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TENTH REPORT

The Ombudsman | Ontario

APRIL 1, 1982 - MARCH 31, 1983

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The Ombudsman | Ontario

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June 25th, 1983

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

Dear Mr. Speaker:

It is with pleasure that I present the Tenth Annual Report of the Ombudsman for the period April 1, 1982 to March 31, 1983.

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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PREFACE

After over four and one-half years as Ombudsman of Ontario I wish to take a short while to reflect on the time I have spent serving the citizens of this fine province.

Leaving the Supreme Court of Ontario to become the second Ombudsman posed a challenge never before presented to me and one which caused some grave concerns. I was following a tradition established by a high-profile defence attorney, a man well-known to almost every household in Ontario. At first blush I was tempted to refuse the appointment. Upon reflection, I can honestly say my term in Office brought home to me the great service the Office brings to you, the citizens.

Too frequently we are prone to criticize our governmental organizations as being too bureaucratic, too cumbersome and far too insensitive to the needs of the citizenry. On the contrary, we in Ontario are blessed with a strong, understanding and sympathetic democracy. Throughout my dealings with the various Ministries, boards, agencies and commissions I was constantly surprised at the dedication and total cooperation of the civil servants. My meetings with all levels of government and with the elected representatives of all three parties took place in an atmosphere of support, openness and conciliation.

My success as Ombudsman was also due in large measure to my fine staff. These men and women, investigators and lawyers, clerical staff and support staff, accepted the challenges ungrudgingly. They travelled throughout the province to ensure justice would prevail. They accepted my philosophies without question and instilled in each other the pride necessary to accomplish their goals.

At the outset I often wondered whether an Ombudsman could be of benefit to a complainant. Shortly after taking Office I was convinced of the importance of this great institution and I encourage my replacement to continue the fine work commenced with the founding of the Ombudsman's office.

I learned very quickly the importance of meeting my counterparts throughout the world. I benefited, as did my staff, by attending at their offices, talking with their

employees and exchanging thoughts and ideas. Likewise I, as a Director of the International Ombudsman Institute, was able to impart Ontario's successes to other Ombudsmen. My attendance, along with certain members of my staff, at Ombudsman conferences, kept the Ontario Office of the Ombudsman in the forefront. It allowed us the privilege of comparing our operation with others, confirming the fact that your Office, the Ontario Office of the Ombudsman, is, in my opinion, without a doubt the finest, most efficient office in existence. It must be kept that way and I urge my successor to become involved in the international aspect of Ombudsmanship.

One of my first tasks upon taking office was to reorganize the workflow and establish priorities within the various Directorates. Certain areas received additional strength in management deployment, while others were amalgamated. Our backlog was in an unmanageable position and the current work in progress (open files receiving attention) was increasing at an alarming rate. Constant nurturing and supervision reduced the backlog of those investigations which had been in progress within our Office for more than thirty-three months from 157 to 17, at this year's fiscal year end. Similarly, our work in progress was reduced from 2,714 investigations to an all time low of 1,086, accomplished without sacrificing quality for quantity. Throughout this entire time, our intake of complaints and information requests remained relatively stable, at approximately 10,000 each year.

Frequently my Office receives complaints which do not fall within my jurisdiction. The complainants are given every assistance through our referral system. The drafters of the Ombudsman Act are also to be congratulated for their thorough approach as to how an Ontario Ombudsman shall conduct his or her affairs. In only two instances did I find it necessary to approach the Courts to determine our jurisdiction. However, there are areas within the present Act which should be amended, and with this in mind I submitted my recommended amendments to the authorities for consideration. Hopefully, in the not too distant future, these amendments will be received favourably.

The drafters of the Act in their wisdom were careful to ensure the independence of the Ombudsman and enshrined this independence in the Ombudsman Act. This granted me the authority to hire my own staff and conduct the affairs of the Office without interference from the elected officials. I am not without scrutiny. My budget is approved by the Board of Internal Economy; my Office is audited

yearly by the Provincial Auditor; I appear before the Standing Committee on General Government and the Standing Committee on Public Accounts for a review of office procedures and expenditures. Along with the above, my annual report is presented to the House, and the Select Committee on the Ombudsman has the mandate to review and make recommendations to the House based on this annual report. More recently, the Legislature has seen fit to expand the mandate of the Select Committee, enabling that Committee to also review my budget. I can only caution against any attempts to erode the independence of the Office. If this were to happen then the citizens of Ontario would suffer and the effectiveness of the Office would be greatly diminished. Each Committee can be and has been a benefit to the Office, but each must appreciate the role and function the Ombudsman of Ontario is called upon to perform. It is his or her mandate to investigate complaints against governmental organizations unimpeded, and any interference, regardless how small, will undermine the Ombudsman's effectiveness.

It is my fervent hope that the past cooperation between my Office and the various Committees continues. Differences will arise; this is normal. However, differences which tend to minimize the importance and effectiveness of the Office serve no purpose and can only, in the long run, destroy the independence of the Office.

The future for the Office of the Ombudsman of Ontario shines brightly. I wish my successor well and trust he or she will receive the support of all governmental organizations which I received and treasured throughout my years in service.

INTRODUCTION

Concentrating on the past fiscal year, 1982/83, I am pleased to comment on our successful completion of the longstanding North Pickering investigation.

Some 110 complainants (former landowners) complained to the Ombudsman about the circumstances of the sale of their land to the Province of Ontario for the North Pickering Community Development Project, later to become known as the North Pickering Project. The majority of these complaints were brought to our Office in 1976, while others were received at an earlier date. Hearings under oath were conducted on a total of 387 days, resulting in well over 80,000 pages of recorded transcripts. In mid-November 1981, I was presented with a five-volume report of approximately 3,000 pages constituting a review of the investigation. From these volumes, I was able to formulate my tentative conclusions and recommendations and offer them to the now Minister of Municipal Affairs and Housing. Several months of discussions subsequently culminated in an equitable way of resolving the landowners' claims for compensation, excepting those landowners who had been characterized as "investors". I remain of the view that this group of former landowners, deemed to be "investors", should not have been excluded from the compensation scheme offered by the Ministry of Municipal Affairs and Housing. Accordingly, I have further reported on this group of cases in the form of a "Recommendation Denied" detailed summary under Chapter 2, page 69 of this report.

Also, during the past fiscal year, the Office was instrumental in resolving complaints concerning the registration of the Remor Investment Management Corporation by the Registrar of Mortgage Brokers of the Ministry of Consumer and Commercial Relations. The complainants, many of whom lost their life savings in the corporation's collapse, contended maladministration on the part of the Registrar in the licensing of the Remor Investment Corporation. At the conclusion of the investigation, the Minister accepted, in total, my recommendations which, in my opinion, resulted in a fair settlement to those investors affected. Total financial losses to investors have been estimated at $6.6 million.

Both of these matters noted above involved many very complex issues whose resolution required an exceptional amount of time and diligence on the part of my Office and

the governmental agencies which were the subject of the investigation.

I remain of the view that it is important to address the root causes of complaints, as well as individual complaints one at a time. Let me refer to one matter involving the Social Assistance Review Board of the Ministry of Community and Social Services.

I have made repeated recommendations to the Ministry of Community and Social Services regarding the submissions of the Director of Income Maintenance to the Social Assistance Review Board. It has been my view for some time that in family benefits appeals, the submissions of the Director failed to adequately advise the Social Assistance Review Board of all the information the Director had before him when he made his decision to deny an individual assistance. This lack of information appeared to be the root cause of difficulties in cases which involved applications for assistance on medical grounds, in particular. In several cases, I advised the Director of Income Maintenance that he should provide the Social Assistance Review Board with a comprehensive picture of all the evidence which had been provided to him, and upon which he had made his findings as to eligibility in all cases where an appeal had been taken. Accepting that the Director of Income Maintenance was vested with discretion insofar as his written submissions were concerned, it was my view that he should exercise that discretion judicially and that he ought reasonably to provide the Board with a fair account of the evidence which was before him when he made his decision.

I am pleased to note that the recently appointed Director of Income Maintenance has responded to my concerns by indicating his agreement with my view that it is only reasonable and just for the Director to provide the Review Board with a fair account of the evidence which was available to him when he made his decision. He also advised that the current practice is to provide more detailed summaries of the evidence in the Director's submission to the Social Assistance Review Board. Recent cases which have come to my attention do appear to include more complete submissions by the Director.

I congratulate the Director of Income Maintenance on his willingness to initiate such an important procedural improvement. Cooperation such as this makes my task less difficult.

In my Ninth Report I outlined the chronology of events pertaining to my investigation of 135 cases relating to how the Workers' Compensation Board assesses workers for permanent disability awards under section 42(1) [now section 43(1)] of the Workers' Compensation Act. Although the Select Committee on the Ombudsman supported my interpretation of section 42(1), the then Minister of Labour preferred a different legal opinion which supported the Board's interpretation of section 42(1). Ultimately, 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 those cases further. My purpose was to determine if the level of permanent disability assessed by the Board for each worker was reasonable in view of the medical findings.

In September 1982, I advised the Select Committee that 126 of the total 135 cases had been closed. Of the remaining nine cases, three recommendations were made to the Board, all of which were accepted. Five of the cases were not supported; however, in one case we discovered an administrative error concerning the payment of arrears and it was rectified by the Board. The final complainant chose to ask the Board for a reconsideration and asked me to discontinue my investigation.

During this reporting period all 135 cases relating to section 42(1) of the Workers' Compensation Act were closed.

In my last report, the Ninth Report of the Ombudsman, I made mention 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 effectively to the large number of non-jurisdictional complaints the Office receives each year. We have accomplished this even though our intake of work has remained approximately the same or has increased slightly over the years.

As I have already stated in the preface to this report, my first task upon taking office was to reorganize the work flow and establish priorities within the various directorates so as to reduce an unmanageable backlog and the current work in progress, which was increasing at an alarming rate. It appears that the steps this Office has implemented to remedy the backlog of files and reduce in-progress work are now beginning to pay dividends.

For instance, the volume of work received by my Office has remained relatively the same during my term. More recently, during this reporting period, the volume has increased. Nonetheless, my Office has been able to significantly reduce the number of investigations carried over at year end to 1,086 from 1,457 investigations the previous fiscal year -- a 25% decrease. More importantly, over the past four years, the number of in-progress investigations carried over at year end has been reduced by 60% from the peak of 2,714 investigations in progress on March 31, 1980. The figure of 1,086 in-progress investigations carried over at this year end is now, in fact, the lowest number since the Office was instituted in 1975.

The trend towards a reduced number of in-progress investigations carried over at year end is graphically illustrated on page 13. The graph shows that the peak of 2,714 in-progress investigations on March 31, 1980 was reduced to 1,634 in-progress investigations on March 31, 1981. A further reduction to 1,457 in-progress investigations occurred on March 31, 1982. This figure was again reduced by 25% to 1,086 in-progress investigations at March 31, 1983.

Not only has my Office been successful in reducing its number of in-progress investigations carried over at year end, we have also been able to reduce the time in which those investigations have remained in progress. In this regard, I am pleased to state that we have further reduced the carryover of investigations with a time span in excess of 33 months from 157 investigations on March 31, 1982 to 17 investigations on March 31, 1983. The remaining 17 investigations, which include three North Pickering cases undergoing further review by the Ministry, involve complex factual and legal issues. The ability of my Office to maintain manageable case load levels while ensuring that the lengthier cases are not carried over from year to year is the critical factor in ensuring further improvements in our efficiency.

I am pleased to report that the statistics included herein demonstrate that my Office is continuing to make significant progress in terms of more effective and timely service to the citizens of Ontario. Figures pertaining to the volume of complaints received, the number of complaints closed, and the year end carryover of in-progress investigations all reflect a positive trend compared to previous years.

Specifically during this reporting period, April 1, 1982 to March 31, 1983, my Office received 10,754 complaints and information requests. This figure is 12.4% higher than the previous year and is the highest figure over the past four years.

This year, the volume of complaints and information requests closed increased from 10,175 to 11,801 compared with the previous fiscal year.

The majority of these complaints and information requests were closed within several months of their receipt by my Office. In actuality, 73.3% or 8,656 were fully handled within one month. 86.6% or 10,228 were closed within six months, and only 7.8% or 921 took longer than one year to close. In terms of actual numbers, more complaints and information requests were closed within each of these time spans compared with the previous fiscal year.

This year I have carried out my intention, as outlined in my Ninth Report, to report statistical information in a simpler fashion, based on the number of complaints dealt with by my Office. Also, in keeping with earlier statements that I have made to the Select Committee in September, 1982 and in a subsequent letter to the Chairman of that Committee, my Office has discontinued expressing "average duration to closing" statistics. I explained that this term has been a source of misinterpretation and does not accurately reflect the time required by my Office to close complaints. Instead, duration-to-closing is expressed by the number of complaints closed within a given period of time. The chart found on page 14 illustrates duration-to-closing information for the fiscal year 1982/83 along with other statistical highlights contained in this report. Unlike previous years, our statistics now account for multiple allegation complaints.

While speed in investigations is important, it would be tragic if our humanity were set aside in the drive for efficiency. In an Ombudsman's office there must be human contact between investigators and complainants, and between investigators and government officials, so that even if the result of the investigation is disappointing to either side, the process itself is not. Both complainant and government must feel that they were truly heard by the Ombudsman.

Human contact takes time. Real discussion of difficult issue takes more time. But if we forget the importance of taking the time, then the real value of the Ombudsman idea will have been lost.

REGIONAL OFFICES

On June 15, 1979, our first regional office was established in Thunder Bay, as it is the centre of far northwest Ontario and those remote regions which have the most difficulty being serviced by the main office in Toronto. A second regional office was subsequently opened in 1981 in North Bay. Operation of both offices has proved to be successful and cost-efficient, rendering excellent service to the north central and northwest portions of the province.

A third regional office in Ottawa has been opened unofficially as of March 31, 1983. An official opening date has been scheduled for late May, 1983.

The Ottawa office will service the east and northeast part of the province and complete the west-to-east bridge of Ombudsman regional offices. Geographically, this office services a population of approximately 1.3 million people, covering some 19 electoral districts. In addition, 10 provincial correctional facilities and two psychiatric hospitals will also be serviced by staff from the Ottawa regional office. Based on the number of complaints emanating from this geographical region, studies show that it is cost-efficient to open a regional office rather than sending hearings officers and investigators on a regular basis from Toronto into that region.

PRIVATE HEARINGS

I remain of the view that it is essential for the Office of the Ombudsman to be as accessible as possible to all the people of Ontario regardless of where they reside. In keeping with this objective, staff members from the Toronto Office and our regional offices in both Thunder Bay and North Bay collectively visited a total of 79 communities province-wide during this reporting period. In total, our staff received 1,211 complaints and information requests in the course of these hearings.

I am confident that the private hearings conducted by the newly-established Ottawa regional office will augment the accessibility of the Office of the Ombudsman to the citizens of eastern Ontario.

In my Eighth Report, I reported that the Office altered its hearings schedule and focused on visiting the smaller communities so that our staff could devote more of their efforts to clearing up a rather large case load. During the ninth reporting period, and again during this reporting period, the Office returned to visiting the larger centres in the province. While only slightly fewer complaints were received this year over last year, the budget for the hearings remained approximately the same. This is, in part, due to the fact that hearings conducted in the north by our staff members from the regional offices are supplemented with staff from the Toronto office only when necessary.

Date		Location	No. of Complaints and Info. Requests Received	No. of Interviews Conducted
1982				
April	1	Smith Falls	13	11
	5/6	Sudbury	34	33
	14	White River	1	1
	15	Marathon	2	2
	20	Bancroft	7	7
	21	Barry's Bay	8	6
	22	Huntsville	16	16
May	4	Beardmore	2	2
	5	Longlac	3	3
	5/6	Sault Ste. Marie	11	11
	6	Geraldton	2	2
	11	Welland	9	7
	12	St. Catharines	57	51
	19	Armstrong	7	6
June	1	Port Elgin	6	6
	1	Schreiber	2	2
	2	Owen Sound	15	15
	2	Nipigon	1	1
	2/3	Timmins	25	25
	3	Collingwood	13	12
	4	Kirkland Lake	15	15
	22	Barrie	18	18
	23	Orillia	24	24
	24	Gravenhurst	15	15
July	13	Red Lake	7	7
	14/15	Kenora	9	8

Date		Location	No. of Complaints and Info. Requests Received	No. of Interviews Conducted
July	14/15	Windsor	63	60
Aug.	24	Hawkesbury	18	13
	25/26	Ottawa	39	33
Sept.	8/9	Sault Ste. Marie	12	11
	14	Sarnia	25	21
	14/15	Fort Frances	3	3
	15	Grand Bend	5	5
	16	Goderich	16	16
	16	Rainy River	11	8
Oct.	5	Cambridge	14	14
	6/7	Sudbury	33	30
	6/7	Kitchener	18	17
	7	Pickle Lake	2	2
	8	Savant Lake	2	2
	19	Sioux Lookout	7	6
	20	Dryden	3	3
	21	Ignace	6	6
	26	Belleville	28	27
	27/28	Kingston	44	42
Nov.	9	Elliot Lake	22	21
	10	Sault Ste. Marie	15	14
	16	Manitouwadge	6	3
	16	Guelph	11	10
	17/18	Hamilton	37	35
	18	Terrace Bay	5	4
	20	Vermilion Bay	2	2
Dec.	1/2	Kenora	4	4
	7/8	Sudbury	30	30
	9	Hudson	1	1
	14	Chatham	33	33
	15/16	Windsor	41	40
1983				
Jan.	11	Nipigon	7	7
	13	Marathon	6	6
	18	St. Thomas	17	17
	19/20	London	54	54
	26	Nestor Falls	1	1

Date		Location	No. of Complaints and Info. Requests Received	No. of Interviews Conducted
Jan.	27	Sioux Narrows	1	1
Feb.	8	Fenelon Falls	5	4
	8	Atikokan	6	6
	9	Lindsay	19	18
	9/10	Fort Frances	2	2
	10	Peterborough	41	37
	15	Kapuskasing	3	3
	16	Cochrane	6	5
	17	Timmins	21	20
	18	New Liskeard	7	7
March	1	Port Colborne	16	15
	2	Simcoe	19	19
	3	Tillsonburg	22	21
	3	Minaki	1	1
	22/23	St. Catharines	27	25
	24	Niagara-on-the-Lake	21	19
	29/30	Sudbury	31	30
			1,211	1,140

VISITS TO INDIAN RESERVES AND SETTLEMENTS

It is important that the services of the Ombudsman of Ontario also be made available to our native population who live on the various Indian reserves and settlements throughout Ontario. During the past twelve months, staff in the Regional Services Directorate visited 13 reserves and settlements, concentrating on the greater number which are located in northern Ontario.

In many instances, our staff are required to fly into these locations in order to gain access. Due to the remoteness of these bands, personal contact with members of the Office is essential.

Date		Location
1982		
Dec.	8	Eagle Lake Indian Reserve
	10	Waigoon Band Indian Reserve

Date		Location
1983		
Jan.	24	Seine River Indian Reserve
	24	Nicickousemenecaning Indian Band
	24	Couchiching Indian Reserve
	25	Northwest Bay Indian Reserve
	26	Big Island Island Indian Reserve
	26	Manitou Rapids Indian Reserve
March	1	Rat Portage Indian Reserve
	1	Shoal Lake #39 Indian Reserve
	1	Shoal Lake #40 Indian Reserve
	2	Kenora Reserve #38B
	3	Islington Indian Reserve

COURT CASES

A judgment rendered by the Supreme Court of British Columbia held that the British Columbia Ombudsman did not have jurisdiction to investigate a complaint against the British Columbia Development Corporation (BCDC). The Ombudsman of British Columbia appealed this decision to the Court of Appeal of British Columbia, which decided on July 23, 1982 that the Ombudsman of British Columbia did, in fact, have authority to investigate the complaint. Subsequently, the BCDC appealed the decision of the British Columbia Court of Appeal to the Supreme Court of Canada. As the major issue before the Supreme Court of Canada is the jurisdiction of the British Columbia Ombudsman, and as our Office has twice had decisions of the Court of Appeal dealing with our jurisdiction, we are concerned that these two favourable decisions might be affected by the Supreme Court of Canada. Therefore, I obtained leave from the Supreme Court of Canada to intervene in this appeal. Leave to intervene was also obtained by the Ombudsmen of Saskatchewan and Quebec. No date has yet been set for this appeal, but it is anticipated it will be heard in the fall of 1983.

LEASE

In my Eighth Report, I stated that we had moved into our new premises located at 125 Queen's Park. A drastic increase in rental rates in the downtown area has demonstrated the wisdom of our move into this building which

has resulted in a substantial saving of several million dollars to the taxpayers of Ontario.

DETAILED SUMMARIES

As in previous reports of the Ombudsman, I have included an array of detailed case summaries of complaints which I feel would be of interest to our readers and reflect the type of work carried out by my Office. I recommend a few cases found on pages 15, 21, 46 and 56 which are particularly noteworthy. In Chapter 2, 32 detailed summaries are presented.

The preponderance of cases presented in this report involves matters in which we were able to be of assistance to the complainant. This might leave the reader with the false impression that we support the majority of complaints received by my Office. However, this is not the case. During this past fiscal year, 48.8% of complaints were resolved in favour of the complainant. This represents a 16% increase compared with the fiscal year 1981/82.

At the conclusion of this reporting period, March 31, 1983, there were 7 cases where my recommendations were not adopted by the respective governmental organizations. One deals with the Ministry of Consumer and Commercial Relations, found on page 29; three relate to the Ministry of Labour, Workers' Compensation Board, found on pages 58 to 64, another deals with the Ministry of Revenue on page 83; and another deals with the Ministry of Tourism and Recreation on page 80. On page 69, I have also presented the North Pickering complaints where the Ministry of Municipal Affairs and Housing refused to implement my recommendation pertaining to a particular group of complainants.

