rowsell, for comparative information, visited Fort Steilacoom, Washington, and the federal correctional centre for dangerous sexual offenders in Abbotsford, British Columbia, where treatment programs with similar concepts are employed. Our consultants drew on their personal experiences in numerous visits to Penetanguishene over the preceding years in their professional

capacities as consultants in criminal matters before the courts. In addition, they were provided with all written material pertaining to the organization of the social therapy program and studied numerous articles relating to Oak Ridge, and particularly to the social therapy program, which had been published in professional journals.

Our consultants submitted a draft report in June 1977 and this was studied by the Ombudsman and other members of the staff in our office, and also by the then Medical Director of the Mental Health Centre at Penetanguishene, Dr. B.A. Boyd. Our consultants developed their report in further meetings with our staff and it was presented to the Ombudsman in its final form in the late fall of 1977.

In our opinion it was not necessary for any person to be accorded an opportunity to make representations concerning this investigation, inasmuch as nothing in it 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.

After studying our consultants' report, Dr. Boyd made further helpful suggestions. A copy of this report was also forwarded to the Deputy Minister of Health, Mr. W.A. Backley, on December 20, 1977, inviting his Ministry's comments and suggestions before the Ombudsman's Report was finalized.

On March 31, 1978, Mr. Backley advised our office that the Ministry of Health intended to use our consultant's report as "useful background information for our program assessment from which we hope to effect major improvements." Having studied the doctors' report in conjunction with the views expressed by both Dr. Boyd and the officials of the Ministry of Health, the Ombudsman's final report was forwarded to the Ministry on May 25, 1978.

In their report, our consultants described the social therapy program in terms of its context in the field of psychiatry, its therapeutic objectives, considerations for the selection of patients for this treatment modality and the calibre and sufficiency of staff employed in the program. They described the structure of the program within four thirty-eight bed wards and the goal of each phase of the program. The concept and basic philosophy for using patients as "therapists" was explained. Special programs

known as the Motivation, Attitude and Participation (MAP) program, the "capsule" (both of which employ intensive encounter techniques), and the administration of defense disrupting drugs, were explored in depth by our consultants. They commented on the patients' understanding of the program and the matter of their consent for such treatment.

The doctors found:

- "1. That the program is applied humanely and intensively;
2. that the patients understand the nature of the therapy;
3. that the attendants at the hospital manifest a comprehensive understanding of the Social Therapy Unit;
4. that the patients are well informed about the treatment and its possible benefits to the extent that it is our opinion that the patients in the Social Therapy Unit are better informed than most general hospital patients;
5. that the present services available to assist patients with their re-adjustment into society are primitive and insufficient;
6. that the occupational and industrial therapy available to patients in E Ward is not adequate;
7. that sex offenders have a relatively low treatment potential at Oak Ridge due to the fact that they are most immature and suffer from a different kind of psychopathology from the rest of the population and consequently they do not blend easily into the groups nor do they derive much benefit from confrontations that they face in the Social Therapy Unit;
8. that referral to the M.A.P. program is so flexible as to be capable of abuse and that the M.A.P. program itself could be abused;

therefore, the M.A.P. program requires more safeguards;

9. that there is a need for the continual upgrading of the staff through additional staff training and extramural education;
10. that additional staff training is presently difficult due to the shortage of staff;
11. that the staff complement is 20 to 25 per cent smaller than it should be;
12. that one therapeutic dimension lacking at Oak Ridge is the presence of women;
13. that one weakness of the Social Therapy Unit program is the lack of provision for the involvement in the program of the significant people in the patient's life and the lack of a follow-up program for former Oak Ridge patients;
14. that a patient in the Social Therapy Unit has little real choice for moving to the Activity Therapy Unit;
15. that there is a shortage of recreational facilities;
16. that there is a lack of gradation in the patient's return to an ordinary life due to the absence of a specialized rehabilitation program."

Flowing from these findings, the doctors recommended:

1. That the custodial staff complement should be increased by 20 to 25 per cent over that complement presently employed in the Social Therapy Unit so that there is at least one staff member for every group, in particular, in the M.A.P. program.
2. That custodial staff and personnel receive continual up-grading and reinforcement by the establishment of further intramural staff training and extramural education.

That employment at Oak Ridge should be incorporated into university programs in the criminology, law, clinical psychology and forensic and general psychiatry, and other behavioral sciences and disciplines.

3. That the following safeguards be implemented into the M.A.P. program;
 - a. an attendant always be present in the group sessions;
 - b. another attendant drop into the session periodically;
 - c. video tape cameras of group rooms and corridors be in use at all times;
 - d. the transfer of a patient to the M.A.P. program should always be with the knowledge of the Medical Director.
4. That there should be a separate co-educational facility, preferably in a separate building, situated near Toronto for the treatment of sex offenders.
5. That E Ward should be expanded.
6. That regional mental hospitals should be made to serve as half-way houses for patients who have been released into the community following the Social Therapy Unit treatment. Key people are needed for such centres who would be equivalent to parole officers in the community, providing support for the patient during his re-adjustment. The formation of such a service is necessary to the patient's treatment and should be expected to be of a duration equivalent to the patient's involvement in the Social Therapy Unit or, as it is negotiated with the Advisory Review Board.

That a life skills training program should be implemented into the Social Therapy Unit.

That a specialized rehabilitation program be instituted to assist the patient's return to an ordinary life.

7. That the Ministry of Health take steps to review the present consent form executed by patients in the Social Therapy Unit.
8. That there should be female peer group therapists in the Social Therapy Unit program.

That an apartment should be set up to enable patients and a companion, male or female, approved by the hospital and the group, to spend time together.

That provisions should be made to enable a patient in the Social Therapy Unit to move to the Activity Therapy Unit should he wish to.

That additional recreation and rehabilitation facilities should be implemented.

In his report to Mr. Backley, dated May 25, 1978, the Ombudsman advised that he had decided to adopt, in its entirety, the report of Doctors Rowsell, Butler and Long, and a copy of their report was appended. Because the report was generally supportive of the social therapy program, it was clear that the complaints of the eleven Oak Ridge patients, as they related to the program, could not be supported. However, the Ministry was urged to give careful consideration to the implementation of our consultant's recommendations, because the Doctors felt that the program would be enhanced and broadened if these recommendations were put into effect.

On May 25, 1978, reports were forwarded to each of the complainants. These reports did not include a copy our consultants' report although the findings and recommendations of the doctors, as they were made to this office, were set out.

In a letter of response received from Mr. Backley on June 22, 1978, the Ombudsman was advised that a new Administrator and Medical Director had been appointed at the Mental Health Centre, Penetanguishene, and that our consultants' recommendations would be forwarded to them. Although in previous correspondence from Mr. Backley, it had been indicated that most of the recommendations which appeared in our report were acceptable, we were advised that the Ministry of Health did not wish this document to be made public.

The importance to our Office of the report of Doctors Rowsell, Butler and Long cannot be underestimated. It was central to the investigations of the complaints of the eleven Oak Ridge patients referred to in this summary. Subsequently, our investigative staff who regularly visit Oak Ridge, and who have thoroughly familiarized themselves with the report and the Ombudsman's position in relation thereto, have been better able to discuss the social therapy program with patients whose complaints relate to this area, utilizing the objective perspective of the Ombudsman's consultants. Since the commission of this report, the Ombudsman has been assisted in reaching conclusions and making informed reports on numerous complaints concerning the social therapy program.

During the course of an investigation conducted by our Office within the framework of the evaluative study of the social therapy program carried out by Doctors Rowsell, Butler and Long, but prior to the submission of their report, the authorities at the Mental Health Centre, Penetanguishene, implemented procedures designed to provide greater safeguards in the M.A.P. program which reflect our consultants' recommendation in this respect. The doctors' full report has been disseminated amongst the administrative and clinical personnel of the Mental Health Centre at Penetanguishene who have indicated that they are viewing the findings and recommendations of the doctors with respect to the social therapy program in conjunction with other organizational changes which are occurring at the centre. This Office expects to be advised in due course of any further action which might be taken to implement the recommendations made by our consultants with respect to other aspects of the program.

CHAPTER THREE

COMPREHENSIVE STATISTICAL
SUMMARY

April 1, 1978 to
September 30, 1978

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NUMBER

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CHAPTER THREE

The previous four reports to the Legislature included comprehensive statistical summaries, which, when taken together, cover the period from May, 1975 to March 31, 1978. This Fifth Report provides a comprehensive statistical summary for the period from April 1, 1978 to September 30, 1978. Comparable figures for the six month period covered by the Fourth Report are shown in square brackets. TABLE SIXTEEN provides definitions for the terminology used in this chapter.

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

COMPLAINT RECEPTION

HOW MANY COMPLAINTS WERE RECEIVED?

From April 1, 1978 to September 30, 1978 we received 3,089 [2,954] complaints for which we opened new files. In addition, there were 521 [359] new complaints which necessitated the re-opening of a complainant's file. Therefore, in total we received complaints relating to 3,610 [3,313] files. In addition, the Office received 3,500 [3,842] no follow-up complaints and information requests for which we did not open a file. Therefore, on an annual basis the Office is receiving over 14,000 [14,000] complaints and information requests.

HOW WERE COMPLAINTS RECEIVED?

55% [57%] by mail
19% [28%] by office interview
26% [15%] by hearing interview

The percentage of complaints received through interviews at our private hearings increased significantly to 26% from 15% for the period covered by the Report.

DID COMPLAINTS COME FROM ALL REGIONS OF THE PROVINCE?

Once again, complaints originated from all regions of the Province. As in previous reports, TABLE ONE shows that more closed files were associated with complaints (536) [478] that 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 TWO, TORONTO SUBURBS was the source of the fewest number of complaints (250). 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% [48%] of all closed files, whereas these districts constitute only 30% [30%] of the provincial electoral population. Similarly, electoral districts where private hearings were held accounted for 28% [20%] of all closed files, whereas these districts constitute only 16% [6%] of the provincial electoral population.

All electoral districts in TABLE ONE are designated with the letters (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 electoral population exceeds 66% of the total riding electoral 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 closed files was either disproportionately high or low in relation to its electoral 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 ratio of files closed to electoral population.

FILE CLOSINGS

HOW MANY FILES WERE CLOSED?

There were 3,597 [3,226] files closed during the period from April 1, 1978 to September 30, 1978. The monthly rate of file closings (599) [538] is comparable with the previous reporting periods. The file closings (3,597) [3,226] almost equalled file openings (3,610) [3,313]. The number of in progress files has decreased by 258 [239].

The disposition analysis of these closed files indicates that there were 507 [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 506 [378] 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 FILE?

The 3,597 [3,226] files closed during this reporting period required an average of 97 [111] days to close. Files associated with jurisdictional complaints required an average of 176 [196] days, whereas files associated with complaints that were outside the Ombudsman's jurisdiction required an average of 57 [67] days.

Again, the majority (76%) [76%] of files were closed

within a 90-day period. TABLE FIVE shows that 1,263 [778] files were closed within a one-month period. The majority of these files were associated with non-jurisdictional complaints. For example, TABLE SEVEN shows that during the month of April, 1978, there were 125 files associated with non-jurisdictional complaints that were opened and closed within that month.

The average duration to closing for jurisdictional files includes 508 [555] files which required more than nine months to complete. Many (675) [670] files associated with jurisdictional complaints were closed within 90 days.

ORGANIZATIONS

WHICH GOVERNMENT AND PRIVATE ORGANIZATIONS WERE INVOLVED WITH THE COMPLAINTS?

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 closed complaints.

The majority of all complaints were directed against the ministries, agencies, boards and commissions of the Province of Ontario (2,625) [2,284]. The important fact is that this figure, on a percentage basis 62% [63%], is comparable with the increased percentage reported in the Fourth Report.

The private sector accounted for 753 [663], or 18% [18%], of all complaints. In addition, municipalities and local authorities accounted for 345 [290] or 8% [8%] of all complaints. The Federal Government accounted for 287 [194] or 7% [5%] of all complaints.

The Ministry of Correctional Services accounted for 1,034 [789] or 39% [35%] of the Province of Ontario complaints. The Workmen's Compensation Board was involved with 397 [491] or 15% [22%] of the Province of Ontario complaints. Overall, 69% [65%] of the complaints against the Province of Ontario were directed at ministries, and the remaining 31% [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 4,224 [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 1,364 [1,225] complaints within our jurisdiction as defined by The Ombudsman Act, 1975. The percentage of complaints within our jurisdiction during this reporting period (37%) was about the same as during the previous reporting period (38%). Conversely, there were 2,337 [2,013] complaints which were outside our jurisdiction. These figures do not include either the 56 [40] instances where abandonments and withdrawals precluded a jurisdictional determination or the 467 [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 295 [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 547 [618] premature complaints where the complainants had not exhausted the appeal remedies associated with their problems. These complaints fall into a special non-jurisdictional category in that the complaints 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 291 [189] complaints directed at the Federal Government of Canada and the 26 [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 (206) [176], a legal advisor to the Crown (10) [22] or the Cabinet (19)[74] . Also included in this group are 278 [80] complaints which did not involve a decision, recommendation or act of a "governmental organization" or did not affect the complainant "in his or its personal capacity" within the meaning of Section 15(1) of The Ombudsman Act, 1975.

Finally, the fifth group includes those non-jurisdictional complaints involving private individuals and self-funding private organizations. There were 691 [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" (1,148) [1,123] and "Inquire/Refer" (530) [531] action categories include a large number of complaints because these actions are associated with the 2,337 [2,013] outside jurisdiction complaints. There were a large number of "Inquire" actions (1,535) [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, 97% [96%] of all complainants received assistance. Assistance was provided in 95% [92%] of the jurisdictional complaints and 99% [98%] of the non-jurisdictional complaints.

(iii) SETTLEMENT

HOW MANY COMPLAINTS WERE RESOLVED?

TABLE TWELVE shows that 1,106 [985] of the 4,224 [3,606] complaints were resolved. The percentage of complaints that were resolved during this reporting period (26%) was about the same as during the previous reporting period (27%). Seventy-eight percent (863) [754] of these complaints were resolved as a result of the assistance of the Ombudsman. TABLE THIRTEEN 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. As shown in TABLE SIXTEEN, a resolved complaint is defined as 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."

TABLE TWELVE also shows that a large number of complaints (3,118) [2,621] could not be resolved. With the exception of the few complaints (17) [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 2,264 [1,906] unresolved cases, the complaint was outside the jurisdiction of the Ombudsman. In other cases the complaint was abandoned, withdrawn or circumstances changed in the course of the investigation. In addition, there were 10 [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".

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

There were 453 [396] complaints resolved in favour of the complainant. A significant number of these complaints (210) [165] were resolved through the assistance of the Ombudsman. Additionally, there were 243 [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, we were unable to determine conclusively that our involvement was predominantly responsible for the settlement in favour of the complainant.

The 210 [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 167 [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 37 [25] complaints where, in the course of an investigation, a suggested settlement scheme was found to be acceptable to all parties.

(c) There were 6 [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".

On the other hand, the 653 [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 FILES

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

There were 1,858 [2,116] in progress files as of September 30, 1978. This represents a decrease of 258 from the 2,116 in progress complaint files at the end of the previous reporting period.

TABLE FOURTEEN shows both the status and the duration of all in progress files. A total of 1,433 [1,415] of these files were within the jurisdiction of the Ombudsman. This constitutes 77% [67%] of all in progress complaint files. The increased percentage of jurisdictional in progress files confirms the suggestion expressed in our Fourth Report 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: CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT
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REGION

<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

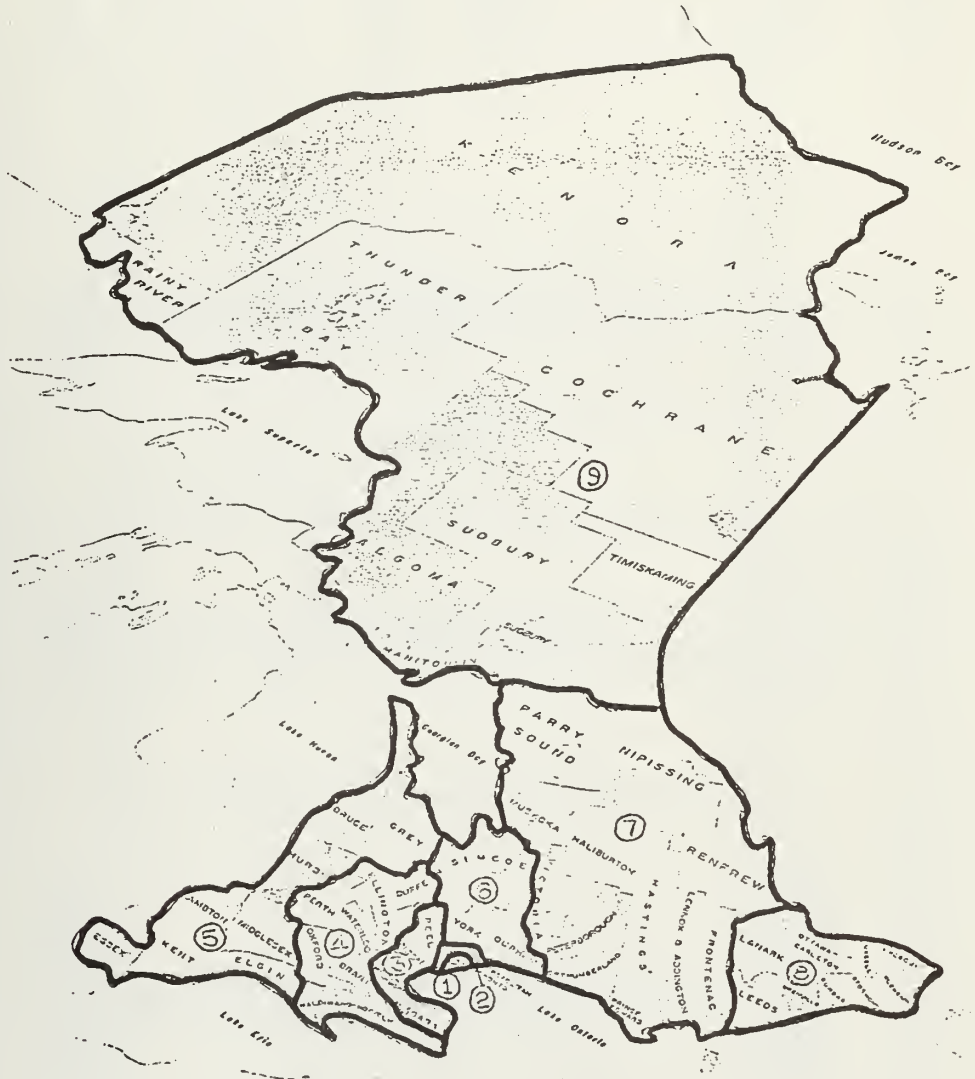
Note: The designations below apply to the schedules found in this table.

- (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. Electoral population figures are based on the number of names on the polling list as taken from Pages 26-29 "1977 Ontario Election Summary From the Records".
- (3) This table is based on 3329 closed files where a constituency determination could be made.

TABLE NO.: 1 (i)

TITLE:

CLOSED FILES BY REGION AND
ONTARIO ELECTORAL DISTRICT



THE PROVINCE OF ONTARIO

TABLE NO.: 1 (11)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION ONE: TORONTO-CENTRE

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Beaches-Woodbine	38,432 (U)	23	6.9	6.1
Bellwoods	20,962 (U)	15	3.8	4.0
Don Mills	50,717 (U)	47	9.1	12.4
Dovercourt	23,822 (U)	14	4.3	3.7
Eglinton	47,471 (U)	15	8.5	4.0
High Park-Swansea	38,708 (U)	19	6.9	5.0
Oakwood	33,027 (U)	15	5.9	4.0
Parkdale	28,178 (U)	21	5.0	5.5
Riverdale	30,954 (U)	17	5.5	4.5
Scarborough West	38,994 (U)	14	7.0	3.7
St. Andrew-St. Patrick	35,383 (U)	30	6.3	7.9
*St. David	39,026 (U)	78	7.0	20.5
St. George	45,833 (U)	49	8.2	12.9
York East	45,058 (U)	8	8.1	2.1
York South	43,060 (U)	15	7.7	4.0
T O T A L S	559,625	380	100%	100%
Percentage of Total Electoral Population	10.9%			
Percentage of Total Closed Files		11.4%		

TABLE NO.: 1 (iii)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION TWO: TORONTO-SUBURBS

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Amourdale	48,794 (U)	15	7.3	6.0
Downsview	35,039 (U)	24	5.3	9.6
Etobicoke	39,606 (U)	44	6.0	17.6
Humber	56,864 (U)	23	8.6	9.2
*Lakeshore	43,035 (U)	28	6.5	11.2
Orlolo	50,052 (U)	10	7.5	4.0
Scarborough Centre	40,661 (U)	10	6.1	4.0
Scarborough East	46,332 (U)	15	7.0	6.0
Scarborough-Ellesmere	41,290 (U)	13	6.2	5.2
Scarborough North	65,593 (U)	23	9.9	9.2
Wilson Heights	43,771 (U)	15	6.6	6.0
York Mills	56,308 (U)	17	8.5	6.8
York West	52,976 (U)	2	8.0	0.8
Yorkview	44,057 (U)	11	6.6	4.4
T O T A L S	664,378	250	100%	100%
Percentage of Total Electoral Population				
Percentage of Total Closed Files				
	13.0%	7.5%		

TABLE NO.: 1 (iv)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION THREE: GOLDEN HORSESHOE

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Brampton	59,187 (U)	56	7.3	11.3
Brock	35,346 (U)	10	4.4	2.0
Burlington South	56,545 (U)	24	7.0	4.9
*Halton-Burlington	43,337 (U)	97	5.4	19.6
Hamilton Centre	38,003 (U)	14	4.7	2.8
Hamilton East	48,620 (U)	11	6.0	2.2
Hamilton Mountain	46,192 (U)	8	5.7	1.6
*Hamilton West	41,056 (U)	85	5.1	17.2
Lincoln	31,387 (U)	21	3.9	4.2
Mississauga East	44,089 (U)	13	5.5	2.6
Mississauga North	55,251 (U)	25	6.9	5.1
Mississauga South	42,511 (U)	9	5.3	1.8
Niagara Falls	45,208 (U)	16	5.6	3.2
Oakville	40,194 (U)	15	5.0	3.0
St. Catharines	52,660 (U)	20	6.5	4.0
*Welland - Thorold	39,712 (U)	37	4.9	7.5
Wentworth	39,420 (U)	23	4.9	4.6
Wentworth North	47,903 (U)	11	5.9	2.2
T O T A L S	806,621	495	100%	100%
Percentage of Total Electoral Population	15.7%			
Percentage of Total Closed Files		14.9%		

TABLE NO.: 1 (v)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT
 REGION FOUR: ONTARIO WEST-CENTRAL

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Brantford	44,311 (U)	35	8.4	10.1
Brant-Oxford-Norfolk	38,328 (R)	10	7.3	2.9
Cambridge	46,081 (U)	15	8.8	4.3
Erie	31,564 (U)	10	6.0	2.9
*Haldimand-Norfolk	44,142 (R)	32	8.4	9.2
Kitchener	46,835 (U)	32	8.9	9.2
Kitchener-Wilmot	42,181 (U)	9	8.0	2.6
Oxford	50,501 (M)	40	9.6	11.5
*Perth	43,680 (M)	18	8.3	5.2
Waterloo North	44,263 (U)	10	8.4	2.9
Wellington-Dufferin-Peel	46,325 (R)	16	8.8	4.6
*Wellington South	47,868 (U)	120	9.1	34.6
T O T A L S	526,079	347	100%	100%
Percentage of Total Electoral Population	10.3%			
Percentage of Total Closed Files		10.4%		

TABLE NO.: 1 (vi)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION FIVE: ONTARIO WESTERN-RING

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Chatham-Kent	39,222 (U)	21	5.5	6.8
Elgin	38,858 (M)	67	5.5	19.7
Essex North	33,938 (M)	4	4.8	1.2
Essex South	36,073 (R)	14	5.1	4.1
Grey	36,455 (R)	30	5.2	8.8
*Grey-Bruce	35,539 (M)	27	5.0	7.9
Huron-Bruce	35,985 (R)	19	5.1	5.6
Huron-Middlesex	30,130 (R)	8	4.3	2.4
Kent-Elgin	33,007 (R)	11	4.7	3.2
Lambton	31,379 (R)	6	4.4	1.8
*London Centre	47,683 (U)	20	6.7	5.9
London North	48,617 (U)	6	6.9	1.8
London South	59,614 (U)	34	8.4	10.0
Middlesex	32,446 (R)	14	4.6	4.1
*Sarnia	46,807 (U)	27	6.6	7.9
Windsor-Riverside	47,174 (U)	2	6.7	0.6
*Windsor-Sandwich	37,419 (U)	20	5.3	5.9
Windsor-Walkerville	37,698 (U)	10	5.3	2.9
T O T A L S	708,044	340	100%	100%
Percentage of Total Electoral Population	13.8%			
Percentage of Total Closed Files		10.2%		

TABLE NO.: 1 (vii)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT
 REGION SIX: TORONTO NORTH-EAST CORRIDOR

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
*Dufferin-Simcoe	48,888 (M)	42.	11.3	14.0
Durham East	47,393 (U)	11	11.0	3.7
*Durham West	46,823 (R)	21	10.8	7.0
Durham York	41,693 (U)	22	9.6	7.4
Oshawa	41,124 (U)	20	9.5	6.7
*Simcoe Centre	52,644 (M)	116	12.2	38.8
Simcoe East	44,578 (M)	43	10.3	14.4
York Centre	58,784 (U)	13	13.6	4.3
York North	50,833 (M)	11	11.8	3.7
T O T A L S	<u>432,760</u>	<u>299</u>	<u>100%</u>	<u>100%</u>
Percentage of Total Electoral Population	8.5%			
Percentage of Total Closed Files		9.0%		

TABLE NO.: 1 (viii) TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION SEVEN: ONTARIO NORTH-CENTRAL

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Frontenac-Addington	35,040 (R)	5	8.0	1.2
Hastings-Peterborough	33,310 (R)	16	7.6	3.8
Kingston & The Islands	38,217 (U)	18	8.7	4.2
Muskoka	24,759 (R)	43	5.6	10.1
*Northumberland	42,909 (M)	32	9.8	7.5
*Parry Sound	28,474 (R)	57	6.5	13.4
*Peterborough	58,901 (U)	76	13.4	17.8
*Prince Edward-Lennox	30,525 (R)	23	7.0	5.4
Quinte	44,996 (U)	15	10.3	3.5
*Renfrew North	28,248 (M)	66	6.4	15.5
Renfrew South	35,133 (R)	37	8.0	8.7
*Victoria-Haliburton	38,132 (R)	38	8.7	8.9
T O T A L S	438,644	426	100%	100%
Percentage of Total Electoral Population	8.6%			
Percentage of Total Closed Files		12.8%		

TABLE NO.: 1 (ix)

TITLE:

CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION EIGHT: OTTAWA-EAST

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Carleton	50,946 (U)	11	10.0	4.3
*Carleton East	56,496 (U)	33	11.1	12.9
*Carleton-Grenville	37,263 (R)	25	7.3	9.8
*Cornwall	34,029 (U)	13	6.7	5.1
*Lanark	29,668 (M)	35	5.8	13.7
*Leeds	35,406 (M)	21	7.0	8.2
Ottawa Centre	45,324 (U)	31	8.9	12.1
Ottawa East	45,497 (U)	23	9.0	9.0
Ottawa South	50,647 (U)	11	10.0	4.3
Ottawa West	52,139 (U)	13	10.3	5.1
*Prescott & Russell	39,111 (R)	29	7.7	11.3
Stormont-Dundas-Glenarry	31,522 (R)	11	6.2	4.3
T O T A L S	508,048	256	100%	100%
Percentage of Total Electoral Population	9.9%			
Percentage of Total Closed Files		7.7%		

TABLE NO.: 1 (X)

TITLE:

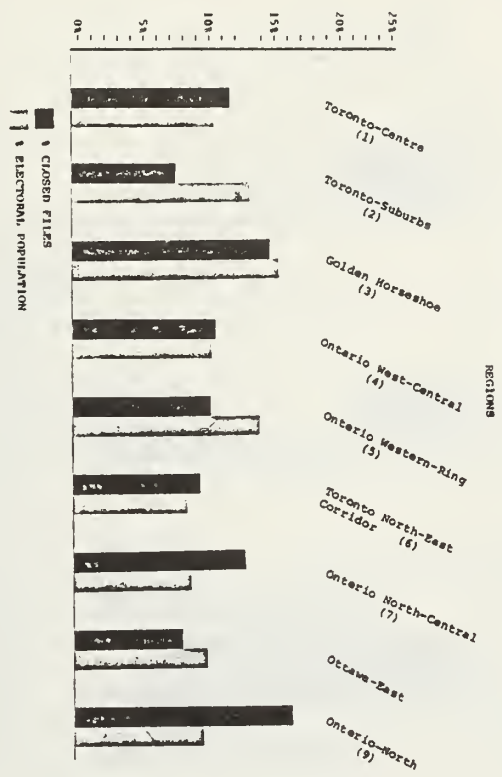
CLOSED FILES BY REGION AND ONTARIO ELECTORAL DISTRICT

REGION NINE: ONTARIO-NORTH

CONSTITUENCY	ELECTORAL POPULATION	NUMBER OF CLOSED FILES	PERCENTAGE OF REGIONAL ELECTORAL POPULATION	PERCENTAGE OF REGIONAL CLOSED FILES
Algoma	18,386 (R)	47	3.8	8.8
Algoma-Manitoulin	20,212 (R)	34	4.2	6.3
Cochrane North	25,509 (R)	68	5.3	12.7
*Cochrane South	35,133 (U)	62	7.3	11.6
*Fort William	40,247 (U)	30	8.4	5.6
Kenora	28,413 (M)	54	5.9	10.1
Lake Nipigon	19,744 (R)	19	4.1	3.5
*Nickel Belt	24,359 (R)	10	5.1	1.9
Nipissing	42,247 (U)	45	8.8	8.4
*Port Arthur	39,207 (U)	49	8.2	9.1
*Rainy River	18,320 (M)	16	3.8	3.0
*Sault Ste. Marie	50,240 (U)	25	10.5	4.7
*Sudbury	43,133 (U)	30	9.0	5.6
Sudbury East	45,527 (M)	11	9.5	2.1
*Timiskaming	28,892 (M)	36	6.0	6.7
T O T A L S	479,569	536	100%	100%
Percentage of Total Electoral Population	9.4%			
Percentage of Total Closed Files		16.1%		

TABLE NO.: 2

TITLE: REGIONAL COMPARISON OF CLOSED FILES AND ELECTORAL POPULATION

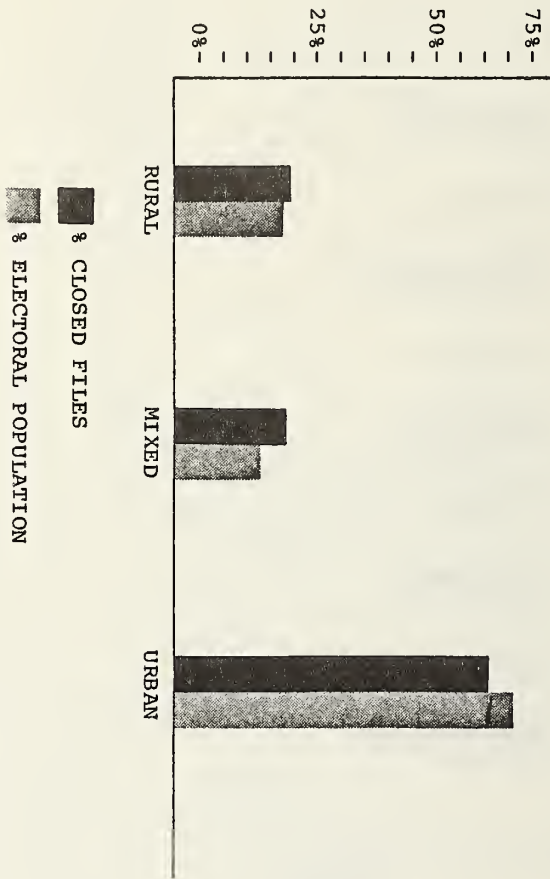


Region	Closed Files	% Closed Files	% Electoral Population	% Closed Files to Electoral Population
1 Toronto-Centre	380	11.4	10.9	1.0
2 Toronto-Suburbs	250	7.5	13.0	0.6
3 Golden Horseshoe	495	14.9	15.7	0.9
4 Ontario West-Central	347	10.4	10.3	0.7
5 Ontario Western-Ring	340	10.2	10.5	1.1
6 Toronto North-East Corridor	292	8.6	8.6	1.5
7 Ontario North-Central	256	7.7	9.9	0.8
8 Octave-East	536	16.1	9.4	1.7
9 Ontario-North				
Total	3329	100%	100%	

TABLE NO.: 3

TITLE:

CLOSED FILES AND ELECTORAL POPULATION BY RURAL/URBAN DESIGNATION



Rural
Mixed
Urban
TOTAL

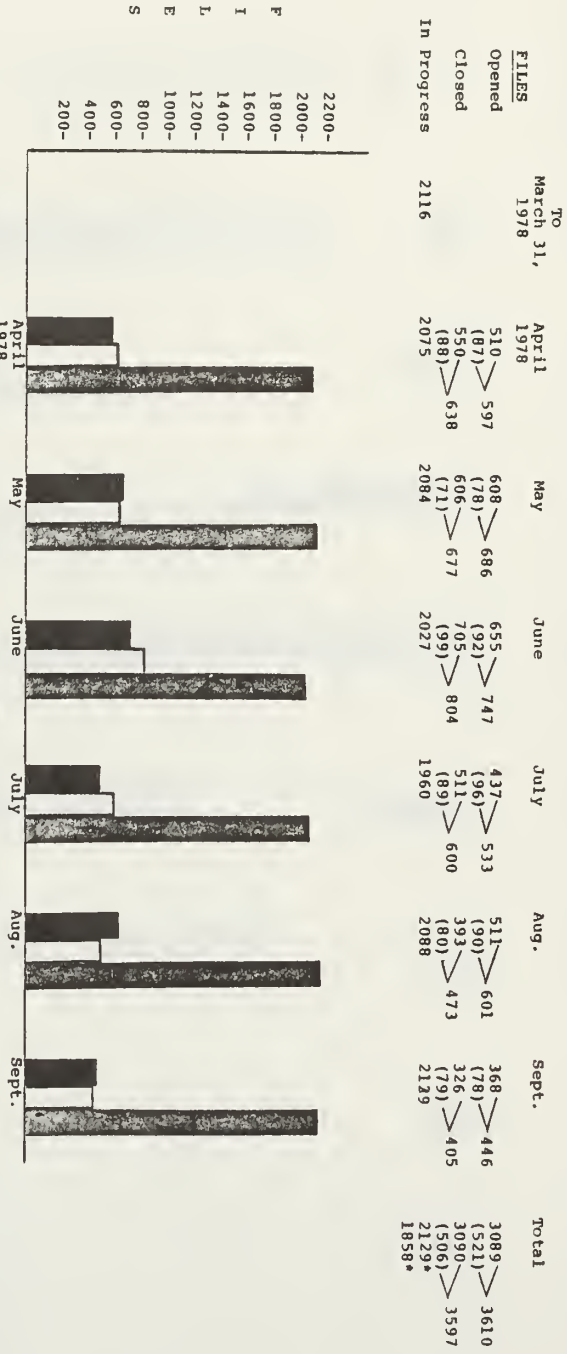
	CLOSED FILES	%CLOSED FILES	% ELECTORAL POPULATION
Rural	643	19.3	16.5
Mixed	639	19.2	12.8
Urban	2047	61.5	70.6
TOTAL	3329	100%	100%

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

TABLE NO.: 4

TITLE:

FILE OPENINGS AND FILE CLOSINGS BY MONTH



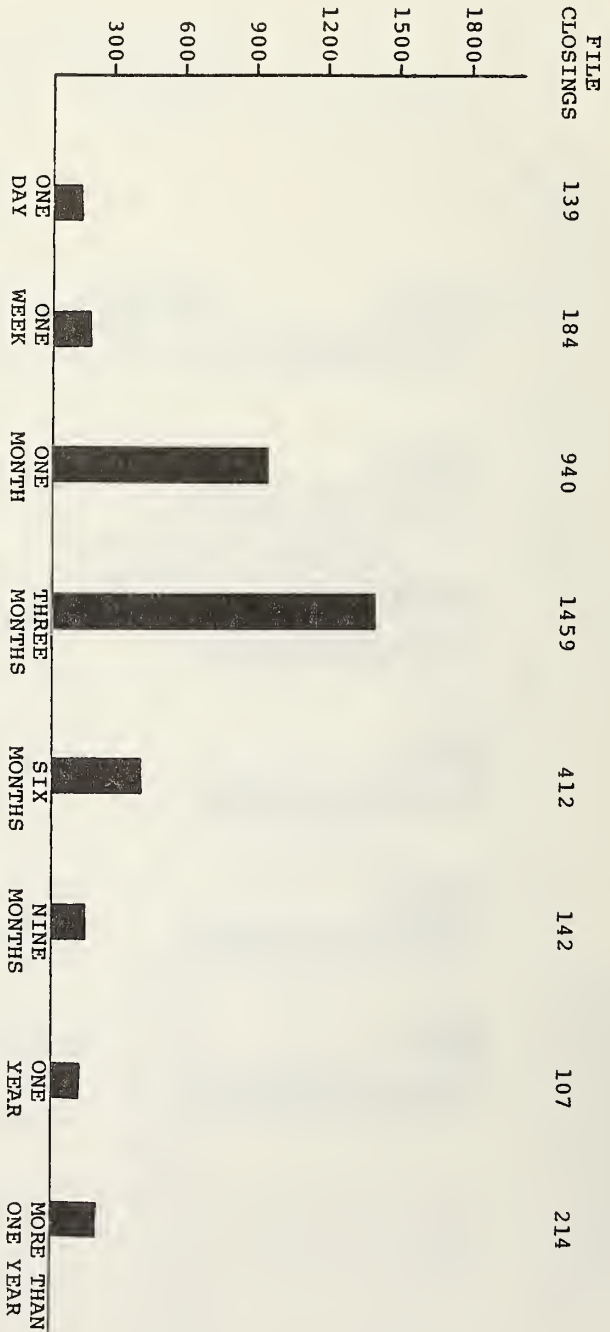
*The Sept. 30, 1978 inventory of in progress files counted 1858 files. The difference between these figures reflects the number of file consolidations.

NOTE: The figures in brackets represent additional file reopenings and file closings involving complainants who have, over time, brought a second or third new complaint to the Ombudsman.

TABLE NO.: 5

TITLE:

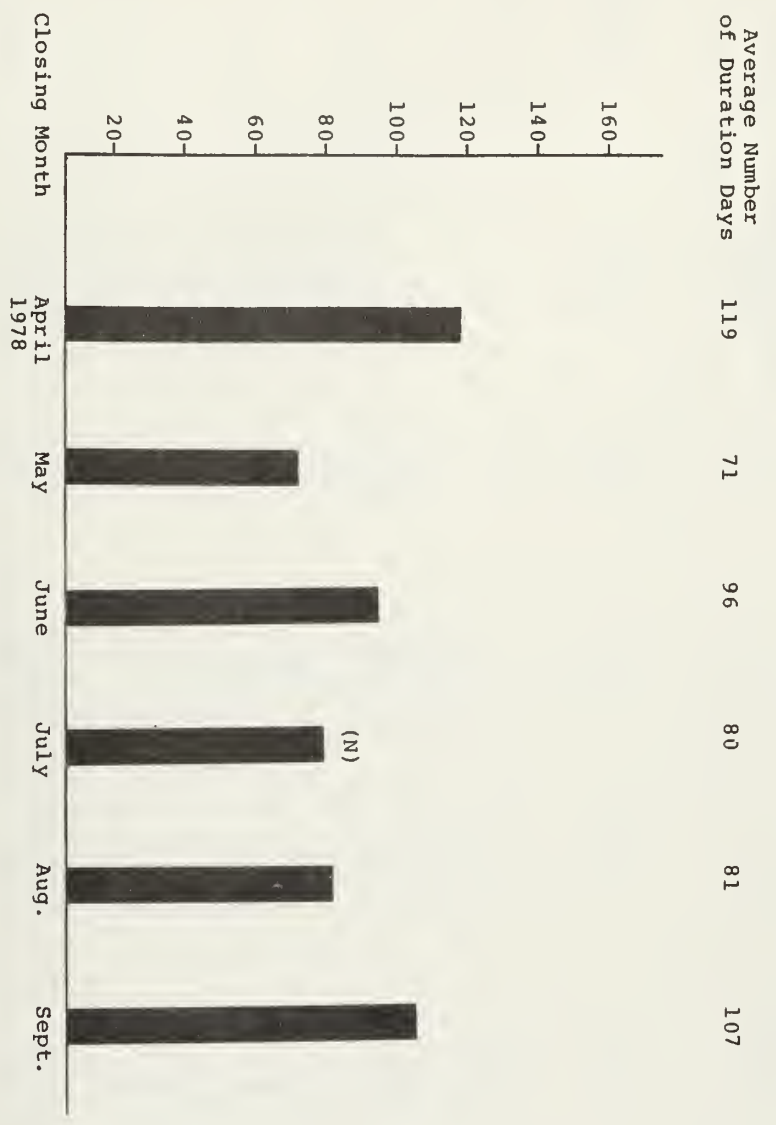
FILE CLOSINGS BY DURATION CATEGORY



TOTAL FILE
CLOSINGS
3597

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 files which were closed during the month indicated.

TABLE NO.: 7

TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE

Opening Month	Closing Month									Total File Closings
	April 1978	May	June	July	August	September	October	November	December	
May/75 to June 30, 1977	80	18	62	42	24	28	254			
July	5	2	4	3		2	16			
August	10	4	3	3		1	21			
September	17	6	11	11	6	3	54			
October	14	11	9	8	6	2	50			
November	13	8	14	7	8	6	56			
December	22	1	10	8	6	7	54			
January 1978	37	10	30	6	6	10	99			
February	104	32	27	10	4	11	188			
March	190	110	46	37	8	3	394			
April	146	331	109	40	15	9	650			
May		144	320	79	14	17	574			
June			159	216	59	21	455			
July				130	145	48	323			
August					172	177	349			
September						60	60			
Total File Closings	638	677	804	600	473	405	3597			

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

Closing Month
April
1978

May

June

July

August

September

Total
Complaints

Opening Month									
May/75 to June 30, 1977	70	14	71	31	23	25	234		
July	9	4	5	3		3	24		
August	6	5	3	3		1	18		
September	14	8	5	12		6	51		
October	7	6	6	7		4	33		
November	8	8	15	4		5	45		
December	9		7	5		5	34		
January 1978	28	6	18	3		6	69		
February	26	18	25	4		2	85		
March	42	30	30	28		6	140		
April	11	48	40	20		8	136		
May		18	77	43		3	154		
June			19	82		27	142		
July				18		54	89		
August						27	96		
September							11		
Total File Closings	230	165	321	263	178	207	1364		

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

TABLE NO.: 7 (11)	TITLE: MONTH OPENED/MONTH CLOSED CALENDAR YEAR PROFILE/OUTSIDE JURISDICTION										
	Closing Month April 1978		May	June	July	August	September	Total Complaints			
Opening Month											
May/75 to June 30, 1977	31	6	6	11	2	4	61				
July	1		2				3				
August	2			2			4				
September	7		4	1			12				
October	5	4	3	2	3		17				
November	5	2		6	3	1	17				
December	9	1	2	7	1	1	21				
January 1978	17	5	11	3		3	39				
February	76	19	8	6	3	1	113				
March	138	91	18	13	5		265				
April	125	259	62	21	7	4	478				
May		120	240	41	10	11	422				
June			138	150	39	13	340				
July				97	97	35	229				
August					143	124	267				
September						50	50				
Total File Closings	416	507	494	360	313	247	2337				

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	COMPLAINTS BY ORGANIZATION		NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
	WITHIN JURISDICTION	OUTSIDE JURISDICTION			
Agriculture and Food	1	3	2	2	8
Crop Insurance Commission	1	1			1
Milk Commission of Ontario		1			1
Ontario Bean Producers Marketing Board		1			1
Ontario Milk Marketing Board		4			4
Attorney General	8	36	1	11	56
Criminal Injuries Compensation Board	4	3		5	12
Land Compensation Board	1				1
Ontario Municipal Board	7	29		36	36
Colleges and Universities	6	8	1	3	18
Colleges of Applied Arts & Technology	4	2			6
Community and Social Services	29	68	1	34	132
Centres for Developmentally Handicapped	2	3		2	5
Schools	3	1			6
Total	34	72	1	36	143
Social Assistance Review Board	5	41			46
Consumer and Commercial Relations	31	19	1	11	62
Liquor Control Board	5	2			7
Liquor Licence Board	3	2			5
Ontario Racing Commission	1				1
Ontario Securities Commission	1	2		3	3
Pension Commission of Ontario	1				2
Residential Premises Rent Review Board	15	6	1	2	24

TABLE NO.: 8 (i)

TITLE:

COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION		OUTSIDE JURISDICTION		NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Correctional Services	27	24	1	8	60		
Correctional Centres	278	69	1	63	411		
Detention Centres	164	15	1	31	211		
Jails	281	18	2	51	352		
Community Resource Centre		1			1		
Total	750	127	5	153	1035		
Ontario Board of Parole	8			5	13		
Culture and Recreation							
Ontario Lottery Corporation	4	1		2	7		
Education							
Education Relations Commission	5	9		3	17		
Teacher's Superannuation Commission	1				1		
Energy							
Ontario Energy Board		3			3		
Ontario Hydro	5	1		6	11		
Environment							
Environment	13	9	2	4	28		
Government Services							
Public Service Superannuation Board	11	4		3	18		
Health							
Psychiatric Hospitals	7	20	4	5	36		
OHIP	52	19	4	13	84		
Total	19	22	8	18	63		
Advisory Review Board for Psychiatric Facilities	78	61		36	183		
Alcoholism & Drug Addiction Research Foundation	6	6			12		
Board of Directors of Masseurs	1	1			1		
Denture Therapists Appeal Board	1				1		

TABLE NO.: 8 (ii)

TITLE:

COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Governing Board of Denture Therapists		1	1		1
Health Disciplines Board		1			1
Health Facilities Appeal Board	2			1	3
Review Board for Psychiatric Facilities					
Housing	14	7	2	14	23
Ontario Housing Corporation	38	12			64
Ontario Mortgage Corporation	2				2
Industry and Tourism	1			1	2
Northern Ontario Development Corporation	1			1	1
Ontario Development Corporation					1
Labour	7	12		5	24
Ontario Human Rights Commission	10	2	2	1	12
Ontario Labour Relations Board	3	2	1	1	8
Workmen's Compensation Board	133	202		61	397
Natural Resources	18	20	2	3	43
Revenue	47	14	5	6	72
Solicitor General					
Ontario Police Commission	1	6	1	1	8
Ontario Provincial Police	5	1		1	7
Transportation and Communications		18			19
Licence Suspension Appeal Board	60	32	7	9	108
Ontario Highway Transport Board	1	1		1	1
Ontario Telephone Service Commission		3			3

1
2
1

TABLE NO.: 8 (iii) TITLE:

COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Treasury, Economics & Intergovernmental Affairs	7	11	1	1	20
Ontario Municipal Employees Retirement Board		1			1
<u>Government of Ontario Other</u>					
Management Board					
Civil Service Commission	1			1	1
Grievance Settlement Board		3		1	4
Office of the Premier/Cabinet Office		9	1	1	10
Niagara Escarpment Commission	1			1	2
Ontario Youth Secretariat				4	6
Office of the Ombudsman		2			
Government of Ontario Total	<u>1367</u>	<u>818</u>	<u>45</u>	<u>395</u>	<u>2625</u>
<u>Courts</u>					
Total		<u>167</u>		<u>16</u>	<u>183</u>
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>					
Canadian Penitentiary Services		16		1	17
Central Mortgage and Housing		2			2
Consumer and Corporate Affairs		3			3
Health and Welfare		22		7	29
Indian Affairs and Northern Development		9			9
Justice		4		1	5

TABLE NO.: 8 (iv) TITLE:

COMPLAINTS BY ORGANIZATION

	COMPLAINTS BY ORGANIZATION		NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
	WITHIN JURISDICTION	OUTSIDE JURISDICTION			
Manpower and Immigration		21		2	23
National Parole Board		31		2	33
Post Office		11			11
Public Service Commission		1		1	1
Revenue Canada - Taxation		31		1	32
Royal Canadian Mounted Police		9			9
Transport		4			4
Unemployment Insurance Commission		59		2	61
Veteran Affairs		9		1	10
Federal Government - Other		34		4	38
Total		266		21	287

PRIVATE

Associations/Groups		44		3	47
Children's Aid Society		19			19
Catholic Children's Aid Society		2			2
Doctors - Patients		14		1	15
Hospitals		30		1	31
Lawyers - Clients		93			93
Law Society of Upper Canada		35			35
College of Physicians & Surgeons		3			3
Other - Private		42		20	62
Private Business		347		6	353
Private Individual		83		1	84
Universities - Private		8			8
Member of Parliament		1			1
Total		721		32	753

TABLE NO.: 8 (v) TITLE:

COMPLAINTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>					
Municipal Conservation Authority		7			7
Municipal Boards of Education		25			25
Municipal Fire Department		2			2
Municipal Governing Body		83			83
Municipal Hydro		10			10
Municipal - Other		44		1	45
Municipal Parks/Recreation		1			1
Municipal Police		71	1		72
Municipal Public Health		7			7
Municipal Roads		21			21
Municipal Sewers		16		1	17
Municipal Taxes		17			17
Municipal Transit		3			3
Municipal Water		5			5
Municipal Welfare		21		1	22
Committees of Adjustment		8			8
Total		341	1	3	345
<u>INTERNATIONAL</u>					
Total		7		1	8
<u>OTHER PROVINCES</u>					
Total		17		1	18
Total		17		1	18

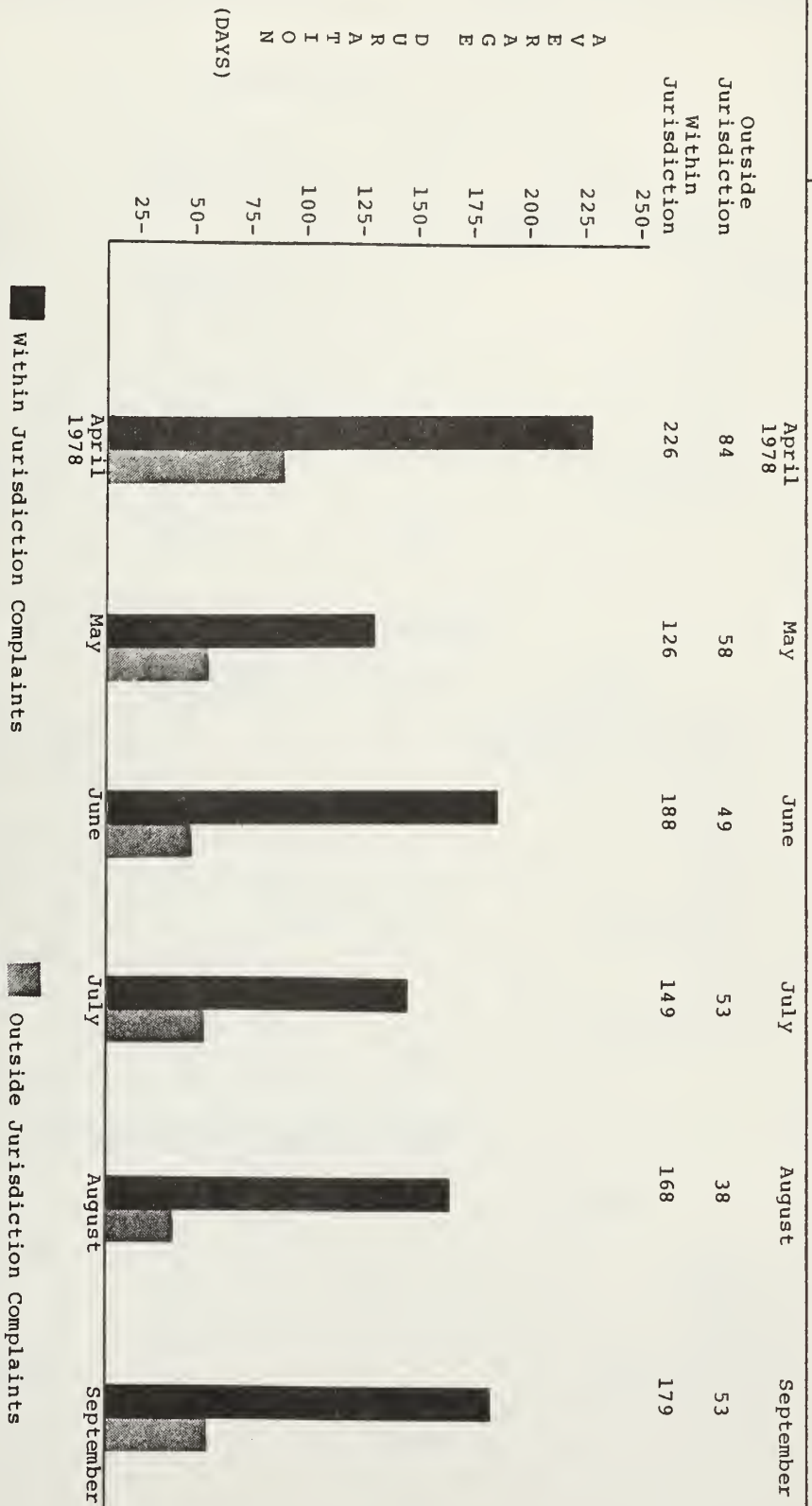
TABLE NO.: 8 (vi) TITLE:

