

# *NINTH REPORT*

# The Ombudsman | Ontario

## APRIL 1, 1981 - MARCH 31, 1982

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HON. DONALD R. MORAND

The Ombudsman | Ontario

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June 25th, 1982

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

Dear Mr. Speaker:

It is with pleasure that I present the Ninth Annual Report of the Ombudsman for the period April 1, 1981 to March 31, 1982.

This report is submitted pursuant to Section 12 of the Ombudsman Act.

Yours very truly,

Donald R. Morand

Donald R. Morand

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# CHAPTER ONE

## INTRODUCTION

On January 2, 1979, my appointment as Ombudsman took effect. Having now had more than three years of experience as Ombudsman, I feel able to make some general observations.

Although a single statute - the Ombudsman Act - governs all our work, in reality the Ombudsman in Ontario operates in many different spheres involving several different functions. Our mandate extends from complaints against simple instances of administrative inefficiency, to complaints against quasi-judicial decisions of the myriad of provincial administrative tribunals (themselves ranging in kind from the Ontario Municipal Board to the Health Disciplines Board), to allegations of unjust deprivation of privileges or loss of remission in the correctional system.

When we respond to a citizen's complaint that his Workmen's Compensation cheque has been delayed, and make a telephone call to a Workmen's Compensation Board official, we are performing quite a different function from when we pore over the evidence submitted in support of a licensing application before the Ontario Highway Transport Board, because the unsuccessful applicant has complained that the Board unreasonably turned it down. We perform yet another function when we visit a patient in a psychiatric hospital and explain to him his rights under the Mental Health Act if he wishes to refuse treatment.

The Ombudsman's statutory function is clear: to investigate and report. In practice, the people of Ontario call on my Office to do more than that: they call on us to help them speed up bureaucratic action, to help them find their way through the seemingly endless maze of government offices, to translate legislation directly affecting them into language they can understand.

A few years ago this Office was criticized for devoting so many of its resources to handling non-jurisdictional enquiries and complaints. I am proud of the fact that we have increased our efficiency so that we can place appropriate emphasis on our primary function of investigating complaints within our jurisdiction while still being able to respond to the large number of non-jurisdictional complaints the Office receives each year.

(Our task might be easier if government offices at all levels communicated better with the public. The volume of enquiries we receive makes it clear that the public has a

very imperfect understanding of government programs and institutions, and the laws that commonly affect them.)

The challenge my Office has faced over the past years has been to respond to a large volume of jurisdictional complaints without expanding our staff to an unmanageable and unaffordable size.

Since my appointment, cost-of-living increases to employees and other standard increases in the cost of services and supplies have affected our yearly budgets.

However, when these increases are computed, I am pleased to state our expenditures over this three-year period are approximately $250,000 less than the above-mentioned increases. In times of fiscal restraint, I am naturally proud of this accomplishment. Along with these savings, we have also substantially increased the number of employees conducting investigatons.

During the period covered by this Ninth Report, April 1, 1981 to March 31, 1982, my Office received 9,567 complaints and information requests. This figure is approximately 10% higher than the previous year.

Again this year, I am pleased to report that the number of in-progress investigations carried over at year end has been further reduced to 1,457. This is the lowest carry-over of in-progress cases in the previous four years.

These figures on in-progress cases are critical because our efforts to maintain the caseload at manageable levels will allow our Office to continue to meet the goal of providing prompt, courteous and effective service to the citizens of Ontario.

During this reporting period the Office closed a total of 10,175 complaints and information requests.

The majority of these were closed within several months of their receipt by my Office. In fact, 7,164 or 70% were handled within one month. 88% or 8,947 were closed within six months and only 7% or 691 took longer than one year to close.

Since my Office is continually reviewing its procedures, seeking new methods to deal with complaints more expeditiously, consideration is being given to changing the manner in which statistical information is presented in future annual reports. It is my intention to report statistical information in a simpler fashion, based on the number of complaints dealt with by my Office. Little

reference will be made to the term "files", as this term has been the source of some confusion for our readers in the past.

The chart found on page 13 shows duration-to-closing information for the fiscal year 1981-1982 along with other statistical highlights contained in this report.

During the year we took steps to increase our ability to investigate complaints against the Workmen's Compensation Board more promptly. We recognized the need to reduce the number of files in progress in that area. At the same time, we faced a large number of previously closed complaints which required fresh investigation as a result of the Legislative Assembly's response to a recommendation denied by the Workmen's Compensation Board. This group of cases is discussed in more detail below.

To increase our staff resources until the number of in-progress complaints stabilized and then reduced, three investigators were hired on short-term contracts. As well, four new investigators have been appointed to the permanent staff. (Two of these replaced investigators who had resigned.)

We also reviewed our procedures in handling and investigating Workmen's Compensation complaint files. Changes were made to ensure more regular contact with complainants. We have also added procedures to enable us to focus more precisely at the earliest stage of the investigation on the issues in dispute between the complainant and the Workmen's Compensation Board.

Finally, meetings have been held between members of our staff and officials of the Workmen's Compensation Board to discuss ways our respective offices might co-operate to facilitate our investigation of complaints.

In my Sixth Report to the Legislature, I reported on a case which related to how the Workmen's Compensation Board assesses workers for permanent disability awards under section 42(1) [now section 43(1)] of the Workmen's Compensation Act. This section states in part:

> 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...

I came to the conclusion that the Board was unreasonable, in assessing this particular worker, in limiting its

consideration to medical findings. I felt that in accordance with section 42(1), the Board should have considered all relevant factors, such as the worker's age and skills, in assessing the degree of his impairment of earning capacity. I recommended that the complainant's permanent disabilty award be increased. The Board disagreed with my interpretation of section 42(1) and refused to implement my recommendation.

While considering my Sixth Report, the Select Committee on the Ombudsman agreed with my interpretation of section 42(1) and recommended in its Eighth Report that the complainant's permanent disability award be increased.

When I learned that the Select Committee supported my interpretation of section 42(1), I conducted a review of Workmen's Compensation Board cases then under investigation in my Office, and determined that 135 complaints concerned the level of permanent disability award. In none of these cases had the Board considered relevant factors other than the medical findings. I concluded that the Board's decisions were therefore unreasonable, and I recommended that the Board reconsider each case, considering all the relevant factors.

When the Select Committee's Report was debated in the Legislature, the Minister of Labour advised that neither he nor the Board could accept the Committee's recommendation. The Minister preferred a different legal opinion which supported the Board's interpretation of section 42(1). The Legislature agreed with the Minister's position and did not accept the Select Committee's recommendation.

Since the 135 cases were not to be reconsidered by the Board, during the Select Committee hearings in September, 1981, I volunteered to investigate the cases further. My purpose would be to determine if the level of permanent disability assessed by the Board for each worker was reasonable in view of the medical findings. In other words, accepting the Board's interpretation of section 42(1), was the decision reasonable? I would also consider if the Board's decision on the worker's entitlement to a supplement under section 42(5) [now section 43(5)] was reasonable. (This section gives the Board authority to award a temporary supplementary pension "where the impairment of earning capacity of the employee is significantly greater than is usual for the nature and degree of his injury.") The Select Committee requested that this work be completed by July, 1982.

In November, 1981, my Office contacted the 135 complainants. Of them, 106 requested that their complaints be investigated further. By March 31, 1982, 63 investigations had been completed. I expect that the remainder will be completed by the end of June, 1982.

In addition, I instructed an investigator to review the remaining cases where the complainants had not requested that we investigate further, to ensure that there had been no substantial injustice which we ought to pursue with the Board notwithstanding the complainant's apparent lack of interest.

I will be able to discuss the results of these investigations with the Select Committee at its next hearings.

It would be naive to think that the challenge of meeting never-ceasing complaints with limited resources has been met and overcome. The difficult economic times in which we live can be expected to produce a higher volume of complaints. This is easiest to see in the correctional field, where many of Ontario's correctional institutions are housing more inmates than they were optimally designed to accommodate. Our Office must be prepared to handle more inmate and staff complaints about overcrowding and under-servicing. Or, we might predict that the unavailability of summer jobs for post-secondary students will lead to more applications to the Ontario Student Assistance Program, ultimately leading to more complaints to the Ombudsman.

We can try to be more efficent and we can to a small extent increase our resources. At present, 105 of the total 122 employees are, directly or indirectly, totally or partially, involved in the investigation of complaints. We will also continue to try to get at the root causes of complaints, rather than simply deal with them one by one. For example, during the year I considered three particular complaints against the Workmen's Compensation Board which served to illustrate a difference of opinion over the interpretation of the definition of "accident" contained in section 1(1)(a)(iii) of the Workmen's Compensation Act.

Section 1(1)(a)(iii) was enacted in 1963 to provide that:

> "accident" includes,
>
> (iii) disablement arising out of and in the course of the employment.

Directive 2 of "Board Policies and Administrative Directives", dated October 15, 1963, contains the Board's policy on the application of this part of the definition:

> Entitlement under the amending Act applying to accidents happening on and after the 3rd day of April, 1963, which includes 'disablement arising out of and in the course of employment' requires that the disablement which the employee suffers must have some causal relationship with the work being performed, that is, it is not sufficient that the disablement comes on during work, but rather there must be something about the work which can be considered to have caused the disablement to come on, such as strenuous work, awkward position, unaccustomed strain, or even a movement arising out of the work which is reasonable to consider has caused the disablement.

In each of these three cases, the injured employee had, prior to injury, worked for some length of time at a job which was relatively light, but which called for repetitive movement. The medical evidence in each case suggested that each worker's disability was, at least in part, a result of the repetitive action required.

The primary reason given by the Board for denying benefits in each case was that the worker was unable to identify a specific incident at work or an unusual movement which had brought on the disability.

In my opinion, a specific incident or an unusual movement is not required to satisfy section 1(1)(a)(iii) of the Workmen's Compensation Act and the Board's directive. There need be only "a movement arising out of the work which is reasonable to consider has caused the disablement". This might be a repetitive motion or heavy labour over a period of time. In my opinion, in deciding disablement cases the Board should consider the medical evidence as well as the work history.

I believe that my opinion follows the decision of the Supreme Court of Canada in Workmen's Compensation Board v. Theed, [1940] 3 S.C.R. 561, a case involving the Workmen's Compensation Board of New Brunswick.

Careful readers of this Office's annual reports and the reports of the Select Committee on the Ombudsman will

notice that we have continued to pursue with the Ontario Health Insurance Plan the extent of the right of a claimant to appeal a decision of the General Manager of OHIP, and the information given out by OHIP about appeal rights.

## PRIVATE HEARINGS

As in the past, the Office continued to conduct private hearings throughout the province. In my Eighth Report, I indicated the Office had concentrated its efforts on smaller communities during 1980-81 and would return to visiting larger municipalities in 1981-82. Returning to this expanded format, the Office had an increase in the number of complaints received and number of interviews conducted.

In support of this expanded format, my Office revised our newspaper advertisement and scheduled a three-week radio campaign in most metropolitan centres throughout the province.

Hearings throughout northern Ontario are conducted by staff members from our two regional Offices (North Bay and Thunder Bay) and are supplemented when necessary by staff from the Toronto Office.

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|---|---|---|---|---|
| 1981 | | | | |
| April | 1 | Sioux Lookout | 11 | 9 |
| | 2/3 | Kenora | 27 | 26 |
| | 7 | Alexandria | 13 | 13 |
| | 8 | Cornwall | 30 | 30 |
| | 9 | Morrisburg | 8 | 8 |
| | 21 | Atikokan | 7 | 7 |
| | 22 | Rainy River | 4 | 4 |
| | 23 | Fort Frances | 5 | 5 |
| | 28 | Leamington | 22 | 21 |
| | 28 | Pembroke | 33 | 32 |
| | 29 | Tilbury | 19 | 18 |
| | 29 | Deep River | 5 | 5 |
| | 30 | Wallaceburg | 21 | 20 |
| | 30 | Mattawa | 11 | 10 |
| May | 12 | White River | 3 | 3 |
| | 13 | Marathon | 5 | 5 |
| | 20 | Aylmer | 7 | 7 |
| | 21 | Port Stanley | 9 | 9 |

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|---|---|---|---|---|
| 1981 | | | | |
| May | 26 | Timmins | 24 | 24 |
| | 27 | Kirkland Lake | 21 | 21 |
| June | 9 | Fort Erie | 17 | 17 |
| | 9 | Nakina | 0 | 0 |
| | 10 | Niagara Falls | 17 | 17 |
| | 10 | Geraldton | 4 | 4 |
| | 11 | Niagara-on-the-lake | 15 | 15 |
| | 11 | Longlac | 12 | 12 |
| | 12 | Beardmore | 0 | 0 |
| | 23 | Armstrong | 10 | 7 |
| July | 21 | Midland | 22 | 20 |
| | 22 | Elmvale | 9 | 8 |
| | 22 | Wawa | 5 | 5 |
| | 23 | Bracebridge | 5 | 5 |
| | 23 | Chapleau | 2 | 2 |
| Aug | 18/19 | Sault Ste. Marie | 47 | 47 |
| | 20 | Blind River | 14 | 14 |
| | 25 | Stratford | 18 | 17 |
| | 26 | Listowel | 9 | 9 |
| Sept. | 1 | Pickle Lake | 6 | 5 |
| | 2 | Savant Lake | 3 | 3 |
| | 3 | Dryden | 17 | 17 |
| | 4 | Ignace | 4 | 4 |
| | 15 | Guelph | 22 | 22 |
| | 16 | Ancaster | 2 | 2 |
| | 17 | Oakville | 2 | 2 |
| | 23 | Kapuskasing | 12 | 12 |
| | 24 | Hearst | 12 | 12 |
| | 29 | Fort Frances | 4 | 4 |
| Sept. Oct. | 30/ 1 | Kenora | 21 | 21 |
| Oct. | 6 | Cambridge | 17 | 17 |
| | 7/8 | Kitchener | 22 | 22 |
| | 14 | Parry Sound | 16 | 16 |
| | 15 | Burk's Falls | 7 | 7 |
| | 26 | Vermillion Bay | 6 | 4 |
| | 27 | Perth | 23 | 23 |
| | 27/28 | Red Lake | 7 | 7 |
| Nov. | 17 | Belleville | 12 | 12 |
| | 18/19 | Kingston | 68 | 68 |

| Date | | Location | No. of Complaints Received | No. of Interviews Conducted |
|---|---|---|---|---|
| 1981 | | | | |
| Nov. | 24/25 | Sudbury | 40 | 38 |
| | 24 | Manitouwadge | 4 | 4 |
| | 26 | Terrance Bay | 6 | 6 |
| | 27 | Red Rock | 3 | 3 |
| Dec. | 3/4 | Ottawa | 44 | 44 |
| | 15 | Elliot Lake | 4 | 4 |
| 1982 | | | | |
| Jan. | 5 | Sarnia | 19 | 19 |
| | 6 | Windsor | 75 | 74 |
| | 12 | Sioux Lookout | 6 | 6 |
| | 13/14 | Kenora | 12 | 12 |
| | 26 | Woodstock | 7 | 7 |
| | 27/28 | London | 50 | 50 |
| Feb. | 9 | Brantford | 35 | 35 |
| | 9 | Dryden | 3 | 3 |
| | 10/11 | Hamilton | 71 | 71 |
| | 10/11 | Fort Frances | 15 | 15 |
| | 16 | Iroquois Falls | 8 | 8 |
| | 17 | New Liskeard | 12 | 12 |
| | 23 | Wingham | 4 | 4 |
| | 24 | Palmerston | 8 | 8 |
| | 25 | Orangeville | 6 | 6 |
| March | 9 | Renfrew | 10 | 9 |
| | 10 | Arnprior | 5 | 5 |
| | 11 | Carleton Place | 1 | 1 |
| | 11 | Atikokan | 9 | 9 |
| | 30 | Brockville | 21 | 18 |
| | 31 | Cornwall | 29 | 29 |
| | | | 1,281 | 1,256 |

## VISITS TO INDIAN RESERVES AND SETTLEMENTS

Members of the staff from the Regional Services Directorate were able to visit 19 Indian reserves and settlements in Ontario, in order to offer the services of the Ombudsman to our native population.

