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# Ombudsman Ontario

## Annual Report 1983-84

## Volume I

The Ombudsman | Ontario

DANIEL G. HILL
OMBUDSMAN

125 QUEEN'S PARK, TORONTO, ONTARIO
M5S 2C7
TELEPHONE (416) 596-3300

June 15, 1984

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

Dear Mr. Speaker:

It is an honour and a pleasure to present the Eleventh Annual Report of the Ombudsman for the period April 1, 1983 to March 31, 1984.

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

Yours sincerely,

Daniel G. Hill

Daniel G. Hill

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DR. DANIEL G. HILL

## OMBUDSMAN'S MESSAGE

As the newly appointed Ombudsman for the Province of Ontario, I look forward to the responsibilities and tasks that lie ahead.

Although I have not long been Ombudsman, I am already convinced that the Ombudsman is one of the institutions essential to a society under the rule of law, a society in which fundamental rights and human dignity are respected.

The right to complain, the right to be heard, and the right to have corrective action taken if one has suffered harm from Government are human rights.

Human rights and fundamental freedoms - the various civil, political, social, economic and cultural rights and freedoms - are proudly set forth in many state documents, particularly the Universal Declaration of Human Rights, of which Canada is a signatory. However, these rights and freedoms, so essential to the dignity of man, are only words and phrases without substance unless accompanied by effective governmental machinery which will implement the documents.

I believe that the Office of the Ombudsman embodies such machinery. By affirming that the administrators of government are accountable for their actions, by establishing a grievance-handling mechanism which provides easily accessible review, flexible disposition of complaints, and speedy judgment, the Ombudsman Act, passed in 1975, was the culmination of a number of human rights statutes enacted in Ontario. The Ombudsman Act stands as a testament to the commitment of our legislators to safeguard the rights of individuals.

As an officer of our legislature independent from the executive, I anticipate a cooperative relationship with all 125 members of the Assembly. With a mutual commitment to the function of the Ombudsman, we shall together serve the people of this province.

It must be remembered that the Ombudsman is not only the person, but also the function. The function of the Ombudsman is to investigate complaints against administrative decisions and acts of officials of the Government of Ontario and its agencies.

But to this function, every incumbent brings a personal legacy and philosophy. Throughout my life I have worked in the field of human rights. As Ombudsman, my policy for this office will reflect this commitment and I welcome this opportunity to share my commitment with you.

The Office of the Ombudsman is in the position to look critically at government organizations and must itself strive to be exemplary.

While I am Ombudsman, this office will be committed to the spirit of the Ontario Human Rights Code, and its policy:

> ... to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well- being of the community and the Province, ...

In keeping with the aims of the Code, I will pursue the following policies:

1. Equal employment opportunity and equal access to services for all persons regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status, or disability.

2. The monitoring of all employment practices of this office to ensure that these practices are fair and equitable.

3. Periodic review of the staffing policies and services of the office, and equal opportunity programs to correct any imbalances revealed by such reviews.

4. Provision of reasonable services for the needs of the disabled.

5. Provision of multilingual information and services to the extent necessary to assure that all members of the community have access to the Ombudsman's services.

In this regard, I have just appointed the first female Executive Director for the Ombudsman's Office, in the person of Mrs. Eleanor Meslin. Mrs. Meslin is a senior administration and management professional who has been involved in human rights and community activities throughout her life. As Executive Director, Mrs. Meslin will be responsible for the day-to-day administration of the Office which has a staff complement of 122 members, as well as for the evaluation and updating of these policies, and for their ongoing implementation.

I have been frequently asked - what rights should a citizen enjoy when dealing with Government?

In my opinion, all persons are entitled to fair, just and reasonable treatment from government authorities and every person in dealing with our provincial authorities is entitled to the following:

1. Respect for individual rights and personal dignity.

2. Prompt and clear responses to all requests for information or action.

3. Decisions that are arrived at without undue delay.

4. Decisions which are based only on relevant considerations, and on <u>all</u> relevant considerations.

5. Clear statements of the reasons for all decisions.

6. Clear and adequate notice of pending decisions.

7. A reasonable opportunity to be informed of relevant facts and law upon which decisions are based.

8. The opportunity to respond to any point in the decision-making process with additional relevant information.

9. Clear information about rights of appeal against any decision affecting them and reasonable assistance in pursuing appeal procedures.

10. Clear information with respect to government policies and actions, presented in a manner understandable to all those affected.

Such considerations might almost be called a Bill of Administrative Rights for citizens dealing with the authorities. If they were adhered to in the relationship between the people and the provincial authorities, I would venture that fewer complaints would come to the Ombudsman's attention.

Certainly, I will use these considerations both as a yardstick to measure the performance of administrative agencies and also as an aid to assist me in arriving at my conclusions and forming my recommendations.

The Office of the Ombudsman primarily performs an investigative function. I believe that this office can also be a community resource. Ultimately, we are here to help people. Although most of our resources are expended on jurisdictional matters, this office has, over the years, developed an extensive and sophisticated referral system. We have senior staff members who are experts in various government policy fields, agencies and programs. It is my intention to use these resources to the fullest. If the problem that is brought to us is not within our jurisdiction, no person will leave my office

without at least a competent and exhaustive referral.

To borrow an image from Greek mythology - the Office of the Ombudsman can be a kind of Ariadne's thread through the labyrinth of government, an agency that will ensure that the citizen will not get lost when he enters the maze.

But first, the people must find out about my office. Since the taxes of every citizen in the province are paying for this office, it is my belief that every citizen has a right to know about it. To accomplish this, I intend to initiate a public education and outreach program - one that I hope will touch every community in this province - particularly the more remote areas in Ontario.

I intend to broaden our base of contact, especially with the voluntary and community organizations in this province.

It is my intention to try to reach all of our people with the message that we exist - that we exist to inform them of their rights - and to protect those rights against abridgement by administrative agencies.

My door will always be open to the citizen who feels aggrieved. As long as I am Ombudsman, I hope to be able to say - as was said by an ancient Roman leader, Terence, the son of a Libyan slave, - "I am a human being and nothing human is foreign to me."

Daniel G. Hill

Daniel G. Hill

## HIGHLIGHTS

*This is the eleventh occasion for tabling an annual report in the Legislative Assembly. The report deals with the activities of the Ombudsman's Office from April 1, 1983 to March 31, 1984.*

- This report is published in two volumes. Volume I is an overview of the operations of the Office. Volume II deals with recommendations made by the Ombudsman that were denied by various governmental organizations.

- An attempt is made to make the case summaries more readable by reducing detail and providing brief introductions for each summary.