RECOMMENDATIONS DENIED AND SECTION 22(3)(d) OR (e) RECOMMENDATIONS

When I considered the treatment of recommendation denied cases by the Select Committee on the Ombudsman during my tenure, I was on the whole satisfied. Naturally, I was disappointed that the Committee did not support my recommendations in a few cases. No one expects the Committee to rubber stamp the Ombudsman's recommendations.

I would however, remind the Committee of statements made by it on this subject in its Fifth Report:

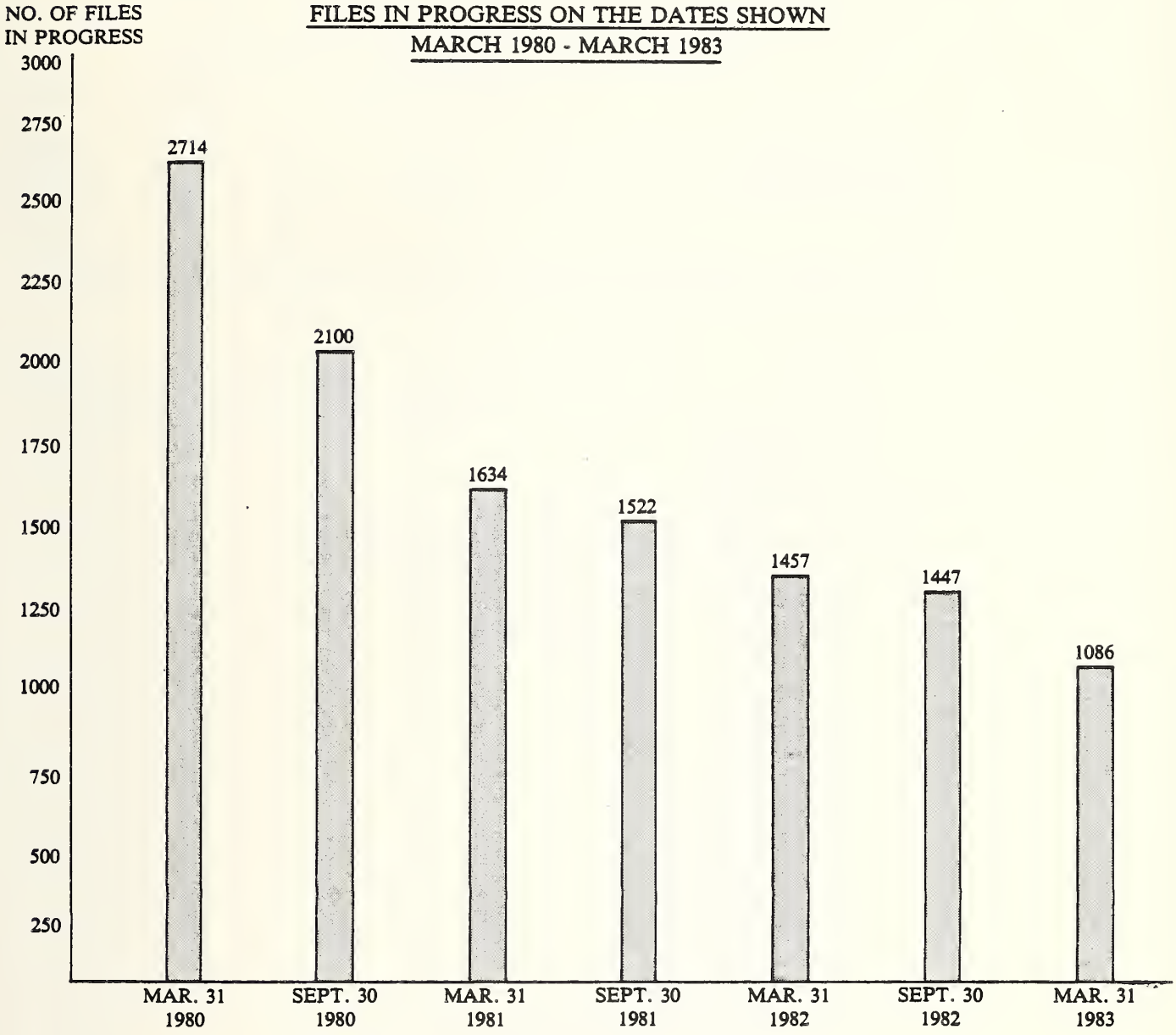
> ...When it appears to the Committee that the Ombudsman has complied with the provisions of the legislation and where the governmental organization's response is not adequate, appropriate or reasonable to the Committee, it will prima facie support the Ombudsman's recommendation. When the Ombudsman was created in Ontario, the Legislature intended that a vehicle for the scrutiny of decisions of the public service would ultimately press the Legislature to redress the consequences of certain decisions considered by him to be warranted, within the context of the Ombudsman Act. If the Committee chose not to support a recommendation of the Ombudsman after it had satisfied itself as set out above, it would seriously undermine the effectiveness and credibility of the Ombudsman in the eyes of the people of the Province of Ontario and the members of the public service.

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 96 to 109, 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, 1983, that is, cases where it is anticipated that some further action will be taken either by the governmental organization or by the Select Committee.

Since the Select Committee's Tenth Report on the Ombudsman had not been tabled at the time this reporting period concluded, several of these recommendations appear as "Not yet reported" by the Select Committee. It is anticipated that these recommendations will, however, be addressed by the Select Committee in its Tenth Report.

IN-PROGRESS INVESTIGATIONS CARRIED OVER AT YEAR END

MARCH, 1980 - MARCH, 1983



The above histogram illustrates a 60% reduction of in-progress investigations at year end over a three-year time span – from a peak of 2,714 to 1,086 (or a reduction of 1,628 investigations).

STATISTICAL HIGHLIGHTS

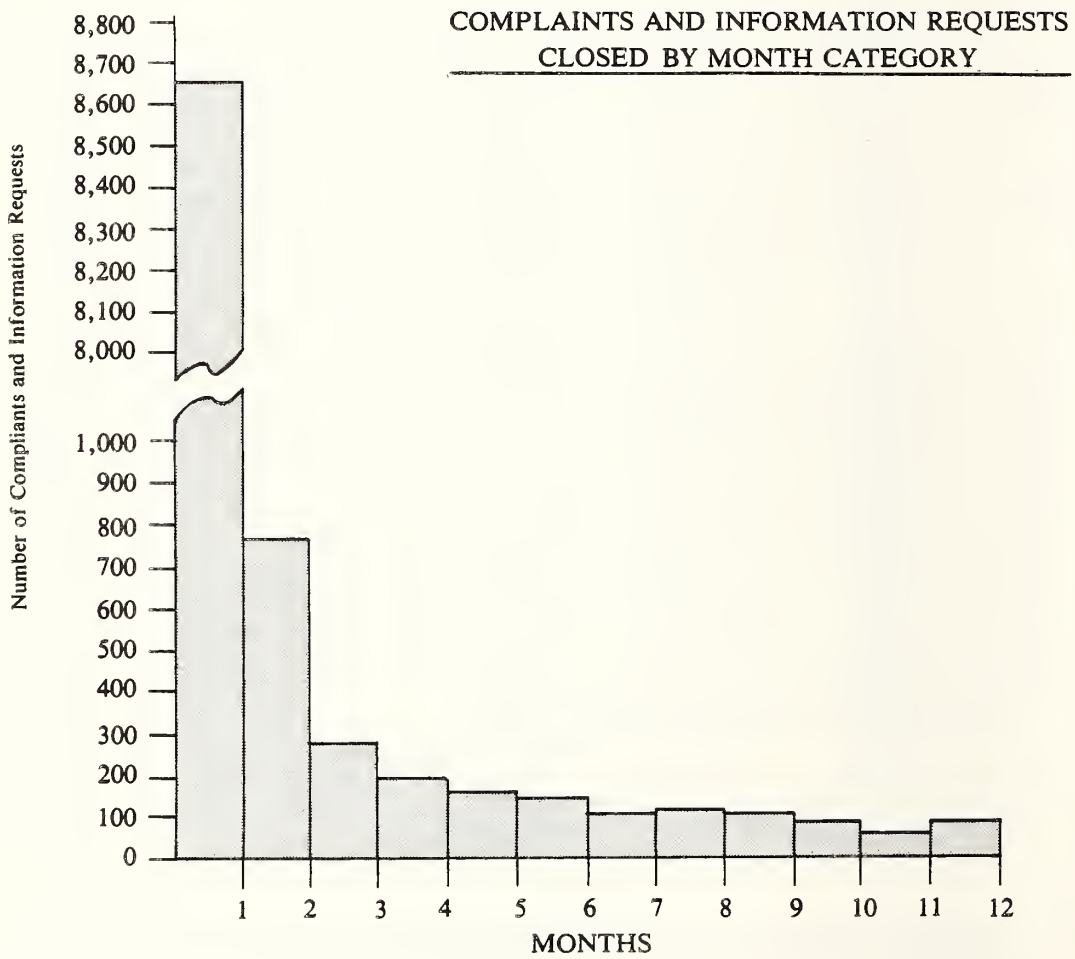
1982-1983 FISCAL YEAR

Total Complaints and Information Requests Received 10,754
Total Number of Investigations In Progress at Year End 1,086

CLOSED COMPLAINTS AND INFORMATION REQUESTS

	Complaints Documented in Files	Fast Actions*	TOTAL
Within Jurisdiction	2,764	1,696	4,460
Information Requests	271	1,990	2,261
Outside Jurisdiction	1,056	4,024	5,080
TOTAL	4,091	7,710	11,801

*"Fast Action" is the term used to describe the method of quickly handling less complex complaints and information requests without formally opening a file.



The above histogram covering a twelve-month period accounts for 92.2% of the 11,801 complaints and information requests closed by the Office between April 1, 1982 and March 31, 1983. A further 921 complaints of the total required more than 12 months to close.

CHAPTER TWO

DETAILED CASE SUMMARIES

DETAILED SUMMARY NO. 1

(NON-JURISDICTIONAL COMPLAINT)

On November 4, 1982, this individual contacted the Office of the Ombudsman at the suggestion of his federal member of parliament.

The complainant has a wife and two small children, one of whom is an eight-month-old baby. He was recently laid off from his job and was in receipt of welfare benefits until such time as his Unemployment Insurance benefits could be processed. The citizen, knowing about the impending layoff, had moved his family to less expensive housing on November 1, 1982. At the time of his call to the Ombudsman's Office, he had been unable to have the gas service connected to his house because the gas company was demanding a $275 security deposit. General Welfare assistance guaranteed $100 towards the deposit but would go no further. The complainant contacted his federal M.P. for assistance as he was not able to raise the remaining $175. His M.P., in an attempt to assist the complainant, contacted the gas company and the local Welfare Administrator but was unsuccessful in rectifying the matter.

It was determined that the complainant had a good payment record. Therefore, in an effort to assist him, a number of informal inquiries were made on his behalf.

First, the Ombudsman's Office contacted the local Welfare Administrator, who clarified the situation by advising that the $100 security deposit ceiling was established by municipal bylaw and Welfare could provide no more money for the security deposit without a change in the bylaw. The name and telephone number for the Regional Manager of the gas company were then obtained, and the situation was explained to the Regional Manager, who agreed to reduce the amount of the deposit by $75. The Office tried contacting a community service organization to see if it kept funds for emergency situations, but was unsuccessful.

Subsequently, the complainant was advised of the reduction in the security deposit so that he could attempt to raise the $100 required. In the meantime, he was assured that the Office would try to have the amount reduced further.

A further telephone call was made to the gas company's Regional Manager. After some discussion the Regional

Manager agreed to reduce the deposit by a further $50, leaving the citizen with $50 to pay. In the meantime, the complainant had managed to borrow $100 from his father and immediately paid the security deposit. Connection of service was arranged immediately.

MINISTRY OF

COLLEGES AND UNIVERSITIES

DETAILED SUMMARY NO. 2

The complainant contacted the Ombudsman's Office requesting assistance regarding a student loan and expressing her dissatisfaction with a decision of the Ministry of Colleges and Universities. She had received a letter from a solicitor at the Ministry of Government Services advising her that her Ontario Student Assistance Program debt of $1,410 would be collected by the Ministry of Government Services. The solicitor stated that the Ministry of Government Services wanted to collect the $1,410 from the complainant because this amount constituted the balance due on the difference between the amount of money the complainant received under OSAP in 1979-1980 and the amount of money she was entitled to receive. This came about as a result of a reassessment of her financial resources.

The reassessment indicated that the complainant was allowed OSAP funds which were $1,410 in excess of her actual financial needs because the Ministry of Colleges and Universities believed that her parents' income had been underestimated. Therefore, she was requested to repay the excess ($1,410).

The complainant's father contacted his M.P.P. in regard to this matter. He explained that the reassessment of parental income occurred because his and his wife's RRSP's were purchased in the tax year of 1975 and cashed in December, 1979. His actual income was $14,300 ($13,000 had been the projected estimate), but because he and his wife felt that it would be better to budget their pension income, they decided to discharge all debts. Therefore, they cashed in their RRSP's a month too soon, and thus jeopardized the complainant's grant, on which she was dependent.

In accordance with the provisions of the Ombudsman Act, the Ministry of Colleges and Universities was advised of the complainant's concerns regarding her debt. The Ministry was invited to comment on her contentions and shortly thereafter this Office received a reply from the Manager of Appeals of the Ministry of Colleges and Universities. The Manager stated that if the complainant were to document her parents' obligations and reasons for cashing in their RRSP's, the Ministry would be willing to reconsider her case.

The complainant forwarded correspondence to the Ombudsman's Office explaining that her parents used their

RRSP's to pay off their debts, and that her father, who was in his late 60's, had had three heart attacks which resulted in open-heart surgery in mid-October of 1981. As her parents had moved, it was difficult for them to locate documentation of the 1979-80 expenses. Subsequently, at the request of the Ombudsman's Legal Director, the complainant's mother wrote to the Ombudsman explaining why the RRSP had to be cashed; additional information specific to actual expenses was obtained.

The Ombudsman forwarded this information to an official of the Legal Branch at the Ministry of Government Services, outlining the chronology of events and the purposes for which the RRSP money was used. A request was then made on the complainant's behalf to forgive her debt of $1,410. Shortly thereafter a reply was received from a solicitor at the Ministry of Government Services, enclosing copies of correspondence within that Ministry and stating that the complainant's debt was cancelled. Accordingly, the file was closed as the matter had been resolved for the complainant.

MINISTRY OF

COMMUNITY AND SOCIAL SERVICES

DETAILED SUMMARY NO. 3

This complainant first made his concerns known to the Ombudsman's Office during a personal interview on June 16, 1981. At that time he was complaining about a decision rendered by the Social Assistance Review Board, affirming an earlier decision of the Director of Family Benefits to deny him reclassification as a disabled person within the meaning of the Family Benefits Act.

The complainant was receiving a Family Benefits allowance as a permanently unemployable person. He stated that, originally, he was unaware that there were two categories under which an applicant may be entitled to receive benefits. He alleged that communication between the Ministry and applicants/recipients was insufficient.

The Ombudsman notified both the Ministry of Community and Social Services and the Social Assistance Review Board of his intent to investigate this complaint and requested a statement of their positions in response to the complainant's allegation. The Ministry replied that, on the strength of the medical opinions rendered by its Medical Advisory Board, the complainant was a permanently unemployable person, but could not be considered disabled. The Social Assistance Review Board responded that, inasmuch as the facts and evidence adduced at the hearing did not support the complainant's contention that he should be reclassified, the Board's decision had been correct.

During the course of the investigation, the Office reviewed the files maintained on this matter by both the Ministry and the Board. Information contained in the Board's file indicated to the Ombudsman that the Board's decision had not been unreasonable. It appeared that the Board had not been provided with objective medical findings which would support the complainant's appeal for reclassification.

Information contained in the Ministry's file, however, indicated that there were certain medical opinions available to it at the time of the complainant's appeal hearing which it had not presented to the Board. The investigation also confirmed the complainant's contention that information concerning the legislative definition of the classifications in question was not made available to him.

Accordingly, the Ombudsman wrote to the Ministry and the Board to outline his tentative conclusion that the Director of Family Benefits had unreasonably omitted to

provide the complainant with specific information concerning his possible entitlement to Family Benefits as a disabled person. The Ombudsman also advised that he had tentatively concluded that the Director of Family Benefits ought to make a new submission to the Board which ought to include all relevant information, including the opinions of the complainant's physicians. Finally, the Ombudsman advised that the Ministry had unreasonably omitted to provide the complainant with acknowledgement letters upon its receipt of new information from his physicians. The Ministry's failure to do so had caused the complainant a great deal of confusion.

In light of these tentative conclusions, the Ombudsman tentatively recommended that the Ministry request a new hearing before the Social Assistance Review Board on the complainant's behalf. He also recommended that the Ministry review and upgrade its form letters to ensure that Family Benefits applicants/recipients are provided with reasonable explanations for all decisions made in respect of their entitlement to benefits.

Replies were received from both the Ministry and the Social Assistance Review Board. The Ministry indicated that it had prepared a new summary of all the evidence available to it at that time. The new submission was forwarded to the Social Assistance Review Board with a copy to this Office. Further, the Ministry indicated that it had requested that the Board rehear the complainant's appeal. The Social Assistance Review Board notified this Office that it had agreed to hold a hearing for reconsideration of its decision.

In respect of the Ombudsman's tentative conclusions and recommendations concerning the apparent lack of accurate information concerning the classification schemes, the Ministry advised this Office that it was in the process of reviewing all communications that it sends out to applicants/recipients. The review is part of the Ministry's development of a new computer system which is intended to integrate and improve all existing systems. Finally, the Ministry advised that it will no longer be making a distinction between the classifications "permanently unemployable" and "disabled". The Ministry intends to devise a new category of eligibility. At the time of the response, the Ministry was in the process of developing a legislative definition for the new category.

The Ombudsman considered the representations of the government agencies and determined that the complaint was

resolved to the complainant's satisfaction. Accordingly, the complainant was issued a copy of the Ombudsman's final report and the file on the matter was closed on January 25, 1983.

DETAILED SUMMARY NO. 4

The complainant, formerly an administrator with a municipality, wrote to the Ombudsman on May 6, 1981 concerning certain actions taken by the Ministry of Community and Social Services. The complainant had several contentions against the Ministry; however, some of these had been dealt with by the courts in a wrongful dismissal action the complainant had brought against the municipality, and some of the contentions dealt with the proceedings at and arising out of the civil action.

As the Ombudsman is precluded from investigating judges or the functions of any court, the complainant was told that the only issue within the Ombudsman's jurisdiction was whether the Ministry had acted unreasonably in preparing a report on the welfare administration in the municipality and submitting that report to the municipality without first giving the complainant an opportunity to be apprised of the contents of the report and make submissions.

The Ombudsman notified the Ministry of Community and Social Services of his intention to investigate this complaint and requested a statement of the Ministry's position. The Ministry replied that, while the decision to dismiss the complainant may well have been as a result of the findings documented in the Ministry's report, the decision was that of the municipality, not the Ministry.

During the course of the investigation, it was found that a branch of the Ministry, as a practice, conducted reviews of Municipal Welfare Administrations throughout the province on a regular basis. The Director of the Branch of the Ministry has a supervisory function to ensure that the legislation is properly administered and a duty to advise administrators and others as to the manner in which their duties under the legislation are to be performed.

The Ministry undertook a complete review of a department in which the complainant was employed. The scope of the review was very broad, encompassing virtually the entire operation. In the course of the review, a number of allegations and complaints were made against the

complainant which, in the opinion of the Ministry's review team, were sufficiently serious to warrant further investigation as these complaints and allegations could, if substantiated, reflect on the manner in which the department was being administered and thus be indicative of the manner in which the complainant carried out his function.

The complainant was aware of the review. The scope of the review had been discussed with him; he was given an opportunity to voice any particular areas of concern he wished investigated, and his input was invited. The complainant in turn made his staff and his files available to the review team. However, at no time throughout the review was the complainant told or otherwise made aware of the findings of the review team or of the allegations made against him.

Upon completion of the review, a meeting comprised of Ministry and municipal officials was held and the report was read. Subsequently, a closed municipal council meeting was held at which Ministry officials were also in attendance. At that meeting, copies of the report were distributed among the participants and the council discussed the report. The decision to dismiss the complainant was taken at that meeting by the council. That action was taken that day and the complainant was told that he could obtain a copy of the report from the municipality's solicitor.

The issue before the Ombudsman was whether the complainant was denied natural justice and treated fairly, inasmuch as he was not apprised of the contents of the report so that he could present "his side of the story".

The Ministry took the position that since it was commissioned by the municipality to conduct the review and to report to it, the Ministry's only responsibility was to report its findings to the municipality. Moreover, the Ministry argued that if the rules of natural justice applied, they applied to the municipality, the body which ultimately dismissed the complainant.

Our review of the legislation revealed that almost every facet of the administration and delivery of this governmental service, including the appointment of the administrator, is controlled either directly or indirectly by the Ministry. Hence, it appeared that the review was conducted for the benefit and use of the Ministry as well as the municipality.

Our review of the case law reinforced the Ombudsman's opinion that even though the Ministry made no actual

decision with respect to the disposition of the complainant, there was a duty on the Ministry to treat the complainant fairly, which would have entailed advising the complainant of the substance of the allegations and statements critical of him and to provide him with an opportunity to respond to those allegations and statements.

On February 22, 1982, the Ombudsman notified the Ministry, pursuant to section 19(3) of the Ombudsman Act, that he had come to the tentative conclusion that the complainant ought to have been made aware of the allegations and statements critical of him contained in the Ministry's report respecting its administrative review of the department in question before the report or the contents thereof were disclosed to the municipality, and that the Ministry's omission to do so was "unreasonable" and "unjust", as set out in section 22(1)(b) of the Ombudsman Act. The Ombudsman made the tentative recommendation that the Ministry adopt the practice of advising municipal officials of its findings pursuant to an administrative review in cases such as the complainant's where such findings may have adverse consequences for municipal officials.