During the past twelve months, the bands visited were located in northern Ontario. 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 the role of the Ombudsman and be able to express their problems.

| Date | | Location |
|---|---|---|
| 1981 | | |
| April | 22 | Manitou Rapids |
| | 24 | Couchiching |
| | 24 | Nicickousemenecaning |
| March | 12 | Pic Mobert |
| May | 14 | Pic Heron |
| | 14 | Pays Plat |
| June | 11 | Long Lake #58 |
| | 11 | Long Lake #77 |
| | 24 | Gull Bay |
| Sept. | 28 | Naicatchewenin |
| Dec. | 15 | Rocky Bay |
| | 15 | Lake Helen |
| 1982 | | |
| March | 11 | Shoal Lake #39 |
| | 11 | Shoal Lake #40 |
| March to | 15 | Winisk |
| | | Attawapiskat |
| | 20 | Kahechewan |
| | | Fort Albany |
| | | Moosonee |

## CONFERENCES ATTENDED

Since its inception, the Office of the Ombudsman has taken part in International Ombudsman affairs. As this Province has, in my opinion, one of the most efficient Offices in the world, I feel it is necessary to keep in close contact with other Ombudsmen's offices to ensure we maintain our pre-eminence.

While attending the International Ombudsman Institute meeting in Israel in 1980 I was elected to the Consultative Committee. This Committee is the sole administrative

body of the Institute and has as one of its duties the organizing of the next world conference.

During the past year I had the opportunity of visiting the Offices of Ombudsmen in Hawaii, Fiji, Australia and New Zealand. This trip coincided with a meeting of the Consultative Committee of the International Ombudsman Institute which was held in Fiji in January of this year.

In late 1981, it became apparent that there was a good possibility I would be appointed Commissioner under the proposed Freedom of Information Act. In Australia and New Zealand the Offices of the Ombudsmen are the complaint mechanism to which freedom of information complaints may be taken. It made eminent sense then to spend time with those involved in the pending implementation of their freedom of information acts.

I was fortunate to spend a great deal of time with Sir James Wicks, Privacy Commissioner, in Wellington and Mr. James Cameron who has the equivalent position in New Zealand to our Deputy Attorney General. He was also a member of the Danks Committee, the Committee responsible for the drafting and implementation of freedom of information legislation in New Zealand.

I also attended seminars dealing with administrative law through the Canadian Institute of Advanced Legal Studies and the Canadian Ombudsman Conference held each year in a provincial location.

## VISITS BY OTHER OMBUDSMEN

Again, over the past year my Office had the distinct pleasure of hosting a great many distinguished guests. Ombudsmen from Sweden and Trinidad/Tobago, as well as many from the other provinces in Canada, and the Assistant Ombudsman from Jamaica were among the visitors.

As well, we have been visited by several respresentatives of other countries. Many were interested in reviewing our procedures, methods of investigation and internal file control and record keeping.

Since, in my opinion, the Ombudsman's Office in the Province of Ontario is the most efficient of all Ombudsmen's offices, we can expect a continued flow of visitors to our Office throughout the next year.

## DETAILED SUMMARIES

Some 20 complaint summaries are presented in Chapter Two. All are interesting; however, I recommend a few cases found on pages 17, 27, 49, and 59, which are particularly noteworthy.

The majority of the cases presented in this report involve cases in which we were able to be of assistance to the complainant. It would appear that we support the vast number of complaints to my Office. However, this is not true. Only about 30% of complaints were resolved in favour of the complainant.

Unlike the Eighth Report where my Office had only two cases where my recommendations were not adopted, this report contains eight cases where my recommendations were not adopted. One deals with the Ministry of Consumer and Commercial Relations, found on page 19, three deal with the Ministry of Health and are found on pages 33 to 43, and four relate to the Ministry of Labour, Workmen's Compensation Board, found on pages 62 to 71.

## 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 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 72 to 84, summarize the recommendations made under the appropriate categories, and the disposition of these recommendations by the governmental organizations, and where appropriate, by the Select Committee on the Ombudsman. The charts summarize only cases outstanding as of March 31, 1982, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

## STATISTICAL HIGHLIGHTS

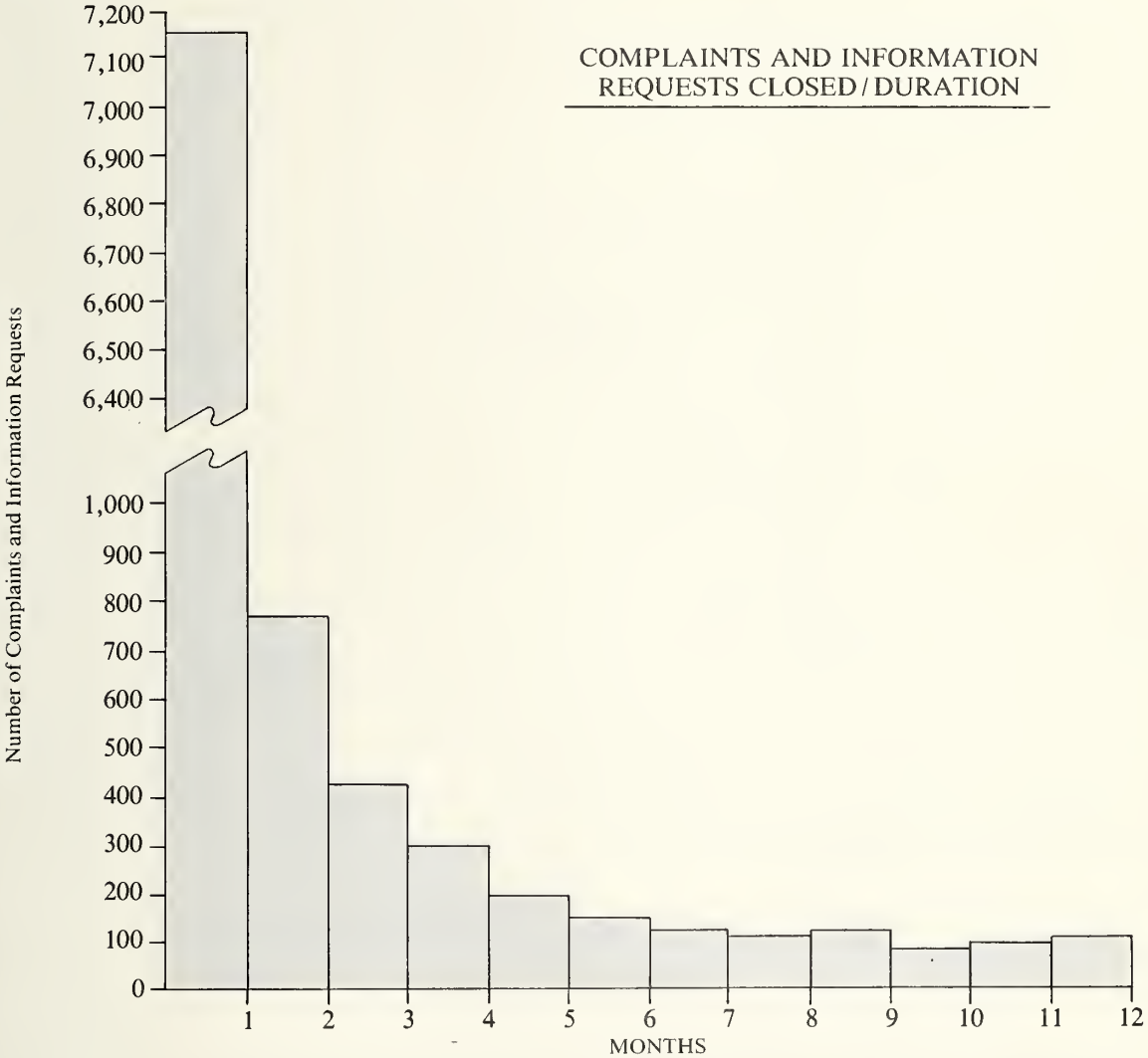
| FILES | | No Follow-Up Complaints and Information Requests: |
|---|---|---|
| Opened | 3,217* | |
| Closed | 3,255** | 6,350* |

| CLOSED COMPLAINTS DOCUMENTED IN FILES: | |
|---|---|
| Within Jurisdiction | 2,166 |
| Information Requests | 212 |
| Not Determined | 201 |
| Outside Jurisdiction | 1,246 |
| Total | 3,825** |

*Overall the Office *received* 9,567 new complaints and information requests and *closed* 10,175 of the same.

**Some closed files involved more than one complaint.

COMPLAINTS AND INFORMATION REQUESTS CLOSED / DURATION




The above histogram covers 93.2% of the 10,175 complaints and information requests closed by the Office between April 1, 1981 and March 31, 1982 and includes their duration values. A further 691 complaints or 6.8% of the total required more than 12 months to close.

# CHAPTER TWO

# DETAILED CASE SUMMARIES

MINISTRY OF

COLLEGES AND UNIVERSITIES

## DETAILED SUMMARY NO. 1

This complainant wrote to the Ombudsman on March 19, 1981 concerning a decision rendered by the Ministry of Education. She contended that the Ministry had acted unreasonably in refusing to grant her a Letter of Eligibility.

The complainant attended public school in Nova Scotia and later a university in New Brunswick where she received a Bachelor of Arts degree in 1962 and a Bachelor of Education degree in 1963. She contended that her education was equivalent to that received by a student in Ontario and that she should be allowed to teach in Ontario. She felt that it should be irrelevant whether she completed seventeen years of academic training as long as she received equivalent educational training in her sixteen years of schooling. She contended that the Ministry should grant her a Letter of Eligibility.

The Ombudsman notified the Minister of Education of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that under the current Regulations, seventeen years of acceptable schooling, including a recognized degree plus one year of professional education, were required for teachers trained in Ontario. The Ministry indicated that as the complainant had submitted evidence of having completed, subsequent to Grade 12, twenty-three university courses including the required teacher training, she had only to complete two additional university courses in order to be granted a Letter of Eligibility.

During the course of our investigation, our Office reviewed the courses which the Ministry had counted towards the requirement for a Letter of Eligibility and noted that it had only recognized one credit for three practical music courses taken by the complainant while studying at university. Our investigator inquired into this matter and was informed that the Ministry assumed that the music courses were not regular university courses equal in weight to the other courses for which the complainant had received credit. We therefore wrote to the Registrar of the university in order to obtain further information in this regard. The Registrar responded in a letter stating that "at that date they (the three practical music courses) were equivalent to practical subjects now offered in the degree program which certainly are treated in exactly the same way as are other subjects in the programs."

We then wrote to the Manager of the Registrar Services Section, Ministry of Education, requesting that the Ministry reconsider the number of courses which could be counted towards the complainant's Letter of Eligibility in light of the information provided by the Registrar of the university to our Office. The Manager of the Registrar Services Section responded to our letter indicating that on the basis of the information submitted to us by the university, the Ministry was prepared to give the complainant credit for the three courses in music. As a result, the complainant satisfied the academic requirements for a Letter of Eligibility valid in the Intermediate and Senior Divisions.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated his investigation and the file on the matter was closed on March 3, 1982.

# MINISTRY OF

# COMMUNITY AND SOCIAL SERVICES

## DETAILED SUMMARY NO. 2

This complaint was registered with the Office of the Ombudsman in June, 1979, through the office of the complainant's Member of Provincial Parliament.

The complainant contended that following a hearing in May, 1979, the Social Assistance Review Board had upheld a decision of the Director of Family Benefits to deny her reclassification as a disabled person within the meaning of the Family Benefits Act and Regulation. She was of the view that the Board's decision was unreasonable.

Accordingly, the Ombudsman notified the Deputy Minister of Community and Social Services and the Chairman of the Social Assistance Review Board of his intention to investigate this matter. Responses were received from the Chairman and from the Director of Family Benefits on behalf of the Deputy Minister, shortly thereafter.

During the course of the Ombudsman's investigation the files maintained by the Board and the Ministry were examined. Extensive interviews were conducted by the Ombudsman's investigator with the complainant.

On the basis of the information obtained primarily from the Board's own file, it appeared to the Ombudsman that the medical information which was presented on the complainant's behalf at the hearing, strongly supported her appeal that she was improperly classified. In particular the evidence provided by her doctors and her Ministry field worker, indicated that her multiple disabilities including chronic urinary problems, pinpoint vision, a hearing impairment, and spinal difficulties, rendered her severely limited in her activities pertaining to normal daily living. Therefore, the Ombudsman came to the possible conclusion that the decision of the Board was unreasonable in light of the information which had been presented to it at the complainant's hearing. The Ombudsman tentatively recommended that the Board reconsider its decision, rescind the decision of the Director of Family Benefits and direct him to grant the complainant an allowance under the Family Benefits Act as a disabled person.

Since the Ombudsman felt that the Board and the Ministry might be adversely affected by his possible conclusion and recommendation, he accorded them the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

Shortly thereafter the Ombudsman received notice from the Board that the Board was not opposed to reconsidering

its decision. A response from the Director of Family Benefits indicated that he was willing to file the Appeal Form for the reconsideration hearing. This hearing was held in the complainant's home at the end of 1980.

Early in 1981 the Ombudsman was advised by the Board that following reconsideration of its decision the Board had concluded that the complainant was in fact a disabled person within the meaning of the Family Benefits Act. The Board had directed the Director of Family Benefits to increase the complainant's allowance to reflect this classification.

As this resolution was satisfactory to both the Ombudsman and the complainant, the file was closed on April 30, 1981.

## DETAILED SUMMARY NO. 3

A Member of the Provincial Parliament from southern Ontario referred this complaint to the Office of the Ombudsman in October of 1981. It related to a decision of the Ministry of Community and Social Services.

The complainant had been denied an allowance under the Family Benefits Act on the ground that his assets exceeded the maximum allowable under the legislation.

After discussing the complaint with the M.P.P., the Ombudsman contacted the complainant to obtain further clarification of the reasons for the denial of Family Benefits. We were advised by the complainant's wife that the complainant was in business for himself until 1979 at which time it was diagnosed that he had multiple sclerosis. He was no longer able to operate his business and had applied to the Ministry of Community and Social Services for Family Benefits. He was working part-time as a watchman but the income was not sufficient to support his wife and three children.

Although it was determined by the Ombudsman that the complaint was not within his jurisdiction, as the decision of the Director of Family Benefits to deny assistance had not been appealed to the Social Assistance Review Board, inquiries were made with officials of the Income Maintenance Branch and the complainant's lawyer. Ministry officials explained to the Ombudsman that the complainant was not eligible for assistance because of the value of the assets remaining from his business. With the co-operation of the Ministry, arrangements were made with the complainant's lawyer to provide the Ministry with a full

account of the complainant's financial circumstances, particularly with respect to the dissolution of his business. Confirmation was also obtained that affidavits had been filed with the Ministry of Revenue indicating that the business had been dissolved.

Shortly thereafter, the Ombudsman contacted officials in the Ministry of Community and Social Services who confirmed that the correspondence which had been received from the complainant's lawyer had clarified his financial circumstances. Eligibility for Family Benefits as a disabled person was to be granted retroactive to four months, which was the maximum possible.

Subsequently, the Ombudsman advised the complainants of the Ministry's actions and they indicated their satisfaction with the outcome.

The file was therefore closed on November 17, 1981.

# MINISTRY OF
# CONSUMER AND COMMERCIAL RELATIONS

# LIQUOR CONTROL BOARD OF ONTARIO

## RECOMMENDATIONS DENIED

## DETAILED SUMMARY NO. 4

This complaint against the Liquor Control Board of Ontario was received on December 6, 1978. The complainant contended that the Board unreasonably refused him authorization to establish a liquor agency in his commercial premises located in a municipal airport in northern Ontario.

The complainant was advised in a letter from the then Minister of Consumer and Commercial Relations that agency stores must be "sufficiently remote" from a Board outlet and that any outlet established at a municipal airport would have to be operated by Board employees. The Ministry considered an agency store to be "sufficiently remote" if it was located at least 25 miles away from a Board outlet.

The complainant pointed out that in another area of northern Ontario, a liquor agency is operating in a general store in the off-season and it is only 11 miles from a Board outlet. He argued that an agency store at the airport would eliminate inconvenience to fly-in tourists wanting liquor and it would enhance the sagging tourist trade in the area.

Having received the Board's statement in reply to the notification of our intention to investigate this complaint, the file was assigned for investigation.

Our investigator learned that the complainant and his wife operate a small store in a municipal airport building in which they sell light snacks, tobacco products and confections. The store caters to air travellers, a large number of whom are United States residents who hunt, fish and vacation in Canada. The complainant wished to establish a liquor agency in his store to provide visitors to Canada with an opportunity to purchase liquor before 10:00 a.m. and after 6:00 p.m. when the Board liquor store is closed.