NO ORGANIZATION SPECIFIED	COMPLAINTS BY ORGANIZATION				INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED			
Total	1367	1	10	469	11	
OVERALL TOTAL	1367	2338	56	469	4230*	

*This figure exceeds the total number of closed complaints (4224) because some complaints involve more than one organization

TABLE NO.: 9	TITLE: OUTSIDE JURISDICTION COMPLAINTS BY REASONS	

TABLE NO.: 10 TITLE: AVERAGE DURATION TO CLOSING BY MONTH AND BY JURISDICTIONAL DETERMINATION



(DAYS)

TABLE NO.: 11	TITLE: FINAL ACTION ANALYSIS/ ASSISTANCE TO COMPLAINANTS	
<u>ALL COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	17	No Assistance 2.4%
Listen	87	
Explain	427	
Advise	427	
Refer	1148	
Inquire/Refer	530	
Inquire	1535	
Suggest	37	Assistance 97.6%
Recommendation	16	
TOTAL	<hr/> 4224	
<u>WITHIN JURISDICTION COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Refuse to Investigate or Further Investigate	17	No Assistance 4.9%
Listen	51	
Explain	126	
Advise	13	
Refer	1	
Inquire/Refer	6	
Inquire	1097	Assistance 95.1%
Suggest	37	
Recommendation	16	
TOTAL	<hr/> 1364	
<u>OUTSIDE JURISDICTION COMPLAINTS</u>		
<u>Action</u>	<u>Number of Complaints</u>	
Listen	15	No Assistance .6%
Explain	238	
Advise	372	
Refer	1065	
Inquire/Refer	451	Assistance 99.4%
Inquire	196	
TOTAL	<hr/> 2337	

TABLE NO.: 12	TITLE: COMPLAINT SETTLEMENT STATUS
<u>STATUS</u>	<u>NUMBER OF CLOSED COMPLAINTS</u>
Resolved/Assisted/Favour Complainant	210
Resolved/Independent/Favour Complainant	243
Resolved/Assisted/Favour Governmental Organization	653
Total Resolved	<hr/> 1106
Not Resolved	3118
Total Complaints	<hr/> 4224
<u>REASONS</u> (Not Resolved)	
Abandoned	170
Withdrawn	164
No Solution Identified	6
Circumstances Changed	20
Information Requests/Submissions	467
Outside Jurisdiction	2264
Refuse to Investigate or Further Investigate	17
Recommendation Denied	10
Total Not Resolved	<hr/> 3118

TABLE NO.: 13

TITLE:

COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

GOVERNMENT OF ONTARIO Ministries/Agencies	Assisted		Independently Favour Complainant
	Favour Complainant	Favour Governmental Organization	
Agriculture and Food		1	1
Attorney General	3	2	3
Criminal Injuries Compensation Board	1	1	2
Land Compensation Board		1	
Ontario Municipal Board		2	1
Colleges and Universities		5	1
Colleges of Applied Arts & Technology		1	
Community and Social Services Centres for Developmentally Handicapped Schools	14	4	10
Social Assistance Review Board	3	2	1
Consumer and Commercial Relations	6	9	2
Liquor Control Board	3	2	
Liquor Licence Board		2	
Ontario Racing Commission		1	
Pension Commission of Ontario		1	
Residential Premises Rent Review Board		7	2
Correctional Services	4	20	2
Correctional Centres	35	132	52
Detention Centres	23	88	24
Jails	25	150	48
Ontario Board of Parole	3	1	1

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 13 (1)

TITLE:

COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Favour Governmental Organization	Independently Favour Complainant
	Favour Complainant			
Culture and Recreation	1		2	
Education	1		4	1
Education Relations Commission				
Energy			1	1
Hydro			4	1
Environment	4		4	
Government Services	1		3	3
Public Service Superannuation Board			2	
Health			2	1
OHIIP	7		3	10
Psychiatric Hospitals	5		34	4
Advisory Review Board for Psychiatric Facilities	1		2	1
Board of Directors of Masseurs			1	
Denture Therapists Appeal Board	1		2	2
Review Board for Psychiatric Facilities			5	
Housing	1		6	2
Ontario Housing Corporation	1		1	
Ontario Mortgage Corporation	11		1	9
Industry and Tourism			1	
Northern Ontario Development Corporation			1	

Note: "RD" indicates "Recommendation Denied"

1
2
3

TABLE NO.: 13 (ii)

TITLE:

COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Independently
	Favour Complainant	Favour Governmental Organization	
Labour			
Ontario Human Rights Commission	1	4	1
Ontario Labour Relations Board	1	6	
Workmen's Compensation Board	24	2	32
5RD		5RD	
Natural Resources	5	6	2
1RD		1RD	
Revenue	4	36	2
Solicitor General		1	
Ontario Police Commission		3	
Transportation and Communications	9	15	8
Treasury, Economics & Intergovernmental Affairs	3	3	1
<u>Ontario Government Other</u>			
Civil Service Commission			
Ontario Youth Secretariat	1	1	
Government of Ontario Total	201	655 + 10 RD	228
<u>Courts</u>			
Total			1

Note: "RD" indicates "Recommendation Denied"

1
6
3
1

TABLE NO.: 13 (iii)

TITLE:

COMPLAINT SETTLEMENT RESULT BY ORGANIZATION

	Assisted		Independently
	Favour Complainant	Favour Governmental Organization	Favour Complainant
<u>FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES</u>			
Health and Welfare	2		2
National Parole Board			1
Revenue Canada - Taxation	1		1
Unemployment Insurance Commission			1
Federal - Other			
Total	3		5
<u>PRIVATE</u>			
Law Society of Upper Canada	2		2
Private Business			5
Private Individual	1		1
Universities - Private			
Total	3		8
<u>MUNICIPALITIES/LOCAL AUTHORITIES</u>			
Municipal - Other	1		1
Municipal Police	1		
Municipal Welfare	2		
Total	4		1
OVERALL TOTAL	211	655 + 10RD	243

Note: "RD" indicates "Recommendation Denied"

TABLE NO.: 14

TITLE:

STATUS OF IN PROGRESS COMPLAINT
FILES/OFFICE WIDE SUMMARY

IN PROGRESS STATUS CATEGORIES

- 01 Not Assigned
- 02 Assigned/No action taken
- 03 Under review to determine jurisdiction
- 04 Under legal research to determine jurisdiction
- 05 Inquiries underway for non-jurisdictional letter
- 06 Non-jurisdictional letter being prepared
- 07 Preparing 19(1) letter
- 08 Awaiting response to 19(1) letter
- 09 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

- 99 Other

Explanation:

The number at the top of each column represents the status category most appropriate to the file.

TABLE NO.: 14 (1)

TITLE:

STATUS AND DURATION OF IN PROGRESS FILES/OFFICE WIDE SUMMARY

DIRECTORATE	STATUS CATEGORY																			DIRECTORATE TOTAL	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		99
D. S. S.	-	3	14	3	6	4	18	4	1	200	4	2	6	48	11	6	2	59	3	-	394
C. A. P. S.	6	45	3	-	2	2	1	2	-	12	66	-	-	2	1	1	-	182	12	5	342
Consumers Road	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	63	63
General Investigations	95	4	9	1	3	2	14	7	3	178	2	9	9	27	17	-	-	51	21	81	533
Hearings & Regional Services	-	-	-	-	1	-	-	1	-	4	-	-	-	2	-	-	-	-	-	8	8
Legal & Complaint Policy	69	11	38	24	4	37	14	18	43	21	2	10	4	18	14	1	8	146	8	14	504
Ombudsman Group	-	1	-	-	-	-	-	-	-	7	-	-	-	-	-	-	-	5	1	-	14
OFFICE WIDE TOTAL	170	64	64	28	16	45	47	32	47	422	74	21	19	97	43	8	10	443	45	163	1858
	98	3.48	3.48	1.58	.88	2.48	2.58	1.78	2.58	22.78	4.08	1.18	18	5.28	2.38	-	-	23.88	2.48	8.88	1008
AVERAGE IN PROGRESS DURATION (DAYS)	71	64	126	352	116	42	145	158	241	304	100	404	376	481	595	615	308	326	374	630	299

TABLE NO.: 15

TITLE:

COMPLAINT DISPOSITION SUMMARY

<u>NUMBER OF FILE OPENINGS/CLOSINGS</u>	
OPENED	3610*
CLOSED	3597
IN PROGRESS	1858

<u>JURISDICTION</u>	<u>NUMBER OF COMPLAINTS</u>	<u>SETTLEMENT STATUS:</u>	<u>NUMBER OF COMPLAINTS</u>
WITHIN	1364	RESOLVED/ASSISTED	863
OUTSIDE	2337	RESOLVED/INDEPENDENT	243
NOT DETERMINED	56	TOTAL RESOLVED	1106
INFORMATION REQUESTS/SUBMISSIONS	467	<u>FINDINGS:</u>	
		SUPPORTED	57
		NOT SUPPORTED	654
		NOT RESOLVED:	
		REASONS:	
	4224	ABANDONED	170
		WITHDRAWN	164
		NO SOLUTION IDENTIFIED	6
		CIRCUMSTANCES CHANGED	20
		INFORMATION REQUESTS/SUBMISSIONS	467
		OUTSIDE JURISDICTION	2264
		REFUSE TO INVESTIGATE	17
		OR FURTHER INVESTIGATE	10
		RECOMMENDATION DENIED	
		RESULTS: (ONLY RESOLVED COMPLAINTS)	3118
		FAVOUR COMPLAINANT	453
		FAVOUR "GOVERNMENTAL ORGANIZATION"	653
			1106

<u>FINAL ACTION</u>	
LISTEN	87
EXPLAIN	427
ADVISE	427
REFER	1148
INQUIRE/REFER	530
INQUIRE	1535
SUGGEST	37
RECOMMENDATION	16
REFUSE TO INVESTIGATE	17
OR FURTHER INVESTIGATE	
	4224

*This figure includes 521 files that were reopened.

TABLE NO.: 16	TITLE: DEFINITION OF TERMS
<p><u>GENERAL</u></p> <p>"DURATION"</p> <p>The number of calendar days from the date the complaint is received to the date on which the file is closed.</p> <p><u>COMPLAINT DISPOSITION</u></p> <p>"JURISDICTION"</p> <p>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. These other reasons are listed in this chapter under the heading "JURISDICTION".</p> <p>"FINAL ACTION"</p> <p>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:</p> <ul style="list-style-type: none">"Listen""Explain""Advise""Refer""Inquire/Refer""Inquire""Suggest""Recommendation""Refuse to Investigate or Further Investigate" <p>"LISTEN"</p> <p>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.</p>	

TABLE NO.: 16 (i)	TITLE: DEFINITION OF TERMS
<p>"EXPLAIN"</p>	<p>The extent of the action taken when a complainant is offered an explanation of his or her circumstances.</p>
<p>"ADVISE"</p>	<p>The extent of the action taken when a complainant is offered general advice concerning his or her problem.</p>
<p>"REFER"</p>	<p>The extent of the action taken when the complainant is directed to a specific organization.</p>
<p>"INQUIRE/REFER"</p>	<p>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.</p>
<p>"INQUIRE"</p>	<p>The extent of the action taken when contacts are made on behalf of the complainant, but there is not a referral nor a suggestion or recommendation. All inquiries include either advice or an explanation.</p>
<p>"SUGGEST"</p>	<p>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 <u>The Ombudsman Act, 1975</u>.</p>
<p>"RECOMMENDATION"</p>	<p>The extent of the action taken when, pursuant to Section 22(3) of <u>The Ombudsman Act, 1975</u>, an investigation results in a recommendation to a "governmental organization".</p>

TABLE NO.: 16 (ii)	TITLE: DEFINITION OF TERMS
<p>"REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE"</p>	
<p>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.</p>	
<p>"SETTLEMENT"</p>	
<p>A set of determinations which describe the finalization of a complaint in terms of the following considerations:</p>	
<ul style="list-style-type: none">(i) Was the complaint resolved?(ii) For those complaints that were resolved:<ul style="list-style-type: none">(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"?	
<p>"SETTLEMENT STATUS"</p>	
<p>A determination of whether a complaint was resolved.</p>	
<p>"FINDING"</p>	
<p>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.</p>	
<p>"RESOLVED COMPLAINT"</p>	
<p>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.</p>	

TABLE NO.: 16 (iii)

TITLE:

DEFINITIONS OF TERMS

"NOT RESOLVED COMPLAINT"

A complaint which does not culminate 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.
- (h) The recommendation of the Ombudsman pursuant to Section 22(3) of The Ombudsman Act, 1975, was denied by officials of the "governmental organization".

"SETTLEMENT RESULT"

A determination of whether the complaint was resolved in favour of the complainant or the "governmental organization" complained against.

CHAPTER FOUR

DETAILED CASE SUMMARIES

MINISTRY OF

THE ATTORNEY GENERAL

(1) SUMMARY OF COMPLAINT

This complainant wrote to us complaining about a decision rendered by the Ontario Municipal Board. The complainant contended that the decision of the Board dismissing his appeal under The Planning Act was wrong. He had appealed a refusal by his Municipal Council to amend a zoning by-law to permit a lot size of 4,400 square feet.

The complainant contended that the Municipal Council had passed two amendments which permitted the creation of lots smaller than 5,000 square feet, in the same area as his property. He went on to add that his application for the amendment conformed to the Official Plan and was recommended for approval by the staff report of the Town.

The complainant indicated that his family urgently required the additional home which could be constructed if the amendment was approved, and that effect should be given to a recommendation of the Ministry of Housing's Planning Policy Branch to reduce lot size and serviced area to 3,000 square feet. He went on to add that numerous neighbours supported his application for the amendment.

During the course of the investigation, the Ontario Municipal Board's file was carefully examined. The information examined included the evidence presented by the complainant that:

- a) the request for severance conformed with the Official Plan,
- b) the staff report of the Town recommended that the application for severance by the complainant be approved,
- c) all Municipal services were available in the area,
- d) two by-laws had been passed by the Town Council and approved by the Ontario Municipal Board each permitting the creation of two new lots of 3700 square feet and 4250 square feet from two existing single lots,
- e) of a total of 51 property owners within 400 feet of the complainant's property whose opinions were canvassed as The Planning Act requires 34 property owners were in favour of the complainant's proposal while 17 so canvassed were opposed, and

- f) the Engineering Departments of both the Region and the Town had no objection to the complainant's proposal.

The Board's file contained sixteen letters from the complainant's immediate neighbours; fourteen of the letters were from home owners objecting to the complainant's proposal while the remaining two letters were written in support. The file also contained information from the Town Planner who had given evidence to the effect that the amendment to the by-law permitting a lot of 4,400 square feet would not be good planning because the lot would be undersized and secondly the shape would not be in keeping with the other lots in the immediate area.

Our investigator attended the Town Municipal Offices and examined the files on the two by-laws.

The applicable section of The Planning Act which gave the Ontario Municipal Board the authority to hear the complainant's appeal was section 35(22) which states:

"Where an application to the Council for an amendment to a by-law passed under this section or a predecessor of this section, or any by-law deemed to be consistent with this section by sub-section 3 of section 13 of The Municipal Amendment Act, 1941 is refused or the Council refuses or neglects to make a decision thereon within one month after the receipt by the Clerk of the application, the applicant may appeal to the Municipal Board and the Municipal Board shall hear the appeal and dismiss the same or direct that a by-law be amended in accordance with its order."

Since section 35(22) indicates that the proceeding is an appeal, the onus is on the applicant (in this case the complainant) to prove his case.

It appeared from the investigation that there was evidence before the Board on which it could base its decision to deny the complainant's appeal. The Board had decided that the complainant failed to discharge the onus placed on him by section 35(22) of The Planning Act.

Having considered all of the facts we were unable to support the complainant's contentions and we so advised him.

MINISTRY OF

COLLEGES AND UNIVERSITIES

(2)

SUMMARY OF COMPLAINT

The complainant, of Polish origin, submitted a complaint to us concerning the Industrial Training Branch of the Ministry of Colleges and Universities.

With the assistance of an interpreter, the complainant wrote the examination for a Certificate of Qualification as a truck/trailer repairman. According to Ministry policy, the interpreter was required to have no mechanical knowledge. The complainant contended that an interpreter unfamiliar with the technical vocabulary employed in the trade could not translate the exam into Polish well enough for him to understand the questions. As a result, the complainant felt that the examination could not adequately reflect his competence as a truck/trailer repairman.

After failing on his first attempt, the complainant brought the same interpreter for his second attempt. However, he was interrupted during the exam because Ministry policy required that the same interpreter not be used for another attempt for at least 12 months. The complainant alleged that he had not been informed of this policy.

The complainant stated also that on one occasion he was advised by a training information officer that in special circumstances, an applicant who failed a written examination could be examined for certification at his place of work.

The complainant felt that having worked 24 years as a truck/trailer repairman and in view of the disadvantage he faced on a written examination, the Ministry should make appropriate arrangements for an on-the-job assessment.

Our investigation included meetings with appropriate officials in the Training and Enforcement Branch and the Examination Development Branch of the Ministry. We learned that the Ministry's policy that interpreters have no technical knowledge and that the same interpreter be used only once in a twelve month period was to prevent the use of an interpreter with technical expertise and the possible compromise of the trade examination.

The Ministry had not considered employing its own translators for trade examinations because, apart from financial considerations, it was not practical in view of the small percentage of applicants who require interpreters. In addition, there had not been a demand for examinations to be printed in different languages.

We learned from the Administrator of the Examination Development Branch that the technical terms used on the examination were terms used daily in the trade. It was pointed

out that the truck/trailer repairman applicant must have a knowledge of trade terms in the English language so that he understands the various dealer manuals and work orders; without a knowledge of English he could become a safety hazard.

It was pointed out that if indeed the complainant had been employed for some 23 years as a truck/trailer repairman, then he should be familiar with trade terms in English and not require any technical assistance from his interpreter.

The investigator contacted the Supervisors of two firms where the complainant had been employed for the longest periods of time. We learned that at one firm, the complainant did not work as a truck/trailer repairman and therefore did not need complete fluency in English although he was required to write his reports in English. However, at the second place, he had worked as a truck/trailer repairman. He was required to read work orders in English as well as write his shift reports in English. He needed knowledge of certain terms in English although if he did not understand manuals or work reports, he could ask for assistance. Therefore, he had ample opportunity to acquire knowledge of the trade terms used in English.

In addition, the trade examination questions were reviewed and it was noted that not all the questions required translation of "technical terms". We also noted that the complainant did not object to the use of an interpreter without trade knowledge after he failed his first exam, but brought the same interpreter for the second attempt.

We determined that a reminder notice had been sent by the Industrial Training Branch to the complainant, advising him that a translator could not be used more than once in a twelve month period.

The complainant indicated that he had received this notice. It was our view that if he had not understood it, he should have taken steps to have it translated.

With respect to the complainant's contention that he should be allowed to have an on-the-job assessment, we noted that all the following conditions for such an assessment had not been met by our complainant:

1. The applicant must have failed a written examination.
2. The applicant must prove beyond a doubt that he prepared for the examination, took it seriously and attempted to pass it.
3. The applicant's employer must not only give his permission that the work place be used for the examination but must make representa-

tions on the applicant's behalf that he is fully competent in the trade and his failure in the written examination does not reflect his competence, and

4. The Industrial Training Branch Officer responsible for the actual certification procedure must concur that an examination on-the-job is appropriate.

Although the complainant had failed a written examination, section 18 of the regulation under The Apprenticeship and Tradesmen's Qualification Act, gives an applicant three opportunities to pass the exam. If the complainant had not qualified on a third attempt, then he would have been considered as an applicant who had failed the written exam. In addition, it appeared that the complainant had never requested that employers make representations on his behalf regarding an on-the-job evaluation.

Having considered the results of the investigation conducted, it was determined that the complainant's contentions were not supported. We did suggest to the complainant that he should consider rewriting the examination inasmuch as there would be no fee charged as his last attempt had been interrupted. He was also advised that he could bring the same interpreter since it had been over twelve months since his last attempt.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

(3)

SUMMARY OF COMPLAINT

The complainant visited the Queen's Park Office of the Ombudsman and informed us that he and his wife had been on Family Benefits - GAINS for some time. In August of 1978, the complainant transferred to the Old Age Security program and, as a consequence, his Family Benefits Allowance was discontinued as of the same month. This meant that in August, the complainant's and his wife's sole income was \$159.79, the amount of his Old Age Security. Though the complainant would eventually have been entitled to a Guaranteed Income Supplement and GAINS-A, those income related allowances always lag behind the Old Age Security by a few months. At that time, retroactive payments are made.

Meanwhile, because of the loss of the Family Benefits Allowance which used to provide the complainant and his wife with \$430 a month, the couple now had the impossible task of trying to make do on \$159.79. Their rent alone was \$179 a month.

The complainant advised us that neither he nor his wife had eaten supper the night before or any food the day of his visit and that there was no food or money in their home. Since he had appealed to us just before a long weekend, it became evident that money had to be obtained for the complainant and his wife that very day if they were to survive the three days.

A call was made immediately to the Provincial Benefits Branch of the Ministry of Community and Social Services. Our investigator was advised that the complainant's wife had made a Family Benefits application. The senior civil servant with whom this matter was discussed advised that the medical report was with the Medical Advisory Board at that moment and he would try to find out within half an hour if an application for Family Benefits on medical grounds could be granted to the complainant's wife.

The complainant also advised at that time that he had been told that he could not qualify for a Guaranteed Income Supplement. A call was therefore made to the Director of the Old Age Security program with Health and Welfare Canada to make further inquiries concerning the Guaranteed Income Supplement. The Director stated that there was no reason why the complainant would not qualify but said that it could take up to four months for him to receive a Guaranteed Income Supplement. The complainant was advised of this and was told that he would automatically qualify for the Province of Ontario GAINS-A program once he received a Guaranteed Income Supplement.

Within 15 or 20 minutes, the senior civil servant with the Provincial Benefits Branch telephoned back to advise that the Medical Advisory Board had accepted the complainant's wife's application for Family Benefits and that she qualified as of August, 1978, and that a special cheque would be made available to the complainant immediately at the district office closest to him. The senior civil servant also advised that a bank was located around the corner from the district office so that there would be no problem in having the cheque cashed the same day.

(4)

SUMMARY OF COMPLAINT

This complainant advised our investigator that he had been requested by the local welfare administrator to repay an overpayment of more than \$3,000. He had also received a request from the Family Benefits Branch of the Ministry of Community and Social Services to repay another overpayment of approximately \$800. The complainant did not think that he owed the money but even if he did owe it, he stated that he didn't have the money to repay a total of approximately \$4,000.

Our investigation established that the complainant became entitled to a Canada Pension as of October 1, 1976. However, it wasn't mailed to him until January 4, 1978. In the interval, the complainant first used up all his own money and was then forced to go on General Welfare Assistance. A cheque for over \$4,000 was first sent by the Canada Pension Plan to the Municipal Welfare Administrator but when it was later discovered that a necessary document had not been signed by the complainant the Municipal Welfare Administrator was asked to return the money. The money was returned and forwarded to the complainant by the Canada Pension Plan. He was not aware that he had to pay any of the money to the Municipality and therefore he used it to pay back taxes on his house and to purchase much needed winter clothing for his children. By the time the Municipality had requested repayment of over \$3,000, he had already spent the money. By that time he was on Family Benefits and because of the Canada Pension payments, another overpayment of slightly over \$800 had resulted.

Our investigator contacted the Municipal Welfare Consulting Branch to obtain more information concerning the General Welfare Assistance overpayment. After considerable consultation on all sides, the Municipal Welfare Administrator decided not to recover the overpayment. He agreed that it had been incurred inadvertently and that the money was spent in the complainant's family's best long-term interest.

Enquiries were also made with the Provincial Benefits Branch of the Ministry of Community and Social Services concerning the \$800 overpayment. Since the complainant is still on Family Benefits at this time and he is likely to remain on them for some time to come, the Provincial Benefits Branch advised us that it will be recovering the overpayment by deducting \$10 a month from the complainant's monthly Family Benefits cheque.

(5) SUMMARY OF COMPLAINT

This complaint was originally brought to our attention at a private hearing by the complainant's daughter. A statement outlining the complaint and signed by the complainant was submitted for our consideration.

The complainant's contention was that at a hearing before the Social Assistance Review Board early in 1978, the complainant was not provided with a French interpreter even though he speaks only French and had requested an interpreter some months prior to the hearing. As a result he had considerable difficulty in making his views known to the Board. He was of the view that he should have been provided with an interpreter.

A letter written pursuant to section 19(1) of The Ombudsman Act, 1975 outlining the above-noted contention was sent to the Chairman of the Social Assistance Review Board and the Deputy Minister of Community and Social Services on May 9, 1978. In response to our notice of intent to investigate this complaint it was confirmed by the Chairman of the Social Assistance Review Board in a letter to our Office, that the complainant had requested that his hearing be conducted in French. Consequently the Chairman agreed to have the Board conduct a hearing in French, to reconsider its decision.

We then notified the complainant in writing of the results of our investigation. We also wrote to the Chairman of the Social Assistance Review Board and the Deputy Minister of the Ministry of Community and Social Services confirming the resolution of the complaint and the termination of our investigation.

(6) SUMMARY OF COMPLAINT

This complainant was first interviewed at our Office early in 1978, concerning the problems she was experiencing with the Ministry of Community and Social Services.

The complainant explained that as an employee of the Ontario Civil Service and approaching retirement age, she was required to submit to the Personnel Branch of her Ministry an application for a Canada Pension. She filed the application with the Personnel Branch in November, 1976, and in spite of several enquiries during the weeks following, she did not receive the completed form back from the Personnel Branch, ready for submission to the Canada Pension Office until mid-January, 1977. The complainant was of the view that the Ministry of Community and Social Services was responsible for the delay in processing her Canada Pension application and this resulted in a financial loss equal to a one month payment of her pension. She maintained that the Ministry should reimburse her for this amount (\$135.00).

Since the complainant had already filed an appeal with the Canada Pension Office with respect to this matter, we advised her that we would await the outcome of her appeal before taking any action. After receiving notice from Health and Welfare Canada, that they could not provide her with a retroactive pension payment, the complainant returned to our Office and requested an investigation.

Her contention was then outlined in a letter to the Ministry, written pursuant to section 19(1) of The Ombudsman Act, 1975, dated August 3, 1978.

In response to our notice of intention to investigate the complaint we were advised by the Ministry of Community and Social Services that its investigation into this matter revealed that there was indeed a delay in action taken by officials in the Personnel Services Branch that resulted in the problem which the complainant had experienced in obtaining the Canada Pension Plan benefits to which she was entitled. The Ministry agreed to pay to the complainant an amount equal to one month's Canada Pension Plan benefits (\$135.00).

The complainant was notified of the results of our investigation and the file was closed. Subsequent to this we received a letter from the complainant expressing her satisfaction with the Ministry's actions and thanking us for our assistance.

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

(7)

SUMMARY OF COMPLAINT

The complainant wrote to our office and complained about the actions of the Ministry of Consumer and Commercial Relations.

The complainant was involved in a motor vehicle accident and there was extensive damage to his car. The other driver was at fault. Temporary repairs to his car were authorized by an agent of the company with whom the other party was insured. When it was later discovered that the insurance policy of the other party had lapsed, the complainant filed a claim with the Motor Vehicle Accident Claims Fund of the Ministry of Consumer and Commercial Relations.

He had obtained two estimates for repairs to his car, and these, along with a claim for temporary repairs, storage, and towing charges were sent to the Fund. The Fund retained the services of a professional appraiser who submitted an estimate for an amount much lower than those submitted by the complainant. The lower of the two estimates submitted by the complainant was obtained from the same body shop used by the appraiser, and the Fund made an offer to the complainant based in part on the appraiser's estimate. The total amount requested by the complainant for storage and temporary repairs was not accepted by the Fund. The Fund agreed to pay half the amount of the storage claim as it had evidence from the appraiser that it was not necessary for the complainant's car to have been stored for as long a period of time as it had been.

In connection with the claim for temporary repairs, the Fund also had information from the appraiser that some of the damage was caused by the complainant attempting to drive the car after the accident. Further, the invoice which had been submitted by the complainant did not sufficiently itemize the temporary repairs which had been carried out.

The Deputy Minister of Consumer and Commercial Relations was advised of our intention to investigate this complaint, and upon receipt of his response, the Motor Vehicle Accident Claims Fund files were reviewed, and meetings were held with the Director of the Fund.

Our investigation revealed that although the complainant wanted a settlement based in part on the lower of the two estimates which he had received, the repairs to his car could have been effected for the price of the lower estimate received by the Fund. The difference in price was due to the use of new as opposed to used parts. The car was an old one. Discussions with the manager of the body shop which had given the lower of the complainant's two estimates as well as the Fund's estimate,

revealed that he could not guarantee the availability of used parts at the time that he gave an estimate to the complainant. On the other hand, the appraiser for the Fund was able to locate used parts. The complainant's car therefore, could have been repaired for the amount quoted to the appraiser.

It was also found during this investigation, that the complainant had not incurred towing expenses as claimed. He had in fact used another of his cars to tow the wreck.

The Fund's position with respect to storage charges was discussed further with the complainant, and he accepted the offer of fifty per cent.

At the request of our investigator, an itemized invoice in connection with the temporary repairs was forwarded by the company which had effected those repairs. The complainant said that he had been unable to secure one.

The Fund's explanation of its reasons for taking the position it did was relayed to the complainant, and the invoice received by our Office submitted to the Fund.

Upon receipt of the invoice, the Fund agreed to pay the full amount for the temporary repairs and the offer to the complainant was increased. The complainant accepted the offer and the file was closed to his satisfaction.

(8)

SUMMARY OF COMPLAINT

This complaint concerned the actions of a land registrar in that he registered a 43-year old deed the effect of which was to encumber the complainant's title to land.

In 1960 the complainant purchased 365 acres of property. In February of 1976, a real estate agent called the complainant about the possibility of selling a piece of the property. The complainant was not interested in selling, but the real estate agent advised the complainant that the agent had been ejected from the complainant's property by an individual who represented an absentee owner other than the complainant. Moreover, the real estate agent advised the complainant that in 1970 a Mr. "S" registered a deed for part of the complainant's property, which deed was 43-years old. The deed impugned the ownership of the complainant to 7 1/2 acres of his land. Subsequently, Mr. "S" sold the 7 1/2 acres to Mr. "P" who was now claiming ownership.

The Ministry of Consumer and Commercial Relations was notified of our intention to investigate, and replied that the

registry system was merely a recording type of registration system and did not guarantee title as does the land titles system. When an instrument is presented for registration, the land registrar checks to make sure the instrument affects the title to the land and conforms to the requisite formalities. The registrar would not concern himself with the fact that the document may be 43-years old as long as the instrument met the requirements for registration as provided for in The Registry Act.

We agreed with the Ministry that the impugned deed was presented to the land registrar in registrable form and contained all but one of the necessary affidavits; that being the affidavit attesting to the grantor having reached the age of majority. However, the deed had an appropriate judge's certificate in lieu of this affidavit. In August of 1977, the Ombudsman reported to the complainant that he could not support the complaint and further advised the complainant that he should obtain legal advice as this was essentially a private matter.

Subsequently the complainant contacted our Office and stated that the registrar should not have registered the deed for a further reason, that being that the supporting affidavit to the court application which was made to obtain the judge's certificate in lieu of the affidavit of age was incorrect. This affidavit sworn by Mr. "S" incorrectly described the location of the land involved by describing it as being in a township other than the one in which it actually was.

The complainant and his Member of Provincial Parliament, who is also his lawyer, came to our Office to discuss the issue of this affidavit. The complainant was advised that the paragraph relating to the location of the land was merely descriptive and the County Court judge clearly accepted the substance of the affidavit as he granted a certificate. As well, it should be noted that the affidavit was made merely in support of a court application and was not, in itself, relevant to the registration of the deed. All that The Registry Act requires is the certification by the judge, and it may well have been improper for the land registrar to look behind a judge's certificate as the complainant suggested should have been done in this case.

The complainant then raised a further issue relating to the assessment of the 7 1/2 acres affected by the impugned deed. The complainant stated that the real estate agent advised him that a sketch in the regional assessment office showed Mr. "P" to be the owner and that this individual was also apparently being assessed for the same land upon which the complainant was paying taxes.

A further investigation was conducted concerning the issue of the apparent irregularity in assessment. As part of this investigation a search of title was conducted of the complainant's property and a copy of the assessment office map which referred to the complainant's property was obtained.

The title search indicated the complainant's deed was registered prior in time to the impugned deed registered by Mr. "S". Accordingly, it would seem that The Registry Act would deem the impugned deed as being void vis-a-vis the complainant's deed.

The Ombudsman again came to the conclusion that the registrar's actions in registering the 43-year old deed were not wrong and therefore the complainant was being assessed on land he owns, notwithstanding the fact that Mr. "P" was also being assessed on the same property.

The complainant was advised that an assessment office would not normally concern itself with the legal ownership of land or the legality of land claims. The function of an assessment office is only to assess property and to notify the owners of the same. If two individuals claim to own the same piece of land it is not the duty of the assessment office to determine who in law has the better claim. The true owner would be obliged to pay the taxes and in this case Mr. "P" did so. Moreover, the office map prepared by the regional assessment office was only done for assessment purposes and would have no other legal effect whatsoever.

Accordingly, the Ombudsman was not able to support these complaints.

(9)

SUMMARY OF COMPLAINT

These complainants first contacted us at a private hearing in northwestern Ontario complaining of the decision made by the Liquor Control Board of Ontario not to grant them a liquor agency outlet in their grocery store.

The complainants, who reside in a small northwestern Ontario community, applied for a liquor agency licence in 1973 and every year since that time and had been consistently refused a licence by the Liquor Control Board of Ontario. The complainants stated that they were never given reasons for this decision by the Board although they had requested them in their correspondence with the Board.

The history of the complainants' interest in an agency store dates back to October 1973, when they made their first application. As a result of this request, the Board instructed

the district supervisor to prepare a report on the location for its consideration. In October 1973, the supervisor of this district completed a survey in which he identified the applicants as the owners and operators of a general store in the area, a position they had filled for 13 years. He indicated that a new cement block building being built by the complainants would be very attractive and offer sufficient space to handle an agency outlet. The supervisor recommended in his report dated October 29, 1973 to the Director of Store Operations, as follows:

"Should the Board forego the present mileage regulation and consider an agency store for this area, it would be my recommendation that this applicant be given consideration upon the completion of his new store."

The complainants reapplied for an agency licence upon completion of their new store on March 26, 1974 but they were refused in a letter dated April 4, 1974 from the general manager. This subsequent application was followed by requests for a re-consideration of their application in February 1975, June 1975 and October 1975.

As a result of a letter from the complainant to the Premier's Office in 1975, the complainants were informed that proximity to a larger town that did have a Liquor Control Board store was one of the reasons why the licence had been refused. Apparently, the Board's policy on this matter was based on a definition of "sufficiently remote" which it defined generally as a distance of 25 miles on main highways and secondary roads. If, however, adequate service cannot be provided in a community due to inaccessibility which is less than 25 miles, or if the Board does not intend to establish a permanent store in the locality, the mileage limit may be reduced at the discretion of the Board. In this case, the Board determined that adequate service was available for this area. However, the complainant contested this decision on the basis that there were two liquor stores within the mileage distance of a nearby larger town.

The investigator met with representatives of the Board to discuss this case in general and in particular to determine the Board's policy with respect to the granting of liquor agency licences. The following criteria are considered by the Board in determining whether or not to grant such an application: the area supervisor's report and recommendation; the population density of the area; the demand by local residents; the distance from the nearest liquor board store; the suitability of the applicants; the demand on existing stores; and the local road and transportation conditions. These variables were considered by the Board in reviewing this application and the Board determined that there was no need for a liquor store agency in this area.

The investigation conducted by our Office dealt with the reasonableness of the Board's decision in this matter. During the course of the investigation into this complaint we formed the view that it was open to us to conclude that there existed sufficient grounds to make possible adverse recommendations to the Board. The Board was therefore given an opportunity to make representations respecting these possible adverse recommendations.

The tentative recommendations were that the Board should provide unsuccessful applicants with written reasons on the refusal of an agency store application and that the Board should reconsider the complainant's application.

Although we indicated in our final report that we might have interpreted the definition of "adequate service" more liberally in this case, given the population such an agency might serve in the community in question we could not say that the Board had exercised its discretion for "an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations" within the meaning of The Ombudsman Act, 1975. Therefore this complaint was unsupported.

(10)

SUMMARY OF COMPLAINT

This complaint first came to our attention through the complainant's Member of Provincial Parliament. The complaint alleged improper and unfair hiring practices by the Liquor Control Board of Ontario.

The complainant advised us that she had been employed in a part-time capacity with the L.C.B.O. store in a mid-size southeastern Ontario town from December 1975 until August 1976 at which time she was laid off and replaced on the part-time schedule. She claimed she was assured by the store manager that this decision did not relate to the quality of her work however she had been replaced by two less senior employees. From December 1, 1976 until May 1977, she returned as a part-time employee in the store but was only given a few hours at sporadic intervals. Although she had made application for full-time employment, a permanent opening was filled by an outside applicant whom she indicated was the chauffeur of a retiring M.P.P. At this time she was also informed that she would not be required for work in the store any longer. The complainant stated she felt this decision was most unfair particularly in view of her experience and her record of good service.

During the investigation it was learned that the complainant was, in fact, a temporary employee of the L.C.B.O. and not a part-time employee as stated in her letter to our Office.

The classification of part-time employee is one that is covered in the collective agreement with the L.L.B.O. and L.C.B.O. Employees Association, while the classification of temporary employee is not.

We found that temporary employees are utilized at peak periods of business and when hired are advised that temporary employment does not necessarily qualify them for a permanent position. This statement was included in the form signed by the complainant when she was hired as a temporary employee. During 1976, 12 different people were employed on a temporary basis in this store and the Board reported that there is no doubt that some of them may have been junior to the complainant. However, the policy of the Board and the stores which it governs is to hire temporary employees on a gradual basis over the year so that they have some experience in training when the peak periods of work occur. Respecting the hiring of the permanent employee identified as the former chauffeur of a Member of Provincial Parliament, the Board indicated that this individual maintained a home in the town in question and wished to obtain a transfer to a branch of the government in that district. He had submitted an application to the Toronto head office, was interviewed by the personnel office and transferred to the store when an opening occurred. The Board also indicated that it was keeping the complainant's application for full-time employment in its active file for a reasonable length of time and indicated she would be considered along with all other applicants when other vacancies occurred.

During the course of the investigation, the investigator learned that none of her former employers took issue with the quality of her work which for the most part was described as good. However, both the store manager as well as two other former employers indicated that the complainant was a difficult employee to deal with.

Our investigation also revealed that the chauffeur's application for employment with the L.C.B.O. reached that office under cover of a letter of a high ranking government official. Without closer scrutiny it might have appeared irregular for such a reference to have been given. However, it was established that the individual in question had acted as a chauffeur to high ranking political figures and there did not seem to be anything unusual or improper in having these names indicated as references for employment. While the complainant had attempted to use this fact as a basis for her allegations of political interference, our investigation did not support this allegation. After a discussion with the complainant and review of the Board's files, it was noted that while the complainant was classified as a temporary employee, employee association dues were deducted from her pay for a period of

seven months. This was brought to the attention of the Board and a correction was made so that the complainant was reimbursed a total of \$21.00 for this error.

The use of temporary employees is apparently left to the discretion of each store manager who is under no obligation to call any temporary staff into work except as the need arises. The hiring of permanent staff, on the other hand, is the responsibility of the personnel department of the L.C.B.O. head office. It was in this context that the store manager had taken the position that "his hands were tied" since the appointment of a permanent employee in the store is not his decision to make. Respecting the placement of the former chauffeur in a permanent position with the store, when such an opening did occur, the district supervisor was consulted as to the placement of the above-mentioned individual and when he indicated he had no objections, the position was so filled. The Ombudsman was of the view that these actions were taken in an effort to accommodate the applicant in returning him to his home community and were not the result of improper political influence.

After thoroughly reviewing the facts in this case, the Ombudsman concluded that the Liquor Control Board of Ontario had not acted unfairly or improperly in this matter. The complaint was therefore not supported.

(11)

SUMMARY OF COMPLAINT

This complainant was driving his employer's truck when he stopped at an intersection and waited to make a left hand turn. He was waiting for an eastbound motorcycle to pass before making the left hand turn, when he saw the motorcycle skid off the roadway and hit a hydro pole.

He gave an account of the accident to the police. The complainant later received a subpoena to appear in court in connection with the accident. He passed the document on to his employer who advised him that the matter would be taken care of by the company's lawyer.

Nothing more was heard by the complainant until he was stopped by the police much later and advised that his licence had been suspended. His employer was later advised that the reason for the suspension was that he was indebted to the Motor Vehicle Accident Claims Fund. The sum of \$1,989.64 had been paid by the Fund to the rider of the motorcycle which the complainant had witnessed skidding off the road, and who had claimed that the complainant had caused the accident.

The Deputy Minister of Consumer and Commercial Relations was advised of our intention to investigate. The Superintendent of Insurance responded by saying that several attempts had been made to advise the complainant of the claim against him with no success. The decision to make a payment on his behalf was based on the testimony of the plaintiff and as there were no independent witnesses, the Motor Vehicle Accident Claims Fund's lawyer was of the opinion that the complainant could be held responsible for the accident.

It was stated that the complainant had failed to notify the Ministry of Transportation and Communications of his change of address and could not be located to dispute the evidence. The letter went on to say that the Fund had not been aware that the truck being driven by the complainant was owned by his employer.

The Motor Vehicle Accident Claims Fund Act provides that:

"The Minister shall not pay out of the Fund any amount in respect of a judgment unless the judgment was given in an action brought against all persons whom the applicant might reasonably be considered as having a cause of action in respect of the damages in question and prosecuted against every such person to judgment or dismissal."
(emphasis added)

Our investigation of this complaint was underway when a letter was received from the Motor Vehicle Accident Claims Fund stating that it had received a statutory declaration from the complainant outlining his version of the accident and denying responsibility for the accident.

In view of the complainant's sworn declaration, the Fund was willing to give the benefit of the doubt to the complainant. The Fund withdrew the Writ of Execution against the complainant and notified the Driver Control Branch to reinstate his Driver's Licence.

This file was closed to the satisfaction of the complainant who subsequently received his Driver's Licence by mail.

(12)

SUMMARY OF COMPLAINT

The complainant contacted us to complain about a decision of the Ontario Racing Commission to convict him of an offence under The Racing Commission Act, which resulted in a fine of

\$1,000 with \$300 costs and a three month suspension from racing activities.

The complainant owned a mare, which foaled a colt in April 1975. In September 1975, he sold the colt for the sum of \$2000. The new owner wanted to enter the horse in the Ontario Sires Stakes, number 5, but foals of 1975 had to be nominated with the Ontario Racing Commission as yearlings by May 1976. When nominations closed, a nomination for the horse in question had not been received.

In January 1977, the new owner made representations to the Commission, supported by evidence, that indicated the nomination for the horse had been lost in the mail since May 1976. The Commission reviewed the evidence and accepted the horse as nominated to the Sires Stakes races.

A detailed investigation was conducted by the Ontario Racing Commission and the Ontario Provincial Police after the horse won its first Ontario Sires Stakes race. During the investigation, the complainant made a statement to the Commission that he had not paid the nomination fee for this horse and that in October or November of 1976 he had given the new owner a stale-dated cheque for the purpose of getting the horse nominated.

The Commission in ruling against the complainant took into consideration the financial implications to the other participants in the Ontario Sires Stakes of the improper nomination of the horse. While the complainant did not gain financially from his actions, it was nevertheless his letter and his cheque that assisted in accomplishing the misrepresentation. The complainant and the new owner were each charged with conduct contrary to the public interest, an offence under The Racing Commission Act. Each was alleged to have acted "in concert with" the other. Following a hearing before the Commission, the complainant was fined \$1000 plus \$300 costs, and suspended from racing activities for three months. The new owner was fined \$1,000 plus \$300 costs, and suspended from racing activities for five years.

Our investigator met representatives of the Commission to discuss the case in general and to determine the Commission's policy in such matters. It was learned that this was the first such case to come before the Commission.

The Commission used the services of the Ontario Provincial Police and the Centre of Forensic Sciences, Ministry of the Solicitor General, to investigate the actions of the two men. Upon completion of their investigation, charges were laid and a hearing resulted in the complainant being convicted, fined and suspended from racing activities for three months.

Our investigation showed that the complainant's fine of \$1000 was determined in relation to the money involved (potential sires stakes winnings) and the gravity of the offence. The Racing Commission Act provides authority for the Commission to levy fines on conviction of offences. The amounts of these fines are discretionary.

In a meeting with the complainant, our investigator was told that during the investigation by the Commission, he provided a statement admitting to his part in the scheme, and he alleged that the Commission investigator held out a promise of protection from prosecution and publicity. An examination of the complainant's statement shows that he was properly cautioned before he made a statement. Our investigator could find no evidence to support the complainant's contention that an inducement had been held out to him. With regard to the matter of publicity, the Commission hearings are held in public, therefore, publicity could not be avoided.

After thoroughly reviewing the facts in this case, the Ombudsman found that in imposing this penalty upon the complainant the Commission did not exercise its discretionary powers for an improper purpose or on irrelevant grounds, and accordingly he could not support the complaint.

(13)

SUMMARY OF COMPLAINT

This complainant contacted us at a private hearing and submitted a complaint respecting a decision rendered by the Registrar of The Real Estate and Business Brokers Act.

The complainant's contention was that he had signed an Agreement to Purchase a house for the price of \$34,500. He was advised at that time by the real estate brokers that there were two existing mortgages. However, just before the closing of the transaction he learned that there were in fact three mortgages on the property. Because of this new development, the complainant felt that it was unrealistic for him to close the transaction. In fact, the complainant felt that he had been taken advantage of by the real estate brokers since they had not informed him of the third mortgage. The Agreement to Purchase included a clause to the effect that the vendors would discharge all mortgages upon completion of the sale.

Because the transaction was not completed, the real estate brokers, as agents for the vendor asked the complainant for \$3,000 since he had not completed the transaction. The complainant felt that it was unfair to require him to pay this money since the brokers had failed to advise him of the third mortgage.

The complainant thus brought his problem to the attention of his Member of Provincial Parliament, who in turn advised the Registrar of The Real Estate and Business Brokers Act of the matter. The Registrar conducted an investigation and apparently found nothing wrong with the real estate broker's behaviour. However, the complainant contended that the investigation by the Registrar of The Real Estate and Business Brokers Act was inadequate and biased. He also felt that there should be a provision in the Act to ensure that senior citizens do not become victims of the unfair business practices of real estate brokers.

The Deputy Minister of the Ministry of Consumer and Commercial Relations was notified of our intention to investigate this complaint. Our investigator reviewed the contents of the Ministry's file. He interviewed the complainant and the complainant's lawyer and three realtors in the area.

The Ministry's file disclosed that they had made inquiries of the real estate company, who explained and defended its position. The file indicated that the Ministry also obtained a report from the complainant's lawyer who stated that in his opinion the complainant had knowingly entered into the Agreement of Purchase and had later changed his mind.

Copies of the agreement and other documents were supplied to the Ministry and examined by us.

Our investigator's interview with the complainant disclosed that he was experienced in real estate matters. He advised us that he refused to go through with the agreement to buy the vendor's house because of his sudden awareness of a third mortgage, notwithstanding that there would be sufficient funds on closing to discharge all three mortgages. He cited as other reasons the disappearance of a TV tower, a poor paint job and a growing dislike for an arrangement in which the vendors would stay on the property as tenants for one year. He also advised us that he offered to pay the vendors \$3,000 after being asked for \$4,400 to extricate himself from the agreement and to avoid an action for specific performance.

In our opinion the investigation of the complaint conducted by the Registrar of The Real Estate and Business Brokers Act was adequate, and the conclusion that there was no wrongdoing on the part of the realtor, was supported by the evidence. Although we are sympathetic to the difficulties often encountered by senior citizens, in our view the complainant was reasonably knowledgeable about real estate matters and was represented by a lawyer.

The complainant also wrote to the Attorney General, complaining about his lawyer's actions in this matter. His complaint was referred to the Secretary of the Law Society of Upper Canada.

Having considered the results of the investigation conducted, we concluded that this complaint was unsupported.

(14) SUMMARY OF COMPLAINT

This complainant was first interviewed at a private hearing. He complained of actions by the Registrar of the Real Estate and Business Brokers Division of the Ministry of Consumer and Commercial Relations.

The complainant alleged that as a salesman working for a real estate company, he and other salesmen of the office were financially harmed by the breakdown and eventual bankruptcy of that firm. He further contended that as a registered real estate salesman he was not adequately protected by the Registrar of the Real Estate and Business Brokers Division. He felt that the Registrar had not adequately monitored the workings of that particular real estate company while it was in operation. The complainant contended that had he done so, it would have helped avert the eventual bankruptcy of the firm and the resulting harm to the salesmen.

Furthermore, the complainant felt that the Registrar should not have permitted the company to have two trust accounts, and that the Registrar should have been monitoring the company's books more closely as provided for in the relevant legislation. The complainant further alleged that in spite of the relevant regulation requiring bonding, the requirement had not been met.

A letter was sent to the Deputy Minister advising him of our intention to investigate this complaint. The Deputy Minister subsequently responded with a statement of his Ministry's position.

Our investigator met with the complainant and reviewed the contents of the Ministry's file with the Registrar and an inspector for the Ministry. It was determined that the president of the company and his lawyer had a meeting with Ministry officials to discuss the financial position of the company prior to declaring bankruptcy. It was apparent that the company's liabilities were far greater than its assets and it would be unable to meet its liabilities as they came due. Ministry officials arranged for an inspection of the company's books but this never took place as the offices were sealed by a Sheriff's Order and Notice.

At this particular point, the president of the company agreed to terminate his and the company's registration as a real estate broker. He also voluntarily froze his trust accounts. It was only at this meeting that Ministry officials learned the company was operating two trust accounts, which came about after the company had bought out another real estate company, but continued using its trust account. However, when an inspection by Ministry officials did take place, both trust accounts were reconciled and in balance.

The Registrar informed our investigator that there were over 10,000 brokers in Ontario, in 4,500 Head Offices and 1,200 Branch offices. The Ministry attempts to inspect the books of every new broker once a year. It also carries out spot inspections in different areas around the province. There was no indication that if the Ministry had monitored the company's records more closely, this would necessarily have affected the outcome, as the trust accounts were reconciled.

It was the Registrar's opinion that it was not the responsibility of the Real Estate and Business Brokers Division to protect salesmen from their brokers. Rather the purpose of The Real Estate and Business Brokers Act is to regulate the activities of real estate brokers in their dealings with the public. The trust provisions are to protect members of the public who have entrusted funds to the broker.