The Ministry of Community and Social Services was afforded the opportunity to make representations respecting the possible adverse report pursuant to section 19(3) of the Ombudsman Act.

In its representations, the Ministry agreed in principle with the possible recommendation but took the position that such a practice could not be followed unquestioningly and without due regard for all the circumstances involved in a particular situation, as blind adherence to such a policy, while it may afford natural justice to one party, could well result in adverse consequences for other parties involved. The Ministry advised that the practice was not followed in this case because (1) the municipality had requested a meeting with the Ministry before the Ministry had had an opportunity to complete its report; and (2) the Ministry was interested in protecting its sources from possible retributive measures which might have been taken by the complainant were he to discover the identity of those who had made damaging statements against him, as he was still the administrator and in a position to take such measures. The Ministry also took the position that if there was a duty to treat the complainant fairly, that duty was the responsibility of the municipality since it was the municipality that took action on the report.

The Ombudsman, upon consideration of this submission, was of the opinion that the argument of the report not having been finalized at the time of the meeting between the Ministry and the municipality did not exculpate the Ministry from its duty to treat the complainant fairly. With respect to the Ministry's concern for protecting the anonymity of its witnesses, the Ombudsman was of the opinion that the substance of the report could have been made known to the complainant without the Ministry having had to breach confidentiality.

Finally, with respect to the Ministry's argument that if there were a duty to act fairly, that duty was the responsibility of the municipality, the Ombudsman was of the opinion that, notwithstanding any duty on the part of the municipality, the case law supported the argument that even though the Ministry had made no actual decision in its report, the potential effects of the findings contained in the report were far-reaching and of vital concern to the complainant.

The Ombudsman concluded that since the complainant ought to have been made aware of the substance of the allegations and statements critical of him contained in the Ministry's report before the report or the contents thereof were disclosed to the municipality, and to have had an opportunity to respond, the Ministry's omission to do so was "unreasonable" and "unjust" pursuant to section 22(1)(b) of the Ombudsman Act.

The Ombudsman recommended, pursuant to section 22(3)(d) that the Ministry adopt the practice of advising municipal officials of its findings pursuant to an administrative review in cases such as the complainant's where such findings might have adverse consequences for the affected municipal officials. This includes cases such as the complainant's where there are potential confidentiality conflicts. The Ombudsman noted that there are means of dealing with such conflicts so that fairness is done.

The Ombudsman reported his conclusion and recommendation to the Ministry pursuant to section 22(3) of the Act on June 24, 1982. By letter dated December 8, 1982, the Ministry informed the Ombudsman that it was prepared to accept the Ombudsman's recommendation. The results of the investigation were reported to the complainant and the file on the matter was closed on December 29, 1982.

DETAILED SUMMARY NO. 5

This complainant contacted the Ombudsman by letter in October 1982. She complained that she had applied for Family Benefits during the spring of 1982, but that she had, to date, received no decision from the Ministry of Community and Social Services. She contended that the time taken by the Ministry to reach a decision with respect to her eligibility was unreasonable.

On November 3, 1982, the Ombudsman notified the Deputy Minister of Community and Social Services of his intention to investigate this complaint, and advised him that because of the urgent nature of the matter, his investigation would begin immediately.

During the following two weeks, the investigator inquired into the status of the application and the reasons for the delay. It was revealed that the medical documents pertaining to the complainant's application had been lost at the Ministry's head office in Toronto.

With the cooperation of the Ministry's field worker at the district office, and the manager of the Family Benefits Branch in Toronto, a second set of medical documents was sent from the district office to Toronto and the complainant's eligibility was reviewed immediately upon the Ministry's receipt thereof.

The complainant was granted Family Benefits on November 25, 1982. Payment was made retroactive for four months, the maximum allowable under the legislation. The file was closed on December 10, 1982.

MINISTRY OF

CONSUMER AND COMMERCIAL RELATIONS

DETAILED SUMMARY NO. 6

The complainant wrote to the Ombudsman on December 1, 1980 complaining of the Ontario Securities Commission's failure to investigate his complaint regarding an unauthorized dealing in securities by his broker.

The complainant had made his concerns known to the Ontario Securities Commission on April 11th and 14th, 1980. One week later he was informed that his complaint had been referred to the Toronto Stock Exchange, and that the Exchange would report to the complainant on the results of its investigation, with advice to the Ontario Securities Commission.

The Toronto Stock Exchange conducted an investigation and in a letter dated August 27, 1980 the Exchange informed the complainant that "no sustainable violation of the Exchange's regulations has been uncovered". However, the Ontario Securities Commission was informed by the Exchange that it (the Exchange) was:

> ... unable to find evidence of a definite nature in this case, other than the statement of the complainant, to warrant a prosecution. As a result the Exchange has decided not to register a complaint against the broker in this matter <u>but he has been informed and cautioned in respect of future actions</u>. (Emphasis added)

This notification to the Ontario Securities Commission was accompanied by a copy of the Exchange's investigation report, without appendices. Of the 23 paragraphs contained in the report, 14 made reference to the appendices. The report contained no conclusions.

On September 3, 1980, one day after the Ontario Securities Commission received the report (without the appendices) from the Exchange, a letter was sent to the complainant from the Ontario Securities Commission indicating that the Commission had reviewed the report and concurred with the decision of the Toronto Stock Exchange. No reference was made to the cautioning of the broker, and no reasons were given for the finding that the broker had not engaged in any improper activity.

On this basis the Ombudsman sent a letter to the Chairman of Ontario Securities Commission, pursuant to

section 19(3) of the Ombudsman Act, in which he set out his tentative conclusions and recommendations. The Ombudsman stated that it appeared that the practice of referring such complaints to the Toronto Stock Exchange for investigation was not unreasonable, but in this case, in referring the matter, the Commission had unreasonably omitted to tell the complainant that it was exercising its discretion not to investigate his complaint, and that if he were dissatisfied with the Exchange he could return to the Commission.

To the Ombudsman it also appeared that the Ontario Securities Commission had: unreasonably and wrongly reviewed the Exchange's report without having the full report; concurred with the report without advising the complainant of the gist of the report or obtaining and considering his comments before arriving at a conclusion; omitted to give reasons for its decision; and omitted to inform the complainant that the broker had been cautioned.

Thus, to the Ombudsman, it appeared that he could recommend that the Commission should now hold a proper review, by other persons employed by the Commission, of the full report, advise the complainant of the gist of the report and obtain his comments, then consider his comments and the report in deciding whether an investigation ought to be ordered, and inform the complainant of the decision and the reasons for it.

The Ontario Securities Commission responded to the Ombudsman's tentative conclusions and recommendations and suggested in part that the whole thrust of the opinion misconceived the duties and obligations of the Commission.

As a result of the Ontario Securities Commission's response, a meeting was held with a representative of the Commission, at which time he indicated that he felt the Ombudsman and the Ontario Securities Commission were at cross purposes.

The Commission's representative felt the Ombudsman did not understand the philosophy of the Ontario Securities Commission. It was his prime concern that in cases such as this, where there is a complaint against a broker without a past record, the investigation should be referred to the Toronto Stock Exchange. He suggested that the intention of the government is to delegate as much as possible to self-regulatory bodies. That philosophy, he stated, must be tempered by a general overview of the Toronto Stock Exchange by the Ontario Securities Commission.

The Ombudsman felt that there had been some misinterpretation of his tentative conclusions and recommendations. The Ombudsman had not made the tentative conclusion that the Ontario Securities Commission was wrong in referring the complaint to the Toronto Stock Exchange. It was pointed out that there was no allegation that the Securities Commission had acted contrary to law, but rather that it might have acted unreasonably. It was further indicated that the thrust of the tentative conclusion was that the complainant should be made aware of the gist of the report, not that he be provided with a copy of the report itself. The representative agreed to take this matter up with the Commission.

Subsequently, the Ombudsman received a letter advising him that the Commission had decided to implement new procedures for processing complaints. These new procedures were to include advising a complainant that the Ontario Securities Commission has exercised its discretion not to investigate a complaint, and that the Toronto Stock Exchange would advise the complainant of the results of its investigation when such complaints were referred to the Toronto Stock Exchange. In addition, the complainant was to be advised that neither the Toronto Stock Exchange nor the Ontario Securities Commission had the power to effect restitution on the complainant's behalf.

In consideration of the Ontario Securities Commission's change in procedures, the complainant's satisfaction with that change, and the Toronto Stock Exchange's caution of the securities broker, the Ombudsman's report was issued without any recommendations.

The file was closed on August 10, 1982.

MINISTRY OF

CONSUMER & COMMERCIAL RELATIONS

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 7

This complaint involved the nature and extent of the authority given to a Tribunal, and a corporation designated by the Legislature, to administer a program providing certain statutory protections and remedies to purchasers of new homes. The legislation, the Ontario New Home Warranties Plan Act, came within the responsibility of the Ministry of Consumer and Commercial Relations. After completing the investigation of the complaint, recommendations were made which have not been implemented.

The complainant, through his solicitor, contended that a decision of the Commercial Registration Appeal Tribunal was unreasonable and unfair. He had appealed a decision of HUDAC, the Corporation designated to administer the New Home Warranties Plan which included a guarantee fund, to restrict his compensation to $5,000 on the basis that the remaining funds claimed were not eligible as they were not part of the deposit paid to the builder.

The Tribunal found the following facts. The complainant had entered into an agreement with a builder registered with HUDAC to purchase a home to be constructed on a specific property for a certain sum. A deposit of $5,000 was paid at that time. Shortly after, the builder approached the complainant for advances on the remainder to ensure completion. The builder gave as security for these advances two mortgages on separate properties, each in the sum of $21,000. These were fourth and fifth mortgages, and when the builder lost these properties, the complainant's security was transferred to the subject property and the builder's home, again as low priority mortgages. Subsequently, construction ceased and power of sale proceedings on the subject property were instituted by a prior mortgagee. The complainant entered into an agreement to purchase the property under power of sale from the prior mortgagee. The complainant paid a purchase price to the mortgagee plus a further $30,000 to have construction completed. His estimated loss was $28,300. The Tribunal concluded the monies advanced were in fact deposits, paid to secure performance.

As stated, HUDAC originally accepted the complainant's claim, but only for the $5,000 paid on the signing of the agreement. However, at the hearing, HUDAC raised for the first time the argument that the complainant was entitled to no payment whatsoever, given its regulation restricting deposit claims to those who "do not become an owner". As the complainant had purchased the property from a mortgagee, he was considered an owner.

The Ombudsman's investigation focused on two issues: the fairness of the hearing, and the legal issues raised. The Ombudsman was not prepared to conclude that the Tribunal had been unfair in its conduct of the hearing, but he did have concerns with respect to the legality of the position taken by HUDAC and the Tribunal. Legal research indicated that the regulation relied on by the Tribunal to defeat the complainant's claim was of questionable validity, as it derogated from rights given by statute.

The Ontario New Home Warranties Plan Act, section 11, provides for the establishment of the Ontario New Home Warranties Plan, which consists of two schemes for consumer protection. The first establishes statutory warranties, and the second provides for compensation to be paid out of a guarantee fund if one comes within one of the situations described in section 14(1). Under section 23 of the Act, the designated corporation (in this instance, HUDAC) has the power to make bylaws, which are deemed to be regulations, "providing for the establishment and maintenance of the guarantee fund and governing procedures for claiming and determining claims for compensation from the guarantee fund" as well as "prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations".

Under section 6 of Regulation 943/76 (now Regulation 726, R.R.O. 1980), HUDAC purports to set out "limits of liability" for payment out of the guarantee fund. It is this section which was considered by the Tribunal and which was held to bar the complainant from entitlement to payment from the Fund.

After reviewing the legislation and regulations and the legal research conducted on the issue, on June 5, 1981, the Ombudsman notified the Chairman of the Commercial Registration Appeal Tribunal, the Deputy Minister of the Ministry of Consumer and Commercial Relations, and HUDAC, of his possible conclusion and possible recommendations. It was the Ombudsman's tentative opinion that section 6 of the regulations was not consistent with the Ontario New Home Warranties Plan Act in that it exceeded the regulatory powers given under that statute. The Act, in section 14, sets out entitlement and speaks to limits on the amount being fixed by the regulation. Section 14(1)(a) states as follows:

> (1) Where,
>
> (a) a person who has entered into a contract with a vendor for the

> provision of a home has a cause of action in damages against the vendor for financial loss resulting from the bankruptcy of the vendor or the vendor's failure to perform the contract;
>
> .... the person or owner is entitled to be paid out of the guarantee fund the amount of such damage <u>subject to such limits as are fixed by the regulations</u>. (emphasis added)

The grammatical and ordinary sense of the wording used in section 14 indicates that the regulations are to limit amounts, not entitlement. If the Legislature had wished to limit entitlement by regulation, this could have been clearly stated. In the Ombudsman's view, it was unlikely that the Legislature intended to delegate to a designated corporation the authority to vary, cancel or otherwise limit the basic entitlement set out by statute. Rather, it intended the extent of monetary liability to be flexible and thus left this to the discretion of the corporation administering the Fund. Decisions as to entitlement under section 14, made by the designated corporation, were not to be final in the legislative plan and under section 16(1) could be appealed to the Tribunal. The Tribunal is given the power to direct the Corporation to act as the Tribunal thinks it "ought to ... in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Corporation." Thus, considerable authority was reserved to the Tribunal in the interpretation of the Act and regulations and entitlement thereunder. Further, there is no provision for approval of bylaws by the Lieutenant Governor in Council and this could be a further indication that the bylaws were not contemplated as affecting in any way the substantive rights set out in the statute.

The facts of the complainant's case clearly demonstrated that the regulation, section 6, in addition to limiting claims to a maximum of $20,000, set out limitations on entitlement. Even though the complainant came within the terms set out in section 14 of the Act and therefore was, at first appearance, entitled to some compensation, he became an "owner", in contravention of the wording of section 6(1) of the regulation, and consequently was held not to be entitled.

In the course of the investigation, the Ombudsman came to the possible conclusion, pursuant to section 22(1)(a)

of the Ombudsman Act, that that part of the decision of the Tribunal which was based on an interpretation of section 6 of Regulation 575/77 was contrary to law, in that section 6 was ultra vires of the Ontario New Home Warranties Plan Act, 1976.

The Ombudsman made the possible recommendation, pursuant to section 22(3)(e) of the Ombudsman Act, that the Tribunal reconsider the law on which the decision was based and apply the principles of statutory interpretation set out in its decision in an earlier case, noting the Ombudsman's comments. Also, pursuant to section 22(3)(c) of the Ombudsman Act, the Ombudsman tentatively recommended that the decision of the Tribunal be varied by the Tribunal issuing an order striking out that part which was based on section 6 of Regulation 575/77. Further, the Ombudsman tentatively recommended that the Ministry take appropriate steps to ensure that the ultra vires portions of the regulations be amended to comply with the Act.

In accordance with section 19(3) of the Ombudsman Act, the Ombudsman accorded the Deputy Minister an opportunity to respond to his possible conclusion and recommendations.

The Deputy Minister responded to the Ombudsman's tentative conclusion saying that he had difficulty only with the tentative recommendation which would change the decision in the complainant's case. He noted his concern that there might be a possible inconsistency with the disposition of this case by our Office and another case which was currently before the courts on a similar issue, and asked that a final decision be postponed.

The Chairman of the Tribunal also raised his concern about different dispositions of claims by the Ombudsman and the courts. He noted that in the past the Tribunal had taken the position that it was functus officio and therefore questioned whether it had any authority to make an order changing its earlier disposition of the complainant's case.

The court case referred to by the Tribunal and the Ministry was heard on May 20, 1982 before the Divisional Court and a decision was given on grounds not relating to the validity of the regulation. On June 21, 1982, leave to appeal was argued and granted, specifically on the question of the validity of the regulation.

Subsequently, on July 19, 1982, the Ombudsman issued his report with the final conclusion that the decision of the Tribunal to deny the complainant entitlement to payment out of the guarantee fund was wrong and was based on

a regulation which appears to have been contrary to law, as it derogated, without authority, from a substantive right given by statute. It was his recommendation that the Tribunal and Ministry reconsider the law on which the Ministry's decision was based, and take appropriate steps to amend the regulations to comply with the Ontario New Home Warranties Plan Act. Further, the Ombudsman recommended that appropriate steps be taken to provide the complainant with payment of his statutory entitlement to compensation.

The Tribunal responded, stating that while it agreed with the Ombudsman's recommendation, it did not see how it could implement his recommendation with respect to the complainant, given that it considered itself functus officio.

In responding to the Ombudsman's final report, the Ministry asked that its time for reply be extended until after the hearing of the Court of Appeal decision in the above-mentioned similar, but unrelated, case. The Ombudsman granted this extension and the Court of Appeal decision was rendered on November 3, 1982. The Court expressed its concern regarding the validity of the regulation but, on the facts of that particular case, dismissed the appeal, expressly stating that its disposition of the case was not to be taken as indicating its agreement with the interpretation of the regulation given by either the lower court or the Tribunal.

The Deputy Minister responded on February 23, 1983, stating his belief that the complainant's claim had been appropriately dealt with and that there was no statutory authority for the Tribunal to revise its decision. Regarding the amendment to the regulations, he stated that the Ministry had no control over the decisions of the HUDAC New Home Warranties Program or the content of the regulations; however, he stated his intention to recommend the revision of the regulation and to reconsider the entire Act at the earliest opportunity. With respect to compensation to the complainant, he stated that in his opinion it was not appropriate to involve the Tribunal or provide compensation out of public funds. He felt it was up to the HUDAC New Home Warranties Program to decide whether it wished to make an ex gratia payment and he offered to advise it of the Ombudsman's findings.

The matter was forwarded to the Premier for consideration on March 11, 1983.

MINISTRY OF

CORRECTIONAL SERVICES

DETAILED SUMMARY NO. 8

This complaint was received by the Office of the Ombudsman on July 8, 1981. The complainant, who was an inmate, stated that he had been denied proper dental treatment.

The investigation revealed that the complainant had consulted the institutional physician because he was experiencing pain from a tooth that he had damaged prior to his admission to the jail. The physician prescribed pain-relieving medication and referred the complainant to the local dentist. However, when the complainant was advised that a dental appointment had been arranged for a tooth extraction, he stated that he wished to have his tooth repaired. The complainant's request was brought to the attention of the Superintendent, who advised the complainant that dental treatment for jail inmates was restricted to extractions or fillings and that other dental procedures would be deferred until after the complainant's transfer to a correctional centre. The appointment that had been made for the tooth extraction was cancelled because the complainant did not wish to have this procedure carried out.

When the investigation commenced, the complainant had been sentenced to a reformatory term and he was awaiting transfer to a correctional centre. During the course of the investigation, an appointment was arranged for the complainant to have a dental assessment, but the complainant's transfer to a correctional centre intervened. Approximately five weeks elapsed between the complainant's first report of toothache and the date of his transfer, during which time he continued to complain of a toothache. (The complainant was subsequently offered restorative dental treatment at the correctional centre).

According to the Ministry of Correctional Services' Manual of Standards and Procedures, two objectives of the dental care plan are relief of pain and preservation of natural teeth during imprisonment. The Ministry's standard procedure provides for inmates to see a dentist on referral from the institutional nurse or physician, or at the inmate's request. Inmates sentenced to less than 90 days, or those on remand, are eligible to receive emergency treatment only for relief of pain, actual or imminent, and infection. Those sentenced to more than 90 days are entitled to receive basic preventative and restorative dental care.

The question arising in the instant case was "who determines whether dental treatment is urgent or necessary and the extent of the treatment to be provided"? The investigator discussed this question with the Ministry's Senior Medical Consultant, who undertook to meet with the jail Superintendent and the Regional Director to discuss this matter. Following this meeting, the Senior Medical Consultant advised the investigator that the Superintendent appeared to have misinterpreted the Ministry's standard procedure. He said it had never been intended that the decision to provide dental treatment or the extent of the treatment to be provided should rest with either the Superintendent or the institutional physician. The Ministry's Consultant in Dentistry had circulated to Superintendents and health care personnel a summary of "common causes of pain in and around the mouth", listing typical dental histories, clinical signs and possible treatments. It was anticipated that when an institutional physician noted such conditions upon receiving a toothache complaint, the physician would refer the inmate for dental assessment. The Senior Medical Consultant said that the dentist had the discretion to determine what treatment was needed, whether there was an urgent need for treatment, and the extent of treatment to be provided (within the Ministry's guidelines), and such treatment would not necessarily be restricted to fillings and extractions. The Senior Medical Consultant felt that his discussions with the Superintendent and the Regional Director had served to clarify this issue.

During a subsequent visit to the jail, the investigator noted that the Ministry's dental referral procedures, as interpreted by the Senior Medical Consultant, were being followed.

When advised of the result of the investigation, the complainant stated that his complaint had been satisfactorily resolved through the action taken by the Ministry's Senior Medical Consultant during the course of the investigation.

DETAILED SUMMARY NO. 9

This complaint was first brought to the Office of the Ombudsman on October 6, 1982.

The complainant indicated that he had been employed in an industry at a central Ontario Correctional Centre until August 11, 1982. On August 12, 1982, he was taken to

court in Toronto on a Judge's Order, whereupon it was determined that an error had been made by the courts and the charge against him was withdrawn. Given that the complainant had not left the industrial establishment on his own accord, he wished to be reinstated to his former position on his return to the Correctional Centre, pursuant to the terms of the Collective Agreement. As well, the complainant insisted that the calendar days which he had been absent be accredited to those days already worked, thus raising him to union status on September 17, 1982. At this point, the complainant would be entitled to receive $514 in back pay and, as well, his salary would increase to $10.40 per hour. Although staff at the industrial establishment promised that he would be the next employee to be rehired, four other inmates were hired ahead of him. The complainant concluded by stating that a week had passed since he had reached union status and he had not yet received his back pay. Consequently, he requested the Ombudsman's Office to investigate.

