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EIGHTH REPORT

The Ombudsman | Ontario

APRIL 1, 1980 - MARCH 31, 1981

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APRIL 1, 1980 - MARCH 31, 1981

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HON. DONALD R. MORAND

The Ombudsman | Ontario

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May 25, 1981

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

Dear Mr. Speaker:

It is with pleasure that I present the Eighth Annual Report of the Ombudsman for the period April 1, 1980 to March 31, 1981.

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

Yours very truly,

Donald R. Morand

Donald R. Morand

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CHAPTER ONE

INTRODUCTION

I am pleased to present the Eighth Report of the Ombudsman which is also the third Report in my capacity as Ombudsman of the Province of Ontario.

In this Report I have again kept the number of detailed summaries to a minimum. This is in keeping with the stated intention outlined in my last Report which was to shorten all future annual reports while maintaining a comprehensive sampling of the complaints brought to my attention.

COMPLAINT STATISTICS

Since the inception of the Office of the Ombudsman in May of 1975, to March 31, 1981, the Office received complaints for which a total of 32,870 files were opened. A total of 31,245 files were closed since May of 1975; 12,226 (39%) of these files involved complaints which were within the jurisdiction of the Office of the Ombudsman to investigate. During this period, the Office dealt with 36,284 non-jurisdictional complaints and information requests for which no follow-up action was required and for which a file was not opened. Therefore, the total of complaints and information requests received in our Office since May of 1975 was some 69,154.

One statistic which I feel is worthy of special note is the number of files which remain open in our Office at year end compared to the same figure a year ago. As of March 31, 1980, there were 2,714 open files in our Office. As of March 31, 1981, this number has been reduced to 1,634. This represents a very substantial drop of 1,080 files in the case load of work in our Office and was achieved by hiring extra investigators and of course the dedicated work of our office staff who strive to give the citizens of Ontario prompt service. It is my view that this figure can be again decreased slightly in the ensuing year. This will remain one objective of the Office along with our continuing goal of providing prompt, courteous and effective service to the citizens of Ontario.

Another dramatic change occurred in the number of files closed in the period covered by this Report. A total of 5,083 files were closed between April 1, 1980 and March 31, 1981, which represents an increase of 428 file closings when compared with the previous fiscal year.

There were 6,182 complaints and information requests associated with the 5,083 file closings. These 6,182 cases incorporate 5,682 complaints for which the jurisdiction of the Office was determined. Approximately 63% or 3,602 of these complaints were found to be within the jurisdiction of the Ombudsman. In comparison with the previous Report, this represents an increase of 35% or 1,248 in the number of jurisdictional complaints dealt with. The remaining 2,080 complaints were found to be outside the jurisdiction of the Ombudsman.

Overall, 2,151 (2,117 jurisdictional complaints) complaints dealt with during this reporting period were resolved. The preponderance of these complaints, 2,108 (98%), coincides with situations where the Office was directly involved. The remaining 43 complaints were resolved independent of any involvement on our part. Of the 2,151 complaints, 666 were resolved in favour of the complainant. The involvement of our Office and the cooperation of the officials of the various ministries and agencies of the Province were the two most important factors contributing to the resolution of these cases. Examples of the excellent cooperation between my Office and the various Ministries are illustrated in the detailed case summaries contained within the Eighth Report. Especially worthy of note are detailed case summary numbers 8, 13, 29 and 31. On the other hand, the balance or 1,485 complaints were resolved in favour of the "governmental organization". In these cases the involvement of our Office culminated in a decision by the Ombudsman that he was unable to support the complainant pursuant to the provisions of Section 22(1) or (2) of The Ombudsman Act, 1975.

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. Our Office once again was able to be of assistance in 99% of the non-jurisdictional complaints that warranted the opening of a file. The complainants were provided with either a specific referral to an appropriate agency or a clarifying explanation of their circumstances. Those who were involved with the 4,687 no follow-up complaints and information requests for which we did not open a file were provided with a referral or an explanation of their situation in the course of their interview with our staff. These no follow-up complaints and information requests were received and handled through our interview services by means of office interviews (469), telephone interviews (3,196), hearing interviews (523), and institutional visit interviews (499). The large number of complaints received in the course of interviews continues to support our view that citizens perceive this Office as one which they can approach on a very personal and individual basis, either by meeting with members of our staff in the course of a private hearing or by contacting the Office in person or by telephone.

During the period covered by this Eighth Report, April 1, 1980 to March 31, 1981, we opened 4,022 files and dealt with 4,687 no follow-up complaints and information requests, for which a file was not opened. Therefore, the Office received 8,709 new complaints and information requests. The volume of new complaints and information requests was somewhat lower than during the period covered by the Seventh Report. In large measure, this decline is attributable to a reduction in our schedule of hearings in the larger communities across the province, as well as a greater awareness by the public of our jurisdiction.

Once again, 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 17% (750) of all complaints where a geographical determination could be made.

AVERAGE DURATION TO CLOSE FILES

The 5,083 files closed during the period covered by the Eighth Report, April 1, 1980 to March 31, 1981, as compared with the 4,655 closed the previous year, required an average of 207 days to close. The average duration to close a file during the period covered by the Seventh Report, April 1, 1979 to March 31, 1980, was 153 days. We attribute a significant proportion of the increase to the continued use and expansion of our no follow-up complaint documentation procedure (the procedure now includes correctional and psychiatric complaints). With this procedure, it is not necessary to open a file for straightforward non-jurisdictional complaints and information requests. We estimate that the overall average duration to close a file would have been considerably lower, approximately 173 days, had the 1,491 (excludes 3,196 no follow-up telephone interviews) no follow-up complaints and information requests been included in the calculation of the average duration to closing. Also, the increase in the overall average duration was in part attributable to a 14% increase from 255 days to 295 days in the average duration to close jurisdictional complaints. This increase in the average duration coincides with a 12% increase in the closing of more complicated and older jurisdictional complaints which required more than 6 months to complete. Furthermore, this increase in the closing of older jursidictional complaints should be viewed as a consequence flowing from the fact that during the period covered by the Eighth Report, we significantly reduced our case load of jurisdictional files from 2,056 to 1,411.

STATISTICAL HIGHLIGHTS

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

FILES:		NO FOLLOW-UP COMPLAINTS AND INFORMATION REQUESTS: 4,687*
OPENED	4,022*	
CLOSED	5,083**	
COMPLAINTS:	6,182**	

BY JURISDICTION		BY ORGANIZATION	
3,602	within jurisdiction	4,972	involved Ontario Government ministries or agencies
460	information requests	560	involved private agencies, firms or individuals
40	jurisdiction undetermined	276	involved municipalities or local police forces
2,080	outside jurisdiction	215	involved Federal Government departments or agencies
		175	involved courts
		38	involved international, other provinces or unspecified
6,182**	Complaints	6,236***	Complaints

*Overall the Office received 8,709 new complaints and information requests.

** Some closed files involved more than one complaint

*** Some complaints involved more than one organization

REGIONAL OFFICES

Both Regional Offices located in North Bay and Thunder Bay are operating satisfactorily and are rendering excellent service to the Northern and Northwest portion of the Province.

PRIVATE HEARINGS

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 Eighth Report, the Office of the Ombudsman held Private Hearings in the following 65 communities:

Date		Location	No. of Complaints Received	No. of Interviews Conducted
1980				
April	1	Parry Sound	25	25
	9	Barry's Bay	31	29
	10	Huntsville	51	49
	23	Morson	01	01
	23	Nester Falls	01	01
	24	Emo	12	08
	25	Vermillion Bay	11	08
May	6	Goderich	12	12
	7	Listowel	19	18
	8	Cambridge	44	44
June	2	Sudbury	50	50
	3	Espanola	27	26
	3	Kenora	17	20
	10	Barrie	55	02
	11	Orillia	60	58
	12	Gravenhurst	24	24
	23	Beardmore	02	02
	24	Geraldton	13	12
	25	Longlac	06	05
July	10	Strathroy	30	29
	31	Port Elgin	18	18
Aug.	21	Tillsonburg	27	26

Date		Location	No. of Complaints Received	No. of Interviews Conducted
Sept.	9	Eganville	15	15
	9	Nakina	02	02
	10	Renfrew	12	12
	11	Arnprior	12	12
	15/16	Fort Frances	14	14
	16	Morson	03	03
	16	Sault Ste Marie	15	15
	18	Dryden	08	08
Oct.	7	Stirling	07	07
	8	Picton	07	07
	9	Brighton	10	10
	14/15	Kirkland Lake	13	13
	15	Manitouwadge	01	01
	16	Cobalt	08	08
	16	Schreiber	02	02
	17	Nipigon	01	01
Nov.	4	Hawkesbury	13	13
	5	Chesterville	00	00
	6	Kemptville	08	08
	18	Red Lake	19	13
	19	Ear Falls	00	00
	25	Smooth Rock Falls	04	04
	26	Cochrane	04	04
	27	Iroquois Falls	16	16
1981				
Jan.	6	Fergus	05	05
	7	Mount Forest	12	10
	8	Alliston	13	11
Feb.	2	Webequie	04	02
	3	Keswick	06	06
	4	Fort Hope	02	02
	4	Landsowne House	02	01
	4	Lindsay	33	32
	5	Lakefield	07	07
	10	Thessalon	05	04
	11	Elliot Lake	05	05
	12	Little Current	05	05
Mar.	3	Markdale	11	10
	4	Collingwood	21	19
	5	Wiarton	12	12
	16	Round Lake	04	01
	17	Deer Lake	03	01
	18	Sandy Lake	11	03
	19	North Spirit Lake	05	01
			896	835

North Spirit Lake, the last municipality visited during this reporting period, represents the 220th time members of our staff conducted private hearings.

Early in 1980-81 our hearing schedule was altered to allow our staff to devote their efforts to clearing up our case load. In past years approximately 15-20% of all complaints to our Office came as a direct result of the hearings. It was therefore decided that our concentration would be on smaller communities. This accounts in part for the fewer complaints received during this reporting period.

In addition, we revised our advertising message indicating that the Office of the Ombudsman would be prepared to take appointments on the hearing days that were scheduled in each municipality. Advertisements were placed in the local papers informing the general public they could contact our Office by phoning collect to Toronto to arrange an appointment for the day we were in their municipality.

During this reporting period our staff has visited more municipalities than ever before and we have accomplished it without increasing our budget for hearings. Providing the opportunity for complainants to meet with our staff through appointments resulted in us having to send less staff to each municipality.

In the fall of 1981 it is expected we will be returning to a hearing schedule that will again encompass visits to the larger municipalities.

As was reported in our Seventh Annual Report, hearings throughout Northern Ontario are conducted by staff members from our two regional offices and supplemented by staff from the Toronto Office when necessary.

VISITS TO INDIAN RESERVES AND SETTLEMENTS

Members of the staff from the Regional Services Directorate were able to visit the Indian Reserves and Settlements in Ontario, in order to offer the services of the Ombudsman to our native population.

During the past 12 months, the bands visited were located in Northern Ontario. In some cases, visits represented the first contact with the band on its own reserve, but a good many were repeat calls. Due to the isolation of many settlements from the closest non-Indian community, it is necessary for our staff representatives to fly into these locations. Without such personal contact, the majority of our Indian residents would never know of the role of the Ombudsman and be able to express their problems.

INDIAN RESERVES

Date		Location
1980		
April	23	Big Island Indian Band
	23	Sabaskong Indian Band
Aug.	11	Moosonee
	12	Fort Albany
	13	Kashechewan
	14	Attawapiskat
Sept.	17	Big Island Indian Reserve Rainy River
1981		
Feb.	2	Webequie Settlement
	4	Fort Hope Indian Reserve
	4	Landsowne House Settlement
March	16	North Caribou Lake Band
	17	Deer Lake Band

THE CORRECTIONAL REPORT

Our Report on Adult Correctional Institutions which was begun in 1975 and published by The Ministry of Correctional Services in 1977 contained a total of 138 recommendations with many of those recommendations containing sub-parts.

Of the total number of recommendations, 105 dealt with specific institutions and 33 covered the broader aspects of the Report.

Having reviewed the entire Report as well as the replies of the former Ministers, the Honourable Frank Drea, and the Honourable Gordon Walker, I am happy to report that all of the 105 specific recommendations have been either implemented or no longer apply because of actions taken by the Ministry.

Prior to a recent meeting with the Ministry of Correctional Services, only 4 general recommendations remained unresolved. These were recommendations #4 - page 396, #5 - page 397, #28 - page 430, and #29 - page 436.

Recommendations #4 and #5 concern the issue of "overcrowding" in the Ministry's facilities. It was our recommendation that the Ministry immediately establish advisory committees composed of senior members of other ministries, agencies and bodies in the criminal justice areas, e.g., the Provincial Secretariat for Justice and the Ministry of the Solicitor-General.

On April 8, 1981, the Ministry of Correctional Services reported that an overcrowding problem still exists in some institutions. Nevertheless, the Ministry intends to take further steps in an attempt to alleviate "overcrowding".

A major step to alleviate this "overcrowding" has been the Ministry's increased budget in the area of crime prevention at the community level. The Ministry is presently implementing a "strategic plan" to develop, promote, and participate in crime prevention programmes and to provide victim-offender services. An example of these efforts has been the recent series of lectures entitled "Crime and Justice in the Community Week" held in Waterloo, Ontario from March 30 to April 5, 1981, and sponsored by the Ministry of Correctional Services and other agencies such as Youth in Conflict with the Law, and the John Howard Society.

Recommendation #28 addresses the need for increased availability of all documentation pertaining to sentenced prisoners. This documentation will be utilised at the time a sentenced prisoner enters into custody. This will assist the Ministry of Correctional Services in expediting the classification of inmates.

The Ministry has reported ongoing communications with chiefs of police which have resulted in improved cooperation in local communities. The chiefs of police have been provided with special forms by the Ministry which provide the needed additional information to assist in the proper classification of inmates. Also, the Ministry is seeking the cooperation of the police in gaining restricted direct access to the Canadian Police Information Centre (C.P.I.C.).

Recommendation #29 addresses amendments to The Ontario Election Act to allow incarcerated provincial inmates to vote in provincial elections.

The Ministry of Correctional Services reported that this recommendation had been referred to the Ministry of the Attorney General following Justice Cabinet Committee discussions. However, no further action has been taken. This recommendation will once again be brought to the attention of the new Minister of Correctional Services by the Deputy Minister.

I wish to conclude that I am satisfied with the efforts taken by the Ministry of Correctional Services on these recommendations.

NORTH PICKERING HEARINGS

Mr. Keith Hoilett, Chairman of the Hearings, is rapidly approaching the conclusion of his report on this lengthy and contentious problem. As soon as it is completed I will of course scrutinize it intently with a view to winding up this problem as soon as possible.

COURT CASES

In my Seventh Report I noted the appeal brought by five land acquisition agents from the decision of the High Court, which held that I had jurisdiction to further investigate the complaints of certain land owners in the North Pickering area. In an oral judgment released on December 3, 1980, the Court of Appeal unanimously dismissed the appeal.

There are no other applications or appeals involving our Office before the Courts, and I do not anticipate any in the immediate future.

LEASE

Since my last report, we have moved into our new premises at 125 Queen's Park at the corner of Bloor Street. The building has been beautifully renovated by the owners, Victoria College and we now have a guaranteed period of ten years of adequate quarters in which to perform our duties. A drastic increase in rental rates in the downtown area has demonstrated the wisdom of our move to this building. The lease negotiated was satisfactory to both parties and will result in substantial savings to the taxpayers of the province.

CONFERENCES ATTENDED

During the past year, I attended the International Bar Association Conference (Ombudsman Committee), the American Ombudsmen Conference and the Second International Ombudsman Conference. I specifically gave a submission from our Select Committee to the International Bar Association Conference and subsequently reported on the reception of that submission to the Select Committee.

I was appointed by the International Bar Association (Ombudsman Committee) liaison representative to the judiciary. I was also elected to the Consultative Committee for the Third International Ombudsman Conference.

All of the conferences attended were very interesting and educational. I was surprised to find how similar the problems are in various jurisdictions. However, after attending these conferences, I feel confident in saying that Ontario has one of the best, if not the best Ombudsman Offices in the world. I think it is also safe to say that generally our administrative arm of government is very responsive to the needs of citizens of the community.

In addition, I also wish to point out with pride that many members of my staff have been honoured by appointments in their respective fields. To name only one, Mr. Brian Goodman, Counsel and Special Advisor to the Ombudsman, was appointed Vice-Chairman of the International Bar Association (Ombudsman Committee) and Chairman of the Publications Sub-Committee.

SELECT COMMITTEE

During the past year, the Select Committee of the Legislature of the Ombudsman held a number of meetings with me and the members of my staff. Since my appointment as Ombudsman, I have found the Select Committee to be very helpful and supportive to this Office. Their report on the Ombudsman Office was adopted by the Ontario Legislature. Their support of our Office has helped us to achieve a high level of efficiency.

VISITS BY OTHER OMBUDSMEN

During the past year, our Office has been visited by Ombudsmen from Mauritius, Nigeria, Australia, New Zealand, the United States and from most Provinces of Canada. In addition to the above we have been visited by representatives of other countries. Many of these visitors are contemplating setting up an Ombudsman Office in their own countries and others were interested in our methods of dealing with problems which arise in various segments of the administration of government.

AMENDMENTS TO THE OMBUDSMAN ACT

Recently, I have submitted to the Attorney General draft amendments to The Ombudsman Act, 1975, and a policy submission in support thereof.

DETAILED SUMMARIES

You will notice that the vast majority of detailed summaries involved cases in which we were able to be of some assistance to the complainants. The casual reader might presume that we find the complaints to our Office to be justified in a vast majority of cases. This, of course, is not true. Our statistics show that only about 30% of complaints are found to be resolved in favour of the complainant.

THE WORKMEN'S COMPENSATION BOARD

When I took over as Ombudsman and to this date, complaints about The Workmen's Compensation Board have been the second highest of any board, agency or ministry. Since my appointment I have carried on intensive negotiations with representatives of The Workmen's Compensation Board including Michael Starr, the former Chairman and Lincoln Alexander, the present Chairman. I am very pleased to say that the relationship between the Office of the Ombudsman and The Workmen's Compensation Board is now one of mutual appreciation and respect. We do not always agree, of course, but we are able to effectively discuss the areas in which we disagree.

I am pleased to say that there are only two cases included in this Report (see pages 65 to 70) in which we have made recommendations that have not been adopted. There were a number of others, but intensive discussions led to these matters being resolved.

RECOMMENDATIONS DENIED AND

SECTION 22(3) (d) or (e) RECOMMENDATIONS

As a means of taking inventory of all cases since the inception of the Office of the Ombudsman where either: 1) a recommendation under s.22(3) of The Ombudsman Act, 1975 was denied by the governmental organization to which it was addressed, or 2) a recommendation was made pursuant to s.22(3)(d) or (e) that a practice be altered or a law reconsidered, I have appended in each Report since my Sixth Report, two charts. These charts which in this Report appear as Appendices A and B at pages 85 to 100, summarize the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organization, and where appropriate, by the Select Committee on the Ombudsman. The charts summarize only cases outstanding as of March 31, 1981, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

CHAPTER TWO

DETAILED CASE SUMMARIES

MINISTRY OF

AGRICULTURE & FOOD

DETAILED SUMMARY NO. 1

This was a complaint against the Ministry of Agriculture and Food's Ontario Junior Farmer Establishment Loan Corporation for not forgiving the complainant's junior farmer loan, which she was unable to pay when her husband died. The complainant was under the impression that her husband's life had been insured to cover the loan when in fact her life had been insured. The complainant was now struggling to operate the farm as well as holding down a full-time factory job.

After receiving the Deputy Minister's statement in reply to our notification of intent to investigate this complaint, the file was assigned for investigation.

Our investigators interviewed officials from the Ministry, the Corporation, and the insurance company, reviewing both the Ministry's and the insurance company's files. The investigation revealed that the Corporation had disposed of certain documents contained in this and other files in an effort to maximize storage space.

The investigation of this complaint showed that when the complainant and her husband applied for a loan in 1969, her husband was over the required age limit. Thus the loan was made out in the complainant's name. Since this loan was for an amount exceeding $20,000, life insurance covering it was mandatory. Corporation officials contacted the complainant by telephone, and later by letter, informing her that her loan application had been accepted and asking her if she wanted the life insurance to be in her name or her husband's name. Generally, the husband's life was insured and the complainant and her husband were informed that this could be done even though the loan was made out in the complainant's name. The complainant and her husband agreed that it would be best to insure her husband's life and so by letter, they informed the Corporation of their wishes and forwarded the necessary documentation.

The documentation was later returned without comment by the Corporation. In a form letter, the insurance company informed the complainant's husband that his life had been insured. However, the company enclosed a certificate which indicated that the borrower, that is, the complainant, was the insured. Subsequent invoices for insurance premiums and mortgage payments were sent to her husband.

The Ministry was of the view that there was no indication on the loan application form that the insurance should be placed in the name of any person other than the applicant. The Ministry further stated that although the insurance company did address its letter to the complainant's husband, this was a typographical error and, in any case, the enclosed insurance certificate showed that the complainant, not her husband, was the insured person.

During the course of this investigation the Ombudsman came to the tentative conclusion pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Corporation had made an "unreasonable" omission in failing to keep complete records. He also came to the tentative conclusion that the

Corporation had made an "unreasonable" omission, in failing to take the appropriate steps pursuant to the receipt of the complainant's husband's birth certificate, and following this, in failing to instruct the insurance company properly and in accordance with the complainant's wishes.

Since it seemed to the Ombudsman that the Corporation could be "adversely affected" by his possible conclusions and recommendations, he accorded to the Ministry, pursuant to section 19(3) of The Ombudsman Act, 1975, the opportunity to make representations respecting his possible adverse report. Ministry officials made representations in a meeting with the Ombudsman and members of his staff, later confirmed by letter, to the effect that the complainant and her husband had the responsibility to see that their instructions concerning the life insurance policy were carried out properly; the complainant and her husband were in possession of the certificate of insurance which named the complainant, not the complainant's husband, as the insured, and they were therefore the only persons involved who had an opportunity to correct the error. The Corporation therefore felt that its refusal to forgive the loan was not unreasonable.

The Ombudsman carefully considered the Ministry's representations in light of the investigation conducted.

It was the Ombudsman's conclusion, that the Corporation had made an "unreasonable" omission in disposing of its documents. He suggested that care should be taken in the future not to destroy records relating to ongoing matters since they could be significant at a later date.