Furthermore, the Ministry is not in a position to establish priorities in classes of creditors, as, under The British North America Act, this falls within the jurisdiction of the Federal Government. The Registrar however was of the opinion that salesmen should be protected, but that this should be done by their own Association, the Ontario Real Estate Association, rather than by the Ministry which does not have the legislative mandate to do so.

The complainant's allegation that his broker was not bonded as required was incorrect. A broker cannot be registered unless bonds of \$5,000 for the broker and \$1,000 for each salesman are lodged with the Registrar. The purpose of these bonds is to protect the trust funds, and these are maintained for two years after termination of registration. The bonds for this particular company were filed correctly.

This complaint was therefore not supported. The complainant was advised that although we were sympathetic to the complainant we were of the opinion that the Ministry does not have the legislative mandate to provide such protection for real estate salesmen against their brokers. Such protection in our view should be provided by an organization such as the Ontario Real Estate Association.

MINISTRY OF

CORRECTIONAL SERVICES

(15) SUMMARY OF COMPLAINT

Letters were received from two complainants who were incarcerated in a correctional centre in Central Ontario identifying concerns related to the medical treatment which they were receiving at the facility. The complainants were interviewed by our investigator at which time they signed consent forms pursuant to section 20(4) of The Ombudsman Act, 1975.

One complainant contended that she felt it had been unreasonably difficult to obtain treatment for a cold from which she had suffered for two months. The complainant stated that whenever she asked for medication for the cold she was told that the drugs would not be compatible with a drug which she was receiving because of her previous dependence on heroin. The complainant went on to state that her cough had become so bad that she had been forced to move from her room to the general area of her unit so that her roommate could sleep.

The second complainant advised our investigator that in the previous seven months of her incarceration, she had suffered five or six headaches for which she had requested an aspirin. Just prior to our investigator's visit, she had requested an aspirin but had been advised that it would be more appropriate for her to go to bed with a cold cloth. The complainant contended that if she had a history of abusing medication, or if in fact she were a chronic complainer, she could have appreciated the denial of the aspirin.

During the course of our investigation, our investigator reviewed the log books maintained in the complainants' units, the complainants' unit files, and medical files. She also spoke with the Unit Supervisor, the Head Nurse, the attending nurse, and the Superintendent.

With respect to the first complainant, our inquiries revealed that the cold was well documented on the medical records from April through to July when the complainant was interviewed. In addition, unit staff supported the complainant in her contention that she had been ill, had suffered from a severe cough, and had been unable to receive adequate medication from the Health Centre staff. With respect to the complaint identified by the second complainant, the Superintendent, after reviewing her medical file, concurred that the actions taken by the Health Centre staff had been inappropriate.

In the company of our investigator, the Superintendent consulted with the Head Nurse and advised that a new procedure of health care at the facility was to be implemented. It was decided that one nurse was to be assigned to each of the units in the facility to ensure that consistent health care

would be afforded all residents. Further, it was decided that all medical cards would be reviewed on a bi-weekly basis to determine whether or not consistent complaints were being raised by residents. Further, the Superintendent advised that a closer watch would be maintained on all activities related to the Health Centre in the institution.

During the course of our inquiries it became apparent that the Superintendent had never been advised that a Shift Supervisor had previously noted and reported on the first complainant's continual coughing.

Since the implementation of the new Health Care policy at the correctional facility no further concerns related to inappropriate medical attention have been received by our Office.

(16) SUMMARY OF COMPLAINT

During a visit to our Office this complainant identified a number of complaints relating primarily to the actions of a correctional officer.

Our investigator visited the institution, examined all relevant documentation contained on the complainant's institutional and medical files, and the log books. In addition, a determination was made as to the identity of staff who might be required for interviews. Following these inquiries and in accordance with the requirements of section 19(1) of The Ombudsman Act, a letter of intention to investigate the complainant's concerns was forwarded to the Deputy Minister.

With the agreement of the Ministry of Correctional Services, two investigators visited the institution at which time they spoke with and took written statements from eight staff members of the facility as well as the complainant. Additional interviews were held with the Director of Personnel for the Ministry of Correctional Services, a Deputy Area Director for Legal Aid, the complainant's lawyer, and the Executive Assistant of a federal Member of Parliament.

With respect to three of the complainant's concerns, namely; a) that the Senior Officer was over the age of sixty-five and, therefore, should not be employed; b) that the complainant's letters to the Executive Assistant of a federal Member of Parliament were taken by the Senior Officer and were not forwarded, and; c) that the complainant was generally denied Inmate Request Forms, we determined that The Ombudsman Act only permitted us to find them to be supported and make an appropriate recommendation had we been of the view that the actions complained of were "unreasonable,

unjust, oppressive or improperly discriminatory." As this was not the situation, we determined that these complaints could not be supported.

However, in respect of the remaining complaints, we came to the possible conclusions that 1) with reference to a complaint that the complainant had been denied cell time although procedures specified that there were set hours for this privilege, it would be open to us to conclude that the failure to apply consistently these procedures and rules was an unreasonable omission; 2) with reference to the complaint that the complainant had never been advised of a telephone call from the complainant's lawyer, it would be open to us to conclude that the failure to apply consistently a practice, regarding the recording of, and subsequent relaying of this information, which was a part of the facility's normal procedure, was a wrongful omission; 3) that with reference to the complaint that the complainant was denied access to speak with a Legal Aid Assessment Officer, it would be open to us to conclude that the senior officer's decision to advise the Assessment Officer that it was useless to speak to the complainant as the complainant had exhausted all avenues of appeal, was both wrong and improperly discriminatory toward the complainant. Further, we felt that it would be open to us to conclude that the failure to note the above referred to incident in the log book of that section of the facility was an omission from the Centre's normal practice; 4) that with respect to the complaint that the complainant had been denied a request form to see the Superintendent, the basic substance of the complaint could be supported, even though the complainant had ample opportunity to speak with the Superintendent on an informal basis. During the course of the investigation, it became evident, however, that there was an omission in the administrative practices of the Centre with respect to the completion of Inmate Request Forms in that the date action was taken was not specified on the forms.

These possible conclusions and recommendations were reported to the Senior Officer of the facility, the Superintendent, and the Deputy Minister of Correctional Services in a letter pursuant to Section 19(3) of The Ombudsman Act, 1975. Representations were subsequently received on behalf of these persons by letter.

After carefully considering the representations of the Ministry and the results of the investigation conducted we reached our final conclusions.

With respect to the complainant's contention regarding the lack of notification of a lawyer's phone call, the investigation revealed that since the incident, there had been a number of staff changes at the facility and it would

not be possible to ascertain the identity of the individual who had received the call. In an effort to resolve the problem, and in an attempt to assure the confidentiality of a client-lawyer relationship, a pilot project was initiated at the facility which would provide for an inmate telephone system enabling residents to speak directly with their lawyers through the provision of a private line with additional hand sets.

The most serious contention made by the complainant related to the alleged actions of the Senior Officer in the denial of a visit with a Legal Aid Assessment Officer. The investigation revealed that the incident occurred as described by the complainant. Serious consideration was given to a formal recommendation that the Senior Officer should be reprimanded in writing for the decision to advise the representative of the Legal Aid that there was no use in his seeing the complainant. Were it not for the fact that the Senior Officer had been in the employ of the Ministry for over twenty years without receiving any negative reports, the Officer's age, and the actions of the Superintendent who strongly counselled the Officer in relation to the situation, we felt that we would have been compelled to make a formal recommendation. Notwithstanding the admittedly difficult personality of the complainant as viewed not only by Ministry personnel but also by our investigators, we viewed the right to counsel as a right that could not be abridged or abrogated at any level of the democratic process.

With respect to the matter of the recording of the aforementioned incident, the Superintendent advised that the proposed recommendation was being fulfilled as all visitors were being logged.

With reference to the suggestion that a procedure be implemented in all provincial institutions to rectify the problems regarding the non-specification of dates in the reply section of Inmate Request Forms, a directive was forwarded to all Superintendents stating that the amendment was to be made immediately to the Manual of Operational Procedures thereby implementing our suggestions.

In conclusion, we were satisfied with the representations which were made by the Ministry following our letter pursuant to section 19(3) of The Ombudsman Act with the exception of the statements in reference to the complainant's contention about cell privileges. The investigation revealed that certain mitigating circumstances affect the reasonableness of the granting of cell time on a regular basis. Accordingly, it became apparent that the complainant may have been denied cell time for any number of undiscernable reasons. We recommended, pursuant to section 22(3) of The Ombudsman Act, that the Senior Officer of the unit should ensure that the

procedures and rules for inmates with regard to cell privileges be adhered to as strictly as possible. Further, should circumstance dictate a change in procedures, these reasons should be recorded in the daily log.

A letter was subsequently received from the Ministry of Correctional Services indicating their decision to accept our recommendation.

(17)

SUMMARY OF COMPLAINT

This complainant wrote to us concerning his incarceration in a correctional facility in Western Ontario. The complainant contended that he had been wrongly identified as being involved with two fellow inmates in an effort to organize a riot.

Following an interview with the complainant, our investigator examined all documentation on his institutional file regarding his involvement in the disturbance. Our investigator noted a statement that the complainant "had been identified by many staff as being involved with inmates... in an effort to cause a riot"; however, there was additional documentation on the file which indicated that the complainant had not actually been involved in the disturbance and further had not been subject to a misconduct following the incident.

This discrepancy was brought to the attention of senior officials at the institution who indicated that they would be prepared to change the wording of the documentation contained on the complainant's file. It was agreed that the above noted statement would be varied to read, "identified by staff as being involved with inmates ... in an effort to prove to the administration that the Inmate Committee had considerable authority in the institution and was needed by the administration."

In order to facilitate the handling of this complainant's concern regarding the inaccurate documentation on his institutional file, a letter was forwarded from the Ombudsman to the Deputy Minister of Correctional Services suggesting that perhaps a copy summarizing the Ombudsman's inquiries confirming that he had not been directly involved in the action, resulting in this disturbance, could be included on the file. A letter was subsequently received from the Deputy Minister indicating that he agreed with the Ombudsman's suggestion, and further that a copy of his letter would be placed on the complainant's institutional file.

(18)

SUMMARY OF COMPLAINT

This complainant wrote to us from two provincial jails in Western Ontario requesting assistance in obtaining a transfer to a correctional facility.

Our investigator determined that the complainant had been sentenced three months prior to contacting the Office of the Chief Provincial Bailiff for the Ministry. A review of the Ministry file determined that the Bailiff's Office had not been notified of the complainant's eligibility for transfer until two months after his date of sentence. At that time, in accordance with normal procedure, his name had been placed on the list of inmates awaiting transfer to a correctional facility. Subsequent contact with the authorities at the originating jail determined that an error had been made by the former Clerk of Records who had recorded the forwarding of a Superintendent's report on the complainant when none had been forwarded. Additional inquiries revealed that three other men were in situations similar to that of the complainant. Our investigator recontacted the Chief Provincial Bailiff and advised him of the foregoing information. Within two days the four men were transferred to a correctional facility.

(19)

SUMMARY OF COMPLAINT

This complainant wrote to us from a correctional facility in the Province of Alberta requesting assistance in obtaining confirmation of his incarceration in a correctional facility in Ontario from August 2, 1977, until December 31, 1977.

From the information contained in the complainant's letter, it appeared that he had been held without bail following his arrest in Ontario for a new charge after he unlawfully left the correctional facility in Alberta. He was subsequently convicted and sentenced for the charge arising in Ontario, served his sentence, and was subsequently returned to Alberta. The complainant stated that the Clerk of Records at his institution had been unable to confirm his time in custody on remand.

Our investigator contacted the Manager of the Client Information Systems for the Ministry. A review of the file revealed that two inmate record cards had been completed on the complaint, the second noting his admission on or about October 3rd of 1977, but failing to mention his time in custody from August 2nd until that date. This error had not originally been noticed by the Ministry when contact had been received from the Clerk of Records at the Alberta institution.

Our investigator subsequently contacted the Clerk of Records in Alberta by telephone and advised her of the complainant's incarceration in Ontario. The information was confirmed by a letter forwarded from the Ministry in Ontario. As a result of our intervention and a recent court decision, the complainant's discharge date was varied by three months and he was released in May of 1978.

(20)

SUMMARY OF COMPLAINT

This matter was brought to our attention when letters were received from three inmates at a jail in Central Ontario complaining that Correctional Officers at the jail had beaten another inmate whose name was not given. Subsequent interviews with the inmates who had written revealed the name of the inmate who had allegedly been assaulted.

The complainant was interviewed, and after being informed of his right to proceed with criminal charges, he indicated that he wished our Office to conduct an investigation into the alleged beating. The complainant stated that while being escorted to segregation after being charged with a misconduct, he was struck in the back of the head by the correctional officer escorting him. When he turned to defend himself, an altercation began which was joined in by three other correctional officers. The complainant was subdued and taken to segregation. He complained that in subduing him, the correctional staff used excessive force, and that as a result, he suffered several injuries, including cuts, bruises and abrasions to his face, neck and arms. The complainant alleged that he was also grabbed and kicked in the areas of the genitals and coccyx.

Prior to commencing an investigation, the Ministry was given both verbal and written notification of our intention to investigate pursuant to section 19(1) of The Ombudsman Act, 1975.

Subsequently, a member of our staff commenced an investigation into the complainant's allegations. Interviews were conducted with staff members involved in the incident, inmate witnesses, the jail's medical staff and senior officials. In addition, a volunteer worker who spoke with the complainant on the day of the incident was interviewed. Written statements were obtained from several of the inmate witnesses and staff members. The complainant's institutional file including medical records, the jail's daily Log Book and the Segregation Log Book were examined and copies of all relevant documentation were obtained. In the interim, a response had been received from the Deputy Minister which indicated that after an investigation was conducted by the

Ministry's Inspections and Investigations Branch, there was no evidence to indicate that the complainant had been assaulted by staff at the jail.

After consideration of the Ministry's position in conjunction with the findings of our investigation, it was concluded that there was insufficient evidence to support the complainant's allegation that he was assaulted by a Correctional Officer at the jail. Similarly, while a degree of force was used against the complainant during the altercation, there was no evidence to support the complainant's contention that correctional staff at the jail used force in excess of what is permitted by section 21(a) of the Regulations made under The Ministry of Correctional Services Act. None of the inmate witnesses named by the complainant had actually witnessed the incident. In addition, there was insufficient medical evidence to conclude that the complainant did in fact suffer the injuries which he claimed.

During the course of the investigation, however, certain other issues came to light which we felt should be brought to the attention of the Ministry. First, it was evident that the complainant was not examined by the institutional physician for possible injuries until three days after the altercation with correctional staff although it was shown that the medical staff at the jail were aware that the complainant had been forcibly removed to segregation.

This raised some concern about the immediacy of the medical attention and therefore the adequacy of the policy with respect to the medical examination of inmates who have been forcibly restrained or moved.

Our investigation revealed that the Correctional Officers involved in restraining and moving the inmate were all slightly injured, but only one Officer reported his injury to the medical authorities in the jail. There appeared to be a lack of provision which would require staff members involved in such situations to report any injuries sustained and to be medically examined.

Secondly, we were concerned after a review of the documentation available, that there was not a more complete documentation of the incident in view of the fact that a degree of force had been used and that several staff members had been involved. It seemed more appropriate that in all cases where it was necessary for staff to use force to facilitate the movement of an inmate, that complete documentation, with respect to circumstances of the movement of the inmate, including the names of staff members participating in the movement of the inmate and detailing the degree of force involved, be prepared as a matter of course. In addition, it appeared that a concise notation of the circumstances of the actions taken could have been in either or

both the institution's Daily Log Book and the segregation Log Book, where appropriate.

After receiving our report, the Ministry undertook to review procedures for the examination of inmates who have, by necessity, been forcibly moved by correctional staff. The Ministry indicated that its Senior Medical Consultant would discuss the matter with the institutional physician at the jail in question to ascertain the nature of the medical treatment given to the complainant following his forcible removal to segregation. The Ministry stated that the matter of a medical examination of inmates following their forcible removal, would be considered as part of their review of the Health Services section of the Ministry's Manual of Standards and Procedures. Concerning the adequacy of documentation in this case, the Ministry indicated that they were reviewing the directives to correctional staff and would be expanding requirements for the recording of circumstances and details surrounding any situation where force was used to control an inmate.

A report containing the results of our investigation and the response of the Ministry to our suggestions was sent to the complainant.

(21) SUMMARY OF COMPLAINT

The complainant, an inmate incarcerated at one of the western Ontario correctional facilities, wrote this Office concerning a medical problem. He alleged that his problem originated from an incident which had occurred while he was incarcerated in one of the eastern Ontario correctional facilities. The complainant stated that while he was incarcerated at the eastern facility, he was assaulted by two inmates with the result that his nose was noticeably crooked and he was at times having difficulty breathing through one of his nostrils. He stated that he was seen by a doctor at that facility who assured him that his nose would be attended to and corrected surgically. However, he indicated that he was reclassified because of the incident and subsequently transferred to the western facility. He stated that when he saw a doctor at the western facility about his nasal problem and his wish to have his nose corrected surgically, the doctor advised him that he was willing to give him medication if he had difficulty breathing but refused to arrange surgery for him. The complainant contended that since his nasal injury was sustained while he was incarcerated, and since he could not afford to have the problem corrected himself, the Ministry of Correctional Services should be held responsible for the cost involved.

In reviewing the documentation obtained by our investigator, there was evidence to indicate that the complainant had been assaulted by an inmate while incarcerated at the eastern facility and that he had sustained injuries to his face as a result of the incident. The treatment record revealed that the injuries sustained by the complainant consisted of scrapes and scratches on his face, forehead, chin and mouth and a nose bleed.

There was no evidence to indicate that the complainant voiced any complaints about having a nasal problem until three months after the assault took place. At that time, the complainant had been incarcerated at the western facility for over ten weeks. He was seen by the insitutional doctor whose notes indicated that he complained of a fractured nose and that upon examination, his nose was deviated to the right with a narrow left passage with some stuffiness, and sinus x-rays were ordered. The institutional doctor noted that to fix the depressed nasal area would not help greatly and it would be cosmetic only.

The Senior Medical Consultant for the Ministry of Correctional Services indicated that the complainant (who had since been released on parole) could be referred to a doctor in his locality and that arrangements for surgery could be made through the complainant's probation and parole officer if surgery was necessary. After this discussion, we contacted the complainant's probation and parole officer. At a later date, we were advised that the complainant was seen by a doctor in his locality who referred him to an ear nose and throat specialist, and, that subsequently the complainant had nasal surgery.

(22)

SUMMARY OF COMPLAINT

This complaint originated by a letter which was received from ten inmates complaining about discrimination against the Francophone population at one of the provincial detention centres. These inmates contended the following: that there seemed to be a delay in the processing of requests submitted in French; that some inmates were having problems conversing with staff members; that the amount of French reading material at the Centre was inadequate; that the French inmates who could not speak or read English were having difficulties because the institutional rules and regulations were posted in English only; that the signs and posters inside the Centre were inadequate because they were not bilingual; and, that conflict existed between the French and the English inmates over the selection of television programs.

The Deputy Minister of Correctional Services was notified pursuant to section 19(1) of The Ombudsman Act of our intention to investigate the matter. During the course of our investigation, eight of the ten inmates were interviewed and numerous discussions were held with senior jail officials and various staff members.

With respect to the alleged delay in the processing of requests submitted in French, and the issue of conversing with staff in French, our findings revealed that the number of bilingual staff members was more than adequate to meet the requirements of the French population at the Centre. We found that there was no unwillingness on the part of the staff to converse with inmates in the French language. While some inmates said that a request in English could receive faster treatment, French requests were always dealt with but the manner in which they were handled largely depended on which correctional officer received the request.

With respect to the television programming, our findings revealed that this was clearly a matter that the inmates wanted to resolve themselves and our last interviews with them indicated that they were well on their way to doing so.

During our investigation, it was brought to our attention by a senior official of the Detention Centre that three inmates were about to go to trial and requests were made for copies of the Criminal Code in French. It was pointed out that the librarian spent two hours trying to locate a copy of the Criminal Code in French and found that there was a copy at a local university and at the court house in the region, but the officials of these institutions were not prepared to release them. In view of this, two bilingual editions of the Criminal Code were given to the Superintendent of the Centre by the Office of the Ombudsman for use by the inmates and the staff at the Centre. We understand that the Minister of Correctional Services has since issued instructions to all other institutions in the Province to provide two copies of the Criminal Code in the French language for use of the inmates who require them.

With respect to the issues concerning the rules and regulations and signs and posters, the Superintendent stated that he was, at the time of our investigation in the process of converting the Centre into a bilingual institution. We found that the Inmate Information Booklets published by the Ministry were available in both French and English but it was true that the local rules and regulations were posted in English only. We found that signs on the outside grounds of the Centre were bilingual but the signs in the interior of the Centre were not. The Superintendent stated that it would take two or three months to translate the rules and signs because the Manual of Administration requires

that all translation be done by the Ministry of Culture and Recreation. In addition to the translation of the rules and signs, the signs posed a greater problem because they had to be made up and it could have taken several weeks as the Superintendent had to place an order with the Brampton Adult Training Centre. This issue caused us great concern and because of the urgency we attached to this matter, we offered our Office's French translation services to the Centre. The Superintendent quickly accepted this proposal following which written material to be translated was forwarded to our Office, translated by our staff and returned to the Centre. This material included the rules and regulations pertaining to the institution, which are posted in the various wings, and information signs posted for visitors to the institution. With respect to the institutional signs, the Superintendent agreed to move as quickly as possible to have them made up. In the interim, he agreed to have temporary signs made up and posted throughout the interior of the institution, and indicated that the task could be completed within one and one half weeks.

As a result of our investigation, we were satisfied that the Superintendent of the Centre had done his utmost to secure the rights of the Francophone population. Subsequently, our findings were reported to the complainant.

(23)

SUMMARY OF COMPLAINT

In his letter, this complainant indicated that he and several other inmates had been placed in segregation after leaving their dormitory without permission. He claimed that this unauthorized movement was prompted when he and other inmates were threatened by three inmates in the dormitory. The complainant claimed that these three inmates had made threats of violence against the weaker inmates in the dormitory and were attempting to extort money for "protection".

When interviewed by our investigator, the complainant indicated that the difficulties had arisen when he had been placed in the "so-called" protective custody dormitory with other inmates of similar classification. He stated that problems arose when three inmates in the dormitory began to threaten the weaker inmates with what they described as "the P.C. Life Insurance Policy." The three inmates in question apparently were attempting to extort money from weaker inmates in exchange for some guarantee that no harm would come to them. According to the complainant, those who did not agree to pay were constantly threatened, and in some cases assaulted both physically and sexually by the three inmates in question. The complainant stated that while this matter had been brought to the attention of correctional

staff in the area, no action had been taken until he and a number of other inmates left the dormitory without permission and were placed in segregation on misconducts.

The complainant contended that subsequent to this mass exodus of protective custody inmates, a search of the dormitory by institutional authorities uncovered several clubs and one knife. He further stated that prior to the incident when inmates left the dormitory, he and several other inmates had been forced to submit to homosexual acts by the three inmates in question.

At the time of the initial interview with our staff, the complainant, and other protective custody inmates, had been transferred from the dormitory to cell accommodation where the complainant indicated there was a greater degree of protection and that, temporarily, the threats and violence had ceased. The complainant remained concerned however, that the three inmates who were responsible had not yet been dealt with by the institutional authorities and were still in the institution.

In view of the nature of the concerns expressed, our investigators brought this matter to the immediate attention of the senior official at the institution. A senior staff member indicated that a preliminary investigation into complaints received from the complainant, and other protective custody inmates, had been undertaken prior to the incident when inmates left the dormitory without permission. However, the initial investigation had failed to produce enough evidence to warrant proceeding against the three inmates and there was some suspicion that the stories of threats and violence were untrue. However, in view of additional information which had come to light, the authorities indicated that this investigation had been reopened and had already resulted in the transfer of one of the three inmates complained about to an institution of greater security. In addition, the other two inmates had been isolated from the protective custody population until the investigation was completed. The authorities indicated that they would advise our Office once they had completed their investigation into the allegations of the protective custody inmates.

Subsequently, our Office received a copy of the report of the investigation conducted by the institutional authorities. While the evidence was not conclusive, the investigation had concluded that the three inmates complained of, were in fact responsible for at least threatening violence against weaker protective custody inmates. The authorities could, however, find no evidence of physical or sexual assault. In view of their findings, the institutional authorities had transferred the two remaining inmates to an institution of greater security. In addition, it had been

decided that the protective custody inmates would remain housed in cell accommodation which would provide increased protection from threats and violence at the hands of other inmates.

The results of our enquiries and the institutional authorities' investigation were made known to the complainant. He was subsequently interviewed by our investigative staff on two separate occasions, and while he continued to be concerned about his safety, he indicated that there had been no further threats or violence against him. The matter was, therefore, considered to be resolved.

(24)

SUMMARY OF COMPLAINT

In his letter, the complainant indicated that he had been placed in segregation on a misconduct for directing profane language towards a correctional officer. The complainant admitted his guilt but complained that the correctional officer had sworn at him first. He felt that it was unfair that he was punished for something that the correctional officer was allowed to do.

When interviewed by one of our investigators, the complainant indicated that the incident arose when he became involved in a heated discussion with the correctional officer. He stated that the discussion began when he attempted to get the answers to some questions from the correctional officer and he maintained that he did not use profane language towards the correctional officer until the correctional officer had sworn at him. The complainant stated that he was guilty of swearing at the correctional officer and he did not complain about the punishment which he had received for this misconduct. However, he felt that it was not right that the correctional officer could swear at him without being punished.

After a review of the complainant's institutional file which confirmed that the correctional officer named was, in fact, the same officer who charged the complainant with the misconduct for swearing, this matter was raised with the senior administration of the institution. After stating that the use of profane language by staff is unacceptable, the Superintendent summoned the senior administrator who dealt with the complainant's misconduct and the correctional officer who was alleged to have sworn at the complainant. In the presence of our investigator the Superintendent questioned the correctional officer who conceded that he had, in fact, directed profane language towards the inmate who had been bothering him with questions while he was otherwise occupied. The Superintendent advised the correctional officer that use of profane language towards inmates

was unacceptable and warned him that repetition of this type of complaint could lead to disciplinary action. The officer in question was an inexperienced probationary staff member and in view of the stern warning and counselling given by the Superintendent, it appeared that no further action was warranted.

Our Office sent a letter to the complainant advising him of the actions taken by the institutional Superintendent against the correctional officer who had directed profane language towards him.

(25) SUMMARY OF COMPLAINT

The complainant wrote to our Office from a Central Ontario detention centre, complaining that his Ontario Parole had been cancelled. He explained that this resulted from his incurring further criminal charges. However, he contended that the decision of the Parole Board in his case seemed unfair, inasmuch as he had been granted bail on these further charges.

During our initial inquiries, we were advised that, earlier in his parole, the complainant had been convicted of a criminal charge. On that occasion, the Parole Board saw fit to allow him to remain in the community and the court ordered a period of probation in sentencing him for that offense.

The Parole Board had reviewed the complainant's case at his request some three months after the cancellation of his parole when the complainant was still in custody on remand, awaiting the disposition of his outstanding charges through the court. The Board indicated its willingness to conduct a further review upon receiving a request from the complainant, along with a copy of his bail notice. This information was given to the complainant by our investigator in a personal interview at the detention centre.

Meanwhile, our investigator became aware of a decision rendered by the Honourable Mr. Justice A.M. Linden in the Supreme Court of Ontario in the case of Regina v. Grenier. This decision required that all statutory remission standing to the credit of an inmate on the date he was released on parole must be re-credited if his parole is cancelled. Prior to the decision in the Grenier case, an inmate whose parole had been cancelled, lost all of his statutory remission time but was given a re-credit of one quarter of the remaining part of his sentence. Mr. Justice Linden's decision had the effect of causing all sentence computations of Ontario Parole violators to be recalculated immediately and all inmates in this category were to be released forthwith.

Our investigator assumed that the complainant would thus have been released from the detention centre because it appeared that his circumstances fell within the category described. However, it was found eight days after the Grenier decision, that none of these re-calculations had yet been attended to at this detention centre, despite a directive to this effect which had been issued immediately after the Grenier decision by the Executive Director of the Adult Division, Ministry of Correctional Services. Our investigator brought this matter to the attention of a senior administrative officer at the detention centre.

It was subsequently reported to our investigator that those inmates at the detention centre who fell within the category relevant to the Grenier decision including the complainant had all been committed for trial on further charges so that they could not be released from custody. In view of the complainant's advice that he had been granted bail on the charges outstanding against him, our investigator requested that the appropriate staff at the detention centre reconsider the facts of his case. This resulted in the complainant's release from custody.

Although the complainant's sentence had expired due to the Grenier decision, he was still under supervision in the community because the terms of his earlier probation order were still in effect. Our investigator telephoned the complainant at his home on the evening he was released from custody to ensure that he was aware of this fact and suggested that he report to his Probation Officer as soon as possible. An inquiry the next day revealed that he had followed up on our suggestion.

The complainant was grateful that he had been released from custody. His family, the Parole Board, and the Probation and Parole Officers, expressed their appreciation with the manner in which they had been kept advised of his situation as it unfolded.

We were concerned that in this case a Ministry directive urgently transmitted to all institutions was not acted upon within at least the space of the next normal work week. Of further concern was the fact that the complainant's detention in custody was further extended through the apparent failure of the appropriate correctional staff to note that he had been granted bail on the charges outstanding against him. We advised the Deputy Minister of Correctional Services, and the Superintendent of the detention centre, of our concerns.

(26)

SUMMARY OF COMPLAINT

This matter was brought to our attention in a letter written by the complainant, an inmate at one of the Ministry's specialized treatment facilities. In addition, we received a telephone call from a staff member at the facility bringing to our attention the complainant's difficulty.

In his letter, the complainant indicated that he had made application for National Parole some three months earlier, but he had not received a decision concerning his parole even though he was technically eligible for release on parole that month. He stated that a female representative from the Parole Board, whose name he could not remember, had assisted him with his application. He was especially concerned because a fellow inmate who had made an application at the same time had already been released on parole. The complainant expressed concern that his application had been lost and that he would not receive consideration for parole.

The complainant was interviewed by one of our investigators who explained to him that we do not have jurisdiction to investigate decisions of the National Parole Board. It became apparent from the discussion with the complainant, however, that his real concern was that his application may have been improperly processed and might never have reached the National Parole Board for their decision.

After raising the matter with senior staff of the facility, the local office of the National Parole Services was contacted to determine if an application for parole had been received from the complainant and whether it was under consideration. After canvassing the Parole Service representatives who regularly visited the facility during the period in question, it was determined that no parole application had been received from the complainant and that he had never, at any time, been interviewed by a National Parole Service representative. Subsequently, a review of the complainant's institutional file failed to produce any indication that the complainant had filed an application for National Parole.

However, it was determined that at about the same time that the complainant stated he filled out his application with the assistance of a female Parole Service representative, it was learned that he had been interviewed by a female representative of the Ontario Probation and Parole Service. This individual was contacted and it was learned that she had interviewed the complainant concerning a probation period which was to follow his sentence. At the same time, she had advised him that he was eligible to apply for National Parole and she had obtained the necessary National Parole application forms for him from staff at the facility.

However, she indicated that she did not assist him to turn them in to staff at the facility when they were completed.

Based on this information, the possibility that the complainant's application had been misplaced was discussed with the facility's Administrator. Enquiries to staff at the facility made by the Administrator were unproductive and it became apparent that it would be impossible to trace the complainant's application as no records of the receipt of applications from inmates were kept by the facility. Since the complainant could not remember who he had given his application form to, the possibility that he had misplaced it could not be ruled out.

Since the complainant's primary concern was to apply for National Parole the Administrator of the facility arranged with the National Parole Service representative for the complainant to be interviewed and an application to be completed. In view of the circumstances of the case, the National Parole representative agreed to expedite the complainant's application.

Since there was a possibility that staff of the facility had been responsible for the misplacement of the complainant's application, the Administrator indicated that as a result of this case, a review of the handling of applications at the facility was being undertaken and the results of this review would be made known to our Office.

Subsequently, the Administrator informed our Office that new procedures had been adopted at the facility to ensure that there would be no repetition of this type of complaint. These new procedures involved the keeping of Log Books in each Unit of the facility which recorded each time an application of any type was issued by staff to an inmate and also recorded when the completed application was returned to the staff by the inmate.

In view of the action taken by officials of the Ministry, we closed our file and sent a report of our involvement to the complainant.

MINISTRY OF

CULTURE AND RECREATION

(27)

SUMMARY OF COMPLAINT

This complainant attended our private hearings in southwestern Ontario to submit a complaint on behalf of a church-affiliated youth entertainment group of which he was Director. The allegations against the Ministry of Culture and Recreation concerned the fact that the Arts Support Division cancelled a Wintario Non-Capital Projects Grant.

In the Summer of 1976, the group applied for a Wintario grant to help finance a concert tour of Iran. During the first week of August, the complainant was advised by the Ministry that the group was eligible to receive \$5,000 as Wintario's contribution toward travel costs as well as \$673.76 for Wintario's share of the purchase of equipment. The equipment grant was awarded at that time.

However, due to timing factors, the monies for the trip were to be forwarded during that first week of August to a New York travel agency which was arranging the tour. According to the complainant, a Ministry official advised him that taking out a loan was a customary procedure while awaiting the grant which still required the approval of the Minister. As a result, the complainant and a colleague each obtained a short-term loan of \$2,500 from a trust company.

This money, along with \$22,136 which was raised by means of 23 different fund-raising projects such as bake sales, teas and raffles, was sent to the New York travel agency. On August 5, 1976, the group learned that the tour was cancelled because of political unrest in the host country. However, the money could not be recovered from the travel agency. Subsequently the Ministry cancelled the grant on the basis that the group was unable to use it.

The complainant alleged that the \$5,000 loan assumed by the two leaders of the group increased their financial burden and he felt that the Ministry should bear some of the liability for having suggested the loan and should therefore allow the grant to be awarded.

The investigator learned that the conditions for issuing the grant were clearly stated on the application form as follows:

- (a) final approval for the grant must come from the Minister's Office.
- (b) the grant is given on condition that the project materializes, otherwise the money must be refunded.

The Ministry's position was that the loan was the full responsibility of the group. Its only commitment, once an application has been approved, is to provide the grant described in its letter, with the condition, of course, that the project or activity takes place.

However, in consideration of the special circumstances of this case, and on compassionate grounds for the financial plight of this group, we recommended that the Minister use his discretion to allow payment of the grant even though the project for which it was intended had fallen through, with the condition that the complainant would return the monies if and when their deposit was secured from the travel agency.

After discussions with the Ministry's legal branch, as well as the complainant, a proposal satisfactory to both sides was agreed to. By this time the group members had substantially reimbursed the two leaders who had in turn paid off the loan. However, this still left the group members in a financially disadvantaged position. Since the borrowed money had already been repaid to the trust company, negotiations were conducted between the Ministry and the trust company which resulted in an arrangement whereby the Ministry agreed to match dollar for dollar any donation made to the group by the trust company. In this way, the group finally received \$2,000 of which \$1,000 was a Wintario grant.

The Ministry explained that it had no control over how much or how little the trust company was prepared to contribute and it took the position that it must maintain the integrity of the Wintario grant program. We considered the Ministry's response and it was our view that this was a satisfactory solution, notwithstanding that the group was not reimbursed the full amount it had paid out to enable the two leaders to pay off the loan incurred by them on its behalf.

MINISTRY OF

EDUCATION

(28)

SUMMARY OF COMPLAINT

In 1966, this complainant's Letter of Standing, which permits a teacher who has entered Ontario with qualifications gained elsewhere to teach for one year while his competence is evaluated, was terminated by the Ministry of Education on the basis of an unsatisfactory record of work performance.

The complainant was of the opinion that the Ministry's refusal to grant him a teaching certificate was based on misinformation in the Ministry's files concerning an alleged assault on a student in 1956. In addition, he believed that a separate school inspector provided the Administrators of various schools where the complainant taught after 1956, with misinformation concerning his past. The complainant was of the opinion that this information, which was included in the Ministry's files, was detrimental to his reputation and to his career as a teacher.

Our investigator reviewed the relevant sections of The Education Act, 1974 and noted that where a candidate is granted a Letter of Standing, he must submit to the Deputy Minister evidence of at least 10 months of successful teaching experience in Ontario as certified by the Supervising Officer concerned, before an interim second class teaching certificate may be granted.

Our investigator then met with an Education Officer of the Supervision and Legislation Branch of the Ministry of Education. It was learned that the complainant was granted a Letter of Standing in 1956. From 1956 to 1966 he received several extensions of the Letter of Standing. During that time he was evaluated by different inspectors from the Ministry. We learned that inspectors at that time were not obliged to send written reports of their assessments of teachers to the Ministry. In a case of a teacher with a Letter of Standing, the Ministry had a form which was to be co-signed by an inspector if he felt that a teacher's work was satisfactory. This form was returned to the Ministry's office which in turn would issue an interim teaching certificate. In this complainant's case, however, none of the inspectors who reviewed his work co-signed this particular form.

We noted that several written reports were sent to the Ministry by these inspectors. All of the reports commented on the complainant's poor teaching performance. However, there was no evidence in the Ministry's files that the inspector who reviewed the complainant's work in 1956 had sent a report to the Ministry regarding an alleged assault on a student by the complainant. In fact, the complainant had received a report from this inspector which advised him that his teaching was not

up to par. Evidence indicated that after this particular inspection, the complainant was requested to resign by the Board of Education, not because of the "incident" involving a student but rather "because the inspector had stated that his work is unsatisfactory". We noted that there was no documentation supporting the complainant's contention that there was misinformation in the Ministry's files concerning his alleged assault on a student.

We also determined that the complainant's contention that another inspector provided the Administrators of various schools at which he taught after 1956 with misinformation concerning his past was not supported.

The evidence indicated that this particular inspector had no prior contacts with the complainant nor did he see any of the reports submitted by other inspectors before he made two inspections of the complainant's work.

A review of this inspector's report indicated that the complainant's work performance was unsatisfactory. The inspector's findings were also confirmed by the person who was at that time the Principal of the school. We determined that the inspector recommended to the Ministry that the complainant's Letter of Standing be terminated. As well, it was suggested to the School Board that the complainant be dismissed in view of his poor work performance and pending termination of his Letter of Standing.

We learned that the complainant obtained another position shortly after he was dismissed. It appeared that the school authorities of this particular Board failed to verify the complainant's credentials at the time he was hired; however, when they learned that his Letter of Standing had been terminated, he was dismissed.

There was no evidence that the inspector had provided the Administrators of any school with misinformation concerning the complainant's past.

In view of the evidence that indicated that the complainant did not receive a favourable report on his teaching from any of the inspectors who evaluated him, it was determined that the Ministry's termination of his Letter of Standing was not "unreasonable, unjust, oppressive or improperly discriminatory". We were therefore unable to support this complaint.

MINISTRY OF

THE ENVIRONMENT

(29)

SUMMARY OF COMPLAINT

Having written to our Office in June of 1977, this complainant also attended a private hearing later in the same month to bring to our attention his complaint against both the Ministry of Natural Resources and the Ministry of the Environment for allowing a garbage dump to be situated on his neighbour's property 500 feet away from his market gardening farm.

In July of 1977, we advised the Ministry of the Environment of our intention to investigate this complaint. The complainant contended that the waste disposal site was not adequately measured by the Ministry of the Environment prior to the issuing of the permit for the site and that the pit was now three times larger than the Ministry's permit allowed. We further advised the Ministry of the complainant's contention that there was no green belt surrounding the dump, nor was the site adequately screened from public view. Uncovered trucks were allegedly hauling waste along the road leading to the complainant's property, resulting in litter being blown off along the roadside. The complainant also objected to the pit having been dug less than 2 feet from the property line, indicating that regulations required a 50-foot set-back from a property line. The complainant also contended that he suffered as a result of debris constantly being blown over his property, soil erosion, lowering of the water table and bad odour, all caused by the garbage dump.

In August, the Ministry replied to our letter, enclosing a field inspection report and indicating that this inspection had been undertaken as a result of our involvement. The report indicated that a number of the complainant's problems had been resolved by the intervention of the Ministry, but that those relating to the Ministry's measuring of the site prior to its issuing of the permit, the lack of a green belt, alleged soil erosion, lowering of the water table and bad odour were all unfounded. The complaints relating to screening, proper enclosure of the site and proximity of the pit to the complainant's property were to be rectified upon the implementation of certain recommendations made by the Ministry. The recommendations involved the raising of the earth bank along the south boundary of the site by adding fill to an elevation which would adequately screen the waste disposal operation; the placing of additional fill and grading along the east boundary of the neighbouring property in order to satisfy the 50-foot set-back requirement; and staking of the boundary of the seven-acre waste disposal area.

The complainant's neighbour was notified by the Ministry in August of 1977 of the necessary improvements to be made on

the site and, as these were subsequently carried out, in September of 1977 the complainant requested that we close his file.

The file was closed and the Ministry advised accordingly. However, in May of 1978, the complainant again wrote to us alleging that the Ministry of the Environment had failed to ensure that his neighbour's waste disposal site was being operated in conformance with the regulations; he asked that we reopen his file.

Our investigator subsequently met with the complainant, as well as with representatives of the Ministry of the Environment who agreed to monitor the waste disposal site on a monthly basis instead of on their regular semi-annual inspection cycle. The complainant was satisfied with this resolution and we again closed our file.

(30)

SUMMARY OF COMPLAINT

This complainant stated that for more than four years a liquid had been seeping into the basement of his home. Analysis of the liquid had indicated, the complainant said, that it contained faecal and other coliforms and faecal streptococcus. He stated that the seepage might have been due to defects in his neighbour's septic tank system. He had complained to the Ministry of the Environment, but the problem remained unresolved.

The Ministry was advised of our intention to investigate the complaint and it responded with a statement of its position.

After discussions with Ministry officials, our investigator visited the complainant's home accompanied by an Environmental officer from the Ministry. Later, documents showing the Ministry's involvement in the complaint were reviewed.

Our investigation disclosed that the following steps had been taken by Ministry officials in attempting to find a solution to the problem.

Shortly after a complaint was received by the Ministry, a sample of the liquid in the complainant's basement was taken. An analysis confirmed that the liquid contained sewage of human origin, but that the origin of the waste was some distance from the complainant's basement.

At a later inspection by Ministry officials, it was determined that the location of the neighbour's septic tank was such that before seepage from the tank could reach the complainant's basement, it would have had to travel through the neighbour's basement since his house is situated uphill from the complainant. Dye was placed in the neighbour's basement and a subsequent sample taken from the complainant's basement showed no trace of the dye.

Subsequently, both basements were inspected. A small channel running through the neighbour's basement was dry. Some liquid collected from the complainant's basement was clear and appeared to contain mould or bacterial colonies. There was no detectable sewage odour in the basement. An analysis of the liquid collected was performed and the Ministry official reported that the results could be interpreted as sewage that had travelled a considerable distance through the ground.

In an attempt to locate the source of the seepage, interception trenches were dug along the Municipal sewage line, which is also located uphill from the complainant's home. The trenches were all dry.

The complainant's lawyer later submitted to the Ministry the results of yet another bacteriological examination of a water sample taken from the complainant's basement. The result was considered by a Ministry official who reported that the faecal count which was found to be present in the sample was not indicative of recent heavy pollution of sewage origin.

Our investigation disclosed that representations were made on behalf of the complainant to the Ministry by his Member of Provincial Parliament. As a result another water sample from his basement was analyzed. The result showed that the bacteria were of the genera found in soil and were typical for most continuous urban run-offs. That test, like the others conducted earlier, failed to confirm that the drainage originated from the neighbour's sub-surface system.

Our investigation showed that it was for these reasons that the complainant's request that his neighbour's septic tank be inspected by the Ministry was not granted. The Ministry was unable to find the source of the seepage into the complainant's basement. It was, however, determined that the seepage did not come from the neighbour's septic tank, or come from the Municipal sewer system, but originated some distance from the complainant's house.

It came to our attention during this investigation that several residents in the area were experiencing drainage difficulties and that the Ministry was aware of this. We also

learned that a proposal had been made to the local Municipal Council by Ministry officials which would require the local residents to provide some equipment for their basements in an effort to alleviate the drainage problems. The Council, we were told, accepted the proposal, but the complainant advised us that he did not intend to spend any money on such a project.

Having considered the results of this investigation, we were unable to find that the Ministry of the Environment had acted unreasonably in its handling of this complaint.

We were of the view that the Ministry did all it could to locate the source of the seepage into the complainant's basement, unfortunately, without success. This complaint was therefore unsupported.

MINISTRY OF

GOVERNMENT SERVICES

(31)

SUMMARY OF COMPLAINT

This complainant lived in a Government owned house for ten years. In July 1976 this property was declared surplus and made available for sale.

The complainant was given first option to purchase the property and entered into negotiations with the Realty Services Branch. An Agreement to Purchase was finalized in March 1977 at a price of \$38,000.

The complainant felt that he should have been able to purchase this property for \$36,000. He believed the Ministry's original appraisal of \$42,000 was too high because it did not take into account the several repairs the house and property required and an identical house declared surplus by the Government at the same time was sold by tender to an outside bidder for \$36,000. The complainant felt that he should not be expected to pay more for a house into which he had put ten years of work and repair and therefore believed that the \$2,000 difference between the two prices should be refunded to him.

A meeting was held with the Manager of Negotiations and an agent of the Realty Services Branch, Ministry of Government Services, to discuss this complaint and to obtain relevant documentation.

We determined that the Ministry followed the appropriate procedures set forth in the Ontario Manual of Administration with respect to the disposition of the two Government owned residences. The Ministry offered the complainant his property at the market value of \$42,000 as determined by its appraiser. He was notified by a registered letter dated September 26, 1976 that he had three months to confirm whether or not he was prepared to purchase the property at this value. He was also advised to obtain an independent appraisal if he disagreed with this figure. The complainant's independent appraiser estimated the value of the property at \$40,000.

During further discussions with an agent of the Realty Services Branch, the complainant was advised to submit a reasonable counter-offer to the Ministry's proposal of a \$42,000 sale price.

On January 14, 1976, the complainant was advised that the Ministry required vacant possession of his residence. He subsequently forwarded signed copies of an application to purchase the property at the amount of \$38,000. This offer was forwarded to the Deputy Minister recommending its acceptance.

On March 2, 1977, the complainant was advised that his offer was accepted subject to obtaining the necessary Order in Council.

We noted the following: 1) the complainant had been afforded four months to consider purchasing the property although the usual time limit was three months. 2) the Ministry accepted the complainant's offer of \$38,000, which was \$2,000 less than the value indicated by his own appraiser and 3) there was no further correspondence from the complainant after he was informed that his offer for \$38,000 had been accepted.

With respect to our complainant's contention that he should not have had to pay \$2,000 more than the purchaser of the unit sold by tender, we learned that the difference in prices could be accounted for by the fact that his was a tenant sale whereas the other was a tender sale. Participants in a tender sale usually bid conservatively. In respect of the sale by tender, the Ministry considered market conditions in the area, the risk and cost of maintaining a vacant home in the winter and the travel, advertising and over-time costs of another tender in its decision to accept the \$36,000 bid. We further learned that the complainant did not have to purchase his home by contract as described above but could have awaited a call for tenders by the Ministry and taken the chance of submitting a bid at a lower figure than the \$38,000 he settled for by contract.

With respect to the complainant's contention that consideration should have been given to the ten years of work and repairs he put into his house, we noted that a condition of the complainant's permit to occupy was that certain repairs and general upkeep of the house were required of the tenant. The complainant had agreed to these conditions. In addition a credit had been given in terms of the allowance made between the \$40,000 appraisal estimate of the complainant's appraiser and his offer of \$38,000. Also the complainant's rent during this tenancy was less than the rent paid by tenants in similar units in the private sector.

Based on the evidence obtained from our investigation, we determined that the Ministry did not act improperly in negotiating the sale of the property to the complainant for \$38,000. This complaint was therefore found to be unsupported.

MINISTRY OF

HEALTH

(32)

SUMMARY OF COMPLAINT

This complainant is the owner and dean of a college of massage and hydrotherapy. Her school offers a thirty-week day-time course, covering 1,040 hours of instruction. Upon graduation, students can apply to the Board of Directors of Masseurs to write examinations which, if successfully passed, enable them to become registered masseurs and masseuses.

Section 15(1) of The Drugless Practitioners Act requires that the Board conduct examinations at least once a year. Prior to 1977, the Board held two examinations per year, one in the Spring and another one in the Fall. However, in 1977, the Board changed its policy and decided that only one examination would be held each year.

The complainant contended that since her students graduate twice a year, the Board's new policy was causing her school, staff and students undue economic harm. She also felt that the decision to hold examinations once a year was evidence of the Board's "disdain" for the thirty-week course taught at her school.

In 1974, the Board had in fact refused to recognize the complainant's thirty-week course, believing that it could not fully cover the 1,040 hours of instruction required by The Drugless Practitioners Act, and had refused to examine the students from the complainant's college.

However, the college took this matter to court. The courts decided that the Board had no power to dictate how, in what manner, or in what period of time the 1,040 hours of instruction were to be provided.

The complainant further claimed that the Board's decision to hold examinations once a year was made by the Board with a minimum of consultation and input from the college.

Having reviewed the documentation relating to this complaint, our investigator noted that the Board had advised the complainant that economics was not a factor in its decision to hold only one examination per year. However, a letter from the Secretary-Treasurer of the Board to our Office later advised that "because of growing costs, the policy now is to conduct only one examination per year...." When asked for clarification of this point, the Secretary-Treasurer responded saying, "The rising costs of holding examinations became vital, and to stay within the Government guidelines with expenditures, it was increasingly obvious that two examinations were not only unnecessary, but the extra cost was unjustifiable." A review of the Board's financial statement for the year ending December 31, 1975,

showed a surplus and also that the actual cost to the Board for setting exams was a very modest \$74. It was further noted that since the Board charges a fee to students writing the examinations, it could have increased that fee should financial reasons have been at the root of its decision.

It appeared that one of the real reasons for the Board's decision was its view that the college's thirty-week course did not fully cover the 1,040 hours of instruction required under The Drugless Practitioners Act; the Board may have felt that one examination per year would force the college to teach a twelve-month course. However, this matter had already been addressed by the courts. Our investigator also noted that students from the complainant's college had an average to better-than-average pass rate on the examinations.

It became apparent that the Board suspected that the college had connections with questionable body rub businesses. Our investigation determined that there was no strong evidence of a tie between the college and the body rub businesses.

Contacts with the Superintendent of Private Vocational Schools (the college was licensed as a private vocational school) and with the Student Awards Branch of the Ministry of Colleges and Universities revealed that neither of these provincial organizations had encountered any problems with the complainant's school. On the contrary, the Private Vocational Schools Branch supported the college's program.

It did appear that the complainant's contention, that there was a lack of communication on the part of the Board, had some merit in view of the fact that in nine years the Board had never visited the college nor did any discussions appear to have taken place prior to the Board making its decision regarding the frequency of the examinations.

Having reviewed the evidence collected during the investigation including representations made pursuant to section 19(3) of The Ombudsman Act, it was determined that the Board's decision to hold only one examination per year was an unreasonable one. In our report, we made the following recommendations:

"That the Board return to the two examination per year policy, and that the Board and the College meet to discuss these matters."

In response to our report, the Board requested a meeting with members of our staff and advised us of its decision not to accede to our recommendations. The following reasons were given:

- (1) The Board must ensure that 1,040 hours of instruction be given to massage students. It does not feel that the college's six-month course fully covers the 1,040 hours.
- (2) The Board sees itself as protector of the public. It wants only the best masseurs and masseuses registered. It feels that it must do its best to upgrade the image of the profession. It feels that the college is not assisting in this.

By letter dated October 6, 1978, we then advised the Premier of Ontario of our report and recommendation, being of the view that the response of the Board was inadequate.

(33) SUMMARY OF COMPLAINT

A letter was received from the complainant, contending that she had been unreasonably treated by the Ministry of Health in the matter of the termination of her employment as a contract worker at a psychiatric facility in Central Ontario.