Our subsequent investigation resulted in the complainant being reinstated at the industrial establishment. In addition, the management at the industrial establishment agreed to elevate the complainant to union status effective September 17, 1982, and, as well, agreed to pay him from that date at $10.40 per hour.

DETAILED SUMMARY NO. 10

This complaint, from an inmate in a jail in central Ontario, was first brought to the Office of the Ombudsman on January 18, 1983. It involved the spraying of an area adjacent to the complainant's cell with an insecticide, which caused the complainant to suffer headaches from the strong and unpleasant odour of the chemical used.

The complainant contended that on January 10, 1983, a service man sprayed an insecticide in the day room which is the area directly in front of his cell. Although the odour from the chemical was quite strong, the inmates were not removed from the area while the odour dissipated.

It was determined that the chemical being used in this institution was an organic phosphate known as Diazinon. An entomologist with the Pesticides Control Section of the Ministry of the Environment indicated that although it was of low toxicity, its properties could cause medical problems for those suffering from allergies. It was suggested by the entomologist that people in the sprayed

area should be removed for several hours to allow the odour to dissipate and the chemical to crystallize. It was also suggested that unless there was an infestation of cockroaches, a weaker yet effective chemical known as Ficam could be used.

Further investigation revealed that the Diazinon was being used in this institution to control ants in the kitchen area, and that in fact, there were no cockroaches in the building. An official of the insecticide spray company advised that he was not aware that inmates were not being removed from the sprayed area for a period of several hours. After considering that it would be difficult to relocate the entire inmate population, he suggested the use of Ficam to replace Diazinon. This was acceptable to the superintendent of the institution and the change was made. The complainant subsequently informed the investigator that he considered the matter resolved and our file was closed.

MINISTRY OF

EDUCATION

DETAILED SUMMARY NO. 11

This complainant contacted the Ombudsman's Office on January 26, 1982, complaining of certain actions on the part of the Teachers Superannuation Commission. He contended that the Commission was unreasonable in refusing to refund until August 1987 contributions he made to the Superannuation Fund while he was on leave overseas.

The complainant, a teacher, had been contributing to the Teachers Superannuation Fund since 1965. From August 15, 1974 to August 14, 1977, he was on a leave of absence while he taught overseas under contract with the Canadian International Development Agency. While he was out of the country, he remitted to the Superannuation Fund the sum of almost $6,000, representing approximately 14% of the salary he earned during the period, as his contribution to the pension fund. On his return to Canada, he was informed that in order to get pensionable credit for the period of his leave, he would have to pay an additional sum amounting to almost $5,000 plus interest from May 31, 1979. The payment would have to be made by August 31, 1987. The complainant did not wish to make the payment, and requested that his earlier contribution be returned. The Commission informed him that it could not refund his money until August 31, 1987, and at that time it could refund his money with interest at the rate of 3%.

The Ombudsman notified the Teachers Superannuation Commission of his intention to investigate the complaint and requested a statement of the Commission's position. The Commission responded that it had accepted the complainant's payment in accordance with section 9(2) of Regulation 930 made pursuant to the Teachers' Superannuation Act, which requires payment based on the salary upon return to employment in Ontario. Subsection (8) of the same section provides that a refund cannot be made until the time limit for the payment has expired. The Commission's refusal to refund the complainant's payment was made in accordance with these regulations.

Our investigation of this complaint included a review of the relevant regulations, and a discussion of the rationale behind the regulations, with the Commission's Director. In addition, comparative legislation for other large pension plans was reviewed. The circumstances surrounding the complainant's payment into the fund and subsequent request for a refund were ascertained from the Commission's files.

Having reviewed the results of the investigation, the Ombudsman came to the tentative conclusion that the decision of the Commission, made in accordance with section 9(8) of Regulation 930, passed pursuant to the Teachers' Superannuation Act, was made "in accordance with a rule of law or a provision of [an] act that is or may be unreasonable, unjust, oppressive ..." within the meaning of section 22(1)(b) of the Ombudsman Act. The section in question permits the Commission to hold the partial contribution made by the complainant for ten years at 3% interest, and provides that the complainant will get no pensionable credit for any of his approved leave of absence should he not wish to pay the extra amount owing. In addition, the Ombudsman tentatively concluded that the 3% rate of interest provided by the section of the regulation, and the terms upon which a refund may be made, may result in an oppressive outcome in circumstances such as those of the complainant. He therefore advised the Commission that it might be open to him to recommend that the Commission give immediate consideration to the retroactive amendment of the relevant part of the Regulation so that a complainant might obtain a refund of his contribution and obtain the benefit of a higher rate of interest than the 3% provided by the Regulation.

The Commission, having reviewed the tentative conclusions and recommendations of the Ombudsman, responded that a change in the Act or the Regulations could only be made by the Minister of Education, but that the Commission, having considered the tentative recommendation, felt that the Regulation should be changed to permit a refund under the circumstances of this complainant. The Commission therefore agreed to forward a request for a change in the Regulation to the Minister of Education.

Our Office was later advised that steps to make the proposed change in legislation had been initiated, and that the proposed amendment would go before the Legislature as soon as possible. The complainant, having been informed of the proposed changes, agreed that they would resolve his complaint, and the file on the matter was closed on January 27, 1983.

MINISTRY OF

THE ENVIRONMENT

DETAILED SUMMARY NO. 12

The Clerk-Treasurer of a township in Ontario brought this complaint to the Office of the Ombudsman by way of a letter dated May 3, 1982. Similar complaints were received from a councillor, two residents of the township, and the Member of Provincial Parliament for the area.

The township had undertaken a project to install a water supply system under a direct grant plan administered by the Ministry of the Environment. The township was advised by the Minister of the Environment on March 20, 1981 that the project was approved and the township was eligible for a provincial grant of $969,000 or 72% of the estimated cost of the project. In November, 1981, the township received Ontario Municipal Board approval on the basis that 72% of the estimated project cost would be borne by the Ministry. The township subsequently advertised for tenders. Tenders were dated April 1, 1982 and contained a 60-day expiry term, necessitating acceptance of the lowest bid by May 31, 1982.

On April 15, 1982, the township was advised by the Ministry that an error had occurred in calculations and that the correct entitlement to the grant had been reduced from $969,000 to $90,000. The Clerk-Treasurer complained that the Ministry's position was unreasonable as the situation concerning the water supply in the township had become extremely serious; the project would not proceed without the original grant, and the township had relied in good faith on the Minister's original funding commitment.

On June 3, 1982, the Minister of the Environment was advised of the Ombudsman's intention to investigate this complaint. The complaint was immediately assigned for investigation.

On June 11, 1982, the Ombudsman met with the Minister and discussed this complaint with him. On June 21, 1982, investigators interviewed Ministry representatives and reviewed relevant material on the Ministry's file. The Ombudsman also had several telephone conversations with the Member of Provincial Parliament for the area.

During the course of the investigation it was determined that, in processing the grant application submitted by the township, a Ministry policy for financing the construction of water works had not been applied.

The Ministry's policy statement outlining the procedures to be followed for calculating grants was reviewed.

Two types of grant calculations were discussed in the statement: (1) grants up to 75% for high-cost works; and (2) 15% grants for major works. The main purpose of the first type of grant was to facilitate construction of new communal water or sanitary works to serve established built-up areas or to support plans for population growth. In determining the amount of grant available, the total number of existing and potential lots serviced, among other factors, is considered. It was learned that the term "lot" can be defined as "... a typical home or dwelling unit or lot equivalent which is assessed at three persons". There was, however, an additional criterion outlined in the policy statement. This criterion is known as the "30 metre rule" and it takes into account the length of sewer extending along long property frontages. In applying this rule the total length of sewer is divided by 30 metres (the length of one lot). The rule is applied so that long frontages can be allocated more than one connection and municipalities would then bear a fair share of the cost of a project. If the rule is not applied, pipeline systems through non-urban areas could be made relatively inexpensive to municipalities, contrary to the intent of the policy.

In this case, the township submitted a grant application with a grant calculation based on the number of potential lots determined by population. It was the responsibility of the Ministry to check the application to determine whether the proposed works were to service long frontages and whether the "30 metre rule" ought to be applied. The Ministry failed to review the application using this rule.

It was not until late 1981 when a neighbouring township questioned the amount of its provincial grant that the Ministry rechecked the grant calculation for the township in this case. This led to the discovery of the Ministry's error. The Ministry subsequently advised the township that it could not proceed on the basis of the figure originally quoted.

During the course of the investigation, the Ministry reconsidered its position and indicated to this Office that as a result the grant was going to be restored. The Ministry confirmed its position by a letter dated July 6, 1982. The Clerk-Treasurer agreed that this would enable the township to proceed with its original construction program and that the township's complaint had been resolved.

Our file on this matter was closed on August 9, 1982. In his closing letter to the township, the Ombudsman noted

that the "30 metre rule" appeared to be a necessary and integral part of the Ministry's policy of providing services for urban areas; however, under the circumstances of this case, he was pleased to see that the matter had been resolved. The Ombudsman also noted the assistance that had been provided to his Office by the Member for the area.

On February 2, 1983, the Minister of the Environment wrote to the Ombudsman to advise him of the organizational changes that had been made in the Ministry to ensure that a similar situation did not recur. He noted that on August 3, 1982, the Ministry announced a reorganization which included the creation of a branch known as the Capital Financing and Review Branch. This Branch is responsible for the calculations regarding the rate structure and is separate from the Branch that provides construction management. By separation of the functions, the Minister anticipated that there would be no errors of this nature in the future.

DETAILED SUMMARY NO. 13

This complainant telephoned the Ombudsman's Office on August 5, 1982 concerning a decision rendered by the Ministry of the Environment. She contended that the Ministry had acted unreasonably in allowing a pesticide company to use a toxic aerial spray in an area which bordered her property.

The complainant owns property which is used for the grazing of sheep. The property is adjacent to the holdings of a large food producing company, which had arranged for an aerial spray of a pesticide. The aerial sprayer obtained the required permit from the Ministry and proceeded to prepare one of its aircraft for the aerial spray. The complainant was not alerted to the impending spray until the day that it was to occur, and in fact, was given two hours' warning by an employee of the food producing company. The employee cautioned the complainant that there might be an "over-spray" or "wind drift" of the chemical, and since it is quite toxic in nature, he warned her that people should not eat any of the vegetables from their gardens for at least five days. The complainant attempted to ascertain from the employee what effect the chemical would have on sheep if they ate sprayed grass; however, the employee did not know.

The complainant contacted the Ministry immediately but was advised that the aerial spray was properly authorized,

and that the chemical was on the accepted list of pesticides.

On the complainant's contact with this Office, the investigator contacted the Ministry immediately and learned that the chemical was indeed toxic and dangerous to animals and humans if ingested within five days of being sprayed. As a result of the contact with Ministry officials in which they were alerted to the concern regarding the complainant's sheep, the authorization for the aerial spray was altered. The chemical was changed to a less toxic substance, and the pilot of the spray aircraft observed a wide buffer zone between the food producing crops and the complainant's property.

As the complaint was resolved to the satisfaction of the complainant, the Ombudsman did not pursue the matter any further and accordingly, the file was closed on August 5, 1982.

DETAILED SUMMARY NO. 14

This complaint involved the determination of whether the complainant was a "creditor" within the meaning of the Public Works Creditors Payment Act. The complainant is the owner of a company which rented construction equipment to a contractor for use in the building of a sewer system, under contract with the Ministry of the Environment.

The Ministry stopped the construction project, and the complainant made a claim under the Public Works Créditors Payment Act for payment of the monies owing to his company by the contractor. The Minister rejected this claim on the ground that the complainant was merely a renter of equipment, and therefore not eligible to be a creditor.

After extensive investigation, the Ombudsman concluded that the Minister's decision not to accept the complainant's claim under the Public Works Creditors Payment Act was a mistake of law, and recommended that the Minister's decision be cancelled and that he accept and consider the claim as one properly made under the provisions of that Act.

The Ombudsman received written confirmation from the Ministry that it had decided to implement his recommendation and would accept and consider the claim made by the complainant as a claim properly made under the provisions

of the Public Works Creditors Payment Act. The complainant was advised that the complaint had been successfully resolved, and his file was closed.

The Ministry appointed an adjudicator to assess the amount of the claim. The adjudicator awarded the complainant $27,730.30 on his claim for rental charges, but did not award the claim for interest charges on the amount he had originally claimed or the claim for legal costs in pursuing his claim.

On February 29, 1980, the complainant wrote to the Ombudsman's Office and complained against the Ministry of the Environment for failing to pay interest charges and legal costs as claimed.

The investigation focused on two issues: first, whether the Minister has authority under the Public Works Creditors Payment Act to pay the interest as part of, or in addition to, a payment of a claim within the meaning of section 2 of the Act, and secondly, whether the Minister has the authority under that Act to pay the claim for legal costs. Legal research indicated that the adjudicator was wrong in law to decide that the claim for interest could not form part of a claim pursuant to the Public Works Creditors Payment Act. Moreover, the Ombudsman felt that there was no jurisdictional impediment to the Minister, under the legislation, preventing him from paying interest, providing that he found that the claim for interest was part of the contractor's obligation to the creditor. The investigation showed that there was an express contractual obligation by the contractor to pay interest to the complainant.

On March 20, 1981, the Ombudsman notified the Minister and the adjudicator of his tentative conclusions and tentative recommendations, pursuant to section 19(3) of the Ombudsman Act. It was the Ombudsman's possible conclusion that the Minister's conclusion that he does not have the authority to pay interest under the Public Works Creditors Payment Act was based on a mistake of law, and as a result, the Minister had failed to properly exercise his discretion under section 2(2) of the Act.

The Ombudsman further advised the Minister of his tentative recommendation that the Minister accept and consider the claim for interest as one properly made under the provisions of the Act.

The Minister was also advised that the complainant had twice incurred legal costs, once with respect to the

initial hearing, and again with respect to the hearing before the adjudicator. The Ombudsman indicated that the second set of costs need not have been incurred but for the erroneous interpretations of the Act accepted and acted upon by the Minister. The Ombudsman then further advised the Minister that it was open to him to recommend that the complainant receive from the Ministry his legal costs for the second hearing as equitable compensation to the complainant for costs incurred directly as a result of the erroneous interpretations of the Act.

The Minister responded to the tentative conclusion, stating that the previous Minister had not made an error in the initial exercise of his discretion to reject the entire claim, but that, as a result of the interpretation given to the legislation by the Ministry, the complainant might have suffered great hardship, and therefore the Ministry had reopened its consideration on humanitarian grounds.

The Minister gave two reasons for not paying interest, as follows: first, that the Minister had an absolute discretion under the Public Works Creditors Payment Act and he had decided to exercise that discretion against the complainant; and secondly, that the complainant's solicitor waived the interest claimed at the hearing before the adjudicator.

An authority exercising a statutory discretion must have regard to all the relevant circumstances, and must act within the intent and spirit of the legislation empowering him to decide the question before him. The discretion that is exercised cannot be total to the extent that the Minister can disregard relevant circumstances or the spirit of the legislation. The Minister must not misconstrue the scope of his discretion, which it seemed the Minister might have done in this case, by believing that the claim made by the complainant was initially not a valid one and that the Minister had no authority to pay a claim for interest.

The second reason given by the Minister for not paying interest was the assertion that legal counsel for the complainant, after consulting with the complainant, waived the claim for costs and interest either prior to or during the hearing before the adjudicator. The complainant and his counsel denied this assertion and there was no evidence in support of the Minister's position.

After reviewing carefully the arguments made by the Minister, the Ombudsman issued a report confirming his

opinion that the Minister's decision that he did not have the authority to pay interest under the Public Works Creditors Payment Act to the complainant was based on a mistake of law. In addition, the Ombudsman found that the Minister unreasonably exercised his discretion in not considering the complainant's claim for interest under the Public Works Creditors Payment Act.

It was the Ombudsman's recommendation that the decision of the Minister, to accept the recommendation of the adjudicator not to pay the claim for interest made by the complainant, be cancelled, and that the Minister accept and consider the claim for interest as one properly made under the provisions of the Public Works Creditors Payment Act.

Notwithstanding that he tentatively recommended that the Minister pay the legal costs on equitable grounds, the Ombudsman believed that in the context of this complaint a recommendation to pay legal costs should be based on the Public Works Creditors Payment Act. The legal research indicated that this was not possible, and the Ombudsman was not prepared to make a recommendation to the Minister that the legal costs be paid.

The Ombudsman received a response from the Minister stating that he disagreed with these conclusions. The Ombudsman then advised the Minister that his response was not adequate or appropriate, but that he would not be sending a copy of his report to the Premier.

In addition, the Ombudsman wrote to the complainant to advise him of the Minister's response which, in his opinion, was not adequate or appropriate. The Ombudsman also advised the complainant that he would not be sending a copy of his report to the Premier.

DETAILED SUMMARY NO. 15

This complaint against the Ministry of the Environment was brought to the attention of Office of the Ombudsman in September of 1979 by a resident of Northwestern Ontario. He complained that the siting of a water treatment plant, built by the Ministry earlier that year on property immediately adjacent to his, had devalued his residential property and he believed that the Ministry should compensate him for the devaluation.

On December 19, 1979, in accordance with section 19(1) of the Ombudsman Act, the Ombudsman wrote to the then

Minister of the Environment, to notify him of the nature of the complaint and of the Ombudsman's intention to conduct an investigation. In his subsequent statement of the Ministry's position, the Deputy Minister noted that his Ministry and other Ministries of the government had taken the position that an expropriating authority is not liable for claims for injurious affection related to depreciation in value of a property that is alleged to have occurred because of the existence of a works constructed by the authority in the vicinity of the claimant's property, but where no property has been taken from the claimant.

The results of the Ombudsman's investigation showed the complainant's two-story detached house to be located on a dead end street in a residential area on a lot 50 feet wide and 325 feet deep, backing onto a lake. The site of the water treatment plant had been formerly occupied by a house of similar age and style as the complainant's home.

The Ministry had retained the services of a consulting firm to design the plant and the funds were allotted in such a manner that they had to be spent within certain fiscal periods. Officials of the consulting firm explained that the lot adjacent to the complainant's property was thought to be suitable for the plant because a small water pumping station and three intake water mains already existed. By building on this site, it was estimated that costs could be reduced by using these mains, although they ultimately had to be replaced. In addition, a large portion of the site was already owned by the municipality, necessitating acquisition of only the property adjacent to the complainant's.

The plant is approximately three feet from the complainant's property line and six feet from the west wall of his house. The front of the plant is three feet farther from the centre line of the street than the complainant's house and at its widest point, is 115 feet wide. The above ground portion is 154 feet long, the first 38 feet being one story high and the remaining 116 feet 39 feet high. The rear portion of the plant is 72 feet long, most of it being underground, with only three or four feet above ground due to the slope of the land toward the lake. By comparison, the complainant's house is roughly 38 feet long, 44 feet wide (including the garage) and two stories high.

Contact with the Ministry of Revenue during the investigation showed that a reduction of $15,600 had been

applied to the 1978 market value assessment of the complainant's property due to the proximity of the water treatment plant. A copy of an appraisal of the property was also obtained and showed a minus adjustment of $30,000 due to the plant.

Based on the results of the investigation, the Ombudsman tentatively concluded that the Ministry had unreasonably and unjustly refused to compensate the complainant for devaluation caused to his property by the plant, and he tentatively recommended that the Ministry should take steps to determine the amount of the devaluation, if any, and compensate the complainant accordingly. Since the Ombudsman's tentative conclusion and recommendation might have adversely affected the Ministry, he afforded the Deputy Minister the opportunity to make representations. In response, the Ombudsman received a letter dated July 15, 1981, in which the Deputy Minister requested the Ombudsman's view on certain points unrelated to the facts of the investigation. In order to adequately respond to this letter, further research and investigation was conducted.

On September 23, 1981, the Ombudsman wrote to the new Deputy Minister, responding to the concerns raised in the July 1981 letter. The Ombudsman concluded his letter by indicating that his tentative conclusion and tentative recommendation remained unchanged.

On December 16, 1981, the Ombudsman wrote to the Deputy Minister pointing out that his Office had not yet received a response regarding the tentative conclusion and tentative recommendation, and suggested a meeting to discuss the matter. After telephone contact with the Deputy Minister's office, a letter was received from the Deputy Minister dated February 16, 1982, in which he stated that he regretted that he could not accept the Ombudsman's tentative conclusion that the Ministry's refusal to compensate the complainant had been unreasonable or unjust.

Again, on April 13, 1982, the Ombudsman wrote to the Minister of the Environment, and subsequently met with him on June 21, 1982 in an attempt to bring this complaint to a resolution.

Thereafter, on January 19, 1983, Ministry officials met with the complainant at his home, and he subsequently received compensation in the amount of $25,000. The complainant felt that this was a fair and satisfactory resolution of his complaint and our file was therefore closed.

MINISTRY OF

GOVERNMENT SERVICES

DETAILED SUMMARY NO. 16

A complaint was made to the Ombudsman on August 23, 1979 concerning a pension loss suffered by the complainant as a result of a three-year transfer of employment arranged by her employer.

The complaint was treated initially as being directed against the Public Service Superannuation Board, which was notified of the Ombudsman's intention to investigate. During the investigation it became apparent that the complainant's employer, the Alcoholism and Drug Addiction Research Foundation, was also involved. The Foundation was accordingly notified of the investigation.