- For the first time, this Office is publishing information about its budget expenditures. The Ombudsman believes that the public has a right to know how this Office is spending public money. (See fig. 5, p. 18)

- This year we are able to report the lowest figure ever (959) for files in progress at the end of the fiscal year.

- This year the Select Committee on the Ombudsman paid a historic visit to Northern Ontario and had a first-hand look at the operations of our regional staff.

- New "aerograms" have been introduced by our Office for use by inmates of correctional facilities.

- Citizens' comments about our Office are included for the first time.

- The Ombudsman outlines his conception of "Bill of Administrative Rights".

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## INTRODUCTION

This Report covers a period of time from April 1, 1983 to March 31, 1984 and as such, spans the period from April 1 to July 14, 1983 when the Honourable Donald R. Morand was still Ombudsman and from July 15 to February 19, 1983 when Mr. Frank McArdle was the Temporary Ombudsman, plus the period of time from February 20 to March 31, 1984 when I had been appointed as Ombudsman.

I wish to thank both the Honourable Donald R. Morand and Mr. Frank McArdle for their stewardship of this important post.

I believe that the Annual Report of the Ombudsman, beyond being the fulfillment of a statutory requirement, can be an important vehicle to educate the public about the role and function of the Ombudsman.

For this purpose, the format for this and for subsequent reports will be changed to make our report more reflective of the work performed and at the same time be more readable. To this effect, the report has been divided into two volumes.

Volume I gives an overview of our last fiscal year and presents a selection of case summaries which explain how the Ombudsman approaches his job and the complaints before him.

Volume II is devoted entirely to detailed summaries of recommendation-denied cases and tables of recommendations outstanding from past reports. We have found from past experience that this highly technical material is of limited interest. However, it will be made available to any interested reader.

## PAST FISCAL YEAR

In commenting on the past fiscal year, 1983-84, I am pleased to report a trend toward greater efficiency. Although there was no significant increase from previous years in the number of complaints and information requests received (2,786 files opened; 9,882 fast action complaints and information requests), we are able to report the lowest number of in-progress files (961) at the end of a fiscal year since the Office was instituted in 1975. (See fig. 3, p. 17)

I am also able to report the highest number of complaints and information requests closed (13,732) by this Office since its inception. (See fig.3 , p.17)

As in the previous annual report, duration-to-closing statistics are presented in this report and they are expressed by the number of complaints closed within a given period of time. (See fig.4 , p.17)

These duration-to-closing statistics are not significantly different from the previous year, with one exception. Although almost 80% of the complaints and information requests received were closed within one month, 629 of our total required more than 12 months to close. During fiscal year 1982-83, a total of 921 required more than 12 months. Although the number of complaints requiring more than a year to close has been reduced by almost one- third, I believe the duration-to-closing times can be significantly improved. That the trend toward greater efficiency be continued by this Office will be a priority while I am Ombudsman.

The statistical record-keeping functions of this Office are presently under review with the expectation that future reports will contain statistical information that is simple, accurate, readable and more reflective of the work performed.

## THE REGIONAL OFFICES

The Ottawa regional office was officially opened on May 27, 1983. That office plus our offices in North Bay and Thunder Bay have proved to be successful and cost-efficient, rendering excellent service to the northeast, north-central and northwest portions of the province. Given the number of complaints we receive from this region, our cost analyses reveal that it is more efficient to open a regional office rather than send personnel from Toronto on a regular basis into that region.

During the last fiscal year, fifteen percent of all of our complaints emanated from Northern Ontario, an area which has less that ten percent of our total population. (See fig. 1, p. 17)

It is my intention to enhance the operational capabilities of our regional staff so that the people in the north will have equal access to the services of this office. The details of my program will be available in subsequent reports.

## PRIVATE HEARINGS

During the last fiscal year, our Office conducted private hearings in 105 communities in this province, of which 12 were held at Native Indian reserves. A total number of 1746 complaints and information requests were received from these communities.

I am convinced that it is essential for this Office to maintain a program of contact with every segment of Ontario's population. The question of whether the "private hearings" format, as employed by this Office in the past, is the optimum method, is under review. But the principle of the Ombudsman's reaching out to and making contact with and educating every segment of Ontario's population about our role and function will not be compromised.

## SELECT COMMITTEE VISIT TO NORTHERN ONTARIO

During the week of January 9-13, 1984, the Select Committee on the Ombudsman, accompanied by members of our staff, visited various communities in North Eastern Ontario. This historic trip - historic in the sense that these members represented the first such Committee to visit Ontario's North and its Indian Reserves - enabled them to gather information on conditions and problems in North Eastern Ontario, and gave them the opportunity to witness on location our efforts and assess our needs and requirements to serve these communities.

It is indeed gratifying and morale- boosting that the Committee has shown such interest in our efforts to service the North, especially the efforts of our regional staff. We strongly encourage the Select Committee to visit Regional Offices on a regular basis. Their suggestions and recommendations as to how we can improve our services to the citizens of Ontario are most welcome.

## SUPREME COURT OF CANADA, BRITISH COLUMBIA OMBUDSMAN

In 1983, the Ombudsman of Ontario intervened in an appeal before the Supreme Court of Canada.

The Ombudsman of British Columbia had decided to investigate a complaint against the British Columbia Development Corporation. The British Columbia Development Corporation took the view that the Ombudsman could not investigate its decision to refuse to renew a lease of one of its tenants. The Court of Appeal of British Columbia decided that the Ombudsman did have the authority to investigate this decision and the British Columbia Development Corporation appealed to the Supreme Court of Canada.

The issues involved in this matter were of sufficient significance that the Ombudsmen of Ontario, Saskatchewan and Quebec intervened on the side of the B.C. Ombudsman. Indeed, all the provincial Ombudsmen were vitally concerned with the outcome of this important case.

At issue was the meaning to be given to the term "a matter of administration". This Office took the position that the decision of the British Columbia Development Corporation to refuse to renew its tenant's lease was a matter of administration, or in the terms of the Ontario Ombudsman Act, "a decision made in the course of the administration" of the British Columbia Development Corporation.

In addition, the issue of whether the tenant was aggrieved, or in the Ontario Ombudsman Act terms, "affected in its personal capacity" was argued, and whether the term "person" used in both the British Columbia Ombudsman Act and in the Ontario Ombudsman Act excludes a corporation. Our counsel argued that the tenant of the British Columbia Development Corporation was aggrieved and that a person does include an incorporated body.

The appeal was heard by five judges of the Supreme Court of Canada on January 30, 1984. To date, a decision has not been given. I will be reporting the results of the Supreme Court case in my next report.