During an interview with the complainant she stated that she had signed two three-month contracts of employment, the second of which was never completed. This complainant stated that she became too ill to work, and was advised by her physician to remain at home for approximately three weeks. Upon advising the personnel authorities of this situation the complainant stated that the Assistant Personnel Officer requested that she tender her resignation to enable the facility to hire additional staff. It should be noted that this illness occurred approximately one month prior to the completion of the second three-month contract.

A review of the complainant's personnel records at the psychiatric facility, and a conversation with the Administrator revealed that included in the second employment contract was the statement, "this appointment for the terms specified is subject to the availability of funds or work, and may be terminated at any time with one week's notice or pay in lieu thereof." A letter from the Assistant Personnel Officer to the complainant dated February 7, 1978, stated that her contract was terminated effective January 30, 1978, although the contract did not expire until the thirty-first of that month. No mention was made of notice or pay in lieu thereof and she did not receive any pay in lieu of the required notice.

In order to ascertain the Ministry's position a letter pursuant to section 19(1) of The Ombudsman Act was forwarded to the Deputy Minister. It stated that,

"our inquiry thus far tends to indicate that ... (the complainant) was released from service without being given either one week's notice, or one week's pay in lieu thereof."

At a subsequent meeting between our investigator, the Director of the Psychiatric Hospitals Branch and his assistant, the Ministry advised that a letter would be forwarded to the psychiatric facility's Administrator directing him to forward to the complainant a cheque in the amount of one week's pay minus the appropriate deductions.

(34) SUMMARY OF COMPLAINT

The complainant, a patient detained involuntarily in accordance with The Mental Health Act, complained that he had not received any definite information concerning his proposed repatriation to his country of origin.

Our investigator was familiar with the complainant's case. A complaint he made in 1977, concerning a decision made in his case by the Central Ontario Region Board of Review, was not supported by the Ombudsman. However, during this investigation, our legal research indicated that a request for repatriation was not within the purview of the Board. Therefore, in the Fall of 1977, our investigator had suggested to the social worker assigned to the complainant's case, that this separate issue might be considered locally.

Our file was reopened following our investigator's personal interview with the complainant in May, 1978. Our Investigator met personally with the Director of the hospital unit to which the complainant was admitted, and with the social worker assigned to his case. She also contacted a representative of the Consulate concerned, who had already visited the complainant. These contacts were maintained throughout the summer. The complainant's lawyer was also consulted and in June, a letter was sent from our Office to the hospital Administrator requesting a review of this matter. There were several exchanges of correspondence with the complainant throughout this period.

The complainant's citizenship was not in question and he was in possession of a valid passport. He had served a penitentiary sentence and was subject to conditions of mandatory supervision by the National Parole Service were he

to be discharged from the hospital. The complainant was said to suffer from an entrenched paranoia related to his estranged family, who were living in the community where the complainant resided prior to being taken into custody.

The hospital staff had initially proposed to arrange the complainant's transfer to a psychiatric facility in his country of origin and to this end, the complainant's lawyer had held negotiations with that country's Consulate. However, subsequent discussions between the hospital staff and the Consular staff, concluded that the complainant might be returned to relatives in his country of origin. His relatives had indicated their willingness to accommodate him, provided sufficient precautions were taken to ensure that he could not return to Canada where he might endanger the safety of his estranged family.

The hospital staff and the complainant's lawyer made suitable arrangements with the National Parole Service and the Immigration authorities. The complainant had sufficient funds to cover a large portion of the economy air fare. The difference, and some pocket money, was provided from hospital funds. The complainant's estranged family was notified of his impending departure from Canada. Early in August 1978, the complainant was escorted onto his flight home by two hospital attendants and his involuntary hospitalization was terminated as of that day.

(35)

SUMMARY OF COMPLAINT

This complainant, a patient in a Provincial psychiatric hospital, stated that following a recent review of his case by the Advisory Review Board, he was advised that he would have to remain in Hospital for another year with no home visits except under escort by a hospital staff member. The complainant contended that he should have been released from Hospital claiming that he was not dangerous and that he was not receiving any form of treatment in the hospital.

After interviewing the complainant and receiving further information concerning his complaint, a letter pursuant to section 19(1) of The Ombudsman Act was forwarded to the Secretary of the Advisory Review Board advising the Board of our intention to investigate this complaint. The Secretary was also asked whether he was prepared to give a statement of the Board's position regarding this complaint. We received this statement along with copies of the psychiatric examination reports prepared by the two Board psychiatrists, and the report submitted to the Board by the complainant's attending physician.

During the course of our investigation, discussions were held with a number of authorities, both at the Hospital and at the Psychiatric Hospitals Branch, with the complainant's lawyer and with a number of the complainant's relatives and friends. In addition, copies of the documentation submitted by the complainant's lawyer to the Board were obtained and reviewed.

The information obtained revealed that the complainant was being detained in the Psychiatric Hospital under a Warrant of the Lieutenant Governor in Council having been found not guilty by reason of insanity in a criminal trial. The complainant had also been given special consideration insofar as his case had been reviewed by the Advisory Review Board well within the year of the issuance of his Warrant, the time period stipulated in The Mental Health Act. The Advisory Review Board unanimously recommended that the Administrator of the Hospital be given the discretion to permit the patient to visit with his sister and son in the company of a member or members of the staff of the Hospital during the day, and that the Administrator be encouraged to develop a program of therapy with a view to the rehabilitation of the complainant.

The information obtained also revealed that the opinions of the complainant's attending psychiatrist differed from the opinions of the two Board psychiatrists in relation to the manner in which he could be released into the community. Although the Advisory Review Board had recommended that the complainant should receive treatment, he was not receiving any treatment in the form of chemotherapy or psychotherapy because the medical staff at the Hospital were of the opinion that the complainant was not suffering from an active mental illness. Due to a staffing shortage and the types of programs available at the Hospital, the Hospital was experiencing difficulty in implementing the specific recommendations which had been made by the Board.

Our findings revealed that no restrictions were placed on his visits at the Hospital but his home visits only amounted to a few hours each week as there had been difficulty in finding staff to accompany him. Our findings revealed that the staff were having difficulty in developing a program to meet his needs at the Hospital because their programs were limited. Our investigation further revealed that there was a program in the community which the complainant could become involved in and that there was a local clergyman who expressed a willingness to assume responsibility for the complainant. However, under the terms of the Board's recommendation this was not feasible as the clergyman was not a staff member of the Hospital nor were any of the volunteers in the community he had suggested to accompany the complainant on home visits.

In view of the apparent inability of the Hospital to carry out the terms laid down in the complainant's Warrant, and the effect this was having on the complainant's stay in the Hospital, we contacted the Advisory Review Board to determine whether a program could be implemented that would alleviate the problems encountered by the complainant. It was agreed that if the Hospital were to send a request to the Psychiatric Hospitals Branch of the Ministry of Health requesting that the Warrant be changed to authorize the Administrator of the Hospital to allow the complainant to leave the Hospital in the company of anyone approved by the Administrator, whether or not such a person was on the Hospital staff, that this recommendation could then be forwarded to the Secretary of the Advisory Review Board and action would be taken on it. A letter was prepared by the Hospital Administrator along these lines and was forwarded to the Psychiatric Hospitals Branch.

In addition, we were advised that a date had been set for the complainant's next Advisory Review Board hearing. Contact with the Hospital authorities at a later date established that as a result of the complainant's second Advisory Review Board hearing, his Warrant had been vacated and he was discharged from Hospital and is now living in the community.

We were also informed that, prior to his discharge from Hospital, he had been allowed more privileges and that he had been leaving the Hospital grounds on a daily basis with the above-mentioned clergyman and his designated volunteers.

(36)

SUMMARY OF COMPLAINT

This complainant was detained in the maximum security unit of a Central Ontario psychiatric hospital. He complained that he had not received a decision on a request that he be transferred to his regional psychiatric hospital which had been made by the clinical staff some three months earlier. The complainant had also retained the services of a lawyer and had written to his Member of Provincial Parliament to assist him with this problem.

Our initial inquiry established that the complainant was an involuntary patient under The Mental Health Act, and the request made for his transfer had been denied by the regional authority on the basis that he was not a suitable candidate for admission to the open setting of that hospital. The clinical staff at the maximum security unit had made a further request for his transfer, being of the opinion that he had achieved the goals of their program and should be given a trial in the regional hospital where he had been a patient in the past. No decision had been received.

Upon receiving our letter of intention to investigate this complaint, the Deputy Minister of Health advised us that an assessment team from the complainant's regional psychiatric hospital would further assess his case in a visit to the maximum security unit. This resulted, a month later, in a confirmation that the complainant was not suitable for a transfer to their hospital. However, it was suggested by the Ministry that the complainant might be given a trial period at a southwestern psychiatric facility in a minimum security unit from which he could be transferred to his regional psychiatric hospital if he displayed a period of appropriate behaviour. This proposal was to be discussed between the medical staff at the two hospitals involved.

When we sought the complainant's view, he was agreeable to this proposal. Our investigation was thus held in abeyance, pending the outcome of these further discussions of his case by the two hospitals.

The complainant subsequently advised us that there would be a delay of at least six months before any transfer would take place, which he felt would cause an unreasonable delay in his ultimate return to his home community. Simultaneously, we received a letter from the Deputy Minister of Health which advised us that the medical staff at the southwestern facility were uncertain about the degree to which the complainant might pose a danger to others in view of his history of criminal behaviour. However, he stated that they were prepared to reconsider accepting him on a transfer in six months to a year.

Our investigation was reopened and revealed that, in the meantime, a Board of Review had considered the complainant's case upon his application pursuant to section 28 of The Mental Health Act. The Board made an informal recommendation to the hospital Administrator that further efforts be made to effect the complainant's transfer to a regional facility. To this end, there ensued discussion between the Medical Directors of the respective facilities which resulted in the complainant's transfer to the southwestern psychiatric hospital. This complaint was, therefore, resolved independently of our Office.

However, we noted that this investigation, and the investigations of six other complaints concerning the continued detention of persons in the maximum security unit, related to a recommendation made in 1976 by a Committee formed to advise the Director of the Psychiatric Hospitals Branch, that regional referral units (physically secure wards) be established in several regional psychiatric hospitals. However, these units had not been opened because the necessary funding was not forthcoming. Of our seven complainants, we found that five would have to remain in the

maximum security unit because they required a degree of physical security which, with the exception of the southwestern facility mentioned in this summary, was not available in the provincial psychiatric hospitals network.

This case and the others relating to this issue, were the subject of individual reports to the Deputy Minister of Health. They were also referred to in the Fourth Report of The Ombudsman to the Legislature with the suggestion that the officials of the Ministry of Health consider expediting the establishment of regional referral units.

(37)

SUMMARY OF COMPLAINT

This complainant was detained under a Warrant of the Lieutenant Governor in the maximum security unit of a Provincial psychiatric hospital in Central Ontario. This detention resulted from a verdict of "not guilty by reason of insanity" on two criminal charges.

In June 1977, he complained of a decision made by the clinical staff to place him in intensive therapy. He contended that he felt compelled, during this therapy, to admit that he committed crimes so that he could obtain relief from rigorous therapy situations. From the outset, the complainant had maintained that he was completely innocent and had launched an appeal of the court's decision in his case. This appeal resulted in the ordering of a new trial.

After we made some initial inquiries, the Deputy Minister of Health was advised, in a letter pursuant to section 19(1) of The Ombudsman Act, of our intention to investigate this complaint, and he was invited to provide a statement of the Ministry's position. During the course of the investigation we formed the opinion that there may have been sufficient grounds to justify making a report or recommendation which could adversely affect the clinical staff member who made the decision in the complainant's case. These individuals were, therefore, given an opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, and did so in a comprehensive memorandum. They maintained that the decision made in the complainant's case was based on clinical judgment and was directed towards his ultimate benefit. They stated that the complainant did not raise any objection to the therapy program prior to his complaint to our Office. Furthermore, they were of the opinion that their action did not jeopardize the complainant's appeal and subsequent retrial. They submitted that, in their experience, admissions made by a patient in therapy had not been used by the prosecution in court and would most likely be considered to be inadmissible as evidence at trial. It was proposed by the clinical staff that in the

future, should they receive written notice that a patient had an appeal before the court, they would ask him to sign a "Consent to Intensive Treatment" form should he wish to continue in therapy, and, in the event of his refusal to sign, he would be moved to a less intensive treatment ward.

Several issues were subjected to further legal research before all of the information obtained during this investigation was given further consideration by us. Our final report was then submitted to the Deputy Minister of Health on April 24, 1978.

We concluded, pursuant to section 22(1) of The Ombudsman Act that the decision made by the clinical staff in this case was unreasonable since the complainant was appealing the verdict arrived at at his trial. We came to this conclusion since the Court of Appeal could have and in fact did order a new trial. Since the complainant's defence at his original trial was that he had not committed the offences with which he was charged, and it would have been open to him to raise the same defence at a new trial ordered by the Court of Appeal, we concluded that it had been unreasonable to confront him with the very issue of his alleged guilt during these intensive therapy situations until the Court of Appeal had ruled on his request for a new trial.

We acknowledged that although the clinical staff may not have had any experience with statements made by a patient during therapy being used by the prosecution in a subsequent trial, the fact that the courts had not recognized any privilege of communication in respect of the doctor/patient relationship made the request for such statements dangerous. In addition, statements made by the complainant to other patients and staff in the context of the coercive milieu would not be privileged and could be used against him in a subsequent trial.

We learned that one of the factors taken into account in determining the complainant's suitability for the intensive therapy program was the clinical staff's perception of the validity of the complainant's appeal and its likelihood of success. We understood that one of the first steps in the intensive therapy program was the early confrontation of the patient with his criminal action and that the success of coercive treatment thereafter relied to a large degree on the patient facing an indeterminate period of detention. The prediction of the clinical staff concerning the outcome of his appeal was not accurate, although it perhaps indicated their wish to establish that he would be available for at least the period of time required for defence disrupting techniques to be applied safely and effectively. However, it was of concern to us that the clinical staff would attempt to assess the validity and likely success of any appeal, the determination of these factors not being within their expertise.

We were impressed with the manner in which patients in this Provincial hospital unit were apprised of the treatment programs and their rights in relation thereto. However, in considering the clinical staff's proposal to establish a "Consent to Intensive Treatment" form, we were cognizant of stresses and strains which accompany a highly coercive therapeutic milieu in a maximum security setting, and could not concur that the suggested consent form would provide a viable solution under these circumstances.

We were of the opinion that certain safeguards were required in situations such as that of the complainant's, and, therefore, pursuant to section 22(3) of The Ombudsman Act, we recommended that no patient in the unit referred to in our report, should be exposed to intensive therapy situations if an appeal of his case had been launched, except in the event that he specifically requested such therapy and his legal counsel concurred with the therapy which was proposed.

We further recommended that the Ministry of Health take appropriate steps to put before the joint Federal/Provincial Task Force on Evidence Reform, a legislative proposal which would confer upon a person who is placed in coercive psychotherapeutic milieu, such as the one in the unit referred to in our report, a privilege against the disclosure in any proceedings, whether criminal or civil, of any statement made by the person in the course of therapy.

In addition, we recommended that the proposed legislation embodied in this recommendation would be in addition to the proposed amendment to The Mental Health Act in section 9 of Bill 19 which would create the new section 26a of The Mental Health Act.

In a letter dated June 12, 1978, the Deputy Minister of Health agreed with these recommendations, and advised us that the Psychiatric Hospitals Branch had been directed to implement them as soon as possible. The complainant was advised accordingly.

(38)

SUMMARY OF COMPLAINT

In this case the complainant telephoned our Office, explaining that his son had been held in the maximum security unit of a Central Ontario psychiatric facility for about a year. There was a history in this case of multiple admissions to psychiatric hospitals and the complainant acknowledged that his son required a physically secure setting. Although the complainant was impressed with the degree of care shown by the staff in the maximum security unit, he contended that

his son's condition did not warrant confinement in this environment.

The clinical staff, in response to our initial inquiries, assessed the complainant's son as suitable for placement in a less secure facility.

A letter was sent to the Deputy Minister of Health advising him of our intention to investigate this complaint. The Deputy Minister's response confirmed that the complainant's son was not considered physically violent but, from his history it was the opinion of the treatment team that he would walk away from an open psychiatric hospital. It was felt that the complainant's son would be suitable for admission to a psychiatric hospital in southwestern Ontario, which was said to be the only facility with minimum security accommodation. The Deputy Minister suggested that the staffs of the respective hospitals determine together if the complainant's son was a suitable candidate for a transfer to that facility.

We consulted the complainant who advised that this proposal would be satisfactory. Ultimately, we were advised by the Administrator of the southwestern facility that, in his view, the complainant's son could be successfully treated in one of the lockable units at that hospital. The transfer was carried out forthwith.

(39) SUMMARY OF COMPLAINT

This complainant contacted our Office to complain about a decision rendered by the Ontario Health Insurance Plan not to pay claims submitted on his behalf relating to the extraction of eight teeth, including \$185.00 for hospital costs and \$69.00 for his dental surgeon's bill. It appeared that OHIP had refused to pay these amounts on the ground that it was not "medically necessary" to perform the extractions in hospital and that the services were not "insured services" covered by The Health Insurance Act, 1972.

After a number of preliminary inquiries with OHIP, we wrote to the Deputy Minister, in accordance with the requirements of The Ombudsman Act and advised him of our intention to investigate this complaint. We also asked him whether he was prepared to give a statement of his Ministry's position on the complaint. We subsequently received this statement.

Our investigation consisted of interviews with the complainant's physicians and dentist, officials of the Ministry, and an expert in dentistry.

During the course of the investigation, we came to the possible conclusion that OHIP should have paid the claims because the complainant had satisfied all the applicable conditions contained in section 43 of Regulation 323/72 under The Health Insurance Act, 1972. We also came to the possible conclusion that OHIP should have referred the claims to the Medical Eligibility Committee under section 23 of The Health Insurance Act, 1972. Accordingly, we reported our possible conclusions to the Deputy Minister as well as to the General Manager of OHIP. Because we were of the view that OHIP and its General Manager might be "adversely affected" by our possible conclusion and recommendation, they were given an opportunity to make representations concerning the possible adverse report pursuant to section 19(3) of The Ombudsman Act. Representations were received on behalf of OHIP and its General Manager.

Although the General Manager could not agree that the decision to refuse payment of the claims was "unreasonable, unjust, oppressive or improperly discriminatory" within the meaning of section 22(1)(b) of The Ombudsman Act, he did agree that OHIP should proceed on the basis that section 23 of The Health Insurance Act, 1972 applies in cases where authorizations or claims for services prescribed in section 43 of the Regulation are refused by reason of lack of medical necessity. He also noted that section 24 of the Act, which gives an unsuccessful claimant a right of appeal to the Health Services Appeal Board, would apply in accordance with its terms.

We were then notified by the General Manager that the complainant's claims had been considered by the Medical Eligibility Committee and that they had been denied. The complainant was notified of this decision by OHIP and of his right to a hearing by the Health Services Appeal Board pursuant to section 24 of The Health Insurance Act, 1972.

We concluded that the General Manager's decision to refer the claims to the Medical Eligibility Committee was fair and reasonable. Since the complainant had the right to appeal the ensuing negative decision to the Health Services Appeal Board, in our view our jurisdiction over this complaint was for the time being divested due to section 15(4)(a) of The Ombudsman Act, 1975. We therefore made no comment concerning the decision of the Medical Eligibility Committee. We reported to the complainant and to the Ministry that we did not support the complaint at this time.

We later learned that the complainant was represented before the Health Services Appeal Board by his alderman, and that the hearing was adjourned to enable medical evidence to be presented.

(40)

SUMMARY OF COMPLAINT

The main contention of this complainant was that the Board of Administration appointed under The Embalmers and Funeral Directors Act and the Registrar exceeded their jurisdiction in causing a notice to be published in a local newspaper of a Southern Ontario town, announcing the sale of the funeral home business. We wrote to the Chairman of the Board of Administration in accordance with the requirements of The Ombudsman Act, 1975 and advised him of our intention to investigate this complaint.

It was the complainant's contention that the Registrar and the Board of Administration appointed under the Act exceeded their jurisdiction in publishing the above referred to notice announcing the sale of the funeral home business.

We were advised by the complainant that in November, 1974, the assets and goodwill of the funeral home were sold to "A". "A" entered into a contract with "B" under which "B" acquired the right to operate the funeral home business under its original name. In a sale of this kind, we were advised by the complainant that the continued use of the old business name and the continued employment of the old management are very important to maintain goodwill. "B" was of the view that the Registrar's notice in the newspaper impaired the goodwill of the funeral home and, therefore, diminished the value of the business and reduced its revenue.

"B" felt that it should be compensated for the financial losses it incurred as a result of the above actions. "B" was unhappy that the Registrar took it upon himself to interfere with the management and direction of the funeral home. "B" was also dissatisfied that the Board refused to acknowledge what "B" viewed as the impropriety of the Registrar's actions, and that the Board refused to provide assurances that such actions would not be repeated.

Our investigator revealed that on November 14, 1974, the funeral home sold its assets and goodwill to "A". "A" in turn entered into an agreement with "B" under which "B" leased the funeral home premises from "A" with an option to purchase the premises and acquired the right to operate the funeral home business. The funeral home business continued to be operated under the original name. The original owner and his son became officers of "B" and continued to be key employees of a corporation operating the funeral home. The former owner and his son also acquired one share each in the capital of "B".

On November 14, 1974, a short news item appeared in a newspaper stating that the funeral home had been sold. "B" considered the news item to be slightly incorrect and in an

effort to correct the wrong impression left by it, "B" published a notice in the same newspaper on November 28, 1974. The notice signed by the previous owner of the funeral home announced that "B" had joined the staff of the funeral home.

On February 28, 1975, the Registrar of the Board of Administration wrote to the former owner of the funeral home advising him that the news item and notice had come to his attention and that he wished clarification as to whether or not the business had been purchased by "B". Not having received a reply, the Registrar again wrote to the previous owner on March 13, 1975. On March 27, 1975, the previous owner replied advising that "B" had purchased the business.

On April 3, 1975, the Registrar wrote again to the previous owner stating that the November 28 newspaper notice misrepresented the true situation in that it was calculated to suggest that "B" had merely joined the staff of the funeral home. The Registrar ordered the former owner to advise the public in and around the area in a manner equivalent to his November, 1974 announcement that "B" was not merely a member of his staff but that anyone dealing with the funeral home was in fact dealing with a business entity owned by "B".

On April 17, 1975, the former owner wrote to the Registrar stating that the notice was not misleading and that in any event nothing in the Act or the Regulation empowered the Registrar or the Board of Administration to regulate advertising of funeral home businesses. On May 8, 1975, the Registrar caused a notice to be published in the local newspaper. The notice stated that the funeral home had been purchased by "B". The notice was made in the name of the Board of Administration.

In a letter dated July 25, 1975, the solicitor for "B" requested a meeting with the Board of Administration. On February 2, 1976, the meeting was held.

In his February 9, 1977 letter, the Registrar had invited our investigator to meet with him and the Board's lawyer. On March 15, 1977, one of our investigators and a member of our legal staff met with the Registrar and the Board's lawyer. During the course of the meeting, the Registrar described the events which led him to publish the controversial notice. His description of the events did not differ substantially from those described to us by the complainant. The Registrar also described the complaint procedure he follows. He explained that due to the great number of complaints the Registrar receives, he often tries to resolve them without the necessity of a hearing pursuant to section 16(4) of the Act. If a hearing before the Board

is held and the Board's decision is not favourable, the usual consequence is the loss of a license. In this case, the Registrar decided not to proceed with the hearing but to deal with the problem by causing a notice to be published. In so doing, he felt he was acting in the public interest. The Registrar also was of the view that this manner of handling the situation was less heavy-handed than revoking the funeral home's licence. The Registrar explained that this was the one and only time he had caused such a notice to be published. In the past when matters of a similar nature had been brought to his attention, he had advised the funeral homes in question to publish their own notices advising the public of changes in ownership. According to his information, in all these cases, his requests were complied with.

The Board's lawyer addressed himself to the question of the power of and authority of the Registrar. He explained that the Registrar has fairly broad powers which are not specifically set out in the Act. It was pointed out that one of the functions of the Registrar and the Board is to ensure that members of the public know at all times with whom they are dealing. It was also pointed out that Bill 171, The Funeral Services Act, 1976 has incorporated the broader functions which the Registrar is presently exercising.

Discussions were also held with the Chairman of the Board and the Vice Chairman. It was indicated that the Board's position throughout this whole matter has been that the Registrar has the authority to do what he thinks best in the public interest and that is what was done in this case.

After a careful examination of the results of our investigation, we were of the opinion that the full page notice published by "B" on November 28, 1974 was misleading in that it suggested that "B" had merely joined the staff of the funeral home whereas in fact, "B" had leased the home from "A" which had recently purchased the business. We were also of the view that the Registrar believed that by causing a notice to be published on May 8, 1975, he was correcting a wrong impression; and, therefore, attempting to protect the public interest. We noted that section 28(4) of Regulation 240 passed pursuant to the Act states: "No funeral director shall make any false or misleading statement in his advertising."

In our report to the complainant we indicated that we were aware that there were other avenues available to the Registrar to rectify what he felt was a misrepresentation. The Act does provide for a possible suspension or cancellation of a licence after a hearing. However, it was thought by the Registrar that this action would be too heavy handed in

the circumstances. The Board of Administration could also have prosecuted the funeral home, but that would not have necessarily let the citizens of the area know what the Registrar thought to be the true facts respecting the ownership of the funeral home. We also noted that the Registrar's notice was also incorrect as it announced that "B" had purchased the funeral home business. However, this is the information that the Registrar had been given in writing by the former owner.

Although there are no express provisions in the Act permitting the Registrar and Board to cause a correcting notice to be published, we were satisfied that the Registrar's action was necessarily incidental to the carrying out of the powers and duties conferred upon the Board and the Registrar by the Act. The Registrar's action was necessary in the public interest and was taken in good faith. As a result, we did not find this complaint to be supported.

MINISTRY OF

LABOUR

(41)

SUMMARY OF COMPLAINT

This complainant wrote our Office complaining about a decision rendered by the Ontario Labour Relations Board in 1977.

The Ontario Labour Relations Board granted a certificate to a union pursuant to section 7a of The Labour Relations Act. The complainant's company took the position that the Board's decision was at odds with the evidence presented before it at the hearing which was held in Toronto in 1977.

The applicant union had contended that the company had "laid off" some of its employees contrary to the provisions of The Labour Relations Act. The Board found that there was a contravention but did not state which section of the Act had been contravened. The Board further decided that the remaining conditions of section 7a had been satisfied and accordingly certified the applicant without requiring a representation vote.

The company contended that it had not contravened The Labour Relations Act and that the Board's finding was not supported by the evidence. The company maintained that the employees' decision not to report to work was their own and that they were not told that they were laid off.

The complainant requested that the Board reconsider its decision in this matter and order that a representation vote be held.

After contacting the complainant and receiving further information relevant to his complaint, our investigator reviewed the contents of the Board's decision. Our investigator also met with the complainant's lawyer, who represented the complainant at the hearing before the Board.

Our investigation revealed that in the spring of 1977 the Ontario Labour Relations Board received an application from the union to be certified as bargaining agent for a group of employees employed by the complainant.

The day the application was submitted the Registrar of the Board mailed the complainant a copy of the application advising him that a hearing was to be held at the end of the month. The complainant was away on holidays at the time that the application was made. When he returned and learned of the application he called his employees together to discuss it. The reasoning behind the submission of the application for certification was discussed. When the employees indicated that they had joined the union to seek higher wages, the complainant

offered the employees a \$1.00 an hour increase in their wages, and suggested that they sign instead with a Christian labour movement and reconsider the application.

The applicant union wrote the Board claiming that the complainant had engaged in conduct prohibited by the Act by offering his employees increased wages if they would abandon the union, by asking them to sign with a Christian labour movement and by threatening them with dismissal. Prior to this time the hearing to be held at the end of the month was cancelled.

The applicant union wrote the Board again in late Spring requesting that, in view of the above, the Board certify the applicant pursuant to section 7a of the Act, which reads:

7a. Where an employer or employers' organization contravenes this Act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the Board, a trade union has membership support adequate for the purpose of collective bargaining in a bargaining unit found by the Board pursuant to section 6 to be appropriate for collective bargaining, the Board may, on the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit.

A hearing to assess the union's request for certification was then held. In its subsequent decision, the Board concluded that the employer had violated the Act, that the applicant had support adequate for collective bargaining and that in view of the circumstances surrounding the case that the true wishes of the employees would not be ascertained from a representation vote. The following paragraphs of the Board's decision are relevant:

8. The evidence is clear that following the application for certification... [the complainant], the sole proprietor of the respondent, ... made strenuous and improper attempts to dissuade those of his employees who had become members of the Union from proceeding with the application, and from continuing their membership in the applicant Union. The evidence is that the respondent inquired of his employees if they had joined and why they

had done so. When it was made known to him that an increase of \$1.00 per hour was a significant matter, the respondent offered them \$1.00 per hour increase, provided they would drop the application, or would join the [Christian labour movement]. He furthermore went to the extent of preparing two cheques for one of the employees - one at a current rate and the other embodying an increase. The respondent was evasive and vague as to the conditions under which the higher amount was to be paid. We are convinced, upon reviewing all the evidence, that the respondent was attempting to induce the employee concerned to abandon the Union in order to obtain the larger cheque.

10. We have no hesitation in finding that the "layoff" was called because of, and in an attempt to end, the Union activities of the employees, contrary to the provisions of The Labour Relations Act. Section 79 charges were laid and the employees were subsequently reinstated on agreement of the parties before a Labour Relations Officer. The Board's finding of a breach of the Act is based, however, on the evidence adduced before it.
13. The Board, as already indicated, is satisfied, on the evidence, that a breach of the Act has been committed by the respondent. The Board is further satisfied that by reason of the fact that 50 per cent of the persons in the bargaining unit are members the applicant has support adequate for collective bargaining. It remains to decide whether, in the circumstances, the conduct of the respondent has rendered it unlikely that the true wishes of the employees would be disclosed in a certification vote.
14. It is true that in a small unit the risk of disclosure must always be present and the smaller the unit the greater the risk, particularly where, as here, detectable sympathies insofar as polarity are obvious. That, in the absence of employer misconduct will not deter the holding of the vote. In the present situation, however, the conduct of the employer could not do other than adversely affect, at the very least, the non-committed members of bargaining unit because of the probability,

in the small and polarized unit, of disclosure, of such a choice following the counting of ballots. In addition, when the obvious channel of communication existing between the family members is considered in conjunction with the foregoing, the conduct of the respondent renders it extremely unlikely that a vote would disclose the true wishes of the employees.

The main issue in contention by the complainant with respect to the decision of the Board, relates to paragraph 10 of the decision. He claims this finding is inconsistent with the evidence put before the Board. He contends that the Board should have been convinced that he did not lay off the Union supporters following the meeting, but rather they wilfully stayed away from work.

The complainant's lawyer wrote the Registrar of the Board, asking that the Board reconsider its decision on the basis of this issue. The letter reads in part:

The primary ground of the Company's disagreement with the decision concerns the Board's finding that there was a violation of section 79 of the Act. The basic contention of the Union was that the Company "laid off" some of its employees contrary to the Act.

The Company maintained that the employees' decision not to report to work was their own and they were not told that they were laid off.....

To summarize, [one of the employees] was the only person to feel he was laid off and the basis of this was a hearsay statement purportedly made by [the complainant] and relayed by [a second employee]. [The second employee] for his part never stated he was told that he was laid off and admitted the idea to leave was his. There is no dispute that [the complainant] had earlier that morning asked the employees to return to work and when the employees did not report to work on Tuesday he phoned [the one employee] first and then [the second employee in question] (although he did not get in touch with the latter initially because of the latter's illness) asking them to come to work.

The Company fails to see how on the basis of this evidence, the Board could conclude that

there was a violation of the Act. The Company cannot agree that the evidence was such as to justify the Board imposing section 7a of the Act.

The Board then reviewed its earlier decision. By a later decision, the Board concluded that the request for reconsideration "contains nothing else by way of argument or evidence which was not presented and dealt with by the Board" and accordingly did not vary its earlier decision. The pertinent paragraphs from the Board's review are as follows:

4. ... the fact is that the decision of the Board is based, in the main, upon the evidence of [one of the employees] to the effect the [the complainant] told him that the employees must "either withdraw from [International Brotherhood] and he would pay them \$1.00 or we could not return to work" (emphasis added) together with the further evidence of an alternative condition that the employees join [a Christian labour movement].
5. This conduct of the respondent, by whatever term it be described, is so obviously in violation of sections 58(b) and (c) of the Act, that the Board was compelled to issue the decision ...
7. In the result then, the Board does not consider it advisable to vary or revoke its decision ...

In the late winter of 1978 the complainant contacted our Office to advise that his three sons, the only current employees who have been with his company since the time of the original application, had recently applied for decertification pursuant to section 42(1) of the Act.

Notwithstanding this, he asked that our Office consider "suing the Board" for the financial losses he had incurred as a result of the Board's alleged unjust decision to certify the applicant.

He was advised that we could continue the investigation of his original claim with the Office, but that even if we should find his complaint supported, we could not sue the Board on his behalf. It was explained to the complainant that he should seek the advice of a lawyer if he wished to sue the Board.

In the spring of 1978, we received notification from the Board that the union had decided no longer to represent the employees in the bargaining unit of the complainant for the purposes of collective bargaining.

In assessing the complainant's claim against the Ontario Labour Relations Board we relied on the assertions of the complainant, his lawyer and those of the Board, as there was no transcript to be studied to determine the exact nature of the evidence presented.

It was our opinion in reviewing the Board's decision that the Board considered all the relevant questions and considered all relevant matters as it is required to do before certifying the applicant union pursuant to section 7a. Of the three determinations which must be made in order to apply section 7a, two cannot be disputed. Fifty percent of the bargaining unit were members of the union and thus the applicant union had adequate support for collective bargaining. It is also clear from the complainant's own admissions to our Office, and before the Board, concerning his offer of a \$1.00 per hour wage increase to his employees to dissuade them from union affiliations, that an unfair labour practice had been committed by him. It appeared that the complainant by the totality of his actions had contravened section 58(c) of The Labour Relations Act, which reads:

58. No employer, employers' organization or person acting on behalf of an employer or an employer's organization, ...

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

In addition, we agreed with the Board's views with respect to the likely effect of such conduct on the true wishes of the employees, as outlined in paragraph 14 of its decision.

It was our opinion however, that the Board in its initial decision did not clearly specify upon which evidence it concluded there had been a contravention of the Act, which when combined with other evidence heard caused the Board to certify the applicant Union pursuant to section 7a.

We did not come to a conclusion on the issue of whether a lay-off had occurred, because of the insufficiency of the evidence before us due to the unavailability of a transcript. Nevertheless, this problem was not material as it was our view that on the totality of the evidence before the Board, it was not necessary for the Board to accept the employee's evidence that a lay-off occurred and make such a finding in order to grant certification under section 7a. We did not hesitate in concluding that the Board made a thoroughly considered and reasonable decision in certifying the applicant union without a representation vote. We advised the complainant and Board accordingly of our conclusions. This complaint was thus found to be unsupported.

(42)

SUMMARY OF COMPLAINT

In this case, the complainant complained to the Human Rights Commission that she had been dismissed from her position as a bus-driver with a city Transit Commission because of her sex. She contended that although the Commission had investigated her complaint for a period of almost 2 years, it did not take her complaint seriously. She disagreed with the Commission's finding that her allegation against the Transit Commission was not substantiated. She felt that the Commission should have recommended to the Minister of Labour that a Board of Inquiry be appointed in accordance with section 14a(1) of The Ontario Human Rights Code. The complainant further stated that since a Human Rights Officer had visited her prior to the submission of her complaint, the Commission knew that she had been discriminated against and consequently "misled" her when it did not recommend a Board of Inquiry.

Our investigator reviewed the contents of the Human Rights Commission's file and obtained relevant documentation and also met with the Director of Conciliation and Compliance. We learned that due to the extensive press coverage given to the complainant's dismissal, the Commission initiated an inquiry into her case.

Section 14(1) of The Ontario Human Rights Code requires that the Commission or an Officer of the Commission inquire into a complaint and endeavour to effect a settlement. If it appears to the Commission that a complaint will not be settled under section 14a(1) of the Code, the Commission shall then make a recommendation to the Minister as to whether or not a Board of Inquiry be appointed.

In this complainant's case, the Human Rights Commission recommended to the Minister that a Board of Inquiry not be appointed because the Commission felt that it could not "discharge the onus of proof" which lies upon it at a Board of Inquiry.

From a review of the Commission's file, it was noted that a very thorough investigation had been undertaken by the Commission before it reached its conclusion. The Commission's investigation had included extensive interviews with officials of the Transit Commission and drivers, as well as other involved parties. A review of the Commission's findings indicated that the appointment of the complainant created resentment among some of the drivers but that there was not a coordinated plot against her. The drivers who resented her employment did not do so because of her sex but because they believed a superior male candidate who had had previous experience as a Transit driver in the city had been passed over in order to hire her.

The Commission's findings indicated that the Transit Commission's decision to terminate the complainant's employment was for such reasons as heavy braking, over-driving corners, being involved in an accident and not reporting to supervisors. In addition, there had been concerns that the complainant's stature and strength were insufficient to perform the job satisfactorily.

We learned that the Commission attempted to reach a settlement but was unsuccessful. The complainant's case was then submitted to the Commission's Legal Counsel for an opinion. Although the Commission felt that the evidence did not tend to support the complainant's allegations it was decided that attempts should be made to have her driving ability evaluated by an independent tester. However, she failed one of the tests and this failure tended to support the reasons for the Transit Commission's decision to dismiss her.

The complainant's file was again submitted to the Commission's Counsel for legal evaluation. After deliberation by the Commission, it was decided that since the Commission could not support the complainant's allegations of discrimination because of her sex it would not recommend to the Minister of Labour that a Board of Inquiry be appointed.

With respect to the complainant's contention that there was unnecessary delay by the Human Rights Commission in completing the investigation of her case, we found that for a period of time she had no fixed address where she could be reached. After she had moved to accommodations in another city, she had taken new employment and was also in an upgrading course which made her unavailable during both daytime and evening hours. We concluded therefore that any delay had been occasioned by her.

Having considered the evidence obtained by our investigation, it was determined that we could not support the complainant's allegations, and we so reported to her.

(43) SUMMARY OF COMPLAINT

This complainant was first interviewed at a private hearing in northern Ontario, with regard to a decision made by the Employment Standards Branch. The complainant alleged that during a period of employment he had not been paid in accordance with the agreement he had made with his employer. He had complained to the Employment Standards Branch and, following an investigation by the Branch, it ordered the company to pay the sum of \$614.05 to the complainant. However, the employer applied to the Director of the Employment Standards Branch for a review of the order on the grounds that the complainant was not entitled to the money collected on his behalf. A hearing was held before a referee and the referee found in favour of the company. The complaint to our Office was that the decision made by the referee was wrong because the evidence showed, without question, that the company owed the money to the complainant.

A letter advising the Deputy Minister that we intended to investigate this complaint was forwarded and we subsequently received a statement outlining the Ministry's position.

Our investigator contacted the complainant and received further information concerning his complaint and then reviewed the contents of the Ministry's file. At the hearing, applied for by the company, the employee, counsel for the company and counsel for the Ministry all made appearances. The referee's decision was in favour of the company, and he directed that the money paid by the company to the Director of the Employment Standards Branch in trust be returned.

The position put forward by the complainant at this hearing was that he had been guaranteed a definite salary by means of a combination of wages, bonus payments and credits toward a deferred profit-sharing plan. The company, however, never honoured this agreement. The position taken by the company was that it only guaranteed the complainant his wages, and that the bonus payments and credits toward a deferred profit-sharing plan were entirely at the discretion of the employer. The issue at the hearing was the interpretation of "wages", which is defined in section 1(p) of The Employment Standards Act.

The referee clearly decided that the company policy was that bonuses were discretionary, as indicated by the fact that the complainant did not receive a bonus payment in 1976. Furthermore, the referee was of the opinion that these bonus

payments did not come within the definition of "wages" as set forth in the Act. The referee was satisfied from the evidence he reviewed that in 1974 and 1975, there was no agreement with the complainant guaranteeing him anything beyond his wages. We were of the opinion that the referee was correct in his interpretation of "wages", and we concurred with his conclusion that the agreement was with respect to the complainant's wages only.

In considering a letter from the vice-president of the company, stating that the complainant's salary was "approximately" \$13,500, the referee concluded that this was only an approximation of the total amount the complainant was likely to be paid in 1976. This letter was used to help the complainant obtain a mortgage, and therefore the figure quoted was intended as a guideline only. The referee did not feel that this letter could be considered as a guarantee or an agreement that the complainant's salary was a definite \$13,500. On the basis of the evidence before him, the referee decided that the only guarantee that had been made to the complainant was of an annual wage, although there was a possibility of an additional bonus payment. The referee concluded that the complainant was in fact paid all wages owing to him. Bearing in mind the fact that there was no transcript of the hearing, we were unable to find fault with the decision of the referee.

This complaint was therefore found to be unsupported.

(44)

SUMMARY OF COMPLAINT

This complainant wrote to our Office following his conversation with the Ombudsman on a radio phone-in program. The complainant alleged that he was the victim of bigotry and chauvinism because of the termination of his employment as a school dentist with the Department of Health in an Ontario city.

The complainant had been employed as a school dentist from September 1971 to June 1974. His employment was terminated by the Medical Officer of Health in a letter dated July 23, 1974. The complainant alleged discrimination as the reason for his termination citing the fact that he is an American and a Jew.

Inasmuch as this complaint was against a municipality, and not a "governmental organization" within the meaning of The Ombudsman Act, 1975, we were unable to investigate it. However, a staff member from our Office made some enquiries to assist the complainant. We were advised by a legal officer

with the Ministry of Labour that no investigation would be conducted by the Employment Standards Branch of the Ministry as it appeared that all requirements under the Act had been met. We also contacted the Ontario Human Rights Commission and were advised that the complainant should set out his complaint in writing and forward it to the Commission. We so advised the complainant and further advised him that he might consider retaining the services of a lawyer to discuss any appropriate legal remedies available to him. The complainant was also given the address of the Lawyer Referral Service and the address of the closest Legal Aid Office.

On April 26, 1977, the complainant advised our Office that, although he had followed our advice and had taken his complaint to the Ontario Human Rights Commission, the Commission refused to receive it on the grounds that the incident complained of had taken place more than two years earlier.

After some preliminary contacts, we had conversations with several Ontario Human Rights Commission officials who confirmed that the Commission took the position that it had no power to investigate complaints relating to fact situations more than two years old. We were advised that this position was based on a legal opinion obtained from an independent lawyer. Our Office was concerned that the Commission might be carrying on a practice of turning away complainants on the basis of a limitation period that did not actually apply. Consequently, we formally advised the Ontario Human Rights Commission of our intention to investigate the Commission's refusal to receive the complainant's complaint against the municipality.

Subsequently, a member of the Ontario Human Rights Commission advised our Office that the Commission had decided to conduct a full investigation of the complainant's complaint, even though the incident had occurred more than two years earlier. The Commission also agreed to obtain further legal advice on the issue of the applicability of The Limitations Act.

The Commission later replied to our further enquiries concerning this complaint confirming that the complaint was being investigated and enclosing a copy of the legal opinion prepared by Counsel from the Ministry of the Attorney-General, to the effect that the limitation period contained in section 45(1)(h) of The Limitations Act does not apply to complaints filed under The Ontario Human Rights Code.

The complainant was advised of this by letter and was invited to contact us again should he feel dissatisfied with the decision made by the Ontario Human Rights Commission on his complaint against the municipality.

MINISTRY OF

NATURAL RESOURCES

(45)

SUMMARY OF COMPLAINT

This complainant was interviewed at a private hearing in northern Ontario.

In 1958 the complainant's husband erected a cottage on Crown land. In an endeavour to regularize his occupancy he applied for and was issued a life interest Land Use Permit in 1974. However, in late spring of 1977, the husband died and the Ministry of Natural Resources advised the complainant that she had to arrange for the removal of the cottage from the land. In January of 1978 it was determined by Ministry officials that the improvements on the property were to be removed by January 10, 1979.

Our investigation revealed that when the complainant became aware that her husband was dying, she took steps to have the Land Use Permit transferred to her name, and continued to pay the necessary taxes on the land. Two weeks before her husband's death her lawyer was advised that the original Land Use Permit was issued to her husband only and that an assignment or transfer of the improvements would not be allowed. The complainant's Member of Provincial Parliament endeavoured to intervene on her behalf but was advised that the Ministry would not give special consideration in this case, as it would create a bad precedent. A similar appeal to the Minister in October had met with the same response.

We determined through the actuarial branch of a major insurance company that the late husband of the complainant had a life expectancy, when he signed the Land Use Permit, to the year 2011. Our investigation also revealed that withdrawal of the land from disposition by either lease or sale was brought about to prevent pollution of the Great Lakes and possible land speculation on recreational properties. However, Ministry officials admitted that the septic system for the cottage was such that there was no danger of pollution and that the issuance of a Land Use Permit would prevent uncontrolled disposition of the land.

We acknowledged that officials of the Ministry had in the past dealt fairly with the late husband of the complainant in his occupancy of the Crown land. Also it was acknowledged that the present actions of the Ministry were based on the terms of the Land Use Permit as signed by the complainant's late husband. A new Land Use Permit in the name of the complainant would ensure the Ministry's control over the final disposition of the land, yet it would take into account the obvious expectations of the complainant to enjoy the use of the property for many years, as had been anticipated before the untimely death of her husband.

On August 31, 1978, we were advised by the Deputy Minister of the Ministry of Natural Resources that a further review of the case had taken place and it had been decided on humanitarian grounds to offer the complainant conditional lifetime authority to continue to use her late husband's cottage where it stands. The condition was that the Ministry's policy regarding the assignment of interests of deceased persons be complied with.

The complainant advised our Office on September 15, 1978, that she had signed the documentation for the Land Use Permit, and she expressed her gratitude.

MINISTRY OF

REVENUE

(46)

SUMMARY OF COMPLAINT

The complainant, who is in her 70's, arrived in Canada in 1969 as a landed immigrant. From December 1974 until August 1975 she visited her ill son who resided outside Canada. On her return she applied for a GAINS allowance under The Ontario Guaranteed Annual Income Act, 1974 and was refused because she had been out of the country for eight consecutive months. She contended that she was eligible for an allowance.

The Ministry of Revenue explained to the complainant its refusal of her application for an allowance, as follows:

"... The Ontario Guaranteed Annual Income Act, 1974 requires the applicant to have resided five consecutive years in Canada, of which the last year has to be in Ontario, prior to the date on which his application is received or immediately prior to his qualifying date, whichever is the later date

Section 5, subsection 1(a) of O. Reg. 748/74 provides that only an interval of absence from Ontario that is of a temporary nature and does not exceed six consecutive months shall be deemed not to have interrupted the person's residence in Ontario. Thus any interval of absence in excess of six consecutive months is considered as an interruption of Ontario residency unless it falls into a category of prescribed absences set out in subsection 2 of Section 5 of O. Reg. 748/74.

Therefore, when these rules are applied to information supplied on [the complainant's] application form, it appears that since her absence from Canada during the December 1974 to August 1975 period was in excess of six months, her consecutive residency, started in 1969, was interrupted. Because of this, accumulation of consecutive years for the five year residency requirement did not begin until she returned to Canada in August 1975. Based on the above, it would appear that she will not accumulate under the present legislation the five consecutive years until August 1980."

We determined that although the complainant had had the right to appeal the Ministry's decision to the Social Assistance Review Board, the time during which such an appeal could be made had lapsed. The Deputy Minister was advised of our intention to investigate this complaint pursuant to section 19(1) of The Ombudsman Act, 1975. The complainant and members of her family were interviewed and the application provision of The Ontario Guaranteed Annual Income Act, 1974 were examined by members of our legal staff.

During the investigation, we formed the view that it might be open to us to make a report and recommendation that might adversely affect the Ministry of Revenue. Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, the Deputy Minister was given the opportunity to make representations respecting the possible adverse report and recommendation. Our possible conclusion and recommendation were outlined as follows:

"POSSIBLE CONCLUSION

Your Ministry's interpretation of the definition of "eligible person" in The Ontario Guaranteed Annual Income Act, 1974 appears to overlook the distinction between "residence" and "actual residence." Eligible person is defined to mean a person who, inter alia, on the day his application was received by the Minister or his qualifying date, is actually residing in Ontario (which [the complainant] was) and who in addition satisfies one of the sets of conditions contained in paragraphs (i), (ii), or (iii). The paragraph applicable to [the complainant] is (ii), which states:

'resided in Ontario for a period of one full year immediately prior to the date on which his application is received by the Minister or immediately prior to his qualifying date, whichever is the later date, and was either,

- (A) resident in Canada for a period of five consecutive years immediately prior to the date his application is received by the Minister or immediately prior to his qualifying date, whichever is the later date, or
- (B) resident in Canada for a continuous period of, or for periods the aggre-

gate of which is, twenty years after attaining the age of eighteen years.'

Subparagraph (A) is applicable to [the complainant]. The conditions contained in paragraph (ii) speak of the applicant having "resided in Ontario" and being "resident in Canada" while the introductory words speak of the applicant "actually residing" on the date his application is received by the Minister or his qualifying date.

One must assume that the well established legal distinction between these terms was intended to be conveyed. Case law interpreting the terms "residence" and "actual residence", or variants of them, in a number of different statutes have established that while "actual residence" connotes physical presence in a place, "residence" need not. A person's residence is his place of permanent (as opposed to temporary) abode, his home. The cases show that a person can have a residence in a place even though he is physically absent from that place for a considerable period of time, provided that the other indicia of residence, or a permanent attachment to the place, continue.

Section 5(1) of Regulation 748/74, while it clearly cannot apply to deem [the complainant's] absence not to have interrupted her residence, does not require that every absence longer than six consecutive months be deemed to interrupt residence.

In [the complainant's] case, our investigation to date has disclosed that [the complainant's] stay [outside Canada] was for the purpose of visiting her ill son. Her return to Canada was delayed by at least two months because she developed an extreme attack of arthritis in her knees and was unable to travel. [The complainant] has resided with her daughter since her arrival in Canada in 1969, and she has her own room in her daughter's house. This room was set aside for her personal use, and when [the complainant] was visiting her son, the room remained vacant awaiting her return. [The complainant] took with her only those belongings which she required for the visit and left all her other personal belongings in her room in her daughter's house.

My possible conclusion from the foregoing is that notwithstanding the duration of the visit, [the complainant] at the relevant times resided in Canada.

POSSIBLE RECOMMENDATION

My possible recommendation is that [the complainant] should receive GAINS benefits as from the date of her original application."

The Deputy Minister responded to our letter, stating that he disagreed with our interpretation of the statutory provisions. He said that the Ministry has consistently applied its interpretation to applicants for allowances, and that its interpretation has been upheld in appeals to the Social Assistance Review Board. He considered that it would be unfair to other persons whose applications had been rejected by the Ministry on the same basis as in this case, or whose appeals had been rejected by the Social Assistance Review Board, for the Ministry to change its position now.

We reviewed the complaint in the light of the Deputy Minister's representations, following which we issued our report and recommendation pursuant to section 22 of The Ombudsman Act. We concluded that the Ministry was "wrong", as set out in section 22(1)(d) of The Ombudsman Act, in deciding that the complainant was ineligible for GAINS benefits because notwithstanding the visit outside Canada, she resided in Ontario and was resident in Canada at the relevant times. We recommended, pursuant to section 22(3)(c) of The Ombudsman Act, that the Ministry cancel its earlier decision and grant GAINS benefits to the complainant from the date of her original application.

The Deputy Minister of Revenue responded to our report, stating in part:

"With respect to your opinion of the proper interpretation of the Act, my letter of February 6th last has explained the Ministry's disagreement with your interpretation. Your report comments on those reasons in part but it does not discuss that part of my letter in which I explained that the Ministry's interpretation of The Ontario Guaranteed Annual Income Act, 1974--namely that an absence from Canada of more than six months interrupts the consecutive years of residency required by the Act for entitlement to benefits--has been affirmed in appeals to the Social Assistance Review Board under section 8 of the Act. In my view this point is important.