The Board liquor store is about six miles from the airport. However, in this case the complainant said that time and not distance is the significant factor that the Board ought to have considered. Many United States visitors fly into the airport before 10:00 a.m. and after 6:00 p.m. The airport manager advised our Office that during 1978, 596 American aircraft landed at that airport during these times, with an average of 4 to 5 persons per aircraft. These were flights in which travellers had to make connections with Canadian aircraft for points further north. Thus, they could not make liquor purchases. The

Ombudsman noted that these travellers may bring liquor into Canada with them, but are restricted to 40 ounces of liquor or wine per person duty free.

Our investigation revealed that the complainant's M.P.P. wrote to the then Minister of Consumer and Commercial Relations requesting that the Board give consideration to the complainant's request for a liquor agency, as he believed that the service was needed and would be an asset to the tourist trade. As well, an official and a Minister of another Ontario governmental organization and the local Chamber of Commerce requested that the Board give consideration to the complainant's submission. The local Town Council also indicated its approval of an agency store at the airport.

During the course of the investigation, the Ombudsman formed the view that it might be open to him to conclude that it was "unreasonable" for the Board to have denied the complainant a liquor agency at his store. Accordingly, he reported his possible conclusion to the Chairman of the Liquor Control Board of Ontario together with his possible recommendation. Since the Board might have been "adversely affected" by his tentative conclusion and recommendation, the Ombudsman accorded to the Board the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

Representations were received on behalf of the Board by letter in which the Board counsel requested a personal meeting with the Ombudsman. A meeting was held, and the Board presented further representations in writing. In short, the Board could not agree that it had been unreasonable in this matter, and noted that a very bad precedent might be established if the Ombudsman were to proceed with his possible conclusion and recommendation.

The Ombudsman carefully considered the representations of the Board in the light of the investigation conducted and noted the following.

While the Board was satisfied with the location of a conventional liquor store in the town, six miles from the airport, the Ombudsman was of the view that, in this case, time and not distance was the problem. The Board has a policy which allows only duty free liquor stores at airports, and liquor agencies on or north of Highway 17. However, there are, in fact, five such agency stores located south of Highway 17.

The Ombudsman was also aware that the Board's objective in establishing agency stores is to provide the purchasing public with the best service commensurate with sound business practices, and to earn revenue for the government. These stores are established in remote areas of northern Ontario and must be sufficiently remote from any existing liquor store or agency.

The Ombudsman noted that the Board's definition of "sufficiently remote" is generally a distance of 25 miles on main highways and secondary roads. This mileage figure may be reduced by the Board if adequate service cannot be provided to a community due to inaccessibility, or, if the Board does not intend to establish a conventional liquor store in the locality. It was brought to the Ombudsman's attention that the Board has established a liquor store in another area of northern Ontario, to serve the liquor requirements of summer tourists and sport fishermen. Furthermore, the residents of that community can make liquor purchases throughout the fall, winter and spring from an agency store which is approximately ten miles from a Board liquor store in a nearby town.

Notwithstanding the above, the Board decided that the complainant's proposal for an agency store in the airport failed to meet the requirements of a remote location, and conflicted with the Board's policy regarding liquor outlets in airports. The Board considered "time" as opposed to "geography" to be a concept which it could not accept.

With the above in mind, the Ombudsman concluded that the complainant was attempting to provide a desired service for tourists flying into the airport. Since the airport survey revealed that a considerable number of American tourists landed at this airport and made connecting flights before and after the hours kept by the liquor store nearby, it was felt that these people were prevented from making a purchase of Canadian liquor. They were, in fact, remote from a conventional liquor outlet. The complainant was aware of the requirements of the Board regarding agency stores and was prepared to comply with them. Accordingly, the Ombudsman concluded pursuant to section 22(1)(b) of the Ombudsman Act, that the Board's denial of a liquor agency authorization to the complainant was unreasonable.

The Ombudsman recommended pursuant to section 22(3)(c) of the Ombudsman Act that the Board allow the complainant to sell liquor at his store under the authority of an agency licence to bona fide tourists, the outlet to be operated during appropriate hours when the local liquor store is closed.

The Ombudsman's report setting out his conclusion and recommendation was forwarded to the Chairman of the Liquor Control Board of Ontario and to the Minister of Consumer and Commercial Relations. Subsequently, the Deputy Minister of Consumer and Commercial Relations advised the Ombudsman that the Minister had referred this matter to Cabinet for its consideration. The Deputy Minister added that Cabinet had decided to uphold the decision of the Board.

The Ombudsman then wrote to the Premier in accordance with the provisions of the Ombudsman Act, and reported the results of his investigation to the complainant. Our file was then closed. The Premier's response did not indicate that any steps would be taken to implement the recommendation.

MINISTRY OF

THE ENVIRONMENT

## DETAILED SUMMARY NO. 5

This complaint was brought to this Office on November 20, 1979, by an unincorporated group acting on behalf of the citizens of an unorganized community. The primary complaint of the citizens was that the community's water supply system was badly in need of repair, and that although the Ministries of Northern Affairs and the Environment had agreed to fund emergency repairs to ensure the community a water supply through the winter, these repairs were not being carried out.

Informal contacts with the Ministries indicated that the works were proceeding although there had been some delay. It appeared, therefore, that this complaint might be premature and the complainant was so advised in a letter of January 17, 1980. In a letter dated January 30, 1980, the complainant advised that the works had not yet commenced and asked that this matter be investigated.

The Ombudsman advised the Minister of the Environment and the Deputy Minister of Northern Affairs of his intention to investigate this complaint in letters dated February 12, 1980. Separate responses were forwarded by both Ministries.

After contacting the complainant's spokesperson by telephone and after receiving permission from each of the Ministries to release copies of their letters to the complainant, copies of the Ministries' responses were forwarded to the complainant on April 11, 1980 for its consideration. The complainant organization responded to the Ministries' positions by letter dated May 15, 1980.

The file was then assigned for investigation. The spokesperson for the complainant organization was contacted on June 24 and July 4, 1980, at which time the investigator was advised that an additional complaint would be filed by the complainant and that additional documentation would be forthcoming. Subsequently, on July 29, 1980, the investigator was advised that a meeting had been arranged between the complainant and Ministry representatives. After confirming this meeting with Ministry officials, it appeared that the meeting might well lead to a resolution of the complaint. It was decided, therefore, not to commence the investigation of this complaint until after this meeting was held. The meeting was originally scheduled for August 14, 1980, and subsequently postponed to August 28, 1980.

Since the meeting failed to resolve the complainant's concerns, the investigator attended at the local Ministry

offices on September 2, 1980, to review its files as they related to the complaint, and on September 3, 1980, met with the complainant's representatives in the community.

The investigation revealed that the community had experienced problems with its water supply system for some years. Improvements had been made to the water supply system in the winter of 1979/80 but these had done little to ensure either the capability of the system to deliver water or the potability of the water delivered.

The Ministry of Northern Affairs took the view that the money it had budgeted for improvements to the system was intended for emergency repairs to get the citizens through the winter only and, as the winter had passed without incident, its commitment had been met. The Ministry of the Environment said that it did have funds available for the improvement of the water supply system, but in the absence of any public authority to take charge of these funds and of the improvements, it was unable to spend this money. It was also revealed that the legal title to the waterworks was vested in a private corporation.

It was then determined that the local school board might have both the legal authority and the legal capacity to take ownership of the water supply system and to receive funds from the Ministry of the Environment for the improvement of the system.

The investigator thereupon contacted representatives of the Ministry of the Environment, the Ministry of Northern Affairs, the Ministry of Education, the owners of the waterworks and the complainant. It was agreed that this was a possible avenue for the resolution of the problem and the complainant was advised, in a telephone conversation on December 11, 1980, to make the necessary formal approaches to the local school board and then to the Ministry of the Environment.

The investigator was advised, by way of a telephone conversation on January 7, 1981, that discussions had in fact begun. However, subsequent contacts on February 27, 1981, revealed that no action had been taken by the complainant in accordance with the procedures previously agreed upon. As a result of this contact, the complainant did make an approach to the local school board concerning this matter. The school board, however, tabled a motion on this question pending an Ontario Municipal Board hearing on a petition brought by the residents of the community for the creation of a Local Improvement District.

That hearing was held on April 14 and 15, 1981, and the decision was issued on June 22, 1981, denying the petition.

Following this decision, the complainant organization decided to dissolve itself, its members being of the opinion that the organization could accomplish nothing further for the community. The complainant's spokesperson was advised that if individuals wished to have this Office continue its involvement in this matter, then they should consider making complaints on their own behalf. No such complaints were received.

The investigator was subsequently advised, on July 27, 1981, that application had been made for the formation of a Local Services Board. Such a board would have the authority to manage the waterworks and it was further determined that the Ministry of the Environment would be able to make capital grants to such a board.

The file on this matter was then closed as the complainant organization had, for all intents and purposes, abandoned the complaint and there appeared to be an imminent solution to the community's problems.

# MINISTRY OF HEALTH

## DETAILED SUMMARY NO. 6

This complainant registered a complaint with the Office of the Ombudsman in October, 1979. She alleged that during her admission to an Ontario psychiatric hospital, staff members had lost two items of her personal clothing valued at $102.00. The complainant contended that the hospital authorities should either locate and return her clothing or reimburse her.

Following our notice of intent to investigate, the hospital administrator provided pertinent data from administrative records and the Deputy Minister of Health responded by letter. The Ministry took the position that the hospital was not responsible for patients' personal belongings; patients were so advised upon admission to the hospital.

Our investigation revealed that members of the hospital staff had not followed the usual practice of listing clothing upon the complainant's admission to the hospital. Numerous items of her clothing had been sent to another area of the hospital to be marked with her name. This was done four days after the complainant's admission to the hospital and her clothing was not immediately returned to her. The hospital records indicated that after the complainant twice expressed concern to staff members over the whereabouts of her clothing, all clothing was located and returned to her except for one item. The complainant remained in the hospital twenty-one days and, apart from an initial three-day period under close observation, she was permitted to come and go from the hospital and take weekend leave. After her discharge date, the complainant had telephoned the hospital seeking the one item of her clothing that had not been returned to her, or reimbursement if the clothing had been lost. However, the hospital would not assume responsibility for her personal clothing.

Legal research undertaken by our Office revealed that the practice at the hospital, not to assume responsibility for patients' personal belongings, appeared to be contrary to law. The Ombudsman, therefore, formed the view that it was open to him to conclude that the practice appeared to be contrary to law, and that the decision made in the complainant's case, based on this practice, was unjust. He also formed the view that it was open to him to recommend: 1) that the practice of not assuming responsibility for patients' personal belongings, left in the hospital's care, should be altered to acknowledge that in circumstances where other organizations or persons would have

bailee responsibilties, the hospital was likewise responsible; and 2) that the decision not to reimburse the complainant be varied to give her compensation in the amount of $85.00 - the estimated value of the clothing item she claimed to have lost during her admission to the hospital (our investigation revealed no evidence to support that two clothing items had been lost).

Since it seemed to the Ombudsman that the Ministry and the hospital might be "adversely affected" by his tentative conclusions and recommendations, he accorded to the Deputy Minister of Health and the hospital administrator, pursuant to section 19(3) of the Ombudsman Act, the opportunity to make representations respecting his possible adverse report.

The Deputy Minister responded by letter, stating that the complainant would be compensated. The Deputy Minister also advised that hospital staff members were examining record-keeping procedures and revisions would be instituted, as warranted, to ensure utmost control of patients' clothing.

The Ombudsman carefully considered the representations of the Ministry of Health in light of the investigation conducted. He issued a report concluding: 1) pursuant to section 22(1)(a) of the Ombudsman Act, that the practice established at the hospital, not to assume responsibility for patients' personal belongings, was contrary to law; and 2) pursuant to section 22(1)(b) of the Ombudsman Act, that the decision made in the complainant's case, based on the aforementioned practice, was unjust. The Ombudsman did not find it necessary to make a recommendation as the Ministry had taken what he considered to be appropriate action in order to resolve this complaint.

The outcome was reported to the complainant and our file on the matter was closed on July 13, 1981.

## DETAILED SUMMARY NO. 7

This complainant wrote to the Ombudsman on March 5, 1981, concerning a decision rendered by the Ontario Health Insurance Plan (OHIP).

The complainant had been undergoing intensive psychotherapy in the United States for approximately two months prior to January, 1981, as there was no psychotherapist in the place of her residence able to accommodate her need for two sessions per week. OHIP reimbursed her accordingly for these sessions. However, in January, 1981, the bus

employees in her area went on strike, and she was unable to travel to her appointments. Her doctor determined that because of her condition it would be necessary to conduct the psychotherapy sessions by telephone. Approximately one and a half months later she was advised that OHIP did not cover "advice" given by telephone, despite the fact that the sessions were of fifty minutes duration. She, therefore, had to discontinue sessions with her psychotherapist for a period of about two months until the buses were running again, at which time she was able to resume her psychotherapy sessions. The complainant contended that OHIP acted unreasonably in its decision to deny her coverage for the twice weekly telephone sessions with her psychotherapist during a period when she was unable to obtain her own transportation to and from the United States and her doctor had determined the telephone sessions were necessary. Approximately $600.00 was the amount in question.

The Ombudsman notified OHIP of his intention to investigate this complaint and requested a statement of OHIP's position. The General Manager of OHIP replied that under section 49(1)(4) of Ontario Regulation 323/72 under the Health Insurance Act, advice by telephone was specifically excluded from coverage by the Ontario Health Insurance Plan. The question which concerned the Ombudsman was whether or not "advice by telephone" in the context of section 49 included psychotherapy conducted by telephone.

During the course of our investigation, our Office obtained two opinions on this matter from medical experts in the field of psychiatry. Both doctors advised that it was their opinion, within the context of this particular case, that the psychotherapy sessions should not have been considered to be advice, but rather treatment. Our Office then wrote to OHIP apprising it of the two opinions we had obtained in order to permit a review of the complainant's claim. We gave our assurance that no opinion had been formed at that time by the Ombudsman or by any member of his staff with respect to the merits of the complainant's contentions.

Subsequently, we received a response from the General Manager of OHIP indicating that in light of the doctors' advice and within the context of this particular case, he agreed that the telephone sessions should not have been excluded by section 49(1)(4) of Ontario Regulation 323/72 and approved payment for the psychotherapy the complainant received over the telephone.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman terminated his investigation and the file on the matter was closed on November 4, 1981.

## DETAILED SUMMARY NO. 8

This complainant telephoned our Office on March 31, 1981 with a complaint relating to the Ontario Health Insurance Plan (OHIP). On the same date her M.P.P. forwarded documentation on the complaint to our Office.

In November, 1980, the complainant contacted her local OHIP office to request information about OHIP's policy for reimbursement of claims originating from the United States. The complainant was advised to obtain documentation from her family physician concerning the procedure to be performed. This documentation was subsequently submitted to OHIP. By letter dated December 22, 1980, the complainant's family physician was advised that insured hospital services would be reimbursed at 75% of the costs for standard ward accommodation. The letter went on to indicate that reimbursement for medical fees would be as listed in the Schedule of Benefits.

Upon receipt of the information, the complainant called the OHIP district office to indicate that she had been advised by a number of physicians that the procedure she needed was not available in Ontario. She inquired whether or not this fact would affect the amount of reimbursement.

On January 28, 1981, the complainant's M.P.P. wrote to the Minister of Health requesting his personal review of the situation. The matter was referred to the General Manager, OHIP, for investigation. He consulted with the Ontario Medical Association (OMA).

On April 3, 1981, the Chairman of the Orthopaedic Section of the OMA concluded that the procedure could be performed in Ontario. The complainant was subsequently advised of the names of three Ontario orthopaedic surgeons who, in the opinion of the OMA, could perform the procedure. A representative of the OMA indicated that he would arrange an appointment for the complainant with her choice of the three surgeons. On April 6, 1981, our Office was advised by the complainant that the doctor of choice indicated that he would only be prepared to accept a referral from the complainant's family physician. This referral was subsequently made. On April 15, 1981, the complainant was advised by the doctor of choice that it was doubtful

an appointment could be scheduled prior to April 22, 1981, the day the complainant was to travel to the United States for the procedure to be performed there on April 27, 1981. The complainant was advised by the American surgeon that if she cancelled the appointment, she would not be able to arrange a new date for surgery for several months. The complainant was unable to walk unassisted and was in severe pain.