## VANCOUVER CONFERENCE

In September 1983, the Temporary Ombudsman and members of our staff attended the Conference of Canadian Legislative Ombudsmen, hosted by Dr. Karl A. Friedmann, Ombudsman for British Columbia.

Dr. Friedmann is to be commended for a full and very rewarding program. Present and past Canadian Ombudsmen, including Mr. Arthur Maloney, Q.C., were in attendance, as well as Ombudsman representatives from around the world.

It was gratifying to see the presence of the Ontario Select Committee on the Ombudsman. The Committee's Chairman, Robert W. Runciman, presented a thoughtful paper on the relationship between Ombudsmen and legislators. Such participation can only enhance the Committee's perception of the role and function of the Ombudsman. Hopefully the Committee will participate in all such future conferences.

## NEW ENVELOPES FOR INMATES

According to Section 17(2) of the Ombudsman Act, all correspondence from inmates in provincial correctional institutions addressed to the Ombudsman is to be immediately forwarded unopened.

Prior to February 1984, inmates wrote letters on separate sheets of paper which they sealed in pre-addressed Ombudsman envelopes.

We have now revised these envelopes and they take the form of "aerograms" - the body of the letter and the envelope are one and the same.

These envelopes were designed to encourage brevity and conciseness on the part of inmates and to minimize the possibility of tampering.

## NIGERIAN TRAINING PROGRAM

During 1983, the Office was requested by the Public Complaints Commission of Nigeria to provide training in techniques of investigation and office administration for its staff. In October, four representatives arrived - the Secretary for Administration, Mr. B.D. Sadare, and three investigation officers, Mr. S.A. Achimuga, Mrs. T.R.T. Ojigbo, and Mr. Francis Odunayo.

They spent three memorable weeks with us and we wish to thank them for sharing their culture, their comments and observations, and above all their friendship, with our staff.

## CASE SUMMARIES

*The Ombudsman believes that the right to equal treatment by provincial authorities is a human right. The following case illustrates how the Ombudsman can play a conciliatory role to protect this right.*

### Case Summary 1

This complaint was against the Ministry of Colleges and Universities. Three complainants were all patients at a provincial psychiatric hospital, on Warrants of the Lieutenant Governor, and they contended that they were denied admission to the local community college because of their status, notwithstanding the fact that their Warrants had been "loosened" by the Lieutenant Governor's Advisory Review Board to allow for their education in the community. They stated that the college had advised them that their applications would only be considered if information from their medical records at the hospital, concerning their offences and medical history, was made available to the college.

The President of the college stated the college's position that applicants subject to Warrants of the Lieutenant Governor have special needs, and because the college was unable to obtain information from the hospital pertaining to those needs, it was impossible to properly make an admission decision respecting the three complainants.

The President also indicated that because the college was responsible for public funds, it had an obligation to assess the suitability of an applicant for a particular program, based on certain criteria. In the complainants' case, the criteria could not be applied because certain essential information was unavailable.

The complainants, on the other hand, wished to have their applications for admission processed without regard to their legal status or medical history; that is, they wished to be treated in the same manner as any other applicant.

The Manager of Student Services and the Counsellor involved at the college advised that the college did not propose that patients on Warrants of the Lieutenant Governor be banned from the campus, but felt that the College was entitled to receive background information on this type of applicant, since they had committed violent crimes in the past. Concern was expressed for the welfare of the student population, and in order to further reduce the threat of recidivism, it was felt that all patient applicants should be interviewed as a pre-condition to admission, by a Counsellor who was fully informed about their backgrounds.

Members of the Ombudsman's office met with the President and Vice-President of the college, the Manager of Student Services, the Counsellor and Principal of the campus involved, and with the Administrator of the psychiatric hospital, to discuss the complaint.

After this meeting, a letter was received from the President of the college, outlining his proposal for the resolution of the complaint.

The President stated that the college was prepared to consider the patient applicants for admission on the same basis as other applicants, which would necessarily involve an objective assessment by an experienced Counsellor of their likelihood of succeeding in the program, based on performance on standardized aptitude and skill-level tests. They would also be subject to the same expectations and sanctions as other students respecting academic progress and general deportment, in accordance with college policy. They would not however, be required to consent to the release of medical information from their files at the hospital.

This information was given to the complainants, who agreed with the proposal.

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*Many complaints would probably never reach the Ombudsman if governmental organizations provided complete information to the clients they serve. In the following case, the Ministry of Consumer and Commercial Relations gave effect to our recommendation*

*that the Motor Vehicle Accident Claims Fund prepare a more informative notice for uninsured motorists who approach the Fund for assistance prior to default.*

## Case Summary 2

In 1977, the complainant was involved in a motor vehicle accident which caused physical injury to a pedestrian child. At the time of the accident, motor vehicle insurance was not compulsory, and the complainant had paid the uninsured motorist's fee to permit him to drive without insurance. Upon being served with a writ of summons by the injured party, the complainant notified the Motor Vehicle Accident Claims Fund (the Fund) and was asked to and did sign, Form NC-16.

This form was the only document shown to the complainant. It purported to authorize the Minister of Consumer and Commercial Relations to intervene and handle the action on the uninsured complainant's behalf. In addition, the form stated that the undersigned agreed to reimburse the Fund for any monies paid out. The form did not, however, state anything about the possibility of suspending the complainant's driver's licence until the Fund had been reimbursed, or of the possibility of settlement without notification.

During this investigation, officials of the Fund testified that in general, information as to the likelihood of settlement would only be given if specific questions were asked by the motorist. Such issues would, therefore, only be discussed if a motorist already understood the intricacies of a legal action such as the option of settling. The officials of the Fund agreed with the complainant that little information was conveyed to him regarding settlement when he first attended at the Fund for guidance.

The Fund proceeded to negotiate a settlement with the injured party's solicitor. The complainant was contacted once by insurance adjusters retained by the Fund. During this meeting the complainant told the adjuster that he was not willing to pay any amount regarding a settlement and that he wanted to defend the action in court. The Fund subsequently settled the action and paid the injured party $4,131.00. The complainant was then notified that his licence had been suspended until arrangements were made to repay the $4,131.00 to the Fund.

During the course of the investigation the Ombudsman formed a tentative opinion that the Fund acted unreasonably by not having made clear to the complainant the options open to him and the possible consequences of pursuing those options when he first came to the Fund for assistance. The Ombudsman also found it open for him to conclude that use of form NC- 16 was unreasonable, since it may have been misleading to the uninsured motorist with respect to the issue of contesting liability. A preliminary recommendation was therefore made that the Fund cease using form NC-16 and prepare a new notice or form, to be given to uninsured motorists who approach it for assistance, which properly outlines the motorist's legal position in relation to the Fund. He also tentatively recommended that the complainant's debt to the Fund be reduced by 25% as compensation to the complainant for the Fund's actions in this matter.