In nine appeals to the Social Assistance Review Board under section 8 of the Act, the interpretation of the Ministry with which you disagree has been in question. In all of these cases, the Ministry's interpretation was upheld on appeal. In four of these cases, the reason that the applicant's absence exceeded six months was stated to be personal or family illness. Since our interpretation of the Act has been repeatedly supported on appeal, we feel that it correctly reflects the proper interpretation of the legislation, and we feel obliged to accept and apply the decisions of the Social Assistance Review Board, which is a tribunal independent of this Ministry's control. I believe that the result of these appeals is relevant to the issue dealt with in your report, and should be reflected in that report.

With respect to the recommendation in your report that the Ministry should, on the basis of your interpretation of The Ontario Guaranteed Annual Income Act, 1974, pay to [the complainant] the benefits for which she applied in 1976, the Ministry is unable to accept your recommendation. Applicants whom we cannot now identify and who did not appeal to the Social Assistance Review Board have been rejected on the basis of the interpretation with which you disagree, and potential applicants inquiring by letter or telephone as to their eligibility have, where the facts were similar to those of [the complainant's] case, been rejected. To adopt a retroactive interpretation and pay [the complainant] would be, in our view, unfair to other rejected applicants who cannot be identified or who have been specifically denied benefits in their appeals to the Social Assistance Review Board. It seems unfair and inappropriate to us to ignore the decision of the Appellate Tribunal established by the Act and to apply the interpretation for which you argue, when that would have the effect of substituting the opinion of the Ombudsman for the decisions reached on appeal by the Social Assistance Review Board to which [the complainant] did not appeal.

The choice with which your report faces us is, on the one hand, to follow an interpretation of the legislation in question with which the Ministry agrees, which has been repeatedly supported by the Appellate Tribunal appointed under the Act, and which we have consistently applied since the inception of the Act to all applicants; or, on the other hand, to accept the different opinion of your office on the meaning of the Act that is inconsistent with that of the Social Assistance Review Board and, on the strength of that contrary opinion, to pay to one applicant benefits that others in similar circumstances have been denied. Faced with this conflict of opinion, we feel obliged to accept the interpretation sanctioned by the Social Assistance Review Board, and the Ministry, therefore, is unable to accept the recommendation in your report.

I fully respect your right and duty to reach the conclusions authorized by The Ombudsman Act, 1975 in appropriate cases, and I write to you to ensure that, in arriving at the conclusions to which you may feel obliged to come, you will take into account the basis on which the Ministry applies the interpretation of the Act with which you disagree and will bear in mind the reasons why it is felt that the Ministry cannot accept your recommendation to pay to [the complainant] the benefits for which she applied and to which we believe she is not entitled under the provisions of the Act. The Ministry has, in my view, a duty to apply the Act consistently and in accordance with the repeated decisions of the Appellate Tribunal to which the Ministry's decisions are subject. I am confident that, in any action that you feel obliged subsequently to take on this matter, you will give due weight to the fact that the interpretation of the provisions of the statute is very frequently a matter on which several opinions can legitimately be expressed and held, and that in this particular case the interpretation applied by the Ministry of Revenue has been tested and upheld in appeals to the Social Assistance Review Board."

We wrote to the complainant enclosing a copy of our report and advising her that the Ministry indicated that our recommendation would not be implemented. We told the complainant that we remained convinced that the appropriate response of the Ministry of Revenue would have been to implement our recommendation. However, since the Ministry's position was not untenable we decided against referring a copy of our report and recommendation to the Premier pursuant to section 22(4) of The Ombudsman Act. We advised the complainant that we intended to include her case in our next Report to the Legislature where particular reference is made to cases in which recommendations made by the Ombudsman have not been implemented.

(47) SUMMARY OF COMPLAINT

This complainant contacted us because she had been unable to obtain a GAINS-A allowance from the Ministry of Revenue. It appeared that she had applied in April of 1977 but, on October of 1977 had not received either a Guaranteed Income Supplement or GAINS-A allowance.

Our investigator contacted the Guaranteed Income and Tax Credit Branch of the Ministry of Revenue and was advised that the complainant's name had not yet turned up on the computer tapes supplied by the federal Department of Health and Welfare. These tapes are needed to activate a GAINS-A payment.

Contact was therefore made with the Regional Office of Health and Welfare Canada, and it was discovered that the complainant's file was out for field investigation. The complainant was so advised and she eventually wrote, saying that an investigator had been to see her and had assured her that she should have no further difficulty in obtaining a Guaranteed Income Supplement. However, nothing happened as a result of the visit and the complainant wrote to us again.

Health and Welfare Canada was contacted once more and it appeared that the report on the complainant had gone astray and therefore, still another field investigator was dispatched to visit the complainant. Again, the complainant was advised of this and reminded that her complaint was in the federal field and therefore, outside of our jurisdiction.

The second report eventually reached the Regional Office of Health and Welfare Canada and in December, an adjustment cheque for just under \$1,000 was sent to her. Early in January, the complainant advised us that she had indeed received a lump sum Guaranteed Income Supplement but

had heard nothing further from the Ministry of Revenue concerning her GAINS-A allowance.

The complainant was advised that Ontario GAINS payments are activated when the federal Government forwards a computer tape containing the name, address and Old Age Security number of the person in receipt of the Guaranteed Income Supplement. Her name had not appeared on any of the federal computer tapes so far. Since the December payment was a lump sum payment, she was advised that it was unlikely that her name would appear on a federal print-out until the January payment had been made. She was assured that the Guaranteed Income and Tax Credit Branch had been alerted about her payment, and that they were looking out for her name on the next computer print-out. Our investigator told the complainant that she hoped that there would be no further problems with either her Guaranteed Income Supplement or her GAINS payments but urged the complainant to get in touch again if further problems arose.

In February, the complainant contacted us again because she had received neither a Guaranteed Income Supplement nor a GAINS payment. A check with the Ministry of Revenue revealed that the complainant's name still had not appeared on the federal computer tape. We contacted Health and Welfare Canada again and they discovered that the complainant's cheque had not been processed through the computer. In fact, they discovered that it had not been processed at all.

At this point, Health and Welfare Canada contacted the Guaranteed Income and Tax Credit Branch of the Ministry of Revenue to advise them that the complainant indeed exists and is in receipt of a Guaranteed Income Supplement. It was hoped that her February cheque would turn up on the computer tape but since so much had already gone wrong with the complainant's Supplement, it was felt that this personal contact was necessary. Telephone contact was also made between Health and Welfare Canada and the complainant, and the Ministry of Revenue and the complainant. She was advised that, whatever happened, her GAINS-A cheque would be sent out no later than March.

In March of 1978, a cheque for just under \$500 was forwarded to the complainant which represented her GAINS entitlement from April 1, 1977 to March 31, 1978.

Her final complaint concerned the GAINS payments for January, February, and March, 1977, and a GAINS cheque for those months was sent to her in April of 1978. All the complaints were therefore finally resolved to the satisfaction of the complainant.

(48)

SUMMARY OF COMPLAINT

This complainant initially submitted to our Office a copy of a letter which he had sent to the Ministry of Revenue criticizing certain actions of Ministry officials in their tax audit of his retail operation. He was informed that following his receipt of a response from the Ministry, he should then advise us as to whether or not he wished us to proceed with our investigation.

In the fall of 1977, the complainant requested that we commence an investigation into his complaint that Ministry representatives did not return his books which they had removed for the purpose of a tax audit within the two-week period which they had mentioned despite his repeated telephone and written requests for the documents. It was the complainant's contention that this had caused further problems to him including his inability to complete the requisite financial statements for his bank and other financial institutions which culminated in the failure of his retail operation. He furthermore claimed that Ministry personnel had advised his customers that his company was being investigated which resulted in the loss of customers and goodwill.

After our investigator had discussed these matters with various officials of the Ministry, it was ascertained that when a routine audit of the complainant's business was performed by members of the Retail Sales Tax Branch of the Ministry, they noticed that the business records did not appear to be complete or in good order, and consequently, they referred the matter to the Special Investigations Branch of that Ministry.

When officials of this Branch visited the complainant's office and surveyed his records, they found discrepancies in the available documentation which led them to believe that a sizeable tax deficit could exist. Consequently, they requested that the books be released to them for an off-the-site reconstruction of the records.

None of the other persons in attendance on the day that the books were removed, including the complainant's accountant, could remember a two-week time period being mentioned in connection with the return of the books. Section 26(5) of The Retail Sales Tax Act states as follows:

"The Minister, may by registered letter or by a demand served personally, require the production, under oath or otherwise by any person...of any letter, accounts, invoices, statements, financial or otherwise, books or other documents in the

possession or in the control of such person,...for the purpose of determining what tax, if any, is collectable or payable under this Act by any vendor or purchaser..."

In accordance with this legislation during the one-year period that the records were retained by the Ministry, in order to determine the amount of retail sales tax owed by the complainant, contact was made with former customers regarding their purchases by means of a form letter.

With regard to the complainant's access to his records while they were in the possession of the Ministry, we were informed that it was not until approximately eight months after the removal of the records, that the complainant's accountant requested the return of the documents. The Ministry's representative returned the accountant's telephone call, leaving a message since he was not in, but it was not until two months later that the accountant returned this call in order to advise him which documents he required to be photocopied. The photocopies were sent to the accountant shortly thereafter, and two months later, all the documents were returned to the complainant.

After their investigation, members of the Special Investigations Branch concluded that the evidence available would not support charges against the complainant under The Retail Sales Tax Act. However, the calculation of the taxes owed by him did warrant a Notice of Assessment against him in the amount of \$8,973.

In view of the information gathered during our investigation it was our conclusion that the actions of the Ministry's officials were warranted in order for them to ascertain whether or not charges should be laid, and to determine the amount of retail sales tax owing to them.

The complainant and the Ministry officials were notified of the outcome of our investigation and our view that the complaint could not be supported.

(49)

SUMMARY OF COMPLAINT

In early 1977, a lawyer from northern Ontario wrote to our Office complaining about an Ontario Home Buyers Grant decision rendered by the Ministry of Revenue and about delay on the part of the Ministry of Housing in approving his client's application for severance of land.

The complainant contended that in the summer of 1975, he deposited with his lawyer, a sum of money being the full purchase price of a lot. On that date, the vendor expressly authorized the complainant to start erecting his house. The lawyer was authorized to have the lot surveyed and to obtain a transfer from the Department of Veteran Affairs, since the vendor is a veteran and his residence is registered in the name of the Director of the Veterans Land Act.

The lawyer informed our Office that he retained a surveyor and by July 1975, the survey was completed and paid for shortly thereafter. By September 1975, the plan had been approved and registered in the Land Registry Office. The lawyer advised us that he submitted an application under section 29 of The Planning Act to the Ministry of Housing in October of 1975. Shortly thereafter, the Ministry informed him that it had the matter under active consideration. However it was not until early in the new year that the lawyer received the Ministry's letter of approval for the severance.

The final result was that the complainant's application for the Ontario Home Buyers Grant was denied on the basis that he did not have clear beneficial ownership by December 31, 1975, of the land on which he built his new home. Both the complainant and his lawyer felt that the main reason why the complainant was unable to have his title documents registered within the eligibility period was the length of time taken by the Ministry of Housing to consider his application for severance under The Planning Act. The complainant contended that this delay by the Ministry of Housing caused him to lose what he considered to be his statutory right.

After we notified the Deputy Ministers of Housing and Revenue of our intention to investigate this complaint, we received from them a statement of their Ministry's position regarding this matter.

Subsequently, our investigator met with the Director, Operations and Development Control Branch of the Ministry of Housing and with the Appeals Officer, Ministry of Revenue, to review this complaint and obtain the relevant documentation. Our investigator spoke to the complainant and his lawyer who provided further pertinent information. The lawyer pointed out that he did not advise Ministry of Housing representatives that the complainant had applied for the Ontario Home Buyers Grant and that time was of the essence in reviewing his application for severance. Further, the complainant confirmed that he did not notify his lawyer or any Ministry of Housing employee of the urgency in having his application for severance processed in view of the fact that the grant depended on its being allowed.

After a careful examination of all the available evidence, we found that the complainant was not entitled to the Ontario Home Buyers Grant because the legal and beneficial interest in his housing unit did not vest in him within the eligibility period. The complainant did not satisfy section 2(3) of The Ontario Home Buyers Grant Act, 1975, which states that:

"No grant shall be made to a person applying therefor unless the legal and beneficial interest in the housing unit in respect of which application for the grant is made vests, as determined in the prescribed manner, in that person, whether jointly with another person or otherwise, during the period of eligibility."

Further, according to section 1(d) of the Regulations under the Act, the legal and beneficial interest in the housing unit vests:

"when such owner first ordinarily inhabits such unit as his principal residence, provided that, at that time, such unit is situated on land owned, whether jointly or otherwise, by that person."

We noted that although there was no agreement of sale between the complainant and the Director of the Veterans Land Act, the transfer in favour of the complainant was signed by the Director in January of 1976. Shortly thereafter, the document was forwarded to the complainant's lawyer. The Ministry's position was that clear and beneficial ownership in favour of the complainant could not have taken place until the transfer document was received by the lawyer. Such event would have transpired in late January 1976 at the earliest and therefore sometime after the eligibility period. We could not disagree with the Ministry's position that the complainant did not have clear beneficial ownership of the land on which he built his home within the eligibility period. Consequently, we could not fault the officials of the Ministry of Revenue for their actions in denying the complainant the grant.

With respect to the allegation of delay on the part of the Ministry of Housing in approving the complainant's application for severance, we noted that the application was received by the Ministry of Housing in October 1975. Subsequently, the Ministry, in following normal procedure, requested comments and recommendations from other organizations. The Ministry of Housing did not receive a reply

from one organization until December 29, 1975. After evaluating the reports, in mid-January 1976, the Ministry approved the application for severance on the condition that the Deeds were to be received by the Ministry within a reasonable period of time. Since neither the complainant nor his lawyer had advised the Ministry of Housing that the complainant's Ontario Home Buyers Grant was in jeopardy and time was of the essence in approving the application for severance, we determined this aspect of the complaint also to be unsupported. We found that there was no undue delay on the part of the Ministry of Housing in approving the complainant's application for severance.

We reported our findings to the complainant and the Deputy Ministers of Revenue and Housing. This complaint was therefore found to be unsupported.

(50)

SUMMARY OF COMPLAINT

This complainant wrote to our Office complaining of a decision rendered by the Ministry of Revenue regarding her husband's Ontario Home Buyers Grant application in respect of a proposed condominium unit.

The complainant claimed that she and her husband had applied for the grant in good faith and that it was unfair for the Ministry to now reverse its decision. The Ministry had requested that the money issued to her husband be returned because according to their Agreement of Purchase and Sale, the date on which they were entitled to immediate occupancy of their housing unit was October 31, 1974. This date was prior to April 8, 1975, the commencement date of the period of eligibility for the grant. Hence the Ministry contended that the complainant's husband did not satisfy the vesting requirements as the property vested in the complainant prior to the grant eligibility period.

After we notified the Deputy Minister of our intention to investigate this complaint, the Deputy Minister provided us with a statement of his Ministry's position on this matter. Subsequently, our investigator met with the Appeals Officer of the Ministry of Revenue to review this complaint and to obtain relevant documentation from the Ministry's file.

At the request of our investigator, the Ministry provided a further statement of its position pointing out that the complainant made a false statement in his Ontario Home Buyers Grant application. The complainant's husband "certified that he was not entitled to vacant possession of his unit until June 23, 1975, when in fact, he was entitled to vacant possession under his Agreement on October 31, 1974."

During conversations with the complainant, our investigator was advised, among other things, that although the complainant and her husband moved into their housing unit in December of 1974, they rented the unit until June 23, 1975, the date of the registration of the Deed. The complainant and her husband did not receive any assistance in completing their grant application. Subsequently our investigator received pertinent information from a southern Ontario Registry Office indicating that the condominium building in question was registered in May of 1975.

After a careful examination of all the available evidence, we found that the complainant's husband was not entitled to the Ontario Home Buyers Grant because, although he complied with the vesting requirements for a proposed condominium unit under The Ontario Home Buyers Grant Act, 1975, he did so prior to the eligibility period which extended from April 8 to December 31, 1975.

For the purposes of the Ontario Home Buyers Grant program, an applicant would qualify for the grant upon purchasing a proposed condominium unit when he had entered into an enforceable Agreement of Purchase and Sale which the Minister is satisfied is likely to be completed, and when he had become entitled to acquire immediate vacant possession of his proposed condominium unit under that Agreement. The registration of the Deed or Transfer was not a critical factor in determining eligibility for this type of housing unit. The rationale for this is that before the Deed or Transfer could be registered, it is mandatory that the Condominium Declaration, the By-Laws and the Description be registered, at which time the building ceases to be a proposed condominium. Since a proposed condominium unit was considered to be a housing unit under the Act, an applicant had to meet the vesting requirements for such a unit within the eligibility period.

In this case, we found that in October, 1974, the complainants entered into an enforceable Agreement of Purchase and Sale whereby they agreed with the vendor to purchase the unit. Under the Agreement, the transaction was to be completed on October 31, 1974, at which time they were entitled to acquire immediate vacant possession of their unit. We therefore determined that the complainant's husband did not satisfy the requirements of the Act and the Regulations.

We noted that the complainant advised our investigator that December 1, 1974 was the date she and her husband first resided in their unit and they so indicated this in their application. However the complainant's husband certified that June 23, 1975 was the date on which he was entitled to immediate vacant possession of his housing unit and this date is incorrect.

While we sympathized with the complainant's situation, we could not fault the officials of the Ministry of Revenue for their actions in requesting that the grant monies be returned. We accordingly found that this complaint against the Ministry was unsupported because the complainant's husband had not met the requirements of the Act.

(51) SUMMARY OF COMPLAINT

In this case the complainant had been asked to return the Ontario Home Buyers Grant money because upon audit, the Ministry learned that the complainant paid considerably less than fair market value for his housing unit in 1975 when he purchased it from his father. Hence the Ministry's decision was that the complainant did not comply with section 1(g) of The Ontario Home Buyers Grant Act, 1975. Section 1(g) states that:

"'Purchase' where used in reference to a housing unit means the acquisition of the housing unit for valuable consideration in an amount equal to its fair market value."

After notifying the Ministry of Revenue of our intention to investigate this matter, we received a statement of the Ministry's position. Subsequently, our investigator also spoke to the complainant and to his lawyer who provided additional pertinent information. From an analysis of all the available evidence including an assessment report from the Regional Assessment Office, we found that the complainant was not entitled to the Ontario Home Buyers Grant because he did not purchase his housing unit at fair market value as required under the Act.

We determined that it was not unreasonable for the Ministry to assume, from information on the complainant's application, that he had paid fair market value for his housing unit. It would only be upon audit that the Ministry would ascertain the true market value of the unit being applied for. Accordingly, we could not fault the officials of the Ministry of Revenue for their actions in requesting that the grant money be returned.

At the same time, we commended the Ministry of Revenue for its decision not to recommend, in the circumstances of this case, that court action be instituted for recovery of the grant, given that it appeared no misleading or false statements were made by the complainant in the application.

The complainant, his lawyer and the Deputy Minister of Revenue were advised of our findings.

(52)

SUMMARY OF COMPLAINT

This complainant's lawyer wrote to our Office complaining about a decision of the Ministry of Revenue, the effect of which was to deny the complainant an Ontario Home Buyers Grant. The reason given for the denial was that the complainant's husband had owned a housing unit in Trinidad which had been lived in by both the complainant and her husband as their principal place of residence prior to April 8, 1975.

In his letter to us, the complainant's lawyer stated that the complainant arrived in Canada from Trinidad in 1973 following a long separation from her husband of thirty years. In Trinidad, the complainant and her husband had resided for approximately three years when they were first married in a home owned exclusively by her husband, in which she had no proprietary interest. The house had since been sold and the complainant had made no claim nor had she received any part of the proceeds of the sale. The lawyer went on to add that the complainant had grounds for divorce, but that her Roman Catholic faith prevented her from instituting divorce proceedings. The complainant's lawyer added that in his view the decision of the Ministry of Revenue relating to the complainant's eligibility for a grant was unfair and discriminatory.

Our investigator contacted a Ministry lawyer who had some responsibility for the drafting of The Ontario Home Buyers Grant Act. This was done with a view to determining whether those responsible for drafting the Act had considered the effect of the legislation as drafted upon an applicant separated from his or her spouse, who had owned a principal residence prior to the period of eligibility. The lawyer suggested that consideration had been given to this issue. In order to make the Act simple to understand for the applicant and simple to administer and enforce for the Ministry it had been decided that the line of eligibility should be drawn where the marital situation was conclusively irretrievable, that is, where a divorce decree had been obtained.

Accordingly, the fact that a former spouse had previously owned a home would not disqualify the applicant. It was felt that this would preclude the possibility of a married couple separating so that one of the parties could apply for and receive a grant, even though the spouse had previously owned a house, and then resuming co-habitation. Although this was not the situation in this particular case, it was felt that the Act was not unfair or discriminatory in this regard.

After careful examination of all the available evidence it was decided that the complainant was not entitled to the

Ontario Home Buyers Grant because her husband owned a principal residence in Trinidad prior to April 8, 1975. Consequently, the complainant did not comply with section 2(2) of The Ontario Home Buyers Grant Act. As well we noted that when the complainant signed the official application on January 20, 1976, the complainant certified that,

"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 or with another person or otherwise, that was used by any of us as a principal residence."

While we sympathized with the complainant's situation we could not fault the officials of the Ministry of Revenue for their actions in denying her the grant. We accordingly found that the complaint against the Ministry of Revenue was unsupported because the complainant did not meet the requirements of the Act. We so advised the complainant.

MINISTRY OF

THE SOLICITOR GENERAL

(53)

SUMMARY OF COMPLAINT

The administrator of a Police Association in Ontario wrote to our Office on the complainant's behalf in December of 1976 complaining of a decision rendered by the Ontario Police Commission. The complainant had been charged with contravening section 1(i)(a) of the Schedule of Code of Offences of Ontario, Regulation 680/70, made pursuant to The Police Act.

The statement of particulars read as follows.

"That he did while off duty and not in his divisional area, after consuming intoxicating liquor did on two occasions identify himself as a Police Officer and without lawful excuse or sufficient cause, question and search private citizens. He also permitted a friend of his a civilian to falsely represent himself to the said citizens as a Police Officer, search the said citizens and use abusive language toward them, and did thereby act in a disorderly manner or in a manner likely to bring discredit upon the reputation of the Police Force."

A hearing was held before the Deputy Chief of Police and at the conclusion of the hearing the complainant was dismissed from the Force. Following his dismissal the complainant appealed to the Regional Board of Commissioners of Police asking that the sentence be set aside however, his dismissal was upheld. The complainant then appealed to the Ontario Police Commission on the grounds that: a) the sentence imposed was excessive considering all the circumstances, b) the prosecution made improper references to unrelated matters in speaking to sentence, and c) the presiding officer made improper assumptions and considerations in deciding upon the penalty imposed.

The Ontario Police Commission heard the appeal and dismissed it, allowing the penalty as previously imposed to stand. The complainant felt that the penalty was excessive considering all the circumstances and claimed that the reasons given by the presiding officer at the appeal hearing in reaching a decision could not be supported by the evidence.

During the course of our investigation the administrator of the Police Association was contacted as well as a Police Sergeant from the Police Force for which the complainant had worked. Both men provided background information. The Ontario Police Commission file was also viewed and the following documents were carefully examined:

1. The transcript of the evidence of the departmental trial under The Police Act held in the

complainant's town.

2. The transcript of the evidence on the appeal of the complainant against the punishment, heard by the Regional Board of Commissioners.
3. The report prepared by the Constable and submitted to the Police Association and,
4. A copy of the decision rendered by the Ontario Police Commission.

The regulation which gave the Ontario Police Commission the authority to hear the complainant's appeal section 58(10) which provides that:

"On the hearing of an appeal against a conviction or the punishment imposed, or both, the Commission may,

- a) dismiss the appeal;
- b) allow the appeal and quash the conviction and punishment imposed;
- c) vary the punishment imposed as it considers just;
- d) affirm the punishment imposed;
- e) substitute a decision that in its opinion should have been reached; or
- f) order a new hearing of the charge.

This provision therefore vests a discretionary power in the Ontario Police Commission.

After careful examination of all the evidence we decided that in a case such as the complainant's we could only find the complaint to be supported and make an appropriate recommendation when we are of the view that a discretionary power had been exercised for an improper purpose or on irrelevant considerations. In this case, we could not find that the Ontario Police Commission had exercised its discretionary power in an improper manner. This was so notwithstanding the fact that another person or tribunal on the same facts may very well have imposed a lesser penalty than that imposed in this case.

The complaint was therefore found to be unsupported.

(54)

SUMMARY OF COMPLAINT

This complaint was referred to our Office by a Member of Provincial Parliament on behalf of one of his constituents. The complainant was later interviewed in person by a member of our staff.

The complainant stated that he had been assaulted by a Police Officer in January 1976. He had lodged a complaint with the local Board of Commissioners of Police, the Ontario Police Commission and the Office of the Solicitor General. The results of investigations conducted by these agencies were unsatisfactory to him since they had not found in his favour.

We advised the Chairman of the Ontario Police Commission by letter of our intention to investigate this complaint and a copy was sent to the Deputy Solicitor General. Our investigation revealed that two police officers had attended at the complainant's apartment in response to a request from his landlord. The landlord reported that he had had difficulty serving a notice to vacate on the complainant and the police were called to keep the peace.

The events that took place during that meeting led the complainant to complain to the local Police Commission that he had been assaulted by one of the police officers. The local Police Commission conducted an investigation. The evidence of five persons including the two police officers revealed that the complainant had not been assaulted. He had been served with a notice to vacate by his landlord when he decided to pursue the latter who was leaving the scene. While in pursuit of the landlord, he slipped and fell on the icy pavement causing injury to one of his arms.

All the witnesses said that the officer accused of assaulting the complainant, had in fact helped him up from the pavement and aided him back to his apartment.

The local Police Commission concluded that the complaint was unfounded and so advised the complainant. He was dissatisfied and complained to the local Crown Attorney through his lawyer. The Crown Attorney concluded, after a review of the investigation conducted by the local Police Commission that the complaint of assault was completely unfounded and the complainant was advised accordingly.

He then complained to the Office of the Solicitor General. On the instruction of the Office of the Solicitor General, an investigation was conducted by the Ontario Police Commission. The Ontario Police Commission also came to the conclusion that the complaint could not be substantiated. The Commission's report was submitted to the Office of the Solicitor General who advised the complainant of the findings.

After a careful review of the investigation conducted by the Ontario Police Commission we also concluded that the complaint to us could not be supported and we so advised the complainant.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

(55)

SUMMARY OF COMPLAINT

The complainant and his wife came to our Office with their lawyer to complain about the manner in which their property was expropriated by the Ministry of Transportation and Communications and the amount of compensation awarded to them by the Land Compensation Board.

The couple had owned approximately one acre of property located near Toronto on which they had situated a small business and a family residence. They had attempted to obtain a municipal building permit in order to expand the business, but this was denied as the Ministry of Transportation and Communications required the land for future road construction. They then became anxious to sell the property and negotiations began between the complainants and the Ministry for the latter to purchase the land.

Both the Ministry of Transportation and Communications and the complainant retained independent land appraisers. However, it was subsequently discovered that there had been an exchange of information between the appraisers which resulted in the complainants rejecting the Ministry's initial offer of \$93,500. In order to assist the complainant in expeditiously obtaining funds, a Ministry official suggested expropriation of the property, and also suggested that the most expeditious method to expropriate was to dispense with the Hearing of Necessity under The Expropriations Act. The husband agreed to this procedure and indicated his approval by signing a consent form. However, the wife, who was part owner of the property, did not sign the consent form. An order-in-council was passed dispensing with the Hearing of Necessity and a plan of expropriation was registered on March 16, 1971 thereby expropriating the complainant's property.

Although the Ministry did give notice to the complainants' lawyers that the order-in-council was passed, the complainants were not served with the order-in-council as required by The Expropriations Act until five years later.

Although the husband looked for other property upon which he could relocate his business and home, he did not have success. The complainants took the issue of compensation before the Land Compensation Board and a five-day hearing was held before the Board in August of 1973. The Board awarded total compensation to the complainants of \$92,300. The complainants filed a notice of appeal from the decision of the Land Compensation Board, which appeal was subsequently abandoned.

The complainants continued to live in their home, believing that they had been improperly and unfairly treated

by the Ministry of Transportation and Communications since they felt that they had not received adequate compensation for the expropriation of their lands and buildings. Their refusal to vacate the land delayed construction of the highway and caused the Ministry to seek a court order in April of 1975 to permit the Sheriff to eject the complainants. The court held that several requirements of The Expropriations Act had not been met by the Ministry and the Ministry's application for the necessary order was refused. The Ministry again attempted to obtain this order, which this time was granted by the court as several of the omissions and errors enumerated in the first court decision had been corrected in the interval and for the reason that the complainants had by their conduct approbated the expropriation. The complainants were unsuccessful in appealing this court order and in due course the Sheriff took steps to eject the complainants.

Our Office took no active steps to investigate the complaint until the Ministry's court action was settled. In May of 1977, both the Ministry of Transportation and Communications and the Land Compensation Board were notified of our intention to investigate. The investigation conducted included a review of the entire transcript of the Land Compensation Board hearing, various court records, the decision of the Land Compensation Board, and all of the documents relating to this matter which were provided by both the complainants and the Ministry of Transportation and Communications. There was also substantial personal input by the complainants and there were several meetings with the complainants and the Ombudsman and his staff.

Although the complainants complained about the fairness of the Land Compensation Board hearing to us in a general way, they had in effect raised 21 specific issues. Our legal staff reviewed the transcript of evidence before the Land Compensation Board as well as the law which related to these issues. Having fully considered this aspect of the complaint, we were unable to support this complaint. In our opinion, the Land Compensation Board acted properly and extended to the complainants full consideration in receiving their representations. The amount of compensation awarded to the complainants was in our view in keeping with The Expropriations Act. Moreover the complainants were represented by experienced counsel who was given the full opportunity to present the complainants' entire case. We could not come to the conclusion that the decision of the Land Compensation Board could be faulted on any of the grounds set out in section 22(1) of The Ombudsman Act, 1975.

The complaint against the Ministry of Transportation and Communications was essentially that the Ministry, in expropriating the complainants' lands, so departed from the

procedures set out in The Expropriations Act that the expropriation was invalid. We reviewed the complainants' allegation of collusion between their appraiser and the Ministry's appraiser and concluded that there was no "unreasonable, unjust, oppressive or improperly discriminatory" action on the part of the Ministry.

After reviewing the documents obtained in the course of this investigation, we concluded that the Ministry officials involved acted in good faith in suggesting that the complainants consent to an expropriation to facilitate their obtaining funds.

During the course of the investigation, we considered the complainants' contentions that the Ministry failed to follow the statutory requirements provided by The Expropriations Act. These omissions were detailed in the first court judgment given in 1975. After examining these allegations, we reached a tentative conclusion that could have adversely affected the Ministry of Transportation and Communications, and pursuant to section 19(3) of The Ombudsman Act, 1975, the Ministry was given an opportunity to make representations respecting the tentative conclusions. On June 5, 1978, a letter was sent to the Deputy Minister of Transportation and Communications which listed the alleged omissions and tentative conclusions. These were as follows:

1. The complainant wife was a joint owner and was not mailed a copy of the letter proposing an application under section 6(3) of The Expropriations Act. Moreover, the consent clause contained in this letter was only signed by the complainant husband.
2. The court interpreted the letter as making the section 6(3) procedure conditional upon the Ministry proceeding immediately as stated therein to obtain another appraisal on the basis of which a new offer would be made to the complainant husband. The new appraisal to be obtained was required because it appeared that there had been an improper collusion between the Ministry's appraiser and the complainants' appraiser. The court stated that the Ministry did not carry out its agreement as set out in the letter which was a condition of the complainant husband's consent. Accordingly, the court held the complainant husband to not waive any of the procedures required by The Expropriations Act.
3. The Expropriations Act requires that an order-in-council made pursuant to section 6(3) be

served upon each registered owner forthwith. The order-in-council was not served on the complainants until five years after it was made. Although the complainants' solicitors were given written notice when the order-in-council was made, this did not appear to constitute service as required by The Expropriations Act.

4. Section 25 of The Expropriations Act requires that an offer be served upon the registered owner within three months after the registration of the plan of expropriation. The Act further requires that the offer be based on an appraisal report of the market value of the land, and that the report be served with the offer. The court held that the initial offer served on the complainants was not in compliance with section 25(1) of The Expropriations Act.
5. A further offer was subsequently mailed to both complainants in March of 1973 which was criticized by the court as being an offer in form only but not a proper one in substance.

On the basis of these tentative conclusions, it was open to us to form the tentative conclusion that the Ministry had acted in a manner which appeared to have been contrary to law within the meaning of 22(1)(a) of The Ombudsman Act, 1975.

A meeting was held in our Office attended by the Deputy Minister and his counsel to make representations to our section 19(3) letter. In responding to the first issue, the Ministry agreed that only the complainant husband signed the letter of consent to proceed with the procedure under section 6(3) of The Expropriations Act which reads, in part, as follows:

"The Lieutenant Governor in Council may, in special circumstances where he considers it necessary or expedient in the public interest to do so, direct that an intended expropriation shall proceed without the inquiry procedure ..."

The Ministry's counsel stated that there is no necessity under this section to obtain the consent of the land owners to initiate an order-in-council. Consent was requested because it was then the Minister's policy to require the signature of the land owner before presenting such an application to the Cabinet. Ministry officials involved with the expropriation swore in affidavit form that it was believed the complainant husband was authorized by his wife to act on her behalf. We found nothing which caused us to doubt the Ministry on this

issue. Indeed, our Office had often been under the impression that the complainant had been acting with the implicit authority of his wife in all matters relating to our Office's investigation. It was our opinion that the complainants suffered no prejudice by the complainant wife not having signed the letter of consent, and that the expropriation was not affected in any way by this apparent omission.

The second issue raised concerned the court's decision concerning the interpretation of the letter of consent. The court was of the view that this letter made the section 6(3) procedure conditional upon the Ministry proceeding immediately to obtain another approval. The Deputy Minister submitted that the consenting to this procedure was only a formality and had no legal effect. However, the Ministry advised that a further valuation of the complainants' property was soon undertaken.

It was our opinion that the interpretation to be given to this part of the letter of consent was the one which was implicitly accepted by the court in granting the second application: that the subsequent offer referred to by the Ministry concerned an undertaking to be carried out after the order-in-council was made and the new appraisal was not a condition precedent to the complainants getting their consent.

The third point concerned the requirement under section 6(4) of The Expropriations Act that the expropriating authority "shall forthwith serve a copy of the [order-in-council] on each registered owner affected by the intended expropriation." The Ministry acknowledged this omission which is clearly a breach of the statute. However, it was our opinion that nothing turned on this breach. The complainants knew that an order-in-council would be made, and although they were not served with a copy of the order, their lawyers at the time were given written notice of it. It was our opinion that the complainants were not prejudiced by this omission on the part of the Ministry. Moreover, although The Expropriations Act requires that a copy of the order be served, failure to do so did not in our view invalidate the expropriation; and would not in any event invalidate an expropriation where the owners had constructive notice of an order-in-council.

The fourth and fifth points concerned section 25 of The Expropriations Act which requires that an offer be served upon the registered owner within three months after the registration of a plan of expropriation. Section 25 also requires that this offer should be based on an appraisal report of the market value of the land and that the report must be served with the offer. The court in the first

application made by the Ministry of Transportation and Communications strongly criticized the two documents and based a major part of the decision denying the warrant on this omission.

In its representations to us the Ministry stated that the offers were deficient, but added that a second impugned offer although wanting, was in keeping with the prevailing practice of the time. However, we understand that the Ministry of Transportation and Communications has changed its policy concerning its section 25 offers.

Although at that time the complainants were served with the offers the Ministry was acting in good faith, the complainants were prejudiced by the lack of information contained in these offers. They could not have been expected to make a reasoned decision whether or not to accept the Ministry's offers since it could not be determined if the amount of compensation truly reflected the prevailing market conditions. The prejudice suffered by the complainants was, in our view, limited in two ways. First, The Expropriations Act states that any delay in serving the owner past the three months from the date of expropriation results in a penalty payment of interest on the unpaid part of any compensation payable. Delay in itself does not invalidate an expropriation, and the Ministry did pay the complainants this penalty. Secondly, the complainants did see the appraisal report prior to the Land Compensation Board hearing and had the opportunity to cross-examine the maker of the report.

This was an extremely difficult case to investigate both from the point of view of the magnitude of documentation and because of the complainants' extremely strong feelings of indignation over the entire circumstances. It is regrettable that the collusion between the land appraisers occurred. Had it not, the complainants may well have accepted the initial offer of \$94,500. The complainants were the ones who actively lobbied to have the Ministry purchase their land so that they could relocate. The government officials involved used their best efforts to facilitate the purchase, but when negotiations broke down, these officials suggested that the most expeditious method to obtain funds was to expropriate the property. This procedure would have assured the complainants a sum to relocate while leaving open the opportunity to arbitrate any differences of opinion about the value of compensation.

It was our opinion that the omissions which occurred on the part of the Ministry did not greatly prejudice the complainants, although the complainants have perceived these omissions as being greatly prejudicial to them. The omissions of failing to serve a copy of the order-in-council and the

proper offer of compensation were in our opinion, contrary to The Expropriations Act and therefore they appear "to have been contrary to law" within the meaning of The Ombudsman Act, 1975. However, we were of the opinion that these omissions did not prejudice the complainants to a degree which would make it appropriate for us to make a recommendation to the Ministry of Transportation and Communications; it was our further opinion that the complainants had received the full compensation for their property to which they were entitled by law.

This complaint was therefore found to be unsupported.

MINISTRY OF

TREASURY ECONOMICS AND INTERGOVERNMENTAL AFFAIRS

(56)

SUMMARY OF COMPLAINT

This complaint first came to our attention by means of a letter from one of the directors of a Corporation. The complainant alleged that the creation of the Parkway Belt West system by the Government of Ontario in June 1973 eradicated any anticipated potential for lands purchased by the Corporation shortly before the plan was announced.

The Corporation, representing a group of twelve shareholders, acquired approximately 25 acres of vacant land zoned for agricultural uses on February 28, 1973. It was intended to retain the land for a period of up to five years for potential use as a residential development. The imposition of the Parkway Belt West proposal completely eliminated any potential for the land to be rezoned from agricultural usage to residential uses.

Further, it was the impression of the members of the Corporation after meetings with various Ministry officials that no development of any kind would be allowed on the land for an indeterminate period of time with the result that the investors faced the possibility of a severe financial loss.

After 2 years, an offer to purchase was received by the owners which would have permitted them to dispose of the property for use as a single family residence site at only a small financial loss. However, the Corporation alleged that because of administrative delays in processing the required application for an amendment to the Land Use Regulations and despite indications by the affected parties of the critical time period involved in the transaction, approval was not received in time and the offer was lost.

After our Office conducted an initial review of this case, the complainant was advised that the investigation by our Office would be confined to examining the alleged undue delays in the processing of the application for an amendment to the Land Use Regulations made under The Parkway Belt Planning and Development Act. The issue of the actual creation of the Parkway Belt was government policy, and came as a result of the deliberations of the Executive Council of the government and therefore was not within the jurisdiction of our Office.

Our investigation revealed that contrary to the complainant's understanding, zoning could be varied within the goals and objectives of the Parkway Belt West Plan which included a broad regulation or control area within which the future design area would be planned. Land use regulations apply to the entire regulation area which encompasses a complementary use section for such things as highway and transmission corridors.

If the property was located within the design area and was designated complementary use, an application for an amendment to the land use regulations could be made. If the property was located outside the design area but within the plan area, an application for an exemption from the Land Use Regulations could be made.

In this case, an application for an amendment to the Land Use Regulations of the Parkway Belt West was made by the real estate agent. This application was received from the Solicitor General's Office by the Ministry of Housing on August 13, 1975. The intended use of the property was for a single family residence on a 25-acre site.

The investigation also revealed that the original Agreement of Purchase and Sale dated June 28, 1975, included the following condition:

"This offer is conditional on the purchaser or his agent obtaining a building permit for a single family residence within six months from the acceptance of this offer".

This condition was changed on July 25 to read:

"This offer is conditional on the purchaser or his agent obtaining the necessary consent or permission for exemption from the Parkway Belt to allow the erection of a single family residence on the real property within 90 days of the acceptance of this offer".

Because the processing of the application went beyond the 90-day period, the agreement was voided with the result that the Corporation lost the potential disposition of its property from which it hoped to recoup its investment.

On July 23, 1976, the Corporation made representations at the Parkway Belt Hearings. As a result of this action, our file was held in abeyance pending the result of another application for an amendment to the Land Use Regulations, this time for the purpose of erecting 2 single-family dwellings on the property. This application was accepted. Although it appeared that this severance might offer some financial relief to the Corporation, only one lot of 9 acres was sold and the Corporation became aware that even with the most optimistic outlook it would not recover the money invested. As a result our investigation into the original complaint was resumed.

Our investigation revealed that the processing of this land use amendment application took approximately 5 1/2

months, from August 13, 1975 when the Ministry of Housing first received it, until January 30, 1976, when the amending document was mailed out. The purpose of our investigation was to examine this lapse of time and determine whether or not it was inordinate and whether the Corporation could have reasonably expected the procedure to have taken place within the 90-day period which was stipulated in the Agreement of Purchase and Sale.

During our investigation, a study of the average time frame for processing such an application was undertaken. This study revealed that 5 to 6 months was the average time period needed to process the amendment applications. As a result, the 5 1/2 month time frame that elapsed on the processing of the amendment application, while seemingly long, was no longer than was normally required.

As a result, we determined that 5 1/2 months was not an inordinate length of time for the processing of such applications during the initial organizational stages of the Parkway Belt Office. Further we concluded from inquiries made by our investigative staff that anyone wishing to know the time period required to allow them to make relevant business decisions would have had access to such information by contacting either the Ministry of Housing or the Parkway Belt Office. There was no reference in either the complainant's file or the Ministry files that would indicate that such inquiries were made. Further there was no written reference on the Ministry's files to the critical 90-day period in this application.

We noted that one of the directors of the Corporation had personal experience respecting an application for an amendment to the Land Use Regulations for his own private lot. This application, which was granted after a review period of approximately 6 months, was prior to the Corporation's application. Under the circumstances, it appeared that the Corporation could have had previous knowledge of the time period required for such an application and could have anticipated that a 90-day period might not be sufficient to allow for an application to be considered by the Parkway Belt Office.

While it is unfortunate that public policy in this instance was not favourable to the Corporation's objectives, there was no evidence that could lead us to fault the Ministry for the problems facing the Corporation, inasmuch as all property owners in the complementary use area of the Belt face the same limitations on the disposition of their lands and will continue to do so until such time as the form of the Parkway Belt West Development Plan is announced.

This complaint was found to be unsupported.

THE WORKMEN'S COMPENSATION BOARD

(57)

SUMMARY OF COMPLAINT

In the fall of 1969 this complainant, while straining to move a heavy object, suffered a sprain of his right shoulder and neck. A claim was submitted to the Board and accepted and Temporary Total Benefits were paid for seven months until the complainant returned to work to perform light duties with his accident employer.

He worked for several months without experiencing any problems until he had a second accident when a fellow worker accidentally shot a wedge out of a pneumatic drill, striking the complainant on his right shoulder. A second claim was submitted to the Board and Temporary Total Benefits were again paid until the fall of 1973.

In January of 1972 the complainant had been involved in a noncompensable automobile accident. The medical reports indicated that this car accident aggravated the problems in his upper back, neck and shoulder and also created a new problem in his lower back. The automobile accident resulted in a civil action. At the trial the jury awarded the complainant minimal damages as it found that most of the complainant's disability was not related to the automobile accident.

The complainant was first assessed for a permanent disability award in the fall of 1973. It was felt at that time by the Board's surgical consultant that:

"There is no evidence of organic pathology and one must attribute his severe disability to his psychiatric condition. This patient is obviously totally disabled due to his psychiatric disability and in view of the limitation of the entitlements in this claim, I recommend a permanent disability award of 20%."

One year later, the pension was reviewed by another surgical consultant who reported:

"It is my impression that the present award [i.e. 20%] is a reasonable acceptance of an impairment producing on-going symptoms in the neck and shoulder areas but is basically physical (and probably always was). This is likely an appropriate recognition of his full entitlement at a permanent disability level. He obviously has a psychologic condition but whether this is disabling I do not know, nor whether any disability from it is caused by his motor vehicle accident which is obviously also producing the problem in his low back and legs."

Following this, a decision of the Review Committee was rendered which informed the complainant that:

"There was no evidence of organic pathology to which your disability could be attributed. It was felt however that you were suffering from a non-organic disability a degree of which could be attributed to your accidents and therefore you were awarded a permanent partial disability of 20%."

In the spring of 1975, a report from a psychiatrist was received by the Board which stated in part:

"In my opinion [the complainant] suffers from a traumatic neurosis anxiety being the main feature. There was some clinical evidence of depression and conversion reaction.

I would estimate that this workman's disability from psychiatric causes at the present time is 15% to 20%."

An Appeals Examiner Inquiry was held in the summer of 1975 at which time it was decided that it would be in the complainant's best interest for the Workmen's Compensation Board to delay the decision about the amount of a pension until the resolution of his trial concerning the automobile accident. Accordingly, an interim decision was rendered which stated in part:

"An award of 20% has been made with respect to the physical disability and now [a psychiatrist] feels that there is a further 20% which can be attributable to psychiatric disorders."

A subsequent Appeals Examiner Inquiry was held in early 1976 and the decision rendered stated in part:

"It is the considered opinion of the senior consultants who have reviewed this matter that any ongoing psychiatric disability cannot be attributed to the compensable accident."

The case was then appealed to the Appeal Board in the fall of 1976 and the Appeal Board concluded that:

"An appreciably greater level of residual disability does not exist over that already recognized by the 20% permanent

partial disability award which recognized the psychological and organic disabilities. The appeal therefore is denied."

The complainant then brought his complaint to our attention. We determined that he had exhausted all avenues of appeal at the Board and that therefore his complaint was within our jurisdiction to investigate.

We informed the Board, pursuant to section 19(1) of The Ombudsman Act, 1975 of our intention to investigate this complaint.

Following a careful review of the Board's file we formed the tentative conclusion that the Workmen's Compensation Board had been unreasonable and that the Appeal Board's decision should be altered or varied.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was informed by letter that based on our investigation thus far it appeared that there were sufficient grounds for the making of a report or recommendation which might adversely affect the Board. The Board was invited to make representations respecting the possible adverse report or recommendation and it was suggested that such representations should relate to the following possible conclusions and possible recommendations:

"Possible Conclusions

1. From the investigation thus far conducted, it appears possible that the Workmen's Compensation Board has not adequately compensated [the complainant] for the permanent disability which he has as a result of his two compensable accidents. [The complainant's] disability has been reviewed on numerous occasions by different Workmen's Compensation Board medical consultants. The conclusions of these doctors has varied considerably but it does seem clear that [the complainant] has both a psychiatric and an organic disability. Both components have been assessed as each being approximately 20% disabling on various occasions by both the Workmen's Compensation Board and the man's attending physician. Nevertheless [the complainant] has only been awarded a 20% award for both disabilities by the Workmen's Compensation Board.

2. A recent judgement by the County Court of the County of Wentworth ... orders that [the complainant] is to receive a total of \$9,242.37 from the defendants. It is our understanding after speaking with [the complainant's lawyer] that it was the conclusion of the jury that [the complainant's] disability at the present time has only been minimally affected by the non-compensable automobile accident.

Possible Recommendation

That the Appeal Board should cancel their decision and award [the complainant] a greater permanent disability award which would more adequately reflect the medical opinions as to this man's permanent disability as a result of his two compensable accidents."

The Chairman, in his response to this letter, informed us that:

"It is the view of the Appeal Board panel and of the Board that the 20% permanent partial disability pension awarded for life to [the complainant] adequately compensates him for his residual physical and psychology disabilities resulting from his compensable accidents."

We reviewed this case in light of the Board's response following which a report pursuant to Section 22(3) of The Ombudsman Act, 1975 was sent to the Chairman of the Board with a copy to the Minister of Labour. The Chairman responded on behalf of the Board and advised that on the basis of the medical reports, the Appeal Board panel and the Board were satisfied that the 20% permanent partial disability award adequately represented the complainant's residual organic and psychological disability. The Board therefore indicated that it did not propose to take any steps to give affect to our recommendation. The Board's position on the matter remained the same as set forth in it response to our letter pursuant to section 19(3) of The Ombudsman Act, 1975.

Accordingly, pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975 a copy of our report and recommendation was forwarded to the Premier.

The Premier's response did not state that any steps would be taken to implement our recommendation.

(58)

SUMMARY OF COMPLAINT

In July of 1948 this complainant was employed as a lumberjack when a sixteen foot log came down a jack ladder and struck him on the inside of his left knee. Traumatic bursitis of the left knee was diagnosed and he was hospitalized for a short period for complete rest and conservative treatment. X-rays taken on three separate occasions revealed no evidence of fracture or dislocation; however, the final x-ray taken in August of 1948 revealed a small calcified area over the posterior portion of the left knee.

The complainant claimed compensation for the injury and was paid temporary total disability benefits until he returned to work in September of 1948. He continued working as a logger until 1973.

A review of the complainant's medical history subsequent to his return to work in September of 1948 indicated that in September of 1968 he attended a local medical clinic and was examined for complaints of pain and continual aching in his left knee. The attending physician noted tender medial ligaments in the knee and referred him to a radiologist who, in turn, noted in his report that there was no evidence of recent fracture or dislocation although there was evidence of osteoarthritis involving the femoral patella as well as the femoral tibial joint.

The complainant sought no further treatment for his knee until June of 1973 when he again attended the same local clinic where the attending physician noted an injured, swollen left knee with tenderness in the medial aspect and over the patella. He was referred to an orthopaedic surgeon. When an injection of cortisone failed to relieve the complainant of his symptoms, an arthotomy was performed which revealed a tear of the medial meniscus in the left knee. A medial meniscectomy was performed in August of 1973. One year later, in August of 1974, it became evident that the surgery had not been successful; consequently, a second operation, a total left knee replacement, was performed in September of 1974. By March of 1975 the complainant's treatment had been completed and he was considered able to return to work although not in the capacity in which he had been formerly employed because of his left knee.

Throughout the time he was under his care, the orthopaedic surgeon submitted reports on the complainant's behalf to the Workmen's Compensation Board on the assumption that the complainant's condition was compensable. In the meantime, the complainant had applied for Workmen's Compensation benefits for his recurrent left knee problems, maintaining that his condition was attributable to the accident which occurred in July of 1948 as he had not suffered any further

injury to his left knee since that time. The Workmen's Compensation Board, however, attributed the complainant's recent knee problems to the natural wear and tear of the knee joint rather than to the injury he had suffered in 1948. Appeals up to and including the Appeals Examiner's level were denied on this basis. At the final level of appeal, the Appeal Board panel directed that the complainant be examined by the orthopaedic surgeon under whose care he had been since 1973 and that this orthopaedic surgeon be provided with all the facts of the case so that he could render an opinion as to the relationship between the disability which became manifest in 1973 and the complainant's accident in 1948. The physician reported in August of 1975 that it was probably the heavy work which the complainant had been performing over the past thirty years which had led to a deterioration in the knee resulting in the surgery. Accordingly, the Appeal Board concluded in its decision that the complainant's left knee replacement was not attributable to the industrial accident he had suffered in July of 1948 and that he was therefore not entitled to Workmen's Compensation.

The complainant complained to our office about the Appeal Board's decision. As the complainant had exhausted his full appeal rights at the Board, the complaint was within our jurisdiction to investigate. Accordingly, pursuant to section 19(1) of The Ombudsman Act, 1975, the Board was informed of our intention to investigate the complaint.

Our investigation of this complaint involved a thorough examination of the Board's file and several telephone interviews with the complainant. As well, because the complainant's orthopaedic surgeon expressed an opinion to the Appeal Board which appeared to be contrary to those opinions expressed throughout his treatment of the complainant, we referred the complainant's entire medical history to an independent specialist for an expert opinion on the relationship between the left knee problems which were manifested in 1973 and the worker's left knee injury of July, 1948. The specialist submitted his opinion in a report in August of 1977.