The investigation established the essential facts as being that on October 1, 1965 the complainant entered the employment of the Foundation and began making contributions to the Public Service Superannuation Fund (PSSF). At that time the PSSF offered a retirement annuity calculated on the average annual salary of the employee's best three years of earnings. On January 1, 1966, when the PSSF integrated with the Canada Pension Plan, the calculation was changed for all new employees entering the public service, and was in future to be based on the average annual salary of the retiring employee's best five years of earnings. Employees already in the public service, including the complainant, were guaranteed, by a provision in the Public Service Superannuation Act, a retirement annuity calculated on the former, more generous method: the average of the best three years. The guarantee, however, applied only if the employee had remained in the public service without interruption until retirement.

In 1969 the complainant was asked by her employer if she would become the director of a new course to train addiction counsellors. The course was to be sponsored jointly by the Foundation and a community college. She agreed and it was then arranged that she would terminate her employment with the Foundation and move for a period of three years to the college where the course was being offered. Apparently no consideration was given to what effect such a transfer of employment would have on the complainant's pension entitlement. A formal secondment, made with the consent of the Board, would have enabled her to continue her membership in the PSSF. No such secondment, however, was arranged.

On September 1, 1976 she resigned from the Foundation and entered the employment of the college. Her membership

in the PSSF ended and she began contributing to a new pension plan. After nearly three years, she resigned from the college and returned to the Foundation and again changed pension plans. In 1976 she retired and began receiving from the PSSF a retirement annuity calculated on the basis of the average of her best five years of earnings.

The complainant claimed initially that she satisfied the conditions of the guarantee contained in the Public Service Superannuation Act and that the Board should pay her an annuity calculated on her best three years of earnings. The Board did not agree and submitted to the Ombudsman, among other arguments, that her employment in the public service had been interrupted in 1969 when she was transferred to the college. Her right to the guarantee did not revive in 1972 when she returned to the Foundation.

The Ombudsman considered the information established by the investigation, the interpretation of the legislation and all relevant arguments relating to continuous service and the meaning of the term "public service". He concluded that, for the purpose of the Act, by terminating her employment with the Foundation in 1969, the complainant had left the public service. In doing so she had lost the benefit of the guarantee. The Board had thus correctly applied the legislation and the complaint against it could not be supported. The Ombudsman's file as it related to the Board was closed on June 30, 1982.

The complaint against the Foundation was that, in arranging for her transfer to the college in 1969, her superiors had failed to advise her properly and to consider the effect it would have on her pension entitlements.

In accordance with section 19(3) of the Ombudsman Act, the Ombudsman informed the Foundation that there appeared to be sufficient grounds for a report and recommendation which might adversely affect it. He gave an account of the information established by the investigation and advised of his tentative conclusions supporting the complainant and his tentative recommendation that the Foundation pay reasonable compensation for the complainant's loss. The Foundation was invited to make representations if it wished.

After some time spent clarifying details, the Foundation responded by sending a cheque for $6,174.47 payable to the complainant, in full settlement of her claim.

The complaint thus being resolved to the complainant's satisfaction, the Ombudsman ended his investigation and closed his file on January 26, 1983.

MINISTRY OF

HEALTH

DETAILED SUMMARY NO. 17

The complainant contacted the Ombudsman's Office to complain about a decision rendered by the Ontario Health Insurance Plan not to pay claims submitted on his behalf relating to an out-of-province claim. It appeared that OHIP had refused to pay the charges for medical expenses that the complainant incurred while he was in Chicago. In particular, OHIP wanted the name of the doctor who performed the services and, in addition, it wanted an itemized bill from the cancer prevention clinic where the complainant was treated.

The complainant had made preliminary inquiries with OHIP and in his initial correspondence to OHIP he had enclosed a copy of the report which listed all of the tests he underwent at a cancer prevention clinic in Chicago. He also explained to OHIP that the clinic did not issue an itemized bill. Subsequently, he received further correspondence from OHIP informing him that his claim could not be accepted as the medical consultants reviewed it and they advised that since the service was not rendered by a registered medical practitioner, it was not a benefit of OHIP. A second reason for disallowing the complainant's claim was that the cancer prevention clinic in Chicago was not listed with the American Medical Association.

After some initial inquiries, the Ombudsman wrote to the General Manager of the Ontario Health Insurance Plan, in accordance with the requirements of the Ombudsman Act, and advised him of our intention to investigate this complaint. The General Manager was asked if he was prepared to give a statement of his Ministry's position on the complaint. We subsequently received a reply from the General Manager, stating that he could not be of assistance to the complainant, but that the complainant should provide documentation regarding the five doctors who attended him at the cancer prevention clinic, and submit claims individually. A copy of this letter was sent to the complainant for his comments. He replied outlining his dissatisfaction with OHIP's response to his contentions.

The Ombudsman informed the complainant that there is an onus on the claimant to provide OHIP with the information required under the regulations of the Health Insurance Act for out-of-province claims. We also advised him to write to either the cancer prevention clinic or his personal physician in Chicago to obtain statements other

than the list of tests he underwent. Subsequently, the Ombudsman obtained a statement from the cancer prevention clinic and forwarded it to the General Manager of OHIP, but unfortunately, OHIP's position on the complainant's claim had not changed.

The Ombudsman reviewed thoroughly the Health Insurance Act and pursuant regulations. Contact was made with the Coordinator, Hospital Support, Operations Branch of the Health Insurance Division of the Ministry of Health, who suggested that OHIP might consider reimbursement if it were evident that doctors were involved in interpreting the results of the complainant's medical tests, and that they were paid for the services they provided. Thereafter, proper authorization was obtained from the complainant so that our Office could have access to his medical records at the cancer prevention clinic in Chicago.

After receiving evidence of the complainant's physical examination and the names of the doctors who administered it at the cancer prevention clinic, our Office forwarded copies of such evidence to the General Manager of OHIP. Enclosed with this evidence was information stating the fact that the physicians who administered the test were not employees of the cancer prevention clinic, and that they were licensed by the State of Illinois. A request was made to reconsider the complainant's claim.

Shortly thereafter, a staff member of OHIP called this Office and informed us that the complainant's claim for costs incurred while he was in the United States in 1980 would be processed and that he would be reimbursed $95.00 in U.S. funds at the 1980 OHIP Schedule of Benefits rate as soon as possible. Later, a letter was received from the Acting General Manager of OHIP confirming this action by OHIP. Accordingly, our file was closed as the complaint was satisfactorily resolved.

MINISTRY OF

LABOUR

THE WORKER'S COMPENSATION BOARD

DETAILED SUMMARY NO. 18

In a letter dated September 4, 1981, the complainant's M.P.P. advised the Ombudsman of a worker's dissatisfaction concerning a decision of the Appeal Board of the Workers' Compensation Board dated July 23, 1981. The worker was dissatisfied with the Appeal Board's decision to deny entitlement for a chest disability as arising out of and in the course of his employment.

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

The investigation showed that in March, 1968, the complainant submitted a claim to the Board for silicosis as a result of his employment with a mining company during the years 1928 to 1968. His claim for compensation benefits was denied by the Board as it had been found by the Silicosis Referee Board that there was "insufficient radiographic change to warrant a diagnosis of silicosis".

In March, 1972, the complainant was hospitalized for a lung biopsy. The preoperative diagnosis was probable silicosis. Upon microscopic examination, the Board's consultant concluded that there was no evidence of silicosis. It was, however, noted that the complainant had a large pulmonary artery which was occluded by an embolus. The x-rays were also reviewed by the Advisory Committee on Special Chest Diseases in August, 1973 which determined that there was no evidence of silicosis. The Board's own specialist in chest diseases found that the complainant was suffering from chronic bronchitis and arteriosclerotic heart disease.

In 1979, the complainant's M.P.P. submitted to the Appeal Board the report of an independent pathologist, dated July 19, 1979, which concluded that the complainant's test results indicated a moderate amount of silica in the lungs.

This opinion was referred to the original examining pathologist, who argued that the mere presence of silica in the lungs did not constitute silicosis. He reiterated his previous opinion wherein he formed the view that:

> ... the biopsy does nothing to support a suggestion that the complainant has pulmonary silicosis.

> Indeed, it stands to the contrary. If a diagnosis of pulmonary silicosis of significant degree is to be made, it must depend on radiological and functional studies, and must assume that the biopsy is not representative.

Upon further review, the Advisory Committee on Occupational Chest Diseases of the Ministry of Labour also supported the pathologist's opinion and concluded that "there is not enough radiological evidence to diagnose pulmonary silicosis, although, the few nodules seen on the x-ray films could be silica related."

The Board also obtained a further opinion from another specialist in chest diseases. In a memo dated June 6, 1980, the specialist stated:

> It is evident that the absence of radiological changes compatible with silicosis and the definitely negative report by the pathologist with respect to silicosis rules out any entitlement for a silicotic chest disability as claimed by the injured worker.

As part of our investigation into this complaint, we contacted the independent pathologist and asked him to review the complainant's file. Specifically, we asked the pathologist to comment on whether the complainant would be considered disabled given the results of the pulmonary function tests.

In a telephone conversation of July 13, 1982, the specialist advised that the most disabling factor to the complainant's condition would be the shortness of breath which was attributable to his heart problem. Although the pathologist remained of the opinion that there was evidence to indicate mild silicosis, the clinical evidence indicated that this was not very active. The pulmonary function studies appeared satisfactory to him.

After reviewing this additional information, the Ombudsman concluded that the Appeal Board had not been unreasonable in its decision and advised the complainant and the Board in a report dated September 14, 1982, that the complainant's file would be closed.

DETAILED SUMMARY NO. 19

The complainant advised the Ombudsman in a letter dated November 12, 1980 that he was dissatisfied with a decision of the Appeal Board of the Workers' Compensation Board dated September 3, 1980. Specifically, he contended that the Board was unreasonable to deny him entitlement for a loss of hearing which arose out of and in the course of his employment. After determining the Ombudsman's jurisdiction to investigate, the Board was notified of the substance of the complaint.

The investigation showed that the Appeal Board had denied the complainant entitlement to benefits for a bilateral sensori-neural hearing loss because the condition was not occupationally induced. The Appeal Board concluded that the complainant was not sufficiently exposed at work to unacceptable noise levels to warrant entitlement for his hearing loss. The Board's policy indicated that for entitlement to be granted the worker should have been exposed to 90 decibels (A), 8 hours a day, for a five-year period.

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 complainant did not have entitlement for industrial hearing loss. In support of his conclusion, the Ombudsman noted that in 1976 and 1978, the complainant was seen by an otorhinolaryngologist who diagnosed a noise-induced hearing loss. This diagnosis was confirmed by the Board's doctor on February 8, 1979. There was no evidence to indicate that the complainant was exposed to high noise levels at any time outside of his employment. Further, the complainant had been employed by the accident employer since 1952. From 1952 until 1958, he worked in positions which did not entail exposure to high noise levels. From 1958 on, however, he worked as a crane man. He has continued in this position to date. Since 1958, the complainant was exposed on a continuous basis to noise levels ranging between 82 and 92 decibels (A) and levels exceeding 90 decibels (A) to a maximum of 115 decibels (A) on an intermittent basis. Between 1952 and 1973, these levels were approximated, based on testing done in 1978 and 1980. No testing was done between 1952 and 1973. The Ombudsman also indicated that it might be open to him to recommend, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board vary its decision and allow the complainant's claim for hearing loss as being occupationally induced, and upon having done so, direct

the Claims Branch to adjudicate his entitlement to disability benefits.

The Workers' Compensation Board and the accident 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 further testing, undertaken by the Board subsequent to receipt of the Ombudsman's 19(3) letter, had not established exposure to hazardous noise levels as defined by the Board. The employer agreed with the Board's position.

After considering these submissions, and obtaining a further medical opinion regarding the issue under investigation, the Ombudsman issued his report pursuant to section 22 of the Ombudsman Act, recommending that the Board revoke its previous decision and recognize the complainant's hearing loss as being occupationally induced and award the appropriate benefits.

In a letter dated September 29, 1982, the Chairman of the Board advised the Ombudsman:

> I am pleased to inform you that the Board, having regard for all of the circumstances in this case, and by application of the Board's policy of Benefit of Doubt, has concluded that [this claimant] has entitlement under the Workmen's Compensation Act for deafness by reason of his exposure to noise at work.
>
> [The claimant's] file has been referred to the appropriate operating division so that benefits flowing from this decision can be calculated.

The complainant was advised by letter on October 27, 1982 that his file would be closed, as the complaint had been resolved.

THE WORKER'S COMPENSATION BOARD

RECOMMENDATIONS DENIED

DETAILED SUMMARY NO. 20

On August 17, 1977 the Appeal Board of the Workers' Compensation Board rendered a decision denying the complainant entitlement to benefits for his back disability. On January 13, 1978 a letter from the complainant was received by the Ombudsman requesting that he investigate this decision.

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

The investigation of this complaint showed that the complainant's work involved heavy lifting and that over a period of time he had complained of low back pain to his employer. Ten years after starting that job, and five years after his first complaint to his employer, he was examined by an orthopaedic specialist who subsequently performed an intra-transverse fusion. It was necessary nine months later to repeat this operation.

In denying the complainant entitlement to benefits, the Appeal Board concluded, ".... due to a lack of continuity of symptoms, treatment and complaints and the fact that no accident was ever reported to the company", the complainant's disability did not result from his employment. The Appeal Board panel, in reaching this decision, did not obtain any medical advice regarding the relationship between the complainant's disability and his job. There was, however, a report from the operating specialist that the disability was related to his work.

During the course of the Ombudsman's investigation, he formed the view that it might be open to him to conclude that the Appeal Board was unreasonable to find that the complainant did not have entitlement for a back disability as arising out of and in the course of his employment. In support of his possible conclusion, the Ombudsman noted that the Board had previously acknowledged that the work was heavy and a causal relationship to the work had been established by the treating physician. The Ombudsman made the tentative recommendation, pursuant to section 22(3)(c) of the Ombudsman Act, that the Board reconsider its decision and grant the complainant entitlement to benefits for a back disability as arising out of and in the course of his employment.

Since it seemed to the Ombudsman that the Board and the employer could be adversely affected by his tentative

conclusion and recommendation, he afforded the Board and the employer an opportunity to make representations pursuant to section 19(3) of the Ombudsman Act.

In its response to the Ombudsman's possible conclusion, the Board indicated that it did not believe the medical evidence demonstrated a relationship between the complainant's back disability and his employment. In the Board's view, degenerative disc disease was the precipitating factor in the complainant's disability, rather than the employment. The employer indicated that the decision would have to be made by the Workers' Compensation Board based on medical evidence received and that the company was not in a position to refute the medical evidence or to question the Appeal Board's decision. The Ombudsman carefully considered these representations.

In his report dated January 26, 1983, the Ombudsman concluded, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board was "unreasonable" to conclude that the complainant's back disability was not aggravated by his work, as the medical evidence clearly indicated a relationship existed between the complainant's employment and his disability. Accordingly, the Ombudsman recommended that the Board should revoke its decision and grant the complainant entitlement to benefits for a back disability as arising out of and in the course of employment.

Prior to formally responding to the Ombudsman's report, the Board submitted an opinion from a doctor employed by the Board, for his consideration. The doctor indicated that he was not prepared to disagree with the Board's position.

The Ombudsman considered this submission and advised the Board that he would not alter his recommendation.

No formal response to the Ombudsman's recommendation was subsequently received from the Board and on March 31, 1983, the Ombudsman exercised his discretion and referred the matter to the Premier for consideration. The file was then closed.

DETAILED SUMMARY NO. 21

On October 29, 1981 and December 23, 1981 the Appeal Board of the Workers' Compensation Board rendered decisions denying the complainant a partial commutation of his pension to pay off the mortgage on his home. During an

interview on November 25, 1981, the complainant requested that the Ombudsman's Office investigate this decision.

The Board was subsequently notified of the Ombudsman's intent to investigate and the file was assigned to a staff member for investigation.

Investigation of the complaint revealed that on November 27, 1972, at the age of 22, in the course of his employment, the complainant suffered a crushing injury to his left foot during a rockslide. A Symes amputation, removal of the foot above the ankle, was performed in March of 1973. After training and fitting for a prosthesis in 1973, the complainant enrolled at a college for a degree in Business Administration under the auspices of the Board's Rehabilitation Services. The complainant was awarded a 25% pension in January of 1977. After five years of steady employment as an auditor with the Department of National Revenue, he applied to the Board for a partial commutation of his pension to pay off the first mortgage on his house, which was denied in the aforementioned decisions.

During the course of this 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 denying the complainant's request for a partial commutation of his pension on the ground that it was not in his best long-term interest. The Ombudsman, in arriving at his tentative conclusion, referred to the economic arguments advanced by the complainant, which demonstrated that a commutation would result in a $3,000 annual surplus; the steady nature of the complainant's job; and his successful efforts at rehabilitating himself. The Ombudsman made the possible recommendation, pursuant to section 22(3)(g) of the Ombudsman Act, that the Appeal Board revoke its decisions and award the complainant the partial commutation requested.

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

In its response, the accident employer stated that it had no objection to the commutation. The Board stated, in its response, that one of the policy requirements for commutation was that it must constitute a new or continuing rehabilitation measure and show evidence of being to

the injured worker's best long-term interest. The Board pointed out that while the commutation might be in the complainant's best long-term interest, it did not constitute a new or continuing rehabilitation measure as the complainant was already rehabilitated. The Board concluded by stating that, in view of adherence to general policies on commutation, it was unable to agree that its decisions were unreasonable. The Board, therefore, did not propose to take any action to implement the Ombudsman's tentative recommendation.

After carefully considering the Board's representations, the Ombudsman, in his report dated February 24, 1983, concluded pursuant to section 22(3)(g) of the Ombudsman Act, that the Appeal Board was unreasonable in denying the complainant's request for a partial commutation. It was the Ombudsman's opinion that the Board denied the commutation because the complainant did not meet the strict wording of requirements set out in its policy for the granting of commutation. Further, he concluded that the Board had fettered its discretion in this instance by not looking at the real merits of the request. Since the legislative power to commute is clear, and the Board ought not to apply its policies on commutation rigidly as preconditions in all cases, it was the Ombudsman's opinion that the Board was unreasonable in stating that an individual who had been rehabilitated could not be eligible for commutation. As the complainant had shown the enterprise and fortitude to rehabilitate himself and had demonstrated the economic benefits of a commutation, the Ombudsman recommended that the complainant be granted the partial commutation he requested.

On March 31, 1983, the Ombudsman notified the Chairman of the Workers' Compensation Board and the complainant that he had decided to exercise his discretion and refer the matter to the Premier, because a reasonable time had elapsed following his report and there was no adequate or appropriate action by the Workers' Compensation Board. The file was then closed.

On April 26, 1983 (after the 1982/83 fiscal year end), the Board responded further to the Ombudsman's report, maintaining it had not fettered its discretion in this case. In the Board's view the long-term best interest of the employee would be served by the continuation of the pension, which would be increased by legislative amendment, as a dependable source of income. The Board opined that this benefit outweighed a short-term financial relief to the worker if his mortgage were to be discharged. The Board therefore declined to implement the Ombudsman's recommendation.

DETAILED SUMMARY NO. 22

The complainant's Member of Parliament requested that the Ombudsman investigate a decision dated December 5, 1973, of the Appeal Board of the Workers' Compensation Board. The Board denied the complainant entitlement to benefits for a right leg amputation resulting from his accident at work on July 7, 1964, because it found that the complainant had not been employed as a workman in an industry which was liable to contribute to the Workers' Compensation Board's Accident Fund, as his employer did not come within Part 1 of the Workers' Compensation Act.

In April, 1963 a family-run company was incorporated to carry out its investors' concept of erecting and managing a space museum, which consisted of a building with a tower. The company leased the necessary land and handled completely the contracting for construction of the tower, while another corporation run by the same family acted as agent in arranging or letting the contracts for the construction of the building.

The company hired the complainant to ground the tower against the danger of lightning. On July 7, 1964 the complainant fell while working and sustained numerous fractures. Complications necessitated amputation of his right leg in 1974.

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 decision was unreasonable. The Ombudsman found that from the start the company contemplated taking an active role in the construction phase as well as the operating phase of the museum and did, in fact, become the prime contractor for the construction of the tower. The Ombudsman's tentative opinion was that the company's business was the construction and operation of exhibitions and museums. Such construction work came within the industries set out in Schedule 1 of Regulation 834 of the Workers' Compensation Act, and therefore the company ought to have been classified as a Schedule 1 employer. The Ombudsman tentatively concluded that the complainant was hired by the company as an employee to perform work related to the construction phase of the museum, and, as an employee of the company which was the principal during the construction phase of the tower, should have been afforded the same protection given to employees of contractors or sub-contractors involved in the construction phase of a project under sections 9(1) and 9(3) of the Workers' Compensation Act.

The Ombudsman indicated that it might be open to him to recommend, pursuant to section 22(3)(c) of the Ombudsman Act, that the Appeal Board cancel its decision and grant the complainant the appropriate benefits as he was employed as a workman in an industry which was liable to contribute to the Board's Accident Fund.

Pursuant to section 19(3) of the Ombudsman Act, the Workers' Compensation Board and the employer were accorded an opportunity to respond to the Ombudsman's tentative conclusion and recommendation. In its response, the Board took the position that the company could not properly be found to have been in the construction business, and therefore the Board could not give effect to the Ombudsman's possible recommendation. The employer indicated that it was in the business of operating a space museum, and had not assumed the role of a contractor with respect to the construction of the museum building or the tower.

Upon consideration of these responses, the Ombudsman noted that neither the Board nor the company which employed the complainant appeared to recognize that the company could properly have been engaged in more than one industry simultaneously, that is, operating a space museum, and engaging in a construction undertaking. "Industry" was defined in section 1(1)(m) [now s. 1(1)(o)] of the Workers' Compensation Act to include "establishment, undertaking, trade or business".

It was the Ombudsman's view that the Board, in coming to the conclusion it did with respect to the industry in which the company was engaged, had wrongly incorporated a test relating to the "prime purpose" of a company's business, into section 123 [now section 127] of the Act. Had the Legislature intended such a narrow test to be applied, it would have stated so clearly.