It was also the Ombudsman's conclusion, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Corporation had acted "unreasonably" in not forgiving at least part of the complainant's loan. Case law would seem to suggest that, in cases analogous to the complainant's, if an agent (in this case the Corporation) has been negligent in its duty to arrange the insurance desired by an insured (in this case the complainant and her husband), then that agent will be held liable by the courts even though the insured may not have read the policy to ensure that the coverage was arranged as requested. However, the Ombudsman was of the view that there was some responsibility on the part of the complainant and her husband to have detected the error and informed the Corporation of it. Since he thought that both the Corporation and the complainant shared responsibility for the error, he determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Corporation to have omitted to take the appropriate steps, pursuant to the complainant's and her husband's instructions. The Ombudsman therefore recommended, in accordance with Sections 22(3)(b) and (g) of The Ombudsman Act, 1975, that the Corporation forgive one-half of the complainant's loan.

The Deputy Minister informed this Office by letter that although his Ministry assumed no liability in this matter, the Ministry had nevertheless agreed to give effect to the Ombudsman's recommendation. The complainant was so notified and our file on this matter was closed.

MINISTRY OF

THE ATTORNEY GENERAL

DETAILED SUMMARY NO. 2

This complaint against the Office of the Public Trustee of Ontario was first brought to the attention of the Ombudsman in a letter to our Office.

The complainants, who were husband and wife, contracted with a contractor for the erection of a pre-fabricated house. Acting on the advice of their bank manager, they had paid the entire purchase price of $17,995 in advance. The contractor died on September 30, 1976, leaving the complainants' house only partially completed and his subcontractors only partially paid. Two claims for lien were subsequently registered against the complainants' title to the land under The Mechanics' Lien Act and had to be paid out of their own pockets. They therefore attempted to recover the cost of completing the house and paying the subcontractors from the contractor's estate.

The contractor had died intestate leaving no known next of kin in Ontario. The Public Trustee had voluntarily taken over administration of what remained of his estate under section 2 of The Crown Administration of Estates Act. The complainants' lawyer contacted the Public Trustee's Office by telephone and letter in January of 1977. The lawyer expressed his opinion that the funds in the Public Trustee's possession were impressed with a statutory trust in favour of his clients under section 2(1) of The Mechanics' Lien Act, and accordingly the complainants were entitled to payment of their claim in priority to all other claimants. The lawyer was unable to persuade the Public Trustee's Office to his point of view, and consequently complained to the Ombudsman's Office on behalf of his clients that the Public Trustee's actions were unreasonable. In addition, the lawyer alleged that there was undue delay both in answering his letters and distributing the estate, as well as incompetence in calling in the assets of the estate.

A letter was sent by the Ombudsman to the Public Trustee of Ontario, advising him he was investigating the complaint.

Dealing first with the applicability and effect of section 2(1) of The Mechanics' Lien Act, the Public Trustee indicated that although he had readily accepted the complainants as ordinary creditors of the contractor's estate, he was of the opinion that they were only entitled to share in the assets of the estate pari passu with the deceased's other creditors. As the contractor's liabilities at the time of his death far exceeded his assets, this would have resulted in a very small distribution to each creditor. The lawyer, on the other hand, contended that by virtue of section 2(1), his clients were entitled to the whole of the estate to the exclusion of all other creditors.

Section 2(1) of The Mechanics' Lien Act states as follows:

> All sums received by a . . . contractor . . . on account of the contract price constitute a trust fund in his hands for the benefit of the owner, . . . subcontractor, . . . workmen, and persons who have supplied materials on . . . the contract, . . . and the . . . contractor . . . is trustee of all such sums so received by him and he shall not appropriate or

> convert any part thereof to his own use or to any use not authorized by the trust until all workmen, . . . all persons who have supplied materials on the contract . . . and all subcontractors are paid for work done or materials supplied . . ..

The Public Trustee stated that section 2(1) was inapplicable because a trust had not been, and could never be, established on the facts of this case. He stated that the first prerequisite to any claim against specific funds (as opposed to an action in damages for breach of trust) was to trace the funds back to the claimant. This was quite impossible as the assets of the contractor's estate were derived exclusively from the sale proceeds of an automobile owned by the deceased at his death, the balance of a bank account not used by the deceased for business purposes, and certain Canada Pension Plan benefits.

Further, the Public Trustee argued that The Mechanics' Lien Act was designed to give security to persons doing work or furnishing materials in making an improvement on land. To the extent that the owner was intended to be protected at all, that protection was limited to the amount of money owing to subcontractors and workmen. In other words, the trust continued only so long as, and to the extent that workmen and materialmen remained unpaid.

After reviewing the Public Trustee's and the complainants' respective legal arguments, the Ombudsman was unable to fault the Public Trustee's refusal to pay over to the complainants the whole of the funds held by him to the credit of the contractor's estate on the basis of section 2(1) of The Mechanics' Lien Act. It is the Ombudsman's understanding that the Public Trustee, like any other trustee, is obliged to exercise the same degree of care which an ordinarily prudent person would take in the conduct of his own affairs if he wished to provide against loss to people for whom he felt morally bound to provide. As there seemed to be little authority in favour of the complainants' position, and there is jurisprudence against it, it was the Ombudsman's opinion that the Public Trustee's legal position was not unreasonable.

With respect to the allegation of administrative delay, the complainants stated that there were three ways in which they felt the Public Trustee had been remiss: (1) delay in applying for letters of administration, (2) delay in distributing the estate, and (3) delay in answering their correspondence.

Under section 2 of The Crown Administration of Estates Act, the Public Trustee has a discretion to apply for letters of administration where an intestate dies in Ontario leaving no known next of kin in the province. He is under no obligation to do so, and there is no time limit unless administration is contested. In this case, the estate was brought to the Public Trustee's attention in October of 1976, a preliminary investigation was underway by November, letters of administration were applied for on June 28, 1977, and granted on July 20, 1977. In the intervening time, the Public Trustee's investigators visited the former residence of the deceased. They obtained new keys for and towed the deceased's automobile to a car lot in preparation for sale, and canvassed for creditors of the estate. In view of

all this activity, the Ombudsman was unable to conclude that the due administration of this estate was in any way affected by any delay on the part of the Public Trustee in applying for letters of administration. Nor did the investigation reveal any evidence that the Public Trustee exercised the discretion given under section 2 of The Crown Administration of Estates Act improperly or unreasonably.

As to the delay in distributing this estate, the Public Trustee's Office pointed out that the first tasks of any administrator/trustee prior to distribution are to realize upon the assets of the deceased, ascertain his liabilities, and pay all such liabilities to the extent that assets are available, on a pari passu basis. In this case, the Public Trustee explained that his task was made more difficult by the questionable business practices of the deceased during his lifetime. In addition to having the use of two social insurance numbers and omitting to file income tax returns during his lifetime, the contractor apparently ran up a number of unpaid trade bills under several names and fulfilled few, if any, of his business obligations. Issuance of an income tax clearance by the federal revenue authorities was delayed as the result of the former, and three separate mechanics' lien actions were instituted as the result of the latter. Although two of the liens had been settled, it was the Ombudsman's understanding that a distribution to creditors could not be made until the final law suit was disposed of by the Courts. In view of the above, including the difficulty in obtaining information about the deceased which the mysterious circumstances surrounding his death occasioned, the Ombudsman found it impossible to conclude that the Public Trustee unreasonably delayed in distributing this estate.

The complainants also complained that the Public Trustee had been inordinately slow in responding to their letters. The Public Trustee's file indicated that the complainants' lawyer's letter of January 28, 1977 was not answered in writing until April 28, 1977, but thereafter his letters were answered within approximately two weeks of their receipt until January 1978. At that point a decision was made not to respond to the lawyer's letters in writing because the Public Trustee did not think it fair to diminish the assets of this estate by running up a legal bill for answering the correspondence of claimants who choose to write monthly knowing that no progress was likely to have been made. Bearing in mind the volume of correspondence directed to the Public Trustee's Office, the Ombudsman did not think the Public Trustee's decision could be said to be unreasonable in this case. The Ombudsman also understood that answers to some of the lawyer's questions were provided by telephone in the periods between letters.

It was the complainants' final contention that the Public Trustee improperly failed to realize upon one of the assets of the estate, thereby occasioning loss to his clients. The asset in question was a 1974 Ford van found by the police in the woods with licence plates missing and the engine registration number filed off. The van was eventually sold by public auction in satisfaction of a warehouseman's lien.

The complainants presumed that the van had belonged to the contractor. In fact, the police never succeeded in tracing its ownership. The only connection they had, which was tenuous at best, arose from the fact

that a delivery van belonging to one of the contractor's limited companies had been reported missing. The connection was therefore to the company, which was not under the Public Trustee's administration and against which the complainants had no claim. Moreover, the Public Trustee was not even made aware of the existence of the vehicle until July 6, 1977, by which time towing and storage charges totalling over $1,000 had already accumulated against it. He then instructed one of his investigators to inspect and photograph the vehicle and, having estimated its value to be less than the charges outstanding, decided in light of all the above not to consider it part of the estate.

As the Ombudsman understood it, the test is once again whether the reasonable person would, in all of the circumstances, have been satisfied that the asset in question belonged to the deceased and ought to be collected into the estate.

The Ombudsman reported to the complainants that he was unable to support any of their complaints.

MINISTRY OF

COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 3

This complainant was enrolled as a student in a six semester program provided by a Community College and had successfully completed the first three semesters of the program with excellent grades. At the completion of the fourth semester, however, the complainant received low or failing grades, primarily due to an illness during a portion of that semester. As a result of the poor grades she received, the complainant was refused admission to an internship semester which was required for completion of the diploma program.

She therefore lodged an appeal of her fourth semester grades with the College Academic Committee and a hearing was held. The Committee decided to make only minor changes in her grades and she was still unable to register for the fifth (internship) semester.

The complainant contacted the Office of the Ombudsman as she felt that she was not given a fair hearing for the following reasons:

1. She was not permitted to have counsel present;

2. The witnesses were allowed to be present only when they were testifying;

3. Except for the Chairman, the decision was rendered by the very teachers who had given her the grades;

4. A document unfavourably relating to her psychological state was circulated at the hearing. This was later recalled and the members were instructed not to consider it, but the complainant felt that the damage had already been done;

5. The appeal procedures had not been followed as set out in the student handbook.

The complainant further commented that she would like a transcript of the hearing as there had been a stenographer present taking notes. However, she had been informed by officials at the College that no notes were taken.

In accordance with the requirements of The Ombudsman Act, 1975, the Ombudsman advised the College of his intention to investigate this complaint and the College was given the opportunity to state its position. Upon receiving the College's statement, our file on this complaint was then assigned to a member of the Ombudsman's investigative staff for investigation.

In addition to receiving further relevant information and documentation from the complainant, our investigation into this complaint included interviews with the complainant's lawyer, the various members of the Academic Appeal Committee, her various instructors, the Dean of the division in which the complainant was enrolled, and the complainant's boyfriend.

The complainant advised the investigator that during the four-month fourth semester she was absent for approximately three weeks at various times due to illness. She further advised the investigator that the yellow handbook provided by the College did not indicate that attending a certain number of classes was required in order to receive a passing grade.

The investigation found that the yellow handbook provided by the College does in fact indicate that classroom participation is a criterion for evaluation. The Chairman of the Appeal Committee advised that within the College, it is left to the discretion of the individual instructors as to whether or not grades will be assigned for attendance. The Ombudsman concluded that it ought to have been apparent, both from the handbook and from the nature of the program, that regular attendance was necessary for successful standing.

With respect to the complainant's contention that she was not permitted to have counsel present at the hearing, our investigation revealed that her lawyer had telephoned the College prior to the appeal hearing requesting permission to represent her. The College refused permission. The complainant felt that she required his assistance as she was not familiar with the procedures of an appeal hearing.

The Chairman of the Appeal Committee advised the Office of the Ombudsman that because an appeal of academic grades is not a legal matter he was of the view that the attendance of a lawyer was unnecessary. However, he stated that he had no objection to a student being represented by another student or faculty member. Moreover, he was of the view that if a student was represented by a lawyer, then the College would also have to be represented by a lawyer, as would the instructors who were called before the hearing.

With respect to her complaint that witnesses at the hearing were allowed to be present only while they were testifying, the Chairman advised the Office of the Ombudsman that this was so. However, he pointed out that she had a full opportunity to question the witnesses. He stated that he did not recall her objecting to the manner in which the witnesses were called. This was confirmed by various members of the Academic Appeal Committee.

The Ombudsman noted that it is customary at trials to exclude witnesses from the courtroom except while they are testifying. This is done to ensure that they are not influenced by each other's testimony, and it works to the equal advantage of the various parties involved. Therefore, the Ombudsman did not feel that it was unfair or unreasonable to have excluded the witnesses from the hearing except while they were testifying.

With respect to the contention that the decision on her appeal was rendered by the very teachers who had given her the grades, the investigation showed quite the contrary. The members of the Academic Appeal Committee had not had prior dealings with the complainant. It is the College's policy that anyone discussing the matter with the student in the course of earlier appeal stages is disqualified from sitting on the Academic Appeal Committee. Accordingly, the Ombudsman did not support the complainant on this contention.

Regarding her contention that a document unfavourably relating to her psychological state was circulated at the hearing, the complainant stated that the document, which was originated by the Dean of the division in which she was enrolled, was circulated to the Committee members.

The Chairman advised the Office of the Ombudsman that personal opinions have no bearing on grades and the Dean's report was deemed to be irrelevant. The Chairman stated that after he had read a portion of it, the complainant objected, and that is when he ruled it irrelevant. The investigator learned from members of the Committee that the report had been circulated but that it was collected and returned to the Dean after it had been ruled irrelevant. The Committee members said that they themselves considered the report irrelevant even before the Chairman formally deemed it so. All of the members advised the investigator that they did not take it into consideration when making their decision on the complainant's grades.

Although it would have been preferable for the document to have been ruled irrelevant before it was distributed, the Ombudsman could not find that its distribution caused any unfairness to the complainant.

In elaboration of her fifth contention that the appeal procedures had not been followed as set out in the Student Handbook, the complainant stated that she was not charged a fee for the appeal nor did she have discussions with faculty members before submitting her appeal to the Committee.

The Chairman advised the Office of the Ombudsman that the College did not know what the complainant was charged by way of fees, although he was certain that she was not overcharged. He indicated that the cost of a search of the College's records would be out of all proportion to the amount of money involved. He stated that if the complainant had underpaid she may wish to correct the error and if she claimed she had been overcharged the College would search its records and make an appropriate refund.

As stated in the Student Handbook, the Chairman advised that discussions did take place between the complainant and her instructors. The Chairman stated that such discussions were not documented as it is in their nature that they be relatively informal. However, the Ombudsman understands that now when a faculty member discusses academic problems with a student, the student is required to sign a statement acknowledging the discussion.

During the course of our investigation the complainant contended that she had not had the opportunity to question one of her instructors as he had left the hearing early for a dental appointment. The investigator confirmed that her instructor did in fact have a dental appointment on the day of the hearing. However, the investigator was advised by the Committee members that the instructor was not rushed and that the complainant did not object to his leaving without her having questioned him. Therefore, the Ombudsman was not able to conclude that the fact that the instructor had left early caused any unfairness to the complainant.

In respect of the complainant's request for a transcript of the hearing, the Chairman informed the investigator that there was no stenographer present at the hearing. Rather, due to the absence of the Assistant to the Academic Committee, the Chairman's secretary attended in order to manage the documentary evidence and note the Committee's recommendations. The Ombudsman understands that the Chairman's secretary does not take shorthand and she made no attempt to record the proceedings. However, after the hearing, minutes were formulated and circulated for the Committee members' approval. While these minutes were intended solely for internal College purposes, a copy was provided to the Office of the Ombudsman and permission was obtained to release a copy to the complainant, which was done.

With respect to the complainant's inability to register for the fifth semester, the Chairman indicated that she could not register in those courses for which she had failed the prerequisites. The Chairman advised that the complainant can, of course, repeat the prerequisite courses.

As a result of the investigation, the Ombudsman formed the opinion that it might be open to him to conclude, in accordance with section 22(1)(b) of The Ombudsman Act, 1975, that the College had acted "unreasonably" in not permitting the complainant legal representation at the academic appeal hearing. In forming this tentative opinion the Ombudsman considered the case law on the application of the rules of natural justice to a non-statutory domestic body, such as the College's Academic Committee. The Ombudsman noted that the appeal had serious consequences for the complainant. The Ombudsman did not feel that it would be necessary for witnesses appearing at the appeal (i.e. instructors, other students) to be represented by legal counsel just because the appellant was, since they would not be facing any consequences.

It appeared that it might be open to the Ombudsman to recommend in accordance with section 22(3)(d) of The Ombudsman Act, 1975, that the College amend its practice in order to permit a student to be represented by counsel at an academic appeal hearing if he/she so wished.

Pursuant to the requirements of section 19(3) of The Ombudsman Act, 1975, the Ombudsman wrote to the College advising it of his possible conclusion and recommendation. Because in his view, the College might be "adversely affected" by his possible conclusion and recommendation, the Ombudsman afforded it the opportunity to make representations respecting this matter.

After meeting and discussing this matter further with the President of the College and the Chairman of the Appeal Committee, the Ombudsman received the College's response which stated that:

> If, on the facts of some future case, it appeared to the Academic Committee, or to any other College review body, that lawyers might be of assistance or that legal representation was, for some reason, desirable, they would, no doubt, consider permitting legal representation.

In view of all the circumstances the Ombudsman formed the opinion, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the College's decision to not allow the complainant legal representation at the academic appeal hearing was "unreasonable".

However, the Ombudsman concluded that to recommend a new hearing to review the complainant's grades would be fruitless as the result would in all likelihood be the same as in the previous hearing.

In addition, the need for any recommendation which might have been appropriate for the Ombudsman to make with respect to allowing legal representation in the future was obviated by the College's statement that such legal representation will be allowed, in the future, where warranted.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 4

From December 1, 1978 until April 30, 1979 the complainant received from the Ministry of Community and Social Services an allowance under The Family Benefits Act as a single, permanently unemployable person.

In May 1979, her allowance was terminated by the Ministry on the ground that she was no longer considered to be living under the circumstances of a single person. The complainant appealed this decision to the Social Assistance Review Board and following a hearing on July 4, 1979 the Board, in accordance with Section 12(10)(a) of The Family Benefits Act upheld the decision of the Director of Family Benefits to terminate her allowance.

The complainant registered her complaint with our Office by telephone regarding the Board's decision. She contended that notwithstanding the fact that she was living with her husband, the decision of the Board was unreasonable.

Accordingly, pursuant to Section 19(1) of The Ombudsman Act, 1975 the Chairman of the Social Assistance Review Board and the Deputy Minister of Community and Social Services were informed of the Ombudsman's intention to investigate this complaint.

The Chairman of the Social Assistance Review Board advised the Ombudsman that he and counsel for the Board had thoroughly reviewed the complainant's file and were satisfied that the Board had rendered the only decision possible based on the facts and evidence adduced at the hearing and in accordance with the existing legislation. On behalf of the Deputy Minister, the Director of Income Maintenance wrote to the Ombudsman and indicated that the current legislation does not provide for the granting of a "disability pension", to female persons who reside with their spouses.

During the course of this investigation the files maintained by the Social Assistance Review Board and the Ministry of Community and Social Services were examined in detail. In addition the complainant was interviewed with respect to her living circumstances at the time of the Ministry's decision. It was confirmed by the complainant that she was residing with her husband. She was of the view however that since she had been classified by the Ministry as a "permanently unemployable person", the fact that she was living with her husband should not prevent her from receiving family benefits if she was otherwise eligible.

After conducting careful review of the relevant provisions of The Family Benefits Act and Regulations pursuant thereto and with particular reference to the circumstances under which an individual may qualify for an allowance, it appeared that there existed sufficient grounds for the making of a report or recommendation which could adversely affect the Ministry of Community and Social Services. Therefore, pursuant to Section 19(3) of The Ombudsman Act, 1975, the Ministry of Community and Social Services was given the opportunity to make representations concerning the tentative conclusions and recommendation reached by the Ombudsman.

The Ombudsman tentatively concluded that the decision of the Social Assistance Review Board had been made in accordance with the current legislation and was therefore not unreasonable.

The Ombudsman noted that in the complainant's case, the application of the current legislation meant that although the complainant was considered to be a "permanently unemployable person" within the meaning of The Family Benefits Act, she was disentitled because she was not residing as a single person. However, if the roles had been reversed and the complainant's husband had been classified as a "permanently unemployable person", and all other eligibility criteria were met, he would have been eligible to receive family benefits.

The Ombudsman commented that in his view the treatment men and women receive in this circumstance is fundamentally inconsistent and he reached the tentative conclusion pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the decisions reached by the Director of Income Maintenance and the Social Assistance Review Board were in accordance with a provision of The Family Benefits Act which was improperly discriminatory.

The Ombudsman tentatively recommended pursuant to Section 22(3)(g) of The Ombudsman Act, 1975 that The Family Benefits Act and the Regulations thereunder be amended to provide for equal treatment to both men and women who are residing with their spouses when family benefits entitlement is being determined.

In his letter of response, the Minister of Community and Social Services confirmed that a woman who is living with her husband is not eligible to receive family benefits regardlesss of other circumstances whereas a man may be entitled to an allowance on behalf of himself and his family if he otherwise fulfills the family benefits eligibility criteria. The Minister stated in part:

> I can understand your tentative conclusions and recommendations and I would note to you that as funds become available, consideration will be given to rectifying some of the problems in the area of discrimination on the basis of sex. However, to be quite frank with you, I do not know of any current method where we can open new areas of eligibility and at the same time, continue to provide funds on a priority basis to persons who are in the greatest need.

The Ombudsman carefully considered the Minister's response with respect to this matter however, he was not satisfied that on the basis of information he had received from the Ministry to date, some financial accommodation could not be reasonably arranged to overcome the improperly discriminatory nature of the current legislation.

Accordingly, the Ombudsman formed the opinion pursuant to Section 22(1)(b) of The Ombudsman Act, 1975 that the decisions reached by the Director of Family Benefits and the Social Assistance Review Board with respect to the complainant's allowance under The Family Benefits Act were

in accordance with a provision of The Family Benefits Act and the Regulations thereunder which is improperly discriminatory. The Ombudsman recommended in his Report that pursuant to Section 22(3)(g) of The Ombudsman Act, 1975, The Family Benefits Act and the Regulations thereunder be amended to provide for equal treatment to both men and women who are residing with their spouses when entitlement to an allowance under The Family Benefits Act is being determined.