The Ministry responded to the Ombudsman's tentative conclusions by stating that it could not agree that form NC-16 was lacking or that uninsured motorists were not properly informed as to their relationship with the Fund. The Ministry was also of the opinion that it had no power under the Motor Vehicle Accident Claims Fund Act to waive all or any portion of an uninsured's indebtedness to the Fund.

In reviewing the Ministry's response, substantial consideration was given to the Fund's powers under the Act. Once an uninsured motorist defaults in his or her defense of an action, the Ministry legally gains carriage of the action. However, these powers do not exist prior to default. At this stage, a motorist such as the complainant is attending at the Fund for information and guidance and he must be advised in no uncertain terms of the obligation of the Fund to provide prompt and fair compensation to entitled plaintiffs. As an uninsured motorist has to eventually pay back to the Fund any monies paid out on his or her behalf, he or she of course has an interest in the amount being as minimal as possible. This being so it is of paramount importance that the motorist be informed as to various options, such as contesting liability which the complainant in this case was prepared to do.

The Ombudsman concluded that it was unreasonable of the Fund not to have made very clear to the complainant the options open to him and the possible consequences of pursuing those

options when he first came to the Fund for assistance. Secondly, it was the Ombudsman's view that the use of form NC-16 was unreasonable as it may be misleading to the uninsured motorist.

Thus the Ombudsman recommended that the Fund cease using form NC-16 and prepare a new notice or form to be given to uninsured motorists who approach it prior to default. This document should carefully outline the motorist's options and the consequences of pursuing them. Further, a recommendation was made that the Fund take all necessary steps to arrange the reduction of the complainant's debt by 25%. While the Ombudsman agreed with the Ministry that the entire debt should not be forgiven, it was felt that the Fund should be prepared to compensate the complainant, given the circumstances in which his claim was handled, to the extent of 25% of the indebtedness. It was noted that there was nothing in the legislation which prevented the Minister from so acting on our Office's recommendation.

The Minister agreed to give effect to the recommendation to prepare a new notice to be given to an uninsured motorist approaching the Fund prior to default. As well, the Ministry agreed to reduce the complainant's debt to the Fund by 25%.

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*Governmental organizations usually base their decisions on available information. In the following case, the Ombudsman was able to resolve a complaint simply by bringing more information to the attention of the authorities.*

## Case Summary 3

The complainant first wrote to our Office in June, 1982 explaining that she had been awarded an Ontario Study Grant totalling $4,150 for the academic years 78/79 and 79/80. By letter dated December 24, 1980, she was informed by the Ministry that her application had been reassessed by the Verification Section of the Student Awards Branch, and it had been determined that she was not entitled to the grant and would be required to repay the full amount.

The complainant was of the view that she should not have been assessed on the basis of her parents' income as she had been living away from home since the age of sixteen. She felt that she should have been assessed as an independent student and she found it unreasonable of the Ministry to require her to repay the grant.

The Ministry policy regarding independent students requires the student to have worked for three periods of twelve consecutive months or more. In this case the Ministry was of the opinion that the complainant had only worked two full years and not three, and that the complainant's status therefore was that of a dependent student requiring repayment of the grant.

The complainant insisted that she met the Ministry policy for independent status as she had been working for three years. The investigator therefore suggested that her former employers be contacted in order that their statements with respect to her employment might be verified.

Employment statements were received from various former employers which, in conjunction with a detailed working history provided by the complainant, illustrated that she had been employed for three years and three months.

Copies of this information were sent to the Ministry. In a letter dated June 13, 1983, the Ministry advised the Ombudsman that it had now established that the complainant had been a full-time employee for 3 years. As a result, the reassessment requesting payment of the $4,150 was cancelled. Since an independent student would have been entitled to an amount greater than what she received, the Ministry issued a cheque in the amount of $1,852 to cancel the outstanding balance of her Canada Student Loan indebtedness.

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*Administrative delay is one of the most common causes of complaint against government. In the following case, an inmate of a provincial correctional centre was held four days beyond his release date because of administrative delay.*

## Case Summary 4

On May 30, 1983 the Office of the Ombudsman received a letter forwarded from a complainant from southern Ontario. The complainant expressed concern over the apparent delay in being released from a correctional centre in November, 1982. The complainant was released four days after his bail release papers

arrived at the institution. Consequently, he requested financial reimbursement from the Ministry for lost wages equalling approximately four days employment.

The Ministry's response indicated that in the spirit of cooperation the Ministry was prepared to offer the complainant the sum of three hundred dollars ($300), recognizing that the Ministry did not have any documented evidence or statement that his financial earnings were, in fact, approximately one hundred dollars a day and that such earnings were on a regular basis. A condition of the proposed settlement was that the complainant agree to sign a "release of liability" for the Ministry.

The complainant was advised of this information by a member of our investigative staff, and stated that he was satisfied with the measures proposed by the Ministry. After the necessary documentation had been signed, the Ministry sent the complainant a cheque for $300.00.

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*Before the Ombudsman can support a complaint, his investigation must determine that the actions of the governmental organization were "contrary to law" or "unreasonable" or "unjust" or "oppressive" or "improperly discriminatory" or "based ... on a mistake of law or fact" or "wrong". In the following case, as in the majority of jurisdictional complaints, the actions of the governmental organization could not be so described, and the Ombudsman was unable to support the complaint.*

## Case Summary 5

An elderly married couple believed that the Ministry of Revenue had acted unreasonably in deciding to recover $750 from them on the basis that they had been overpaid in 1980 and 1981 for the Ontario Pensioners' Property Tax Grant.

Our investigation confirmed that in September 1980, the husband completed an application for an Ontario Pensioners' Property Tax Grant indicating his marital status as widowed. He did not complete the space reserved for indicating changes in marital status and the date of such change. The wife also completed her application after having been married, indicating her marital status as widowed, and leaving blank the space reserved for indicating a change in marital status. On the basis of this information, the Ministry sent the complainants each a cheque for $500, the maximum allowable grant for 1980. In the spring of 1981, the Ministry sent them each a cheque for $250 as a first payment toward the 1981 grant, with the balance to be sent upon receipt of a completed application form. The husband realized that he and his wife were not eligible for two grants in 1981 since they were a family unit, and he so informed the Ministry, but did not return any money.

When the Ministry discovered that the couple had married in 1980, it concluded that they should not have each received $500 in that year (for a total of $1,000) but rather, only one grant of $500 between them. The Ministry asked that they return $750 ($500 for 1980 and $250 for 1981). The complainants refused, arguing that at the time they paid their property taxes, they were not married and were therefore each eligible for a $500 grant.