The Ombudsman concluded that at the time of the accident, the complainant was employed as a worker in the construction industry, which is a Schedule 1 industry, and ought to have received benefits in accordance with the spirit and intent of the Workers' Compensation Act. It was the Ombudsman's opinion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Appeal Board's decision dated December 5, 1973, was unreasonable and unjust in denying the complainant's claim for benefits. He therefore recommended, pursuant to section 22(3)(c) of the Ombudsman Act, that the Workers' Compensation Board cancel the Appeal Board decision and award the complainant the appropriate benefits.

The Board obtained an independent legal opinion dated July 30, 1982, which stated that the Ombudsman erred in looking at activities rather than purposes. The company built the museum for its own personal use, so as to be in the museum business, and not to sell for profit, which would have put it in the construction business. One determines whether or not an activity is covered by the Act by looking at the industry within which the activity is performed, not by simply looking at the activity.

On September 29, 1982 the Chairman of the Board advised the Ombudsman that the Board had adopted this legal opinion as a statement of the Board's position, and was not prepared to implement the Ombudsman's recommendation.

The Ombudsman acknowledged that while the Board could reasonably have come to the conclusion that the company was in the business of operating a space museum, it could also have reasonably come to the conclusion that the company was, at the time in question, in the construction business. Bearing this in mind, as well as the real merits of the case and the spirit and intent of the Workers' Compensation Act, the purpose of which is to compensate workers for injuries and loss of earnings related to accidents at work, the Ombudsman remained of the opinion that the Appeal Board's decision was unreasonable and unjust.

Given that the Board was not prepared to implement the Ombudsman's recommendation, the Ombudsman provided the Premier with a copy of his report dated June 18, 1982, and the Board's response, pursuant to sections 22(4) and 22(5) of the Ombudsman Act. The Workers' Compensation Board and the complainant were advised of this and the file was closed on November 10, 1982.

MINISTRY OF

MUNICIPAL AFFAIRS AND HOUSING

DETAILED SUMMARY NO. 23

This complaint concerned a Housing Authority in Northern Ontario which had issued notice to a senior citizen requiring her to give up possession of her apartment for non-payment of rent. The complaint was brought to the Office of the Ombudsman at hearings held in June of 1982. On July 28, 1982, the Ombudsman wrote to the Chairman of the Housing Authority, notifying him of the nature of the complaint and of his intention to conduct an investigation. A statement of the Housing Authority's position was received in a letter dated August 5, 1982.

The investigation revealed that the complainant and her late husband had jointly applied to the Housing Authority for subsidized housing in 1971, indicating their income and unspecified real estate assets worth either $3,000 or $5,000. Upon her husband's death in 1973, his estate, which consisted of three 100 acre lots, was transferred to the complainant. In late 1973, the complainant was accommodated in the apartment which she occupied at the time of making the complaint. At that time, the value of assets held by a tenant or an applicant for Ontario Housing did not figure in determining eligibility, need for housing, or rent, the only financial consideration being gross income. Assets were relevant only if they produced income.

Under the terms of her lease, the tenant was to use and occupy the leased premises only as a private residence for herself, and the rent was based on information she supplied concerning her gross income. In signing the lease, the tenant agreed to furnish the landlord with an updated statement of her gross income from all sources as soon as any change in income occurred. Clause 13 of the lease stated that if the tenant furnished any incorrect or misleading information as to her income or assets, the rent was to be recalculated, based on the corrected information. If such recalculation indicated that additional rent was owing, the tenant was to immediately pay such additional rent.

The Ontario Housing Corporation's policy concerning non-income-producing assets, which first came into effect on June 1, 1980, defined non-income-producing assets as all those assets, investments or holdings that do not bear interest, including assets that have been transferred or given away. The policy concerning transferred assets was also to apply to all current tenants at the time of lease renewal, although a tenant's total amount of transferred

assets was to be reduced or written down by $2,000 a year. Effective April 1, 1982, the method of calculating rents for tenants with non-income-producing assets was altered so that a rate of return was applied to the value of such assets to give an imputed income. Rent was to be calculated based on imputed income and all other income.

The Housing Authority did not inform its tenants in 1980 of the introduction of the new policy, nor did it review its files or make inquiries to determine whether its senior citizen tenants had non-income-producing assets which should be included in the rent calculation. The Housing Authority annually sent forms to tenants on which they were to provide the information used to calculate rent. Several different forms had been used over the years, but all referred only to income, with only the most recent form, which was developed after January 1, 1982, specifically requesting information on assets, and then only with regard to real estate.

The investigation showed that early in 1980, the Housing Manager began to notice that the complainant's son's vehicle was often parked outside her apartment. The Housing Manager informed this Office that this raised some concerns that the complainant's son might have been occupying the premises, contrary to the lease, and this matter was brought to the complainant's attention. Subsequent inquiries by the Housing Authority indicated that the complainant owned the land which she had inherited from her husband, and the assessment on the property was found to be $39,500. The Housing Authority then wrote to the complainant, informing her that it had recently learned she was the owner of land. The policy with regard to non-income-producing assets as it applied to calculating rent was explained, and the complainant was informed that her rent would not exceed the local market rent for similar accommodation. Some two weeks later, the complainant conveyed the land to her son, retaining a life interest.

The Housing Authority subsequently learned of the transfer and on March 23, 1982, the Housing Manager wrote to the complainant, informing her that in keeping with clause 13 of the lease, her rent was to be recalculated to $248 from $110, based on the assessed value of the property, retroactive to February 1, 1982. This letter stated that the policy pertaining to non-income-producing assets was also applicable to assets which had been transferred. The complainant continued to pay $110 a month because she felt the increase was not justified, although the Housing Authority considered the difference between the rent calculated as owing, and the amount paid, to be

arrears. On May 25, 1982, a notice to vacate based on rental arrears was issued to the complainant.

In his letter to the Ombudsman of August 5, 1982, the Chairman of the Housing Authority noted that the complainant had only made one reference to her property -- on the original application in 1971 -- and no mention of it was made on any subsequent annual income review. An examination of the forms used by the Housing Authority shows that information on assets was not requested until September 1, 1982.

The Housing Authority stated that it relied on clause 13 of the expired lease which, in its opinion, put an onus on the complainant to report assets. In the Ombudsman's opinion, the complainant could not have been said to have furnished any incorrect or misleading information as to her income or assets, since the Housing Authority had not requested such information on its income review forms. Further, although clause 13 refers to assets, the lease puts an express onus on tenants only with respect to income. In addition, the Ombudsman considered the provisions of the Landlord and Tenant Act, which requires landlords to give tenants 90 days' notice of a rent increase, and states that if this notice is not given, the rent increase is void. As of February 1, 1983, the Housing Authority had calculated the complainant's rent to be $212. The complainant had not received notice in accordance with the Landlord and Tenant Act with respect to the increase from the former rent of $110.

In the Ombudsman's opinion, on the basis of the investigation conducted, it was open to him to make a report which would justify certain tentative conclusions and recommendations. In accordance with section 19(3) of the Ombudsman Act, the Ombudsman wrote to the Chairman of the Housing Authority on February 8, 1983, informing him of the results of the investigation and stating that he could possibly conclude that: 1) the Housing Authority acted unreasonably in: (a) not notifying its senior citizen tenants of the 1980 change in policy regarding imputed income on non-income-producing assets; (b) not altering its annual income review forms at that time to provide tenants with the opportunity to report their non-income-producing assets; and (c) not notifying the complainant of all aspects of the policy, particularly with regard to transferred assets, in its letter of December 8, 1981; 2) the Housing Authority acted unreasonably in increasing the complainant's rent retroactively, based on clause 13 of the lease; 3) the Housing Authority acted contrary to the provisions of the Landlord and Tenant Act in increasing

the complainant's rent and the increase was therefore void; and 4) the Housing Authority unreasonably issued to the complainant a notice to vacate for non-payment of rent.

The Ombudsman also stated in his letter to the Chairman that he could possibly recommend that: 1) the Housing Authority revise its annual income review form to request from senior citizens details on all non-income-producing assets that they might have; 2) the Housing Authority inform its senior citizen tenants of all aspects of the policy introduced in 1980 relating to non-income-producing assets; 3) the Housing Authority take no further action in evicting the complainant and that it remove from her account all arrears, since the increase in rent was void; 4) the Housing Authority give the complainant 90 days' notice of any rent increase as required by the Landlord and Tenant Act, and that any imputed income should be based on the 1980 market value assessment of the land, written down by $2,000 per year.

As required by section 19(3) of the Ombudsman Act, the Ombudsman invited the Chairman to make representations regarding the possible conclusions and possible recommendations. These were received in a letter dated March 8, 1983, in which the Housing Authority stated its disagreement with the Ombudsman's possible conclusions. With respect to his possible recommendations one and two, the Housing Authority agreed to implement these through revisions to its annual income review form. As for possible recommendations three and four, the Housing Authority gave the complainant 90 days' notice of a rent increase as required by the Landlord and Tenant Act, and agreed to impute to her income based on her transferred non-income-producing assets based on the 1980 market value assessment written down by $2,000 a year.

The complainant subsequently advised this Office that on March 1, 1983, the Housing Authority notified her that her rent would increase to $223, effective June 1, 1983. All arrears of rent were removed from her account and the Housing Authority agreed to take no further action to evict her on this ground. Although the complainant felt that $223 was a considerable amount to pay in rent, she nevertheless indicated that her complaint had been resolved satisfactorily, and the Ombudsman's file on this matter was accordingly closed.

MINISTRY OF

MUNICIPAL AFFAIRS AND HOUSING

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 24

On December 20, 1982 the Ombudsman issued his report entitled "Report of the Ombudsman of Ontario as a result of Certain Complaints in Relation to the North Pickering Project". In it he disclosed that he had reached agreement with the Minister of Municipal Affairs and Housing on a revised settlement proposal under which the majority of complainants (95 of 113) would receive additional compensation for their land from the Province. In essence, the Ministry agreed to update the settlements from the date of appraisal to the date of offer, and to pay the former landowners the difference between the revised market value and the compensation which they had received. The Ministry also agreed to pay interest at the rate of 6% per annum (the rate prescribed by section 35(1) of the Expropriations Act) until a cutoff date.

However, the Ministry did not agree to include in the settlement 18 former landowners who, in its view, "were fully knowledgeable about the value of these properties and made calculated business decisions to complete the sale at the time to the Ministry". These 18 landowners came to be known as "investors", in that they were holding relatively large tracts of land (ranging in size from 50 to over 153 acres) for investment purposes. Many of them were companies formed for the purpose of acquiring land from capital provided by individual investors, later selling the land at a profit to those investors.

The Ombudsman acknowledged that these owners were more sophisticated and knowledgeable than the ordinary landowners, and that some of them had considerable experience in buying and selling land. He accepted the Ministry's submission that these landowners made calculated business decisions to sell, rather than to wait for expropriation.

The fact remained, however, that the Government neglected to pay fair market value for these lands, since the appraised values were not updated sufficiently by Project officials. Even "knowledgeable" owners were entitled to receive fair market value.

The Ombudsman noted that, had these owners waited for expropriation and had their claims for compensation determined by the Land Compensation Board, the Board would have had no regard to the character of the owners. He pointed out that if the Government wanted to curb land speculation, it was open to it to introduce appropriate legislation.

It was, accordingly, the Ombudsman's opinion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Ministry of Housing had unreasonably omitted to pay the 18 landowners excluded from the revised settlement proposal fair market value for their lands. It was his further opinion that the basis upon which they were excluded by the Ministry of Municipal Affairs and Housing constituted improper discrimination under the same subsection.

The Ombudsman recommended, pursuant to section 22(3)(b) and (g) of the Ombudsman Act, that the 18 landowners be subject to the same terms proposed by the Ministry in its revised settlement proposal.

On January 11, 1983, the Minister of Municipal Affairs and Housing replied to the Ombudsman's report. In his reply, he stated, "After careful consideration of my responsibilities for the expenditure of public funds, I am not prepared to recommend that the Government accept your recommendation ... to include 18 additional landowners in the revised settlement proposal."

After considering the matter further, the Ombudsman decided that he would send his report and recommendation to the Premier, pursuant to section 22(4) of the Ombudsman Act. This was done by letter dated January 21, 1983, and the Minister of Municipal Affairs and Housing was so informed.

On February 24, 1983 the Premier acknowledged receipt of the Ombudsman's report and recommendation. He advised that Cabinet had concurred with the Minister's proposal.

The Ombudsman notified the 18 landowners and their counsel of the results of his investigation and their files were then closed.

MINISTRY OF

NATURAL RESOURCES

DETAILED SUMMARY NO. 25

The complainant's solicitor wrote to this Office on December 4, 1980, concerning a decision of the Ministry of Natural Resources. The Ministry had refused to sell the complainant a parcel of Crown land on which he had built a cabin some twenty years previously under the belief that the land was his. This, the complainant contended, was unreasonable.

The Ombudsman notified the Deputy Minister of Natural Resources of his intention to investigate this complaint. The subsequent investigation revealed that in 1976 a survey had shown that the cabin was occupied periodically by the complainant, and that docks and a boathouse belonging to a neighbouring lodge owner were located on Crown land. At that time, the complainant was an employee of the Ministry. The complainant was originally instructed to remove his cabin from Crown land. Because the complainant was employed by the Ministry, it was not, in any event, possible for the Ministry to sell him the land. However, after negotiations, an arrangement was made whereby the complainant would sell the cabin to the owner of the neighbouring lodge to be held in trust, and the lodge owner would purchase the land on which the docks, boathouse and cabin were located.

After this arrangement was made, allegations were made to Ministry officials that the cabin did not belong to the complainant but was, rather, Crown property which the complainant had occupied without authorization. As a result, the Ministry undertook an investigation into the history of this cabin and determined that the cabin was Crown property.

The complainant then produced two sworn affidavits for the Ministry's consideration. The first, from a former owner of the lodge, attested to the fact that the complainant had paid him [the former owner] $200 for the land in question, as he [the former owner] had been under the belief that the land was part of his lot. The second affidavit, from a former employee of the Ministry now retired, attested to the fact that the complainant had been given permission to salvage certain building materials which the complainant had then used to construct the cabin.

The Ministry, however, based on the results of its investigation, remained firm in its decision and the complainant was instructed to remove his improvements from the "Ministry's" cabin.

The Ombudsman's investigation revealed that the docks and boathouse located between the lodge and the complainant's cabin (now known to be on Crown land) were built some time prior to 1956. The former lodge owner had purchased the lodge at that time. As noted, the former lodge owner also acknowledged that he did receive money from the complainant for the land, believing it to be his to sell. There was, however, no record of this transaction between the complainant and the lodge owner on the title to the property, nor was there any written deed or receipt for money paid, or even an application to sever the lot from the lodge property.

It was agreed by all parties that the basic structure, consisting of a 12-foot x 24-foot wood frame, was originally a building at a roadside park formerly under the jurisdiction of the Ministry of Transportation and Communications. The park was transferred to the Ministry of Natural Resources about 1956 or 1957 for development as a provincial park.

The complainant stated that he had asked permission to salvage the building after it had been taken down at the park, and was given permission to do so by the then District Forester. According to the complainant, the cabin was then rebuilt on the land he had purchased from the lodge owner. From 1969, when the opening of a new highway made access to the cabin site much easier, the complainant's family began to make use of the cabin on a regular basis. In 1970, the complainant began to make substantial improvements.

In 1973, when the Provincial Land Tax Roll was created by the Ministry of Natural Resources, the complainant was enrolled as owner and has paid the taxes since. The fact that the complainant was improving the property was known to Ministry personnel. During the Ombudsman's investigation of this complaint, those persons previously interviewed during the Ministry's investigation who, it appeared, might have direct knowledge of this matter, were interviewed again. Not surprisingly, given the amount of time that had elapsed, the recollections of these persons were vague and contradictory. Some persons were very definite that the cabin was Ministry property. Others recalled that it had always belonged to the complainant.

The Ombudsman came to the tentative conclusion that the decision of the Ministry of Natural Resources to refuse to sell the lands on which the cabin is located and to order the complainant to remove his improvements from the cabin was unreasonable and oppressive within the

meaning of section 22(1)(b) of the Ombudsman Act. Accordingly, the Ombudsman reported this possible conclusion to the Deputy Minister by letter dated January 21, 1982 together with his possible recommendation that the Ministry should proceed as quickly as possible to regularize the occupation of the land in question by the complainant. The Ministry was afforded the opportunity to make representations respecting the tentative conclusion and tentative recommendation, but the Minister advised the Ombudsman that he had no further information to offer.

After reconsidering this matter, it was the Ombudsman's opinion that the decision of the Ministry to refuse to sell the lands in question and to order the removal of the complainant's improvements from the cabin was unreasonable and oppressive within the meaning of section 22(1)(b) of the Ombudsman Act. The Ombudsman came to this conclusion on the unique facts of this case. The complainant had claimed that the location of the cabin on Crown property could be explained by an honest but mistaken belief in title to the property. His claim was substantiated to some degree by the sworn testimony of the former lodge owner. As well, the complainant was enrolled as owner of the land on the Provincial Land Tax Roll in 1973, thereby putting the Ministry on notice of his claim to the land.

The dispute between the Ministry and the complainant over the ownership of the cabin was more difficult. However, it was noted that the complainant had gone unchallenged in his first ten years of occupation of the cabin. The Ombudsman also considered the fact that the cabin was not in a location which could reasonably be described as remote. It was located next to a lodge in an area where there are many private cabins. Finally, the Ombudsman considered that the order to the complainant to remove his improvements would have destroyed the value of both the cabin and the improvements themselves.

Based on this conclusion, the Ombudsman recommended, pursuant to sections 22(3)(c) and (g) of the Ombudsman Act, that the Ministry should proceed as quickly as possible to regularize the occupation of the land in question by the complainant. By this time, the complainant was no longer an employee of the Ministry and it was possible for the Ministry to deal directly with the complainant in this matter.

In a letter dated April 13, 1982, the Deputy Minister advised that he accepted the Ombudsman's recommendation

and that he would instruct his staff to begin the necessary work to complete a sale and patent of the land in question. The matter having been resolved, the file was then closed.

MINISTRY OF

REVENUE

DETAILED SUMMARY NO. 26

This complaint against the Ministry of Revenue was referred to this Office of the Ombudsman on October 19, 1981 by Mr. David A. Tickell, Ombudsman of Saskatchewan, to whom the complaint had originally been made.

On May 26, 1981, while temporarily in Ontario, the complainant's husband had purchased a moped on which he paid $21 in retail sales tax. Since the moped was not intended for use in Ontario, he felt that he should be exempted from paying the tax. The salesperson informed him, however, that upon his return to Saskatchewan, he could claim a rebate of the tax paid in Ontario.

Once in Saskatchewan, the moped was registered and licensed, and retail sales tax was paid to the Saskatchewan government. When the complainant's husband subsequently wrote to the Ministry of Revenue requesting a refund, he was informed that the Ministry required proof that the moped had been removed from Ontario within 30 days of its purchase. All available receipts were forwarded to the Ministry, although these showed that the moped was in Ontario on June 27, 1981, and had therefore not been removed within the 30 day limit.

The complainant felt that the Ministry had acted unreasonably in not refunding the tax, and requested that the Minister exercise his discretion under the Retail Sales Tax Act to exempt her husband from payment of the tax and provide a refund.

The Ombudsman notified the Deputy Minister of Revenue of his intention to conduct an investigation and subsequently received a statement of the Ministry's position. During the investigation, a review of the Retail Sales Tax Act confirmed that the tax was legally payable in Ontario, although a refund might be granted by the Minister upon receipt of satisfactory evidence that the item was removed from the province within 30 days of its purchase. It was also confirmed that the Act allows the Minister to exempt a purchaser if, owing to special circumstances, it is deemed inequitable that the whole amount of tax be paid.

In response to concern on the part of the Ministry, the complainant provided it with information indicating that a rebate could not be claimed from the Saskatchewan government and requested that the Minister exercise his discretion to provide the refund.

On April 27, 1982, the Office received a copy of a letter dated April 23, 1982, addressed to the complainant from the Deputy Minister, informing her that her request for a refund had been approved and that payment would be processed and forwarded within a few weeks. The complainant was pleased with this disposition of her complaint and our file was therefore closed on May 17, 1982.

DETAILED SUMMARY NO. 27

This complaint against the Ministry of Revenue was brought to the Ombudsman's attention by way of a letter dated April 7, 1981. The complainant felt that the Ministry had unreasonably refused to reimburse him for expenses which he incurred as a result of a clerical error by the Ministry which caused his property assessment to be nearly doubled.

On July 28, 1981, the Ombudsman notified the Deputy Minister of Revenue of our intention to investigate this complaint. In his statement of the Ministry's position, the Deputy Minister indicated that the increase in the complainant's assessment had been the result of an error in the Ministry's office. Since the assessment roll had been returned to the municipality, the only means available under the Assessment Act to correct the error was an appeal to the Assessment Review Court. The Deputy Minister indicated that the complainant had been advised to proceed in this manner and concluded that the factors resulting in the delay in reducing the assessment were beyond the control of the Ministry of Revenue.

The investigation showed that on January 7, 1980, the complainant's Notice of Assessment for taxation commencing January 1, 1980 was mailed to him by the Ministry. This notice showed the assessed value of his property to be substantially increased over the previous year's assessment. On contacting the Regional Assessment office on January 14, 1980, the complainant was informed that this had been the result of an error, but in order to have it corrected, he would have to complain to the Assessment Review Court. The complaint was received by the Court on January 15, 1980, but due to difficulties in the hearing schedule, the Court's decision reducing the assessment to $7,850 was not issued until October 27, 1980. The assessment roll had, however, been returned to the municipality on January 22, 1980, and a tax bill based on the incorrect assessment had been issued.