During our investigation, we formed the tentative conclusion that the Workmen's Compensation Board had acted wrongly in not obtaining an independent medical opinion to determine the relationship between the worker's left knee disability and his accident of July, 1948. We also tentatively concluded that the Workmen's Compensation Board was wrong in denying the complainant entitlement to Workmen's Compensation benefits in the form of temporary total and pension benefits for his left knee disability.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was 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 Board. The Board was invited to make representations respecting the possible adverse report or recommendation and it was suggested that, if it chose to do so, it should address itself to our possible conclusion and possible recommendation as follows:

"POSSIBLE CONCLUSION:

At the present time, based on our investigation so far, it would appear open to me to conclude that the Appeal Board, in its decision of September 9, 1975, wrongly concluded that the torn medial meniscus requiring a meniscectomy and debridement and total knee replacement was not attributable to [the complainant's] industrial accident of July, 1948. I am of the opinion that this position is supported by [the independent specialist's] report in which, having reviewed [the complainant's] medical records dating back to 1948 he concludes,

[the complainant] had a moderately severe injury to his left knee in the accident of July, 1948 resulting in a partial tear of his medial collateral ligament. The resultant laxity of the ligament produced relative instability of his knee joint which combined with strenuous physical work caused degeneration of the medial meniscus and the early development of osteoarthritis in the knee joint. As a result, he had to stop work at age 51 and subsequently had major surgery with complete replacement of his left knee. Therefore, in my opinion, his present left knee disability is directly and wholly attributable to the compensable accident which occurred in July, 1948.

POSSIBLE RECOMMENDATION:

The Appeal Board should cancel its decision dated September 29, 1975

and order that [the complainant] receive entitlement for the periods he was totally disabled between June of 1973 and March of 1975 as a result of his left knee disability and entitlement to a permanent disability award which would recognize the permanent residual effects of [his] left knee replacement."

The accident employer was not notified of our possible conclusion and possible recommendation as the Workmen's Compensation Board informed our office that the accident employer was no longer in business and would, therefore, not be adversely affected should our recommendation be implemented.

The Workmen's Compensation Board responded in January of 1978 by stating that the Appeal Board was satisfied with its decision and did not intend to vary or amend that decision.

We considered the argument raised by the Board that the medical opinion expressed by the specialist retained by our Office was based wholly on the premise that the complainant had suffered a partial tear of the medial collateral ligament of his left knee at the time of his original accident in 1948 and that, in fact, the evidence supporting this premise was weak particularly since there was no evidence in the initial documentation in 1948 that such an injury occurred.

Our review of the specialist's report, however, indicated that the doctor did not begin by assuming that the complainant had suffered a partially torn ligament in 1948; rather he reviewed the complainant's symptoms at the time of the original accident and concluded that, while some of the symptoms were suggestive of traumatic bursitis, the complainant displayed additional symptoms which distinguish a partial tear of the medial collateral ligament from traumatic bursitis. The doctor indicated, then, that the complainant's left knee injury may have been misdiagnosed originally. He went on to support his theory by pointing out the symptoms characteristic of the torn ligament in the years following the original injury and in comparing the symptoms to those found in the complainant's case. The specialist concluded that the complainant did, in fact, suffer a partial ligament tear in 1948 as opposed to a traumatic bursitis. As well, the specialist drew on the findings at the time of the complainant's arthrogram and surgery in August of 1973 which revealed a horizontal tear of the medial meniscus, to account, in retrospect, for the complainant's symptoms characteristic of a torn meniscus over the years between 1948 and 1973.

We concluded, therefore, that the Appeal Board was wrong in its decision to deny the complainant's claim for entitlement for the left knee disability.

We then forwarded a report to the Board pursuant to section 22(3) of The Ombudsman Act, 1975 outlining our opinion that the Appeal Board was not correct to deny the complainant entitlement for the left knee disability which became manifest in 1973. We accordingly recommended that the Appeal Board's decision to deny the complainant benefits be cancelled and that the complainant be held entitled to benefits for the periods he was totally disabled between June of 1973 and March of 1975. We also recommended that he be awarded a permanent disability award which would recognize the permanent residual effects of his left knee replacement. A copy of our final report was also sent to the Minister of Labour.

After receiving our final report, the Board informed us that it still did not plan to implement our recommendation. A copy of our report was sent to the Premier pursuant to sections 22(4) and 22(5) of The Ombudsman Act 1975.

The Premier's response did not state that any steps would be taken to implement our recommendation.

(59)

SUMMARY OF COMPLAINT

The complainant in this case had made a claim for a Widow's Pension on the grounds that her husband's death was caused by industrial disease. This issue was referred to the Advisory Committee on Occupational Chest Diseases. This Committee expressed the opinion that the pathologist's findings with respect to silicosis had no clinical significance. The complainant's claim for a Widow's Pension was, therefore, rejected and her later appeal was denied. Subsequent applications for reconsideration were made in 1974 and 1975 but were rejected on the ground that no new evidence had been presented.

The complainant's husband had been employed in underground mining operations, including seven years in dry drilling operations, for 47 years. Just prior to his retirement in 1960 at the age of 66, he had established a silicosis claim with the Workmen's Compensation Board. Entitlement was not granted as the Board found that his pulmonary disablement was not due to industrial disease.

The complainant's husband died in 1972 at age 78. The immediate cause of death was diagnosed as "pneumonia". An autopsy, however, reported the cause of death as "silicosis superimposed with acute bronchopneumonia". The worker's heart and lungs were sent to the Workmen's Compensation Board for pathological examination. The pathologist's principal finding was acute bronchopneumonia. The second most severe change in the lungs was reported as pulmonary emphysema. The pathologist also reported findings of slight pulmonary silicosis and marked silicosis of the hilar nodes.

The complaint was brought to our attention by a Member of Provincial Parliament and the complainant was interviewed at a private hearing in northern Ontario. A letter pursuant to section 19(1) of The Ombudsman Act, 1975 was forwarded to the Chairman of the Workmen's Compensation Board, advising him of our intention to investigate the complainant's contention that her husband's death was caused by the occupational health hazards associated with his working conditions and that she was, therefore, entitled to a Widow's Pension.

The Board's file was reviewed and further information was obtained from the physicians in northern Ontario who had treated the worker prior to his death. Additional clinical records and chest x-rays were obtained from a central Ontario hospital, to which the worker had been admitted in 1965, and also from a northern Ontario sanatorium where he had been transferred the same year for the treatment of tuberculosis. The available medical data was then sent to a specialist in respiratory disease. The specialist requested further specific information and x-rays. These were obtained from the sanatorium, a northern miners' chest examination station.

and from the Ministry of Health. An effort was also made to obtain reports on the dust content of the mines which employed the worker with special reference to the amount of silica and asbestos. The only available reports were provided through the cooperation of the Ontario Mining Association.

The report of the specialist was forwarded informally to the Chairman of the Workmen's Compensation Board. Following further investigation we reached the tentative conclusion that the decision of the Appeal Board to reject the complainant's claim was unreasonable in the circumstances. Pursuant to section 19(3) of The Ombudsman Act, 1975, this tentative or possible conclusion, together with a possible recommendation, was reported to the Chairman of the Workmen's Compensation Board and to the deceased worker's former employers. Representations from these parties were received and were carefully considered. Since the proper disposition of the complainant's claim depended on medical issues the comments of the Board's Medical Advisors were referred to the specialist mentioned earlier, and to another specialist in the field of respiratory diseases.

The first specialist found definite evidence that the worker had tuberculosis in 1965 and he described this as a recognized complication of silicosis. He was of the further opinion that other diseases reported by the pathologist may or may not have been associated with silicosis. This specialist concluded his report by saying that there was:

"enough evidence in this case for me to recommend compensation to the widow".

The second specialist was of the opinion that the worker's case presented features of a rare syndrome which had been reported in a British medical journal. He stated in his report that:

"the patient died of terminal bronchopneumonia and appeared to have survived to a good age despite his various illnesses. In his last illness his respiratory reserve must have been minimal as a consequence of the severe emphysema. The question must, therefore, be posed as to whether the previous damage to the right middle and lower lobe of the lung [bronchial stenosis of the right lower lobe with bronchiectasis of the right lower and middle lobe] diminished his reserves still further. I would have thought that it probably did and that the benefit of doubt should be given to the patient".

This specialist also alluded to a correlation between silicosis and tuberculosis.

Based on the opinions obtained from these specialists, we concluded, pursuant to Section 22 of The Ombudsman Act, 1975 that the decision rendered by the Board in the complainant's case was "unreasonable".

On April 24, 1978, a report pursuant to Section 22(3) of The Ombudsman Act, 1975 was forwarded to the Workmen's Compensation Board. This report contained our opinion and reasons therefor and also contained the specialists' reports. It was recommended in this report:

"that the benefit of doubt be extended to the claimant, and that the Appeal Board revoke its decision and order that a Widow's Pension be awarded".

It was further recommended:

"that the Appeal Board consider, in the light of the total medical evidence now available, whether the late [worker] might reasonably have been eligible for benefits in his lifetime".

A copy of our report was also sent to the Minister of Labour.

In a letter dated May 5, 1978, the Board advised that the Appeal Board Panel saw no reason to change its view of the case and confirmed its previous decision. The Board advised that its consultant was of the opinion that the most important evidence in considering whether or not occupational factors contributed to the worker's death was not evidence of his clinical condition in 1965 but evidence of the state of his lungs at the time of his death. This consultant was of the opinion that the pathologist did not provide any evidence that there were any structural or cellular changes in the lungs at the time of death due to occupational exposure. This consultant was of the further opinion that the cause of the worker's disability during life was gross emphysema, which was not occupational in origin, and that this was the main reason why he did not survive the acute bronchopneumonia from which he died. The Board's consultant held the view that there was insufficient medical evidence to suggest that the worker's death was related to complications arising from silicosis or any other occupational disorder.

The complainant was forwarded a copy of our report and advised that the Board had declined to implement our recommendations. A copy of the final report and the Board's

response was also sent to the Premier pursuant to Sections 22(4) and 22(5) of The Ombudsman Act, 1975.

The Premier's response to our report did not state that any steps would be taken to implement our recommendation.

(60) SUMMARY OF COMPLAINT

In January of 1972 while employed by the Federal Government, this complainant was involved in a motor vehicle accident. He was treated immediately for a neck disability.

The Workmen's Compensation Board recognized the neck disability as compensable and awarded the complainant benefits.

Approximately fourteen months after the accident, while receiving treatment in the Workmen's Compensation Board hospital, the complainant complained of low back pain. The Workmen's Compensation Board originally extended his entitlement to include a low back disability. However, this original decision was overturned by the Review Committee.

The Board's decision to deny entitlement was based on the opinions of two of their medical consultants who were of the opinion that a relationship between the accident and the low back disability did not exist.

The complainant was of the opinion that his low back problem was related to his accident at work and therefore appealed the decision to deny him entitlement.

In December of 1974 the Appeal Board confirmed the decision to deny further benefits on the ground that the medical evidence did not indicate a relationship between the complainant's low back disability and the motor vehicle accident of January, 1972.

After exhausting the appeal procedure at the Workmen's Compensation Board, the complainant registered a complaint with our office. It was his contention that he had low back disability as a result of the motor vehicle accident of January, 1972, and that his benefits from the Workmen's Compensation Board should have included this disability.

Following an interview with the complainant, the Board was notified pursuant to Section 19(1) of The Ombudsman Act, 1975 of our intention to investigate his complaint.

During our investigation, the complete file from the Workmen's Compensation Board was reviewed. The information presented by the complainant was considered.

Our investigation revealed that the complainant was a seasonal labourer who performed whatever work he could find in the area. From the information available, it became clear that prior to this accident the worker had suffered no significant problem with his low back or his neck. However, after the accident he had persistent pain in both areas, which had caused him to become severely disabled.

Following the accident, the worker returned to work for only a brief period of time and has not worked since 1972. In the course of his conservative treatment the complainant was admitted to the Workmen's Compensation Board Hospital and Rehabilitation Centre on February 13, 1973 for an intensive program of exercise and conditioning. It was during this stay at the Rehabilitation Centre that he first complained of a low back pain. The complainant is still suffering from pain in his neck. However, the problems in his low back are an important factor in his inability to work.

We noted during the course of our investigation that the two doctors who treated the complainant were of the opinion that a possible relationship did exist between the low back disability and the accident at work.

Following a careful review of the Board's file we formed the tentative conclusion that the Workmen's Compensation Board's decision had been wrong and that the Appeal Board's decision should be altered or varied.

Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, the Board and the employer were informed by letter that based on our investigation thus far, it appeared that there were sufficient grounds for the making of a report or recommendation which might adversely affect the Board or the employer. The Board and the employer were invited to make representations respecting the possible adverse report or recommendation and it was suggested that such representations should relate to the following possible conclusions and possible recommendation:

"A. POSSIBLE CONCLUSIONS

It would appear open to me to conclude that the Appeal Board, which rendered its decision on March 3, 1976, wrongly concluded that there was no evidence to support any relationship between a low back disability and the compensable accident of January 7, 1972. I am of the opinion that this position is supported by a report dated May 8, 1976 from [Dr. A.], the family physician who has treated the complainant since the time of the original accident. In this report, [Dr. A.] states:

I am convinced that the present incapacity of [the complainant] is secondary to the motor vehicle accident he was involved in on January 7, 1972. This means that I believe that the cervical and back ailment he is presently impaired with were both caused by the above-mentioned motor vehicle accident.

A report dated May 15, 1975 from [Dr. B.], the orthopaedic surgeon who has treated [the complainant], also supports the position that a relationship did exist. His report states:

The accident was of a severe nature and had the potential to cause a back injury of considerable significance, throughout the spinal axis... The same temporal relationships of his low back complaints is not as good, but nevertheless it is reasonable to suppose that an injury of this area did take place, as he did have some minor grumbling complaints of his low back, while his cervical region was first under treatment. However, his neck complaints were so severe that the low back complaints were not of prime importance. After many months, his back tended to worsen, rather than improve, and became a separate source of considerable symptomology. It is quite possible that the injury of the low back occurred at the time of the accident, and when combined with the underlying degenerative disc process already of considerable magnitude, was sufficient to cause an increased rate of degeneration, which then became more obvious with increased symptoms at a later date.

POSSIBLE RECOMMENDATIONS

The Appeal Board should vary its decision dated March 3, 1976 and order that [the complainant] be granted entitlement to a Permanent Disability Award in recognition of a low back disability.

In its response to our tentative conclusions, the Board stated in part:

"The Board had before it the possibilities but did not consider these as constituting reasonable doubt. The picture has not changed. Therefore there is no indication that an amendment of the Board's decision how question is warranted."

The employer responded and offered no objections to our possible recommendation.

After a review of the Board's response we sent a report pursuant to Section 22(3) of The Ombudsman Act, 1975 to the Board which stated in part:

"The issue before the Board was whether there is a relationship between the low back disability and the compensable accident. I am of the opinion that the medical reports of [the complainant's] treating physicians summarized below support the position that such a relationship does exist. [Dr. A.], the family physician, states in a report dated May 8, 1976, "I believe that the cervical and back ailment he is presently impaired with were both caused by the above-mentioned motor vehicle accident". [Dr. B.], the orthopaedic surgeon who originally treated [the complainant], at the Board's request states in a report dated May 15, 1975, "It is quite possible that the injury of the low back occurred at the time of the accident and when combined with the underlying degenerative process...was sufficient to cause an increased rate of degeneration". Both [Dr. C. and Dr. D.], Surgical Consultants employed by the Workmen's Compensation Board, disagree with these opinions. In my opinion, however, there still exists a reasonable doubt regarding the justification of the case, especially when it is remembered that two doctors supporting [the complainant's] case have been treating him on a regular basis for some time.

I have accordingly determined, pursuant to section 22(3) of The Ombudsman Act, 1975, that the Appeal Board that heard [the complainant's] appeal wrongly concluded that there was no evidence to support any relationship between a low back disability and the compensable accident. It is my recommendation, pursuant to section 22(3)(c)

that the Appeal Board should revoke its decision dated March 3, 1976 and order that [the complainant] be granted entitlement to a Permanent Disability Award in recognition of a low back disability."

A copy of this report was also sent to the Minister of Labour.

The Board informed our Office that there was no change in its position and that it did not intend to implement our recommendation.

The final report and responses were then sent to the Premier pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975. The complainant was also provided with a copy of our final report.

The Premier's response to our report did not state that any steps would be taken to implement our recommendation.

(61)

SUMMARY OF COMPLAINT

The complainant in this case was employed as a mechanic with an engineering firm, between the years 1973 and 1977. In the summer of 1976, the complainant was working on a boring mill, handling a pipe approximately 10 feet long, 11 inches in diameter and about 1 inch thick. His job was to cut this 10-foot pipe into rings. At one point during this procedure, the pipe twisted loose from its holding bracket. In an attempt to stop the machine, the complainant fell backwards, landing on his buttocks. The complainant reported that there was a steel post behind him which he may have hit on his upper back and neck. The complainant continued working for the remaining two hours of his shift. The following day, the complainant commenced a two-week vacation period.

During the next two weeks following his injury, the worker felt increasing pain in his back and neck. In July of 1976, he felt it necessary to be examined by his family physician for continuing pain in his right arm, neck and shoulder. His family physician diagnosed his condition as cervical disc syndrome and ordered a stay in hospital for further treatment. In early August, 1976, the complainant was discharged from hospital. At the time of his discharge, his diagnosis included both disc syndrome and narrow cervical disc and nerve root compression. It was at the time of his discharge from hospital that he related his disability to his injury at work. Following his release from hospital, the complainant submitted an Accident Report to his employer

who, in turn, notified the Workmen's Compensation Board. The claim was investigated and the Board forwarded a letter to the complainant outlining its decision to deny him benefits. The Claims Review Branch notified him by letter that:

"field service to assist in establishing your claim has failed to produce any evidence in support of the injury as claimed to have occurred on July 16, 1976".

The complainant appealed the Board's decision regarding his claim. An Appeal Board decision dated June 27, 1977 stated that:

"The relationship between the accident of July 16, 1976 and the disability commencing on July 27, 1976 has not been established".

Based on this decision, the complainant assumed that the Workmen's Compensation Board did not question the issue of accident recognition but rather decided that a medical relationship had not been established between the alleged accident and the diagnosed disability. Following the Appeal Board's decision, the complainant brought his complaint to our Office. As the complainant had exhausted all the appeal rights open to him at the Workmen's Compensation Board, it was determined that his complaint was within our jurisdiction to investigate. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Workmen's Compensation Board was informed of our intention to investigate this complaint.

Our investigator interviewed the worker to obtain further details regarding this case. In addition, the Ombudsman Liaison Officer at the Workmen's Compensation Board was contacted regarding this case. Our investigation revealed that a discrepancy existed as to whether the Workmen's Compensation Board questioned the issue of accident recognition. Our investigator discussed the issue of accident recognition with the Ombudsman Liaison Officer at the Board. The Board's representative agreed that a discrepancy arose between the Claims Review Branch's decision and the Appeal Board decision. However, our investigator was informed that the Appeal Board decision did not appear to question the issue of accident recognition. In light of the wording of the Appeal Board decision and our investigator's discussion with the Board's representative, our investigation proceeded under the assumption that the Board accepted the fact that this worker was injured during the course of his employment in July of 1976.

The investigation conducted by our office revealed that the complainant did not immediately report his injury to the Board or employer, or seek medical attention until

some time after the injury. The complainant explained that at the time, he did not feel that his injury was serious enough to warrant a report to the appropriate persons.

Our investigation also revealed that during his stay in a London, Ontario hospital, the complainant was treated by a noted specialist in the field of neurosurgery. A report from this physician stated in part:

"I think there is little doubt that this man exhibits a clear-cut history and now physical findings of C6 root compression syndrome on the right. It would be my opinion that he has a significant herniation of disc material from the C5-6 disc with the C6 root being compressed on the right. I would think it is likely that this is a work-related injury".

In a follow-up report, this physician reported:

"It is my opinion that this man's complaint of neck and right arm pain with numbness of the thumb and index finger of his right hand is caused by compression of his C6 nerve root on the right side by disc material extruding from C5-6 disc. It would further be my opinion that this is a work-related injury and specifically by history, from the injury which occurred on the 16th day of July, 1976".

Our investigation revealed that this particular physician treated the worker for a number of months following his July, 1976 injury. Based on this physician's report, the complainant was awarded life insurance disability benefits for his ongoing disability. The medical consultants at the Workmen's Compensation Board did not appear to disagree with the diagnosis in this claim. The surgical consultant at the Board filed a report in February, 1976 that stated:

"[This worker's] claim was reviewed concerning entitlement and it was noted that the diagnosis appeared to be the double one of cervical degenerative disc disease maximal at the C5-6 interspace together with calcified rotator cuff problems in the right shoulder. The accident was unwitnessed and it occurred on July 16, 1976. No mention of the accident was made when

[the worker] initially saw the doctor on the 27th of July, 1976 and he did not report the accident to the employer until August 10, 1976. Really significant symptoms only started on July 27, 1976. By the injured employee's own admission, his association was a retrospective one".

Based on these facts, the Board's surgical consultant did not recommend acceptance of the claim. The Board agreed with the Consultant's opinion, and denied this claim.

During our investigation, we formed the tentative opinion that the Workmen's Compensation Board had acted unreasonably and that the Appeal Board's Decision of June 27, 1977 should be reconsidered. Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Chairman of the Workmen's Compensation Board was notified by letter that, based on our investigation thus far, it appeared that there were sufficient grounds for the making of a report or recommendation which might adversely affect the Board. Our office was informed by a senior representative of the Workmen's Compensation Board that the employer in this case, would not be affected by any such report. Therefore, the employer was not informed of our investigation. The Board was 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 conclusion and possible recommendation:

"Possible Conclusion

It would appear that it may be open to me to conclude, pursuant to Section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board in its decision dated June 27, 1977 was unreasonable to conclude that [the worker's] diagnosed conditions are not the result of an injury sustained on July 16, 1976."

This conclusion was based on the medical reports from both the Board's consultants and the treating specialist in this case. It was our opinion that since all consulting physicians agreed as to the claimant's condition and the outside treating specialist specifically related the condition to an injury sustained in July, 1976, the worker should be granted benefit of the doubt.

"Possible Recommendation

It would appear that it might be open to me to recommend, pursuant to section 22(3)(e) of The Ombudsman Act, 1975 that the Appeal Board Panel should reconsider its decision of June 27, 1977 with the view to grant [the worker] entitlement to compensation benefits for his injury of July 16, 1976."

The Chairman, in his response to this letter, informed us that the members of the Appeal Board Panel and the Board would not implement our possible recommendation. In addition, the Chairman stated that:

"The Appeal Board Panel in its decision of June 27, 1977 referred to the alleged accident and did not and does not accept that [this worker] suffered an accident in employment on July 16, 1976 and even if the accident did happen as alleged that the diagnosed conditions were not the result of any such accidents".

The case was reviewed in light of the Board's response. After reviewing the original Appeal Board decision, (June 27, 1977) we concluded that this decision did not appear to raise the question of accident recognition. Our office felt that it was unfair for the Workmen's Compensation Board, at this time, to state that accident recognition was, in fact, an issue. We therefore forwarded a report pursuant to Section 22 of The Ombudsman Act, 1975, containing the above-noted recommendation to the Chairman of the Workmen's Compensation Board and the Minister of Labour.

The Report stated in part:

"It is my recommendation, pursuant to Section 22(3)(c) of The Ombudsman Act, 1975, that the Workmen's Compensation Board should revoke its decision of June 27, 1977 and rule that [the worker] be awarded Temporary Total Disability Benefits for time lost at work as a result of his compensable injury of July 16, 1976".

The Chairman of the Board responded to our recommendation in a letter wherein he stated:

"The Board does not propose to take any steps to give effect to your

recommendation that the Board revoke its decision of June 27, 1977 and award [the complainant] Temporary Total Disability Benefits as a result of his compensable injury of July 16, 1976. A copy of the response of the Appeal Board to your Section 19(3) letter of April 10, 1978 is attached hereto".

The Minister of Labour did not wish to comment on our recommendation.

On August 11, 1978, a copy of our report and recommendation was forwarded to the Premier pursuant to Section 22(4) and 24(5) of The Ombudsman Act, 1975. On September 15, 1978, the Premier forwarded a letter to our office, acknowledging receipt of this report. The Premier did not state that any steps would be taken to implement our recommendation. On September 18, 1978, the complainant and the Board were informed of the results of our investigation.

(62)

SUMMARY OF COMPLAINT

This complainant attended a private hearing in northern Ontario to request assistance in obtaining additional benefits from the Workmen's Compensation Board.

The information provided by the complainant, indicated that he had appealed a decision concerning his claim to the Appeal Board. He stated that his appeal had been allowed and that the Appeal Board decision of July 1977, had granted him entitlement to Temporary Total Disability benefits for a prior period when he had received Temporary Partial Disability benefits (50%). However, he stated that he had yet to receive this additional award.

Our investigator contacted a senior official at the Board concerning his complaint. When the claim file was reviewed, the Board official informed our Office that no action had been taken since the decision was rendered. No specific reason for the delay was determined and the official expressed the opinion that it had been an oversight.

Shortly after our inquiry, the complainant received a cheque from the Board in the amount of \$3,659.75.

(63)

SUMMARY OF COMPLAINT

This complainant brought to our attention a complaint concerning two separate decisions of the Workmen's Compensa-

tion Board with respect to her claim for continuing benefits. These decisions concerned a six month period of time when her Temporary Total Disability benefits were reduced and subsequently, the termination of her ongoing benefits.

Our investigator's inquiry with the Workmen's Compensation Board revealed that both issues were appealable; however, upon our request a review was made of the reasons for the reduction in benefits.

Following this review, it was the Workmen's Compensation Board's opinion that adequate notification had not been given to the complainant at the time her benefits were reduced. For this reason the Workmen's Compensation Board adjusted the previous partial benefits awarded to Temporary Total benefits, to the date on which notification had been forwarded.

Therefore, the action initiated by our Office resulted in the complainant receiving an additional award of approximately \$370.

(64)

SUMMARY OF COMPLAINT

In December of 1969, this complainant injured his low back while lifting a heavy piece of steel. A claim was submitted to the Workmen's Compensation Board and the complainant received Temporary Total Disability Benefits until his return to work the following year. Prior to the complainant's return to work, he was awarded a permanent disability award recognizing the residual disability in his low back which, according to the medical evidence, was directly attributable to his original injury.

In the spring of 1971, he suffered a recurrence of his disability and was forced to lay off work for a two-month period. During this period, he received Total Disability Benefits from the Workmen's Compensation Board. In March of 1972, the complainant suffered a third injury to his low back. Once again a claim was submitted to the Workmen's Compensation Board and he received disability benefits for time lost from work. As the medical evidence did not indicate a measurable deterioration of his low back as a result of his second and third injuries, the Workmen's Compensation Board did not increase his Permanent Disability Pension.

The complainant appealed to the Workmen's Compensation Board for an increase in his Permanent Disability Pension. The Board conducted a medical investigation of his claim and ruled that insufficient medical evidence existed to support his contention that his low back disability was greater than

that represented by his present pension assessment. In addition, an Appeal Board Panel ruled that the complainant was not entitled to further disability benefits as a result of his compensable injuries. Following this decision, he complained to our Office.

After determining that the worker's complaint was within our jurisdiction, we sent a letter pursuant to Section 19(1) of The Ombudsman Act, 1975 to the Chairman of the Workmen's Compensation Board. This letter informed the Board's Chairman of our intention to investigate this complaint. Our investigation of this complaint consisted of a personal interview with the worker to obtain further information in addition to a complete review of the Workmen's Compensation Board's file. The case was also discussed with senior representatives of the Board.

The investigation of this complaint revealed that prior to any compensable injury, the complainant suffered from degenerative disc disease of the lower spine to such an extent that in 1958 he required a laminectomy. In addition, our investigation revealed that the complainant suffered a compensable back strain in August of 1965 while employed as a labourer with a furniture company. Our investigation focused on the medical evidence contained in the Board's file. Our investigation revealed that the medical evidence was not, for the most part, supportive of the complainant's contention that his entire ongoing back disability was directly attributable to his compensable injuries. It was noted that the medical consultants at the Workmen's Compensation Board were in agreement that the complainant's compensable injuries played a minor role in his present disability and attributed the major portion of that disability to his pre-existing back condition. Other medical specialists who were not associated with the Workmen's Compensation Board also appeared to be in agreement with the Board's theory. Our investigation also revealed that on a number of occasions, it was suggested that the complainant undergo corrective surgery for his low back disability. The complainant however, was adamantly opposed to any form of surgery.

Based on the opinions expressed by the medical consultants involved in this case, and the complainant's pre-accident history, it was our conclusion that the Appeal Board's decision to deny the worker an increase in his disability pension was not unreasonable. We also concluded, based on the medical evidence contained in this file, that the Workmen's Compensation Board's decision to deny the worker further entitlement as a result of his compensable injuries was not unreasonable. It was our conclusion that although the worker was significantly disabled, only a small portion of that disability could be medically related to his compensable injuries.

Our investigator noted that the complainant expressed a desire to obtain some form of rehabilitative training from the Workmen's Compensation Board. We contacted a senior representative of the Board to discuss the possibilities of retraining this worker. As a result of this inquiry, our Office was informed that the Board had, in the past, made numerous attempts to retrain him. According to the Board's files, the complainant had withdrawn from a retraining program aimed at placing him in a position within his physical capabilities. Our Office was also informed that the complainant had terminated his employment with a number of firms, which in the opinion of the Board, had provided the worker with suitable modified employment. However, as a result of our inquiry, the Board's representative agreed that if the complainant took the initiative to seek employment, the Board would be pleased to offer the services of its Rehabilitation Department.

In April of 1978, a final report was forwarded to the Workmen's Compensation Board and the complainant, outlining our conclusions and reasons therefor. Our covering letter to the complainant stressed the Board's willingness to assist him in returning to the work force.

(65)

SUMMARY OF COMPLAINT

This complainant contended that her husband's death in September of 1975 was directly attributable to his industrial accident which occurred in December of 1972. She claimed that she should receive entitlement to Widow's Benefits from the Workmen's Compensation Board.

In December of 1972 the complainant's husband, an electrician, sustained severe electrical burns when he came in contact with a 12,000 Volt bus-bar while installing high voltage cables. The electrical current entered his left hand and exited through his neck, resulting in third-degree electrical burns in the left axilla, the neck and the occiput. Following his accident, the worker underwent a corrective amputation below his left elbow and a split skin graft from his left thigh to the burnt area on his neck.

The Workmen's Compensation Board awarded him a 50% pension for the loss of his left arm and a 10% pension in recognition of the sub-occipital and neck problem. He was subsequently fitted with a prosthesis and placed in a rehabilitation program. He was able to resume modified work with the accident employer in July of 1973.

In July of 1975, at the request of the worker's family physician, he was examined by a specialist in internal

medicine who diagnosed angina. The specialist noted that the worker's electrocardiograph revealed an increase in his left ventricular strain pattern and/or antro-lateral wall ischemia when compared to his electrocardiograph of February, 1975. Further tests were ordered after which it was the opinion of this specialist that in view of the worker's aortic stenosis and severe and rapidly onsetting angina, he should be considered for a referral to a cardiac unit for investigation and consideration of aortic valve replacement.

The worker was subsequently seen by a cardiologist whose examination revealed the presence of significant aortic valve disease with severe coronary artery disease within the circumflex coronary artery. The catheter note showed reduced cardiac output, severe aortic stenosis, significant aortic regurgitation and significant double vessel coronary artery disease.

In September of 1975, the worker underwent surgery for an aortic valve replacement as well as an aortic-coronary bypass to the circumflex coronary artery. Approximately two weeks following his surgery, he experienced a sudden onset of severe temporal pain in his head requiring admission to hospital. Upon arrival, the worker's condition deteriorated rapidly and he became unconscious. He died two days later of an intra-cerebral hemorrhage, never having regained consciousness.

At the widow's Appeal Board Hearing on October 15, 1976, her lawyer contended on her behalf that the worker's death was causally related to his compensable accident and that she, therefore, was entitled to Widow's Benefits. The Board considered existing reports from the worker's family physician and two specialists who had treated him. Two of these physicians addressed themselves specifically to the question of whether his death of a cerebral hemorrhage was related to the industrial accident of September, 1972. One, a cardiologist, was of the opinion that:

"Neither aortic stenosis which was the worker's main problem, nor coronary artery disease could in any way be attributed to an electrical shock".

However, the worker's family physician was of the view that notwithstanding his heart valve lesion which was present many years before the accident:

"his accident did help to cause his severe heart discomfort on exertion...and it was on account of this anginal pain that he was investigated and then underwent heart

surgery, following which he was on anti-coagulants to prevent his blood from clotting, and I think that this would have contributed to his cerebral hemorrhage which caused his death".

Prior to handing down its decision the Appeal Board requested a second cardiologist to address himself to the question of a possible relationship between the worker's compensable accident and his death. Having reviewed all relevant medical documentation, this specialist expressed the opinion that the industrial accident of December, 1972 did not in any way influence the course or natural history of the worker's aortic valve disease or his coronary artery disease and that his accident could not in any way be related to his death. Having received this statement, the Appeal Board concluded that the worker's death was not causally related to nor the result of his compensable accident of December, 1972.

The widow disputed the Board's decision and registered a complaint with our Office, at a private hearing held in the spring of 1977. It was determined that the complaint was within our jurisdiction as the complainant had exhausted all avenues of appeal.

The Board was advised, pursuant to section 19(1) of The Ombudsman Act, 1975, of our intention to investigate this complaint. The Board's file was reviewed with particular reference to the medical reports. In addressing the question of a possible relationship between the worker's compensable accident and the cause of his death, there appeared to be a difference between the opinion expressed by the worker's family physician, and that of the two cardiologists.

Our investigator contacted the widow to discuss the difficulties in evaluating the medical issues of this case and advised her of our intention to obtain a further independent cardiological opinion.

After receiving a report from this 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 also of the opinion that the workman's disastrous electric shock of December, 1972 did not influence the course or natural history of his aortic valve stenosis or his coronary artery disease.

We concluded therefore that the Board was not unreasonable in denying the complainant's request for Widow's Benefits.

Accordingly, pursuant to section 23(2) of The Ombudsman Act, 1975, our final 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.

(66)

SUMMARY OF COMPLAINT

This complainant was employed as an underground miner in a uranium mine in northern Ontario from 1957 to 1962. Prior to that, he had worked as an underground coal miner in Nova Scotia from 1946 to 1948 and in Alberta from 1948 to 1953. His total exposure to dust was 132 months, 48 of which were in Ontario. He had not worked in the mines since 1962.

In 1964, the complainant filed a claim with the Workmen's Compensation Board for silicosis as he was experiencing shortness of breath which he attributed to the inhalation of silica in the course of his former employment as a miner. The Board referred him to the Advisory Committee on Occupational Chest Diseases where he was examined and x-rayed. The diagnosis was chronic bronchitis and probably slight emphysema. There was no evidence of silicosis. The Review Branch of the Workmen's Compensation Board denied the complainant's claim for benefits.

The complainant appealed this decision and requested that the Board obtain the report of his doctor, a specialist in internal medicine. The report stated, however, that the complainant's x-rays showed no evidence of silicotic nodules or any pulmonary fibrosis. The doctor concluded that there was no evidence either radiologically or in terms of pulmonary function tests of any pulmonary fibrosis with or without silicosis. He advised the complainant to quit smoking and prescribed the use of broncho-dilators. The Appeal Board denied the complainant's claim for benefits for silicosis.

In 1976, the complainant was admitted to hospital. Although he was admitted under the care of his specialist in internal medicine, the report was written by a resident. The resident informed the complainant that he had silicosis; however, in his report he described the investigations which were carried out but made no mention of any findings of silicosis whatsoever. The final discharge diagnosis did indicate silicosis, although there was no apparent explanation for the diagnosis. In fact, the specialist subsequently submitted a report which indicated that the complainant did not have silicosis.

It was on the strength of the resident physician's statement to him that the complainant contacted our Office

complaining of the Appeal Board's decision and requesting that we investigate his claim against the Board. The Chairman of the Board was contacted in accordance with the requirements of Section 19(1) of The Ombudsman Act, 1975 and advised of our intention to investigate this complaint.

After contacting the complainant and receiving further information relating to his complaint, our investigator reviewed the contents of the complainant's Workmen's Compensation Board file. As well, our investigator consulted with two of the leading authorities on occupational chest diseases, the former Chief of the Chest Clinic at Sunnybrook Hospital, and the Director of the Occupational Health Programme at McMaster University in Hamilton, and the Chest Consultant at the Workmen's Compensation Board. These physicians all agreed that the primary cause of bronchitis is cigarette smoking and that a relationship had not been established between bronchitis and underground mining. Similarly, emphysema has not been found to have a relationship to underground mining.

We concluded from our investigation that the complainant was not suffering from silicosis and that his disabling condition which had been diagnosed as chronic bronchitis and emphysema is neither peculiar to nor characteristic of a particular industrial process, trade or occupation. We concluded that his condition was, therefore, not compensable under the terms of Section 118 of The Workmen's Compensation Act.

The complainant and the Workmen's Compensation Board were advised that we were unable to support this complaint.

(67)

SUMMARY OF COMPLAINT

This complainant indicated that he had sustained an injury in the course of his duties as a volunteer firefighter in November of 1973 when a beam fell on his right shoulder while he was at the scene of a fire. Although his shoulder was painful, the complainant stated that he did not report his accident at that time as he felt his injury was not serious enough to warrant medical attention. According to the complainant, approximately one week later, the persisting pain prompted him to seek treatment from the Fire Department's physician and later his own family doctor who in turn made arrangements for admission to hospital in March, 1974 for surgery. Following his operation, the complainant stated that he was unable to return to work for 15 weeks.

When the complainant attempted to establish entitlement for benefits from the Workmen's Compensation Board, the Board conducted an investigation of the accident as reported

and concluded that the claim could not be supported as the date and history of the accident could not be substantiated.

In May of 1976, during his interview with an official of the Workmen's Compensation Board, the complainant stated that his initial account of the accident was untrue and that he now wished to clarify matters. According to the complainant, his injury actually occurred in March of 1973 when he assisted at the scene of a house and garage fire. He indicated that on that occasion he had entered the garage after the fire had been extinguished and while in the process of pulling down the roof of the garage, he was struck on the right shoulder by a beam. He thought that the pain would pass and therefore did not report the injury at that time; however, due to the continuing discomfort in his right shoulder, the complainant stated that he was forced to seek medical attention approximately one week later from the Fire Department's physician who arranged for x-rays to be taken. The history of ongoing medical treatment described by the complainant during this interview remained essentially the same as he had reported previously.

Having received this second account of the date and history of the complainant's accident, the Workmen's Compensation Board investigated the matter further and concluded that while continuity of the complaint had been established through his co-workers, it had not been established that an accident had occurred as stated on the date in question. The Appeal Board of the Workmen's Compensation Board therefore concluded that the complainant did not sustain personal injury arising out of and in the course of his employment and consequently denied the complainant's appeal.

The complainant was dissatisfied with the Board's decision and proceeded through the Board's appeal system. The Appeal Board, the final level of appeal, confirmed the previous decisions to deny the claim.

The complainant brought this matter to our attention during a personal interview. It was determined that the entire appeal process had been exhausted and that therefore the complaint was within our jurisdiction to investigate.

The Board was advised, pursuant to Section 19(1) of The Ombudsman Act, 1975, of our intention to investigate this complaint.

Our investigation focused upon clarifying the events surrounding the accident of March, 1973 as reported by the complainant. Statements submitted by the Fire Chief and other co-workers, as well as all available medical evidence were thoroughly reviewed. Further information given by the complainant and one of his former co-workers was taken into consideration.

Information provided by the Fire Department revealed that none of the complainant's co-workers at the Fire Department had witnessed the accident and no report to the Department regarding the injury had been made by the complainant. From the available photographs of the scene of the fire, it appeared that it was impossible to enter the garage or structure before, during or after the fire. The photographs further revealed that the garage roof and beams were intact and only a car inside the garage was burned. It was the Department's position that as there were a number of permanent firemen on the scene, they would have been the individuals designated to enter the garage after the fire was over, rather than a volunteer worker. At no time was the complainant instructed to enter the garage for any reason.

Our investigation revealed that the complainant had spoken of pain in his right shoulder to several of his co-workers at a recreation centre where he was employed from August to October, 1973. Initially, the complainant had maintained that he sought medical treatment approximately one week after his accident. Later, he stated that it was in fact one month after his accident that he saw the Department's physician who sent him for x-rays. This physician is no longer practising medicine; however, the records which he turned over to another physician indicate that the complainant was seen in March of 1973 for an unrelated problem. No other entries in these records were made other than a copy of a right shoulder x-ray taken in October of 1973. A notation on the x-ray report indicates that it is the original x-ray and not a repeat examination.

The complainant's family physician noted in his records that the complainant had attended at his office in January of 1974 complaining of right shoulder pain for the previous four or five months which he related to an injury in March of 1973 when a heavy beam fell on his shoulder.

After reviewing all available evidence, we formed the opinion that the complaint against the Board could not be supported as the weight of evidence both historical and medical did not support the complaint. In view of the complainant's delay in reporting the accident and in seeking medical treatment as well as the discrepancies in the accident history, we were unable to establish that the complainant's right shoulder injury occurred in the course of his employment in March, 1973 as he reported.

Accordingly, pursuant to Section 23(2) of The Ombudsman Act, 1975 our final 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.

(68)

SUMMARY OF COMPLAINT

The complainant, an employer in Ontario, had received numerous statements from the Workmen's Compensation Board requesting payment for coverage for her employees during her first year of business.

However, these statements were not self-explanatory and the complainant tried unsuccessfully on several occasions to clarify them with the Board.

During a private hearing in northern Ontario, the complainant brought her complaint to our attention.

Our investigator contacted the Revenue Assessment Branch of the Workmen's Compensation Board concerning the complaint. The day following our inquiry, a Workmen's Compensation Board staff member spoke with our investigator and correspondence was immediately forwarded by the Revenue Branch, providing the complainant with a detailed explanation of the assessments to date.

(69)

SUMMARY OF COMPLAINT

In September of 1978, this complainant contacted our Office regarding a complaint against the Workmen's Compensation Board. He stated that in 1964, he had sustained a back injury for which he claimed Workmen's Compensation benefits and for which he was paid benefits by the Board for a period of two to three years. Since that time, however, he had received neither further benefits nor any correspondence from the Board regarding the disposition of his claim.

Our investigator contacted the office of the Chairman of the Workmen's Compensation Board and was informed that in 1967 the complainant was assessed by the Board's Pensions Medical Department to determine the extent of the residual effects of his accident and to award him a pension accordingly. At that time, his permanent disability was assessed at 15%; however, before the pension was processed and made payable to him, he claimed compensation for a hearing loss related to the same accident. The attention in his claim was then focused on whether or not he had entitlement for the hearing loss so that, if he had, the pension for his back and the pension for the hearing loss could be consolidated. It was ultimately decided that he did not have entitlement for the hearing loss and the Board closed his claim, neglecting to pay him the 15% pension previously decided upon for the back injury.

As a result of our inquiries, the complainant was awarded the monetary equivalent of a 15% pension retroactive

to 1967 in a lump sum. This award took into account all of the amendments to The Workmen's Compensation Act from 1967 to 1978 which allowed for various pension increases to reflect the rising cost of living. As well, the Pensions Medical Department arranged for a reassessment of the complainant's back condition so that the pension he would continue to receive would reflect the degree of his current disability, rather than as it was rated in 1967.

(70)

SUMMARY OF COMPLAINT

This complaint was brought to our attention at a private hearing and concerned the Workmen's Compensation Board's delay in considering the complainant's entitlement to a hearing aid.

The complainant indicated that he had originally established a hearing loss claim with the Workmen's Compensation Board in 1973 and subsequently received a lump sum Permanent Partial Disability Award with respect to his hearing loss. In 1976 he was assessed by a specialist and then requested a hearing aid from the Board. He told us that the Board had not received a report from the specialist nor had he received authorization to purchase his hearing aid. He therefore requested our assistance.

Our inquiry revealed that the Workmen's Compensation Board had attempted since 1976 to obtain the medical report of the complainant's condition but had been unsuccessful. We were also informed that three months before our inquiries a Workmen's Compensation Board staff physician had examined the file and had recommended that a hearing aid be granted to the complainant; however, the complainant had not yet been so advised.

As a result of our inquiry, the Workmen's Compensation Board advised the complainant, in writing, of his entitlement to a hearing aid and to a further review of his claim to consider if a more up-to-date medical report was necessary regarding his present degree of hearing loss.

A subsequent telephone conversation by our investigator confirmed that the complainant had been provided with a hearing aid by the Board.

(71)

SUMMARY OF COMPLAINT

In 1963, this complainant was employed as a labourer with a mining company in northern Ontario. In October of 1963, during the course of his employment, the complainant

was working on a scaffold helping to set a blast for a raised tunnel. According to the complainant's report, some loose rock above him fell down striking him on the foot and on the back. In an attempt to escape the falling rock, the complainant stated that he jumped down from the scaffold, a distance of approximately 12 feet. Immediately following this incident, the complainant was treated by the company's physician for an abrasion and contusion of the left foot.

A claim was submitted to the Workmen's Compensation Board and the complainant received Temporary Total Disability Benefits for the acute period of disability. He returned to work approximately two weeks following his injury.

In April of 1964, he began experiencing continued pain in the lower back. Medical treatment was sought and it was determined that the most appropriate remedy would be surgery. The complainant submitted a second claim to the Workmen's Compensation Board claiming that his ongoing back disability was related to his original compensable injury. The Board investigated his claim and concluded that in addition to insufficient medical evidence relating the ongoing disability to the compensable injury, his file did not contain sufficient evidence to conclude that an injury to the low back had, in fact, occurred at the time of the original incident. Accordingly, the Board denied the complainant further entitlement. This decision was appealed and upheld by an Appeal Board Panel. Following this adverse decision, the complaint was brought to our attention by the complainant's Member of Provincial Parliament.

As it was clear that the complaint was within our jurisdiction, the Chairman of the Workmen's Compensation Board was notified, pursuant to section 19(1) of The Ombudsman Act, 1975 of our intention to investigate his complaint.

Our investigation involved a thorough review of the Board's file and discussions with the complainant.

The investigation revealed that the worker began to experience continuing pain in the low back in April of 1964. There was no mention of back pain in any reports at the time of the accident in 1963. In addition, none of the medical reports contained in the complainant's file directly related his ongoing back disability to his compensable injury. Our investigation disclosed that his back disability was most likely attributable to a non-compensable pre-existing condition. In light of the medical reports contained in this complainant's file and the facts surrounding the compensable injury, it was our conclusion that the Appeal Board's Decision in this case was not "unreasonable, unjust, oppressive, or improperly discriminatory". Accordingly, a final report was forwarded to the complainant and to the Workmen's Compensation Board outlining our conclusions and reasons therefor. This complaint was found to be unsupported.

(72)

SUMMARY OF COMPLAINT

This complainant was working on a construction site pulling cables. The cables were up to two inches thick and varied in length from 200 to 2000 feet. Two days prior to his assignment to this duty, the complainant had purchased new safety boots from a distributor, authorized to sell at the company's various work sites. These were the boots the complainant was wearing at the time of the incident. At the end of his shift, the complainant noted blister formations extending along both sides of his heels and also on the bottom of his feet.

The complainant subsequently laid off work for a period of eight weeks during which time he was treated by a plastic surgeon for severe ulcerations on both feet. The incident was reported to the appropriate Board officials following his medical examination; however, the complainant was refused compensation benefits. In deciding this claim, the Appeal Board of the Workmen's Compensation Board ruled that the injuries had not arisen out of or in the course of his employment. The Appeal Board's decision noted that the worker had purchased the safety boots of his own volition.

The complainant then sought our assistance in dealing with this claim against the Board.

As the complainant had exercised his full appeal rights at the Board, the complaint was within our jurisdiction to investigate. Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was informed of our intention to investigate the worker's complaint.

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 as well as two consultations with his attending physician.

During our investigation, we formed the tentative conclusion that the complainant's disability arose out of and in the course of his employment.

Accordingly, pursuant to Section 19(3) of The Ombudsman Act, 1975 the complainant's employer and the Chairman of the Workmen's Compensation Board were informed that, based on our investigation at that point, there possibly 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 the possible adverse report or recommendation and 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

It would appear open to me to conclude that the injury sustained on May 30, 1975, resulting in a work lay-off from June 2, 1975 until July 18, 1975, arose out of and in the course of his employment as substantiated by the following:

i) the complainant bought new work boots that were certified by the C.S.A. from a dealer who was approved by the complainant's company to sell its safety boots on the premises of the latter;

ii) the injury sustained out of and in the course of the complainant's normal range of duties with his employer;

iii) the complainant should have been given the benefit of a doubt with regard to purchasing boots that were a proper fit considering the fact that he had never encountered any problems with blisters in the seven years prior to this accident;

iv) the opinion of the supervising medical specialist, who feels that the combination of vigorous work involving a strain on the heels, and the relatively new boots could have caused the blisters such as those this man sustained on May 30, 1975."

Our letter continued:

POSSIBLE RECOMMENDATIONS

The Workmen's Compensation Board Appeal Board's Decision should be varied and the complainant should be granted total temporary compensation benefits for his work lay-off of June 2, 1975 to July 18, 1975 which resulted from his employment accident sustained on May 30, 1975."

The Board in its response stated in part that:

"...It was the boots and not the work that was responsible for the disability now under consideration."

The Board's response continued indicating that it could not accept our possible recommendation.

The employer also responded stating that although they subsidized the purchase of the boots, the employee was not absolved of his personal responsibility to purchase boots which fit properly and enabled him to discharge his duties without injury to himself. They stated that they could not therefore, endorse our possible recommendation.

After giving careful consideration to these representations we did not change our views on the case. Accordingly, a report pursuant to Section 22 of The Ombudsman Act, 1975 was sent to the Board and a copy was sent to the Minister of Labour. In this report, we expressed the opinion that the Appeal Board's Decision was unreasonable and we recommended that the decision be revoked and total temporary benefits be paid to the complainant for the time he was off work.

The Board reconsidered its previous decision after receiving our report and recommendation and granted the complainant benefits for the time he was off work due to his injured feet.

The complainant was advised of the results of our investigation and the file was then closed.

(73)

SUMMARY OF COMPLAINT

This complainant contacted our Office complaining that the Appeal Board of the Workmen's Compensation Board had denied his claim for pulmonary silicosis. We advised the Board, pursuant to Section 19(1) of The Ombudsman Act, 1975, of our intention to investigate this complaint.

A review of the complainant's file with the Board revealed that the complainant had been employed as an underground gold miner in northern Ontario from 1938 until he retired in 1972. In January of 1975, he submitted a claim to the Board for silicosis as he had been experiencing shortness of breath and claimed that this was due to the inhalation of silica dust while in the course of his 30 years' employment as a miner. His claim, however, was denied.

As the nature of this complaint was primarily a medical one, the medical reports submitted to the Board on this

man's behalf were given particular consideration by us. These reports indicated that in August of 1974, he underwent a left upper lobectomy (excision of a lung lobe) for a carcinoma on the lung. In a follow-up report some three months after the surgery, the complainant's doctor noted that the complainant had been having considerable shortness of breath, both prior to and after his surgery. He noted that a review of the pathological specimen showed some silicotic involvement of the pleura and lymph nodes.

The pathology reports and specimens were referred to an internist at the Toronto General Hospital for an opinion as to whether the complainant did indeed have silicosis. The internist reported that there was no recognizable evidence of nodular changes in keeping with silicosis. He was of the view that, at best, there could be dust effects.

The slides were nevertheless referred to the Chief Pathologist at the Banting Institute in Toronto for his opinion as to whether any significant degree of silicotic change in the lungs was present. The physician reported that although there was clear evidence of silicosis in the hilar lymph nodes and the disease was moderately advanced, he stated that in that particular area it would cause no disability. He stated, further, that although the thickening of the pleura might well be due to the deposition of silica, it was not typical of silicosis and would be unlikely to produce any functional disability. He found no evidence of silicosis in the lungs proper, however, and concluded that the complainant had no evidence of pulmonary silicosis.