The investigation also included an examination of the provisions of the Ontario Pensioners' Property Tax Assistance Act, which came into force on July 1, 1980. The Act defines "family unit" as "an individual and his spouse", and states that the Minister shall pay only one grant to a family unit in each year. On May 20, 1981, an amendment to the Act allowed a husband and wife who were both eligible persons to make an application for a grant as a family unit for the year in which they married and a further application for a grant may be made by one of the spouses for the occupancy costs in that year prior to marriage. Provided that such occupancy costs were not included in the application made for that year by the family unit, the Minister may pay such grant. The Act also provides for recovery of any grant paid to a person not entitled to receive it.

In considering the actions of the Ministry of Revenue in this case, the Ombudsman noted that the Ministry had acted in accordance with the relevant legislation in allowing the complainants only one grant of $500 for 1980, and in recovering the overpayment from the subsequent year's grant. While it could be argued that the Act, prior to the amendment made in 1981, improperly discriminated against senior citizens who married in 1980, the amendment corrected the situation. The amendment was not retroactive, and the Ombudsman could not therefore find any basis on which to make a recommendation that this couple

be entitled to a larger grant than that provided to any other couple who married during 1980. With regard to the complainants' contention that they felt that the information requested regarding marital status related to the time at which property taxes were paid, the Ombudsman noted that there was nothing in the wording of the application which would convey this impression. The investigation did not however, reveal any information to indicate that the complainants deliberately attempted to fraudulently obtain money to which they had no right. In fact, it was the husband himself who contacted the Ministry in 1981 after it mistakenly sent him and his wife first installments on that year's grant to which they were not entitled.

Since the investigation did not reveal any facts which would lead the Ombudsman to conclude that the Ministry had acted unreasonably in this case, he was unable to support the complaint.

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*The Ombudsman will support a complaint when the actions of the Ministry are contrary to law. In the following example, the legal issue was the provision of the Family Benefits Act that the Director is authorized to recover an overpayment only from the person who receives it.*

## Case Summary 6

In November 1981, the complainant was advised by the Ministry of Community and Social Services that he was being charged with a Family Benefits overpayment of $30,834.78. This followed an investigation by the Ministry which had concluded that the complainant's common-law spouse had improperly received Family Benefits as a single parent from 1973 to 1979. The overpayment recovery was being made by monthly deductions of $25 from his own Family Benefits cheque.

Our investigation revealed that following disclosure by the complainant's common-law spouse that they had been living together for six years, the Ministry cancelled the spouse's Family Benefits, assessed her with an overpayment of $30,834.78 and charged her and the complainant with fraud. The spouse pleaded guilty to defrauding the Ministry of approximately $5,000 and she was given a suspended sentence upon payment and restitution of $3,000. The charges of fraud against the complainant were dismissed by the court. As the complainant's spouse was no longer receiving Family Benefits, the Ministry could not recover the overpayment by making deductions from her allowance. In order to recover the money, the Ministry transferred the overpayment charge to the complainant, who in 1980 had been granted Family Benefits in his own right. The complainant objected to the Ministry's charging him for a debt which he did not incur, and appealed to the Social Assistance Review Board. The Board affirmed the decision of the Director.

After reviewing the relevant legislation, the Ombudsman formed the tentative conclusion that the decision of the Director of Income Maintenance to transfer the overpayment to the complainant was contrary to law. In support of this tentative conclusion, the Ombudsman noted that the Family Benefits Act provides that the Director is authorized to recover an overpayment only from the person who receives it. The Ombudsman noted that while there was a debt due to the Crown in this case, it was not, in his view, a debt owed by the complainant.

The Ombudsman tentatively recommended that the Director of Income Maintenance cancel his decision to transfer the overpayment to the complainant and apply what monies had already been deducted from he complainant's allowance to the recovery of a small overpayment which the complainant had on his own account. In his letter of response, the Assistant Deputy Minister of Community and Social Services advised the Ombudsman that the Ministry was prepared to accept his tentative recommendation and cancel the transfer of the overpayment. In addition, the Ministry agreed to apply the monies which had been paid by the complainant to his own overpayment on account.

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*Achieving necessary procedural changes in government agencies is an important part of the Ombudsman's function. As a result of the following case, the Employment Standards Branch established a special collections unit to deal with recalcitrant and insolvent debtor- employers.*

## Case Summary 7

In this case, a chef complained to the Ministry of Labour's Employment Standards

Branch that he had not been fully paid by his former employer. The Branch's investigation confirmed that he was owed approximately $2,500 and an Order to Pay was issued, but the employer refused to pay. The Employment Standards Branch filed a certificate for the amount in a small claims court outside of Metropolitan Toronto and informed the complainant that this was all it could do for him under the Employment Standards Act. The complainant enlisted the assistance of his M.P.P. because he felt that there must be some way for him to obtain money that was rightfully his and which he had earned.

A review of the Employment Standards Act conducted during the investigation indicated that the Branch has the power to issue third party demands to garnishee money which has not been paid pursuant to an Order to Pay. It also became apparent that the certificate carried an incorrect name for the employer and had been filed in the wrong court because small claims courts outside of Metropolitan Toronto have no jurisdiction to collect amounts over $1,000. This information was brought to the attention of the Ministry, which immediately issued a new certificate in the correct name of the employer, filed it in the correct court and issued third party demands under the appropriate section of the Employment Standards Act to garnishee the amount owing to the complainant.

A little more than a month later, the complainant had received his money. It had, however, taken more than sixteen months, and when the Deputy Minister of Labour was informed of the results of the investigation, he stated that the Ministry was prepared to offer the complainant a payment of $350 in final settlement of all claims arising out of the Branch's handling of his complaint against his former employer.

The Employment Standards Branch has also, as a result of this complaint, established a special collections unit within the Branch which will result in more effective action being taken against recalcitrant and insolvent debtor-employers. In addition, the Ministry has taken steps to ensure that its officials are aware of the debt collection powers and remedies available under the Employment Standards Act and the general law.

In this case, the complainant was insistent over a period of some three years in attempting to obtain what was rightfully due to him and in questioning the position of the Branch. As a result, he obtained not only his wages, which would otherwise have been lost, but compensation for the delay. His complaint resulted not only in a financial benefit to him, but a change in procedure within the Ministry's Employment Standards Branch which may well serve to prevent such unfortunate occurrences in the future.