The Ombudsman informed the Deputy Minister of Health of his intention to investigate the complainant's contention that in view of her protracted communications with OHIP, and her inability to obtain a consultation with an Ontario surgeon able to perform the procedure before April 27, 1981, it was unreasonable for OHIP to refuse to pay 100% of her hospital costs, and an amount for her surgical costs equivalent to the average amount paid for the procedure in the area in question.

The Ministry's position, as stated by the Deputy Minister, was that the procedure was available in Ontario, and, therefore, reimbursement would be as previously stated to the complainant.

On April 22, 1981, the complainant left for the United States having been unable to obtain an appointment with the Ontario surgeon. On April 27, 1981, our Office received a telephone call from the Ontario surgeon's office advising that an appointment would be available for the complainant. The doctor's secretary confirmed that this was the first time the complainant would have been given a definite appointment.

With the complainant's permission, we wrote to the American surgeon and asked for his comments on OHIP's opinion that the complainant had elected to go to the United States for a non-emergency procedure which was available in Ontario. In his response, the surgeon advised, in part, that "her surgery was not elective in a very important sense that had she lost just a small amount of additional bone, reconstruction would have been impossible. ...It is my belief that it was necessary to have this complex surgery done in (the United States)".

The documentation provided by the surgeon, including the operative report, was forwarded to the General Manager of OHIP. The General Manager agreed to readjudicate the claim.

On October 30, 1981, a representative of the General Manager's office advised our Office of the results of the readjudication. The operative report had been submitted

to the OMA where it was reviewed by two orthopaedic surgeons. Both surgeons, while noting the complexity of the operation, stated that there were several surgeons in Ontario with the expertise and experience necessary to perform the procedure. OHIP, therefore, decided that the professional fees would be paid according to the Schedule of Benefits and that, in its view, this was a non-appealable decision. However, OHIP said that it would be open to the complainant to appeal its decision with respect to hospital costs to the Health Services Appeal Board (HSAB).

On November 12, 1981, we received a copy of the complainant's letter to the Health Services Appeal Board serving notice of her intention to appeal the General Manager's decision with respect to costs (both medical and hospital) arising out of the surgery she had received in the United States. We were subsequently advised that in the General Manager's opinion the complainant was not entitled to appeal her claim with respect to medical costs, as he did not reduce the claim "to an amount less than the amount payable by the Plan", as referred to in section 24(1)(c) [now section 26(1)(c)] of the Health Insurance Act; OHIP would, therefore, argue before the HSAB that it had no jurisdiction to hear this appeal.

During a telephone conversation on November 26, 1981, and by letter dated January 13, 1982, the complainant was advised that we would not be proceeding further with our investigation into her complaint as there was now an appeal available to her. We also notified the complainant's former M.P.P., and her present M.P.P., of our findings. Our file was then closed as the complaint was premature.

On February 17, 1982, the complainant's appeal was heard by the HSAB. The Board found that the complainant's situation had been one of extreme urgency and that under the circumstances she had no alternative but to have the operation performed by the American surgeon. Pursuant to section 25(1) [now section 27(1)] of the Health Insurance Act, the HSAB substituted its opinion for that of the General Manager and allowed the hospital claim at 100%. The Board further determined that claims for physiotherapy and radiology treatments should also be paid at 100%. Accordingly, it determined that the complainant would be reimbursed an additional $8,053.72 U.S.

With respect to medical costs, the HSAB found that:

> The OHIP Schedule of Benefits of April 1, 1981 which set forth the relevant fee schedule established the fee payable for this type of operation, and

> evidence adduced indicated that the Tariff Committee was cognizant of the (American surgeon's) technique in setting the fee.
>
> The Board is bound by the tariff and cannot vary it. Accordingly, the General Manager's decision with respect to the physician's services...will be upheld.

We later learned that the complainant's solicitor issued a notice of appeal of the HSAB decision to the Divisional Court.

# MINISTRY OF HEALTH

## RECOMMENDATIONS DENIED

## DETAILED SUMMARY NO. 9

The complainant contended that a decision of the General Manager of the Ontario Health Insurance Plan (OHIP) was unreasonable.

The complainant had undergone extensive dental surgery following surgical removal of a cancerous growth on her face. The surgery was performed by the Chief of the Department of Dentistry of an eastern Ontario hospital. When the complainant submitted a claim for reimbursement of the balance of the medical and laboratory charges not covered by a private insurance company, her claim was refused by the General Manager on the grounds that the services provided were not insured benefits. The complainant subsequently learned that if the dental surgery had been performed by a physician, the services would have been benefits under OHIP, but, because they were performed by an oral surgeon, they were not. It was the complainant's view that this was an unreasonable distinction.

The complainant contended that few residents of Ontario would have had sufficient knowledge of OHIP regulations to ensure that such work was performed by a physician. The complainant advised our Office that "I also doubt that when one is faced with the loss of an eye and the structure of one side of the face, they can be expected to turn their minds to rules and regulations which are not even readily accessible." The complainant further contended that it was unreasonable to deny her reimbursement because the work was performed by an oral surgeon, when the work was necessitated by an operation performed by a medical surgeon.

The Ombudsman wrote to the then Deputy Minister of the Ministry of Health to advise him of his intention to investigate this complaint. The Deputy Minister's response indicated that dental benefits were restricted to a specific list of procedures spelled out in section 43 of Regulation 323/72 (now section 46 of Regulation 452) under the Health Insurance Act. The services performed on the complainant were not included in the list of procedures and, therefore, were not benefits of the Plan. The reply further suggested that although it might be true that the complainant was not aware that the services were not benefits of OHIP, certainly the oral surgeon could have informed her.

In the course of our investigation we spoke with the former General Manager of OHIP. He emphasized that he did not have any discretion under the the Health Insurance Act to make payment in a case such as this and confirmed that

if the same surgery had been performed by a physician, it would have been a benefit of OHIP.

During the course of the investigation, it appeared to the Ombudsman that it might be open to him to conclude that the Ministry's decision not to pay this claim was, in the words of section 22(1)(b) of the Ombudsman Act, "in accordance with a rule of law or a provision of any Act" that is or may be "unreasonable" or "improperly discriminatory". The complainant's surgery was necessitated by earlier surgery to remove a tumor, and was an unusual dental surgical procedure which would have been an insured service had the surgery been performed by a plastic surgeon rather than an oral surgeon. The Ombudsman was of the opinion that the complainant acted in a reasonable manner by engaging the oral surgeon recommended to her by her first surgeon, and further noted that the complainant was not aware at the time of the operation that OHIP would not pay for surgery performed by an oral surgeon.

The Ombudsman tentatively recommended that OHIP pay the claim submitted by the complainant either by implementing an amendment to section 43 of Ontario Regulation 323/72 under the Health Insurance Act, or by passing a special bill. The amendment could provide a review of each case on its merits, with coverage for cases in which medical services were performed by an oral surgeon on the referral of a physician.

The Ombudsman reported his tentative conclusion and recommendation to the Deputy Minister as required by section 19(3) of the Ombudsman Act.

Representations received from the then Deputy Minister of Health, which indicated that the Ministry could not agree that the regulation should be amended, were given careful consideration by the Ombudsman. He remained of the view that the Ministry's decision not to pay this claim was in accordance with a regulation that is "unreasonable" and "improperly discriminatory". Accordingly, the Ombudsman recommended that the Ministry of Health pay the complainant's claim, either by means of a special bill or by an amendment to section 43 of Ontario Regulation 323/72 pursuant to the the Health Insurance Act.

The Deputy Minister's response to the recommendation stated in part:

> If these medical procedures, namely the flushing and debridement of the wound, had been performed by a physician, a

> claim to OHIP would have been appropriate. Depending on the nature of the precise service performed, the benefit payable would vary but would still be considerably below the amount billed by (the oral surgeon).

After receiving this response, the Ombudsman consulted a past Chairman, Plastic Surgery Section of the Ontario Medical Association (OMA). After ascertaining that, in the past Chairman's view, the operation would normally have been performed by a plastic surgeon in company with an ear, nose and throat specialist, the Ombudsman requested from him his analysis of the treatment provided for the complainant. The Ombudsman specifically asked which services would in his view have been covered by OHIP, had the treatment been performed by a plastic surgeon.

The past Chairman stated to the Ombudsman that, on the basis of the information provided, it was his opinion that OHIP would not ordinarily cover the cost of the prosthetic device, the insertion or cleaning of that device. He stated, however, that surgical release of adhesions and relief of adhesions of trismus, if performed in a hospital setting, were services for which the patient could reasonably expect coverage had the procedure been performed by a plastic surgeon.

The Ombudsman considered this additional information and advised the former Deputy Minister of Health by letter dated March 25, 1980, that he wished to revise his conclusion and recommendations. He noted that the recommendations were being made after taking into account the principle contained in the recommendation made by the Select Committee on the Ombudsman in its Seventh Report to the Legislature which stated:

> ...The Committee...recommends 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.
> >
> > (p.62)

The Ombudsman recommended, pursuant to section 22(3)(e) of the Ombudsman Act, that the Ministry of Health pay that portion of the complainant's claim which would have been an insured benefit had the operation been performed by a plastic surgeon. He also recommended that section 43 of Regulation 323/72 of the Health Insurance Act, be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians.

The Deputy Minister of Health responded on October 16, 1980, rejecting the conclusion and recommendations for the reasons previously put forth by the Ministry.

Pursuant to section 22(4) of the Ombudsman Act, a copy of the Ombudsman's report and recommendations was forwarded to the Premier. The Ombudsman reported the results of his investigation to the complainant and the file was closed.

## DETAILED SUMMARY NO. 10

This complainant telephoned our Office complaining that a decision of the General Manager of the Ontario Health Insurance Plan (OHIP) was unreasonable.

In 1968, surgery to remove a growth on the complainant's jaw was performed by an ear, nose and throat specialist. Ten years later, the tumor reappeared and it was recommended to the complainant by two doctors that the growth be removed by a third doctor. The operation involved an extensive surgical excision and immediate reconstruction of the jaw area. When a bill was submitted to OHIP by the surgeon, OHIP agreed only to pay for the removal of the tumor as the surgeon was an oral surgeon. Both the complainant and her oral surgeon were of the opinion that the surgery was unusual and should have been given independent consideration by an OHIP referee. The oral surgeon was also of the opinion that the surgery could not be considered simply as dental work, and should, therefore, be a benefit under OHIP.

Following the General Manager's decision not to pay the claim in full, the oral surgeon wrote to an OHIP referee expressing his opinion why the complainant's claim should be paid. The OHIP referee advised he was aware "that the OHIP list of procedures and the fees for same are inadequate". The referee went on to indicate that the above notwithstanding, he did "not have the authority to approve fees for services which are included in the Act

and Regulations which pertain to the Ontario Health Insurance Plan".

The Ombudsman informed the then Deputy Minister of Health of his intention to investigate this complaint. In its response, the Ministry took the position that at the time of the complainant's surgery it was limited to providing payment for the dental procedures specified in section 43 of Regulation 323/72 (now section 46 of Regulation 452) under the Health Insurance Act; that the only dental procedure performed which was listed in the Schedule of Benefits was the tumor excision; and that there was no provision for pre- or post-operative dental care, or for independent consideration of the claim.

Our investigation revealed that the oral surgeon had been granted operating privileges by the Chief of Staff at the central Ontario hospital. At the time of the operation, the complainant was unaware that the services to be performed by the oral surgeon were, in part, not insured services.

During the course of the investigation, it appeared to the Ombudsman that it might be open to him to conclude that the Ministry's decision not to pay appropriate parts of this claim was, in the words of section 22(1)(b) of the Ombudsman Act, "in accordance with a rule of law or provision of any Act...that is, or may be unreasonable...or improperly discriminatory". The complainant's surgery was necessitated by the re-emergence of an earlier tumor; it was an unusual dental surgical procedure; the claim would have been paid in part if the surgery had been performed by a physician; the oral surgeon had been granted operating privileges by the Chief of Staff of the central Ontario hospital; the complainant was not aware at the time of the surgery that OHIP would not pay for the operation if it were performed by an oral surgeon; and the Ombudsman was of the tentative opinion that the complainant acted in a reasonable manner by engaging the recommended oral surgeon.

In light of his possible conclusion, it appeared open to the Ombudsman to recommend tentatively, pursuant to section 22(3)(e) of the Ombudsman Act, that the Ministry of Health pay that portion of the complainant's claim which would have been an insured benefit had the operation been performed by a physician. He further recommended tentatively that section 43 of Regulation 323/72 of the Health Insurance Act be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are

not physicians. As required by section 19(3) of the Ombudsman Act, he reported his tentative conclusion and recommendation to the Deputy Minister on January 13, 1981.

Representations were received in writing on behalf of the Ministry. In short, the Ministry could not agree that the regulations should be amended to provide coverage for cases such as the complainant's and advised that there were no plans to amend the Act. These representations were given careful consideration by the Ombudsman. The Ombudsman also considered the position of the Ministry on an earlier complaint dealing with the same basic facts (see Detailed Summary No. 9), and the response of the Ministry to the following recommendation contained in the Seventh Report of the Select Committee on the Ombudsman:

> ...The Committee...recommends 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.
> >
> > (p.62)

The General Manager of OHIP expressed the Ministry of Health's concerns with the recommendation and agreed instead to include "Code R990" (now Code R991) in the OHIP Schedule of Benefits. Under this code, independent consideration will be given "to claims that are unusual but generally accepted surgical procedures which are not listed specifically in the Schedule".

As it appeared that Code R990 (now R991) would not apply to the services rendered to the complainant by a dentist, as insured services performed by a dentist are restricted to those specified in the regulation, the Ombudsman remained of the view that the Ministry's decision, not to pay an appropriate part of the claim, was "in accordance with a rule of law or a provision of any Act... that is or may be unreasonable...or improperly discriminatory".

Therefore, on May 5, 1981, the Ombudsman recommended, pursuant to section 22(3)(e) of the Ombudsman Act, that

the Ministry of Health pay that portion of the complainant's claim which would have been an insured service had the operation been performed by a physician. The Ombudsman also recommended that section 43 of Regulation 323/72 of the Health Insurance Act be amended to permit the General Manager to determine the amount of payment for exceptional cases where medical procedures are performed by persons in possession of the necessary hospital privileges who are not physicians.

The Deputy Minister responded to the Ombudsman's report by letter dated September 23, 1981, and stated in part:

> It is very important to recognize that our program in respect of dentists' services differs fundamentally in purpose, scope and character from the hospital and medical care programs; it was never intended to do more than assist residents of Ontario in meeting a very limited part of the cost of dentists' services.

He also stated that the provisions for insured dental services in the regulations were decided upon "after consultation with the profession". The Deputy Minister further advised that, in his view, it would not be appropriate for officials of OHIP to have "discretionary authority" in the administration of the Plan, as this discretion could "introduce the possibility of decisions which could well be arbitrary, unfair or discriminatory and in addition could produce financial impacts which would be totally unacceptable to the Government".

After consideration of all the facts, the Ombudsman forwarded a copy of his report and recommendations to the Premier pursuant to section 22(4) of the Ombudsman Act. The Ombudsman reported the results of the investigation to the complainant and the file was closed.

## DETAILED SUMMARY NO. 11

The complainant wrote to the Ombudsman with a complaint concerning a decision of the Board of Directors of Chiropractic denying him an opportunity to write the Ontario Chiropractic Licensing Examination.

The complainant was enrolled in a 40-month course of continuous instruction at a college of chiropractic in the United States. In order to qualify to write the Ontario

Chiropractic Licensing Examination, the Board insisted that he comply with section 25(2) of Regulation 228 (now section 26(2) of Regulation 248) made under the Drugless Practitioners Act which states, in part, that "the course in chiropractic shall include not less than four academic years of nine months each with at least 4,200 hours of instruction...". The Board interpreted the section so as to require that the complainant take three-month vacations between each of his nine-month academic sessions.

The complainant contended that this was unreasonable, and stated that it would be financially oppressive to extend his education while residing in the United States. Further, he stated that by taking 40 months of continuous instruction, he was actually exceeding the 36 months prescribed by the regulation. The complainant felt that if he completed the required hours of instruction, and if he satisfactorily passed all his subjects, it should not matter at what pace he did so.