Under the terms of the complainant's mortgage, the mortgagor was to pay the municipal taxes out of his mortgage account. When the tax bill based on the higher assessment was received, the account did not contain sufficient funds, and an overdraft resulted to which a $26.68 interest charge was applied. Although a refund was provided by the municipality for the overpayment of taxes, the complainant felt that the Ministry should reimburse him $30.35 to cover the interest charge, plus additional out-of-pocket expenses which he incurred as a result of the Ministry's error.

During the investigation, the Office learned that the time for returning the assessment roll to the municipality had been extended under the Assessment Act to January 22, 1980 and changes therefore could have been made to the roll between January 7, 1980 and January 22, 1980. It seemed, then, that the Ministry could have corrected the assessment at the time the complainant brought the error to its attention on January 14, 1980. It also seemed that the complainant had been given incorrect advice on that date, when he was told that a formal complaint to the Assessment Review Court was the only means of having the error corrected.

Based on the results of the investigation conducted, the Ombudsman tentatively concluded that the Ministry had acted unreasonably and formulated the tentative recommendation that the Ministry reimburse the complainant. In accordance with section 19(3) of the Ombudsman Act, the results of the investigation were communicated to the Deputy Minister, along with the possible conclusions and the possible recommendation, in a letter dated April 14, 1982. The Ministry was accorded the opportunity to make representations, and in his letter of May 17, 1982, the Deputy Minister explained that neither the Ministry of Revenue Act nor the Assessment Act contained any provisions allowing for a payment such as that requested by the complainant. Nevertheless, the Ministry remained receptive to any proposal that would permit it to reimburse the complainant. Subsequently, the Ombudsman's Office pursued with the Ministry other means by which a payment could be made, although these efforts were not successful.

On July 22, 1982, the Ombudsman issued his final report containing his final conclusions and final recommendation made pursuant to the Ombudsman Act. The report noted that the Ministry had acknowledged its error and showed itself receptive to making the payment. It found itself in a dilemma, however, in that on the one hand, it felt that the complainant ought perhaps to be paid, but on the other, had no means of legally disbursing such funds.

The Ombudsman noted in his report that this was not the first time that a difficulty of this nature had arisen. (See Appendix A, page 96.)

Since formulating his possible conclusions and possible recommendation, no information has been brought to the Ombudsman's attention to cause him to alter his opinion. While the amount of money which the Ombudsman felt was due to the complainant was not large, he continued to be of the view that the complainant should be reimbursed.

The Ombudsman's final conclusions under section 22 of the Ombudsman Act were: that the Ministry of Revenue had been wrong in erroneously increasing the complainant's assessment; that the Regional Assessment Office had been wrong in informing the complainant that it was necessary to make a formal complaint to the Assessment Review Court; that the Ministry had acted unreasonably in omitting to alter the assessment prior to the roll being returned to the municipality; and that the Ministry had acted unreasonably in omitting to reimburse the complainant.

The Ombudsman's final recommendation, pursuant to section 22 of the Act, was that the omission should be rectified and the Ministry of Revenue take appropriate steps to reimburse the complainant the sum of $30.35.

In response to the Ombudsman's final report, the Deputy Minister of Revenue stated that he had written to the Deputy Treasurer and Deputy Minister of Economics, who is responsible for the administration of the Financial Administration Act, supporting the amendment proposed by the Select Committee on the Ombudsman. In addition, the Office contacted officials of the Ministry of Revenue's Legal Services Branch, who agreed to refer this case to the Ministry of the Attorney General for a legal opinion which might possibly provide the Ministry with the legal authority to reimburse the complainant.

While the Ombudsman remained convinced that the Ministry of Revenue ought to reimburse the complainant, he recognized the difficulty posed by its lack of legal authority to do so. The Ombudsman was, however, of the opinion that the actions taken by the Deputy Minister in writing to the Deputy Treasurer and Deputy Minister of Economics, and in requesting a legal opinion from the Ministry of the Attorney General, were appropriate and adequate, and he decided therefore not to send a copy of his report and recommendation to the Premier, as he is entitled to do under section 22(4) of the Ombudsman Act.

This file was therefore closed, although the Office will remain in touch with the Ministry of Revenue while it awaits the legal opinion from the Ministry of the Attorney General.

MINISTRY OF REVENUE

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 28

The complainant contended that a decision of the Ministry of Revenue was unreasonable.

The complainant, a student, worked for the Ministry for five consecutive summers, the last three in the Tax Return Centre. In May, 1980, prior to commencing work for the fifth summer, the complainant signed the necessary employment contract accepting a position as a Clerk 1 at $4.65 per hour. At this time he learned that two other students with similar educational backgrounds, but without previous Ministry experience, were earning more money than he. The complainant did not immediately raise the issue of his salary with officials of the Personnel Department, as he was of the view that it was neither the proper time nor place to do so; rather, he subsequently approached the Director of the Corporations Tax Branch and requested a reevaluation. In the complainant's view he was incorrectly classified as a Clerk 1, given that, in terms of skill, expertise, and responsibility, the work he was performing was beyond that required of a Clerk 1. No salary increase was granted.

The Ombudsman wrote to the Deputy Minister of Revenue to advise him of his intention to investigate this complaint. The Deputy Minister's response indicated that the complainant had received the highest rate of pay available for summer students within the Ministry, the only exception being the two students who were selected and employed directly by the Tax System Operations and Design Division on special projects. In summary, the Deputy Minister was of the view that the complainant was "not so exceptional as to merit remuneration higher than that paid to over two hundred other students".

In the course of the investigation, this Office spoke with the complainant's immediate supervisor, members of the Branch with whom he worked, legal counsel for the Ministry, and representatives of the Civil Service Commission.

It was determined that the complainant's duties were not identical to those of an Audit Trainee as outlined in the Ministry's job description; however, they were to a great extent similar to those of a full-time Tax Auditor at the Tax Return Centre. It was acknowledged that the complainant did not have the same responsibilities, nor did he have to achieve productivity levels expected of full-time staff.

The remuneration policy outlined in the Ontario Manual of Administration, which outlines the policy for the Ontario government concerning the employment of summer students, indicates that a student's wages are dependent upon the duties performed by that student. A memorandum dated February 6, 1980, from the Personnel Director of the Ministry of Revenue to Branch Directors and Regional Commissioners, based student wages on the level of educational attainment. In a letter from our Director of Investigations the Deputy Minister was asked to comment on the apparent inconsistency between the two programs. In addition, he was asked for a comparison of the complainant's duties with those of an Audit Trainee, and further, under what authority and for what reason one salary increment had been previously awarded to the complainant, whereas a second increment was denied in 1980.

The Deputy Minister replied with the following comments.

With respect to the apparent inconsistency between the Manual and the policy followed by the Ministry, he stated that the complainant's remuneration was fixed in accordance with the underfill provision of the Manual (section 15-10-3). This provision reads as follows:

> Underfill - Where a student is not required to perform the full range of duties of the assigned position or is subject to different production standards from nonstudent labour performing the same work, the student may be paid at a rate below that of the minimum rate of pay for the equated classification which:
>
> - shall correspond to a rate in the salary range established for a lower class in the equated series if such lower class exists; OR
>
> - shall be at any rate deemed equitable by the Ministry commensurate with duties performed if no appropriate lower class exists.

The Deputy Minister went on to state in part:

> This Ministry does not seek to hire a summer student to perform the full range of duties included in a classified position.... Were the Ministry to

> hire students to perform the duties of regular staff within the constraints of its budget, it would be able to hire students only to perform the duties of staff in the lowest salary ranges whose duties are less gratifying and stimulating intellectually. By permitting students to perform under supervision part of the duties of a more challenging position, we both recognize the students' inability to handle the complete job and offer to as many students as possible a position of some responsibility which offers both useful experience and satisfaction.

He indicated that the complainant had been employed in the Tax Return Centre in response to his own request. No comment was made by the Deputy Minister with respect to the other two issues raised.

At this stage of the investigation, the Ombudsman formed the tentative conclusion, pursuant to section 22(1)(b) of the Ombudsman Act, that the Ministry's omission to compensate the complainant in accordance with the pay practice outlined in the Ontario Manual of Administration was "unreasonable" in that no consideration was given to the work performed by the complainant.

It also appeared to the Ombudsman that it might be open to him to tentatively recommend, in accordance with section 22(3)(d) of the Ombudsman Act, that the Ministry's practice of paying summer students on the basis of their educational achievement should be altered to conform with the pay policy as outlined in the Ontario Manual of Administration. Further, it appeared that it might be open to him to recommend, in accordance with sections 22(3)(b) and (g) of the Ombudsman Act, that the Ministry reexamine the amount of wages paid to the complainant, and pay him the salary which would have been due had a practice conforming with the Ontario Manual of Administration been followed.

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

Representations received from the Deputy Minister of Revenue indicated that the Ministry was of the view that its program conformed to the policy in the Manual and that the Ombudsman's possible conclusion ignored the positive

correlation between educational background and complexity of work assignment. After carefully considering these representations, the Ombudsman noted that there had been no change in the summer student policy of either the Civil Service Commission or the Ministry of Revenue for the summer of 1982.

Contact with the Civil Service Commission revealed that the Commission's role is one of instructor rather than monitor. The only control it exerts is that each Ministry must advise it of the number of summer students employed annually, and the total cost of that employment. The Ombudsman was advised that there is continuing debate among the provincial Ministries concerning the amount of remuneration to be paid to summer students. Although the Commission was aware that some Ministries paid different rates of remuneration, it was not its intention that Ministries pay a flat fee for all jobs.

Before reaching his final conclusions on this complaint, the Ombudsman reviewed the job descriptions provided by the Ministry of Revenue, and compared those to the duties performed by the complainant. The Ombudsman agreed with the Deputy Minister that the complainant was in an "underfill" position, however, he remained of the view that the responsibilities assigned to the complainant were of greater complexity than those assigned to a Clerk 1. The Ombudsman was aware that the complainant's supervisor was directly responsible for his work, and that he did not have to achieve the same productivity levels as full-time staff.

With respect to the Deputy Minister's statement that he was surprised "that [the complainant] as a law student, does not have a greater regard for the contract into which he voluntarily entered", the Ombudsman pointed out that the complainant was unaware of the fact that some students were receiving more remuneration than himself until the day he signed his employment contract. He suggested to the Deputy Minister that as summer employment is not plentiful, an individual would hesitate to reject such employment at the end of May. Further, the Ombudsman noted that the complainant raised the issue with the appropriate authorities some two weeks after being hired.

With the above in mind, the Ombudsman decided not to alter his original tentative conclusion and recommendations. He therefore proceeded according to section 22(3) of the Ombudsman Act.

In addition, the Ombudsman recommended, pursuant to section 22(3)(g) of the Ombudsman Act, that the Civil Service Commission continue to monitor the use of its Manual.

The Deputy Minister of Revenue responded on October 1, 1982, rejecting the conclusion and recommendations for the reasons previously put forth by the Ministry.

The Chairman of the Civil Service Commission responded by letter dated August 18, 1982 indicating that he would draw the attention of all Deputy Ministers to the policies governing student remuneration outlined in the Manual of Administration.

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.

MINISTRY OF

THE SOLICITOR GENERAL

DETAILED SUMMARY NO. 29

The complainant's lawyer contacted the Office of the Ombudsman by letter dated August 27, 1982 in order to outline her complaint against the Office of the Chief Coroner.

The complainant, an old age pensioner, was the common-law spouse of a man who had died in an automobile accident three months earlier. Under the deceased's automobile insurance policy, the complainant was entitled to death benefits as she and the deceased had cohabited for eight years. Because the insurance company required a Coroner's Report before paying these benefits, the complainant requested a report from the Coroner. However, he refused to provide this report to the complainant as she was not considered to be a spouse for purposes of the Coroner's Act. The deceased's family had refused to request the report on the complainant's behalf.

On October 4, 1982 the Deputy Solicitor General was notified of our intention to investigate this complaint. It was the complainant's contention that it was unreasonable of the Coroner not to recognize a spousal relationship as defined in the Insurance Act and in Part II of the Family Law Reform Act. She contended that she was the deceased's common-law spouse and that, as such, the Coroner should release his report to her, as provided in section 18(2) of the Coroner's Act.

By letter dated October 8, 1982 the Deputy Solicitor General responded to our letter outlining the rationale for the Chief Coroner's interpretation of the Coroner's Act. It was felt that confining the definition of next-of-kin and spouse and children to the case law provided a more consistent interpretation of the Act, although he acknowledged that the definition in the Insurance Act did provide a more liberal definition. He also indicated that he would be pleased to obtain a report for the Ombudsman on this matter and to permit him to personally review the file. The Deputy Chief Coroner subsequently advised the Ombudsman that the solicitor for the complainant had been provided with the required Coroner's Report. This was later confirmed by the complainant's solicitor who advised that he was very appreciative of the Office's efforts in this matter. Our file was subsequently closed as the complaint had been resolved to the complainant's satisfaction.

MINISTRY OF

TOURISM AND RECREATION

RECOMMENDATION DENIED

DETAILED SUMMARY NO. 30

This complaint was against the Advertising and Promotion Services Group of the Ministry of Tourism and Recreation.

The complainant believed that the Ministry unreasonably decided to remove his ethnic newspaper from the Government Information/Communication Advertising Program. The complainant also believed he should be compensated for advertisements which he would have received for publication in his paper during the time that it was removed from the Program.

The Government Information/Communication Program was introduced by the Ministry in 1975 to ensure that various ethnic and other communities in Ontario were kept advised of new Ontario government policies and programs by the placing of advertisements in ethnic newspapers. Guidelines were established to ensure equitable treatment of all ethnic publications in the program. This investigation focused on whether the guidelines had been uniformly applied to the complainant's publication as well as to similar ethnic newspapers in the program.

The investigator interviewed the complainant and various government officials, and obtained all relevant documents.

The Ministry stated that the complainant's publication was removed from the program because its advertising rates were not cost efficient. This is one of the Ministry's guideline criteria. The Ministry also said it believed that the complainant's publication was of a lower quality than other ethnic papers because it did not have an editorial policy, used several different typefaces and contained no original reporting.

The Ministry calculates the cost efficiency of a publication's advertising rate on a cost-per-thousand basis, applied to the newspaper's circulation rate. The complainant had submitted a sworn affidavit from his printer stating his paper had a circulation of 5,000. As the complainant charged 82¢ per line of advertising, his cost-per-thousand rate was $90.02.

The investigation showed that two newspapers serving the same ethnic group had cheaper cost-per-thousand rates than that of the complainant. But it appeared that a third newspaper in the ethnic group had a higher cost-per-thousand rate than the complainant's publication.

The complainant claimed that his newspaper actually had a cheaper line rate than other papers in the program because the other papers had inflated their circulation figures. Evidence on this matter was taken under oath. The evidence revealed other papers were grossly inflating their circulation figures and thereby substantially reducing the publication's cost-per-thousand rate. Evidence received under oath from the printer of the complainant's paper confirmed the complainant's stated circulation figure of 5,000 papers.

The guidelines also require that a newspaper must offer satisfactory proof that the majority of its total circulation is in Ontario. Information acquired during the course of the investigation revealed that eight publications receiving government information advertising circulated less than 50% of their papers in this province. The complainant circulates 100% of his papers in Ontario.

The Ministry's guidelines do not address standards relating to editorial policy, typeface or original reporting. Notwithstanding this fact, these factors were part of the basis for the Ministry's decision to remove the complainant's publication from the program. The investigation also reviewed several other publications receiving advertising through the program. These publications used several different typefaces within each edition and appeared to have no original reporting.

Having considered this information, the Ombudsman formed the view that it was open to him to conclude that the Ministry's decision to remove the complainant's publication from the Government Information/Communication Program was unreasonable, unjust and oppressive. It appeared that the cost efficiency of the complainant's publication was better than that of one other publication in the program serving the ethnic community involved. The investigation also indicated the sworn circulation statements provided by publishers were an inaccurate basis for calculating cost efficiency. It appeared that criteria not contained in the guidelines had been unreasonably applied to the complainant's publication, while other similar publications continued to receive advertising through the program.

Further, the Ombudsman formed the view that the Ministry had applied its guidelines for inclusion in the program in an unreasonable, unjust, and oppressive manner. Specifically, the criteria of cost efficiency, percentage of Ontario circulation and the number of pages required

for publications receiving advertisements through the program, had not been uniformly applied.

Having made these tentative conclusions, the Ombudsman also formed the view that it was open to him to recommend that the Ministry's decision to remove the complainant's paper from the program ought to be cancelled and the publication reinstated. He further recommended that the Ministry verify circulation figures for publications then receiving advertising under the program. Finally, he tentatively recommended that the Minister review the administration of the guidelines to ensure equitable treatment for all publications which were eligible for Ontario government information advertising.

Since the Ombudsman believed that the Ministry might be "adversely affected" by his possible conclusions and recommendations, he afforded it the opportunity to make representations respecting the possible adverse report. Representations were received on behalf of the Ministry during a personal meeting with the Executive Coordinator of the Advertising and Promotion Services Group of the Ministry.

In response to the Ombudsman's first tentative conclusion, the Executive Coordinator of the program advised that the complainant had submitted contradictory circulation information in conjunction with his applications for government advertising in the past. The Executive Coordinator advised that the Ministry had never taken steps to validate the number of papers printed by the publications inasmuch as such action might be perceived to be discriminatory in nature. It was also pointed out that sworn statements of circulation are a commonly accepted standard within the advertising industry.

The Executive Coordinator of the Advertising Program noted that the Ministry did exercise some discretion in applying the program guidelines. In response to the Ombudsman's observation that eight publications were receiving government advertising and circulating less than 50% of their papers in the province, he noted that four of the papers had recently been removed from the program. The remaining four publications had been retained in the program because it was felt that with support, the papers would soon achieve a 50% Ontario circulation. Further exceptions were apparently made by the Ministry where a publication fell below the guideline requirements, but was thought to be well received in the community it purported to serve.

In response to the Ombudsman's finding that the third newspaper in the ethnic group had a higher cost-per-thousand rate than that offered by the complainant, the Executive Coordinator of the program advised that the figures cited in documentation made available to the investigator had been incorrect. These figures had since been adjusted and indicated that the paper in question offered a more reasonable cost-per-thousand rate than the complainant's publication.

On December 1, 1982, the Ombudsman received a letter from the Executive Coordinator of the Advertising and Promotion Services Group indicating that the Ministry was prepared to amend the program guidelines. The letter also stated that the Ministry would reinstate the complainant's publication in the program, provided the complainant was prepared to meet certain terms and conditions of reinstatement. He proposed to circulate a revised version of Guideline #6 (concerning proof of circulation) which would state:

> Guideline #6:
>
> a) On a publication's original application for advertising consideration, a notarized, sworn statement of circulation is required for circulation/cost analysis. This requirement is based on compliance with advertising industry practice which requires this formal statement for a publication's listing in Canadian Advertising Rates and Data (CARD).
>
> b) In addition, publications receiving "Ontario 20" advertisements may be required to submit, from time to time, a copy of a current printer's invoice showing the number of papers printed.

The Ministry was prepared to reinstate the complainant's publication on the condition that he agreed to adopt the provincial 5% inflation restraint formula in relation to his annual line rate increase.

On consideration of this material, the Ombudsman was of the opinion that the Ministry ought to take a firmer position in requiring the submission of printer's invoices to validate circulation figures on an annual or more

frequent basis. He also considered that it was necessary to establish whether the Ministry's 5% restraint formula would be applied to all publishers receiving advertising through the program. The Ombudsman's opinions were discussed with representatives of the Ministry. The Ministry claimed that a periodic and regular request for printers' invoices would create a great deal of administrative pressure. The Ministry also stated that it might be forced to withdraw its proposal of allowing the complainant a 5% line rate increase. The Ministry believed that a 5% increase limit would have the effect of automatically raising all publications' line rates by 5%.

After considering the results of this investigation and the Ministry's further representations, the Ombudsman came to a further possible conclusion. If the complainant had been unreasonably, unjustly and oppressively removed from the advertising program, then in fairness, there ought to be some degree of monetary compensation made to him by the Ministry.

The Ombudsman believed that the complainant should receive compensation for the advertisements he did not receive from the date the Ministry was aware of his offer to continue publishing advertising from the Ministry at his old line rate of 72¢ per line. (Since the complainant did not publish the advertisements, he incurred no publishing cost.) As such, compensation should reflect the number of advertisements the complainant would have received under the program at a line rate of 72¢, less a percentage for the cost of printing the advertisements.

Subsequently, the Ministry informed the Ombudsman it would not implement this possible recommendation.

The Ombudsman finally concluded that the Ministry's decision to remove the complainant's publication from the Government Information/Communication Program had been unreasonable, unjust and oppressive, and that the Ministry had applied its guidelines to the complainant in an unreasonable, unjust and oppressive manner. He recommended in his report to the Ministry that the decision to remove the complainant's publication from the program be cancelled and the publication be reinstated at a line rate to be negotiated between the Ministry and the complainant.

The Ombudsman further recommended that the Ministry verify circulation figures for publications currently receiving advertising under the program by obtaining printers' invoices from all publishers, and continuing to do so annually. The Ombudsman also recommended that the

Ministry review the administration of the guidelines to ensure equitable treatment for all publications which were eligible for Ontario government information advertising, and that the Ministry pay to the complainant compensation reflecting the amount of money he would have received for advertising under the program from March 16, 1982. The Ombudsman recommended that compensation should be calculated at a line rate of 72¢, less the recognized industry cost for printing advertisements issued through the program. In the absence of an industry-recognized cost, the Ombudsman recommended that the Ministry calculate the compensation payable to the complainant and provide him with its estimated printing cost factor, and the reasons it believed this factor to be fair.

The Ombudsman's final report was sent to the Ministry on February 9, 1983. On February 23, 1983, the Deputy Minister of the Ministry of Tourism and Recreation responded, requesting that the Ombudsman advise him of the identity of the publications which had been inflating their circulation figures. In rejecting this request, the Ombudsman advised the Deputy Minister that it would be unfair to single out the publications in question. It was his opinion that it was the responsibility of the Ministry to review all papers in the program to ensure honesty.