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*On occasion, an amendment to a government regulation is necessary for a complainant to receive equitable treatment. In the following case, the Ombudsman was instrumental in changing an Ontario Regulation to resolve the complainant's grievance and thus benefit any complainant in similar circumstances in the future.*

## Case Summary 8

The complainant approached the Ombudsman in March, 1982 with a complaint about his deceased mother's benefits in the Municipal Employees Retirement System (OMERS). The Ombudsman initially delayed his investigation as the complainant's union was attempting to resolve the matter on his behalf. In August, 1982, the union advised that it was unable to take any further action and the Ombudsman duly began his investigation.

The complainant's mother was a municipal employee contributing to OMERS for eight and a half years before her death. Previously, in about 1956, she married the complainant's stepfather. About six years later, in 1961, he deserted her and was never heard of again.

In her first year of municipal employment, the complainant's mother completed an OMERS form designating the complainant as her beneficiary for the purpose of the regulations made under the Ontario Municipal Employees Retirement System Act. She made no reference to her husband.

After she died, the complainant sought to claim as beneficiary his mother's benefits in OMERS. OMERS, however, lacked the legal authority to pay him because in terms of its regulations the stepfather (as widower) had a prior claim. The stepfather, however, could not be located.

The problem was thoroughly discussed at a meeting attended by OMERS officers, the solicitor acting for OMERS and the Ombudsman's representatives. A solution was suggested and ultimately put into effect. On June 17, 1983, by Ontario Regulation 359/83, the OMERS regulations were amended to permit payment to someone in the position of the complainant when a person holding a prior claim (the stepfather here) cannot be found.

This enabled OMERS to pay the complainant and early in December, 1983 he duly received the sum of $3,778.15 representing his mother's death benefits ($4,197.94 with interest, less 10% tax). The complaint was therefore satisfactorily resolved.

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*Extensive legal research is often required for the Ombudsman to resolve a complaint. The process is illustrated in the following case, with the result that a governmental organization agreed to reconsider a law on which a decision was based, review its own legal powers and alter its practice of relying on a particular legal precedent. Part of this complaint was completely resolved on the initiative of the complainant's M.P.P.*

**Case Summary 9**

The complainant had purchased a new home in which he subsequently discovered a number of defects. He contacted the Housing and Urban Development Association of Canada (HUDAC) and was advised that his only recourse was to take civil action against the builder or request conciliation under the Ontario New Home Warranty Program. Believing these to be his only two alternatives, the complainant chose the latter. Six months after his purchase, the complainant received the New Home Warranty Program warranty certificate from the vendor/builder. He discovered from the appeal procedures set out on the statutory warranty certificate that he could make a claim for compensation from the Guarantee Fund pursuant to section 14 of the Ontario New Home Warranties Plan Act. He wrote to HUDAC making this claim but received no reply. In the meantime, the conciliation process continued. Later, dissatisfied with the results of the conciliation, he again contacted HUDAC to make a claim for compensation. He was advised by HUDAC, and later by the Commercial Registration Appeal Tribunal