The Report made under Section 22(3)(g) of The Ombudsman Act, 1975 was forwarded to the Minister of Community and Social Services. The Ombudsman subsequently received a response from the Minister indicating that he recognized "that there are certain distinctions made in our programs which may no longer be in keeping with current standards and values". He advised the Ombudsman that he is prepared to propose to Cabinet certain changes to The Family Benefits Act which would address the discrimination issue. He stated however that he could not promise a firm time frame for these reforms as it is necessary that these measures be discussed with the Cabinet and the cost implications be reviewed by Management Board.

The Ombudsman accepted the Minister's letter as an adequate and appropriate response to his recommendation. The complainant was advised of the results of the investigation. The file was closed. However, the Ombudsman advised the Minister that he would be making periodic contacts with his Office to obtain updates on what action was being taken by the Minister in this regard.

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

LIQUOR CONTROL BOARD OF ONTARIO

ONTARIO RENT REVIEW PROGRAM

DETAILED SUMMARY NO. 5

In October, 1977, the complainant received notification that his driver's licence had been suspended. Payment of nearly $20,000.00 had been made from the Motor Vehicle Accident Claims Fund and he had failed to reimburse the Fund in a claim filed against him as an uninsured driver. The complainant had not been involved in the accident, and did not consider himself the owner of the car involved.

The car had been abandoned in the complainant's yard in the fall of 1972. His younger brothers repaired it the following spring. The owner of the car drowned in the winter of 1973.

Once the car was in running order, various people drove it. The keys were usually left in the ignition. The vehicle had been in operation for about a week when an acquaintance of the complainant borrowed it to drive himself home. The complainant consented, and went to bed. The friend did not go home however; he instead drove around all night, drinking with friends. Early the following morning he drove off the road, killing one person and injuring another.

The O.P.P. then charged the complainant with failing to register a motor vehicle under The Highway Traffic Act and with failing to produce evidence of payment of the uninsured motor vehicle fee under The Motor Vehicle Accident Claims Act. The complainant was told he had to accept the ticket. As the nearest Legal Aid office was 60 miles away, he paid the tickets because at the time it appeared to be the simplest means of dealing with the charges.

In July, 1974, the complainant received a notice that action had been commenced against him, pursuant to section 4 of The Motor Vehicle Accident Claims Act. He did not defend the action, and the Fund retained its own lawyers to act.

In April, 1976, the complainant attended his examination for discovery in Toronto. He denied being the owner of the motor vehicle in question. The complainant also recalled that the lawyer acting in his name for the Fund told him that no liability would be attached to the accident. The complainant heard nothing more until October, 1977, when he was notified that the action had been settled and he was indebted to the Fund. The complainant subsequently requested the assistance of the Ombudsman.

Our investigator reviewed the complainant's file at the Fund offices, and spoke with the Deputy Director of Motor Vehicle Accident Claims, who felt the Ministry had acted correctly. Our investigator also reviewed the file of the lawyer who acted for the Ministry on the case, and spoke with the lawyer himself.

The Ombudsman then wrote to the Superintendent of Insurance informing him, pursuant to section 19(3) of The Ombudsman Act, 1975, of possible conclusions and recommendations. These included an opinion that the notice of action had not adequately alerted the complainant to the consequences of failing to defend the action against him. The Ombudsman proposed a recommendation that the Fund notify the original defendants

before it consents to judgment. He also suggested that the Minister might forbear collecting from the complainant in this case, and reinstate the complainant's driver's licence.

The Superintendent of Insurance responded that, under the circumstances, he saw no justification for waiving the complainant's obligation to repay the Fund, nor to reinstate his driver's licence until he entered into a satisfactory repayment agreement.

The Ombudsman formally recommended that the phrasing of the notice sent to defendants be altered so that the possible consequences of a defendant's failing to defend an action are made clear to him or her. A defendant should further be notified of the Ministry's intent to settle the claim and the proposed terms of settlement. Finally, the Ombudsman asked the Superintendent of Insurance to reconsider the complainant's obligation to repay the Motor Vehicle Accident Claims Fund, and perhaps make some compromise of the amount of indebtedness, thus permitting the reinstatement of the complainant's driver's licence.

The Ministry responded that the notices in question had already been replaced and that the replacement notice was under further review. It informed our Office that usually solicitors acting for the Fund do not notify the defendant in an action that the Ministry is proposing to settle a claim; in the future every effort would be made to so advise uninsured defendants.

The Ombudsman met with the Deputy Minister of Consumer and Commercial Relations and the Superintendent of Insurance to discuss the complainant's indebtedness to the Fund. The Fund consequently made arrangements with the complainant which satisfied both parties. The suspension of the complainant's driver's licence was also lifted.

A final report was sent to all interested parties, and our file was then closed.

DETAILED SUMMARY NO. 6

The complainant's solicitor wrote to the Office of the Ombudsman, aggrieved by what he considered to be a lack of proper or adequate action on the part of the Ministry of Consumer and Commercial Relations over a complaint which he had lodged against an insurance company. The solicitor alleged that his client's privacy had been invaded and that confidential medical information had been obtained about her by private investigators acting on behalf of an insurance company. As well, he contended that someone involved in the investigation attempted to obtain hospital records relating to his client by claiming to be from the office of a medical doctor connected with his client. Although the matter was reported to the Superintendent of Insurance, it appeared to the solicitor that nothing of substance had been done.

Our investigation focused on two issues:

1. whether the investigation conducted by the Superintendent of Insurance into this complaint was adequate, and

2. whether the action taken by the Superintendent of Insurance on the basis of his investigation was reasonable.

After receiving the Ministry's statement on this matter our file was assigned for investigation. Our investigation revealed certain inadequacies in the investigation of this complaint conducted for the Superintendent of Insurance. For example, the Registrar who investigated the complaint was of the view that the insurance company had not obtained medical information about the complainant through its private investigators. However, an internal memorandum on the insurance company's file and the private investigator's report which was submitted to the insurance company seemed to suggest otherwise. Also, the Registrar said that he issued a verbal reprimand to the insurance company and received a verbal undertaking that the company would draft a code of conduct for its claim representatives that would include a ban on pretext interviews. However, our investigation determined that this criticism of the insurance company had not been recorded on the Ministry's file.

The Ombudsman came to the tentative conclusion that the Superintendent's investigation of this matter had been inadequate and that his issuing of only a verbal reprimand was "unreasonable" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975. The Ombudsman thought that had a more thorough investigation been conducted, the Superintendent would have been better able to determine if the insurance company was engaging in an unfair or deceptive act or practice, contrary to section 389 of The Insurance Act. If such was the case, a hearing could have been held under the relevant section of the Act and an appropriate order issued. Therefore, the Ombudsman made the tentative recommendations that the Office of the Superintendent of Insurance conduct a more thorough investigation and that a record of the reprimand (or any further disciplinary action taken against the company) be made.

Since the Ombudsman was aware that his possible conclusions and recommendations could "adversely affect" the Ministry and the insurance company, he accorded them the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received in a meeting at the Office of the Ombudsman from the insurance company, and by letter from the Ministry. It was the Ministry's position that not only had the Superintendent issued a reprimand, but also that the insurance company had taken specific steps to prevent such a situation from recurring. The Deputy Minister concurred with the Superintendent that since the case had been resolved and the insurance company had taken the required corrective measures no further action was needed. The Deputy Minister thought that the Superintendent's verbal reprimand was adequate because the insurance company had formally replied to the Ministry in writing, including evidence to show that it had moved constructively to fulfill the obligation of its undertaking to the Superintendent's Office.

The Ombudsman carefully considered these representations as well as those made by the insurance company in light of the investigation conducted.

Although the Ombudsman was of the opinion that the Superintendent could have conducted a more thorough investigation, he also felt that, under the above circumstances, another investigation was unwarranted. However, the Ombudsman did conclude, in accordance with section 22(1)(b) of The Ombudsman Act, 1975, that the Superintendent's issuance of only a verbal reprimand was "unreasonable". He therefore recommended, pursuant to section 22(3)(g) of the Act, that the Superintendent properly record this instance of criticism against the insurance company.

The Deputy Minister subsequently informed this Office that his Ministry had accepted the recommendation. Our complainant and her solicitor were so informed and our file on this matter was closed.

DETAILED SUMMARY NO. 7

The complainant wrote to our Office complaining that the Liquor Control Board of Ontario (L.C.B.O.) did not have the statutory authority to require him to pay a mark-up to the L.C.B.O on wine that he imported for his own use. The mark-up was purportedly collected by federal customs agents on behalf of the L.C.B.O.

Our research indicated that section 3 of the Importation of Intoxicating Liquors Act authorizes the federal government to control the importation of any intoxicating liquor into any province. Section 3 also permits a board, authorized by provincial law to sell liquor, to also import it. By virtue of section 3 of The Liquor Control Act, the L.C.B.O. is a board within the meaning of section 3 of the Importation of Intoxicating Liquors Act, and therefore, has the authority to import liquor, control its sale and fix prices at which it is sold.

Since section 3 of the Importation of Intoxicating Liquors Act prohibits a person like the complainant from importing wine, there was no question that he had done so illegally, albeit with the knowing consent of the federal authorities. However, further research indicated that notwithstanding this illegality, the L.C.B.O. had no authority to require him to pay a mark-up, which is approximately 123% of the purchase price of the wine. Section 3 of the Importation of Intoxicating Liquors Act does not cause privately imported wine to become forfeit. The title in the liquor does not cease to rest with the importer upon the illicit importation at the port of entry. Although section 185 of the Customs Act authorizes federal authorities to seize and forfeit unlawfully imported goods, the action taken with respect to personally imported wine is a matter left within the purview of federal authorities. If no action is taken by federal authorities, then the property in the liquor continues to reside with the importer.

Since the federal customs officers did not seize or forfeit the wine in this case, the ownership of the wine rested with the importer, our complainant. Clearly, the wine in question never became the property of the L.C.B.O., and the L.C.B.O., therefore, had no statutory authority to charge a mark-up on the liquor. The only legislative authority given to the L.C.B.O. by its Act is to fix prices at which the various classes and varieties of liquor are to be sold. Where wine is not purchased on behalf of the

L.C.B.O. and not consigned to the L.C.B.O., such wine is accordingly not sold by the L.C.B.O. nor does it become the property of the L.C.B.O. Therefore, the L.C.B.O. has no authority to stipulate what price must be paid for the wine, and cannot require the complainant to pay a specified mark-up. In the absence of any statutory authority to take such action, the Crown may not require its citizens to pay such a charge by administrative order only.

The L.C.B.O. argued that the complainant was acting as its agent when importing his wine. However, our research indicated that this was not the case since there was no evidence that the complainant had, at any time, held himself out as acting on behalf of the L.C.B.O.

Accordingly, the Ombudsman concluded that the actions of the L.C.B.O., requiring the complainant to pay a mark-up on wine privately imported, was contrary to law. It was therefore recommended that the L.C.B.O. take steps to have its statute amended to give it the statutory authority to levy its mark-up. The L.C.B.O. subsequently advised our Office that it had suggested to the Minister of Consumer and Commercial Relations that our recommendation be accepted. The necessary amendments to the Act were expected to be presented to the Legislature shortly thereafter.

The Ombudsman did not recommend that the L.C.B.O. refund to the complainant all the monies he had paid which were levied as the L.C.B.O.'s mark-up on the private importations of wine. It was the Ombudsman's opinion that the complainant and all other private importers would be placed in a unique and advantageous position with respect to the rest of the public if such a recommendation were made.

A final report was sent to all interested parties, and our file was then closed.

DETAILED SUMMARY NO. 8

This was a complaint against the Ontario Rent Review Program of the Ministry of Consumer and Commercial Relations.

In early 1978, the complainant's landlady advised her that her rent would increase from $165 to $245 a month and that a rent review would take place. As she did not receive notification of a rent review, the complainant contacted the local Rent Review Office and learned that her landlady had not applied for a review. Staff at that office advised her to pay her former rent plus 6%.

She took the advice of the Rent Review Office and paid the rent plus 6%; however, the landlady notified her that due to the needs of her own family, she would have to give up the apartment and move elsewhere. The complainant realized that she would have to rely on her remedies under The Landlord and Tenant Act if she wished to remain in the premises. However, she contacted the Rent Review Office and advised the staff of the landlady's violation of The Residential Premises Rent Review Act. The

complainant contended that she was told by the Rent Review Officer that the Program could take no steps to require the landlady to comply with the Act. She contended that the Program should have taken steps to prosecute the landlady for violation of the Act, and that if it had done so, she would not have found herself in the position of defending an application for a writ of possession.

This Office wrote to the Executive Director of the Ontario Rent Review Program, in accordance with the requirements of The Ombudsman Act, 1975, and advised him of our intention to investigate this complaint. The Executive Director was also asked whether he was prepared to give a statement of his Board's position on the complaint.

The response indicated that when a tenant finds himself or herself in the position of being given a notice of rent increase above the statutory guidelines, with no application for rent review having been made, and then contacts the Rent Review Office, as normal program policy that person is informed of the following options:

(a) Pay the present rent plus 6% increase on the date when the increase is to become effective.

(b) File an application for justification of the proposed rent increase within sixty days of the date on the notice of the rent increase, which forces the landlord to reach an agreement with the tenant or file an application for rent review.

The Executive Director explained that, in this case, after being presented with these options, the complainant chose to pay the 6% increase and not file an application for justification of the increase. Thus, the Rent Review Office did not receive an application from either the tenant or landlord, and had no authority under the Act to take any action in the case. He added that if the complainant believed that an offence under the Act had occurred and the facts of the case justified this belief, then the complainant could have initiated a prosecution by swearing out an information before a local Justice of the Peace. Once this step had been taken, the Crown Attorney would prepare the case and present it in court.

As a result of an interview with the Rent Review Officer and Inquiry Officer involved, our investigator learned that the complainant had not been advised of her options under the Act. In fact, the only advice she was given was to pay her rent plus 6%.

During the course of the investigation, the Ombudsman formed the tentative conclusion according to the terms of The Ombudsman Act, 1975, that it was "unreasonable" for the Inquiry Officer of the Rent Review Office to have omitted to explain to the complainant the options available to her under The Residential Premises Rent Review Act. The Ombudsman also formed the tentative conclusion that the omission to consider prosecuting the landlord in this case was in accordance with a policy or practice that was, or may have been, "unreasonable".

Accordingly, the Ombudsman reported his possible conclusions to the Deputy Minister of Consumer and Commercial Relations, together with his possible recommendations, which were as follows:

> It would appear that it might be open to me to recommend in accordance with section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry should do everything it can to ensure that landlords and tenants have all their options under The Residential Tenancies Act explained to them.
>
> It would also appear that it might be open to me to recommend in accordance with section 22(3)(b) of The Ombudsman Act, 1975, that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence a prosecution for violations under The Residential Tenancies Act where appropriate.

Because in his view the Ministry might be "adversely affected" by his possible conclusions and recommendations, the Ombudsman accorded to it the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975.

In its response to the Ombudsman's first conclusion, the Ministry agreed that the Inquiry Officer of the Rent Review Office omitted to advise the complainant of the option of filing an application requiring the landlord to justify the rent increase. However, in the Ministry's view, the complainant was in fact in a more advantageous position having taken the advice given. The Deputy Minister added that the duty of care in giving advice to the public does not extend to advising the public on alternative courses of action as would a solicitor advising his client. He felt that it was not unreasonable for the Inquiry Officer to advise the complainant as was done.

The Ombudsman felt that the Inquiry Officer had the task of giving out information about The Residential Premises Rent Review Act, and must have known that persons making inquiries would place reliance upon what was said. Our investigation revealed and the Ministry confirmed that the Inquiry Officer gave out incomplete information in response to the complainant's inquiry. Moreover, the Executive Director of the Rent Review Program confirmed that the normal policy was to point out the full range of options. The Ombudsman noted that the Ministry did not claim that the Inquiry Officer did not have the necessary skill and competence to follow such a policy direction or to give such advice. Therefore, the Ombudsman was unable to agree with the Ministry's position that the duty owed by Inquiry Officers to members of the public does not extend to advising on alternative courses of action.

Accordingly, the Ombudsman determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Inquiry Officer to have omitted to explain to the complainant the options available to her under The Residential Premises Rent Review Act.

In response to the Ombudsman's first possible recommendation, the Ministry concurred that:

> ...the Residential Tenancy Commission (should) do everything it can to ensure that landlords and tenants have all their options under The Residential Tenancies Act explained to them.

In response to the Ombudsman's second tentative conclusion the Ministry stated in part that "clearly, the increased rent as set out in the landlord's notice of increase breached the statute and was uncollectable". However, it was the position of the Ministry that the Rent Review Officer appeared to have had no jurisdiction in this matter, as no application was in fact filed by either the landlord or the tenant.

The Ombudsman noted that section 17(1)(a) of The Residential Premises Rent Review Act expressly provides that an attempt to contravene the Act is a violation of the Act, punishable on summary conviction. The Minister of Consumer and Commercial Relations is responsible for the administration of the Act.

The Ombudsman reviewed the facts of the case and the Ministry's representations and determined pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the omission by the Rent Review Program to consider prosecuting the landlady in this case was in accordance with a policy or practice that was "unreasonable".

In response to the Ombudsman's possible recommendation that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence a prosecution for violations where appropriate, the Ministry stated:

> The Commission, as a quasi-judicial body, places itself in a difficult position if it prosecutes violators of the Act, when it may be required to deal with and adjudicate upon applications for civil remedies involving the same parties. It is important for the Commission, if it is to develop credibility in the eyes of the public, to be, and to be perceived to be, impartial and objective. The Commission is also concerned that even if prosecutions were laid by the Ministry of Consumer and Commercial Relations and not the Commission itself, the Commission would, in the eyes of the public be perceived to be carrying out the prosecution since the Ministry would undoubtedly be acting on the reports of the Commission. It may be difficult for the public to effectively separate the Commission from the Ministry and the credibility of the Commission will thereby be affected...the Commission carries among other functions a considerable number of mediations in which its credibility is all important.

The Ombudsman carefully considered these representations by the Ministry and while he understood the concerns expressed, he did not share in them.

The Ombudsman failed to see the difference between the Commission assisting the Crown Attorney or the complainant by providing evidence in the Commission's possession, which the Commission is willing to do, and the Commission providing information to some branch of the Ministry of Consumer and Commercial Relations which would then prosecute the violator. In either case, the prosecuting agent "would undoubtedly be acting on the reports of the Commission" with the apparent result that the Commission would be perceived in the eyes of the public to be carrying on the prosecution.

The Ombudsman noted that the Commission does not appear to be any different than a number of commissions and tribunals which are possessed of both prosecutorial and adjudicative powers.

The Ombudsman also considered section 81 of The Residential Tenancies Act and stated that it would appear that this particular section contemplates, if not implicitly requires, the Commission to investigate prosecutions of known violations of The Residential Tenancies Act.

Consequently, the Ombudsman disagreed with the Ministry's conclusion that "the other subsections deal with private disputes between parties, which, in the opinion of the Commission are better left to an individual or the Crown Attorney to initiate". He therefore recommended pursuant to section 22(3)(b) of The Ombudsman Act, 1975, that the Ministry should cause the Residential Tenancy Commission to change its apparent practice of not prosecuting violations, and upon receipt of a complaint, commence prosecution of violations under The Residential Tenancies Act where appropriate.

The Ombudsman subsequently received a letter from the Deputy Minister, in which he stated in part:

> Initially we were concerned that your conclusion might cause the Residential Tenancy Commission some difficulties. Now, however, after careful consideration of your letter by the R. T. C. Board, it has been concluded that the R. T. C.'s view of its responsibilities is compatible with your recommendation.
>
> I am therefore pleased to be able to advise you that the Residential Tenancy Commission will commence prosecutions of violations under The Residential Tenancies Act where appropriate. Should any question arise as to the responsibility or authority of the Board to commence a prosecution, I am satisfied that direction can be obtained from the Ministry of the Attorney General and that such direction will enable the Board to act in a manner that is consistent with your recommendation.

The complainant was then advised that the Ministry had agreed to give effect to the Ombudsman's recommendation and the file was closed.

MINISTRY OF

CORRECTIONAL SERVICES

DETAILED SUMMARY NO. 9

This complainant wrote to the Ombudsman concerning the difficulty which he had experienced in gaining an interview with a Justice of the Peace at one of the Ministry's correctional centres.

When interviewed, the inmate complained about the practice in effect at that institution for handling inmate requests to see a Justice of the Peace. Specifically, the complainant objected to the impeding of requests to see a Justice of the Peace by the institution's Chief Security Officer. The complainant contended that an inmate should not be denied access to a Justice of the Peace because he did not wish to disclose the nature of his concern to the institutional authorities.

Notice of the Ombudsman's intent to investigate the complaint was given to the Superintendent of the correctional centre, pursuant to section 19(1) of The Ombudsman Act, 1975. Examination of the institution's procedures for handling inmate requests to see a Justice of the Peace revealed that all such requests were first relayed to the institution's Chief Security Officer. It was the responsibility of the Chief Security Officer to interview the inmate, determine the nature of his request and take action, where appropriate, in the interests of the security of the institution. While an inmate could not be compelled to reveal the nature of his concern, it was within the discretion of the Chief Security Officer to refuse an inmate access to a Justice of the Peace.

In the course of the investigation of this complaint, our Office undertook legal research with respect to the right of access to a Justice of the Peace by an inmate in a provincial correctional institution. Based on the legal opinion rendered, discussions were held with the senior institutional authorities who agreed to re-examine their practice in this regard.

Subsequently, the institutional authorities agreed to revise the practice. Under the new procedure adopted, an inmate requesting to see a Justice of the Peace is required to place his request in a letter to the local Justice of the Peace. The letter is then forwarded to the Chief Security Officer who screens it in accordance with general Ministry policy for the handling of inmate mail. The letter is then forwarded, without delay, to the Justice of the Peace. The Chief Security Officer no longer has the discretion to deny an inmate access to a Justice of the Peace for any reason.

In view of the action taken by the institutional authorities, the file on the matter was closed.

DETAILED SUMMARY NO. 10

This complaint was made by an inmate of a Ministry jail.

The complainant stated that members of the jail staff had acted unreasonably towards him in the following circumstances:

1. A nurse failed to supply him with medication prescribed by the institutional doctor.

2. The same nurse filed a Misconduct Report in which she cited him for using profane language; he felt this was unreasonable because, although he used profane language, he had not directed his language towards any person.

3. He was not permitted yard exercise during a period when he served a misconduct penalty in segregation.

4. The Superintendent destroyed a book sent to him at the jail; he felt he should be reimbursed for the cost of the book.