Inasmuch as the Ministry had taken no other action in response to his report which was considered to be adequate and appropriate, the Ombudsman forwarded a copy of his report to the Premier on March 3, 1983.

By letter dated March 8, 1983, the Deputy Minister of the Ministry of Tourism and Recreation wrote to advise that the complainant's paper would be reinstated in the program and that the Ministry was prepared to negotiate with the complainant a reasonable line rate. The Ministry stated that it would continue its practice of verifying circulation figures by obtaining signed questionnaires and/or printers' invoices for each publication in the program. The Ministry advised that this action would be taken annually. In order to ensure cost efficiency and equitable treatment in its administration of the program, the Deputy Minister advised that the Ministry would continue to conduct periodic reviews of all publications receiving advertising through the program.

Finally, in response to the recommendation that the Ministry compensate the complainant, the Ministry stated that it was not prepared to do so for the period of the investigation during which the complainant had chosen, unconditionally, not to accept the Ontario government's

ethnic advertisements at a 72¢ line rate. The Deputy Minister advised that the governing principle for advertising is that the media are paid for a service rendered. The Ministry noted that when no advertisements are published, there can be no obligation after the fact which would require the advertiser to pay public funds to the publisher. The Ministry was of the opinion that if it were to establish such a precedent, the government's program manager's responsibility to administer public funds in the most cost-efficient way would be in jeopardy.

As only one of his four recommendations had been fully implemented by March 31, 1982, the Ombudsman sent a copy of the Deputy Minister's letter to the Premier.

On June 15, 1983 (after the 1982/83 fiscal year end), the Deputy Minister forwarded a clarification of his March 8, 1983 response to the Ombudsman. This letter indicated that the Ministry had reinstated the ethnic newspaper on the Government Information/Communication Program for ethnic publications at a mutually agreeable line rate; the Ministry's agency will verify circulation figures by obtaining printers' invoices and/or signed questionnaires; the Ministry has procedures in place to review the administration of the guidelines and these ongoing procedures will ensure equitable treatment for all eligible publications.

However, the Deputy Minister was not prepared to alter his position regarding compensation to the complainant.

The Ministry has therefore implemented three of my recommendations and has declined to implement one recommendation.

MINISTRY OF

TRANSPORTATION AND COMMUNICATIONS

DETAILED SUMMARY NO. 31

This complainant telephoned our Office on August 26, 1982 concerning a decision rendered by the Ministry of Transportation and Communications. The complainant contended that the Ministry had acted unreasonably in suspending his driver's licence.

The complainant explained that he had received a driver's licence suspension notice from the Ministry which had apparently been the result of a Criminal Code conviction for "drinking and driving" in Manitoba. The complainant alleged that he had not been involved in this offence and therefore, the suspension was a mistake. As a result of this suspension, the complainant was seriously inconvenienced in that he had to be driven to work every day. He was also frustrated in his efforts to solve the problem through telephone contacts with the Ministry of Transportation and Communications and the Manitoba authority.

Our investigator contacted an official of the Ministry of Transportation and Communications, who indicated that the suspension notice, authorized by the Ministry, was justified by information sent to the Ministry from the Manitoba Provincial Court. The official indicated that if this information was in error, the Ministry would issue a cancellation order for the complainant's suspension notice and he would be issued with a new driver's licence immediately. However, any indication of an error in the information from the Manitoba authority would have to be provided by that authority.

Our investigator contacted the police in Manitoba and learned that a man using the complainant's name had been arrested and charged in that city for "public mischief". As well, it was learned that he was responsible for the offence which caused the suspension of the complainant's driver's licence. Subsequent to this, our Office contacted the Manitoba Crown Attorney's office and an official there agreed to pass this information on to the Ontario Ministry of Transportation and Communications as soon as possible. As a result, the required information, which indicated that the complainant had been wrongfully convicted, was telexed to the Ministry on September 2, 1982. The complainant advised our Office that he had been notified on the same day that his driving privileges had been reinstated immediately.

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 September 3, 1982.

DETAILED SUMMARY NO. 32

The complainants contacted the Office of the Ombudsman on October 20, 1981. They complained that the Ministry of Transportation and Communications had replaced a bridge on a creek (the outlet stream for the lake on which their cottage is located) with a half-culvert which was, they alleged, inadequate for the flow of water from the lake. In their opinion, the new culvert caused high water levels on the lake for extended periods of time.

On November 10, 1981, the Ombudsman notified the Deputy Minister of the Ministry of Transportation and Communications of his intention to investigate this complaint and requested a statement of the Ministry's position. The Deputy Minister replied that the new culvert was hydrologically adequate and that it should not hamper natural drainage in the area.

During the course of the investigation, the investigator assigned to this complaint reviewed the contents of the Ministry's files with various representatives of the Ministry, including a District Engineer, Municipal Engineer and a Senior Municipal Foreman. A professor of the University of Toronto was consulted. Other cottage owners on the lake were contacted as well as a water level control supervisor of the Ministry of Natural Resources. An on-site inspection was made with the Ministry's representative who had done the original hydrological study to determine the size of the culvert required for the new bridge.

It was learned that a preliminary hydrology study in the area of the bridge was done by the Ministry in 1979. Using design criteria for a one-in-ten-year storm, the Ministry determined that a 15 or 16 foot steel arch culvert on concrete footings could be used to allow drainage of the creek. Based on this study, a new bridge was constructed in the fall of 1980.

Following the installation of the new bridge, the complainants advised this Office that they experienced unusually high levels of water on their lake which flooded shorelines and caused damage to docks and boathouses. While they had experienced high water levels in the past,

they noted that since construction of the new bridge, lake water levels were higher and, more importantly in their opinion, they remained high for very long periods of time. Their position was supported by other property owners on the lake, who also believed that the natural drainage of the lake had been affected by the new culvert.

The Ministry representative who had done the preliminary hydrological study advised this Office that as the road on which the bridge is located is a cottage road, serving relatively few people, he applied the lowest hydraulic design criteria for the culvert. This was in accordance with Ministry policy. The one-in-ten-year storm design criteria meant that the culvert was sized to accommodate the worst possible storm expected in an average ten-year period, based on past experience.

The representative explained that since large, expensive bridges cannot be installed at every river crossing, and since every culvert will restrict water flow to some extent, the Ministry will install a culvert large enough to keep the rise of the high water mark of a water body within one foot of the previous high water mark.

Having reviewed the preliminary hydrological study which he had done in 1979, the Ministry representative found that the design of the culvert would cause the lake level to rise 1.4 feet above the old high water mark after a one-in-ten-year storm. This was slightly in excess of the allowable criteria. In view of the complaint with this Office and the possibility of error in design, the Ministry representative agreed to review the matter further.

On October 1, 1982, the Ministry representative advised the complainant that he had recommended that the culvert inlet be shaped to accommodate greater inflow into the culvert. He had also recommended that water levels be monitored through the fall and following spring and summer.

On October 5, 1982, the Ministry advised this Office that work was underway to modify the culvert inlet.

Under the circumstances, the complainant agreed no further investigation by this Office was necessary. The Ombudsman terminated his investigation and the file was closed on October 25, 1982.

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 CONSUMER AND COMMERCIAL RELATIONS			
		Liquor Control Board of Ontario			
9	4	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 Committee has not yet reported.	
		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.	The Ministry of Treasury and Economics has responded and proposed that the Ombudsman Act is the more appropriate statute for the amendment, since the purpose of the amendment directly relates to procedure under that Act. The Ministry proposed that the Ombudsman Act be amended as follows: "Where the Ombudsman, in a report under subsection 22(3), recommends to the governmental organization to whom the report is made that the governmental organization pay a specified sum to or for the benefit of the complainant to

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF GOVERNMENT SERVICES (cont'd)			reimburse the complainant for an ascertainable financial loss suffered by him in the matter complained of, and where the Minister to whom a copy of the report is sent under that subsection accepts the recommendation at the amount mentioned therein or at a lesser amount acceptable to the Ombudsman and there is no authorization, apart from this section, for the payment of the sum so agreed on, such sum may, where it is less than $1,000, be paid by the Treasurer out of the Consolidated Revenue Fund on the authorization of the Minister concerned, and where the sum so agreed on is $1,000 or more, it may be paid by the Treasurer out of the Consolidated Revenue Fund on the order of the Lieutenant Governor in Council approving such payment as is recommended by the Minister concerned."
		MINISTRY OF HEALTH			
4	45	That the Ministry consider what changes should be made to the Public Hospitals	5, Recommendation 27	That the Ministry implement as soon as possible the recommendation of the Ombudsman.	On November 5, 1982, the Ministry advised the Committee of a draft of a proposed

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)			
		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.	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.	amendment to Regulation 865 under the Public Hospitals Act, respecting criteria applicable to applications for appointment to a hospital medical staff. It is anticipated that this draft, which satisfies the Ombudsman's recommendation, will be adopted by the end of 1983.
			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".	
		Ontario Health Insurance Plan			
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	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	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

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)			
		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.		the function of the General Manager and he has the power to determine the amount".	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 advises claimants of their right of appeal to the Health Services Board only in those cases where the claimant expresses dissatisfaction with the amount of reimbursement for an out-of-country claim or where the issue of the non-availability of a procedure in Canada is apparent at the time a claim is initiated. OHIP is no longer taking the position that listing of a procedure in the Schedule of Benefits precludes a claimant's right of appeal.
9	9	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.		The Committee has not yet reported.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)			
		That s. 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.			
9	10	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. That s. 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 Committee has not yet reported.	
		Board of Directors of Chiropractic			
9	11	That the Board alter its practice of interpreting the regulation in this manner and acknowledge that the complainant had satisfied the requirement of the		The Committee has not yet reported.	The Board has altered its practice, but did not acknowledge that the complainant had satisfied the requirement of the regulation.

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)			
		regulation and is, therefore, eligible to write the Ontario Chiropractic Licensing Examination.			
		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 an internal review mechanism allowing applicants and tenants to seek reviews 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.
			9		The Corporation has rewritten portions of the Manual, and hopes to have chapters 1 to 10, which deal with tenant management, available for consideration by June, 1983. 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
		MINISTRY OF LABOUR			
		Workers' 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. After receiving the Medical Referee's report, the Board reconvened and determined that the policy of benefit of doubt was not appropriate in this case. The Appeal was denied.
			8		The Committee in its Eighth Report noted its "grave reservations that the Appeal Board Panel in this matter considered the application of the policy of the benefit of the doubt as intended by the Committee and articulated by the Corporate Board policy itself". After discussing these issues fully

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR Workers' Compensation Board (cont'd)			with the Board, the Committee intends to report to the Legislature with any appropriate recommendations. 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 benefit of doubt. The Committee has not yet reported on the further submissions.
9	19	That the Workers' Compensation Board alter its policy on attendance allowances and take into account reasonable costs. That the Board revoke its decision and award the complainant an attendance allowance to cover reasonable costs of providing supervision and assistance which his condition necessitates.		The Committee has not yet reported.	

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION DENIED	CONSIDERED IN SELECT COMMITTEE REPORT NO.	RECOMMENDATION OF COMMITTEE	PRESENT STATUS
		MINISTRY OF LABOUR			
		Workers' Compensation Board (cont'd)			
9	20	That the Board should cancel its decision and reconsider exercising the discretion provided by section 42 [now 43] of the Workers' Compensation Act.		The Committee has not yet reported.	
9	21	That the Board revoke its decision and grant the complainant the full assessed value of his permanent partial disability award.		The Committee has not yet reported.	
9	22	That the Appeal Board reconsider its previous decision with a view to granting the complainant a temporary supplement to his permanent partial disability, on the basis of a full consideration of the appropriate test for entitlement to such benefit. That the Board provide reasons for its decision following the reconsideration.		The Committee has not yet reported.	

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.	The Ministry has amended s. 8(1)(i) of the Education Act as follows: "The Minister may (i) prescribe the conditions under which and the terms upon which pupils of boards shall be deemed to be employees under the Workers' Compensation Act, deem pupils to be employees for such purpose and require a board to reimburse Ontario for payments made by Ontario under that Act in respect of a pupil of the board deemed to be an employee of Ontario by the Minister."
		MINISTRY OF GOVERNMENT SERVICES					
2	57	That the Public Service Superannuation Act be amended in order to eliminate all restrictions	Aug. 31, 1976	Executive Secretary of the Civil Service Commission agreed to	3, Recommendation 24	That the Ministry table appropriate legislation in the Legislature during the current session removing the	Amendment to s. 16 of the Public Service Superannuation Act is currently being prepared by the Benefits

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 (cont'd)					
		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.		recommend to Management Board of Cabinet changes in Public Service Superannuation Act.		present restriction on the total current earnings of a provincial superannuate.	Policy Branch of the Civil Service Commission and is expected to be before the Legislature next session. The amendment has been delayed, with proposed changes to other pension plans, until the governmental review of the pension industry is completed.
		MINISTRY OF HEALTH					
3	40	That: 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 on compliance with the terms of the proposal and any subsequent stipulations imposed by the Ministry prior	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. The Executive Chairman of 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 (cont'd)					
		to the granting of an unconditional licence.			Area Planning Coordinators responded on behalf of the Ministry as to the additional steps which have been taken subsesequent to the letter from the Minister to the 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.		
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	Jan. 1978	The Deputy Minister took the position that decisions of hospital boards and the Hospital Appeal Board in general	5, Recommendation 27 6, Recommendation 1	That the Ministry of Health implement as soon possible the recommendation of the Ombudsman. That the Ministry of Health consider what changes should be made	On November 5, 1982 the Ministry advised the Committee of a proposed amendment to Regulation 865 under the Public Hospitals Act respecting criteria applicable to

OMBUDSMAN'S REPORT NO.	DETAILED SUMMARY NO.	RECOMMENDATION UNDER SECTION 22(3)(d) or (e)	DATE OF RESPONSE	NATURE OF RESPONSE	CONSIDERED IN SELECT COMMITTEE	RECOMMENDATION OF THE COMMITTEE	PRESENT STATUS
		MINISTRY OF HEALTH (cont'd)					
		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.		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.		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.	applications for appointment to a hospital staff. It is anticipated that this draft, which satisfies the Ombudsman's recommendation, will be adopted by the end of 1983.
					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					
		Workers' Compensation Board					
2	132	That the Board either request jurisdictional determination from the courts or request that the Workers' Compensation Act be amended to give the Board the power to both collect and offset overpayments.			3, Recommendation 31	Amend the Workers' Compensation Act to provide for statutory authority to recover or write-off overpayments.	Recommended amendment has yet to be enacted.

APPENDIX C

STATISTICAL TABLES

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

GOVERNMENT OF ONTARIO

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Agriculture and Food	15	8	9	32
Crop Insurance Commission of Ontario	1			1
Farm Products Appeal Tribunal	1			1
Ontario Crop Insurance Arbitration Board	1			1
Ontario Drainage Referee		1		1
Ontario Drainage Tribunal	3			3
Ontario Egg Producers' Marketing Board	1			1
Ontario Milk Marketing Board	1	1		2
Attorney General	36	38	21	95
Assessment Review Court	1	3	1	5
Criminal Injuries Compensation Board	8	2	5	15
Ontario Municipal Board	26	21	10	57
Public Trustee	15	2	4	21
Colleges and Universities	69	25	13	107
Colleges of Applied Arts and Technology	12	2		14
Ontario Council of Regents for Colleges of Applied Arts and Technology	7			7
Community and Social Services	135	98	54	287
Centres for Developmentally Handicapped	2			2
Training Schools	22	3	3	28
Total	159	101	57	317
Social Assistance Review Board	58	11	6	75

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Consumer and Commercial Relations	133	30	54	217
Commercial Registration Appeal Tribunal	1	1		2
Liquor Control Board	15	2	4	21
Liquor Licence Board	2	5	1	8
Ontario Racing Commission	1	1		2
Ontario Securities Commission	11	1	1	13
Pension Commission of Ontario	2			2
Residential Tenancy Commission	21	17	12	50
Residential Premises Rent Review Board	8	3	3	14
Correctional Services	28	9	18	55
Correctional Centres	560	62	197	819
Detention Centres	768	46	308	1122
Jails	645	25	166	836
Total	2001	142	689	2832
Ontario Board of Parole	29	15	8	52
Citizenship and Culture	4		3	7
Ontario Lottery Corporation	1			1
Royal Ontario Museum Board of Trustees	1			1
Education	46	20	11	77
Education Relations Commission	1			1
Teacher's Superannuation Commission	6		2	8

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Energy	5	2	2	9
Ontario Energy Board	1			1
Ontario Hydro	24	16	5	45
Environment	67	9	13	89
Government Services	33	10	12	55
Public Service Superannuation Board	4			4
Health	35	7	21	63
Psychiatric Hospitals	134	18	44	196
O.H.I.P.	35	22	18	75
Total	204	47	83	334
Advisory Review Board	6		1	7
Alcoholism and Drug Addiction Research Foundation	4			4
Board of Regents of Chiropody	1			1
Clarke Institute of Psychiatry		2		2
Health Disciplines Board	18	5	5	28
Health Services Appeal Board		1		1
Review Board for Psychiatric Facilities	6			6
Toronto East General and Orthopaedic Hospital Board of Governors	1			1
Industry and Trade Development	10	2	8	20
Ontario Small Business Development Corporation	1			1
Intergovernmental Affairs	3		1	4

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Labour	69	18	19	106
Employment Standards - Panel of Referees			1	1
Ontario Human Rights Commission	39	8	12	59
Ontario Labour Relations Board	16	2	3	21
Workers' Compensation Board	627	614	132	1373
Municipal Affairs and Housing	143	25	25	193
Local Housing Authorities	2			2
Ontario Housing Corporation	53	23	18	94
Ontario Mortgage Corporation	4	2	4	10
Natural Resources	122	17	19	158
Game and Fish Hearing Board	1			1
Northern Affairs	2	2	1	5
Ontario Northland Transportation Commission	3			3
Revenue	81	51	43	175
Solicitor General	7	3	5	15
Coroner's Council	2	1		3
Ontario Police Commission	10	3	2	15
Ontario Provincial Police	65	27	18	110
Tourism and Recreation	4	1	1	6
Ontario Lottery Foundation	2	1	4	7
Transportation and Communications	113	59	46	218
Licence Suspension Appeal Board	1			1
Ontario Highway Transport Board	2			2
Treasury and Economics	1	1		2
Ontario Municipal Employees Retirement Board	16	5	3	24

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

Ministries/Agencies	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Government of Ontario-Other				
Management Board		1	1	2
Civil Service Commission	8		1	9
Grievance Settlement Board	8			8
Ontario Public Service Labour Relations Tribunal		1		1
Public Service Grievance Board	1	1	2	4
Niagara Escarpment Commission	4			4
Office of the Assembly		2	5	7
Office of the Premier/Cabinet Office		9	9	18
Lieutenant Governor		1	1	2
Office of the Ombudsman		2	189	191
Provincial Auditor			1	1
Executive Council		1	1	2
Ontario Government - Other	6	14	26	46
Government of Ontario Total	4497	1441	1636	7574
Courts				
		344	28	372
Total		344	28	372

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

FEDERAL GOVERNMENT DEPARTMENTS/AGENCIES	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
Air Canada		1		1
Canadian Penitentiary Services		8	4	12
Federal Penitentiaries		19	1	20
Central Mortgage and Housing		24	2	26
Consumer and Corporate Affairs		15	9	24
Employment and Immigration		243	21	264
Office of the Correctional Investigator		1		1
Health and Welfare		113	34	147
Indian Affairs and Northern Development		7	2	9
Justice		2		2
National Parole Board		9	2	11
Post Office		25	3	28
Public Works		1		1
Revenue Canada - Taxation		79	21	100
Royal Canadian Mounted Police		15		15
Transport		7		7
Veterans' Affairs		14	1	15
Federal Government - Other		102	13	115
Total		685	113	798

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
PRIVATE				
Associations/Groups		71	9	80
Children's Aid Society		34	3	37
Catholic Children's Aid Society		1		1
Complaint Bureaus		1		1
Doctors - Patients		60	4	64
Hospitals		71	5	76
Lawyers - Clients		186	33	219
Law Society of Upper Canada		97	95	192
College of Physicians and Surgeons		8	2	10
Private Business		716	54	770
Private Individual		256	20	276
Universities - Private		20		20
Member of Parliament		1	7	8
Private - Other		417	167	584
Total		1939	399	2338

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
MUNICIPALITIES/LOCAL AUTHORITIES				
Municipal Conservation Authority		8	2	10
Municipal Boards of Education		32		32
Municipal Garbage		3		3
Municipal Governing Body		16		16
Municipal Housing		8	1	9
Municipal Hydro		14	1	15
Municipal Parks/Recreation		2		2
Municipal Planning Boards		3		3
Municipal Police		149	14	163
Municipal Public Health		4		4
Municipal Roads		16	2	18
Municipal Sewers		16	2	18
Municipal Taxes		31	7	38
Municipal Transit		5		5
Municipal Water		10		10
Municipal Welfare		124	9	133
Committees of Adjustment		3		3
Municipal - Other		166	16	182
Total		610	54	664

COMPLAINTS AND INFORMATION REQUESTS BY ORGANIZATION

	WITHIN JURISDICTION	OUTSIDE JURISDICTION	INFORMATION REQUESTS/ SUBMISSIONS	TOTAL
INTERNATIONAL				
		9		9
Total		9		9
OTHER PROVINCES				
		21	5	26
Total		21	5	26
NO ORGANIZATION SPECIFIED				
		30	29	59
Total		30	29	59
OVERALL TOTAL	4497	5079	2264	11840*

*This figure exceeds the number of closed complaints (11,801) because some complaints involved more than one organization.