The complainant's claim for disability as a result of silicosis was denied by the Workmen's Compensation Board. After filing an appeal, he was referred to the Ministry of Labour's Advisory Committee on Occupational Chest Disease which concluded, following x-rays and pulmonary function testing, that there was no evidence of silicosis in the lungs (although there was some pleural thickening) and that despite the lobectomy in 1972, his lung volume was in fact slightly above normal. The Committee was of the view that the changes in the pleura were attributable to inflammation secondary to the lung cancer. The Committee recommended a follow-up in two years' time. In January of 1978, the Advisory Committee reported that the complainant remained as previously classified, that is, not silicotic as there was no evidence of silicosis.

As part of our office's investigation of this complaint, two of the leading authorities in occupational chest diseases, the former Chief of the Chest Clinic at Sunnybrook Hospital, and the Chief of Occupational Chest Disease at McMaster University were consulted. These physicians confirmed that silicosis is disabling when the particles present in the

lungs proper are such that, first of all, they are visible radiologically and, secondly, they are present in such quantities as to cause impairment of breathing capacity, which is demonstrated on pulmonary function testing. Because, in this complainant's case, he had neither the visible signs of silicosis in his lungs nor an impairment of breathing capacity, it was concluded that he did not have silicosis and that his shortness of breath bore no relationship to his occupation as a miner.

On the basis of the medical evidence, we concluded that the decision of the Workmen's Compensation Board to deny the claim had not been unreasonable.

We therefore informed the complainant and the Workmen's Compensation Board that we were unable to find the Board's decision complained of, within the terms of Section 22(3) of The Ombudsman Act, 1975, "unreasonable, unjust, oppressive, or improperly discriminatory".

(74)

SUMMARY OF COMPLAINT

On April 20, 1968, this complainant strained his back at work, while lifting a piece of lumber. The initial diagnosis was a strain of the lumbar spine. He returned to work for a brief period of time but found it necessary to lay off due to back pain. He was admitted to the Board's Hospital and Rehabilitation Centre on December 16, 1968 and discharged on January 31, 1969. The discharge diagnosis was a lumbosacral strain, superimposed upon degenerative changes. On January 28, 1970, a Board Pension Medical Officer examined the complainant for the purpose of determining whether he had a residual disability due to his accident of April 20, 1968. This physician could not recommend a pension award. That opinion was upheld by a further pension assessment on August 5, 1971.

As the complainant had appealed the Board's decision not to award him a pension, his appeal was referred to the Board's Review Committee. In a letter dated August 17, 1971, he was advised that his appeal had been denied. In April, 1972, the complainant's lawyer requested entitlement from the Board for a psychiatric condition which he claimed was related to the complainant's compensable accident. On July 20, 1972, the Board's Review Committee denied that request. That decision was upheld by an Appeal Tribunal's Ruling dated January 18, 1973.

On December 3, 1974, an Appeal Board hearing was held to hear the complainant's appeal for a Permanent Partial Disability Award for an ongoing organic and psychiatric disability resulting from his accident. The written Appeal Board Decision dated December 11, 1974 concluded that:

"The evidence does not support that the complainant has a measurable degree of ongoing organic disability resulting from the accident sustained on April 28, 1968... or that the accident in question was a significant factor in the onset of his neurosis condition. ...the appeal is denied".

In a letter dated February 10, 1977, the complainant's Member of Provincial Parliament brought this complaint to our attention. Accordingly, on March 18, 1977, pursuant to Section 19(1) of The Ombudsman Act, 1975, the Board was informed of our intention to investigate this complaint.

Our investigation of this complaint involved a complete examination of the Board's file, a personal interview with the complainant and correspondence with the complainant's family physician.

Our review of the physician's reports concerning the complainant's low back disability revealed that he had recovered from his back injury by January, 1970. However, it was noted that the complainant may have been suffering from a psychiatric disability which was preventing him from returning to work.

In October of 1977, pursuant to the provisions of Section 19(3) of The Ombudsman Act, 1975, we afforded the complainant's employer and the Board an opportunity to make representations concerning the following possible conclusion and possible recommendation which we determined might adversely affect them:

"Possible Conclusion

It is open to me to conclude that the complainant's compensable lumbar strain sustained on April 20, 1968 precipitated a post-traumatic neurosis, and prevented him from working, from 1970 to late 1975.

Possible Recommendation

That the Appeal Board of the Workmen's Compensation Board should vary its decision and grant the complainant a provisional, psychological award for the effects of his April 20, 1968 accident, which resulted in unemployment from 1970 until approximately late 1975."

The employer did not make representations to our office. The Board, however, notified us by letter dated November 7, 1977 that it would arrange a psychiatric examination for the complainant in an effort to resolve satisfactorily this complaint.

On March 8, 1978, the complainant was examined by a psychiatrist whose report was submitted to the Board for consideration. The psychiatric report in part, stated:

"...I have come to the conclusion that he was partially disabled from the psychiatric point of view for a period of about three months. Bringing the partial disability to a percentage it would be about 15% disability".

On April 6, 1978, the Board informed our office that the Appeal Board Panel and the Board had considered the psychiatric report and had accepted our possible conclusion and possible recommendation. The Appeal Board decision read in part:

".. the Appeal Board concludes that the complainant's reactive depression resulted from his compensable accident and that he is entitled to a 15% award from January 29, 1970, when his temporary compensation benefits ceased, to June 21, 1972, the date of [the psychiatrist's] first examination, and from that date to October 21, 1972, when the evidence indicates he had recovered from his psychiatric disability".

A final report was sent to the complainant and to his Member of the Provincial Parliament indicating that:

"the Appeal Board Decision of December 11, 1974 not to award the complainant continuing benefits for an organic back condition was not unreasonable".

We also concluded that the Appeal Board's decision of April, 1978 to award the complainant benefits to 1972 was reasonable, based on the medical evidence.

(75)

SUMMARY OF COMPLAINT

An employee submitted a claim to the Workmen's Compensation Board for benefits for a three-week period approximately two months after he alleged that he had injured his back during the course of his employment. The Board, after weighing the evidence, determined that the benefit of doubt should be extended to the worker and granted him entitlement for the period of lost time. The employer, however, was of the opinion that the accident did not occur during the course of his employment and appealed the Board's decision.

The Appeal Board upheld the decision to allow the claim. The employer then brought his complaint against the Workmen's Compensation Board to our attention. As the Appeal Board had rendered a final decision, it was determined that the complaint was within our jurisdiction to investigate. Accordingly, the Board was notified pursuant to section 19(1) of The Ombudsman Act, 1975 of our intention to investigate this complaint.

Our investigation involved a complete review of the Workmen's Compensation Board's file and several personal interviews with staff of the employer and co-workers of the injured employee.

Our investigation revealed that a claim had been established at the Board's offices upon receipt of a doctor's report. The doctor stated that he had treated the employee for back pain the day after the alleged accident. The description by the doctor of the employee's complaints were consistent with the history of the accident as described by the employee. The employee returned to work approximately three weeks after the accident and has continued to work for the same employer since that date.

After being notified of the claim by the Board, the employer reported to the Board that they had no knowledge of any accident having occurred.

It became apparent to our investigator during the course of our investigation that the complainant was not fluent in English and had difficulty in providing anyone with an exact history of the accident. We also determined that the payments made to the worker would have no effect on the company's rates with the Board.

Having considered the results of our investigation, we determined that the Board's decision was not unreasonable. Accordingly, the Board and the company were informed that we could not support the complaint.

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 - 4000

Dear Sir:

This will acknowledge receipt of your letter dated May 5, 1978, and confirm your telephone conversation with Miss Barbara Puckering of our Office.

We understand from your letter that you are concerned over a possible evaluation system that may be in effect next year at a certain French language school. The principal has proposed a point system that would allocate 80 percent for school marks and 20 percent for speaking the French language only in the halls and schoolyards. Children will be penalized academically for speaking a language other than French outside the classroom. You wish to know if this sort of provision is acceptable when our Province has never been officially declared bilingual. You are also concerned over the effect this policy will have on your children's emotional stability.

We can appreciate your concern in this matter but, unfortunately, schools and school boards are not within the jurisdiction of the Ombudsman. The Ombudsman is empowered "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".

The phrase "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".

Schools and school boards, whose members are elected, are not considered to be governmental organizations as defined by The Ombudsman Act, 1975. Nevertheless, we did some research on your problem.

Under section 252 of The Education Act, 1974, the respective boards of education have the authority to determine if there are sufficient numbers of French speaking pupils to warrant the use of the French language in instruction. If enough students elect to be taught in the French language, the Board must provide the facilities. As well, the Board has the authority to determine the use of the French language and the English language in the French language instructional units. If English-speaking students are fewer in number than the French-speaking students, the same provisions are made for the English students.

With respect as to the method of evaluation, the marking schemes are a matter of local autonomy. They are devised by the teacher and possibly the principal, although the school board may have some input. As a result, your particular concern can probably be most effectively examined by your local school board.

We understand from discussions with the Ministry and yourself that a tentative solution to the language of instruction problem has been reached. There will be two degrees of instruction in both French and English languages in order to accommodate the different preferences. We hope that one of these programs will adequately serve your needs.

However, if you are still dissatisfied after discussions with your school board, you may wish to make your concern known to the Council on French language Schools. They ensure the continuing development of education for French-speaking students in Ontario and will be interested in responding to your constructive comments. The Council advises the Minister of Education and his Deputy on all matters pertaining to French language schools. They may be contacted at the following address:

Council on French Language Schools
Mowat Block, 900 Bay Street
Toronto, Ontario M7A 1L2

As well, there is a Languages of Instruction Commission that was established to help resolve disputes between school boards and parents over the provision of education programs in the language of a minority group, French or English, as the case may be. Since your school board is composed of a Francophone majority, the Commission will only be able to accept representations from Anglophone parents. Should this be the case, you should contact:

Mr. G. C. Fillion, Executive Secretary
Languages of Instruction Commission
25 Grosvenor Street, 17th floor
Toronto, Ontario

We hope the above information will be of some assistance to you. Should you have occasion to contact us again, please do not hesitate to do so and kindly quote our file reference number.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000

Dear Sir:

This will acknowledge your letter of March 28, 1978. We apologize for the delay in sending a reply to you. However, your letter was not received in the Office of the Ombudsman until April 24, 1978.

In your letter, you state that your problem is with the Ontario Milk Marketing Board and concerns your market sharing quota. Further, you indicate that because of a depopulation of your dairy herd that was ordered by the Federal Government in 1975, you were only able to ship milk for 11 months. It appears that as a result, your quota has been based on 11 months' milk shipments and not 12 months as is the case with other milk producers. It is your contention that the Milk Marketing Board's action in this respect is unfair and although you have done everything you can, the Board will not change its mind.

In order to obtain a few more details of your complaint, a member of our staff, Miss Eileen Couch, telephoned and discussed the matter with your wife on Thursday morning, May 4, 1978.

We understand that your wife told Miss Couch that sometime ago you met with officials of the Milk Marketing Board in Toronto for the purpose of discussing your problems concerning your quota allotment. Additionally, your wife indicated that she did not think that you had appealed the Board's decision which we assume was not satisfactory to you, to any higher authority.

While we can certainly sympathize with your situation, we must point out the limitations on the jurisdiction of the Ombudsman. The Ombudsman is a forum of last resort. Section 15(4)(a) of The Ombudsman Act, 1975, reads as follows:

"Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission,

(a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired."

Therefore, the Ombudsman's jurisdiction to investigate your complaint is excluded until you have availed yourself fully of all rights of appeal or objection open to you.

With regard to your particular situation, we would like to confirm the information that Miss Couch gave to your wife which is that you may still have rights of appeal under section 26 of The Milk Act.

The first level of appeal is the Ontario Milk Marketing Board but you may have already been back to the Board to ask for a reconsideration of your case. The second level of appeal is the Milk Commission of Ontario and it does not appear that you have exercised this right.

Furthermore, section 26a. of The Milk Act give you the right notwithstanding your right of appeal under section 26 of The Milk Act, to approach the Milk Commission of Ontario if the decision of your appeal to the Milk Marketing Board is not in your favour. Consequently, you would have to make at least one attempt to have the Milk Commission reconsider your case, if you are not satisfied with its decision on your appeal from the Milk Marketing Board, before the Ombudsman would have jurisdiction to investigate your complaint.

For your information, we are enclosing a xerox copy of sections of The Milk Act which refer to appeals. We have chosen to forward the sections to you rather than to paraphrase them and risk omitting an important detail. As well, we are enclosing some explanatory notes on the various terms that are used and the procedures to follow in making an appeal. There are no time limitations on your rights of appeal.

Should you choose to initiate an appeal to the Milk Commission of Ontario, you should address a letter to the Secretary of the Commission. The following name and address are provided for your guidance:

Mr. J. F. Jewson, Secretary
Milk Commission of Ontario
Ministry of Agriculture and Food
Queen's Park
Toronto, Ontario
M7A 2B2

In your letter, you should indicate that you are appealing a decision of the Milk Marketing Board, give the date of that decision and what the decision was.

You do not need to have a lawyer at the Milk Commission hearing, and it is our understanding that proceedings are very informal. However, you may wish to consider retaining legal counsel to help you to organize your case and present it to the Commission. If there are financial difficulties in the way of your seeking legal advice, you may be eligible for assistance under the Ontario Legal Aid Plan. You may make inquiries at the following address:

Mr. H. C. Waind
Ontario Legal Aid Plan
27 Douglas Street
Guelph, Ontario
N1H 2S7

Tel: (519) 824-0170

When you have exercised your rights of appeal to the Milk Marketing Board and the Milk Commission of Ontario, and your right to apply for reconsideration to the Milk Commission, if that is necessary, the Ombudsman would then have jurisdiction to investigate your complaint if you are still unhappy.

We hope that the above information will be of some assistance to you. If you have any questions, please do not hesitate to contact our Office.

In the event of future correspondence with this Office, please quote our file reference number.

Yours very truly.

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000



The Ombudsman | Ontario

Dear Sir:

We have now had the opportunity to review your file.

We understand that your Regional Health Centre Board has been unable to hire a pharmacist. The Board is therefore desirous of obtaining permission for a local doctor to dispense not only his own prescriptions, which he currently does, but to enable him to dispense those of his associate as well.

We can well understand your concern; however, we must point out the limitations on the jurisdiction of the Ombudsman. 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".

The phrase "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".

As the matter you have raised is not a complaint against a specific decision or act made or performed in the course of the administration of a governmental organization, but is a problem concerning the provision of pharmacists' services, it is not within the jurisdiction of the Ombudsman to investigate. However, we have been able to make some general inquiries which we would like to relate to you.

You had indicated to Gary Speranzini of our Office that if your area were classified as under-serviced, the requisite permission would be granted to the doctor. Our research has revealed that there is no legislative authority for designating an area as under-serviced for the purpose of enabling a physician to dispense drugs prescribed by other physicians.

Section 124(1) of The Health Disciplines Act provides that "no person shall act or hold himself out as acting as a pharmacist unless he is licenced under this part". The only exception to this requirement is set out in section 52(6) of the Act which provides that a physician may dispense drugs for his own patients.

Mr. W. R. Wensley, Registrar of the College of Pharmacists, has indicated to a member of our staff that it may be possible to make an amendment to the Act, giving themselves discretion to waive the formal requirements in extreme situations. We would suggest that you contact Mr. Wensley to further pursue the possibility of such an amendment.

An alternative solution would be to obtain a provincial subsidy so that a full-time pharmacist could be hired. Dr. W. J. Copeman of the Ministry of Health, Chief of Northern Public Health Services, indicated to a member of our staff that such a subsidy may possibly be granted if a very strong case was made on behalf of the community. Dr. Copeman may be contacted at Room 1064, Hepburn Block, Queen's Park.

If you are not satisfied with Dr. Copeman's response, please feel free to contact this Office again and we will review the matter. We sincerely hope that this matter can be resolved to your Board's satisfaction. If you have occasion to write to this Office again, please be sure to quote our file reference number.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

Dear Sir:

This will confirm in writing your personal interview with Mr. Kerry Wilkins of our office at one of the Ombudsman's hearings. Thank you for bringing your concern to the attention of the Ombudsman.

You explained to Mr. Wilkins that you and an associate of yours had been convicted together on a charge of theft under \$25.00 in British Columbia in about 1951. You served ten days in jail and paid a \$15.00 fine. Since that time you have had no further trouble with the law. You asked Mr. Wilkins if it would be possible for you to obtain a federal pardon from that conviction because of your good record since that time, in order that the conviction will no longer appear on your record.

There is indeed such a procedure. Under the Criminal Records Act (Canada), persons convicted of offences under the Criminal Code (Canada) can apply to the Solicitor General of Canada for a pardon from an offence committed long ago. It is not possible to obtain a pardon from a summary conviction until two years have elapsed since the sentence was served or the fine paid; it is not possible to obtain a pardon from a conviction for an indictable offence until five years have elapsed from the date sentence was completed or the fine was paid. In your case, of course, considerably more time than that has elapsed.

If you wish to apply to the Solicitor General of Canada for a pardon from this conviction, you should do so in writing and send it to this address:

The Honourable Jean-Jacques Blais
Solicitor General of Canada
Sir Wilfred Laurier Building
Ottawa, Ontario
K1A 0P8

When the Solicitor General receives your request he will refer it to the National Parole Board; the Board will make inquiries to satisfy itself that you have conducted yourself properly since your conviction, and then it will make a recommendation to the Solicitor General, either that a pardon be granted or that a pardon not be granted. If the Board decides to recommend that a pardon not be granted, it is required by the law to notify you in writing before making that recommendation, so that you can provide the Board yourself with any additional evidence which might change the Board's mind. When the Solicitor General receives the Board's recommendation, he refers that recommendation to the federal Cabinet and the federal Cabinet decides the matter.

The effect of a pardon, unless it is later revoked, is to vacate the conviction and to remove "any disqualification to which the person so convicted is, by reason of such conviction, subject by virtue of any Act of the Parliament of Canada or a Regulation made thereunder". In other words, if you receive a pardon for it, your conviction in 1951 should not restrict your right to possess firearms under proposed federal gun control regulations.

Because the procedure for obtaining a pardon is entirely within the jurisdiction of the federal government, the Ontario Ombudsman can play no part on your behalf in helping you obtain one. This office has no jurisdiction to review decisions or actions of federal agencies; our jurisdiction is exclusively provincial. If you need further assistance in following this procedure, your Member of Parliament, can probably be of help and you can write to him without postage in c/o the House of Commons in Ottawa.

We hope this is the information you required; if the Ombudsman can assist you with other matters on other occasions, please feel free to contact him again.

Yours very truly.

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000

 The Ombudsman | Ontario

Dear Sir:

Further to our letter of March 2, 1978, we have now reviewed your file and offer the following comments.

As I understand it, your complaint is in regard to the accessibility of medical records. In particular you state that hospitals are applying an overly strict interpretation of The Public Hospitals Act in regard to autopsy reports which form part of a deceased's medical records. I note that it is your contention that relatives who are asked to authorize an autopsy are frequently either denied knowledge of the findings in an autopsy report or encounter an insurmountable amount of red tape blocking their request.

It appears that you are of the view that changes may be forthcoming in respect of The Public Hospitals Act, and you have asked the Office of the Ombudsman to intervene on behalf of relatives who authorize an autopsy, to enable them to secure a copy of the autopsy report if that is their wish.

The Ombudsman Act, 1975 states that the function of the Ombudsman 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".

The phrase "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".

Legal research conducted by members of our staff has established that a public hospital is not a governmental organization within the meaning of The Ombudsman Act, 1975. Thus, with respect to your request that the Ombudsman intervene on behalf of concerned relatives who wish to obtain autopsy reports, which form part of the deceased's medical records at the hospital, I must inform you that the Ombudsman is not empowered to act respecting a matter that is not within his jurisdiction.

Although we do not have the jurisdiction to investigate your complaint, we would nevertheless like to make some suggestions that may be of assistance to you.

It appears from your letter that you are knowledgeable with respect to the procedures implemented by hospitals in regard to your concerns. In order that you may be further informed in regard to the legislative provisions governing the procedures you complain of, a member of our Legal Services and Complaint Policy Directorate has, on your behalf, reviewed The Public Hospitals Act and regulations thereunder.

Under The Public Hospitals Act a hospital is given a considerable amount of power and authority over its day to day operation. In this respect each hospital is authorized to pass by-laws by virtue of the power given in section 9 of the Act. The regulations passed under the Act pursuant to the regulation-making power of section 39, prescribe the matters upon which by-laws are to be passed by hospitals. In addition, the regulations prescribe requirements to be satisfied in connection with operational functions such as the obtaining of consents.

With respect to autopsy reports, the governing regulation is Ontario Regulation 729 under The Public Hospitals Act. Section 38 of the regulations states what must be included in a medical record, one item of which is "report of post-mortem, if any". Section 35a provides that a report on any tissue, etc, shall be part of the medical record. Section 35(4) states that a report of a pathologist shall be included in the medical record of the patient.

Section 39 makes the Superintendent responsible for the safe-keeping of all records relating to a patient. There are also numerous provisions concerning the retention and destruction of medical records. These are generally dealt with in sections 42 to 47, inclusive.

Section 48 of the regulation provides that the hospital board shall not permit any person to remove, inspect or receive information from a medical record, subject to exceptions, some of which you mentioned in your letter. Generally these exceptions include removal for legal proceedings, and in certain circumstances under the authorization of a coroner or members of the College of Physicians and Surgeons. The board may also permit access by a person who presents a written request signed by any patient or where the record is of a former patient, deceased, by his personal representative.

Thus, although there appear to be no specific legal barriers to the obtaining of medical records in situations that you have brought to our attention, one can appreciate your concern as to how hospitals are able to block such requests should they decide to do so.

With regard to your concern that legislative changes are necessary to simplify the procedures for persons who wish to obtain autopsy reports of a deceased relative, it is suggested that you make your views known to your M.P.P. and the Minister of Health, whose function it is to effect legislative change. The address of the Minister is as follows:

The Honourable Dennis R. Timbrell
Minister of Health
Hepburn Block
80 Grosvenor Street
Toronto, Ontario
M5S 1B6

In addition, you may wish to make representations to the Royal Commission of Inquiry into the Confidentiality of Health Records in Ontario. This Commission will report to the Minister of Health with any recommendations for necessary amendments to the legislation and the Regulations passed thereunder. The address of the Commission is as follows:

Royal Commission of Inquiry into the
Confidentiality of Health Records
in Ontario
The Honourable Mr. Justice H. Krever
Commissioner
180 Dundas Street West
22nd floor
Toronto, Ontario
M5G 1Z8

I hope the above information is of some assistance in the clarification of your problems. Should you write to us again concerning any of the above, please refer to our file reference number.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000

Dear Sir:

We wish to confirm receipt of your letter dated March 17, 1978, in which you set out your concerns regarding the Small Claims Court action.

As we understand the facts, you had aluminum eaves troughing installed several years ago which you found to be faulty. Consequently, you had new eaves troughing installed in 1977 and brought an action in Small Claims Court to recover the loss. On November 22, 1977, you received a Notice of Judgment in the amount of \$293.70. Recently, you have been advised that the roofing company has applied to the Judge to have the Default Judgment set aside. You wish to know if this can be done.

Please be advised that the jurisdiction of the Office of the Ombudsman is set out in section 15(1) of The Ombudsman Act, 1975, as follows:

"The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the investigation of a governmental organization and affecting any person or body of persons in his or its personal capacity."

The phrase "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, section 14(a) of the Act states:

"This Act does not apply to judges or to the functions of any court."

As your complaint is directed against a private individual and the Small Claims Court, please be advised that we have no jurisdiction to investigate as there is no governmental organization involved.

However, we did make some inquiries in an effort to assist you with your problem. Although there have been a number of amendments to The Small Claims Court Act recently, these only apply to matters after November 25, 1977. As the Default Judgment which you received was given prior to this date, the old Small Claims Court Act applies. Under that Act, certain actions may be commenced in Small Claims Court where the amount in dispute does not exceed \$400. Generally, an appeal may be taken from the judgment of a

Small Claims Court only where the amount in dispute exceeds \$200. This limitation on appeals is intended to preclude expensive litigations where only a small amount of money is in dispute. The recent amendments have increased the minimum amount which may be appealed.

Under The Small Claims Court Act, where a judgment has been rendered as a result of the defendant not entering into dispute, the Judge may set aside the judgment and permit the case to be tried on such terms as to him seem just. There is no specified time limit for bringing an application to have a Default Judgment set aside. However, the defendant must satisfy the Judge that there are valid reasons for setting aside the Default Judgment. When a Default Judgment is set aside, the matter proceeds to trial and the facts are heard and a decision made as if no Default Judgment had ever been entered.

In order to determine the current legal status of your claim a member of our staff telephoned the Clerk of the First Small Claims Court in your area. The Clerk advised us that the Judge had set aside the Default Judgment but ordered that the defendant pay into court the amount of the Default Judgment and to pay to you directly \$25. We understand that the matter will presently be tried in the Small Claims Court, and that you will be advised of the date. It would appear that the matter is now as it would have been in November, 1977, had the defendant responded to your Statement of Claim. The matter will be tried before a Judge of the Small Claims Court and a decision rendered.

We very much regret that we are unable to be of more assistance to you and hope that this matter will be resolved to your satisfaction.

Should you at any future time have a complaint against a governmental organization of the Province of Ontario, please do not hesitate to let us know.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869-4000

Dear Madam:

This will acknowledge receipt of your letter by this Office on July 20, 1978. We have now had the opportunity to carefully review your file.

We understand from your correspondence that you have experienced great difficulty and embarrassment as a result of the activities of the Associate Financial Services Limited and the Credit Bureau. Apparently, both organizations are circulating incorrect information about your credit rating. You do not feel that this situation should be allowed to exist inasmuch as you pay your bills regularly and promptly and you cannot understand why these two organizations have rather negative information concerning your credit.

In response to your request for assistance, we must advise that by virtue of The Ombudsman Act, 1975, we are unable to provide you with investigative assistance.

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".

The phrase "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".

Inasmuch as your complaint is not directed against a governmental organization as defined above, we are unable to provide you with investigative assistance.

We would advise, however, that The Consumer Reporting Act, 1973, provides for the regulation of Consumer Reporting agencies, such as Credit Bureaus. The Act cites various restrictions on the operation of these agencies. For your convenience, we have provided you with a copy of the relevant sections.

As well, the Registrar of Consumer Reporting Agencies has the power to order a consumer reporting agency to amend or delete any information that is in his opinion, inaccurate

or incomplete, or that does not comply with the provisions of the Act. Should you wish to contact the Registrar, you may do so at the following address:

Mr. I. B. Weinstein
Registrar
Consumer Reporting
555 Yonge Street
Toronto, Ontario Tel: 963-0364

Should you be dissatisfied with the manner in which the Ministry investigates this problem for you, you may then contact our Office again and we will gladly review your file.

We hope, however, that by contacting the Ministry of Consumer and Commercial Relations, you will be able to obtain a satisfactory resolution to your problem.

In the event of future correspondence with this Office, please be sure to quote the above file reference number.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000

Dear Sir:

This will acknowledge receipt of your letter dated April 14, 1978 and confirm your telephone inquiry of May 29, 1978.

We understand that you are concerned over the health danger that is present every spring when your basement drain backs up and oozes effluent from the sanitary sewer. You are the original owners of the house and commenced paying the mortgage in March, 1974. You have contacted the plumbers who did the original work, the builder and several municipal officers, including your local politician, and no one is willing to take responsibility for the problem.

Unfortunately, we, too, are unable to assist you directly. 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".

The phrase "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".

Unfortunately, municipal matters and matters of a private nature between your builder and yourself are not within the jurisdiction of the Ombudsman. Therefore, until a governmental organization is involved and all avenues of objection, review or appeal have been exhausted, the Ombudsman has no authority to investigate.

Nevertheless, we contacted the Ministry of the Environment on your behalf. They are involved in some municipalities with the operation and management of sewage work systems as well as handling complaints. Our policy on the strict confidentiality of all complaints prevented us from providing the Ministry with your name without your authorization. However, we explained your problem to them and they may be able to assist you. Specifically, you should get in touch with:

Mr. Paul Cleator
Peterborough District Office
Ministry of the Environment
139 George Street North
Peterborough, Ontario
K9J 3G6

Tel: (705) 743-2972

If your problem is a result of the builder's construction, there is little that can be done because of the length of time that has passed since you first purchased your new home. There is a corporation referred to as the HUDAC New Home Warranty Program which administers The Ontario New Home Warranties Plan Act. The Act provides warranties in respect of all new homes sold after January 1, 1977, and all builders and vendors of new homes must be part of the Plan. Because your house was purchased before this date, this legislation unfortunately does not apply. There is a small chance that your builder might have enrolled in a voluntary warranty program that was in effect prior to legislation coming into force. The HUDAC New Home Warranty Program will be able to advise you if your builder was a member. Full details including the builder's name and documentation as to when the problem first occurred should be forwarded to:

Operations Department
HUDAC New Home Warranty Program
Suite 702, 180 Bloor Street West
Toronto, Ontario
M5S 2V6

Tel: (416) 922-3005

Should these referrals not resolve your problem you may wish to seek legal advice. If you cannot afford a lawyer at this time, you may be eligible for legal assistance under the Ontario Legal Aid Plan. For information, you should contact the Area Director for Northumberland and Durham Counties at the following address:

Mr. J. P. Funnell, Q.C.
Ontario Legal Aid Plan
P.O. Box 185
98 King Street West
Cobourg, Ontario
K9A 4K5

Tel: (416) 372-2432

We sincerely hope the above information will be of some assistance to you. In the event of future correspondence with this Office, please be sure to include our file reference number.

Yours very truly.



The Ombudsman | Ontario

SUITE 600
65 QUEEN STREET WEST, TORONTO, ONTARIO
M5H 2M5
TELEPHONE (416) 869 - 4000

Dear Sir:

This will acknowledge in writing your telephone conversations with Mr. Kerry Wilkins of our office on June 1 and June 6, 1978. Thank you for bringing your concerns to the attention of the Office of the Ombudsman.

We understand from your conversation that your problem is with Revenue Canada, Customs and Excise. You are a Malaysian citizen who holds landed immigrant status in Canada. On May 12, 1978, you returned to Canada after an extended visit to Malaysia, Singapore and Australia. You went through customs at Toronto International Airport. While clearing customs you were singled out for extensive personal search and interrogation, and several of your personal belongings were seized by the customs officials. One of the items seized, a camera, you now admit you had attempted to bring into Canada illegally; the others, however, had been in your possession for some time. After first contacting the Ombudsman, you received notification from Revenue Canada, Customs and Excise, that the goods which had been seized would be forfeited if you did not file a claim for them by June 12, 1978. You wish the assistance of the Ombudsman in having returned to you the items which were legitimately yours all along.

As Mr. Wilkins explained on the telephone, this is not a matter in which the Ombudsman can play any formal part. The Ombudsman is an appointee of the Ontario legislature and takes his powers from provincial legislation. That legislation limits his authority to the investigation of complaints involving agencies of the Ontario government. Customs matters are exclusively the prerogative of the federal government; as a consequence, they lie wholly outside the Ombudsman's authority for review.

All the same, Mr. Wilkins promised to be of what help he could to you in obtaining help from other sources. We understand from his telephone conversation with you on June 6, 1978, that you did file a claim in writing with Revenue Canada, Customs and Excise, for the goods which had been seized. That set the review procedure prescribed by the Customs Act (Canada) in motion. We shall attempt in the rest of this letter to explain that procedure to you, and to suggest others whom you might contact for help in proceeding through it.

According to section 153(1) of the Customs Act (Canada), all goods seized by a customs officer may be deemed forfeited unless you, the person in whose custody they were found, file a Notice of Claim with customs officials within one month from the date of the seizure. By June 12, 1978, in other words, you had to have notified

customs officials of your intention to claim these goods. We understand from your telephone conversation with Mr. Wilkins on June 6, 1978, that you did file written Notice of Claim within that time.

Now whenever anything is seized by a customs officer under provisions of the Customs Act (Canada), the customs officer is required to report in detail of the matter to the Deputy Minister of National Revenue, Customs and Excise. When the Deputy Minister receives both this report and notice from you of your intention to claim the goods, he sends you another notice, giving you thirty additional days within which to provide any evidence you have to support your claim to the goods, or to defend your position in the matter at issue. Any such evidence you submit should be in the form of an affidavit or affirmation, and signed and sealed before a Justice of the Peace, a Collector, a Commissioner for taking affidavits or a Notary Public.

Once the Deputy Minister receives your evidence, he - or some other official in the Department designated for the purpose by the Minister of National Revenue - shall consider and weigh the circumstances of the case and report his opinion and recommendation to the Minister himself. Under section 163 of the Customs Act (Canada) the Minister may then either give his decision as to the matter or refer the issue to the Federal Court of Canada for a decision. A decision by the Minister is considered final and binding unless he receives from you, within thirty days of the date on which you were notified of the Minister's decision, written notice that you find his decision unacceptable. In the event he does receive such notice from you, the Minister refers the matter to the Federal Court of Canada, which hears it anew, considers all the available evidence and renders a judgment according to the right of the matter. You will be notified by the Deputy Minister of your opportunity to provide evidence, and by the Minister of his decision, by registered mail; the thirty days within which you may act upon either notice are calculated to begin from the mailing date of either registered letter.

You will probably find it useful to obtain competent legal advice in pursuing your claim through this procedure. Mr. Wilkins indicated to you over the telephone several different ways in which you might obtain legal assistance; here is more information about each of them.

In the first place, there are several free legal clinics throughout Metropolitan Toronto which might be willing and able to assist you to understand better this procedure and how you might best defend yourself. Two of those closest to you are:

Neighbourhood Legal Services
257 Seaton Street
Toronto, Ontario Tel: 921-4730

and

Students' Legal Aid Society
University of Toronto
78 Queen's Park Crescent
Toronto, Ontario Tel: 978-7293

Another possibility is the lawyer referral service provided by the Law Society of Upper Canada. If you apply to the referral service, you will receive the names of several lawyer who practice in Metropolitan Toronto and who specialize in customs and immigration law. You choose among them; by agreement, your first consultation with the lawyer will cost you \$10 for one-half hour. After that you pay the lawyer's regular fee, if you continue to require his services. For more information, contact:

Lawyer Referral Service
Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario Tel: 362-4741

A final possibility is that you are eligible for representation under the Ontario Legal Aid Plan. You can obtain more information about the services and eligibility requirements for legal aid in your area by contacting:

Mr. W. Reid Donkin, Q.C.
York County Legal Aid Office
204A Richmond Street West
Toronto, Ontario
M5V 2T7 Tel: 598-0200

One final matter. You mentioned to Mr. Wilkins your concern that you may have been singled out for unusually harsh treatment by the customs officer because of your nationality. If you believe you have been a victim of discrimination, and if you wish the matter investigated, you may file a complaint with the newly formed Canadian Human Rights Commission. The Commission has the authority under federal law to investigate allegations of discrimination against federal employees, and to recommend redress where appropriate. The address of the Commission's Toronto office is:

Canadian Human Rights Commission
55 St. Clair Avenue East, Room 812
Toronto, Ontario
M4T 1M2 Tel: 966-5527

We hope all this information is of use to you. If other matters come to your attention which you wish the Ombudsman to look into, please feel free to get in touch with us again.

Yours very truly.

APPENDICES

ARTHUR MALONEY, Q.C.

The Ombudsman | Ontario

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65 QUEEN STREET WEST, TORONTO, ONTARIO
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TELEPHONE (416) 869-4000

August 15, 1978.

Honourable William G. Davis, Q.C.,
Premier and President of the Council,
Legislative Building,
Queen's Park,
Toronto, Ontario.

Dear Mr. Davis:

This letter confirms the discussion we had
in your office last August 3rd.

It is my intention next October 9th to
deliver to Mr. Speaker my letter of resignation as Ombuds-
man of Ontario. I am advising you in advance of my inten-
tion so as to provide for a more orderly period of transi-
tion and also to enable me to conclude work on a number of
files. This will cause less inconvenience to the public and
to the officials of the Civil Service whose ministries or
agencies are involved.

As I prepare to resign this office, I wish
first to express my thanks again to you and your colleagues
in the Cabinet for my nomination in May of 1975, and my
gratitude to the members of the Legislative Assembly, who,
without dissent, approved my appointment. I have written
separate letters of appreciation to Dr. Stuart Smith and
Mr. Michael Cassidy. Their encouragement and support as
well as that of their distinguished predecessors, Mr. Robert
Nixon and Mr. Stephen Lewis, have meant a great deal to me.

When I informed you of my decision you were
good enough to express your regret and to invite me to re-
consider. I respectfully declined your invitation and told
you that it was not something I had decided to do in haste
and that my decision to resign was firm.

Honourable William G. Davis, Q.C.

August 15, 1978.

Our relationship with each other as Premier and as Ombudsman has been consistently warm and courteous. We did not always agree but then I am sure neither one of us expected that we would and indeed such a state of affairs would not have implied a very healthy government-ombudsman relationship.

I leave the Office with a very favourable impression of the many exceptional men and women who have been appointed to serve the people of Ontario in the Civil Service.

I was not long in my present position before learning to appreciate the combination of talent, knowledge and expertise that is concentrated in this distinguished group of public servants who execute their heavy responsibilities with a degree of integrity and skill which should give great confidence to the people of Ontario.

There have been occasions in the time that has intervened since my appointment when I have been in confrontation and controversy with some of the members of the Legislature.

No one who knew the circumstances would regard this as evidence of any lack of either respect for the office of the elected member or appreciation of the importance of that position. The strong stand I have taken on several such occasions was intended merely to manifest my determination that the Office of the Ombudsman would - so long as it was under my direction - remain untainted by any suggestion of outside direction or control. This had to be the case if Ontario was to have an Ombudsman function in the tradition of its counterparts around the world.

The Legislature, with its power to dismiss the Ombudsman for cause and to determine his budget has, with these controls, the fullest measure of authority over the Office.

I wish to say a word about the news media. Its interest in the Office and activities of the Ombudsman

Honourable William G. Davis, Q.C.

August 15, 1978.

has done a great deal to make the people of Ontario increasingly aware of the existence of the Office and of its ability and desire to serve them. Neither my colleagues nor I could ever have served as effectively without the interest that has been shown by the men and women of press, radio and TV.

In my three years' experience with the Office I have become immensely impressed with the amount of good it can do for the people - of the need for it and of the importance that it continue strong and independent in the people's service. There is no appointed public function that belongs more especially to each of Ontario's citizens than that of the Ombudsman.

It is the only office or agency totally independent of the whole massive structure of government to which the ordinary individual can turn and on which he can count and rely in order to obtain help when he feels he has been dealt with unfairly by a decision of the bureaucracy. If the Ombudsman, upon investigation of a complaint, finds that it has merit, the citizen knows that his case will be pursued with vigor and that no effort will be spared to ensure that he gets the justice he feels he deserves - which, indeed, has happened on countless hundreds of occasions in Ontario since the Office was brought into being in 1975.

Questions arise from time to time about the cost of the Ombudsman operation. The total budget of the Province of Ontario for the present fiscal year is fourteen billion, five hundred million dollars (\$14,500,000,000.00). As I stated in my Fourth report the budget approved for the Ombudsman for this period is four million, one hundred and sixteen thousand dollars (\$4,116,000.00). This is 0.000293 per cent or indeed less than 1/35th of one per cent of the total. Considering the millions of dollars that the government of Ontario must spend annually to investigate the citizen, this is a small fraction to set aside to enable the citizen to investigate the agencies of government that he feels, rightly or wrongly, have been unfair to him. The people are surely entitled to no less.

For many months I have urged that the jurisdiction of the Ombudsman be expanded to include authority to deal with complaints by citizens against any agency that has a decision-making power likely to affect his rights and interests and where that agency is financed in whole or in substantial part by the Ontario taxpayer.

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Specifically, I have taken the position that the jurisdiction of the Office should be extended to include municipal or local governments, boards of education, universities, hospitals and nursing homes. This, as you know, is a practice that works very well in many other Ombudsman jurisdictions in Canada and around the world. As I leave the Office I re-state this position and urge that this jurisdiction be conferred on my successor.

The Select Committee on the Ombudsman in its Fourth Report supports the concept of an ombudsman for local government in Ontario but recommends that the function should not be performed by an ombudsman who has jurisdiction over provincial or central government organizations.

As I see it the main advantage in doing it the way I recommend is the saving of the additional cost that would be incurred in financing the operation contemplated by the Select Committee. This could easily run into hundreds of thousands of dollars. In addition there would be a good deal of inconvenience and confusion for the citizen that is avoided if the total ombudsman function is under the one central direction.

I have always had a particular concern about the people of Northern Ontario and their right to have ready access to all agencies of government. I have no doubt as I made clear in my Fourth report released last July 24th that an extension of the Office of Ombudsman to meet their special needs is now called for. Arrangements for regional facilities in Northern Ontario should be established as soon as possible. It is my opinion that regional facilities elsewhere in the Province are not required - certainly for the time being.

Regional facilities will not require very much in the way of added staff or in the expenditure of further funds. What I have in mind is really very modest especially when you consider the large network of government offices spread throughout the north. The study which I urged the Cabinet to make of the proposal in my Fourth report will, I am sure, bear out my estimate as to cost.

In planning to leave I have discharged the commitment that was given by me three years ago to bring into being an Office of Ombudsman for Ontario that would be second to none in the world; to staff it, equip it and establish it on a solid foundation which would stand the

Honourable William G. Davis, Q.C.August 15, 1978.

test of time. All this has been brought about largely because of the remarkable men and women who have served and will continue to serve Ontario in the Office of the Ombudsman. Since establishment of the Office has now been accomplished the continued presence of its first incumbent is no longer required. The recommendations contained in the management study undertaken at my request by Hickling-Johnston and with the approval of the Board of Internal Economy as well as of the Select Committee have just now been implemented. This then is a fitting point at which to pass on the responsibilities of the Office to someone else.

Insofar as my successor is concerned you have my assurance that I will lend him or her every possible assistance and this I undertake to do for as long as may be necessary.

I am particularly pleased that the Office has been structured in such a way that recognizes the rights that accrue to all in a province and country with our bilingual and bicultural heritage. We are pleased that Action Canadienne Française d'Ontario (ACFO) has expressed satisfaction with the way in which our office attempts to serve and to recognize and respect the rights of the French-speaking community of our province.

In Ontario's multi-lingual and multi-cultural society I had a heavy obligation to ensure that the rights of the hundreds of thousands of Ontario residents whose first language is neither French nor English were protected. I am proud that our staff has a linguistic capacity in a total of eighteen different languages.

I think it important that my staff has taken great pains to ensure that the Office of the Ombudsman its services and its facilities have been brought to the people. The carefully organized program of tours around the province has resulted in hearings in over one hundred different municipalities. All this has served as a great convenience to thousands of Ontario residents to whom Toronto is not that easily accessible and has assisted members of our staff, who participate in the program of hearings, to get a clearer picture of the province and of the people and their needs. This has also worked to the advantage of the farmers and other rural residents of the province whose special problems

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have always been of concern to us.

I am especially pleased with the work that has been done by my office in the field of corrections. We have taken an active role that has tended to alleviate ever-present tensions associated with any penal setting. Since the inception of my office our task in this field has been greatly assisted by the cooperation of the Deputy Minister, Mr. Glenn Thompson, and, since his appointment, also by the support and encouragement of the Honourable Frank Drea, M.P.P. - the Minister.

Shortly after May 22, 1975, when you first announced my nomination as Ombudsman we opened File No. 1; as of last August 9th we opened File No. 18,500. Further we have dealt, on an informal basis with well over twenty thousand (20,000) additional requests for help. These figures alone explain the Province's need for an Ombudsman and fully vindicate the decision of the government and your colleagues of every political party in the Legislature to establish the Office.

I very much regret that the positive and agreeable tone of this letter must be marred by a necessary reference to the problems arising out of the land acquisition procedures in North Pickering which have not yet been resolved. The hearing agreed to between me and the Honourable John Rhodes when he was Minister of Housing and which is being conducted by Mr. Keith Hoilett under The Ombudsman Act commenced in December 1976, has proceeded with expedition and without delay. It has been thorough and exhaustive. Over two hundred witnesses have been called to give evidence. The landowners - numbering approximately 70 - have been represented by counsel; so has the Ministry of Housing and so were the land acquisition agents. The taking of evidence should conclude during the month of September. Your government undertook to carry out whatever recommendations the Ombudsman saw fit to make in all of the cases being dealt with in this hearing. It was the wish and understanding of the Ministry officials that I should delegate the authority to preside over this hearing to Mr. Hoilett and the Ombudsman would in turn make Mr. Hoilett's recommendations his own - whatever they may be. Mr. Hoilett has conducted a careful, thorough and courteous inquiry - in a manner we are entitled to expect of someone entrusted with such a serious responsibility. Whatever his recommendations may be it can be assumed they will be just and fair to all. I feel a heavy responsibility to all parties involved in the Pickering controversy, to their right to a fair hearing and to the right to just compensation to any landowners in those cases where this is deemed appropriate.

Honourable William G. Davis, Q.C.August 15, 1978.

It follows I was much surprised to read early in July on my return from Russia a letter dated June 23rd sent to me by the Minister of Housing - the Honourable Claude Bennett - in which he puts forward the totally unwarranted suggestion that I had breached the agreement entered into between you, me and his predecessor the Honourable John Rhodes on October 1, 1976. He then indicates he does not feel bound by Mr. Rhodes' commitment under that agreement to give effect to the Ombudsman's recommendations in the cases before Mr. Hoilett. I can't think he seriously feels this to be the case nor can I bring myself to believe that your government, when the time comes, will not honour its agreement and keep its word solemnly entered into with the Ombudsman. To do otherwise would be very grave indeed.

I have already expressed my extreme regret at the way in which the Donnelly Commission discharged its mandate. It failed to appoint Counsel; it failed to conduct an investigation; it failed to require the presence of appropriate government officials and the landowners as witnesses; one Commissioner quit, convinced of the unfairness of the procedure; a loss of confidence was caused on the part of the landowners when they felt their claims were not going to be fairly or properly adjudicated and as a result the report and its conclusions are, as I have already said, totally valueless. This is true regardless of whether the findings were for or against the landowners. I was relieved to learn from a statement made in the Legislature by the Attorney General that it is not the intention of the government to take any action on this report until after the Hoilett Inquiry is concluded.

I give up my present office to return to the practice of law, the profession which, before my appointment, also gave me the opportunity to serve many of Ontario's citizens. As you know, it was my privilege to spend over thirty years acting in the defense of those accused of wrongs by the State and to speak out and work for changes to Canada's criminal justice system. In my view, the challenges to the rights of every citizen have not abated and the need remains for all members of the legal profession to maintain their vigilance and to resist all attempts to strip Canadians of their rights. These are important and exciting matters in which I would like to become increasingly involved. I sense a threat to our jury system. I worry about new laws that affect our right to privacy and that impinge on the privilege that attaches to the solicitor client relationship.

Honourable William G. Davis, Q.C.August 15, 1978.

This is, as well, a time of change within the ranks of lawyers themselves as almost a thousand new, bright and eager young men and women are called to the Bar each year and seek a place in a profession which is, while conservative by nature, constantly attempting to ensure that it maintains the confidence of society by providing skilled advocates for the positions taken by any individual or groups.

I am excited at the prospect of becoming involved once again in the challenges that go in these days and times with being a practising member of the legal profession.

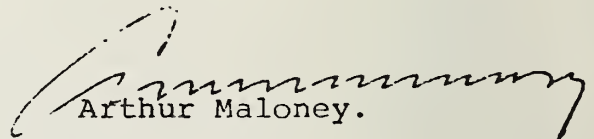
The one remaining commitment I have to fill is the blueprint for the Office of Ombudsman. I undertake that immediately after the effective date of my resignation I will address myself to the completion of this task. A period of no more than six weeks to two months from that date should be required. A substantial reason for the delay is the fundamental disagreement that has developed between me and the Select Committee on the Ombudsman as to the Committee's proper role in the Ombudsman process.

I could not imagine a greater privilege than mine has been over the last three years to have served Ontario and its people and I thank you and your colleagues for having made it possible.

With all good wishes, I remain,

Yours faithfully,

AM/D.


Arthur Maloney.

REPORT

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ORGANIZATION FOR OMBUDSMAN EFFECTIVENESS

*

The Ombudsman of Ontario

*

May 29, 1978

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A MANAGERIAL PERSPECTIVE ON THE ROLE OF THE OMBUDSMAN

CONSTITUTIONAL AMBIGUITIES

Organization and management of the Office of the Ombudsman in Ontario presents a unique challenge. First of all, the role of the Ombudsman does not sit easily within the British Parliamentary context. It is a concept derived from the Swedish style of government which is based upon a different method of political representation and decidedly different relationships between ministers and the heads of those agencies responsible for public administration. In simplest terms, the role of the Ombudsman may conflict with the traditional role of the Member of the Provincial Parliament in acting in the interests of an aggrieved citizen -- and it may conflict with the accountability of ministers of the Crown for the administrative performance of departments, agencies, boards and commissions.

Nonetheless, the Ontario Ombudsman has been created by the Legislature and with the support of all political parties. In its brief history of two and one half years, the Office and the political system have been grappling with the definition of roles and relationships, with the dimensions of the Ombudsman's mandate and the nature of his accountability to the Legislature.

This is an important perspective to keep in mind, because the inherent ambiguities in the Office's role are a pervasive influence on its management processes -- particularly in the formative years.

THE OMBUDSMAN ALONE

Beyond these fundamental matters of role and relationship of the Office, there are other differences which set the Ombudsman apart from the general fabric of public administration in Ontario. The Ombudsman's Act confers powers directly upon the person of the Ombudsman. His appointment is for term, and he does not answer for the use of his powers through a minister of the Crown, but directly to the Legislature itself. He does not have access to a community of peers -- as do ministers -- in discharging his responsibilities, arriving at his judgements, or in rendering an account of his stewardship. Unlike most heads of Crown agencies, he does not have the benefit of a board of directors or advisory council to guide him in meeting the responsibilities defined for him in his Act.

The Ombudsman's job is a lonely one. By the terms of the legislation, the Ombudsman is not an office or an organization. The Ombudsman is a person, and the role and function are personified. In these ways, the Ombudsman's role is similar only to that of the Provincial Auditor, and unlike any executive position in industry. The Ombudsman is more than a Chief Executive Officer: he is the organization.

ADMINISTRATIVE FLEXIBILITY

The unique nature of the Office manifests itself in administrative matters as well. Unlike ministries of the Ontario Government, the Ombudsman is not necessarily bound by the administrative procedures established by the Management Board to govern the affairs of departments and many agencies of the government. In the selection, development and promotion of his staff, the Ombudsman is not bound by the law and practice governing the public service. And in preparation of his estimates of expenditure for approval by the Legislature, he is not bound by the practices and procedures laid down for departments and agencies which are accountable through ministers.

There are inherent advantages in the flexibility implied by this freedom, but with the flexibility goes the responsibility to develop and maintain administrative practices which are consistent with both good management and the contemporary view of acceptable public administration practice.

THE NEED FOR A STRONG AND BALANCED ORGANIZATION

These introductory remarks may be summed up by saying that in matters of both role and practice the Office of the Ombudsman is unique and the responsibilities heavy. The organization which supports the Ombudsman, therefore, must have extraordinary strength and balance. And it must have a responsiveness which is extraordinary as well. The Legislature appoints an Ombudsman for his values, character and leadership skills, not for his administrative abilities. The Office must be so organized as to respond to the *intent* of the Ombudsman, and this intent does not easily manifest itself in clearly defined and carefully documented policy. This implies flexibility within the Office to adapt to the Ombudsman's intent, and to the intent of Ombudsmen who may be appointed to succeed him in time. Together, these characteristics make up a tall order for organization and management.

THE MANAGEMENT CHALLENGE

THE QUANTITY OF ACHIEVEMENT

In the Spring of 1978, the Ombudsman and his staff can look to some impressive achievements in the short history of the Office. The Office has an established mandate, a clarity on its jurisdictional boundaries, an accomplished staff of more than 120 persons, increasingly well defined procedures for investigation, and a working methodology for seeking redress through the government and its agencies for the greater proportion of those complaints which fall within its purview.

In the year ended March 31, 1978, the Office received some 6,700 complaints from Ontario residents. Roughly 35% of these, or some 2,300, were within the Ombudsman's jurisdiction while roughly 65%, or some 4,400 were, for one or more of a variety of reasons, outside the Ombudsman's jurisdiction. These are concrete measures of the acceptance of the Office in the process of governance in Ontario, and the degree to which the Office is recognized in the Province as an avenue of recourse for the citizen.