Upon the Ombudsman giving notice to the Superintendent of the jail, in accordance with section 19(1) of The Ombudsman Act, 1975, various members of the jail staff provided information relevant to the complaint. The nurse named in the complaint was interviewed and the complainant's medical record reviewed. There were telephone contacts with the Superintendent and with a member of the staff of the Institutional Programs Division, Ministry of Correctional Services. An opinion on the medical aspect of the complaint was obtained from the Senior Medical Consultant, Ministry of Correctional Services. This aspect of the complaint was discussed further in an interview with the Superintendent.

The Ombudsman concluded that the nurse did not act unreasonably. The Ombudsman noted that although the jail doctor had prescribed a specific medication for the complainant, this prescription was for a limited time period, which had expired. The nurse therefore offered the complainant the only medication she could give (Aspirin) until such time as the complainant could again be seen by the doctor.

The complainant admitted using profane language during his conversation with the nurse, directly referring to her clinical judgement in providing medication. The Ombudsman therefore concluded that the complainant did make a gross insult by use of abusive language directed at the nurse as set out in section 28(c) of Regulation 243 made under The Ministry of Correctional Services Act, 1978.

The Ombudsman considered whether the complainant might have been treated unreasonably with respect to his general right to have exercise in the open air and in regard to the handling of his personal property. However, he did not find it necessary to reach any conclusions on these matters because the actions taken by the Ministry during his investigation, satisfactorily resolved them.

The Ministry of Correctional Services' policy concerning outdoor exercise states that "every inmate, unless he is found to be plotting to escape or attempts to escape, or is misconducting himself shall be allowed, if weather permits, to have daily exercise in the open air..." The Superintendent had interpreted this policy to mean that inmates serving misconduct penalties would not be permitted outdoor exercise. The Executive Director, Institutional Programs, Ministry of Correctional Services, clarified the Ministry's policy in a memorandum to all Superintendents, stating that inmates who are serving penalties for misconducts should have exercise unless their behaviour poses a threat to the security and safety of the institution.

In the final aspect of this complaint, a magazine, mailed to the complainant, was found to contain a note to the effect that the complainant would be supplied with drugs in the jail. The Superintendent told the complainant he would not allow him to have this magazine and a heated discussion ensued, ending when the Superintendent tore the magazine in half. The Superintendent acknowledged that his act was contrary to the Ministry of Correctional Services' policy regarding the handling of inmates' personal property. In this circumstance the usual practice would be storage of the inmate's property until his release or transfer. The Superintendent mailed a money order to the complainant at the institution where he then resided, stating in a covering letter that this amount was to compensate him "for the magazine destroyed by me in error".

DETAILED SUMMARY NO. 11

An inmate in a Ministry detention centre wrote to the Office of the Ombudsman complaining about the Ontario Board of Parole's decision to suspend and subsequently revoke his parole. The inmate contended that the Board's decision was unfair, in view of his short tenure on parole and the minimum briefing which he had received with respect to the rules imposed upon him at the Community Resource Centre where he was residing while on parole.

The complainant was interviewed by an investigator and advised that the revocation of parole stemmed from the results of a meeting the complainant had with his parole officer and the Director of the Community Resource Centre. The parole officer's decision to suspend parole was based on the complainant's unsatisfactory performance in the Community Resource Programme and the complainant's failure to report a sum of money representing incentive allowance which he had earned during his incarceration. One of the conditions of the complainant's parole was that he report all income to the staff of the Community Resource Centre.

Under the current Ontario parole system, the ultimate decision to revoke parole remains with the Board itself, which makes a careful examination of the circumstances leading to suspension of parole. In this case the decision of the Board to revoke parole was rendered and the inmate was returned to the institution from which he was released on parole.

The Ministry was then given written notification of our intent to investigate pursuant to section 19(1) of The Ombudsman Act, 1975. Copies of the complainant's parole documentation were obtained and both the Chairman of the Ontario Parole Board and the Director of the Community Resource Centre were invited to present their views in this matter.

Documentation revealed that prior to being released on parole, a letter was sent to the complainant by the Director of the Community Resource Centre outlining four conditions upon which he would be accepted into their programme. The inmate agreed to these conditions and these conditions were made an integral part of the parole conditions as outlined on the parole certificate. Upon release on parole, the complainant signed his parole certificate pledging himself to honestly comply with the conditions of his parole.

In a reply from the Director of the Community Resource Centre, the Ontario Parole Board was advised that the purpose of the meeting between the complainant, the Director and the parole officer was merely to confront the complainant with his failure to report the said sum of money. At that particular time, no plans to suspend parole had been put into motion. However, at the time of the meeting, the complainant stated that he wished to stay in the Community Resource Centre to enhance his chances for parole, to have a roof over his head, and to be closer to his girlfriend.

Based upon the complainant's attitude, it was the parole officer's decision to suspend parole. Follow-up reports revealed that the complainant was of the opinion that he should be allowed to come and go freely at the Community Resource Centre and not have to earn his way through the privilege system like other residents.

In a response received from the Chairman of the Ontario Parole Board, the Ombudsman was advised that the rules and expectations of the Community Resource Centre were explained to the complainant on two occasions by staff members. In addition, the Ombudsman was advised that the complainant had been granted a previous parole wherein he resided at the same Community Resource Centre. During that term of parole, the complainant was returned to the institution because of a further criminal charge. It was the Chairman's position that the complainant specifically breached one of the conditions of parole and resisted most expectations as set out by the Community Resource Centre. Therefore, the Board could no longer support such a lack of cooperation on the part of the complainant when it had been part of the reason the Board was willing to take a further risk in spite of the complainant's earlier breach of parole.

After carefully considering the results of the investigation, the Ombudsman concluded that the Ontario Board of Parole did not act unreasonably in revoking this complainant's parole.

DETAILED SUMMARY NO. 12

The Superintendent of a detention centre advised this Office that one of his staff members had opened an Ombudsman envelope while processing incoming inmate mail.

The Ministry of Correctional Services was given written notification of the Ombudsman's intention to investigate the matter pursuant to section 19(1) of The Ombudsman Act, 1975.

Our investigation revealed that an Ombudsman's envelope addressed to an inmate who was no longer incarcerated at the institution had been improperly, although inadvertently, opened during the regular processing of the incoming inmate mail.

In accordance with section 19(3) of The Ombudsman Act, 1975, the Ombudsman's possible conclusions and recommendations were set forth in letters to the Superintendent of the institution and the Deputy Minister of Correctional Services and all government employees who might be adversely affected. It was recommended that:

1. When an inmate has been released from custody and a letter to him from the Ombudsman has been opened by a Ministry employee, the Superintendent should forward him the letter with an accompanying letter explaining the circumstances surrounding the opening.

2. If the inmate is still in custody, a senior staff member interview the inmate involved and explain the circumstances of the letter opening.

3. The mail sorting practice be altered so that Ombudsman correspondence be separated from the general mail before the opening of inmate mail begins.

4. A written Occurrence Report about an incident involving the opening of an Ombudsman letter be addressed to the attention of the Superintendent with a copy to the Ombudsman.

The Ministry accepted these recommendations. A memorandum from the Ministry was addressed to all Superintendents of provincial correctional institutions outlining the procedures to be followed in the event that an Ombudsman's letter should be opened. It further directed that the local Standing Orders for each institution be amended to include these procedures.

MINISTRY OF

THE ENVIRONMENT

DETAILED SUMMARY NO. 13

The complainant, a homeowner, came to us with a complaint against the Ministry of the Environment. She contended that in February 1975, her basement as well as some neighbours' basements were flooded due to the backup of sewers, causing extensive damage to her property. The complainant felt that she should receive compensation for the damage caused to her basement and assurances that it would not recur.

After receiving a response from the Ministry to our notification of intent to investigate this complaint, our file on this matter was assigned for investigation.

Our investigation showed that although the sewage system is operated by the municipality it had been financed and constructed under contract by the Ministry of the Environment.

During the course of the investigation the former Ombudsman came to the possible conclusion that the Ministry had acted "unreasonably" in not taking into consideration at the time of the construction of the municipal sewage treatment system the height of the system's manhole covers. There was evidence to indicate that at the time of construction, some of the manhole covers were installed at a height of 258 feet above sea level. This was well below the previous record flood level of 264 feet above sea level set by Hurricane Hazel in 1954. Also these covers were not sealed. Both of these factors combined to let surface water into the sewage system during the storm of February 1975, when the flood level reached 260 feet above sea level. This contributed to the overburdening of that system. The height of the covers was subsequently increased by one foot.

The Ombudsman also came to the possible conclusion that it was "unreasonable" for the Ministry of the Environment not to have informed the complainant, whose home was located in a "flood plain" area, of the need to have check valves installed as a precaution against possible flooding of her basement.

Based on the above possible conclusions, the Ombudsman was of the opinion that it was open to him to recommend that the Ministry pay to the complainant a sufficient amount to compensate her for damage done to her basement and furniture.

Since the Ministry could be adversely affected by his possible conclusions and recommendation, the Ombudsman afforded the Ministry, pursuant to section 19(3) of The Ombudsman Act, 1975, an opportunity to address itself to his possible conclusions and recommendation. Representations were received on behalf of the Ministry by letter. Briefly, the Ministry could not agree that it had acted unreasonably in respect of either of the two possible conclusions.

The Ombudsman carefully considered these representations in light of the investigation conducted.

It also came to the Ombudsman's attention that the designers of the sewage system had recommended to the Ministry that watertight manholes be installed to provide the system with flood water protection; however, in the system's final design and construction these watertight manholes were not provided. Furthermore, the consultant's report on the system had suggested that, during peak flood periods, the normal gravity overflow at the pumping station would not be able to function (a back flow preventer would close), so by-passing would have to be by pumped discharge and this would necessitate an adequate capacity in the pumping units. The report went on to say that this adequate capacity had not been provided.

In view of the above, the Ombudsman concluded, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was "unreasonable" for the Ministry of the Environment not to have taken into consideration, at the time of the construction of the municipal sewage treatment plant, the height of the manhole covers. He also determined that it was "unreasonable" for the Ministry not to have informed the complainant of the need to install check valves as a precaution against possible flooding of her basement.

The Ombudsman therefore recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of the Environment pay to the complainant an amount to compensate her for the damage done to her basement and furniture as a result of the flooding.

Subsequently, the Ministry informed us that it had offered the complainant the sum of $3,500.00 as compensation. Although the Ministry did not consider itself to be liable in this case, it recognized that she "would have had some chance of success if she had sued".

After confirming that she had accepted the Ministry's offer our file on this matter was closed.

MINISTRY OF

GOVERNMENT SERVICES

DETAILED SUMMARY NO. 14

This complainant complained of a decision rendered by the Ministry of Government Services which also involved the Liquor Control Board of Ontario.

He contended that it was unreasonable for the Employee Benefits Branch of the Ministry of Government Services to require him to repay $622.29 which was paid to him in error by the Liquor Control Board of Ontario. The complainant worked as a re-employed pensioner with the Liquor Control Board of Ontario, and his earnings from October 1st, 1974 to June 30th, 1975, had exceeded the amount he was permitted to earn as a re-employed pensioner. He claimed that he was never informed of the stipulations governing the salaries of such individuals by either the Liquor Control Board of Ontario or the Ministry of Government Services, and that had he been properly advised the overpayments would not have occurred.

Having received a position statement from both the Board and the Ministry in response to our notice of intention to investigate this complaint, the file was assigned to an investigator.

The investigation included interviews with the complainant, the Manager of Pension and Insurance Benefits, Employee Benefits Branch, Ministry of Government Services, a solicitor for the Liquor Control Board of Ontario, and the Records Supervisor, Liquor Control Board of Ontario. In addition, the investigation consisted of telephone conversations with five Liquor Control Board of Ontario store managers.

The complainant was superannuated from the Liquor Control Board of Ontario in 1969, at which time re-employment without penalty was limited to 130 days a year. In July, 1971, The Public Service Superannuation Act was amended and a money limit was established whereby the total of a re-employed pensioner's salary over any three-month quarter, plus his superannuation allowance for the same period, could not exceed three times his last monthly salary before retirement. If it did, he would suffer the penalty of having his allowance reduced by the amount of the excess.

The complainant earned less than the applicable maximum during the period from 1971 to 1973. However, in March, 1976, in response to a routine check by the Ministry of Government Services with other Ministries on apparently inactive re-employment cases, the Liquor Control Board of Ontario informed the Ministry of Government Services that the complainant had been overpaid $432.45 for the quarter ending December 31st, 1974, and $189.84 for the quarter ending June 30th, 1975. Hence, in June, 1976, the Ministry informed the complainant of his overearnings, and that it would be deducting $5.00 a month from his pension cheque until the total amount of the overpayment was recovered.

During an interview with the Manager of Pension and Insurance Benefits, Ministry of Government Services, the investigator was informed that in 1974, the Ministry initiated a program whereby it notified every employee upon retirement, by letter, of his or her pension program and of section 16 of The Public Service Superannuation Act. However, prior to

1974, the Manager stated that it was the responsibility of the Personnel Department of the Ministry or Board which employed the retiring individual to explain the benefits, et cetera available upon retirement. It depended on the individual Ministry or Board whether an "exit interview" was conducted, or a letter was written to the retired individual advising of his retirement plan.

The solicitor for the Liquor Control Board of Ontario advised the Office of the Ombudsman that it had no recognized process in 1969, the time of the complainant's retirement, of advising employees of their pension plans and the fact that they were limited as to the amount of money they could earn as re-employed pensioners. There were no exit interviews conducted at that time. However, when section 16 of the Act was amended, in July, 1971, the Board sent out a memorandum to all department heads and store managers, explaining the money limit. The solicitor stated that at that time it was Board procedure for a store manager to make employees aware of the content of the memorandum, and to then report to Head Office on a form Q-30, information relating to how many hours a week a retired pensioner was working. Head Office was then to report the data quarterly to the Ministry and this is how overpayments would come to light.

It was ascertained that the store managers' method of making employees aware of various memoranda was to post the memoranda on a bulletin board and the employees would then initial them. Our investigator contacted the store managers of the stores in which the complainant had worked while re-employed by the Liquor Control Board of Ontario, but was unable to obtain any evidence regarding whether or not the memoranda relating to the amendment to section 16 of the Act were posted.

The required data regarding the complainant's earnings were regularly reported to the Ministry of Government Services until the quarter ending June 30th, 1973. However, the Liquor Control Board of Ontario did not report again to the Ministry until August 12th, 1975, at which time the overpayment of $189.84 regarding the period ending June 30th, 1975, was noted. In January, 1976, the Ministry wrote to the Personnel Branch, Liquor Control Board of Ontario, requesting that it submit the complainant's quarterly earnings for all the quarters subsequent to June 30th, 1973. The Liquor Control Board of Ontario submitted the required information in March, 1976, and the Ministry of Government Services proceeded to advise the complainant of his overearnings.

The reason stated by the solicitor for the Liquor Control Board of Ontario as to why its Payroll Department did not report the complainant's earnings to the Ministry between June, 1973 and August, 1975, was that the complainant did not advise the store managers of his status, and it therefore did not submit the required Q-30 forms to payroll. It was the Ombudsman's opinion, however, that as the managers were aware of his status up until June 30th, 1973, there would seem to be no good reason why they should not have continued to submit the required information to Head Office, Liquor Control Board of Ontario, after this date.

Thus, the Ombudsman formed the view that it was open to him to conclude that, firstly, the Employee Benefits Branch, Ministry of Government Services and the Liquor Control Board of Ontario acted

"unreasonably" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975, in failing to ensure that the complainant was adequately informed of the fact that under section 16 of The Public Service Superannuation Act he was limited as to how much he could earn as a re-employed pensioner, and the details pertaining thereto. Further, the Ombudsman tentatively concluded that the Liquor Control Board of Ontario acted "unreasonably" in failing to report the required information regarding the complainant's earnings to the Ministry of Government Services for the period between the quarter ending June 30th, 1973, and the quarter ending December 31st, 1974.

The Ombudsman tentatively recommended that the Ministry of Government Services take such action as was necessary to refund to the complainant the amount already deducted as a result of the overpayment, and discontinue the deductions in the future, and that the Liquor Control Board of Ontario, in the future, promptly report to the Ministry of Government Services, on a quarterly basis, the required data regarding the earnings of re-employed pensioners. The Ombudsman reported his possible conclusions and recommendations to the Chairman of the Liquor Control Board of Ontario and the Deputy Minister of the Ministry of Government Services.

Because in the Ombudsman's view both the Board and the Ministry might be "adversely affected" by his possible conclusions and recommendations, he accorded to them the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received on behalf of the Board and the Ministry. In short, neither the Board nor the Ministry could agree that its actions or omissions in the matter had been unreasonable.

The Board maintained that the complainant was properly informed of his rights and position as a re-employed pensioner but that he failed to recognize or ignored the information. The Ministry remained of the view that since prior to 1974 the responsibility of informing a retiring employee of his entitlements rested with the employee's Ministry or Board, it was up to the Liquor Control Board of Ontario to inform the complainant of the 1971 amendment to The Public Service Superannuation Act and the consequences thereof. The Deputy Minister advised that in both 1969 and 1971, the Director of the Pension Funds Branch (the predecessor of the Employee Benefits Branch) informed all personnel directors of the 1969 and 1971 amendments and requested that he be advised in all cases where a person in receipt of a pension under The Public Service Superannuation Act was re-employed. However, the Branch was not advised by the Liquor Control Board of Ontario of the complainant's re-employment until May, 1973.

The Ombudsman carefully considered the representations of the Liquor Control Board of Ontario and the Ministry of Government Services in light of the investigation conducted. He obtained a statutory declaration in which the complainant swore that he was never informed by the Liquor Control Board of Ontario, the Ministry of Government Services, the Pension Funds Branch, or any other agency, or individual employed by such agency of the Province of Ontario of the fact that under section 16 of The Public

Service Superannuation Act he was limited as to how much money he could earn as a re-employed pensioner without having his pension reduced.

It was the Ombudsman's view that the Board ought to have had a more reliable method whereby it informed employees upon retirement of their pension program and of section 16 of The Public Service Superannuation Act. He was also of the view that had the Board more promptly reported to the Ministry of Government Services, on a quarterly basis, the required information regarding the complainant, at least one of the overpayments might not have occurred.

Although it appeared that the Liquor Control Board of Ontario was the body primarily responsible for informing its re-employed pensioners of the 1971 amendment, and therefore for omitting to ensure that the complainant was adequately informed of it, the Ombudsman was of the opinion that the Ministry of Government Services was also responsible in that it did not follow up its directive to government agencies concerning the earnings of pensioners. As well, it was his view that the Ministry should share the responsibility for the complainant's predicament because it was in a position to rectify the situation.

Accordingly, the Ombudsman determined that the actions and omissions of the Liquor Control Board of Ontario and of the Ministry of Government Services in this regard were "unreasonable" within the meaning of section 22(1)(b) of The Ombudsman Act, 1975. He therefore recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of Government Services take such action as was necessary to obtain the authority to refund to the complainant the amount already deducted as a result of the overpayment, and to discontinue future deductions, and that the Liquor Control Board of Ontario, in the future, promptly report to the Ministry of Government Services, on a quarterly basis, the required data regarding the earnings of re-employed pensioners.

The Ministry responded by letter that it was pleased to inform the Ombudsman that the officials of the Liquor Control Board of Ontario had agreed to refund the total amount of the overpayment which the complainant was being required to repay to the Ministry. The complainant was refunded the amount which had been withheld from his pension in recovery of the debt and future deductions were immediately discontinued. Also, the Liquor Control Board agreed, without hesitation, to accept the Ombudsman's recommendation directed to it.

MINISTRY OF

HEALTH

DETAILED SUMMARY NO. 15

This complainant wrote a letter and complained of a decision made in his case at a central Ontario psychiatric hospital. He claimed that he was transferred to a maximum security unit in another psychiatric facility because another patient alleged he had threatened an elderly woman patient and members of the staff at the central Ontario psychiatric hospital. The complainant contended that his transfer was not justified because the allegation was false.

The complainant was interviewed at the maximum security facility and initial information was obtained from his clinical record and from the Medical Director of the central Ontario psychiatric hospital. In a letter pursuant to section 19(1) of The Ombudsman Act, 1975, the Deputy Minister of Health was advised of our intention to investigate this complaint. He was invited to provide a statement of his Ministry's position on the complaint. The Deputy Minister responded by letter.

Our investigation revealed that the complainant's transfer to the maximum security facility occurred for reasons other than his alleged assaultive behaviour. Therefore, the Ombudsman felt the complainant's specific contention could not be supported. However, the Ombudsman came to the possible conclusion that it might be unreasonable for an allegation, made by another patient, to remain on the complainant's clinical record because this allegation was not investigated and the complainant was not given an opportunity to refute the allegation.

As it appeared that the attending physician and the Hospital Administrator might be "adversely affected" by our possible conclusion, these individuals were given an opportunity, pursuant to section 19(3) of The Ombudsman Act, 1975, to make representations concerning our possible conclusion and a possible recommendation. The attending physician and the Hospital Administrator made a joint representation which was carefully considered at a conference in this Office. Essentially, they took the position that an attending physician exercises clinical judgement when recording information that might be relevant to a patient's care and, by its very nature, a clinical record is a compilation of reports and observations from a variety of sources which may include the patient's family, staff and, on occasion, the reports of other patients. They submitted that although it might not be feasible to investigate an incident, the treatment staff may make a clinical judgement that the information reported may be relevant to a patient's care. Further, they felt a patient could be reassured that the contents of a clinical file are protected by a provision in The Mental Health Act governing confidentiality.

The Ombudsman was in agreement with the representation made by the attending physician and the Hospital Administrator. The Ombudsman felt that the attending physician's notations concerning the allegation made against the complainant were relevant to his psychiatric assessment and management, as well as to the safety of other patients and public safety. However, although the contents of a clinical record are kept confidential, the Ombudsman felt that clinical records are used as a reference to

facilitate a number of administrative and therapeutic processes. Thus, it was conceivable that entries made on the complainant's clinical record might influence his security classification at the maximum security facility, the assessment of his potential for aggressive behaviour, his suitability for transfer to a less secure psychiatric unit, his potential for discharge through any application he may make to the Regional Review Board, and his suitability for community or group residences. The Ombudsman felt that great care should be taken to ensure that if it was not feasible to investigate an allegation, it should be clearly stated on the record that the allegation was not substantiated.

The Ombudsman made a report to the Deputy Minister of Health concluding, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that it was unreasonable for the reports on the complainant's alleged misbehaviour to remain on his clinical record without qualification. He recommended, pursuant to section 22(3)(g) of The Ombudsman Act, 1975:

1. That a "Caution" sheet be attached to the complainant's clinical records, both at the central Ontario psychiatric hospital and the maximum security facility, to state that the allegation made by the other patient was not investigated and therefore unsubstantiated.