The Board was informed of our intention to investigate this complaint and two of our investigators met with an official of the Board to discuss the matter further and to obtain relevant documentation.

We learned that the Board had defined "academic year", the term used in the regulation, to mean the months of September to May, inclusive. It had concluded from this that in order to comply with the regulation, and hence to qualify to write the Ontario Chiropractic Licensing Examination, a candidate must show a period of 45 months between matriculation and graduation, including nine months of vacation.

The Board was not able to provide any documented policy reasons which would support its interpretation of the regulation. A review of minutes of past meetings of the Board, dating back to 1937 when the regulation was passed, did not reveal any further information in this regard.

A representative of the Board stated that the Board would not support changing the wording of the regulation as such a change would not make an improvement to the quality of chiropractic care. He suggested that students require three-month vacations so that they can be receptive to the following academic session. However, he could not provide any evidence to suggest that students completing an accelerated course of study were less academically prepared or that their work was inferior to students taking a program which included vacation periods. The representative also stated that universities schedule their

course programs to include nine months of academic study, alternating with three-month vacations and, therefore, students of chiropractic should follow this schedule.

Our investigation revealed that it was not uncommon for universities to offer courses during the summer which would enable a student to complete a four-year program in less than four years. We also learned that most of the chiropractic colleges in North America have been offering a 36-month full-time in-residence chiropractic professional curriculum in an accelerated fashion for nearly 40 years, so that the entire program can be completed within 36 consecutive calendar months.

It appeared to the Ombudsman that nothing in section 26(2) of Regulation 248 would seem to require that "academic year" be restricted to mean a September to May academic year. He formed the opinion that provided a student's program consisted of at least four units of nine months each and at least 4,200 hours of instruction, the regulation appeared to be satisfied. The Ombudsman, therefore, came to the possible conclusion that the Board was unreasonable in denying the complainant an opportunity to write the Ontario Chiropractic Licensing Examination. Accordingly, the Board was advised of the possible conclusion and the possible recommendation that the Board alter its interpretation of the regulation, pursuant to section 19(3) of the Ombudsman Act.

Representations were received on behalf of the Board. The Board could not agree that its interpretation of the regulation was unreasonable and, therefore, would not allow the complainant an opportunity to write the Ontario Chiropractic Licensing Examination. The Board maintained that it had consistently interpreted the regulation to mean four academic sessions of nine months in each of four calendar years. However, a representative of the Board agreed that it was possible to question whether the regulation intended "academic year" to be qualified by "calendar year".

Representatives of the Board stated that the Board's interpretation of the regulation had traditionally served Ontario well and was in line with other health disciplines. Our investigation, however, revealed that other health disciplines are administered differently in that academic standards are determined independently by each of the educational institutions offering health discipline courses. Provided a student meets the academic standards of the institution in which he or she is enrolled, it is open to that student to write the applicable licensing examination.

The Board also maintained that its interpretation of the regulation allowed the Board to control the quality of Ontario chiropractors. Nevertheless, the Board did not provide evidence that students completing an accelerated course of study were less academically prepared than students complying with the regulation.

Further, the Board expressed concern that if its interpretation of the regulation were opened up, it might make the Board's task of administering the legislation more difficult.

Lastly, the Board stated that its interpretation of the regulation limited the number of chiropractic students leaving Ontario to attend schools in the United States and also limited the influx of practitioners from the United States. The Ombudsman concluded, however, that the regulation was not intended for these purposes and it was, therefore, not reasonable for the Board to apply it in order to achieve them.

Additional investigation was conducted in order to determine what course requirements are necessary to write chiropractic licensing examinations in other Canadian provinces. Representatives of provincial chiropractic associations were contacted in each province, with the exception of Newfoundland. It appeared that Ontario is the only province which strictly requires students to complete a course of study which includes four years of nine months each. We found that British Columbia and Quebec, the only other provinces which have similar requirements, are willing to make exceptions by allowing students who have completed an accelerated course to write the provincial examinations.

After reviewing the representations made by the Board and the additional information obtained during the investigation, the Ombudsman determined, pursuant to section 22(1)(b) of the Ombudsman Act, that it was unreasonable of the Board to interpret section 26(2) of Regulation 248 to require that the four, nine-month academic sessions be separated by three-month vacations. Accordingly, he wrote to the Board recommending, pursuant to section 22(3)(c) and (d) of the Ombudsman Act, that the Board alter its practice of interpreting the regulation in this manner, and acknowledge that the complainant had satisfied the requirement of the regulation and is, therefore, eligible to write the Ontario Chiropractic Licensing Examination.

A reply was received from the Board indicating that it would not be implementing the Ombudsman's recommendation. As a result, the Ombudsman sent a copy of his report to

the Premier, pursuant to section 22(4) of the Ombudsman Act; the complainant and the Board were so advised. Our file was closed on April 6, 1981.

MINISTRY OF

HOUSING

## DETAILED SUMMARY NO. 12

This complaint was brought to the attention of the Ombudsman by a letter from the complainant dated November 19, 1980.

The complainant stated that he had written to the Minister of Housing on August 14, 1980, stating his objections to a certain amendment to the Official Plan of his local municipality and requesting that the proposed amendment be referred to the Ontario Municipal Board for a hearing pursuant to what was then section 44(1) of the Planning Act. On September 4, 1980, the Minister wrote to the complainant stating that he would not refer the amendment and that, in his opinion, the request was made only for the purpose of delay.

The Ombudsman wrote to the Minister of Housing on February 25, 1981, advising the Minister of his intention to investigate this complaint. The Deputy Minister responded in a letter dated March 12, 1981, stating that the Minister had fully considered the complainant's concerns.

During the investigation, it was determined that the Official Plan amendment in question had been made by the municipal council at the request of a developer. The developer was engaged in the construction of a condominium building but had decided, after starting construction, to enclose the balconies with glass, thus increasing the floor space index on the building site beyond the ratio allowed by the Official Plan. The floor space index is a ratio of floor space to lot area. In the formula for calculating the floor space index, the floor space of open balconies is not counted but the floor space of enclosed balconies is.

The complainant noted that the Official Plan had only very recently been approved by the Minister; he was of the opinion that the amendment of the Official Plan so soon after its approval tended to reduce the value of the Official Plan as a planning guideline and was in itself a bad planning practice. The complainant argued that the hearing before the Ontario Municipal Board was the proper forum in which he could argue his contention and he felt that he had been unreasonably and arbitrarily denied the right to appear before the Board.

However, the complainant also stated that he did not object to the enclosure of the balconies. He pointed out that the developer had other options it could pursue to enclose the balconies and yet remain within the provisions of the unamended Official Plan.

During the investigation the Ministry put forth the position that the proposed amendment was a technical modification as most planning criteria, the number of living units in the project, the amount of traffic generated by the unit, the amount of services required by the building, and the size of the building itself, remained unchanged and within the allowances of the Official Plan. The only change authorized by the Official Plan amendment would be the enclosure of the balconies.

The complainant responded that the question of whether this amendment was merely "technical" or a departure from good planning principles ought to be determined by the Ontario Municipal Board and not by the Minister.

In considering this case, the Ombudsman determined that the substance of the complaint was that the Official Plan would be amended soon after it was approved. It was the complainant's contention that amendments generally should not be made at that time because the Official Plan should be allowed to "work" and that any amendments should be put off for some time, or in other words, delayed. The complainant did not object to the work which the amendment allowed. The Ombudsman, therefore, determined that the Minister had not come to an unreasonable conclusion in deciding that the complainant's request for a referral was "made only for the purpose of delay" and also that the Minister had not acted unreasonably in deciding not to refer the proposed Official Plan amendment to the Ontario Municipal Board.

The Ombudsman reported this decision to the complainant and the Minister on November 3, 1981. Accordingly, the file was closed.

## DETAILED SUMMARY NO. 13

This was a complaint against a Housing Authority in northwestern Ontario and the Ontario Housing Corporation (OHC).

The complainants were both tenants in a senior citizens' building managed by the Housing Authority and subsidized by OHC. Prior to June 6, 1980, senior citizens who were tenants in OHC subsidized housing paid rent in an amount calculated solely on the basis of income. Those who earned $6,700 or less per year paid annual rent equivalent to 20% of income. Those whose income exceeded $6,700 paid annual rent of 20% of $6,700 plus 25% of all income in excess of $6,700.

On June 6, 1980, the Ontario Housing Corporation adopted a new policy whereby the value of a senior citizen's non-income-earning assets would also affect the amount of rent payable. Tenants continued to pay 20% of income up to $6,700, and 25% of excess income. In addition, tenants were required to assess the value of all their non-income-earning assets and pay further rent at the rate of $4.00 per month for each $1,000 of assets owned in excess of $5,000. In no case would rent exceed the fair market rental value of the premises.

Both complainants were owners of summer cottages. In August, 1980, the Housing Authority notified them that their rent would be increased in accordance with the new policy. They complained to my Office in October, 1981, that this decision was unreasonable.

After receiving the Chairman's statements in reply to our notice of intent to investigate these complaints, the files were assigned for investigation.

During the course of the investigation, OHC advised us that the new policy had been adopted as part of a scheme whereby senior citizens' housing was made available to a larger group of applicants than had previously been eligible. The Corporation had been aware for some time of a high demand for its housing among senior citizens of all incomes. Concurrently, in many areas of Ontario, there were subsidized senior citizens' apartments standing vacant because of a shortage of applicants whose incomes were low enough to qualify them for residence.

Under the new policy up to 15% of the units in any subsidized building were to be made available to applicants who would previously have been ineligible. The Corporation decided to charge rent in respect of non-income-earning assets for two reasons:

1) In fairness, those who were wealthy enough to own substantial amounts of these assets must be considered wealthy enough to pay higher rent, regardless of income.

2) The policy would prevent prospective tenants from "hiding" their wealth in non-income-earning assets. Although this had not been a problem in the past, it was perceived to be a potential source of abuse.

It was the Ombudsman's understanding at the time that a senior citizen who sold a non-income-earning asset would be deemed to earn income of 8% per annum on the proceeds of sale, which deemed income would be included with other income for the purpose of rent calculation.

The cottage owned by one of our complainants had an assessed value of $30,000. The new policy caused a rent increase of $100 per month if the cottage was not sold. If, however, it was sold, the deemed income resulting from the sale would cause an increase of only $50 per month. Other hypothetical calculations showed that as the value of non-income-earning assets increased, the difference between rent payable if they were kept, as opposed to rent payable if they were sold, increased also.

At this stage of the investigation, the Ombudsman reached the tentative conclusion that, while it was reasonable to charge rent in respect of non-income-earning assets, it was unjust or improperly discriminatory to charge more rent to those who kept them than to those who sold them and earned income on the proceeds. His tentative recommendation was that a new policy be adopted whereby rent would be the same whether a tenant kept or sold his assets. He was also prepared to recommend that the rent policy be referred to a joint federal-provincial project on senior citizens' housing which was then under way. Since it seemed to the Ombudsman that the Housing Authority and the Corporation could be "adversely affected" by his possible conclusions and recommendations, he accorded to the Chairmen, pursuant to section 19(3) of the Ombudsman Act, the opportunity to make representations respecting his possible adverse report.

The Ombudsman received responses from both Chairmen. The Chairman of the Housing Authority advised him that he was bound to carry out Ontario Housing Corporation policy. The Ombudsman agreed that the Chairman was in no position to deviate from the policy.

The Chairman of the Corporation sent a lengthy response. He began by correcting a misconception on the Ombudsman's part. The Ombudsman was mistaken in believing that proceeds of sale of non-income-earning assets were automatically deemed to earn 8% income. The policy called for actual income earned to be used for rent calculation. Only where this could not be determined was the deemed income provision used. Assuming a rate of return on proceeds of sale of 14% (reasonable at current interest rates), it was then demonstrated that the difference in rent chargeable to our complainants was considerably less

than the Ombudsman had believed. Nevertheless, a difference was acknowledged to exist, which favoured those who sold their assets.

The Chairman stated the Corporation's justification, but after carefully considering his representations, the Ombudsman was not persuaded.

It was the Ombudsman's view that the effect of the policy was to encourage sales of non-income-earning assets. It was noted that the result of such sales would be an increase in income, thereby reducing the need to encroach on capital, so that the net effect may well have been the exact opposite of what the Corporation suggested.

The Ombudsman acknowledged that the difference at the time of the Chairman's response was relatively small, because of the high interest rates prevailing at the time. However, as interest rates drop, the difference in rent increases. Had interest rates continued to climb, on the other hand, the policy might have begun to operate so that higher rent was charged to those who sold their assets. The policy would then have encouraged the acquisition of non-income-earning assets.

On September 21, 1981, the Ombudsman issued his report on these complaints. He concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the policy "whereby a different rent increase [was] charged to the complainants ...when electing to retain non-income-earning assets from that which would [have been] charged should they elect to sell their non-income-earning assets" was improperly discriminatory. He recommended, pursuant to section 22(3), that the practice be changed so that a senior citizen's non-income-earning assets have imputed to them income equivalent to that which would be acceptable as a reasonable rate of return on conservative investments. In this way, rent payable would be the same whether a tenant kept or sold his non-income-earning assets. At the same time, wealth could not be "hidden" in such assets.

On December 15, 1981, the Chairman of the Corporation wrote to advise the Ombudsman that the policy had been changed. Non-income-earning assets were to have an imputed income attributed to them for rent calculation purposes. This figure was to be adjusted at the beginning of each year in accordance with the rate payable on the previous quarter's Canada Savings Bond issue.

As this resolution was satisfactory to both the Ombudsman and the complainants, our files on the matter were closed on February 26, 1982.

## DETAILED SUMMARY NO. 14

This complaint, against the Ministry of Housing, was brought to this Office on February 8, 1979. The complainant, an employee of the Ministry, had been subjected to a pre-dismissal hearing pursuant to section 31 of Ontario Regulation 749 under the Public Service Act. The complainant contended that the Ministry's decision to proceed with the hearing was unreasonable and unfair in that it resulted from certain allegations made by a temporary clerk-typist, which constituted the sole evidence offered by the Ministry.

The Hearing Officer had found that there was insufficient evidence to merit disciplinary action against the complainant on all of the allegations. The complainant's solicitor made requests of the Ministry that it reimburse the complainant for his legal costs, which amounted to $3,405.30. The Ministry rejected these requests. The complainant felt that, given the circumstances, it was unreasonable of the Ministry to have put him to the expense and humiliation of a hearing and to have refused to reimburse him for his legal costs.

The Ombudsman wrote to the Deputy Minister of Housing on March 7, 1979, and advised him of his intention to investigate this complaint. In response, the Deputy Minister stated that he followed what he believed to be the accepted practice of arranging for a hearing to be held under the Public Service Act in view of the serious allegations made by the clerk-typist. The Deputy Minister further stated that he believed that there was adequate justification for the hearing being ordered and that he would have been subject to more criticism had he not ordered a hearing to clear the matter up.

The Ministry's position with regard to the complainant's contention that he should be reimbursed for legal costs was that there was no practice or legal authority to allow a Deputy Minister to make such a payment.

The following facts were revealed by the investigation. On October 15, 1976, a clerk-typist who had been employed at the Branch for less than a month delivered a letter to the Deputy Minister of Housing in which she made allegations against certain members of the Branch, including the complainant, who she contended had entered in a conspiracy to discredit the Director of the Branch. In her letter, the clerk-typist named three other persons in addition to the complainant as being responsible for disrupting the normal operation of the Branch in an effort to discredit the Director.

On October 18, 1976, senior staff members of the Ministry of Housing met to discuss the various employee problems being encountered in this Branch. At that meeting, it was determined that any misconduct or failure to adhere to administrative procedures on the part of the complainant would be monitored and treated immediately by the Director with the appropriate progressive disciplinary action, either by verbal reprimands and written warnings to be followed by a decision to suspend or dismiss, depending on the circumstances. The complainant's work performance was to be closely monitored by the Director and a demotion or transfer was to be considered if it was determined that he was not meeting the requirements of his position. It was also decided to explore the possibility of a hearing to be conducted by the Deputy Minister or his designate in accordance with section 31 of Regulation 749 under the Public Service Act to investigate the charges contained in the clerk-typist's letter.

On October 27, 1976, the Deputy Minister replied to the clerk-typist requesting her co-operation in any investigation into matters that she had raised. The clerk-typist replied by letter on October 30, 1976 that she had no intention of being subjected to an investigation by Ministry staff.