QUALITY AND THE OMBUDSMAN'S INTENT

The dominance of complaints falling outside the Ombudsman's jurisdiction are a reflection of the Office's acceptance and of the difficulty the Office has in satisfying complainants. The figures speak to the confusion in the minds of Ontario citizens about the relative responsibilities of the Governments of Canada and Ontario, and the responsibilities of municipalities. The intent of the present Ombudsman has been to provide whatever reasonable guidance could be given the complainant in pursuing other avenues of redress. This is a major issue of the "quality of service" rendered by the Office. Indeed, quality of service is a problem the Ombudsman shares with other organizations in the service industries.

And, as always, there are costs associated with quality of service. We have made rough estimates that the direct cost of closing a jurisdictional case is approximately \$775.00, while the direct cost of handling a non-jurisdictional case is approximately \$100.00. It is not possible for the Ombudsman to substantially reduce the number of non-jurisdictional

EXHIBIT 1

OMBUDSMAN'S OFFICE
 1978 ESTIMATED EXPENDITURES
 IN THOUSANDS OF DOLLARS

OMBUDSMAN'S GROUP COMMUNICATIONS	\$ 763.0	18.5%
PICKERING	497.0	12.0%
ADMINISTRATION	620.0	15.0%
CASE SOLVING DIRECTORATE COST	2,249.0	54.5%
TOTAL	<u>\$4,129.0</u>	<u>100.0%</u>

cases coming to his attention. It may be that, in time, citizens will come to better discern the finer points of jurisdiction, but such will likely be a gradual process. There is some choice in the way such complaints are turned aside. But it is the intent of the current Ombudsman that a high priority be placed upon leaving the citizen with the view that the Ombudsman cares, and that no citizen who approaches the Office should be turned away without a minimum of guidance. This is a concrete example of how the intent of the Ombudsman manifests itself in policy and practice.

FINANCIAL FORECASTS FOR FISCAL BALANCE

These remarks about quality of service provide a useful point of departure for examining the fiscal dimensions of the management challenge facing the Office over the next several years. Exhibit 1 is an estimated breakdown of expenditures in the Office for the fiscal year ended March 31, 1978. Of the some \$4.1 million, roughly 55% was spent by those directorates directly involved in handling complaints, a further 12% on the Pickering hearings, and about 15% for administration. The Ombudsman's group itself spent about 18% of the total budget.

Exhibit 2 details a number of assumptions used in projecting the financial dimensions of the Office ahead through 1983. Most notable of these, perhaps, is the assumption that costs in the Office will rise in accordance with an assumed inflation rate of 8%. In historical terms, this is a very high rate of inflation, but is not an unreasonable one for planning purposes in 1978. At the same time, it is assumed that the ability of the Legislature to match this inflationary increase is limited to 5%. This assumption takes into consideration the general fiscal balance of the Province. Exhibit 2 indicates, that with no increase or decrease in case load, the Office faces a potential shortfall in funds increasing to \$681,000 in 1983. This is a dilemma facing labour intensive organizations in the service industries throughout Canada, whether they be in private business or in government. It is one of the challenges of the era. Exhibit 3 displays the fiscal projection graphically. Other projections based on alternative assumptions about case load variation are included in Appendix A, and their effect on projected shortfall is summarized on the graph of Exhibit 4.

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE
WITH STABLE CASE LOAD

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0%
10. Annual Change in non-Jurisdictional Case Load = 0.0%

YEAR*	PICKERING COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3208	4223	4116	107
1980	0	962	3465	4427	4296	130
1981	0	1039	3742	4781	4486	294
1982	0	1122	4041	5164	4686	477
1983	0	1212	4365	5577	4895	681

* Fiscal Year ending March 31

EXHIBIT 3

GRAPHICAL PRESENTATION OF
FORECAST OF FINANCIAL STATUS

STABLE CASE LOAD

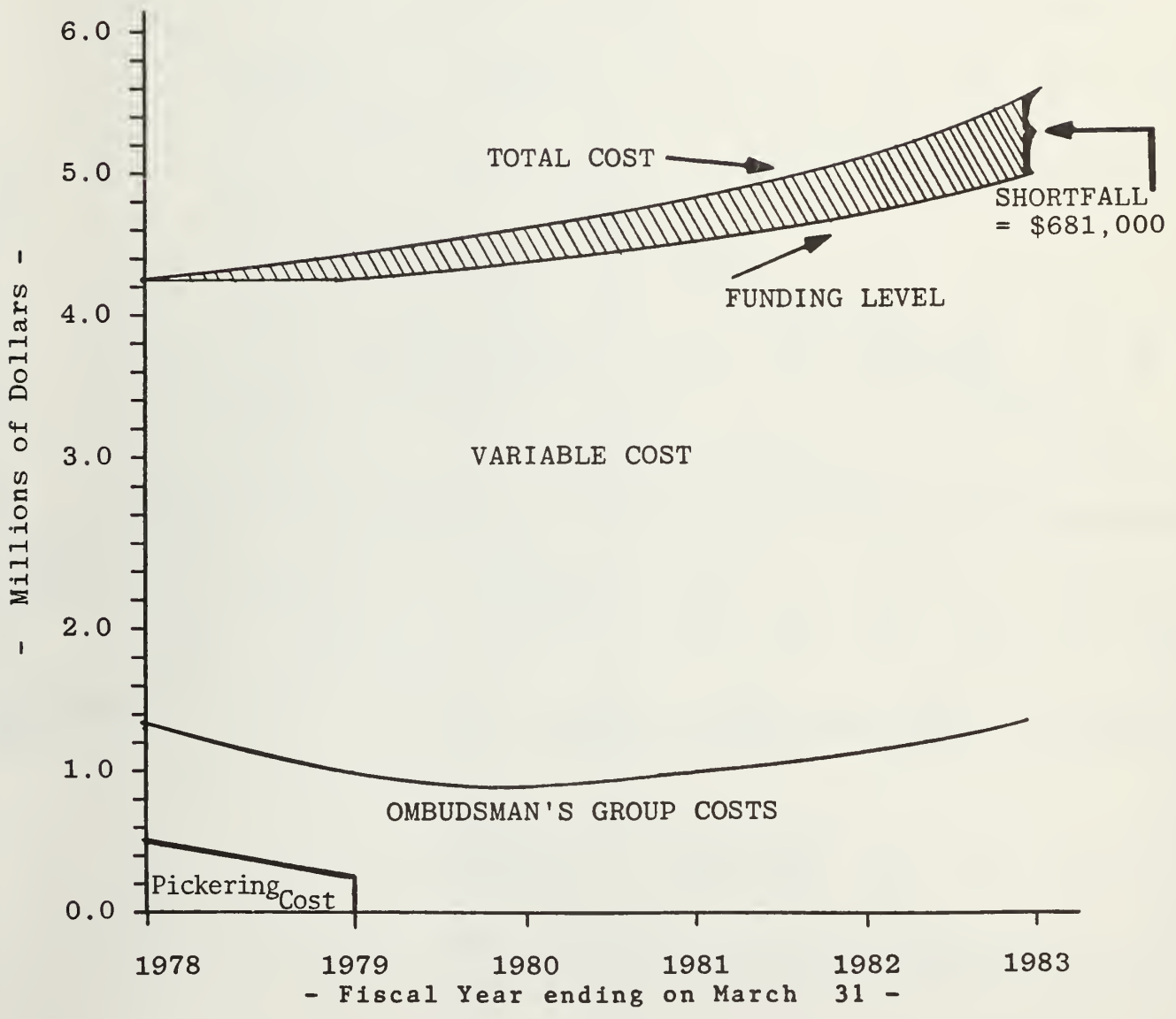
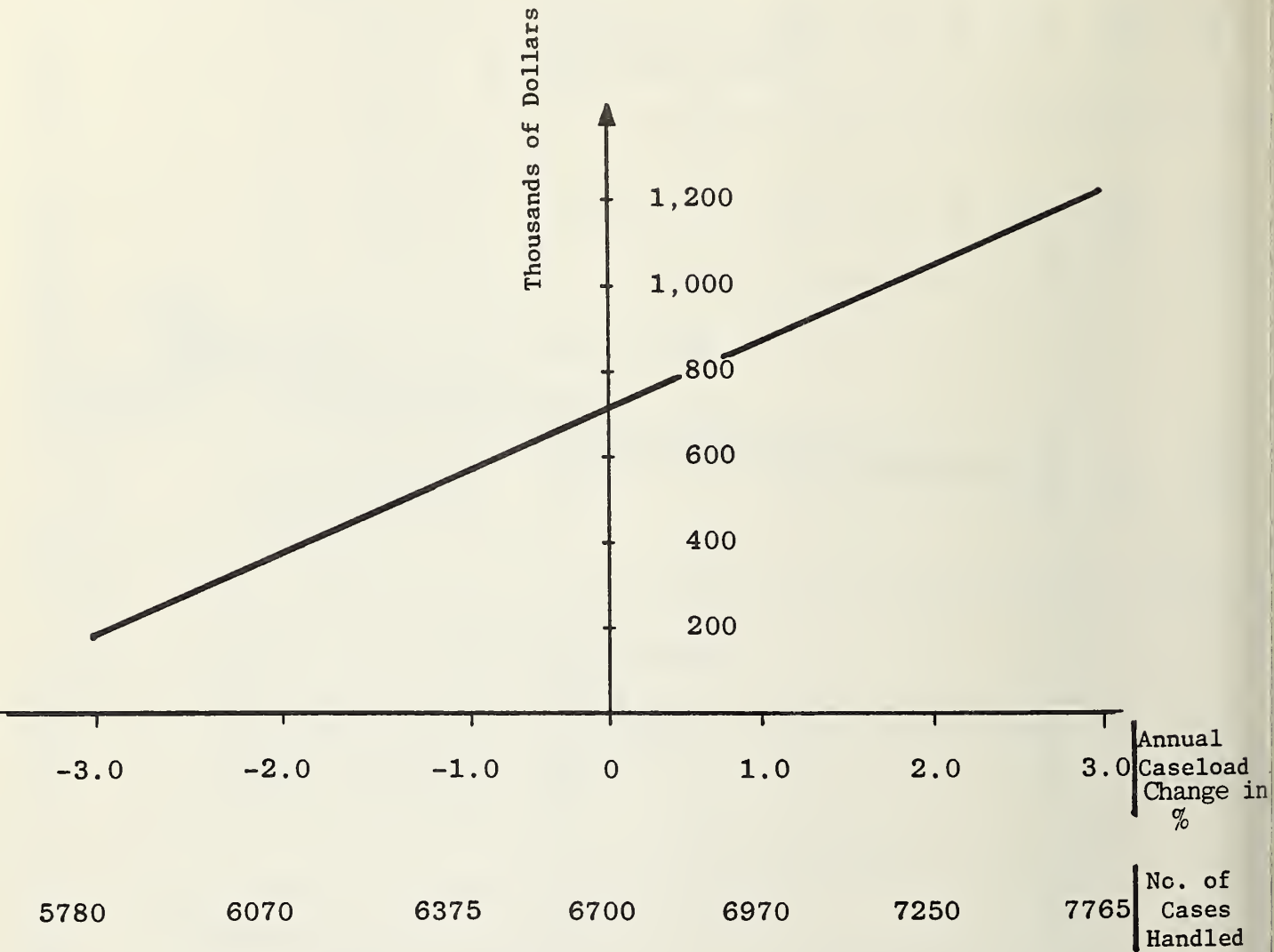


EXHIBIT 4

1983 SHORTFALL ANALYSIS



FORECAST OF FINANCIAL STATUS
NON-JURISDICTIONAL "QUALITY" LOWERED

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0 %
10. Annual Change in non-Jurisdictional Case Load = -5.0 %

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3194	4200	4116	84
1980	0	962	3435	4377	4296	81
1981	0	1039	3694	4703	4486	216
1982	0	1122	3973	5054	4686	367
1983	0	1212	4274	5432	4895	536

* Fiscal Year ending March 31

PRODUCTIVITY IMPROVEMENT IS A HIGH PRIORITY

There are several important points evident in the alternatives examined in Appendix A, but one of the more important has to do with the "quality of service" to non-jurisdictional complainants. Exhibit 5 illustrates the probable results of a reduction in assistance to non-jurisdictional cases, and is portrayed there in terms of a 5% compounded drop in the number of such cases addressed by the Office. This drop in service quality does reduce the shortfall in 1983, but not nearly as much as the relative volume of cases might suggest. This is because the costs of handling jurisdictional cases are nearly eight times those falling outside the Ombudsman's purview. While some cost savings could result from a frontal attack on non-jurisdictional cases, they would not be sufficient to address the fiscal shortfall facing the office. It is clear to us that cost savings through productivity improvement broadly across the Office are much more to the point. And they have a higher probability of being faithful to the Ombudsman's intent.

What this means for the Office of the Ombudsman is a high priority on productivity improvement over the next five years.

Improved productivity in the service industries is associated with better management technique and with the introduction of capital equipment to replace labour -- as it has been in the goods producing industries. A rough guide for the Office of the Ombudsman might be expenditure of some \$200,000 a year on computers, word processing equipment, management information systems and better management technique generally. We estimate that this will require, and provide the ability to achieve, productivity improvement of roughly 3.7% per year.

In practical terms, the person-hours required to close the average jurisdictional case would need to fall from some 50 hours in 1978 to 48.2 hours in 1979, to 46.5 hours in 1980, to 44.8 hours in 1981, to 43.2 hours in 1982, to 41.7 hours in 1983.

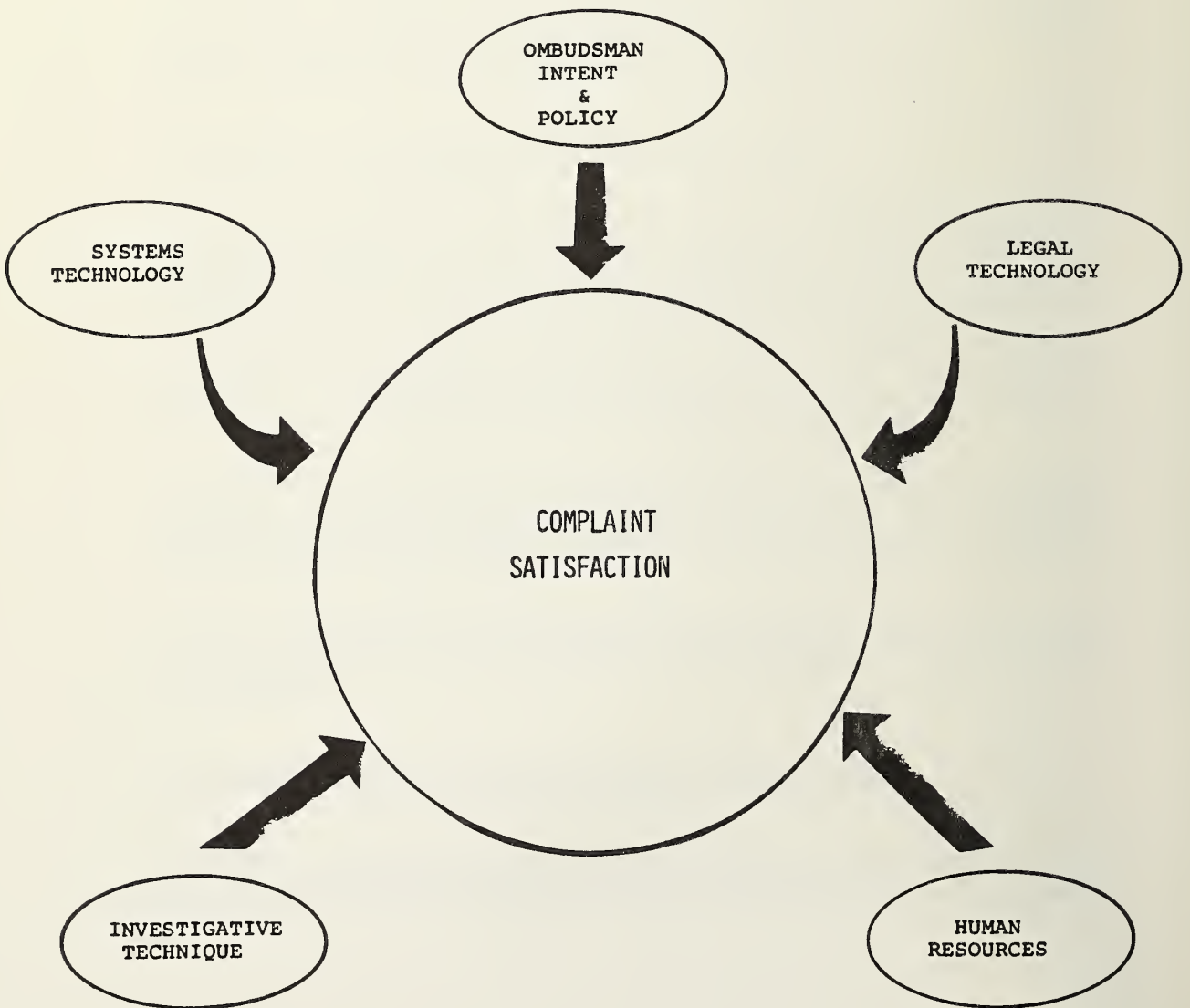
In our judgement these are workable objectives for the Office, and provide a quantitative dimension to the management goals of the Ombudsman.

THE IMPORTANCE OF PROFESSIONAL MANAGEMENT

What these financial and productivity projections illustrate is the importance of good management to the Office in the future. By this we

mean the very best in professional management which is goal oriented, draws on human skills and motivation, and uses the best available technology for achievement. In this way, the Office can fulfill the quality *intent* of the Ombudsman, and remain within the boundaries of fiscal responsibility. To achieve these ends, the Office requires an organization tailored to professional management.

THE COMPONENTS OF AN ORGANIZATIONAL STRATEGY



THE COMPONENTS OF AN ORGANIZATIONAL STRATEGY

Exhibit 6 summarizes the components of an organizational strategy for the Office of the Ombudsman. It focuses on *complaint satisfaction* as the underlying role of the Office. It is governed by *Ombudsman intent and policy* which defines the way in which that role will be carried out. It pursues complaint satisfaction through the management of *human resources*. And it draws upon *investigative technique, legal technology and systems technology* to do so in an efficient and effective manner.

OMBUDSMAN INTENT AND POLICY

Satisfied complainants are the product of the Office. The product needs to be seen in terms of both quantitative and qualitative dimensions. Six thousand seven hundred complaints in the year ending March 31, 1978 defines the overall quantitative dimensions. Two-thirds non-jurisdictional and one-third jurisdictional complaints defines the overall mix. Level of service to each type of complaint is a matter of product quality and, as outlined in the preceding section, a matter of Ombudsman intent and policy. Backlog, average case turnaround time and proportion of cases closed with a recommendation are quantitative measures of administrative performance which speak to both production and quality of that production.

It is clear from the volume of cases reaching the Office that the Ombudsman can be personally involved with only a very small proportion. Through the well developed process of Case Conferences in the Office, the Ombudsman has the ability to make his intent and policy clear on selected complaints, to give guidance to his organization on the appropriate way to proceed under particular circumstances, to define a body of precedent in the handling of certain types of complaints, to give guidance for dealing with the government organization involved and in dealing with the complainant. This process of Case Conference is the single most important leadership device the Ombudsman has to convey his intent and policy, and thereby define standards of quality for the organization.

But the great majority of cases must of necessity be handled by his organization within the envelope of intent and policy he lays down. Overall measures of performance, such as backlog and turnaround time, give the Ombudsman the ability to gauge the quantity and certain dimensions of quality in the product of the Office. But the handling of

individual complaints is, for the most part, a matter delegated within his organization. He must rely extensively on organization to make his intent and policy reality.

HUMAN RESOURCES

The quality, dedication and motivation of the some 120 employees of the Office are the most important factors governing performance. This is in large part a professional or quasi-professional work force. And there are several important principles which underlie successful organization and management of a work force of this type.

First of all, there must be a heavy reliance on the individual judgement of employees. In a managerial sense, this requires emphasis on a supervisory style within the Office which shapes that judgement and motivates efforts along channels which embody Ombudsman intent and policy in the treatment of individual complaints. There is a fine balance here between latitude for professional discretion and clear definition of task. It requires what the military call "man management" which implies close attention to the supervision and professional development of the individual. It means that the most important managerial roles within the Office are those directly involved with supervision. It implies a decentralization of responsibility and accountability. And it implies that the "personnel" function -- the staffing, training and development and replacement of human resources -- is embodied in the supervisory organization.

Secondly, an emphasis on team building and team management offers the best prospects for addressing issues like the requirement for sustained productivity improvement over the next several years. The way in which professional and quasi-professional work is conducted by individual employees determines trends in case costs and in case quality. It is important, therefore, that the quantifiable productivity improvement goals of the Office be shared with employees, and that the supervisory process engage their judgement and skills in finding ways to achieve them. This need manifests itself in several ways, but one of the more important is the way in which progress toward productivity improvement goals are measured and reported. We would caution, for example, against measurement systems which isolate individual performance within a work group and argue for scorekeeping techniques which report on overall group performance in a supervisory area. Regular reports on the average hours for case completion are best reported back to the group on the basis of group performance rather than individual performance. Peer pressure and supervisory responsibility are the best

mechanisms for addressing unsatisfactory performance, in contrast to measurement systems which have the effect of isolating the individual from the team effort. These are important elements of a successful management style in a professional environment where productivity improvement is much less a matter of working harder than it is of working smarter.

Human resource management is the single most important dimension of performance for the Ombudsman.

INVESTIGATIVE TECHNIQUE

Investigative technique is the central technical skill employed within the Office. It is through investigation that the facts of an individual case are discerned and the basis for the complaint assessed. The Office has recruited experts from the police and related communities to provide specialized knowledge in investigation, and to lay a foundation for the training of other personnel in investigative skills. This technical base is of great underlying importance to the capability of the Office to satisfy complaints. Because it is more art than science, it emphasizes the importance of the supervisory function in developing and maintaining competence within the Office, and it emphasizes the central role in the management of the Office of those holding managerial responsibilities for the investigative units.

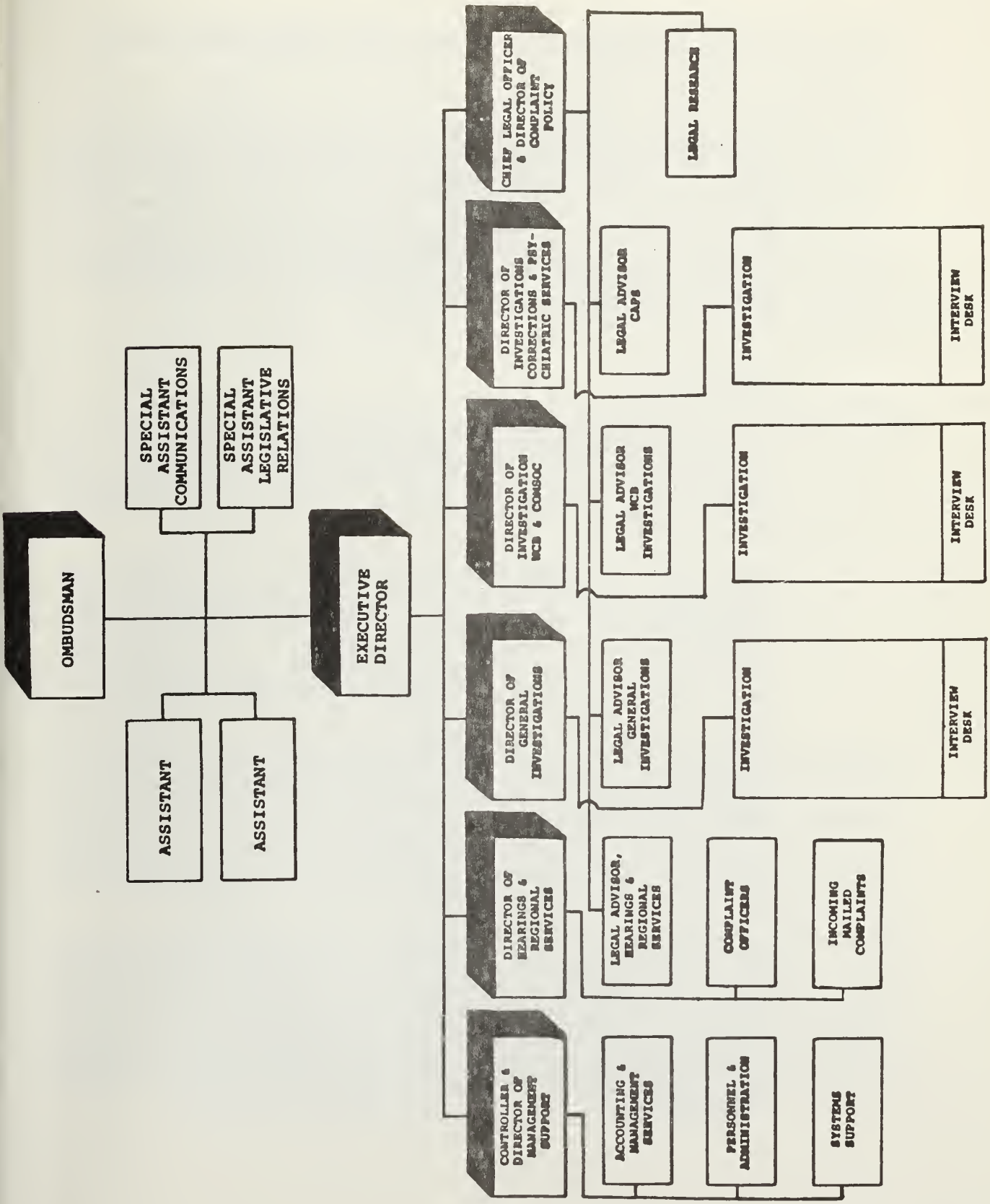
LEGAL TECHNOLOGY

The procedures of the Office are circumscribed by the law, and legal specialists provide a core technology in the operation of the Office. "Technology" is used here in its literal sense -- that of the practical art. The law provides the basis for determining the jurisdiction of the Office with respect to a given complaint, it defines the avenues of recourse open to the complainant, and it specifies the actions the Ombudsman may take in seeking satisfaction of the complaint. Within the Office, legal interpretations have led to guidelines which focus the efforts of investigators in addressing the facts of the case. Legal interpretations are required at several junctures in the proceedings of an investigation as well. While this technology is highly specialized, the organization of the Office must provide a way in which legal skills are readily available to investigators.

SYSTEMS TECHNOLOGY

Electronic methods are becoming increasingly important to the Office, particularly in word processing. Memory typewriters and related equipment are being absorbed into the procedures of the Office to simplify paperwork, to assure quality and to provide efficiency in the processing of large volumes of documents. This is a trend which will intensify. Indeed, there are advances in electronics which favour large scale automation of otherwise manual tasks, and these advances are just now becoming practical on an extensive scale. We are of the view that the systems technology of word processing offers the basis for very substantial productivity improvement over the next five years. There is potential in the flexibility of this technology to maintain individual service while, at the same time, taking advantage of large scale automation.

We recommend that the coordinated introduction of word processing systems be afforded a high priority in the administration of the Office during the next two years, and that competitive proposals from two or more alternative suppliers be sought immediately to that end.



OMBUDSMAN

ASSISTANT

ASSISTANT

SPECIAL ASSISTANT COMMUNICATIONS

SPECIAL ASSISTANT LEGISLATIVE RELATIONS

EXECUTIVE DIRECTOR

CONTROLLER & DIRECTOR OF MANAGEMENT SUPPORT

ACCOUNTING & MANAGEMENT SERVICES

PERSONNEL & ADMINISTRATION

SYSTEMS SUPPORT

DIRECTOR OF HEARINGS & REGIONAL SERVICES

LEGAL ADVISOR, HEARINGS & REGIONAL SERVICES

COMPLAINT OFFICERS

INCOMING MAILED COMPLAINTS

DIRECTOR OF GENERAL INVESTIGATIONS

LEGAL ADVISOR GENERAL INVESTIGATIONS

INVESTIGATION

INTERVIEW DESK

DIRECTOR OF INVESTIGATION WCB & COMSOC

LEGAL ADVISOR WCB INVESTIGATIONS

INVESTIGATION

INTERVIEW DESK

DIRECTOR OF INVESTIGATIONS CORRECTIONS & PSYCHIATRIC SERVICES

LEGAL ADVISOR CAPS

INVESTIGATION

INTERVIEW DESK

CHIEF LEGAL OFFICER & DIRECTOR OF COMPLAINT POLICY

LEGAL RESEARCH

AN ORGANIZATION PLAN FOR THE ONTARIO OMBUDSMAN

The foregoing elements emerged as important in the process of our review of the Office, and were introduced to senior officials of the Office during a two-day workshop to review our findings. These elements, along with a synthesis of the findings of our interviews, formed the basis of an evaluation of a proposed organization plan. On the basis of that joint evaluation, we have revised the proposal and recommend the structure portrayed in Exhibit 7. Its elements can be described in the following way.

FRAMEWORK

We recommend an organization plan which incorporates an Executive Director as Chief Operating Officer for the Ontario Ombudsman. This recommendation clearly preserves the role of the Ombudsman as Chief Executive Officer, but provides a focal point for efficient administration of the Office.

This division of responsibilities is important for several reasons. We have observed, and our study has confirmed, that the administrative responsibilities of the Ombudsman are onerous to the point of overload. Currently, there are 17 positions reporting directly to the Ombudsman, and this supervisory load is inconsistent with the external responsibilities carried by him. In some respects, the Ombudsman's leadership and public responsibilities are analogous to those of a minister of the Crown. And public administration has long found it necessary to provide ministers with permanent administrative heads to oversee the implementation of policy. Furthermore, the administration of a service organization of more than 100 persons requires coordinated attention to the processes of management. In the future, this administrative burden will be of even greater importance in view of the productivity improvement objectives which the Office must adopt to remain within the financial boundaries afforded it.

We recommend, as well, that the investigation function receive dominance in the managerial structure of the Office. This is because of the central importance of investigations to complaint satisfaction, and because of the central importance of management of the Office's skilled human resources. Our proposal envisages three Directorates of Investigation, plus a special purpose Directorate aimed at meeting the needs of rural Ontario as well as providing a focal point for the receipt of complaints.

Two specialized Directorates are recommended to support the management process in a technical way. A Chief Legal Officer and Director of Complaint Policy provides the Office with the means to control its investigative efforts within legal boundaries. A Controller and Director of Management Support provides the Office with the means to control its investigations within approved managerial and financial policy, and provides the technical leadership for introduction and improvement of that systems technology which will underlie productivity improvement.

As Chief Operating Officer, the Executive Director is seen as chairing a Management Committee comprised of the six Directors for the purposes of ensuring efficient and effective management of the operations of the Office, and for developing, recommending, monitoring and controlling the administrative policies which will govern the day to day functioning of the Office.

The Chief Legal Officer and Director of Complaint Policy is seen as chairing those processes described as *Case Conference* where the Ombudsman's policy and intent with respect to the handling of complaints is developed and maintained.

The components of the organization plan in Exhibit 7 can be described as follows.

THE EXECUTIVE

The Ombudsman's Group

The Ombudsman's Group includes those functions, offices and persons which directly support the Ombudsman. The composition of the Group is very largely a function of the preference of the Ombudsman and may be larger or smaller depending upon his administrative style. In Exhibit 7, the Group is shown as including Assistants and the functions of Legislative Relations and Communications. In our view, Legislative Relations is clearly a function which should relate directly to the Ombudsman, particularly during the early years of the Office while the relationships to the Provincial Parliament are in the process of being established. The positioning of Communications is optional, and is included in the Ombudsman's Group because it has been used primarily as a strategic device in establishing the relationship of the Ombudsman with the several dimensions of the Ontario community. Communications has important tactical support dimensions, as well, particularly with respect to hearings held throughout Ontario and in support of client relationships in the several investigative directorates. In time, it might report to the Executive Director in a staff role.

The Executive Director

The Executive Director is seen as directing administering and coordinating the activities of the Office of the Ombudsman in accordance with the policies, objectives and intent established by the Ombudsman. He assists the Ombudsman in the development of policies and goals that cover operations, personnel and financial performance.

His specific responsibilities include the following:

- . As Chairman, he guides and directs members of the Management Committee in the development and delivery of appropriate services to the citizens of Ontario.
- . He directs the development and preparation of short-term and long-range plans and budgets based upon the broad organizational goals of the Office and recommends their adoption to the Ombudsman.
- . He maintains a sound plan of organization, and recommends changes in organization as required by the development and growth of the Office.
- . He directs the development and installation of procedures and controls to maintain communication and adequate flow of information and to ensure adequate management control and direction of the Office.
- . He develops and establishes operating policies consistent with the Ombudsman's broad policies and objectives and intent; and ensures their adequate execution.
- . He appraises and evaluates the results of over-all operations and reports results to the Ombudsman.
- . He directs the development and establishment of adequate and equitable personnel policies throughout the Office. He ensures that the interests and welfare of staff as individuals are preserved.
- . He ensures sound relationships with key personnel in external public and private sector organizations.
- . He ensures that all Office activities and operations are carried out in compliance with those laws and regulations governing the Office.

THE OPERATING DIRECTORATES

The operating directorates contain the great proportion of personnel in the Office and are responsible for the efficient and effective handling of complaints from the public. There are several considerations which we feel to be of particular importance in guiding the organization of these groups. First of all, there must be the recognition that the Directors of these groups carry the primary responsibility for management within the Office. This is because the Office's managerial challenge emphasizes the development and deployment of human resources. These, therefore, are managerial jobs, as distinct from case oriented roles. They need to focus on the development of the human resource capacity within the Office. Secondly, we would stress the need to retain a flatness to the organization, without steep hierarchies, as a pattern consistent with professional and quasi-professional tasks. And thirdly, we see the need to ensure that the Management Committee be dominated by officials who carry responsibility for the management of the investigative case load and for the human resources of the office.

For these reasons, we recommend that four operating Directorates, each headed by a Director, be formed. There are several considerations involved in grouping case activity among the four, including balance of case load, balance in terms of the numbers of staff, specialization of function, specialization of clientele, and visibility of function to the Ontario community. Our workshop with senior Ombudsman officials examined these considerations in detail and proposed a number of alternatives for differentiating Directorates. We have taken this advice into account in recommending the four which follow. The pattern recommended is based largely on the experience of the Office and reflects what has proven to be a useful basis for differentiating the investigative task and specializing the roles of Directorates.

This basic differentiation in responsibility needs to be moderated in its administration through personnel policies which foster the rotation of personnel, on a carefully planned basis, from one Directorate to another. Such policies are essential to ensuring balanced training and development of personnel.

Directorate of Investigations: Corrections and Psychiatric Services

This Directorate is responsible for all complaints regarding institutions where citizens are incarcerated. The methods and procedures used here are highly specialized and depend upon a continuity of relationships between officers of the Ombudsman and those of the institution involved.

While these institutions span more than a single Policy Field within the provincial administration, we are of the view that the Office of the Ombudsman should cultivate relationships with the Province which take account of the way in which Ministries are grouped. Accordingly, we recommend that the Director of Investigations: Corrections and Psychiatric Services carry liaison responsibility for the Justice Policy Field.

We define as "liaison" the objective of establishing and maintaining effective relationships between the Directorate and the senior personnel involved in the Ministries with whom the Directorate interfaces. Effectiveness would be judged by the avoidance of a negative adversary atmosphere between the Office of the Ombudsman and the Ministry.

Directorate of Investigations: Workmen's Compensation Board and Community and Social Services

There are strong similarities in clientele between WCB and COMSOC and, while the WCB generates an onerous case load for the Office, there is a distinct advantage in the Office specializing to encompass both.

The Director of Investigations: WCB & COMSOC is to carry liaison responsibility for the Social development Policy Field.

Directorate of General Investigations

This Directorate is to be responsible for complaints not falling specifically within CAPS or WCB & COMSOC. As such, it is a large and highly diversified directorate without the benefits of specialization in technique or clientele. Of the three investigative directorates, it is the most onerous from a managerial point of view, but less specialized in a technical sense. Because of the managerial dimensions of this job, we do not recommend that the Director maintain liaison responsibility for a Policy Field.

Directorate of Hearings and Regional Services

This Directorate has three special responsibilities. First, to serve those parts of the Province which are not easily accessible to the Office of the Ombudsman in Toronto. In doing so, the Directorate is to have responsibility for the hearings which the Ombudsman conducts across

Ontario. As opposed to having its own staff of investigators, personnel would be drawn from other Directorates. This provides the opportunity for specialized investigators to broaden their understanding of the various regions in the Province.

Second, the Directorate would, through its Complaint Officers group, initially screen all incoming complainant phone calls or personal visits. The screening is for the sole purpose of determining which Directorate's Interview desk should handle the complaint. A complaint that cannot be quickly allocated to one of the three Investigative Directorates would be referred to Legal Research for handling. The Complaint Officers Group is seen to be a small (2-3) person group, and would not be required to write up Interview Summaries or make any referrals to the complainant.

The Interview desk in each Directorate would be manned by Investigators on a rotating duty roster basis. Interviews would then be conducted in a manner that best meets the needs of that Investigative Directorate. Further, it would be possible in most cases to assign cases to those Investigators conducting the initial interview, thus giving the Investigators a sense of "ownership" of the complaint, but more importantly, it would allow the complainant to identify with one person within the Office.

The third special responsibility of this Directorate relates to incoming mail. Currently, incoming mail is handled by assistants to the Ombudsman, and routed to the appropriate officials. This has had the advantage of providing direct control by the Ombudsman over the flow of cases. We are of the view, however, that this function might be better assigned to the Director of Hearings and Regional Services, providing him with complete access to all incoming cases regardless of the method by which they are received.

TECHNICAL DIRECTORATES

The two technical directorates are as follows:

Chief Legal Officer and Director of Complaint Policy

The Chief Legal Officer and Director of Complaint Policy is to be responsible for developing the way in which legal interpretation is

applied to complaints. He has direct responsibility for developing and maintaining the Office's legal capacity. For this purpose he maintains the legal research group and assigns Legal Advisors to each of the operating directorates. While these assigned Advisors are of his staff and he has responsibility for their career development, they are to operate as integral components of the management processes in their host directorates. This is a matrix concept of organization which has been found to be highly beneficial in the deployment of technical skills. It is a difficult organizational pattern to operate, however, because it carries with it the concept of two superiors. With direct attention to the potential difficulties of divided loyalties, we are confident that this matrix concept can provide high quality legal support for the Office.

Controller and Director of Management Services

Because the Office of the Ombudsman has a high degree of independence, the role of the Controller and Director of Management Support is a much more comprehensive responsibility than that of a comparable position in a government ministry. Indeed, this position is more analogous to the role of controllership in industry. This is a technical directorate which has responsibilities for both control and service. The control dimensions of the role need specific recognition, because they provide the Executive Director, and through him the Ombudsman, with the assurance that expense control, administrative practices, and budgetary planning are consistent with generally accepted practices in the public sector, and are consistent with the Ombudsman's intent for service quality and financial responsibility.

The Directorate includes an Accounting and Management Services group with responsibilities for budgeting, accounting and management information. It groups together the administrative responsibilities for personnel with administrative support for the Office as a whole. This grouping recognizes that the responsibility for personnel resides within the other directorates, but provides a basis for technical support to this line function.

A high priority for this Directorate lies in the Systems Support group, which is to carry responsibility for the systematic introduction of word processing capability throughout the Office. This is a major support activity, given the importance of productivity improvement in the next several years. With this modernization will come increased use of the computer, as an operational support, as an accounting and management information tool, and as a means for evaluating alternative strategies.

MANAGEMENT INTEGRATION

The plan of organization outlined in Exhibit 7 offers the Ombudsman the ability to provide professional management to differentiated and specialized investigative and related tasks. It does this by featuring broad management responsibilities which are delegated to four operating directorates, and places primary emphasis in these managerial roles on the development of the human resources of the organization.

It provides technical support to the operating directorates through specialized responsibilities for legal services and management services which, taken together, provide the operating directorates with the capacity needed to address the goals of complaint satisfaction.

The plan of organization provides the Office with two clear responsibilities for control. The first, through the Chief Legal Officer and Director of Complaint Policy, provides the conduit through which Ombudsman intent in complaint policy is channeled to guide the operating directorates --through assigned legal advisors and through the process of case conferences. The second, through the Controller and Director of Management Support, defines the administrative and financial controls which ensure that the Office performs in accordance with plans and good practice. Technical support to the operating directorates is also assured through these specialized directorates, in the form of competence in legal advice, in administrative advice, and in systems support.

Within this plan, the Executive Director is in a position to coordinate the activities of the Office, integrating the specialized support units with the decentralized responsibilities for management. Teamwork at this level will be key to the success of the plan, and the Executive Director will need the full support of the Ombudsman in bringing the pieces together. The Management Committee provides the forum for developing this teamwork and for resolving the conflicts which inevitably arise between those responsible for technical matters and

those responsible for results. We recommend that the Executive Director undertake to address this team building effort in the context of a medium term plan -- perhaps three years. A management-by-objectives approach would be a useful theme in this regard, featuring case load and unit costing forecasts, projected budgetary constraints, productivity objectives, systems improvement objectives, and quality indicators. From these would flow targets to be achieved by each Directorate, and objectives in terms of staff deployment and staff development. As this planning exercise develops, areas requiring policy definition will emerge. These can be isolated and delegated for staff work within the Management Committee. Specific policy proposals can thereby be brought forward for Management Committee endorsement, and recommendation to the Ombudsman for approval.

In this way, clarity of the objectives of the Office will emerge, and emerge in the context of more precise operating policy. This clarity and precision can be communicated through the management structure leading to a broadly shared sense of purpose within the Office.

IMPLEMENTATION

In our original proposal of November, 1977 and our revised proposal of March 17, 1978, we emphasized the need to approach the problems of organization for effectiveness in a participative manner. This approach has been initiated by the Office of the Ombudsman -- as manifested by:

- . the identification of a Management Study Committee, two members of which were elected by non-supervisory personnel in the Office;
- . the involvement of approximately 40% of staff in individual and small group meetings with the consultants to identify the opportunities for improvement in the Office's operations;
- . the involvement of all members of senior management in a two-day workshop in which opportunities for improvement were reviewed against a proposed new organizational structure.

This involvement has had the effect of giving a strong signal to staff that the organization has started to move on a new course. We believe that the process of future changes in the Office must reflect continued involvement of staff if the Office is to achieve its objective while maintaining its reputation of being sensitive to complainants' needs.

Implementation of the proposed structure must, therefore, reflect care and sensitivity while at the same time, the pace of change must reflect an appropriate sense of urgency.

Traditionally, the public sector has not implemented organization change effectively. Involvement with those most seriously affected has not been planned. Rather implementation by edict has been the normal strategy. This has left staff confused, concerned and more importantly has caused staff to demonstrate stiff resistance to new structures and methods. Further, such a strategy fails to tap the creativity and innovativeness that is inherent in working levels of the organization.

In presenting the revised organizational structure for the Office of the Ombudsman, a great many questions of detail have been left unanswered on purpose. We believe that such details are best left to those personnel involved and skilled in the Office. Our recommended strategy is one that is based on a process of change through dialogue and subsequent shifts in attitude. We believe our strategy to be not only more effective but more efficient in terms of time and cost.

We believe it essential to recognize that organizational change and organizational behaviour are synonymous. Structure is only a means to bring about desired behaviour. The desired behaviour will require changes in attitude. Consequently recognition should be given to the fact that it will take time to achieve the desired behaviour among the various levels of staff in the Office.

It is essential, however, that during the period of transition the quality of service now being provided to citizens of Ontario be maintained.

PRINCIPLES OF ORGANIZATION CHANGE

A CONCRETE SIGNAL

Any organization needs a clear and unmistakable signal that change is underway. This is particularly true in the Office, given the perceptions of staff regarding previous structural realignments. We believe it essential that a number of key steps be taken to indicate to all staff that the new proposals have been reviewed by management and have been accepted by management and, therefore, are serious. Evidence of support from the Ombudsman and his management group is important.

OPEN COMMUNICATION ON THE CONCEPT

It is essential that key staff understand the objectives underlying the proposed structure. Such understanding is best achieved through open and candid communications. Effective communications will also allay skepticism and relieve the anxiety of uncertainty.

CAREFULLY PLANNED CHANGE

The planning of change must recognize the following factors:

- staff need a sense of pace of change, particularly if the changes are going to impact on their own work life;
- the rate of change must be both challenging and achievable;
- expectations of staff must be appropriately tempered;
- some staff will need to be freed to carry out the needed development of detail and subsequent implementation.

PARTICIPATIVE CHANGE

The degree of commitment to the change in organization will be strongly influenced by the degree of involvement by staff. Involvement, however, should be tempered with the realism that not all personnel

have the skills necessary to effectively participate on all matters. Care needs to be taken that competency (which is spread throughout all levels of the Office) be a prerequisite to involvement in such tasks as developing the details necessary to support the proposed organizational design.

EMPHASIS ON GROUP PROCESS

The active involvement of the Management Study Committee and Directors during the course of this assignment and their support in principle of the proposed organization design has reinforced our belief in the strategy of group process. The challenge of developing detailed support systems for the recommended structure can best be met by continuing this strategy.

STAGES OF ORGANIZATION CHANGE

For perspective, we forward a timetable outlining the major stages to put the process of organization change into motion:

STAGE I - A CONCRETE SIGNAL

1. Announcement by the Ombudsman to all staff, in a general meeting, of the acceptance of the report. Copies of the report to be given to each member of staff.
2. Ombudsman announces the following appointments:
 - . Executive Director
 - . The Three Investigative Directors
 - . Director of Hearings and Regional Services
 - . Chief Legal Officer & Director of Complaint Policy
 - . Controller and Director of Management Support

STAGE II - OPEN COMMUNICATION ON THE CONCEPT

Staff would be given the opportunity to attend information meetings chaired by members of the Management Study Committee. Questions of clarification regarding the report would be answered.

STAGE III - CAREFULLY PLANNED CHANGE

1. The Management Committee, chaired by the Executive Director, meets for a two day session to identify, prioritize and plan the implementation program for the next six months. The results of this meeting, in the form of recommendations, would be forwarded by the Executive Director to the Ombudsman for his approval.
2. Among the issues to be considered:
 - a) Establishing the function of "Interview Desk" in each of the three Investigative Directorates, including the development (if deemed necessary) of new interview formats that would better assist the Investigator in resolving the complaints received.

- b) Defining the new role of Information Officers and developing a training program for their revised functions, if deemed necessary.
- c) Allocating legal staff to the various Directorates as indicated in the proposed organization structure.
- d) Establishing personnel policies and procedures relating to the employment, transfer, promotion and discipline of staff.
- e) Establishing appropriate timing for review of job descriptions and subsequent evaluation as a result of new or revised responsibilities.
- f) Establishing procedures for case conferences including attendance, timing, frequency, case loads, etc.
- g) Establishing procedures for hearings across the Province including frequency, geographic location, duration, seconding of appropriate legal and investigative staff, etc.
- h) Developing criteria for the establishment of a Management Information System, consistent with the theme expressed in the Report, that will enable Directors to determine the effectiveness and efficiency of their subordinate group.
- i) Instituting a review of word processing needs across the office by outside suppliers, for subsequent recommended installation of new equipment.

STAGE IV - PARTICIPATIVE CHANGE

1. The Implementation Plan, developed by the Management Committee and approved by the Ombudsman, would be communicated to all staff. In addition, where projects were identified, small task teams, comprised of knowledgeable personnel from all levels, would be created.
2. The Executive Director would be responsible for ensuring that task teams were following their predetermined plans of action and met their objectives on time.

APPENDIX A

ALTERNATIVE FINANCIAL SIMULATIONS

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- ASSUMPTIONS:
1. Inflation Rate = 8%
 2. Funding Rate = 5%
 3. 1978 -- Total Cases closed and dropped etc. = 6700
 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = 0.0%
 10. Annual Change in non-Jurisdictional Case Load = 0.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3208	4223	4116	107
1980	0	962	3465	4427	4296	130
1981	0	1039	3742	4781	4486	294
1982	0	1122	4041	5164	4686	477
1983	0	1212	4365	5577	4895	681
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

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 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = +3%
 10. Annual Change in non-Jurisdictional Case Load = +3%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3281	4296	4116	180
1980	0	962	3625	4587	4296	290
1981	0	1039	4005	5044	4486	557
1982	0	1122	4426	5548	4686	862
1983	0	1212	4892	6104	4895	1208

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = -3.0%
10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3135	4150	4116	34
1980	0	962	3309	4272	4296	(24)
1981	0	1039	3494	4533	4486	46
1982	0	1122	3690	4812	4686	126
1983	0	1212	3897	5109	4895	213
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- ASSUMPTIONS:
1. Inflation Rate = 8%
 2. Funding Rate = 5%
 3. 1978 -- Total Cases closed and dropped etc. = 6700
 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = -3.0%
 10. Annual Change in non-Jurisdictional Case Load = 0.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3149	4164	4116	48
1980	0	962	3339	4302	4296	5
1981	0	1039	3542	4581	4486	94
1982	0	1122	3758	4880	4686	194
1983	0	1212	3987	5200	4895	304

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

ASSUMPTIONS:

1. Inflation Rate = 8%
2. Funding Rate = 5%
3. 1978 -- Total Cases closed and dropped etc. = 6700
4. In 1978 -- Jurisdictional Cases = 35%
5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
6. Administration cost allocated to Ombudsman Group = 10%
7. Average Cost to close a Jurisdictional Case = \$775
8. Average Cost to close a non-Jurisdictional Case = \$100
9. Annual Change in Jurisdictional Case Load = 0.0%
10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3194	4209	4116	93
1980	0	962	3435	4397	4296	100
1981	0	1039	3694	4733	4486	246
1982	0	1122	3973	5096	4686	409
1983	0	1212	4274	5486	4895	591
* Fiscal Year ending March 31						

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- ASSUMPTIONS:
1. Inflation Rate = 8%
 2. Funding Rate = 5%
 3. 1978 -- Total Cases closed and dropped etc. = 6700
 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = +3 %
 10. Annual Change in non-Jurisdictional Case Load = 0.0 %

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3267	4282	4116	166
1980	0	962	3594	4556	4296	259
1981	0	1039	3954	4993	4486	507
1982	0	1122	4352	5474	4686	788
1983	0	1212	4790	6002	4895	1106

* Fiscal Year ending March 31

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- ASSUMPTIONS:
1. Inflation Rate = 8%
 2. Funding Rate = 5%
 3. 1978 -- Total Cases closed and dropped etc. = 6700
 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = 0.0%
 10. Annual Change in non-Jurisdictional Case Load = +3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4129	4129	3
1979	124	891	3222	4237	4116	121
1980	0	962	3496	4458	4296	161
1981	0	1039	3793	4832	4486	345
1982	0	1122	4116	5238	4686	552
1983	0	1212	4467	5697	4895	783
* Fiscal Year ending March 31						

EXHIBIT A-8: JURISDICTIONAL CASE LOAD RISING,
NON-JURISDICTIONAL FALLING

FORECAST OF FINANCIAL STATUS OF THE OMBUDSMAN'S OFFICE

- ASSUMPTIONS:
1. Inflation Rate = 8%
 2. Funding Rate = 5%
 3. 1978 -- Total Cases closed and dropped etc. = 6700
 4. In 1978 -- Jurisdictional Cases = 35%
 5. In 1978 -- Non-Jurisdictional (& other) Cases = 65%
 6. Administration cost allocated to Ombudsman Group = 10%
 7. Average Cost to close a Jurisdictional Case = \$775
 8. Average Cost to close a non-Jurisdictional Case = \$100
 9. Annual Change in Jurisdictional Case Load = +3.0%
 10. Annual Change in non-Jurisdictional Case Load = -3.0%

YEAR*	PICK COST	OMBUDSMAN'S GROUP COST	VARIABLE COST	TOTAL COST	FUNDING LEVEL	SHORT FALL
1978	497	825	2810	4132	4129	3
1979	124	891	3253	4268	4116	152
1980	0	962	3564	4526	4296	229
1981	0	1039	3906	4946	4486	459
1982	0	1122	4284	5406	4686	720
1983	0	1212	4700	5912	4895	1016

* Fiscal Year ending March 31

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