2. That the Ministry of Health take suitable steps to ensure that the staff members of provincial psychiatric hospitals take care, when recording allegations made against patients, to clearly indicate whether or not the allegation was investigated or substantiated.

The Deputy Minister gave full consideration to the Ombudsman's recommendations, inviting input from all of the provincial psychiatric facilities. He advised this Office by letter that these recommendations were acceptable and that the psychiatric hospitals had been instructed to follow these recommendations. The complainant was advised accordingly.

DETAILED SUMMARY NO. 16

The complainant wrote the Office of the Ombudsman complaining that OHIP had refused to cover the cost of air ambulance services used to transport her daughter from a city in Ontario to a hospital in Toronto.

In 1978 the complainant's daughter was sent to the Sick Children's Hospital in Toronto by the hospital in her home city for a bone scan. The purpose of this scan was to determine if a tumor, which had been partially removed surgically, was progressing. The complainant accompanied her daughter on the trip. All costs were paid by OHIP.

Seven months later the complainant and her daughter again travelled to Toronto for a follow-up bone scan. Receipts were submitted to OHIP for the second trip. The complainant was initially advised by the Manager, Air Ambulance Operations, that the travel expenses did not fit within the criteria for reimbursement as her daughter was not confined to a stretcher, did not require continuing care by a qualified medical attendant, and did not require ambulance service to and from the airport to the hospital. The

complainant wrote back to the Ambulance Services Branch expressing dissatisfaction with this decision. Partial payment was subsequently forwarded to the complainant because of conflicting information given to her by the hospital in her home city.

In reply to our notice of intention to investigate this complaint a statement was received from the Director, Ambulance Services Branch.

Our preliminary investigation revealed that there appeared to have been a delegation of authority from the General Manager of OHIP to the Director of the Ambulance Services Branch although The Health Insurance Act does not provide for decisions on claims to be made by officials other than the General Manager. It also became apparent that although the decision to deny full reimbursement of the complainant's claim was made on behalf of the General Manager, the complainant was never advised of the statutory appeal procedures available pursuant to sections 23 and 24 of The Health Insurance Act. Accordingly, our investigator advised the complainant that she should again write to the Ministry of Health expressing her dissatisfaction with the denial of reimbursement for the total claim.

Following a number of contacts with the Director, and a member of the Ministry's legal staff, the Director of General Investigations wrote to the General Manager of OHIP relating this information.

The complainant then contacted the Office advising that she had received a decision from the Secretary of the Medical Eligibility Committee with respect to her request for a review. The Committee did not view the transportation as a medically essential ambulance service and advised that should the complainant wish to appeal its decision she would be entitled to a hearing by the Health Services Appeal Board.

Our Office subsequently received a response from the Ministry of Health in which it advised that in future:

> ...in any instance where it is brought to the attention of the General Manager, Health Insurance Division, or the Ambulance Services Branch, either orally or in writing, that a claimant is in dispute with a decision of the General Manager or the Ambulance Services Branch, the claim will be submitted to the Medical Eligibility Committee for review. The current practice of the Committee is to advise claimants, on the rejection of their claims, of their right to further appeal to the Health Services Appeal Board. The notice has taken the form of that sent to ...(the complainant). This practice will be changed to reflect the requirements of Section 24 of The Health Insurance Act. In the future, the Secretary of the Medical Eligibility Committee will make a recommendation to the General Manager respecting medical necessity. The General Manager shall then inform the claimant of his entitlement to a hearing before the Health Services Appeal Board, as set forth in section 24...

As the complainant had advised the Office that she had requested a hearing before the Health Services Appeal Board, the Ombudsman pursuant to section 15(4)(a) of The Ombudsman Act, 1975, lacked jurisdiction to further investigate the complaint. Accordingly, our file on the matter was closed.

MINISTRY OF

HOUSING

DETAILED SUMMARY NO. 17

The complainant, on behalf of himself and nine of his neighbours, objected to a decision of the Minister of Housing directing the Niagara Escarpment Commission (N.E.C.) to issue a development permit to another neighbour for a husky kennel operation.

The N.E.C. staff had recommended that the application not be approved because although the location was designated "rural", in fact it had an urban character; the kennel would introduce an incompatible land use into a developed area, which might well give rise to complaints about noise and appearance. Apart from this, the N.E.C. staff reported that there appeared to be little conflict between the proposal and the Commission's policy and objectives.

After consultation with the Town, the N.E.C. notified the applicant that his application was approved subject to seven conditions. The complainant appealed the decision to the Minister of Housing, who appointed a hearing officer. The hearing officer heard submissions from all who wished to be heard, and received a petition with ninety-eight signatures opposing the kennel operation. He concluded that the N.E.C. was incorrect in approving the issuance of the development permit. He pointed out that the kennel was an incompatible use, as well as an "obnoxious use" according to the Official Plan, and appeared to be prohibited by the noise by-law. A building permit had been improperly issued to the applicant. He felt that although the applicant might suffer a loss in relocating the kennel, the neighbours would suffer a greater loss in the depreciation of their property.

The hearing officer recommended that the applicant be given a reasonable time to relocate, but recommended against permitting the construction of even a temporary kennel building.

The Minister of Housing disagreed with the hearing officer and directed the Commission to issue a development permit. He concluded that the proposal conformed to the rural designation and intent of the Official Plan; the Town had supported the proposal; and the conditions attached to the permit should abate the potential noise problem satisfactorily.

Following an exchange of correspondence with the Minister, the complainant wrote our Office, submitting that the conditions attached by the Minister were insufficient to meet the noise and visual impact caused by the kennel operation.

During the course of the investigation, attempts were made to determine if the matter could be resolved. Ministry officials undertook to have an engineer visit the kennel site to determine if further improvements could be suggested by the Ministry which might be voluntarily complied with by the kennel operator. The Ministry subsequently indicated that it could find no solution to the noise problem.

Since it appeared to the Ombudsman that there existed sufficient grounds for the making of a report or recommendation that could "adversely

affect" the Minister, pursuant to section 19(3) of The Ombudsman Act, 1975, the Ombudsman afforded the Minister the opportunity to make representations concerning the following possible conclusion:

> It would appear that it might be open to me to conclude that your decision to approve the application is, in the words of The Ombudsman Act, 1975, "wrong", in spite of the conditions attached.
>
> Due to the topography and the fact that the husky team must be tethered outside at all times and in all weather, the landscaping and screening conditions which were attached are insufficient to meet the legitimate concerns addressed by the (complainants) with respect to the noise and the visual impact. The inadequacy of these conditions is demonstrated by the fact that the (kennel operators) have been successfully prosecuted under a local noise by-law. The noise and unsightliness were considered by the Commission and the hearing officers as well as yourself as evidenced by the final conditional approval, however, it is difficult to conceive of any conditions that would have been satisfactory.

The Minister submitted that his decision was not "wrong." He contended that, as the escarpment was not affected by the use of the property as a kennel, the matter was essentially a local one. The decision was consistent with municipal land use policy which designated the area as "rural". Factors which were considered by the Minister included the initial approval of the Commission, the issuance of a licence by the Town and the absence of an objection by it to the application, as well as the substantial implementation of the landscaping plan approved by the Commission. The Minister submitted that the conditions attached to the decision took into account all reasonable concerns raised, and that local by-laws dealt with the noise problem.

A further meeting was held between representatives of the Ombudsman's Office and the Ministry of Housing. Discussions were entered into with the Ministry to ascertain if the Ministry was prepared to either purchase the property on which the kennel was located, or to compensate the owners for moving the husky operation to a more suitable place. The Ministry officials indicated that the Ministry was not prepared to purchase the property or assist in the cost of relocation, nor could the Ministry come up with further suggestions as to how the noise and unsightliness could be reduced.

As a result of further investigation, the Ombudsman determined that his subsequent possible recommendation might adversely affect the Minister of Housing. The possible recommendation was communicated to the Ministry as follows:

> that the Ministry of Housing investigate the impact of the noise and visual problems caused by the husky operation ... on the property values of the complainants, and ... provide me with a written report of the results of such investigation. Should the investigation disclose that property values have in fact been adversely affected, it would be my further recommendation that

the Ministry make ex gratia payments to the complainant property owners to compensate them for the amount of such devaluation.

The Minister replied to the effect that there was, in his opinion, no evidence to support the conclusion that the decision in this matter was "wrong." He also stated that a site inspection had been carried out and that a further investigation by the Ministry could serve no useful purpose.

The Ombudsman was of the view that although the conditions attached to the permit were sincerely intended to reduce the visual impact and meet the noise problem, they were inadequate. For example, although it was a condition that the dog kennel building be insulated, this was of no assistance in reducing the noise of husky dogs which must be kept outside. The landscaping plan which the Minister attached as a condition was virtually of no assistance in reducing noise level and visual impact due to the topography.

Given the topography and the nature of the husky operation, the Ombudsman was unable to conceive any better conditions which the Ministry might have attached. The Ombudsman commented that it may well be that the hearing officer took this into account, when he recommended to the Minister that the decision of the N.E.C. to issue a permit be reversed.

The Ombudsman concluded, pursuant to section 22(1)(d) of The Ombudsman Act, 1975, that the Minister of Housing was "wrong" when he directed that a development permit be issued, subject to conditions which he genuinely believed would safeguard the neighbours' interests, but which were inadequate and ineffective.

The Ombudsman determined that the Minister of Housing had acted in good faith throughout. Even if the Minister were authorized by special legislation to reconsider the matter, neither the Ministry nor the Ombudsman could conceive of any useful conditions which might be imposed. The Ombudsman also considered the fairness of such a possible recommendation as it related to the kennel operators, given that they too had acted in good faith, and had complied with the conditions.

On the other hand, the Ombudsman had some evidence to suggest that property values of at least one of the complainants had been adversely affected by the husky operation. In all the circumstances, the Ombudsman recommended pursuant to section 22(3)(g) of The Ombudsman Act, 1975, that the Ministry of Housing investigate the impact of the noise and visual problems caused by the husky operation on the property values of the complainants, and provide the Ombudsman with a written report of the results of such investigation. Should the investigation disclose that property values had in fact been adversely affected, it was the Ombudsman's further recommendation that the Ministry make ex gratia payments to the complainant property owners to compensate them accordingly.

The Minister replied to the Ombudsman that he was unable to accept the Ombudsman's recommendation. The Minister commented that, in considering the provincial role in the kennel operator's application, it was important to note that it had been determined that the development did not

affect the Niagara Escarpment, and that therefore the application was essentially one involving local planning policies. The kennel conformed to the rural designation in the Official Plan and was considered an appropriate use by the Town and by the N.E.C. The Town did not object to the application and, in fact approved the issuance of a building permit. He felt that the Ombudsman's recommendation had such serious implications for future planning policy that he had no alternative but to oppose it. He stated that although he could not accept the Ombudsman's recommendation, he did not dismiss as inconsequential the inconvenience occasioned to the complainants by the kennel operation.

Having carefully considered the Ministry's reply in light of the investigation conducted, the Ombudsman decided against proceeding to the Premier under section 22(4) of The Ombudsman Act, 1975. In his closing letter to the complainant advising him of this decision, the Ombudsman noted that there was no question but that the Minister had acted in good faith throughout, and had directed that a development permit be issued subject to conditions which he genuinely believed would safeguard the complainants' interests, but which unfortunately did not have the result expected. He commented that it is much easier to determine that a decision was wrong with hindsight. He had learned that as a result of our Office's investigation, procedures have been devised for more detailed assessments by the Ministry in cases like this.

MINISTRY OF

INTERGOVERNMENTAL AFFAIRS

DETAILED SUMMARY NO. 18

This complaint against the Ministry of Intergovernmental Affairs was brought by a farmer who was a participant in the 1977 Ontario Youth Employment Program.

He had been misinformed that relatives were eligible employees under the terms for the Program as set out in The Youth Employment Act. Following two months of employing his younger brother for which he expected to be paid by the Program, he was advised on August 17, 1977, by letter from the Program that his brother was in fact ineligible and that his claim for the period of June 20th to July 15th, 1977, for $101.99, would not be accepted.

After this letter, the complainant did receive a cheque for $101.99, from the Program. Following that, the complainant submitted another claim for the period July 18th to August 26th, 1977, for $204.00. By this time the Program realized its error in paying the first claim, requested a full refund and refused to pay the second claim.

The then Ombudsman advised the Ministry of his intention to investigate the complainant's contention that he was misled by the Ministry into believing that his brother was an eligible employee and that therefore his claim should be paid by the Program.

The Ministry's initial position was that a brochure outlining the terms and conditions of the Program was available to the complainant. Furthermore, the terms of the Act prohibited accepting the claim.

Canada Manpower Centres were distributors of the Program brochure and the investigator contacted the local Canada Manpower Office, where the complainant had obtained information about the Program. It was discovered that this Canada Manpower Office did not provide the Program brochures to the public but had its employees familiarize themselves with the brochure contents. As the Canada Manpower employee who spoke with our complainant was no longer employed there, and was unavailable for comment, it was not possible to confirm the information he had given to the complainant.

A review of the Program file on our complainant revealed a memorandum from a Program summer student who had contacted the complainant regarding his employment of his brother, after he submitted his first claim. The summer student was located and interviewed by our investigator. The student was able to recall the case and confirmed her memorandum to file that she had spoken with the Canada Manpower employee who spoke with the complainant; he did advise him that his brother was eligible as they did not reside together. The summer student also advised the complainant that the Program would pay his claim because he had been misinformed by the Canada Manpower employee. A few days later on August 17, 1977, she wrote him to advise that the Program would not accept his claim.

The Ombudsman came to the possible conclusion that the Program had been "unreasonable" in not accepting the claim as no brochure was provided

by the Canada Manpower Centre, wrong information was passed on to the complainant by a Canada Manpower employee, and an employee of the Program informed him that his claim would be accepted because of the wrong information given. Until the complainant received the Program letter of August 17, 1977, advising him that his brother was ineligible, it was reasonable for the complainant to assume that financial assistance would be provided by the Program.

In view of this the Ombudsman made a possible recommendation that the Program forgive repayment of the $101.99 paid to the complainant, and in addition pay to him the amount he would have received from the Program up until the time he was advised that his brother was not eligible. This additional amount came to $169.50.

Since the Ombudsman felt that the Program might be adversely affected by his possible conclusion and recommendations, he accorded it an opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975.

Soon thereafter, the Ministry advised the Ombudsman that regardless of the misinformation provided to the complainant, the Act required that employers not hire relatives and that positions supported by Program financing be in addition to any regular positions. The Ministry's evidence indicated that the complainant's brother was hired on an "as needed" basis and the position for his brother existed regardless of assistance provided by the Program. The Ministry rejected the possible conclusion and recommendations.

The Ombudsman considered the Ministry's representations. He issued his report wherein he recommended that the Ministry forgive repayment of the $101.99 and that the Program pay to him $169.50 covering the amount which would have been paid until August 17th, 1977. In accordance with section 22(3) of The Ombudsman Act, 1975, the Ministry was asked what steps, if any, it planned to take to implement the recommendations.

In its response, the Ministry advised the Ombudsman that the Program had forgiven the amount already paid. However, it could not accept any recommendation to pay the complainant for any time after August 17th, 1977, as on that date he was clearly informed that his brother was ineligible.

As it appeared from the Ministry's letter that the Program believed it had already paid the complainant up until August 17th, 1977, the Ombudsman replied that in fact he had been paid only to July 15th, 1977, leaving $169.50 unpaid. The Ministry quickly acknowledged the error and agreed to pay the additional funds, subject to approval by the Management Board.

Following the payment, the Ombudsman informed the complainant and the Ministry that the file on this matter would be closed.

MINISTRY OF

LABOUR

DETAILED SUMMARY NO. 19

This complainant wrote to the Office of the Ombudsman, alleging an inadequate investigation by the Employment Standards Branch of the Ministry of Labour. The complainant complained to the Branch that, after eighteen years of working for the same employer, installing kitchen cabinets, he was laid off and never recalled. He had been terminated without notice and without severance pay. He sought redress.

For almost a year, the complainant heard nothing further from the Branch. He then received a letter stating that his complaint had been supported and an order had been issued against his employer to pay approximately $2,000 as termination pay in lieu of notice. He was advised that the employer had not paid the amount requested and the Branch had begun Court proceedings to enforce the order. Four months later, the complainant received another letter from the Branch advising him that he was not entitled to severance pay or notice because he had been deemed a construction worker who fell within the exemption from termination pay requirements. This decision was based on provisions in Regulation 251 and Regulation 803 passed pursuant to The Employment Standards Act and The Employment Standards Act, 1974, respectively.

The complainant requested a review, under section 49 of The Employment Standards Act, 1974, of the Branch's decision. He stated he was not a construction worker, working seasonally or day to day, but had been regularly employed for eighteen years as a carpenter-cabinetmaker. Subsequently, he was again advised by the Branch that he was not entitled to termination pay because of the exemption in the Regulations. The complainant then contacted the Ombudsman, alleging that the Branch's decision in his case was unjust and unreasonable.

Our investigation focused on two issues:

1. whether the Branch was correct in classifying the complainant as one not entitled to termination or severance pay according to the Regulations; and

2. whether the initial investigation and the subsequent review conducted by the Branch was adequate and reasonable.

Our investigation revealed that the Branch's interpretation of the Regulation in question might not be in keeping with the overall intention of the Act and Regulations. The Branch in this case gave section 2(e) of Regulation 251 a strict and literal interpretation which had serious ramifications for a very large service industry, such as major appliance and furnace installers. Further, the approach taken by the Branch in this case was not consistent with the approach taken in its Interpretation Manual regarding the interpretation of sections affecting employees working in the construction industry.

Our investigation also revealed that both decisions of the Branch, to issue the order and subsequently to withdraw prosecution of that order, were based on insufficient inquiry and consultation with the parties involved. The evidence on which the complainant was eventually disentitled was available

when the complainant first attended at the Branch to complain, had reasonable inquiry been made, and at any time after, had the complainant been contacted. Further, the decision to discontinue prosecution of the existing order was made without first contacting the complainant for further information or clarification even though the employer had made no effort to appeal or dispute the order issued.

Our investigation also revealed that the purported review under section 49 did not address the issues raised by the complainant in his request for same.

The Ombudsman came to the following tentative conclusions:

1. that the Branch, in classifying the complainant as a person caught by section 2(e) of Regulation 251, may have acted in accordance with a law or practice that may be unreasonable, unjust or oppressive;

2. that the Branch acted unreasonably in its original investigation of the claim for termination pay;

3. that the Branch may have acted contrary to law in failing to meet the requirements of natural justice;

4. that the Branch acted unreasonably in its review of its original investigation of the claim for termination pay; and

5. that the Branch acted contrary to law in not conducting a review under section 49.

As a result of the Ombudsman's investigation and the above tentative conclusions, the Ombudsman made the following tentative recommendations:

1. that the Ministry review its practice in regard to the interpretation of section 2(e) of the Regulation and develop a consistent practice in this regard, taking into account the fact that the Regulation may well not have been intended to exclude persons such as the complainant;

2. that the Ministry reconsider the law on which the decision was based, with a view to recommending amendments to the Legislature; and

3. that the Ministry, in view of all the circumstances in this particular case, consider granting an ex gratia payment.

Since the Ombudsman was aware that his possible conclusions and recommendations could "adversely affect" the Ministry and the Employment Standards Branch, he afforded them the opportunity to make representations pursuant to section 19(3) of The Ombudsman Act, 1975. Representations were received in a meeting at the office of the Deputy Minister. During this meeting, the Deputy Minister expressed his opinion that this was a case which ought to be resolved and offered to make an ex gratia payment in a reasonable amount to the complainant considering the circumstances and the events that had transpired in relation to the complainant. The Deputy Minister was not persuaded that the Branch had misconstrued the language

of the Regulation but he did feel that the Ministry should reconsider the wording of the clause in view of the comments and representations made by the Ombudsman insofar as the clause exempts repairers and installers of fixtures and equipment on premises other than those of the employer. He undertook to direct that a review of the clause be conducted by the Branch in conjunction with the Ministry's Legal Branch.

The Ombudsman carefully considered the Ministry's representations and offer to resolve the matter. He felt that the Ministry's acceptance of the possible recommendation to review the legislation adequately answered his concerns in this regard. Further, the Ombudsman felt that the Deputy Minister's acceptance of the Ombudsman's possible recommendation that an ex gratia payment be made adequately recognized the delay and inconvenience caused the complainant. The time for making an order against the employer had expired and, given that the complainant's entitlement to severance pay remained in dispute, the Ombudsman felt that an ex gratia payment to the complainant in the amount of $1,250.00 was a reasonable resolution of the matter. A cheque was sent to the complainant by the Branch in this amount.

As the Ministry had agreed to give effect to the Ombudsman's possible recommendations, the file was then closed as resolved.

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 20

The complainant contacted the Office of the Ombudsman requesting an investigation into the decision of the Appeal Board of the Workmen's Compensation Board. He was dissatisfied with the Board's decision to deny him entitlement to further benefits beyond October, 1976, for ongoing shoulder and psychological disabilities which he related to his accident in November, 1974. After determining the Ombudsman's jurisdiction to investigate the complaint, the Board was notified of the substance of the complaint.

The investigation indicated that in November, 1974, the complainant slipped while carrying a joist, striking his elbow. He consulted his family doctor who diagnosed a shoulder strain. The Workmen's Compensation Board accepted the complaint and awarded benefits. The complainant returned to work in June of 1975, at which time his benefits were terminated.

Soon after his return to work, he sustained a blow to his head while in the course of his employment. This accident was covered under another claim number and benefits were paid until November 17, 1975. Temporary total benefits were then restored under the first claim because of ongoing shoulder problems until January, 1976, when he again returned to work.

In reaching his conclusions the Ombudsman noted the following information. The worker sustained a minor injury in November, 1974, and the doctors who examined him recommended an early return to work. When the complainant was again examined in November, 1976, the doctors found no specific pathology to explain his shoulder pain. The orthopaedic surgeon who examined him found that there was no relationship between the complaint of right shoulder disability and the original accident. The orthopaedic surgeon who examined him in November, 1977, at the request of his family doctor again found little objective evidence of disability and felt that the ongoing complaints were likely as a result of the normal aging process. Based on this evidence, the Ombudsman found that the Board's decision to deny further benefits was not unreasonable.