*(Case Summaries continued on page 20)*

# Locations of Private Hearings in Ontario

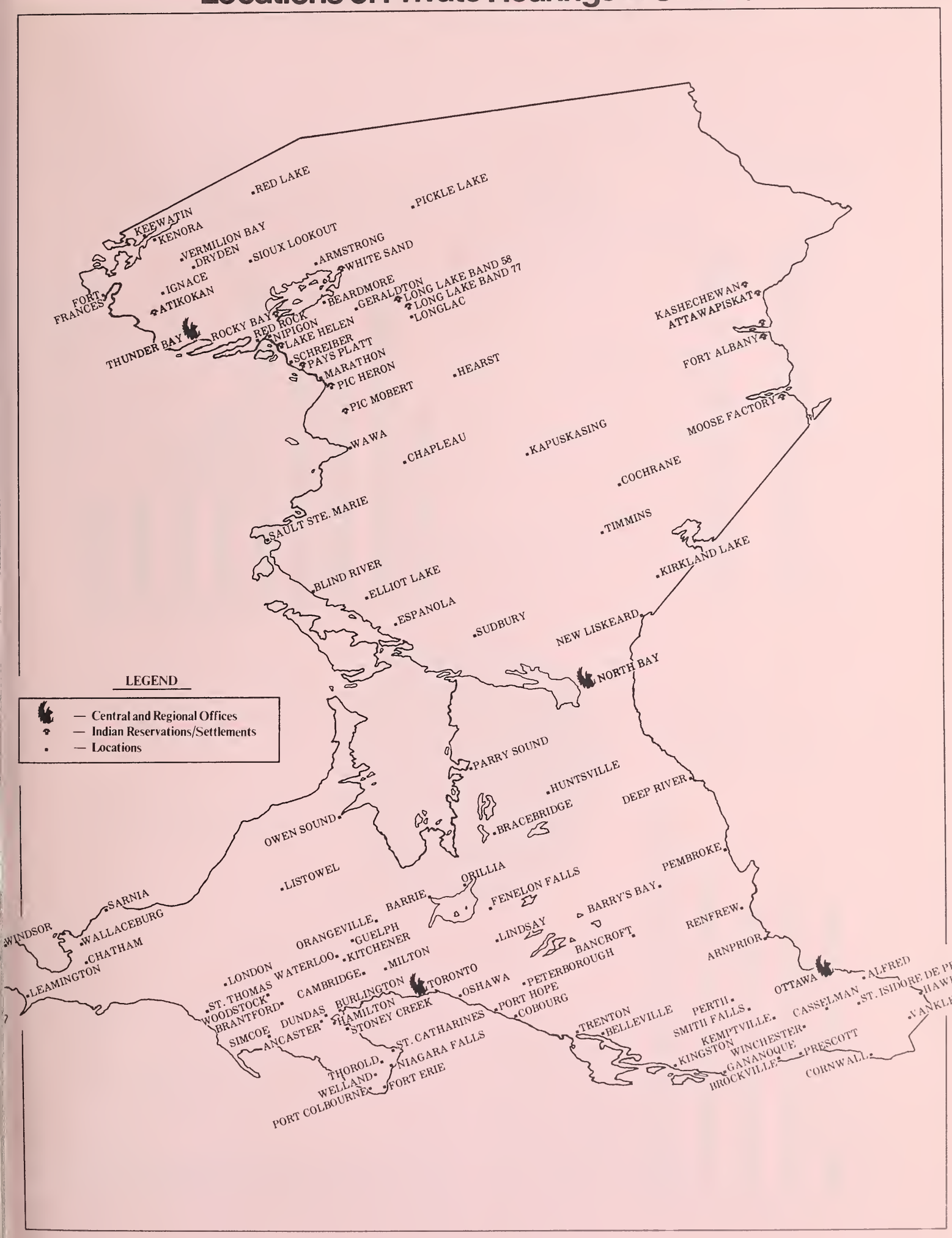


Fig. 1

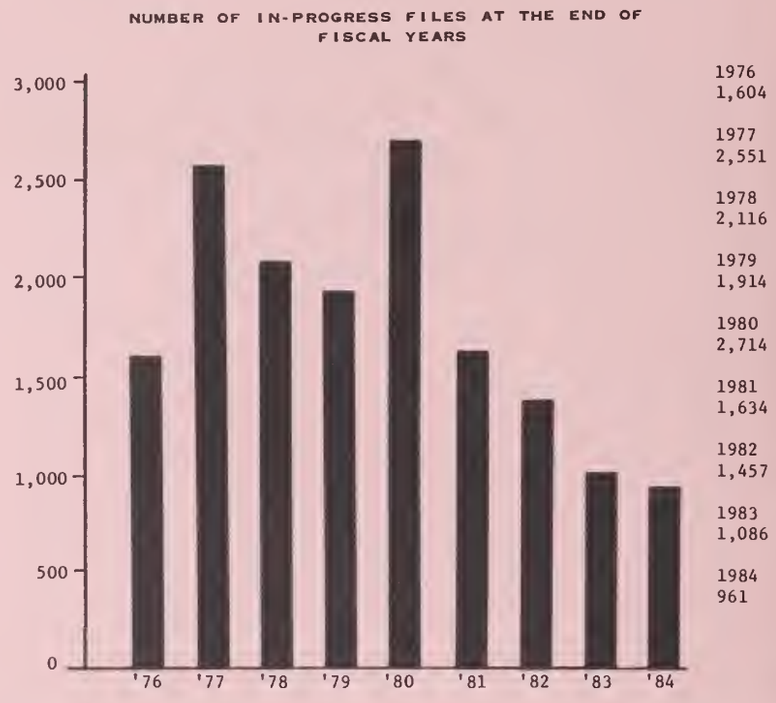



Fig. 2

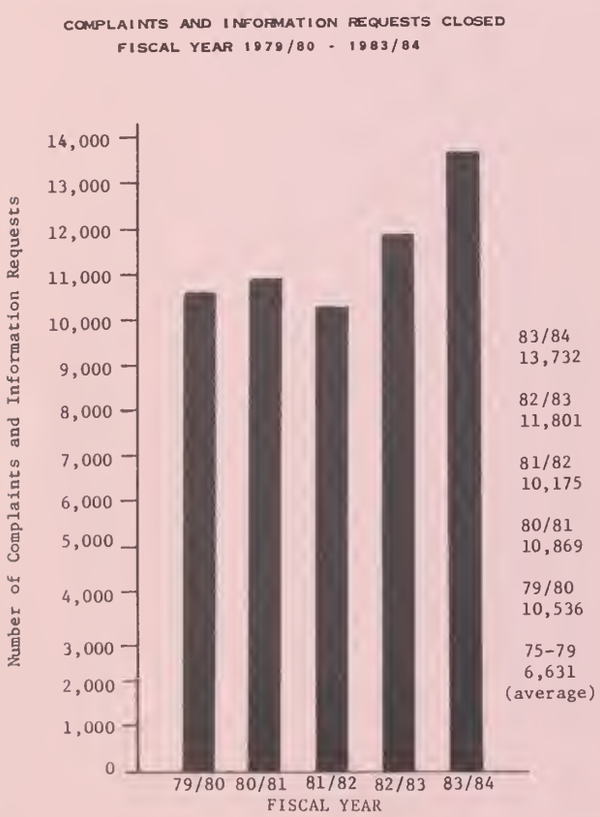
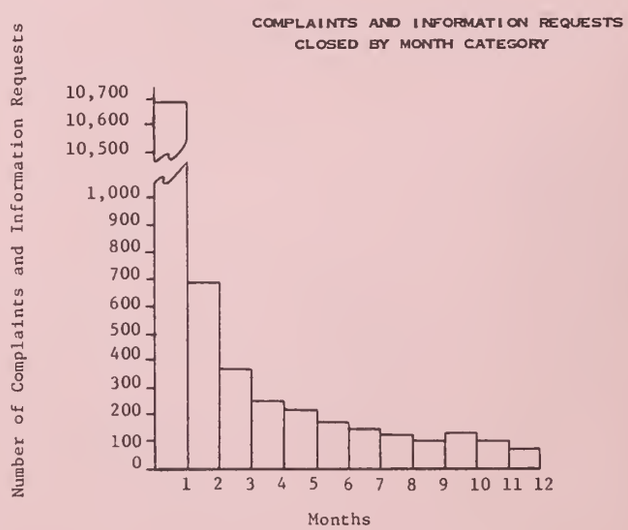



Fig. 3




The above histogram which covers a period of 12 months accounts for 95.4 per cent of the 13,732 complaints and information requests closed by the Office between April 1, 1983 and March 31, 1984. A further 629 complaints required more than 12 months to close.

Fig. 4

## FILES

### COMPLAINTS AND INFORMATION REQUESTS

| | NUMBER | % |
|---|---|---|
| RESOLVED | 1,488 | 38.6 |
| ABANDONED | 201 | 5.2 |
| CIRCUMSTANCES CHANGED | 1 | -- |
| INFORMATION REQUESTS | 307 | 8.0 |
| NO SOLUTION IDENTIFIED | 22 | .6 |
| NON-JURISDICTIONAL | 845 | 22.0 |
| RECOMMENDATIONS DENIED | 25 | .6 |
| REFUSE TO INVESTIGATE | 361 | 9.4 |
| WITHDRAWN | 600 | 15.6 |
| TOTAL | 3,850 | 100.0 |

### * FAST ACTION COMPLAINTS (NO FILE OPENED)

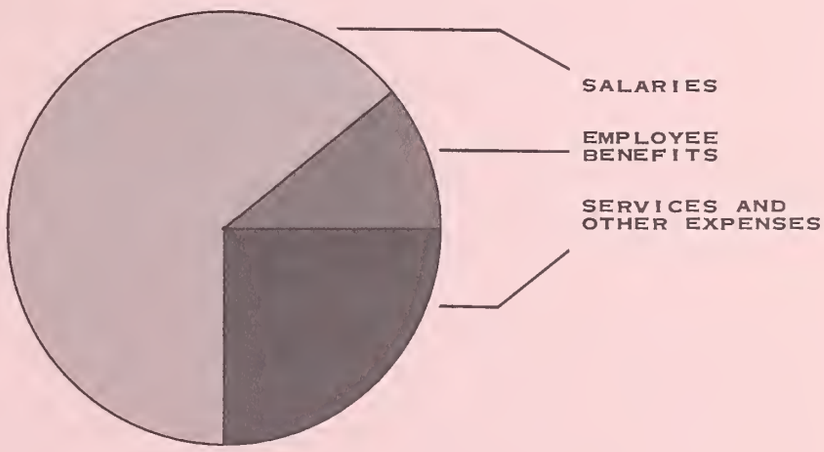
| | NUMBER | % |
|---|---|---|
| RESOLVED | 141 | 1.4 |
| ABANDONED | 739 | 7.5 |
| REFERRED/ADVISED/ EXPLANATION GIVEN | 8,078 | 81.7 |
| WITHDRAWN | 924 | 9.4 |
| TOTAL | 9,882 | 100.0 |