On March 30, 1977, the Director of the Branch wrote a confidential memorandum to the Deputy Minister, enclosing a new letter from the clerk-typist to the Deputy Minister indicating that she was now willing to testify in the presence of her lawyer at a hearing into the allegations outlined in her letter of October 15, 1976. The Director requested that a hearing be conducted to look into the allegations made by the clerk-typist.

On May 24, 1977, the Deputy Minister appointed a Hearing Officer under section 23 of the Public Service Act. The Deputy Minister stated that the purpose of the hearing was to determine whether sufficient cause existed for the removal or dismissal of the complainant from employment by reason of his misconduct during the course of his employment.

A member of the Ministry's Legal Services Branch was appointed to represent the Ministry at the hearing and to compile the evidence to be presented by the Ministry.

On several occasions, the Ministry's solicitor advised the Ministry that there was no hard evidence to be offered in support of its allegations against the complainant and recommended that the hearing be cancelled. The only evidence at hand was the uncorroborated evidence of the

clerk-typist whose complaints concerned, in the solicitor's opinion, nothing more than "exaggerated office disagreements". She noted a lack of co-operation on the part of the Director of the Branch and the clerk-typist in her efforts to compile evidence against the complainant. She also raised the issue of unfairness, pointing out that although the clerk-typist's letter complained of the behaviour of at least four Branch employees, the Director requested pre-dismissal hearings for only two of them.

On August 16, 1977, the complainant was notified of the Ministry's intent to proceed against him by way of a hearing.

The hearing was held on March 13, 14 and 15, 1978. The clerk-typist was the Ministry's only witness and her testimony constituted the total evidence offered by the Ministry in support of its allegations against the complainant as outlined in the Notice of Hearing. The Hearing Officer found in favour of the complainant and stated that there was "insufficient evidence presented to justify disciplinary action against (the complainant) on all of the items listed in the Notice of Hearing." On May 31, 1978, the Deputy Minister of Housing informed the complainant that he had received the Hearing Officer's report on the hearing and advised that he was in agreement with the findings.

The Ministry contended that it was aware, as early as 1976, that there was discord in the Branch, which it attributed to a group of four employees, one of whom was the complainant. Furthermore, the Ministry had received information that the complainant was discontented with the situation in the Branch and that he had expressed this discontentment by making certain allegations against the Director. Ministry staff had discussed the personnel situation in the Branch with the Director who had provided information and documentation regarding the complainant's performance and workload. It was the Ministry's position that the complainant was a problem employee and that the Director was attempting to come to grips with the problems posed by his behaviour in the Branch.

However, an examination of the Ministry of Housing's personnel file on the complainant did not substantiate this. On the contrary, it appeared that the complainant was, in the words of the Ministry's solicitor, an "honest, experienced, competent, and conscientious employee". There were no reprimands against the complainant noted on his file.

During the course of the investigation, the Ombudsman formed certain posssible conclusions and a recommendation. As required by section 19(3) of the Ombudsman Act, he reported his possible conclusions and recommendation to the Deputy Minister of Housing. The Ombudsman tentatively concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that: 1) it was "unreasonable" for the Ministry of Housing to have proceeded against the complainant by way of a hearing pursuant to section 31 of Regulation 749 made under the Public Service Act based solely on the evidence of the clerk-typist; 2) it was "unreasonable" for the Ministry to have proceeded with the hearing against the complainant since preliminary inquiries conducted by its solicitor after the appointment of the Hearing Officer showed that the Ministry had no evidence at all to present in some of the charges, no persuasive evidence on the rest, and the solicitor had recommended on several occasions that the proceedings against the complainant be withdrawn; and 3) it was "unreasonable" for the Ministry not to reimburse the complainant for the legal expenses incurred by him as a result of the hearing, since the Ministry needlessly subjected him to a hearing notwithstanding the lack of any cogent evidence against him.

Accordingly, the Ombudsman tentatively recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Ministry pay the complainant's legal expenses. However, the Ombudsman explained that he was not suggesting that as a general principle a ministry should pay legal costs whenever a civil servant is successful in his section 31 hearing. Rather, he was addressing the particular circumstances of the complainant's case.

The Ministry responded to the Ombudsman's report on March 26, 1981, accepting the possible recommendation. The complainant was subsequently reimbursed for his legal costs and the file on this matter closed.

## DETAILED SUMMARY NO. 15

This complaint against a local Housing Authority in central Ontario was made by a 73-year old man who felt that he, his wife and their three-year old daughter were being unreasonably denied housing.

The Ombudsman notified the Chairman of the Housing Authority on June 23, 1980 of his intention to investigate. In his response of July 3, 1980, the Housing Authority stated its position that it had not housed the family because their past rent paying and housekeeping

practices, as confirmed by their previous landlords, indicated that they would be a poor risk as tenants. The Housing Authority also raised the question of criminal charges involving child molesting which had been laid against the complainant, adding that although the charges were subsequently dropped, it must consider the safety of other families in the housing project. The Housing Authority stated its willingness to accommodate the family in a rent supplement or isolated unit, thereby applying a restrictive measure to the application.

During the investigation, the Housing Manager was interviewed and the Housing Authority's file relating to the complainant was examined. The complainant and his wife were visited at their home and two of their previous landlords, as well as their current landlord, were contacted. Their Family Benefits workers were interviewed and the relevant files of the Ministry of Community and Social Services were reviewed.

The investigation revealed that while the complainant initially applied for housing in 1976, his situation was discussed for the first time at a Housing Authority meeting in October of 1978. At that time, it was decided to put the application on the pending file due to the complainant's poor previous tenant record, unstable family situation (a grandson occasionally lived with him), and concern about his reputation as a child molester. Approximately one year later, the Housing Authority discussed the case again and decided to investigate his previous tenancies. Three of his previous landlords were contacted. One landlord found the complainant's conduct to be "okay", but that there were arrears of rent. The second stated that the complainant's housekeeping was unsatisfactory, and that his attitude was poor. Information was obtained from a third person, from whom the complainant said he had never rented premises, indicating that the complainant's housekeeping was poor, he had rent problems and social problems were suspected. The Housing Authority's file did not reveal how it had learned of the criminal charges, and although the Housing Manager stated that the matter had been looked into, he was unable to confirm who had been contacted.

The investigator contacted the complainant's two most recent landlords, one of whom indicated that the complainant always paid his rent on time and that the family kept house fairly well. The second landlord described the complainant's housekeeping as "lousy" and said that he would not have him back as a tenant although he confirmed that the complainant paid his rent. The complainant's

current landlord stated that the complainant paid the rent on time each month and maintained a fairly good level of housekeeping.

The Housing Authority's file showed that three home visits were conducted at the complainant's residences. The home visitor's first report noted that it was hard to determine the level of housekeeping because the apartment was very small and cluttered, with no closets. The second home visit showed that the housekeeping was "fair", and on the occasion of the third visit, the home visitor found the housekeeping to be satisfactory. The family's current Family Benefits worker confirmed that she had recently visited the family and although they had no advance warning of her visit, she found the house to be clean and tidy. The investigator also found the complainant's home to be tidy and well kept.

Concerning the matter of the criminal charges, it was found that these were charges of indecent assault and that the complainant had been acquitted in September, 1976. Our investigation indicated that the charges had come to the attention of the Housing Authority via rumour, and the Housing Authority had not taken any steps to confirm this information.

The complainant stated that the Housing Authority did not give him its reasons for not housing him. Our review of the Housing Authority's file seemed to confirm this as there was very little correspondence to the complainant. The complainant claimed that he was not aware of the allegations against him concerning the rent arrears, housekeeping and criminal charges until he was sent a copy of the Housing Authority's statement to our Office in response to the Ombudsman's letter of intent to investigate.

Based on the results of the investigation conducted up until that time, the Ombudsman formed the possible conclusions, pursuant to section 22(1)(b) of the Ombudsman Act that: (1) the Housing Authority had made an unreasonable decision in 1978 when it put the complainant's application on the pending file due to his poor previous tenant record, his unstable family situation and concern about his reputation as a possible child molester since it did not investigate his tenant record until a year later, and no attempt was made to verify the facts relating to the criminal charges; (2) the Housing Authority unreasonably omitted to document fully the information on which it relied to deny the family housing; (3) the Housing Authority unreasonably omitted to inform the complainant of its reasons for not housing him and his family; and (4) the

Housing Authority unreasonably decided to apply restrictive measures to the application, as the available information had not demonstrated that the family would be undesirable tenants of a townhouse project.

The Ombudsman also made the following possible recommendations, pursuant to section 22(3)(d) and (g) of the Ombudsman Act: (1) that the Housing Authority fully document information provided to it which would influence a decision not to grant housing; (2) that the Housing Authority, unless there are compelling reasons to the contrary, provide applicants with its reasons for not housing them and give them an opportunity to respond; and (3) that the Housing Authority immediately re-evaluate the complainant's need for public housing assistance in light of his present situation, and reconsider the application based only on the family's need, with no restrictive measures applied. The results of the investigation, along with the possible conclusions and possible recommendations were set out in letters dated June 11, 1981, addressed to the Chairman of the Housing Authority and the Housing Manager, and they were provided with an opportunity to make representations.

The Housing Authority stated, in a letter dated July 2, 1981, its full agreement with the Ombudsman's first and second recommendations, in that full documentation should be maintained on file which may influence a decision not to grant housing, and that applicants should be provided with the reasons and an opportunity to respond. The Housing Authority disagreed with the Ombudsman's third possible recommendation stating that the basic concept of safeguarding the children of its tenants was an important issue.

In view of the Housing Authority's representations, the issue then became whether the Housing Authority had acted unreasonably in applying a restrictive measure to the complainant's application because he posed a potential risk as a child molester to the children of the Housing Authority's tenants.

After considering the Housing Authority's representations, the Ombudsman wrote to the Housing Manager on September 11, 1981, stating that he was pleased that the Housing Authority had concurred with his first two recommendations. The Ombudsman's letter went on to say that it appeared that the Housing Authority's conclusion that the complainant posed a potential risk to the children of its residents and the ensuing decision to apply the restrictive measure may have been based on insufficient evidence. The Ombudsman requested a meeting with the Housing

Manager and the Chairman of the Housing Authority in order to discuss this point. During this meeting on October 21, 1981, the Housing Manager stated that the Housing Authority had received information that the complainant's health was failing. The Housing Authority had considered this information at its previous meeting and also gave consideration to the fact that six years had passed without any occurrence of child-molesting activity on the part of the complainant. The Housing Manager reported that in a majority decision, the Housing Authority had accepted the complainant's application for housing and he had been placed on the waiting list with no restrictive measures applied.

In view of these facts, and the action taken by the Housing Authority, the complaint was considered to be resolved and the file was closed on November 6, 1981.

# MINISTRY OF
# INTERGOVERNMENTAL AFFAIRS

## DETAILED SUMMARY NO. 16

This complaint was made on March 3, 1981, by a property owner whose property assessment had been altered by a Judge of the County Court so as to include a portion assessed as farm land.

Informal inquiries revealed that this alteration occurred after the assessment roll had been returned to the Clerk of the Municipality. The code applied by the Ministry of Revenue on the roll therefore remained "RU", indicating an entirely residential property. The Ministry of Intergovernmental Affairs relied on the coding as it appeared on the roll to determine those property owners entitled to apply under the Farm Tax Reduction Program for a rebate of property tax paid on farm land. This complainant, therefore, did not receive application forms and was unable to apply for a rebate. The complainant felt that it was unfair that he had thus been denied a rebate.

The Ombudsman notified both the Ministry of Revenue and the Ministry of Intergovernmental Affairs on July 8, 1981, of his intention to investigate this complaint and requested a statement of their positions.

In his response of August 25, 1981, the Deputy Minister of Revenue noted that after a review of the situation, he had instructed his staff to inform officials of the Ministry of Intergovernmental Affairs that there should have been a coding change with respect to this property. Shortly thereafter, the responsibility for the Farm Tax Reduction Program was transferred to the Ministry of Municipal Affairs and Housing.

The Ombudsman then received a letter on September 30, 1981 from the Deputy Minister of Municipal Affairs and Housing stating that the complainant's applications for the rebate were being processed. Within a week of the Ombudsman's receipt of this letter, the complainant confirmed having received and cashed cheques for the amount of his rebate.

As the matter had been resolved to the satisfaction of the complainant, the file was closed on October 19, 1981.

# MINISTRY OF

# LABOUR

# THE WORKMEN'S COMPENSATION BOARD

## DETAILED SUMMARY NO. 17

The complainant contacted the Ombudsman during a hearing held in Windsor in November, 1978. The complaint focused on the decision of the Appeal Board of the Workmen's Compensation Board to deny a request for continuing entitlement for a right knee disability which the worker maintained was related to his work accident of March 30, 1971. After determining the Ombudsman's jurisdiction to investigate, the Board was notified of the substance of the complaint.

The injured worker first experienced non-compensable right knee discomfort in 1959. There was also some information to suggest that the complainant injured his right knee in a non-compensable motor vehicle accident in 1968. Employment records revealed that subsequent to January, 1968, the complainant had a right knee "cartilage problem" and that in March, 1969 he had a "possible damaged meniscus or orthopaedic problem" in his right knee.

On March 30, 1971, the complainant's right knee gave out and he fell three feet into a pit. The same day, the complainant's family physician diagnosed a strained right calf muscle. Right knee x-rays taken on April 28, 1971, revealed "minimal osteoarthritic changes". An orthopaedic specialist examined the complainant in October, 1971 and diagnosed a right medial meniscus tear. The specialist arranged for surgery in October, 1971 and notified the Board that the knee joint appeared to be satisfactory except for some degenerative changes. The Board allowed the complainant's claim on the basis of an aggravation of pre-existing degenerative changes in his right knee and awarded compensation benefits until the complainant returned to work on February 1, 1972.

In May, 1976, because of further right knee discomfort, the complainant visited his orthopaedic specialist. The injured worker was then referred to another specialist for a second opinion. The second specialist recommended surgery which was performed in November, 1977.

A senior Board medical official reviewed the case on two separate occasions and formed the opinion that the continuing right knee problems were the result of a pre-existing condition and not related to the compensable accident. The specialist who performed the complainant's surgery, however, was of the opinion that a direct sequential relationship existed between the accident and the condition requiring further surgery.

During the course of the investigation, the Ombudsman consulted an independent orthopaedic specialist in an attempt to resolve the medical disagreement. The complainant's work history and his medical record were sent to the specialist. In a report dated July 7, 1980, the specialist stated that the complainant would not have required surgery in 1977, if he had not torn his medial meniscus previously and had it removed in 1971.

Before the Ombudsman took any further action in this matter, the independent specialist's report was sent to the Board on July 18, 1980, to determine if the Board was prepared to reconsider its previous decision. The Board advised the Ombudsman that it was prepared to reconsider. Accordingly, a new decision dated May 13, 1981, was rendered. The decision in part stated:

> ...The Appeal Board finds the validity of the original acceptance of the meniscus repair as a charge against this claim, highly suspect. The Appeal Board is not, however, prepared to reverse this decision. The Panel accepts the Surgical Consultant's opinion vis-a-vis the relationship between the surgery and its sequelae, and the subsequent development of the post-traumatic arthritic condition. The Appeal Board therefore concludes that (the complainant's) entitlement includes the surgery carried out on November 2nd, 1977.

The complainant was advised by letter on June 3, 1981, that his file would be closed, as the complaint had been resolved.

## DETAILED SUMMARY NO. 18

The complainant advised the Ombudsman on August 28, 1978, that he was dissatisfied with a decision of the Appeal Board of the Workmen's Compensation Board. Specifically, he contended that he was entitled to temporary total benefits from the Board for the period December, 1977 to April, 1978.

The Chairman of the Workmen's Compensation Board was subsequently notified of the Ombudsman's intention to investigate this complaint. The Vice-Chairman of Appeals advised the Ombudsman that the Board did not wish to make a statement concerning the facts of the case at that time. The file was then assigned for investigation.

The investigation showed that the complainant, a carpenter in his fifties, bent down at work, slipped on some dirt and twisted his left knee in November, 1976. Prior to this compensable accident, the complainant had a condition in his left leg which had been present since his youth. Corrective surgery had been performed in October, 1945. He had commenced working for the accident employer in October, 1955 and had an excellent work history during his twenty-five years of service.