With regard to the issue of entitlement for a psychiatric disability, the Ombudsman carefully reviewed the psychiatric opinions on file. The one psychiatrist who examined the complainant diagnosed depression in 1975. The psychiatrist went on to indicate that the worker had undoubtedly been unhappy prior to his accident at work and that the unhappy state predisposed the development of the post-traumatic neurosis. In late 1975, the psychiatrist reported that after a further examination, it appeared that the complainant was making good progress and had returned to normality. Given this information, the Ombudsman found that the psychiatric problems could not be considered disabling beyond October, 1976, and therefore the Board's decision to deny entitlement for benefits on psychiatric grounds was also not unreasonable.

The Ombudsman's findings were reported to the Board and to the complainant and the file was subsequently closed.

DETAILED SUMMARY NO. 21

The complainant's M.P.P. wrote on his behalf to the Office of the Ombudsman requesting an investigation of a decision of the Workmen's Compensation Board to deny entitlement to a temporary total supplement, under section 42(5) of The Workmen's Compensation Act, beyond March 22, 1978.

The investigation revealed that in August, 1976, the complainant was injured when in an effort to keep a container from overturning, he strained his back. The injury was diagnosed as a "sprained back".

By February, 1977, it was the consensus of medical opinion that the worker was capable of modified employment. Accordingly, subsequent to this date, continuing temporary disability benefits were awarded under the provision of section 41 of The Workmen's Compensation Act, which provides for full benefits when a worker has a partial temporary disability and he co-operates in attempting to return to work. The worker was then referred to the Vocational Rehabilitation Branch of the Workmen's Compensation Board.

During the period September to November, 1977, he also attended a work assessment program. A review of both the Vocational Rehabilitation Reports and the reports from work assessment revealed that the complainant severely restricted his work capabilities as he considered himself more disabled than the medical evidence expressed. It was the opinion of the counsellors that he could not meet the daily requirements of full-time employment.

The complainant was eventually granted a 15% permanent disability award and a 40% supplement under the provisions of section 42(5). These awards commenced in March, 1978, at which time his temporary total benefits ceased.

Between March, 1979 to April, 1979, the worker again attended a work assessment program. Further, arrangements were made for him to attend a third eight-week assessment program. A review of these reports regarding the complainant's assessment again revealed that his production level was below the standards set in either sheltered or competitive industry.

The 40% temporary supplement was paid until September 22, 1979, and not extended beyond this date.

The Ombudsman found the medical evidence did not substantiate that the complainant's back disability was totally disabling. Also, the work assessments conducted at the Workmen's Compensation Board's Vocational and Rehabilitation Centre and the two independent assessment centres indicated that the complainant's self-imposed restrictions, not his back disability, prevented his return to gainful employment. The Ombudsman was, therefore, unable to describe the Board's decision to limit the award to 40% as unreasonable.

However, during the course of the Ombudsman's review of the compensation claim file, it was found that the complainant sustained two previous compensable back injuries. These occurred on October 13, 1965,

and on September 2, 1966. When the worker's disability, following his 1976 injury, was assessed in December of 1978, the Pensions Medical Branch was to consider a review of his current disability based upon all his compensable back claims; however, at that time the Pensions Branch was advised that there was no documentation available with respect to any back injuries prior to 1976.

In a letter, the existence of these earlier claims was brought to the attention of the Workmen's Compensation Board by this Office and a request made that all claims be referred to the Pensions Medical Branch for their further consideration.

In addition, it was noted on the Board's file that the worker received temporary disability benefits at the weekly maximum rate of $216.35 following his accident in August, 1976; however, when awarding his permanent disability benefits, on the available earnings information twelve months preceding his accident, it was recommended that the minimum rate be applied. The worker's occupation as a labourer was of a seasonal nature and as such, his employment was not on a continuous basis throughout any particular year. Because of the disparity in earnings between temporary disability benefits (maximum rate) and permanent disability benefits (minimum rate) for compensation purposes, a request was also made that the Pensions Medical Branch review these earnings to assure that full consideration for this man's type of seasonal employment be taken into account when his permanent disability earnings basis was calculated.

This Office was advised by the Pensions Branch of the Board that the worker's earnings basis had now been reviewed and upwardly adjusted. This increase raised his monthly pension award from $85.75 to $147.50 and with respect to the adjustment, effective March 22, 1978, he was awarded $3,916.61 in arrears. This Office was also advised that the three disability back claims would be reviewed subsequent to a further disability assessment of his condition.

In a report to the complainant and the Workmen's Compensation Board the Ombudsman stated that although he found the complaint to be unsupported he was pleased that a review of his disability claim had effectively increased the dollar value of his monthly permanent disability award.

DETAILED SUMMARY NO. 22

The complainant contacted the Queen's Park Office of the Ombudsman and indicated he was not satisfied with a decision of the Workmen's Compensation Board's Appeal Board.

The Board was advised of the Ombudsman's intention to investigate the complaint. It was the complainant's position that the decision to limit his permanent disability award to 10% for an organic back disability was unreasonable and that the decision not to award a supplement pursuant to section 42(5) for the period May, 1976 to October, 1977, was also unreasonable.

Our investigation revealed that in May, 1975, the worker slipped and fell while moving an extension ladder. The initial diagnosis from a general

surgeon was of a contusion strain to the lumbosacral spine. The claim was recognized by the Workmen's Compensation Board and the complainant received temporary total benefits until January, 1976.

As a result of an Appeal Board decision dated July, 1977, the complainant also received temporary total benefits until May, 1976, and a 10% permanent disability award subsequent to May.

Concerning the first contention the Ombudsman noted the results of medical assessments with respect to the worker's back indicated that his disability was of a minimal nature aggravated by his overreaction to pain, his pre-existing degenerative disc disease and his weight. The Ombudsman was compelled by these facts to find this portion of the complaint to be unsupported.

Concerning the second contention, the Ombudsman reached the following possible conclusion and recommendation:

> Possible Conclusion
>
> It would appear that it might be open...to conclude, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board acted unreasonably in its decision of July 22, 1977, in not granting the complainant a temporary supplement to his Permanent Partial Disability Award under section 42(5) because he had been carrying out his own rehabilitation program.
>
> Possible Recommendation
>
> It may be open...to recommend, pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Appeal Board vary, in part, its decision dated July 22, 1977, and grant the complainant entitlement to a temporary supplement award for the period of May 16, 1976, to October 11, 1977, under the provisions of section 42(5) of The Workmen's Compensation Act.

The Board's response indicated that the Appeal Board had reconsidered its decision and accepted the Ombudsman's possible recommendation. The response in part read:

> The Appeal Board has carefully considered the information in the worker's file in light of the Ombudsman's possible conclusions and recommendation. The Appeal Board has had particular regard for the fact that during the period May sixteenth, 1976 to October eleventh, 1977, the services of the Vocational Rehabilitation Branch were not extended to the worker since at that time he was not considered to have incurred any permanent disability.

> In reviewing the available information the Appeal Board is satisfied that the worker was to some extent available for suitable employment during the period May sixteenth, 1976, to October eleventh, 1977, and that in fact he worked for several different employers during this time. The Appeal Board, therefore, concludes that he has entitlement for supplementary benefits subject to the provisions of section 42(5) for some parts of the period May sixteenth, 1976 to October eleventh, 1977.

After being advised that the appropriate payments had been sent, the Ombudsman considered the complaint to have been satisfactorily resolved and the file was then closed.

DETAILED SUMMARY NO. 23

The Appeal Board of the Workmen's Compensation Board denied the complainant entitlement to benefits for a disability arising out of her employment in October, 1976, and entitlement for a recurrence of a back disability which she attributed to her work in November, 1974. The complainant then requested an investigation by our Office into the decision of the Appeal Board.

Our investigation revealed that the complainant suffered a back disability in 1974 while lifting a desk during her employment as a school cleaner. X-rays were taken and she received conservative treatment for muscle spasm from her family doctor. The complainant returned to work approximately 10 days after the accident. The claim was accepted by the Workmen's Compensation Board.

The next incident of back pain occurred in October, 1976, after she was involved in a dispute with a female co-worker. This dispute involved pushing and shoving on the part of both women and ended in the complainant being held in a headlock. As a result of this dispute, the complainant suffered a sore back, neck and arms and was off work for approximately two days. The complainant continued to seek medical treatment for low back and neck pain from her family doctor and an orthopaedic specialist.

A review of all the information on file including statements of witnesses indicated that the complainant had not been a victim of an attack by her co-worker and that the dispute had been a personal argument over the use of a tea cup. In respect to this incident the Ombudsman found that the altercation which occurred during the course of the complainant's employment was a dispute over a personal matter and did not arise out of the employment. The Ombudsman, in reaching a conclusion noted that for an incident to be compensable it had to be shown that the disability not only occurred in the course of the employment but also arose out of the employment. Since the latter condition had not been met, the Ombudsman found that the Board's decision to deny entitlement for that episode was not unreasonable.

In respect to a relationship between the 1974 accident and the recurrence of neck and low back pain, the Ombudsman reviewed carefully

all of the medical information on file. The Investigator also contacted the complainant's orthopaedic specialist in order to obtain his opinion on the cause of the back pain which disabled her from November, 1976, to February, 1977. The specialist stated that in his opinion, the nature of the injury in 1974 was not significant enough to cause the disability which occurred in 1976 and that the dispute in which she was involved would appear to have aggravated an underlying condition. The Board's Surgical Consultant also noted that he could not relate the disability in 1976 to the 1974 compensable accident. Given this medical information, the Ombudsman was unable to find the Board's decision to deny entitlement for ongoing problems as a result of the 1974 accident, as unreasonable.

The complainant and the Workmen's Compensation Board were notified of the Ombudsman's findings and the file was subsequently closed.

RECOMMENDATIONS

DENIED

THE WORKMEN'S COMPENSATION BOARD

DETAILED SUMMARY NO. 24

During a personal interview, this dentist registered two complaints concerning a decision of the Appeal Board of the Workmen's Compensation Board. Specifically, he was dissatisfied with the 10% permanent disability award granted and the decision to deny him additional benefits under section 42(5) of The Workmen's Compensation Act.

As it was apparent that the Ombudsman had jurisdiction to investigate these complaints, the Chairman of the Workmen's Compensation Board was notified of the Ombudsman's intention to investigate.

The investigation revealed the following information. In 1922 the dentist graduated and set up practice which he maintained until March, 1976, when he was forced to close his office because of the radio-dermatitis on the dorsal aspects of both hands. The dermatitis was a result of the x-ray machines used between 1922 and the early 50's which were not properly shielded.

In 1965 the complainant applied for personal coverage from the Workmen's Compensation Board because he was no longer eligible for private income loss insurance plans. The complainant paid premiums until 1977 and had $7,500.00 annual coverage from the Board.

In the initial stages of the adjudication of this claim, the Workmen's Compensation Board denied entitlement because in its opinion the dentist could have continued to work with gloves. The claim was then allowed and the worker was granted the 10% permanent disability award. With respect to the permanent disability award the Ombudsman found that the 10% rating adequately and fairly represented the complainant's residual disability.

However, with respect to the benefits pursuant to section 42(5), the Ombudsman came to a possible conclusion and recommendation which might have adversely affected the Board. Accordingly, pursuant to section 19(3) of The Ombudsman Act, 1975, he afforded the Board the opportunity to make representations with respect to the following:

> Possible Conclusion
>
> It would appear that it might be open to me to conclude pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Board's decision that (the complainant's) impairment to earning capacity was not significantly greater than usual and therefore the decision not to grant (the complainant) a special supplement under section 42(5) was unreasonable based on the following findings.
>
> (The complainant) was in his late 70's. It would appear that a younger doctor, afflicted with the same disability, would have more opportunities to secure employment as a teacher or consultant. It, therefore,

> appears that (the complainant's) impairment to earning capacity was greater than normal simply because of his age.
>
> (The complainant), who practiced dentistry for 50 years had a substantial commitment to his profession. Therefore, his occupational possibilities were very limited. It would appear unreasonable to suggest that he consider another occupation.
>
> It would appear that the Appeal Board on September 1, 1978, attached importance to the fact that (the complainant) did not renew his licence to practice dentistry in 1978. There is little merit to suggest that (the complainant) should have renewed his licence as he did not have a job and, therefore a need for the licence. This was an unnecessary expense. (The complainant) was assured by the Royal College of Dental Surgeons of Ontario that he would be able to renew his licence if he was finally able to secure employment. The Appeal Board asked whether there was an age requirement for practicing dentistry. It satisfied itself with the answer that (the complainant) had not renewed his licence. The question of this licence, it would appear, was an unreasonable consideration.
>
> Possible Recommendation
>
> It would appear that it might be open to me to recommend pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Board vary its decision of January 15, 1979, and grant (the complainant) entitlement to a temporary supplement.

In response to the Ombudsman's possible conclusion and Recommendation, the Board responded in part as follows:

> However, in the opinion of the Board, (the complainant) does not meet the requirements of section 42(5) that would warrant a supplement for the following reasons:
>
> Section 42(5) requires that the employee either cooperate and be available for a medical or Vocational Rehabilitation program which would in the opinion of the Board aid in returning him to work or that the employee be available for employment which is available and which in the opinion of the Board is suitable for his capabilities.
>
> The information available clearly demonstrates that in the opinion of the Board there is no reasonable

> medical or Vocational Rehabilitation program available that will aid in returning (the complainant) to employment nor in the opinion of the Board does the information provided by (the complainant) and the information obtained by the Vocational Rehabilitation Branch indicate that there is any employment available which is suitable for (the complainant's) capabilities.

Upon receipt of this response, the Ombudsman carefully considered the information and noted that the complainant had both cooperated and been available for any kind of program or work that the Board would have offered him. The Ombudsman also noted, however, that the Board was not able nor did it attempt to assist the complainant either through appropriate vocational retraining or job placement. In the Ombudsman's opinion, it was precisely because the Board could not offer the complainant any other assistance that he was entitled to benefits under section 42(5) in accordance with its own policy. Because there were no employment possibilities apparent, it must have been concluded that the complainant's impairment of earning capacity was significantly greater than usual for the nature and degree of his injury.

In a report the Ombudsman concluded pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the Appeal Board decision of January 15, 1979, unreasonably denied the complainant entitlement to a supplementary award under the provisions of section 42(5) of The Workmen's Compensation Act. He recommended pursuant to section 22(3)(c) of The Ombudsman Act, 1975, that the Workmen's Compensation Board vary its decision and award the complainant a temporary supplement.

The Board advised the Ombudsman that it did not intend to implement his recommendation. The substance of the Board's response read as follows:

> The Board, then accepts that the impairment of earning capacity is greater than usual in this case. The Board also accepts that (the complainant) has determined a willingness to cooperate in a vocational rehabilitation program to place him back into the work force. Implicit in this, is his availability for employment. The problem arises, however, (as was pointed out in Mr. Starr's letter of March 3, 1980) in that the requirement of the statute that he be available for work "which is available" has not been met. Through the efforts of (the complainant) in cooperation with the Vocational Rehabilitation Branch, the Board is satisfied that there is no work available for (the complainant) which is "suitable for his capabilities". The Board cannot accept that the legislation intended to provide supplementary benefits in cases where there is absolutely no indication that suitable work will become available. Such benefits, in the opinion of the Board, were intended to assist an injured employee temporarily, during a

> period of financial hardship while the injured employee was actively engaged in looking for work which was available, but which the injured employee had not yet been able to secure.

After reviewing the Board's response, the Ombudsman concluded that it was not adequate or appropriate in respect to his recommendation. In his opinion there was work available to senior citizens in the general labour market. In the Ombudsman's opinion there was no evidence to indicate that there was no work available to the complainant.

Accordingly, the Ombudsman referred this matter to the Premier pursuant to the provisions of section 22(4) and 22(5) of The Ombudsman Act, 1975. The results of his findings and the response of the Workmen's Compensation Board were reported to the complainant. The Board was also advised of the Ombudsman's decision to refer the matter to the Premier. The file was then closed.

DETAILED SUMMARY NO. 25

A number of complaints against the Workmen's Compensation Board concerning the level of permanent disability awards granted under section 42(1) of The Workmen's Compensation Act have been registered with the Office since its inception through personal interviews and by letters of complaint written by the complainant or his M.P.P.

In each case, the level of the permanent disabilty award had been the subject of an appeal to an Appeal Board panel. Accordingly, the Workmen's Compensation Board had been notified in writing at various times of the Ombudsman's intention to investigate.

Section 42(1) of The Workmen's Compensation Act reads as follows:

> Where permanent disability results from the injury, the impairment of earning capacity of the employee shall be estimated from the nature and degree of the injury, and the compensation shall be a weekly or other periodical payment during the lifetime of the employee, or such other period as the Board may fix, of a sum proportionate to such impairment not exceeding in any case the like proportion of 75 per cent of his average weekly earnings during the twelve months immediately preceding the accident or such lesser period as he has been employed.

The Board has historically held that this section provides for the making of an award only on the basis of a clinical assessment made by a duly qualified medical practitioner.

During the investigation of complaint #30, reported in the Seventh Report to the Legislature, the Ombudsman came to the conclusion that the crucial issue to be addressed by the Board under section 42(1) was the impairment of the employee's earning capacity. In the Ombudsman's view the

Board, in determining the impairment, is not limited to a consideration of the clinical rating, but shall also consider any and all other relevant information when assessing a workers' impairment of earning capacity. In complaint #30 the Ombudsman recommended that the Board revoke its decision and grant the complainant an increase to his permanent disability award.

The Board declined to accept this interpretation and recommendation. The matter was then referred to the Premier, pursuant to section 22(4) of The Ombudsman Act, 1975, included in the Seventh Report to the Assembly and then reviewed by the Select Committee on the Ombudsman during its sittings in the summer of 1980.

In its Eighth Report dated December 9, 1980, the Committee stated as follows at page 53:

> The interpretation placed on all of section 42 of The Workmen's Compensation Act by the Workmen's Compensation Board makes no provision for a workman in Ontario to receive a disability payment for an impairment of earning capacity greater than otherwise might be expected, on an indefinite basis where that workman, because of the injuries and the disability and degree of impairment is effectively removed from the work force. In the Committee's opinion this anomaly only exists because of the Board's interpretation of section 42(1), that is, impairment of earning capacity is dictated by clinical assessment of the nature and degree of the injury.

At page 55, the Committee concluded that:

> The Committee supports the recommendation of the Ombudsman particularly as it relates to his interpretation of section 42(1) of The Workmen's Compensation Act. The Workmen's Compensation Board has historically interpreted this section as permitting the payment of benefits to workmen in amounts which are proportionately higher than the actual impairment of earning capacity. It must follow that that interpretation to be truly equitable must also permit the payment of benefits which actually reflects the impairment of one's earning capacity.

In light of the Committee's support of the Ombudsman's interpretation and recommendation, a review of all files in this Office pertaining to the Workmen's Compensation Board was conducted. Of these, there were 135 files under investigation which specifically raised the issue of the Board's assessment of permanent disability awards. The investigation into these complaints revealed that the permanent disability awards were assessed by the Board on the basis that it had no discretion to make any award pursuant to section 42(1) beyond a clinical assessment made by a duly qualified practitioner. The Ombudsman decided that, inasmuch as the crucial issue in all of these complaints was the same, the most appropriate approach was to

deal with them collectively. The complaints were separated into two Appendices, each identifying the complainant's name, file number and claim number. Appendix A listed all complaints which dealt solely with the awards granted under section 42(1) of The Workmen's Compensation Act. Appendix B listed all those cases where the complainant registered multiple contentions only one of which concerned the assessment of the permanent disability award.

The Ombudsman notified Mr. T. D. Warrington, Vice-Chairman of Appeals of the Workmen's Compensation Board, pursuant to section 19(3) of The Ombudsman Act, 1975, of his possible conclusion and recommendations, with respect to these cases, and invited the Board to make representations. The Ombudsman advised Mr. Warrington that he was of the tentative opinion that the decisions regarding the cases referred to in Appendices A and B were unreasonable, as the Board had limited its inquiry to a clinical assessment and had failed to give consideration to all relevant factors when assessing permanent disability awards for the complainants in question. The Ombudsman also informed Mr. Warrington of the tentative recommendation that all of the cases referred to, should be reconsidered by the Board, to determine the impairment of earning capacity of the injured workers.

Mr. Warrington advised the Ombudsman that the Board was not in a position at that time to comment on the tentative conclusion and recommendations, and was content with him making a final decision without further representations.

After carefully considering all of the relevant information, the Ombudsman formed the opinion pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the decisions by the various Appeal Board Panels in the cases referred to in Appendices A and B were unreasonable in that all information necessary to assess the complainants' impairment of earning capacity, as a result of their compensable injuries, was not considered in view of the Board's interpretation of section 42(1). Accordingly, he recommended that pursuant to section 22(3)(g) of The Ombudsman Act, 1975, the Appeal Board reconsider all the cases referred to in Appendices A and B and obtain all information necessary to assess the workers' impairment of earning capacity. He also recommended pursuant to section 22(3)(d) that the Board alter its practice to take into consideration, factors indicative of the actual impairment of earning capacity, when assesssing a workers' permanent disability award.

The report made under section 22(3) of The Ombudsman Act, 1975, was forwarded to the Minister of Labour and to the Chairman of the Workmen's Compensation Board requesting that any response be forwarded to the Office within ten days. However, the Chairman of the Workmen's Compensation Board indicated that a period in excess of ten days was required to adequately respond to the Ombudsman's conclusion and recommendations. The Chairman was then advised that notification under section 22(4) and 22(5) of The Ombudsman Act, 1975, would occur at a later date. As of this later date however, the Office had not received any further indication that the recommendations would be implemented and, accordingly, pursuant to section 22(4) and 22(5) of The Ombudsman Act, 1975, a copy of the report and recommendations was forwarded to the individual complainants, their M.P.P.'s where indicated, and to the Premier. The Premier's response did not indicate that any steps would be taken to implement the recommendations.

MANAGEMENT BOARD OF

CABINET

CIVIL SERVICE COMMISSION

DETAILED SUMMARY NO. 26

The complainant wrote the Office of the Ombudsman, complaining against the Civil Service Commission and the Ministry of Government Services.

The complainant was employed as a student counsellor on the casual staff of a Regional Centre from December, 1971 to September, 1972. In September of 1972, he joined the Centre's probationary staff. The complainant was hired under an individual contract of employment between himself and the Ministry of Health, under whose auspices the Regional Centre fell at the time. The contract was governed by The Public Service Act and the regulations passed thereunder. One of the regulations stipulated that,

> There shall be deducted from the regular fortnightly pay of every person appointed to the civil service on and after the day this section comes into force, the sum of $2.00 in lieu of the membership dues of the Civil Service Association of Ontario.

Another regulation stated,

> . . . the deductions referred to in this section shall be remitted to the Civil Service Association of Ontario . . ..

Consequently, when the complainant transferred from casual to probationary staff, the Centre's payroll department began to make the $2.00 deduction from his paycheque. The deduction was identified on the cheque stub as "C.S.A.O. dues". The complainant contended that he had wanted to be an Association member, so he made no objection to the deduction. He maintained that no one from either the Ministry or the C.S.A.O. told him such deductions did not automatically make him a member. In fact, he maintained that no one representing the Association ever approached him at all.

In June of 1973, the complainant lost his left leg in a motorcycle accident unrelated to his work. He subsequently attempted to collect the $2,500.00 provided for loss of limb under an accidental death and dismemberment insurance policy held by the C.S.A.O. for the benefit of its members. He was advised that because he had never applied for C.S.A.O. membership, he was not a member of the Association but a "dues-paying non-member", and accordingly he was not entitled to benefit under its insurance policy. The complainant asked the Ombudsman to investigate.

The former Ombudsman wrote to the Chairman of the Civil Service Commission, and to the Deputy Minister of Government Services and advised them of his intention to investigate the complaint.

During the course of the investigation, the former Ombudsman came to two possible conclusions:

1. that the Ministry of Government Services and/or the Civil Service Commission was/were wrong in that they failed to give the complainant notice of the benefits available to him as a member of the Civil Service Association of Ontario upon commencing his employment; and

2. that the Ministry of Government Services and/or the Civil Service Commission was/were wrong in not providing the former Civil Service Association of Ontario with a list of new government employees so that it would be in a position to contact the complainant and advise him of Union benefits available to him.

The Ombudsman so advised the Civil Service Commission and Ministry of Government Services pursuant to section 19(3) of The Ombudsman Act, 1975.

Because in his view, the Ontario Public Service Employees Union (formerly the C.S.A.O.) might be adversely affected by his possible conclusions, the former Ombudsman also accorded it an opportunity to make representations thereon pursuant to section 19(3) of The Ombudsman Act, 1975.

It was the position of the Minister of Government Services that because his Ministry had neither employed the complainant nor administered the insurance plan under which he was denied benefits, it had no jurisdiction over this matter. The Minister therefore declined to comment on the merits of the complaint, stating that the Civil Service Commission would be providing a more substantive answer.

The Commission stated that there was no obligation on it to advise employees of the existence of union fringe benefit programs designed to encourage union membership. The Commission also stated that any attempt to do so might be considered an improper intrusion into union affairs. It also explained that the amount and kinds of personnel information which an employer provided a bargaining agent was largely the product of collective bargaining, a process which ought not to be interfered with.

The O.P.S.E.U. contended that its predecessor union had done everything within its power to reach people like the complainant and to emphasize that the payment of union dues did not constitute union membership. It pointed to numerous notices it had published in its newspapers and posted on the bulletin board designated for union affairs at the employer's place of business.

In light of the investigation conducted, the Ombudsman came to the conclusion that neither the Ministry of Government Services nor the Civil Service Commission was obliged to outline the benefits available to the complainant if he were to become a union member. Nor, in his opinion, did they act unreasonably in not doing so, as that task belonged more appropriately to the C.S.A.O. Furthermore, upon consideration of the matter, the Ombudsman agreed with the Civil Service Commission that the Crown, like

any other employer, ought to be allowed to determine its position on the disclosure of personnel data at the bargaining table, and that this was a matter more properly left to the Civil Service Commission and the O.P.S.E.U. as part of the bargaining process. Consequently, the Ombudsman was unable to conclude that the Ministry of Government Services and/or the Civil Service Commission was/were "wrong". Nevertheless, the Ombudsman urged that the issue of the systematic exchange of information be the subject of intensive negotiation in the future, since it was the Ombudsman's understanding that the Geographic Location Code currently furnished to the Union is not sufficiently detailed to preclude the recurrence of another predicament such as the complainant's, particularly within the Toronto area.

During the course of the Office's investigation of the allegations made against the Ministry of Government Services and the Civil Service Commission, the argument was advanced, however, that given the C.S.A.O.'s difficulties in reaching new employees back in 1972, some onus lay with the Ministry of Health, as the complainant's employer, to at least explain his status to him. In particular, it was suggested that because an automatic check-off system might well confuse someone unversed in labour relations, the employer should have explained that the deduction in question represented an amount equivalent to Association dues, as opposed to Association dues per se, and therefore did not constitute evidence of C.S.A.O. membership.

Accordingly, a member of the Ombudsman's legal staff contacted the Senior Personnel Officer at the Regional Centre. The lawyer was advised that in the early 1970's, a new employee asking for an explanation of the payroll deduction made pursuant to section 45 of R.R.O. 749 would have been told that it was "union dues", not "a sum in lieu of union dues". Only if he objected to union membership would he have been told that the deduction did not automatically make him a member of the C.S.A.O. This, in combination with the fact that the pay stub identified the deduction as "C.S.A.O. dues", could easily have misled the uninitiated to believe that he was in fact an Association member. Furthermore, because of the C.S.A.O.'s previously discussed difficulties in identifying new employees, and the prohibition against union discussion on the employer's premises which prevailed at the time, the Association was unable to dispel this misunderstanding.

On the basis of this information, the Ombudsman felt that it might be open to him to form the following possible conclusion:

> 1. that the omission of the Regional Centre to clarify the complainant's position respecting the payroll deductions and C.S.A.O. membership with him was unreasonable in all the circumstances.

As the Ombudsman believed the Ministry of Health might be adversely affected thereby, he wrote to the Deputy Minster of Health in accordance with section 19(3) of The Ombudsman Act, 1975, and invited him to make representations respecting the Ombudsman's possible conclusion. In his response, the Deputy Minister denied his Ministry's responsibility in this matter. Appended to the letter was a policy directive issued in 1970, the relevant portion of which was as follows:

> Would you please ensure that all employees in the bargaining unit fully understand that the requirement to pay the equivalent of union dues does not automatically confer membership in the Civil Service Association. An employee becomes a member of the Association only if, and when, he signs a membership card.

The Deputy Minister added that he had no reason to believe that these instructions were not being carried out.

As our investigation had revealed that there might be reason to suspect that the above instructions had not been applied to the complainant, we attempted to contact the Centre's Senior Personnel Officer during the period in question. Unfortunately, the personnel officer had left the public service, and our efforts to trace him proved unsuccessful. Consequently, it was impossible to resolve this point beyond all doubt. However, on weighing the evidence before him, the Ombudsman was satisfied that the complainant was not adequately informed of his status with respect to the C.S.A.O. and the significance of the bi-monthly deductions made under the regulations.

The Ombudsman accordingly determined, pursuant to section 22(1)(b) of The Ombudsman Act, 1975, that the omission of the Regional Centre to clarify the complainant's position respecting his payroll deductions and C.S.A.O. membership with him was "unreasonable" in all the circumstances. In so determining, the Ombudsman recognized that some responsibility must be borne by the C.S.A.O. and the complainant himself.

The Ombudsman did not think, however, that this was an appropriate case in which to recommend an ex gratia payment to the complainant by the Ministry of Health because he did not consider that the failure of the complainant to receive the benefit provided by the C.S.A.O. insurance policy was directly attributable to the omission of the Regional officials to explain the complainant's status to him.

MINISTRY OF

REVENUE

DETAILED SUMMARY NO. 27

This complaint was received at our North Bay Regional Office.

The complainant had initially been denied the $1,500.00 Ontario Home Buyers Grant because he was entitled to immediate vacant possession of his housing unit on March 3rd, 1975, which date was prior to the commencement date for the grant eligibility period. However, after a further review of the complainant's situation, the Ministry took the position that the condominium complex in question was registered by March 3rd, 1975. As a result, the complainant had to meet the eligibility requirements for a "registered" rather than a "proposed" condominium unit. Accordingly, his Transfer of Freehold Land had to be registered in the proper Land Registry Office between April 8 and December 31, 1975, i.e., the grant eligibility period. Since it was registered on March 1st, 1976, the Ministry determined that he was ineligible for the grant.

The complainant nevertheless believed that his condominium housing unit was a "proposed" one at the time of purchase and submission of his grant application. Furthermore, he claimed that he was not entitled to immediate vacant possession of his unit until May 1st, 1975. According to the complainant, although the date of March 3rd, 1975, was the original closing date of the transaction agreed to with the vendor, he could not raise sufficient funds by that date and he had lost his $100.00 deposit on the unit. On April 9, 1975, the complainant was in funds, and since the condominium unit was still available, he provided his solicitor with a down payment. The complainant was apparently advised by his solicitor that he could not move into his housing unit until May 1st, 1975. This could not be verified as the complainant's solicitor is deceased.

In a preliminary review of this complaint, the investigator contacted the Land Registry Office in the Northern Ontario city in question, and learned that the complainant's condominium building was registered on November 5th, 1975. Because of the significance of this fact to the complainant's entitlement to the grant, the investigator passed this information on to the Ministry.

The Ombudsman then notified the Deputy Minister of Revenue of his intention to investigate this matter and soon thereafter received a statement of the Ministry's position.

The Ministry had again contacted the Land Registry Office and discovered that the actual date of registration of the complainant's condominium complex was indeed November 5th, 1975, and not November 4th, 1974, as it had originally believed. The Ministry therefore confirmed that at the time the complainant agreed to purchase the housing unit, it was a "proposed" unit and that entitlement to vacant possession on May 1st, 1975, vested the property in him on that date, within the eligibility period. The complainant was therefore entitled to the $1,500.00 Ontario Home Buyers Grant.

The Ministry advised our Office that since this Program is no longer operating, no money had been voted for it by the Legislature in the current year. However, the Ministry would seek authorization for payment of the complainant's $1,500.00 grant. Payment would be forwarded to the complainant as soon as it had been approved and the complainant was so advised.

DETAILED SUMMARY NO. 28

This complainant contacted the Office of the Ombudsman by letter with a complaint against the Ministry of Revenue.

A Regional Assessment Office had decided that the complainant's residence was completed and occupied on June 1st, 1977, while it was still under construction. The Regional Assessment Office sent a notice of Supplementary Assessment to the complainant's residence and sent a tax bill, pursuant to the Supplementary Assessment, to the Town to be processed and sent to the same address. Unfortunately, the complainant who had been constructing the residence since 1974, was residing at his principal residence in another town at the time of the assessment, where he was recovering from a heart attack. The residence under construction was not visited by the complainant during 1977, and his wife had visited it only occasionally for security checks. As a result, the complainant never received the notice of Supplementary Assessment nor the subsequent tax bill. He therefore missed his opportunity to appeal the Ministry of Revenue's Supplementary Assessment.

The complainant learned of the Supplementary Assessment and the tax bill, when a notice of arrears was sent to his principal residence on April 21st, 1978.

Before the complainant contacted our Office he had approached the Deputy Clerk of the Town who allowed him an opportunity to request that the Town Council cancel the tax bill although the time period for such an appeal, under The Municipal Act, had expired. The Town Council refused to cancel the Supplementary Assessment but did agree to withdraw all interest charges on the unpaid tax bill.

The complainant had also contacted the Regional Assessment Office and spoke with the property assessor who had assessed his unfinished residence. He was informed that the matter was entirely the responsibility of the Town as the time for appeal of the assessment under The Assessment Act had expired.

The Ombudsman advised the Deputy Minister of Revenue of his intention to investigate this matter and soon thereafter received a statement of the Ministry's position. In his response the Deputy Minister stated that the residence in question was inspected on three occasions prior to the assessment date and the property assessor observed that the lawn was sodded, the exterior was finished, curtains hung in the windows and lights were on inside. On these observations the assessor assumed that the house was used.

The Deputy Minister's response also stated that the notice of Supplementary Assessment was sent to the address in question and that the Ministry had no reason to believe it was not claimed. However, the Ministry had been informed that the Town forwarded the tax bill, prepared by the Ministry, to the complainant's principal residence, where he was actually residing. The Ministry could not accept that the complainant did not receive at least one of the items.

Our investigation revealed that the property assessor had not entered the residence to inspect it, but had passed by it in his car. The property assessor had not obtained the name of the owner of the residence to arrange for access to the house, as is the Ministry's normal practice.

Our Office also learned that the complainant had instructed the Regional Assessment Office to forward all correspondence regarding the address in question to his principal address. However, the Regional Assessment Office forwarded the notice of Supplementary Assessment directly to the complainant's other address.

The Town advised us that the tax bill, which had been prepared and addressed by the Regional Assessment Office, was also sent to the wrong address. The complainant had also instructed the Town to forward all correspondence related to the residence under construction to his principal address but the Town failed to notice that the Ministry had placed the wrong address on the bill. Therefore, neither the notice of Supplementary Assessment nor the tax bill was sent to the complainant at his principal residence.

Our Office was advised by the complainant's wife that she had prepared the exterior of the new residence to appear as though it was occupied to discourage prowlers from entering it.

The property assessor informed our staff that he was not certain that the house was actually completed or occupied when he assessed it but processed the Supplementary Assessment believing that any mistake would be rectified through the appeal process.

Based on the foregoing facts, the Ombudsman then advised the Deputy Minister of his possible conclusions pursuant to The Ombudsman Act, 1975, that the Supplementary Assessment of the residence was "wrong"; that the property assessor was "unreasonable" not to have entered the premises or contacted the owner; and that the Ministry had acted "contrary to law" by not sending the notice of Supplementary Assessment to the complainant's principal residence. The Ombudsman also explained in his letter that because the complainant had given instructions to the Regional Assessment Office regarding the forwarding of correspondence, which the Ministry did not respect, the taxation roll certifying the Supplementary Assessment may be invalid, pursuant to section 53 of The Assessment Act.

The Ombudsman stated that in view of the above he might possibly recommend pursuant to The Ombudsman Act, 1975, that the Ministry of Revenue pay to the complainant $312.06, representing the amount of tax paid pursuant to the Supplementary Assessment.

As the Ombudsman was of the opinion that the Ministry and the property assessor might be "adversely affected" by his possible conclusion and recommendation, he accorded both the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of The Ombudsman Act, 1975.

Soon thereafter, the Deputy Minister advised the Ombudsman that the information obtained during the course of our investigation persuaded the Ministry to alter its position, and the Town had indicated its willingness to refund the overpayment of tax related to this Supplementary Assessment in the amount of $312.06.

Subsequently the Ombudsman advised the complainant and the Ministry of Revenue that the file on this matter was being closed as the complainant's problem had been resolved.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 29

In these cases which number approximately 20, the complainants operated buses, ambulances and large trucks. Their classified drivers' licences were revoked by the Ministry of Transportation and Communications, pursuant to Regulation 906/76 under The Highway Traffic Act. That Regulation states that no applicant can be issued a classified driver's licence if he or she suffers from any medical condition listed in the Regulation. The more common medical conditions of our complainants were heart conditions and diabetes. As a result of the Ministry's actions, the complainants were unable to pursue their livelihoods.

The Regulation sets out an absolute standard, providing no discretion to the Ministry with respect to its implementation and no appeal process for an individual whose classified licence has been downgraded or revoked.

In each case we obtained the complainants' medical records to determine if the actions taken by the Ministry were in compliance with the Regulation. Our Office was satisfied that in each case the Ministry did administer the Regulation properly and committed no error of fact or law.

Following our conclusion that the Ministry did act in accordance with the Regulation our investigation focused on the reasonableness of the omission from the Regulation of a process whereby a medically stable applicant could be reissued his or her driver's licence.

The Ministry's position on this matter was that it relied on the advice of the Canadian Medical Association in the drafting of the Regulation. As the Association recommended absolute standards without any appeal process the Ministry was not prepared to allow complainants with medical conditions or histories of such conditions now to receive classified licences. The Ministry advised our Office that its officials themselves lacked the requisite medical knowledge to make policies in this area; the Ministry was only prepared to amend the Regulation on the advice of the Canadian Medical Association.

Our investigator reviewed the Canadian Medical Association's Guide to Physicians In Determining Fitness To Operate A Motor Vehicle and also interviewed members of the Association's Emergency Medical Committee who prepared the Guide. Unfortunately, the Association was unable to provide us with any statistical evidence supporting its conclusions and recommendations put forward to the Ministry of Transportation and Communications. The information sought by our Office had been considered by the Association but was never compiled into one comprehensive report.

We then attempted to obtain evidence on whether drivers with the listed medical conditions were a greater risk than ordinary drivers. Neither the Canadian Heart Foundation, the Canadian Diabetic Association, the Teamsters' Union, a well-known heart attack Rehabilitation Centre in Texas, or individual trucking companies were able to provide our Office with any empirical evidence supporting or challenging the Ministry of Transportation and Communication's Regulation. However, each organization did offer the opinion that the Regulation should provide an appeal process for applicants denied the classified licence.

In our comparison of Regulation 906/76 to relevant legislation in the other Canadian provinces, the State of New York and to the Federal Department of Transportation, Air Regulations, it was discovered that not all jurisdictions followed the strict recommendations of the Canadian Medical Association as the Ministry of Transportation and Communications had thought.

The following jurisdictions apply an absolute standard of minimum health requirements without an appeal for classified licence holders, as is the case in Ontario:

Prince Edward Island
Manitoba
British Columbia
Newfoundland.

The following jurisdictions consider the medical merits of the individual applicant and provide an appeal for all classified licence denials:

Quebec
New Brunswick
Saskatchewan
Alberta
New York.

The Federal Department of Transportation, Air Regulations, provides that applicants for a commercial pilot's licence, air traffic controller's licence, navigator's and engineer's licence will be denied where the applicant has a medical history of the conditions listed in Regulation 906/76. Decisions of the Medical Advisory Panel of the Department of Health and Welfare, the body which considers the medical conditions of air travel licences, cannot be appealed. Applicants for a private pilot's licence may appeal the decision of the Medical Advisory Panel an unlimited number of times. Therefore, a person who at one time suffered from one of the listed medical conditions may possibly be issued a private pilot's licence.

Three major insurance companies advised our Office that their actuarial studies did not show that the listed medical conditions, except poor vision, increased the risk of an accident while driving. Drivers are not charged higher premiums for insurance coverage unless it can be proven that a specific medical condition caused an accident resulting in injury.

Our Office received information on this issue from the Traffic Injury Research Foundation, an independent research group funded by government and business. In a report of a study by the Foundation entitled Medical Conditions and Risk of Collision: A Feasability Study two significant points were made which influenced our decision in these cases.

Firstly, the Canadian Medical Association's preamble to its Guide emphasizes that its recommendations are to be considered as guidelines only and are intended to impose only common sense restrictions on drivers with medical defects.

Secondly, the Foundation's report points out that professional drivers are often unable to control their driving habits or the conditions under which they are forced to work. As a result, a professional driver is unable to control his exposure to risk of potentially hazardous situations. For this reason, stringent conditions of reinstatement should be applied to professional drivers.

In his report on each case the Ombudsman recognized the Ministry's responsibility to ensure maximum road safety for the community. However, the Ombudsman commented that the lack of any evidence to support the belief that drivers with classified licences who suffer from the listed medical conditions present a greater risk while operating a motor vehicle, was a concern to him. It may be that a perfectly trustworthy driver is prevented from pursuing his livelihood. In each case, the Ombudsman was unable to conclude that the Ministry's decisions or actions were unreasonable, given that there was no provision for individual consideration or appeal. However, the Ombudsman strongly suggested that the Ministry re-examine the Regulation with a view to giving individual consideration, through an appeal procedure, to classified licence holders.

The Ministry assured our Office that such an examination would be undertaken.

Some months later, the Minister of Transportation and Communications, informed the Provincial Legislature of his intention to introduce amendments to both The Highway Traffic Act and the Regulation made pursuant to that Act. In essence, the proposed amendments would allow the Ministry the right to waive all medical standards except vision, for those who hold or have held a valid class A, B, C or D driver's licence. The applicant must satisfy the Ministry of his or her medical stability. Furthermore, the Licence Suspension Appeal Board will hear appeals arising out of licence downgrading decisions by the Ministry.

DETAILED SUMMARY NO. 30

This complainant alleged that the Ministry of Transportation and Communications behaved unreasonably in removing his private access to a highway.

The complainant further contended that he was not advised that a permit authorizing him to construct the commercial entrance to the highway was conditional on him removing his original driveway.

The Ombudsman notified the Ministry of his intention to investigate this complaint.

Our investigation included contacts with the complainant for additional information as well as interviews with various Ministry officials.

In response to our notice of intention to investigate this matter, the Ministry replied that the complainant and his wife had, in May, 1977, requested permission to change the use of an existing entrance from residential to commercial to accommodate their proposal to start a

commercial feed business on their property. In assessing the request, it was found that due to the crest of a hill located to the west of their property, only 400 feet of visibility was available to the existing entrance. Since this was substantially less than the 600 foot minimum required for commercial entrances, the request was denied. However, the District Engineer, in reviewing the situation with the complainants, found that if they relocated the entrance 200 feet further east, the necessary visibility requirements could be met. The complainant agreed to relocate the entrance and on this basis, an entrance permit was issued on May 17, 1977, with the condition noted on the permit - i.e., "access to a commercial feed business (reclassification and relocation of present entrance)".

Repeated efforts on the part of the Ministry to convince the complainant to relocate the old entrance were not successful. Therefore, a registered letter was sent on November 23, 1977, to provide formal written notification to him that the relocation of his entrance had not been carried out in accordance with the conditions of the permit issued. A further registered letter was mailed to the complainant on April 25, 1979, to advise that the Ministry would remove the entrance the next time equipment was scheduled to work in the area. The entrance was removed in July, 1979, and when vehicles continued to drive through the ditch, posts were erected to prevent this unsafe practice.

During the course of our investigation, it became apparent that there was in fact more than the 600 feet of visibility required from the original entrance westward on the highway. The cooperation of the Ministry was elicited in order to have the exact distance of visibility determined, by way of measurement with surveying equipment.

On November 17, 1980, Ministry staff members measured the distance of visibility at both four and a half feet above ground level and at four feet above ground level. It was determined that at four and a half feet above ground level, the distance of visibility was 703 feet. At four feet above ground level, the distance of visibility was 680 feet. The Ministry officials recognized the fact that the original refusal of a commercial entrance was made in error, and subsequently apologized to the complainant and rebuilt the original entranceway to conform with the Ministry's standards for a commercial entrance.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated the investigation.

DETAILED SUMMARY NO. 31

This complaint against the Ministry of Transportation and Communications was made by a resident of Northern Ontario who owns a three-quarter ton pick-up truck on which he occasionally carries a slide-in camper.