The Workmen's Compensation Board accepted the claim as compensable and awarded benefits to the complainant.

On December 1, 1977, the complainant was examined by a surgical consultant at the Workmen's Compensation Board. The consultant determined that the injured employee was capable of returning to his pre-accident work. Benefits were therefore terminated. The complainant's orthopaedic specialist, however, continued to report to the Board that the patient was making slow improvement and was not yet ready to return to work. By the end of April, 1978, the complainant had returned to work and had no further problems with his leg.

The Appeal Board, in its decision, denied the worker further benefits because it found that the ongoing disability was due to the complainant's pre-existing non-compensable disability.

During the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board was "unreasonable" to find that the pre-existing condition was the disabling factor. In support of his conclusion, the Ombudsman noted the family doctor's statement that he had not treated the complainant for any leg complaints for the last thirteen years, the complainant's work history, and the treating orthopaedic surgeon's opinion that the leg condition was an incidental condition and the underlying cause of disability was the knee injury. The Ombudsman also indicated that it might be open to him to recommend, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board revoke its decision and grant the complainant entitlement to temporary total benefits.

The Workmen's Compensation Board and the employer were accorded an opportunity, pursuant to section 19(3) of the Ombudsman Act, to make submissions concerning the Ombudsman's possible conclusion and recommendation.

The Board indicated that it was not prepared to implement the Ombudsman's possible recommendation because the

evidence relied on by the Appeal Board had not been refuted by the Ombudsman. The employer agreed with the Ombudsman's possible recommendation.

After considering these submissions, the Ombudsman issued a report pursuant to section 22 of the Ombudsman Act and recommended that the Board revoke its decision and grant the complainant entitlement. This recommendation was based on the Ombudsman's conclusion that the Appeal Board had been "unreasonable" in finding that the complainant's ongoing disability was due entirely to his pre-existing non-compensable disability.

Further discussion ensued between the Workmen's Compensation Board and the Ombudsman. At the Board's suggestion, the Ombudsman agreed to having the claimant examined by an independent medical specialist to obtain a further opinion.

On June 17, 1981, the complainant was examined by an orthopaedic specialist who subsequently recommended to the Board that the benefit of doubt be extended to the complainant. In a letter dated August 11, 1981, received from the Board, the Ombudsman was advised that total disability benefits from December 2, 1977, to April 28, 1978, would be paid to the complainant.

Upon receiving the new decision of the Appeal Board, the Ombudsman concluded that the action taken by the Board to extend entitlement for the above period was appropriate, and after advising the Board and the complainant of the results of the investigation, the file was closed.

# THE WORKMEN'S COMPENSATION BOARD

## RECOMMENDATIONS DENIED

## DETAILED SUMMARY NO. 19

On August 3, 1979 the complainant sent a copy of a Workmen's Compensation Board Appeal Board decision to the Ombudsman. In a telephone conversation with a member of the Ombudsman's staff on August 20, he stated his dissatisfaction with the decision which refused to increase his attendance allowance.

The Workmen's Compensation Board was notified of the Ombudsman's intention to investigate. The Chairman indicated that the Board did not wish to make a statement at that time. The file was then referred to a member of our investigative staff for investigation.

The investigation showed that the worker had suffered a severe head injury in 1974. After a lengthy recuperation, he was determined to be 100% disabled by the Workmen's Compensation Board, because of visual impairment, deficiency of mental functioning, dizziness, residual left hemiparesis, and post-traumatic personality changes.

Since the complainant was unable to attend to his own needs and was not able to be left alone, the Board granted his wife an attendance allowance of $60 per month. This allowance was increased to $120 per month retroactive to November 25, 1975. In accordance with the Board's policy outlining the different classifications for those entitled to attendance allowances, the complainant was placed in Group 2.

The complainant appealed the classification. In its decision dated March 12, 1979, the Appeal Board concluded that the allowance was granted in conformity with the policy and that the evidence did not indicate that the Board should depart from that policy. The award was confirmed and the appeal was denied. Amendments to the amounts payable under this schedule increased the monthly award to $204 per month.

During the course of his investigation, the Ombudsman formed the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the decision was based on a policy, which was in part "unreasonable", in that it was too restrictive. In support of this conclusion, the Ombudsman noted that Group 1 head injury victims, according to the policy, would require supervision as for a child. In the Ombudsman's view, notwithstanding the tasks required of the person supervising the injured party, the minimum cost to provide supervision as for a child would be in the neighbourhood of $300 to $400 per month. The Ombudsman also noted that section 52(1)(c) of the

Workmen's Compensation Act required the Board to provide such attendance "as may be necessary as a result of the injury". That being the case, the Ombudsman was of the view that the Board should make a realistic determination of the reasonable costs for such services.

The Ombudsman also came to the conclusion that it was "unreasonable", given the evidence, for the Appeal Board to find that it should not have departed from the guidelines expressed in the policy. This conclusion was based on the evidence of the rehabilitation officer, which indicated that the complainant needed constant supervision and frequent assistance. It appeared that the Board was "unreasonable" to insist that the complainant's attendance allowance should remain at an arbitrary figure stated in guidelines when the cost of the attendance to which he was entitled obviously exceeded that amount.

The Ombudsman, therefore, made the possible recommendations, pursuant to section 22(3)(d) and (g) of the Ombudsman Act, that the Board should alter its policy concerning attendance allowances to take into consideration reasonable costs and that the Appeal Board should revoke its decision and grant the complainant an attendance allowance sufficient to cover reasonable costs.

The Board and the accident employer were invited to make representations with respect to these possible conclusions and recommendations. No response was received from the accident employer.

In its response, the Board indicated that the individuals who were receiving Group 1 and 2 attendance allowances did not require 24-hour attendance or supervision. The Board also outlined the reasons why the complainant did not meet the criteria for Group 3.

The Ombudsman considered the Board's response and issued a final report dated March 1, 1982. In the Ombudsman's view, someone who requires supervision as for a child would require a person to be available at all times to check on him, although the injured party might not require attendance in terms of dressing, washing, eating, etc. It was unreasonable for the Board to assume that the complainant could receive supervision including meal preparation and attendance to the washroom for $204 per month.

The Ombudsman reiterated his possible conclusions and recommended, pursuant to section 22(3)(d) of the Ombudsman Act, that the Board alter its policy of attendance allowances, taking into consideration the reasonable costs. The Ombudsman also recommended that the Board revoke its

decision and award the complainant an attendance allowance sufficient to cover reasonable costs of providing supervision and assistance which his condition necessitated.

On March 28, 1982, the Ombudsman was advised that the Board did not intend to implement his recommendation. A written response to the Ombudsman's report had not been received; however, in the Ombudsman's opinion sufficient time had elapsed and therefore he referred the matter to the Premier pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The results of his findings and the response of the Board were reported to the complainant and the file was closed.

## DETAILED SUMMARY NO. 20

On July 4, 1979, the Appeal Board of the Workmen's Compensation Board rendered a decision denying the complainant entitlement to a permanent disability award for a hearing loss. This decision was subsequently amended on August 15, 1979, awarding the complainant wage loss benefits under section 41 (now section 42) of the Workmen's Compensation Act. On September 17, 1979, the complainant wrote a letter to the Ombudsman requesting that he investigate this decision.

After receiving a reply from the Vice-Chairman of Appeals in response to our notification of intent to investigate this complaint, the file was assigned for investigation.

The investigation of this complaint showed that the complainant had suffered a hearing loss as a result of his exposure to high levels of noise at work. A 25 decibel loss was found in one ear and a 41 decibel loss in the other. To avoid further deterioration in his hearing, the complainant was provided with another job by his employer. The change in job resulted in a twelve-cent-per-hour wage loss.

In its decision, the Appeal Board granted the worker entitlement to benefits to compensate him for that wage loss. These benefits, however, were to be discontinued when his post-hearing-loss earnings equaled his pre-hearing-loss earnings. The worker's earnings had increased because of a union contract granting adjustments to both pay scales. The worker continued to earn less than he would have in his pre-hearing-loss job category.

However, the Appeal Board denied the complainant entitlement to a permanent disability award because, in

the opinion of its Medical Consultant, the complainant's hearing loss was not sufficient to warrant a permanent partial disability award. The Medical Consultant stated that the required 35 decibel loss in each ear had not been established.

During the course of his investigation, the Ombudsman came to the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board had acted unreasonably by fettering its discretion. It appeared to the Ombudsman that the complainant was not granted benefits because he did not meet policy guidelines rather than because of any statutory bar to such entitlement. Because in the Ombudsman's view, if it had not been for the hearing loss, the complainant would not have experienced an impairment to his earning capacity, he met the requirements of section 42(1) [now section 43(1)] of the Workmen's Compensation Act. The Ombudsman made the possible recommendation, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board vary its decision and grant a permanent disability award for bilateral hearing loss.

Since it seemed to the Ombudsman that the Board and the employer could be adversely affected by his possible conclusion and recommendation, he accorded the Board and the employer an opportunity to make representations pursuant to section 19(3) of the Ombudsman Act.

In its response, the Board indicated that the complainant had not met the guidelines as provided for under section 42(3) [now section 43(3)] of the Workmen's Compensation Act. The Board also stated that a reduction in earnings did not establish the existence of a permanent disability for the purposes of an award under section 42(1) [now section 43(1)]. The employer indicated that it did not agree with the Ombudsman's possible recommendation, and agreed with the Board's final disposition of the matter. The Ombudsman carefully considered these representations.

In his report dated August 19, 1981, the Ombudsman concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board had failed to reasonably exercise its discretion by treating what were intended to be guidelines as prerequisites for entitlement. By so doing, the Board had failed to give the complainant's request for a permanent disability award proper consideration. Accordingly, the Ombudsman recommended that the Board should cancel its decision and reconsider exercising the discretion provided by section 42 (now section 43) of the Workmen's Compensation Act.

The Board responded to the Ombudsman's report by stating that, in its opinion, its discretion was referable only to deciding if guidelines were applicable. The Board decided that the use of guidelines in this case was appropriate because any other decision would have been arbitrary. Therefore, the Board did not accept that it had fettered its discretion and declined to implement the Ombudsman's recommendation.

After considering the Board's response, the Ombudsman determined that it was not an adequate or appropriate response to his recommendation. On February 19, 1982, pursuant to section 22(4) and section 22(5) of the Ombudsman Act, the Premier was informed of the results of the Ombudsman's investigation. The complainant and the Board were also notified of the results of the investigation, and the file was closed.

In an attempt to resolve the matter, further discussions were held between the Ombudsman and the Vice-Chairman of the Board on March 3, 1982. As a result of that meeting, the Board provided the Ombudsman with a further written submission which included an excerpt from the publication of the American Academy of Ophthalmology and Otolaryngology. According to this excerpt, the complainant's hearing loss would have disabled him only from hearing faint speech. Given this limited impairment, it could not reasonably be said that he had a permanent disability. In considering these submissions, the Ombudsman remained of the view that the hearing impairment suffered by the complainant had caused an impairment to his earning capacity and, therefore, was sufficient to warrant an award from the Board.

## DETAILED SUMMARY NO. 21

On October 30, 1978, the complainant's M.P.P. advised the Ombudsman of the worker's dissatisfaction concerning a decision of the Appeal Board of the Workmen's Compensation Board. The M.P.P. requested that an investigation be undertaken by the Ombudsman. The worker was dissatisfied with the Appeal Board's decision to confirm a 65% permanent disability award as an adequate reflection of his disabilities stemming from his accident on April 25, 1969.

The Board was advised of the Ombudsman's intention to investigate the matter. The Vice-Chairman of Appeals indicated that the Board did not want to make a statement and the file was then assigned for investigation.

The investigation showed that following the accident on April 25, 1969, the complainant underwent spinal surgery in May, 1972. After the surgery, it became apparent that the complainant was suffering from a psychiatric disability and he was referred to a number of psychiatrists.

In July, 1973, the Board psychiatric consultant reviewed the file and without the benefit of an examination concluded that the relationship between the complainant's compensable accident, the subsequent treatment and his psychiatric condition was at least minimal. The Board surgical consultant reviewed the previous memoranda and concluded that the psychiatric disability was in the 10% to 30% range. In May, 1976, the Board Senior Pension Medical Officer assessed the complainant's psychiatric disability at 70% but restricted the award to 35%. No specific reasons were given by the Board pension advisor for this restriction. The complainant was eventually granted a 35% permanent disability award for his psychiatric disability and a 30% award recognizing his residual physical disability.

During the course of his investigation, the Ombudsman came to the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board's decision, which confirmed the 35% award for the emotional disability, was "unreasonable". Given the available evidence, it appeared to the Ombudsman that the Appeal Board was unreasonable in placing a 50% limitation on the complainant's entitlement regarding his psychiatric disability.

The Ombudsman's opinion was based on the Board's policy concerning non-measurable pre-existing conditions, which he assumed was the basis for the reduction in the award. According to that policy, if a pre-existing condition produced a major pre-accident disability, the total assessment of the award should be reduced by 50%. However, in reviewing the evidence, the Ombudsman was unable to ascertain any indication of a major pre-existing disability. The Ombudsman noted a social worker's report in May, 1978, which failed to establish that the worker's psychological state was in any way a deterrent to his capacity to work before the accident. The complainant's family doctor reported that there was no indication that he was not a well-balanced man before the injury. The Ombudsman, therefore, made the possible recommendation, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board vary its decision and grant the complainant the full assessed value of his permanent partial disability pension recognizing the non-organic component of the disability.

Both the employer and the Board were accorded an opportunity to make representations concerning the Ombudsman's possible conclusions and recommendation. Before responding, the Board referred the matter to its Medical Branch to determine the reasons for the reduction. The Board also reviewed its relevant policy. On November 17, 1980, the Board advised the Ombudsman that it was not prepared to implement the possible recommendation because, in its view, the accident was minor and there was no dramatic triggering incident to cause any major psychological disability. The Appeal Board also indicated that it was unreasonable to assume that all of the psychological disability arose out of the compensable accident.

On October 1, 1980, the employer advised the Ombudsman that the complainant did not have any psychological problems, nor was he under any mental stress, while in their employ.

After receiving these representations, the Ombudsman made further inquiries to establish the actual policy in effect at the time of the decision. Policies concerning psychological disability dated July 11, 1974, and the Second Injury and Enhancement Fund dated May 5, 1970, were provided by the Board. "Guidelines concerning the Adjudication with Respect to Mental Conditions under Workmen's Compensation", dated October, 1979, were also submitted by the Board. To clarify the issue, the Board was asked in a letter dated May 21, 1981, to provide the exact policy which was relied upon to reduce the benefits. On June 3, 1981, the Ombudsman was advised that the Board's decision in this case was based on the practice of the Board, and not any specific policy.

After considering these further submissions, the Ombudsman issued a report on July 9, 1981. In that report he expressed his opinion that the Appeal Board's decision was "unreasonable" as there was insufficient evidence of a pre-existing condition to justify a reduction in the award granted for the psychological disability. The Ombudsman, therefore, recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Board revoke its decision and grant the complainant the full assessed value of his permanent partial disability award.

On November 5, 1981, the Board responded and indicated that it would not implement the Ombudsman's recommendation because the psychiatric award was reduced by one-half of its assessed value in accordance with the policy at that time. The Board indicated that the policy was to reduce such awards where the effect of the prior condition was high and the aggravating accident was minor. The Board

indicated that the policy now in use recommended reductions when regard was given to the extent the pre-existing condition influenced the injured employee's pre-accident work record and social integration. Because of the new policy, the Board indicated that it would reassess the complainant. However, the reassessment was not possible because the complainant had moved to Israel. The Board then suggested that it would reassess the complainant if he returned to Ontario.

During consideration of the Board's response, the Ombudsman noted the confusion surrounding the policy in effect at the time of the decision and the lack of evidence to substantiate a pre-existing psychological disability. He concluded, therefore, that the Board's suggestion that the complainant be reassessed in 1981 was not an adequate and appropriate response to his recommendation. In the Ombudsman's opinion, given the evidence before the Appeal Board in 1978, notwithstanding which policy was in effect, it was unreasonable to reduce the psychiatric award by 50%. Accordingly, a copy of his report and the Board's response were provided to the Premier, pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The Workmen's Compensation Board and the complainant were accordingly advised and the file was closed on January 4, 1982.