Regulation 418 under The Highway Traffic Act provides that small commercial vehicles owned by residents of Northern Ontario may be licensed at the passenger rate of $10.00 if their gross weight is 2,400 kilograms or less and if they are used primarily for personal transportation.

The Regulation also requires a fee of $10.00 for a motorized mobile home. In the complainant's case, once the weight of the slide-in camper was added to the weight of the truck, the gross weight of the vehicle exceeded 2,400 kilograms and he was then obliged to licence the truck at a much higher rate according to the fee table for commercial vehicles. The complainant felt that this was inconsistent, as his vehicle was used for personal rather than commercial transportation and served a purpose identical to that of a passenger car and a motorized mobile home.

The Ombudsman notified the Ministry of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that notwithstanding certain exceptions, it was a policy of the province's vehicle licensing system to register vehicles according to their construction and design. The Ministry also pointed out that the passenger fee was applicable to commercial vehicles of 2,400 kilograms or less in Northern Ontario because small trucks and vans are commonly used as family vehicles in that part of the province in lieu of passenger cars. Further, the Ministry suggested that it would not be appropriate to allow a reduced fee for a type of luxury such as a truck with a camper attachment.

A review of the legislation was conducted and contact was made with Ministry officials who suggested that motorized mobile homes qualified for lower fees because they are used only part of the year and are designed and constructed to provide living accommodation rather than to carry a load. The Ombudsman found that if the complainant owned two vehicles, a passenger car and a motorized mobile home, he would pay considerably less than the fee required for the truck and the camper unit.

The Ombudsman noted that the criteria in the applicable legislation, which appeared to be gross weight and use, did not conform to the Ministry's stated policy of licensing according to construction and design. Furthermore, in the Ombudsman's opinion, a truck with a slide-in camper unit did not seem to be any more of a luxury than a motorized mobile home.

The Ombudsman informed the Ministry of his possible conclusion that the higher fee exacted for the complainant's vehicle was in accordance with a regulation that was "unreasonable" and "improperly discriminatory", as the complainant's vehicle served a function and was used in a manner identical to other vehicles which could be licensed at a much lower rate according to their gross weight or use or both.

The Ombudsman made the possible recommendation that the Ministry seek an amendment to Regulation 418 under The Highway Traffic Act so that the total fees paid by the complainant would not exceed the total fees required for a passenger vehicle and a motorized mobile home.

In response, the Ministry stated its agreement with the possible conclusion. In order to remedy the problem, the Ministry indicated that an amendment to Regulation 418 would be drafted for the Government's consideration. The amendment will provide that where a self-contained dwelling unit containing life support equipment completely occupies a load, its weight shall not be included in determining the registered gross weight of the vehicle. In this way, owners of pick-up style vehicles will be able to

license their vehicles within the 2,400 kilogram limit of the personal transportation provision of the Act, notwithstanding their occasional use of slide-in campers. Although the Ministry was unable to commit a date by which this amendment would be proclaimed, it stated that it will move as expeditiously as possible.

The results of the investigation were communicated to the complainant and both he and the Ministry were then informed that the file would be closed.

APPENDICES

APPENDIX A

RECOMMENDATIONS DENIED

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES			
2	60	That the Ministry pay the complainant the sum of $1,318.00 for his losses and legal expenses.	3, Recommendation 34	That The Audit Act and The Financial Administration Act be amended to provide that when such a recommendation is made by the Ombudsman after all necessary and appropriate requirements of The Ombudsman Act have been adhered to by his Office, and when entirely accepted by the governmental organization, "a lawful authority" is created for such money to be paid by the governmental organization out of the Consolidated Revenue Fund. Further that the Ombudsman's Office and the Ministry of Government Services resume their discussions on the merits of the Ombudsman's recommendation and that the results of these discussions are to be reported to the Select Committee.	Recommended amendments have yet to be enacted. The Ministry is willing to comply with the Ombudsman's recommendation if the payment can be lawfully made.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH			
4	45	That the Ministry consider what changes should be made to The Public Hospitals Act, Sec. 47 in order to give effect to the principle of a more widely distributed membership on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 to 50 of that Act which may be improperly discriminatory. It was further suggested that this inquiry be assigned to an organization such as the Ontario Council of Health.	5, Recommendation 27	That the Ministry implement as soon as possible the recommendation of the Ombudsman.	The Minister instituted enquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report has recently been received and is being considered by the Ministry.
			6, Recommendation 1	That the Ministry consider what changes should be made to The Public Hospitals Act and in Sec. 47 in particular, including changes in the quorum provisons and length of membership respecting the Hospital Appeal Board. Further, the Ministry cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	
			8	The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report".	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH			
6	21	(2 complaints) that the regulations made pursuant to The Health Insurance Act be amended to provide that those subscribers who obtain the prior approval of the General Manager of the Plan have their medical fees, incurred for insured services performed outside the Province of Ontario, paid by the Plan to an extent substantially greater than would otherwise be paid for an analagous service listed in the O.M.A. fee schedule.	7	The Committee supported the substance of the Ombudsman's recommendation and recommended to the Legislature for approval and adoption that the Ministry of Health cause an amendment to be made to The Health Insurance Act providing that "where the amount payable by the Plan for an insured service rendered by a physician is not prescribed by the regulations, it is the function of the General Manager and he has the power to determine the amount".	As of Jan. 1, 1980, Code R990 was added to the OHIP Schedule of Benefits (Schedule 15 of Regulation 323/72). It specifies that: "Independent consideration also will be given to claims for other unusual but generally accepted surgical procedures which are not listed specifically in the Schedule (excluding non-major variations, of listed procedures)."
			8, Recommendation 1	That the Ministry give prompt notice to all persons whose claims for benefits under R990 are in the future refused, full particulars of the appeal procedures available to them at the same time as the notice of refusal is communicated.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HOUSING			
7	17	That the local Housing Authority give the complainant and his family immediate accommodation in a suitable geared-to-income housing unit; and if a suitable unit is not available immediately, that the Housing Authority accommodate the family in the first such unit which becomes available.	8, Recommendation 2	That the Legislative Assembly adopt and approve the recommendation of the Ombudsman that the Housing Authority in question give the complainant and his family immediate accommodation in a suitable geared-to-income housing unit; and if a suitable unit is not available immediately, that the Housing Authority accommodate the family in the first such unit which becomes available.	Due to illness of some Housing Authority members, no meeting has yet been held to discuss the matter although all members have been provided with a copy of the Select Committee's Report.
			8, Recommendation 3	That the Ontario Housing Corporation immediately conduct a review and study of its manuals and the decision making functions of Housing Authorities in particular for the purpose of amending its manuals to give Housing Authorities more guidance in order that the Rules of Administrative Fairness will be more strictly adhered to.	Chapter 7 of the Manual has been revised and is in use. During 1981 the Corporation intends to completely rewrite the Manual.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
6	38	That the Appeal Board should reconsider its December 15, 1971 decision in the light of (this) report with a view to granting (the worker) entitlement to a Permanent Disability Award for his disability diagnosed as post-traumatic neurosis. Any award should be made retroactive to June 4, 1971 when (the worker's) temporary benefits were terminated.	7	The W.C.B. reconsider, by hearing, its decison of December 15, 1971. In that hearing the Board should at least hear fresh evidence respecting the relationship between the complainant's symptoms and the compensable accident both from the Medical Referee appointed in 1971 and the psychiatrist retained by the Ombudsman during the course of his investigation.	On October 24, 1979 the Board rendered a decision directing that the additional medical report, the detailed summary and recommendation of the Select Committee be referred to the Medical Referee for his further opinion and report. The Medical Referee was to examine the complainant if, in his opinion, such an examination was required. After receiving the Medical Referee's report, the Board reconvened and determined that the policy of Benefit of Doubt was not appropriate in this case. The Appeal was denied.
			8		The Committee in its Eight Report noted its

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR Workmen's Compensation Board (cont'd)			"grave reservations that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and articulated by the Corporate Board policy itself". After discussing these issues fully with the Board, the Committee intends to report to the Legislature with any appropriate recommendations.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workmen's Compensation Board			
7	30	That the Appeal Board revoke its decision and grant the complainant an increase in his permanent disability award of 20%.	8, Recommendation 6	That the W.C.B. revoke its decision and grant the complainant an increase in his permanent partial disability award of 20% pursuant to Sec. 42 of The Workmen's Compensation Act.	The Board to date has not responded to nor implemented the Committee's recommendation.

APPENDIX B

RECOMMENDATIONS UNDER SECTION 22(3) (d) or (e)

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF EDUCATION					
2	47	That a more comprehensive insurance policy be made available to students, one which would provide compensation for injuries resulting in the loss of future earning power.	May 4, 1977	Deputy Minister took steps to meet with insurance industry representatives regarding more comprehensive insurance for students.	3, Recommendation 23	That the Ministry forthwith pursue its discussions with the insurance industry and other interested parties for the purpose of developing an appropriate contract of insurance in the indemnity type at a realistic premium which would adequately compensate a pupil for injuries sustained in the case of a pure accident as the result of participation in shop classes and in organized athletic activities.	Ministry conducted a feasibility study. Not likely insurance scheme will be implemented unless it is made compulsory. Since this would require an amendment to The Education Act, 1974, Ministry now considering the policy issue of whether or not such insurance should be made compulsory.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES					
2	57	That The Public Service Superannuation Act be amended in order to eliminate all restrictions on the re-employment of provincial superannuates except where the nature of their re-employment is such that they resume contribution to the Public Service Superannuation Fund.	Aug. 31, 1976	Executive Secretary of the Civil Service Commission agreed to recommend to Management Board of Cabinet changes in Public Service Superannuation Act.	3, Recommendation 24	That the Ministry table appropriate legislation in the Legislature during the current session removing the present restriction on the total current earnings of a provincial superannuate.	Necessary amendment has yet to be passed. An inter-Ministry task force has been appointed to study the report of the Royal Commission on the Status of Pensions in Ontario and to recommend appropriate amendments to the legislation.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH					
3	40	Thot 1) oll appliconts for the right to construct o nursing home be informed well in odvance of the due dote for opplicotion, of the criterio upon which the Ministry intends to rely in moking the oword for o nursing home including the weight to be ottached to each foctor. 2) every unsuccessful candidate be provided with written reosons os to why his proposol was rejected bosed on these criteria. 3) The NursingHomes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new	Moy 4, 1977	Agreed to implement recommendation.	5, poge 32. The Committee considered this complaint for the purpose of follow-up with the Ministry as to the implementation of the Ombudsman's recommendation as set out ot pages 177 and 178 of the Ombudsmon's 3rd Report. The Executive Chairman of the Area Planning Coordinators responded on behalf of the Ministry as to the odditionol steps which have been taken subsequent to the letter from the Minister to the Ombudsman dated May 4, 1977. The		The Ministry has implemented o procedure of informing by letter persons being owarded new license as a result of competition. Letter will set out ogreement as to schedule of events covering period of construction and prelicensing inspection. Necessary amendments have yet to be enacted.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					
		home to make application for a conditional license immediately upon the making of the award to him. This license should be conditional on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional license.			Committee has attached the said response to this report under Part IX as Schedule D. The Committee is of the opinion that the Ministry has and will continue to fully comply with the recommendations of the Ombudsman.		

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH					
4	45	That the Ministry consider what changes should be made to The Public Hospitals Act, Section 47 in order to give effect to the principle of a more widely distributed memberhsip on the Hospital Appeal Board. That the Ministry enquire into the provisions of The Public Hospitals Act with a view to preventing acts flowing from Sections 44 and 50 of that Act, which may be improperly discriminatory. It was further suggested that this enquiry be assigned to an organization such as the Ontario Council of Health.	Jan. 1978	The Deputy Minister took the position that decisons of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions.	5, Recommendation 27 6, Recommendation 1	That the Ministry of Health implement as soon as possible the recommendation of the Ombudsman. That the Ministry of Health consider what changes should be made to The Public Hospitals Act and section 47 in particular, including changes in the quorum provisions and length of membership respecting the Hospital Appeal Board. Further, the Ministry of Health cause an inquiry to be made into the provisions of The Public Hospitals Act to identify and correct any acts flowing from Sections 44 to 50 of the Act which may be improperly discriminatory.	The Minister's view is that until experience otherwise dictates the optimal way of ensuring an appropriate balance is through careful selection of the members of the Hospital Appeal Board. As to the issue of ensuring that the appropriate balance is represented, not only on the full Board, but also on a quorum of the Board, the Minister recognizes that in theory this can only be guaranteed by a statutory change. However, in view of the assurance given by the Chairman of

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)			8	The Committee reminded the Minister of Health "that to the extent that the Council of Health identifies appropriate legislative change and so recommends to the Minister, the Committee will view those legislative changes as necessary to fully comply with the recommendations in its Sixth Report".	the Hospital Appeal Board, previously reported to the Committee that a quorum will consist of the full Board, except where the parties otherwise agree or one of the members of the Board has a conflict of interest in a particular case, the Minister considers that a Legislative amendment is not required at this time. The Minister proposes to ensure that appointments to the Board will always provide the appropriate balance (as indicated February 27, 1979). A system of time limited and staggered appointments will be in-

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					troduced, replacing the current system of appointments whereby members of the Hospital Board are appointed at pleasure. This change can be implemented through an Order-in-Council without the necessity for legislative change. The Minister has written to the Chairman of the Ontario Council of Health to ascertain what alternative systems for hospital appointments are in place in other jurisdictions. Once the Minister receives the report of the Council of Health, he will then be in a position to decide on the further course of enquiry. The Minister will release the report

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					when it is received and has been reviewed by the Ministry. The Minister instituted enquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report has recently been received and is being considered by the Ministry.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3) (d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR					
		Workmen's Compensation Board					
2	132	That the Board either request jurisdictional determination from the courts or request that The Workmen's Compensation Act be amended to give the Board the power to both collect and off-set overpayments.			3, Recommendation 31	Amend The Workmen's Compensation Act to provide for statutory authority to recover or write-off overpayments.	Recommended amendment has yet to be enacted.

APPENDIX C

STATISTICAL TABLES

COMPLAINT DISPOSITION SUMMARY
FISCAL YEAR 1980/81

NUMBER OF FILE OPENINGS/CLOSINGS	
OPENED*	4,022
CLOSED	5,083
IN PROGRESS	1,634

JURISDICTION	NUMBER OF COMPLAINTS
WITHIN	3,602
OUTSIDE	2,080
NOT DETERMINED	40
INFORMATION REQUESTS/SUBMISSIONS	460
	6,182

FINAL ACTION	
LISTEN	266
EXPLAIN	631
ADVISE	223
REFER	929
INQUIRE/REFER	242
INQUIRE	3,380
SUGGEST	67
RECOMMENDATION	168
REFUSE TO INVESTIGATE OR FURTHER TO INVESTIGATE	276
	6,182

*This figure includes 805 files that were reopened.

SETTLEMENT	NUMBER OF COMPLAINTS
STATUS:	
RESOLVED/INVOLVED	2,108
RESOLVED/INDEPENDENT	43
TOTAL RESOLVED	2,151
FINDINGS:	
SUPPORTED	185
NOT SUPPORTED	1,485
NOT RESOLVED:	
REASONS:	
ABANDONED	734
WITHDRAWN	445
NO SOLUTION IDENTIFIED	2
CIRCUMSTANCES CHANGED	4
INFORMATION REQUESTS/SUBMISSIONS	460
OUTSIDE JURISDICTION	1,966
REFUSE TO INVESTIGATE OR FURTHER INVESTIGATE	274
RECOMMENDATION DENIED	146
	4,031
RESULTS: (ONLY RESOLVED COMPLAINTS)	
FAVOUR COMPLAINANT	666
FAVOUR "GOVERNMENTAL ORGANIZATION"	1,485
	2,151

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

GOVERNMENT OF ONTARIO Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Agriculture and Food	13	2			15
Agricultural Licensing and Registration Review Board		1			1
Crop Insurance Arbitration Board of Ontario	1				1
Crop Insurance Commission	2	1			3
Farm Products Appeal Tribunal		6			6
Farm Products Marketing Board		1			1
Ontario Chicken Producers' Marketing Board		1			1
Ontario Cream Producers' Marketing Board		1			1
Ontario Drainage Tribunal	3				3
Ontario Turkey Producers' Marketing Board	1				1
Attorney General	11	38	1	4	54
Criminal Injuries Compensation Board	6	5		1	12
Land Compensation Board	2	1			3
Ontario Municipal Board	23	11	1	2	37
Public Trustee	13	3			16

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Colleges and Universities	29	1		2	32
Colleges of Applied Arts & Technology	23	3			26
Community and Social Services	60	64		24	148
Centres for the Developmentally Handicapped	3	2		2	7
Training Schools	22			2	24
Total	85	66		28	179
Social Assistance Review Board	38	11	1	1	51
Consumer and Commercial Relations	89	18	4	4	115
Board of Censors	4				4
Commercial Registration Appeal Tribunal	1	1			2
Liquor Control Board	10	5			15
Liquor Licence Appeal Tribunal	1				1
Liquor Licence Board	3	1			4
Ontario Racing Commission	1				1
Ontario Securities Commission	1				1
Pension Commission of Ontario		1			1
Residential Premises Rent Review Board	14	2			16
Residential Tenancy Commission	1			1	2

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Correctional Services	11	2		3	16
Correctional Centres	476	94	3	39	612
Detention Centres	664	62	3	56	785
Jails	444	36	3	44	527
Community Resource Centres	16				16
Total	1611	194	9	142	1956
Board of Parole	24	16		1	41
Culture and Recreation	4			1	5
Ontario Heritage Foundation	1				1
Ontario Lottery Corporation	4	1			5
Province of Ontario Council for the Arts	1				1
Education	18	10		2	30
Energy		2			2
Ontario Energy Board	1			1	2
Ontario Hydro	23	8	1	5	37
Environment	35	8		2	45
Environmental Appeal Board		1			1

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Government Services	98	28		1	127
Public Service Superannuation Board	7				7
Health	41	8		1	50
Psychiatric Hospitals	61	15	2	11	89
O.H.I.P.	27	7	1	4	39
Total	129	30	3	16	178
Advisory Review Board (Mental Health)				1	1
Board of Funeral Services	1				1
Board of Ophthalmic Dispensers	1				1
Board of Regents of Chiropody	1	1			2
Clarke Institute of Psychiatry		1			1
Governing Board of Denture Therapists	1				1
Health Disciplines Board	11	5		1	17
Review Boards for Psychiatric Facilities	1				1
Housing	18	5		1	24
Local Housing Authorities	1				1
Ontario Housing Corporation	54	4		6	64
Ontario Land Corporation	2			1	3
Ontario Mortgage Corporation	2				2
Industry and Tourism	8				8

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Intergovernmental Affairs	15	2			17
Labour	33	15		5	53
Employment Standards - Panel of Referees	3	1			4
Ontario Human Rights Commission	21	4		3	28
Ontario Labour Relations Board	10	1		1	12
Workmen's Compensation Board	726	219	4	135	1084
Natural Resources	104	76		9	189
Freshwater Fish Marketing Corporation	1	1			2
St. Lawrence Parks Commission	1				1
Northern Affairs	7			1	8
Ontario Northland Transportation Commission	2				2
Revenue	47	12		3	62
Solicitor General	5	3			8
Coroner's Council	1	1			2
Hamilton-Wentworth Board of Commissioners of Police		1			1
Ontario Police Commission	22	5			27
Ontario Provincial Police	13	21			34
Transportation and Communications	136	22	2	3	163
Ontario Highway Transport Board	5	1			6
Ontario Telephone Development Corporation		1			1
Toronto Area Transit Operating Authority	1				1

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Treasury and Economics	24	26			50
Ontario Municipal Employees Retirement Board	5	4			9
Government of Ontario Other					
Management Board		3			3
Civil Service Commission	8	1		1	10
Public Service Grievance Board		1			1
Niagara Escarpment Commission	6	2			8
Lieutenant Governor		1			1
Office of the Assembly		2		1	3
Office of the Premier/Cabinet Office		2			2
Office of the Ombudsman				4	4
Executive Council		4			4
Ontario Government Other		1		1	2
Government of Ontario Total	3628	927	26	391	4972
Courts					
		171		4	175
Total		171		4	175

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

FEDERAL GOVERNMENT DEPARTMENT/AGENCIES	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Air Canada		3			3
Canadian Penitentiary Services		2			2
Federal Penetentiaries		16		2	18
Central Mortgage and Housing		3		2	5
Consumer and Corporate Affairs		6		1	7
Employment and Immigration		46		1	47
Health and Welfare		37		5	42
Indian Affairs & Northern Development		5		1	6
National Parole Board		3			3
Post Office		8			8
Public Service Commission		1			1
Revenue Canada - Taxation		25		1	26
Royal Canadian Mounted Police		6			6
Transport		6			6
Veterans' Affairs		6			6
Federal Government - Other		25		4	29
Total		198		17	215

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

PRIVATE	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Associations/Groups		36	1	8	45
Children's Aid Society		16		1	17
Catholic Children's Aid Society		1			1
Complaint Bureaus		1		1	2
Doctors - Patients		20		1	21
Hospitals		15		3	18
Lawyers - Clients		48		2	50
Law Society of Upper Canada		22		2	24
Private Business		266		9	275
Private Individual		91		5	96
Universities - Private		3		1	4
Member of Parliament		2			2
Private - Other		5			5
Total		526	1	33	560
MUNCIPALITIES/LOCAL AUTHORITIES					
Municipal Conservation Authority		5			5
Municipal Boards of Education		23		1	24
Municipal Fire Department		2			2
Municipal Garbage		2			2
Municipal Governing Body		65		3	68
Municipal Housing		1			1

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Municipal Hydro		3			3
Municipal Parks & Recreation		2			2
Municipal Planning Boards		15		2	17
Municipal Police		83		2	85
Municipal Public Health		1			1
Municipal Roads		11			11
Municipal Sewers		6	1		7
Municipal Taxes		8			8
Municipal Transit		2			2
Municipal Water		3		1	4
Municipal Welfare		17		1	18
Committees of Adjustment		3			3
Municipal - Other		10		3	13
Total		262	1	13	276
INTERNATIONAL					
		3			3
Total		3			3

COMPLAINTS BY ORGANIZATION
FISCAL YEAR 1980/81

OTHER PROVINCES	WITHIN JURISDICTION	OUTSIDE JURISDICTION	NOT DETERMINED	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Total	—	19	—	2	21
		19		2	21
NO ORGANIZATION SPECIFIED					
Total	—	—	12	2	14
			12	2	14
OVERALL TOTAL	3628	2106	40	462	6236*

*This figure exceeds the number of closed complaints (6182) because some complaints involve more than one organization.