## DETAILED SUMMARY NO. 22

This was a complaint against the Workmen's Compensation Board of Ontario for denying the complainant entitlement to a temporary supplement under the provisions of section 42(5) of the Workmen's Compensation Act. The complainant felt that as a result of his compensable accident on January 29, 1964, his impairment to earning capacity was significantly greater than was usual for the nature and degree of his injury as he had been compelled to change his occupation to a lower paying job.

After receiving the Vice-Chairman of Appeals' statement in reply to our notification of intent to investigate this complaint, the file was assigned for investigation.

The investigation revealed that on January 29, 1964, the complainant injured his back while in the course of his employment as an underground miner. The complainant returned to work in March, 1964, and while seeking regular medical attention continued to work until 1973. In July, 1973, he suffered a recurrence of his back disability and in April, 1974, surgery was performed. Due to the complainant's change in occupation from underground mine

# 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 |
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| | | 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 inquire into the provisions of the Public Hospitals Act with a view to preventing acts flowing from Sections 44 to 50 of that Act which may be improperly discriminatory. 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 inquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report was received and considered by the Ministry, which intends to meet shortly with representatives of both the O.M.A. and the O.H.A. |
| | | | 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 provisions 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 these 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 |
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| | | 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 analogous 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 452, R.R.O. 1980). 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. | |
| | | | 9, Recommendation 1 | That all decisions made by OHIP in respect of any claim made for benefits pursuant to Code R990 (now R991) be subject to the appeal procedures set out in the General Manager's directive dated May 21st, 1981 and the Memorandum of the Director of the Professional Services Branch dated August 13, 1981. | OHIP continues to consider that there is no appeal where the claim for benefits is denied on the grounds that the procedure is available in Ontario. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | MINISTRY OF HOUSING | | | |
| 7 | 17 | | 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. | The Ontario Housing Corporation has instituted a formal appeals policy allowing applicants and tenants to seek review of decisions made by Local Housing Authorities. They are informed of the reasons for the decision and may appeal it to the members of the Housing Authority.<br><br>The Corporation has rewritten portions of the Manual, and the revision is continuing. |
| | | | 9 | | The Committee deferred further comment and consideration of the Corporation's response to the recommendation until it has received and reviewed the field manuals as amended. |

| OMBUDSMAN'S REPORT NO. | DETAILED SUMMARY NO. | RECOMMENDATION DENIED | CONSIDERED IN SELECT COMMITTEE REPORT NO. | RECOMMENDATION OF COMMITTEE | PRESENT STATUS |
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| | | 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 decision 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.<br><br>After receiving the Medical Referee's report, the Board reconvened and determined that the policy of Benefit Doubt was not appropriate in this case. The Appeal was denied. |
| | | | 8 | | The Committee in its Eighth Report noted its "grave reservations |

| 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) | | | 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.<br><br>This case was again discussed during the Committee's hearings in September, 1981. It was agreed that the Ombudsman and the Board would make submissions on the applicability of the policy of the "benefit of doubt". |

# 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 immented unless it is made compulsory. Has been further delayed by consideration of including cooperative education students under workmen's compensation scheme. |

| 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. | The Select Committee on Pensions has endorsed the recommendations of the Royal Commission on the Status of Pensions in Ontario, which would give effect to the Committee's recommendation. The Ministry intends to present the required amendment. |

| 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 | That: 1) all applicants for the right to construct a nursing home be informed well in advance of the due date for application, of the criteria upon which the Ministry intends to rely in making the award for a nursing home including the weight to be attached to each factor.<br><br>3) The Nursing Homes Act, 1972, be amended in order that provision be made for the successful candidate for the construction of a new home to make application for a conditional licence immediately upon the making of the award to him. This licence should be conditional | May 4, 1977 | Agreed to implement recommendation. | 5, page 32. The Committee considered this complaint for the purpose of following up with the Ministry as to the implementation of the Ombudsman's recommendation as set out at pages 177 and 178 of the Ombudsman's 3rd Report.<br><br>The Executive Chairman of the Area Planning Co-ordinators responded on behalf of the Ministry as to the additional steps which have been taken subsequent to the letter from the Minister to the | | 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<br><br>(cont'd) | | | | | |
| | | on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior to the granting of an unconditional licence. | | | Ombudsman dated May 4, 1977. The 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 membership on the Hospital Appeal Board. That the Minstry 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 inquiry be assigned to an organization such as the Ontario Council of Health. | Jan. 1978 | The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general do not fall within the jurisdiction of the Ombudsman and for that reason the Ministry could only accept the Ombudsman's comments and recommendations as informal observations and suggestions. | 5, Recommendation 27<br><br>6, Recommendation 1 | That the Ministry of Health implement as soon possible the recommendation of the Ombudsman.<br><br>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 instituted inquiries of the Ontario Council of Health in an effort to gain necessary insights into the process in other jurisdictions. The Council's report was received and considered by the Ministry, which intends to meet shortly with representatives of both the O.M.A. and the O.H.A. |

| 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<br><br>(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". | |

| 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 offset 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

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Agriculture and Food | 26 | 12 | 2 | 1 | 41 |
| Agricultural Rehabilitation and Development Directorate | | 1 | | | 1 |
| Crop Insurance Commission of Ontario | 3 | | | | 3 |
| Farm Products Appeal Tribunal | 1 | | | | 1 |
| Farm Products Marketing Board | 3 | | | | 3 |
| Milk Commission of Ontario | 1 | | | | 1 |
| Ontario Drainage Tribunal | 1 | | | | 1 |
| Ontario Flue-Cured Tobacco Growers' Board | 1 | | | | 1 |
| Ontario Milk Marketing Board | | 1 | | | 1 |
| Attorney General | 23 | 73 | | 6 | 102 |
| Assessment Review Court | 1 | 4 | | | 5 |
| Criminal Injuries Compensation Board | 3 | 4 | | 1 | 8 |
| Land Compensation Board | | 1 | | 1 | 2 |
| Ontario Municipal Board | 12 | 25 | 1 | 6 | 44 |
| Public Trustee | 8 | 1 | 1 | 1 | 11 |
| Colleges and Universities | 35 | 52 | 2 | 2 | 91 |
| Colleges of Applied Arts and Technology | 7 | 5 | 3 | | 15 |
| Community and Social Services | 69 | 164 | 12 | 41 | 286 |
| Centres for the Developmentally Handicapped | | 3 | | | 3 |
| Training Schools | 15 | 4 | 4 | | 23 |
| Total | 83 | 171 | 16 | 41 | 311 |
| Social Assistance Review Board | 52 | 17 | 1 | 3 | 73 |

## COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Consumer and Commercial Relations | 25 | 46 | 2 | 8 | 81 |
| Liquor Control Board | 9 | 9 | 1 | | 19 |
| Liquor Licence Board | 1 | 9 | | | 10 |
| Ontario Racing Commission | | 7 | | 2 | 9 |
| Ontario Securities Commission | 4 | 4 | | 1 | 9 |
| Pension Commission of Ontario | 1 | 3 | | | 4 |
| Residential Tenancy Commission | 1 | 1 | | | 2 |
| Residential Premises Rent Review Board | 3 | 8 | | | 11 |
| Correctional Services | 5 | 39 | 1 | 2 | 47 |
| Correctional Centres | 240 | 465 | 28 | 34 | 767 |
| Detention Centres | 313 | 595 | 36 | 28 | 972 |
| Jails | 151 | 490 | 15 | 20 | 676 |
| Community Resource Centres | | 1 | | | 1 |
| Total | 709 | 1590 | 80 | 84 | 2463 |
| Ontario Board of Parole | 9 | 15 | | 1 | 25 |
| Culture and Recreation | 12 | | | 1 | 13 |
| Ontario Lottery Corporation | 1 | 2 | | 1 | 4 |
| Education | 15 | 21 | 5 | 3 | 44 |
| Ontario Institute for Studies in Education | | 1 | | | 1 |
| Teacher's Superannuation Commission | 2 | 1 | | | 3 |
| Energy | 2 | 2 | | | 4 |
| Ontario Energy Board | | | | 1 | 1 |
| Ontary Hydro | 32 | 24 | 4 | 1 | 61 |

COMPLAINTS AND INFORMATION REQUESTS BY PROGRAM/AGENCY

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Environment | 60 | 24 | 1 | 3 | 88 |
| Environmental Assessment Board | 14 | | | | 14 |
| Government Services | 22 | 11 | 1 | 2 | 36 |
| Public Service Superannuation Board | 14 | 2 | 1 | | 17 |
| Health | 20 | 30 | | 10 | 60 |
| Psychiatric Hospitals | 66 | 45 | 14 | 9 | 134 |
| O.H.I.P. | 26 | 31 | 3 | 6 | 66 |
| Total | 112 | 106 | 17 | 25 | 260 |
| Alcoholism and Drug Addiction Research Foundation | 1 | | | | 1 |
| Board of Directors of Chiropractic | 2 | 1 | | | 3 |
| Board of Funeral Services | 1 | | | | 1 |
| Clarke Institute of Psychiatry | | 2 | | | 2 |
| Funeral Services Review Board | 1 | 1 | | | 2 |
| Health Disciplines Board | 21 | 4 | 3 | | 28 |
| Review Board for Psychiatric Facilities | 1 | | | | 1 |
| Municipal Affairs and Housing | 12 | 26 | 1 | 3 | 42 |
| Local Housing Authorities | 2 | | | | 2 |
| Ontario Housing Corporation | 23 | 35 | 4 | 5 | 67 |
| Ontario Land Corporation | 1 | | | | 1 |
| Ontario Mortgage Corporation | 3 | | | | 3 |
| Industry and Tourism | 3 | 6 | | | 9 |
| Ontario Development Corporation | | 1 | | | 1 |
| Northern Ontario Development Corporation | 1 | | | | 1 |
| Intergovernmental Affairs | 5 | 6 | | 1 | 12 |

## COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| Ministries/Agencies | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Labour | 22 | 40 | | 5 | 67 |
| Employment Standards - Panel of Referees | 2 | 1 | | 1 | 4 |
| Ontario Human Rights Commission | 18 | 32 | | 3 | 53 |
| Ontario Labour Relations Board | 10 | 12 | | 1 | 23 |
| Workmen's Compensation Board | 522 | 693 | 15 | 66 | 1296 |
| Natural Resources | 49 | 32 | 9 | 9 | 99 |
| Northern Affairs | 3 | | 1 | 1 | 5 |
| Ontario Northland Transportation Commission | 1 | | | | 1 |
| Revenue | 32 | 114 | 8 | 15 | 169 |
| Solicitor General | 6 | 8 | | 1 | 15 |
| Animal Care Review Board | 1 | | | | 1 |
| Boards of Commissioners of Police | | 2 | | | 2 |
| Coroner's Council | 3 | 1 | 1 | | 5 |
| Ontario Police Commission | 12 | 8 | | | 20 |
| Ontario Provincial Police | 16 | 44 | 1 | 1 | 62 |
| Transportation and Communications | 99 | 105 | 5 | 19 | 228 |
| Ontario Highway Transport Board | 1 | 3 | | | 4 |
| Treasury and Economics | | 2 | | | 2 |
| Ontario Municipal Employees Retirement Board | 8 | | | | 8 |
| **Government of Ontario-Other** | | | | | |
| Management Board | | 2 | | 1 | 3 |
| Civil Service Commission | 1 | 1 | 1 | 1 | 4 |
| Grievance Settlement Board | 2 | | | | 2 |
| Public Service Grievance Board | 1 | | | | 1 |

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Niagara Escarpment Commission | 1 | 4 | | | 5 |
| Office of the Assembly | | 1 | | | 1 |
| Office of the Premier/Cabinet Office | | 1 | | 1 | 2 |
| Office of the Ombudsman | | 55 | | 118 | 173 |
| Provincial Secretariat for Justice | | 1 | | | 1 |
| Provincial Secretariat for Social Development | 1 | | | 1 | 2 |
| Executive Council | | 1 | | | 1 |
| Ontario Government-Other | | 13 | | 4 | 17 |
| Government of Ontario Total | 2197 | 3511 | 187 | 452 | 6347 |
| Courts | | | | | |
| Total | | 245<br>245 | | 13<br>13 | 258<br>258 |



FEDERAL GOVERNMENT
DEPARTMENT/AGENCIES

| | | | | | |
|---|---|---|---|---|---|
| Air Canada | | 2 | | | 2 |
| Canadian Penitentiary Services | | 3 | | | 3 |
| Federal Penitentiaries | | 17 | | | 17 |
| Central Mortgage and Housing | | 6 | | 1 | 7 |
| Consumer and Corporate Affairs | | 11 | | 2 | 13 |
| Employment and Immigration | | 182 | | 15 | 197 |
| Health and Welfare | | 97 | | 21 | 118 |
| Indian Affairs and Northern Development | | 5 | | 5 | 10 |
| Justice | | 1 | | | 1 |
| National Parole Board | | 2 | | 1 | 3 |
| Post Office | | 22 | | 2 | 24 |
| Public Works | | 1 | | | 1 |
| Revenue Canada - Taxation | | 58 | | 10 | 68 |

## COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Royal Canadian Mounted Police | | 10 | | | 10 |
| Transport | | 3 | | | 3 |
| Veterans' Affairs | | 15 | | 1 | 16 |
| Federal Government - Other | ___ | 66 | ___ | 16 | 82 |
| Total | | 501 | | 74 | 575 |
| **PRIVATE** | | | | | |
| Associations/Groups | | 93 | 1 | 13 | 107 |
| Children's Aid Society | | 22 | | 3 | 25 |
| Catholic Children's Aid Society | | 5 | | | 5 |
| Complaint Bureaus | | 1 | | | 1 |
| Doctors - Patients | | 58 | | 7 | 65 |
| Hospitals | | 41 | | 4 | 45 |
| Lawyers - Clients | | 226 | | 46 | 272 |
| Law Society of Upper Canada | | 73 | | 5 | 78 |
| College of Physicians and Surgeons | | 6 | | 1 | 7 |
| Private Business | | 803 | 3 | 59 | 865 |
| Private Individual | | 248 | | 25 | 273 |
| Universities - Private | | 15 | | 2 | 17 |
| Member of Parliament | | 6 | | 1 | 7 |
| Private - Other | ___ | 397 | ___ | 123 | 520 |
| Total | | 1994 | 4 | 289 | 2287 |
| **MUNICIPALITIES/LOCAL AUTHORITIES** | | | | | |
| Municipal Conservation Authority | | 2 | | | 2 |
| Municipal Boards of Education | | 34 | | 6 | 40 |
| Municipal Fire Department | | 3 | | | 3 |
| Municipal Garbage | | 2 | | | 2 |
| Municipal Governing Body | | 38 | | 4 | 42 |
| Municipal Housing | | 20 | | 1 | 21 |
| Municipal Hydro | | 12 | | | 12 |
| Municipal Parks/Recreation | | 3 | | | 3 |
| Municipal Planning Boards | | 14 | | 5 | 19 |

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| Municipal Police | | 194 | 2 | 7 | 203 |
| Municipal Public Health | | 2 | | 1 | 3 |
| Municipal Roads | | 24 | | 3 | 27 |
| Municipal Sewers | | 13 | | 2 | 15 |
| Municipal Taxes | | 38 | | 3 | 41 |
| Municipal Transit | | 4 | | | 4 |
| Municipal Water | | 8 | | | 8 |
| Municipal Welfare | | 59 | | 3 | 62 |
| Committees of Adjustment | | 3 | | | 3 |
| Municipal - Other | ___ | 109 | ___ | 18 | 127 |
| Total | | 582 | 2 | 53 | 637 |
| INTERNATIONAL | | | | | |
| | ___ | 11 | ___ | 2 | 13 |
| Total | | 11 | | 2 | 13 |
| OTHER PROVINCES | | | | | |
| | ___ | 25 | ___ | 4 | 29 |
| Total | | 25 | | 4 | 29 |

## COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

| | WITHIN JURISDICTION | OUTSIDE JURISDICTION | NOT DETERMINED | INFORMATION REQUESTS/ SUBMISSIONS | TOTAL |
|---|---|---|---|---|---|
| NO ORGANIZATION SPECIFIED | | | | | |
| Total | ____ | 37<br>37 | 10<br>10 | 15<br>15 | 62<br>62 |
| OVERALL TOTAL | 2197 | 6906 | 203 | 902 | 10208* |

*This figure exceeds the number of closed complaints (10175) because some complaints involved more than one organization.