### COMPLAINTS AND INFORMATION REQUESTS HANDLED AT HEARINGS

| | NUMBER | % |
|---|---|---|
| FAST ACTION COMPLAINTS | 1,413 | 80.9 |
| FILES | 333 | 19.1 |
| TOTAL | 1,746 | 100.0 |

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

Fig. 5




### ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1983-84

| | | | |
|---|---|---|---|
| SALARIES | $3,420,795 | | |
| EMPLOYEE BENEFITS | 491,786 | FURNITURE & OFFICE EQUIPMENT | 19,039 |
| TRAVEL & RELOCATION | 137,507 | OFFICE SUPPLIES & DEVICES | 38,688 |
| TELEPHONE, MAILING & DELIVERY | 162,012 | BOOKS & PUBLICATIONS | 32,261 |
| BUILDING RENT | 511,181 | OTHER SUPPLIES & EQUIPMENT | 34,113 |
| EQUIPMENT & OTHER RENTAL | 149,774 | TRANSFER PAYMENT TO THE INTERNATIONAL OMBUDSMAN INSTITUTE | 20.000 |
| PROFESSIONAL SERVICES | 35,617 | | |
| OTHER SERVICES | 139,508 | | |
| TOTAL | $5,192,281 | | |

COMPLAINTS & INFORMATION REQUESTS
BY ORGANIZATION

FISCAL YEAR 1983-84

| ORGANIZATION COMPLAINED AGAINST | WITHIN JURIS-DICTION | OUTSIDE JURIS-DICTION | INFORMA-TION REQUESTS | TOTAL |
|---|---|---|---|---|
| AGRICULTURE & FOOD | 37 | 12 | 10 | 59 |
| ATTORNEY GENERAL | *38* | *41* | *35* | |
| ONTARIO MUNCIPAL BOARD | *45* | *14* | *19* | |
| PUBLIC TRUSTEE | *31* | *5* | *8* | |
| TOTAL ATTORNEY GENERAL | 114 | 60 | 62 | 236 |
| COLLEGES & UNIVERSITIES | 79 | 13 | 22 | 114 |
| COMMUNITY & SOCIAL SERVICES | *195* | *101* | *74* | |
| SOCIAL ASSISTANT REVIEW BOARD | *58* | *11* | *10* | |
| TOTAL COM. & SOC. SERVICES | 253 | 112 | 84 | 449 |
| CONSUMER & COMMERCIAL RELATIONS | 158 | 40 | 124 | 322 |
| CORRECTIONAL SERVICES | *66* | *16* | *26* | |
| CORRECTIONAL CENTRES | *678* | *58* | *193* | |
| DETENTION CENTRES | *1,180* | *80* | *428* | |
| JAILS | *867* | *55* | *158* | |
| TOTAL CORRECTIONAL SERVICES | 2,791 | 209 | 805 | 3,805 |
| CITIZENSHIP & CULTURE | 9 | 2 | 2 | 13 |
| EDUCATION | 43 | 10 | 6 | 59 |
| ENERGY | *9* | | *1* | |
| ONTARIO HYDRO | *50* | *12* | *10* | |
| TOTAL ENERGY | 59 | 12 | 11 | 82 |
| ENVIRONMENT | 51 | 6 | 10 | 67 |
| GOVERNMENT SERVICES | 36 | 4 | 16 | 56 |
| HEALTH | *128* | *17* | *25* | |
| PSYCHIATRIC HOSPITALS | *237* | *19* | *35* | |
| O.H.I.P. | *36* | *14* | *8* | |
| TOTAL HEALTH | 401 | 50 | 78 | 529 |
| INDUSTRY & TRADE DEVELOPMENT | 8 | | 4 | 12 |
| INTERGOVERNMENTAL AFFAIRS | | | 2 | 2 |
| LABOUR | *82* | *25* | *29* | |
| HUMAN RIGHTS COMMISSION | *49* | *7* | *26* | |
| WORKERS' COMPENSATION BOARD | *754* | *512* | *229* | |
| TOTAL LABOUR | 885 | 544 | 284 | 1,713 |
| MUNICIPAL AFFAIRS & HOUSING | 124 | 30 | 50 | 204 |
| NATURAL RESOURCES | 129 | 19 | 29 | 177 |
| NORTHERN AFFAIRS | 3 | | 2 | 5 |
| REVENUE | 92 | 42 | 33 | 167 |
| SOLICITOR GENERAL | 54 | 17 | 30 | 101 |
| TOURISM & RECREATION | 13 | 1 | 3 | 17 |
| TRANSPORTATION & COMMUNICATIONS | 171 | 51 | 60 | 282 |
| TREASURY & ECONOMICS | 12 | 1 | 2 | 15 |
| ONTARIO GOVERNMENT OTHER | 41 | 24 | 464 | 529 |
| ONTARIO GOVERNMENT TOTAL | 5,563 | 1,259 | 2,193 | 9,015 |
| COURTS | | 323 | 34 | 357 |
| FEDERAL | | 730 | 157 | 887 |
| PRIVATE | | 2,167 | 503 | 2,670 |
| MUNICIPAL | | 720 | 76 | 796 |
| INTERNATIONAL | | 6 | 4 | 10 |
| OTHER PROVINCES | | 30 | 17 | 47 |
| NO ORGANIZATION SPECIFIED | | 20 | 41 | 61 |
| TOTAL | 5,563 | 5,255 | 3,025 | 13,843* |

**NOTE: This figure exceeds the number of closed complaints (13,732) because some complaints involved more than one organization.*

(CRAT), that since he had proceeded with conciliation, his only recourse would be to arbitration and that he could not now make a claim for compensation from the Guarantee Fund.

The complainant persisted and subsequently CRAT held a preliminary meeting to hear submissions regarding its jurisdiction. The outcome was that CRAT determined it had no jurisdiction and no formal hearing was held under section 16 of the Act.

While the Ombudsman investigated the position taken by CRAT, the complainant pursued his complaints with respect to HUDAC through his M.P.P. and was successful in obtaining a $5,000 cash settlement from HUDAC.

As a result of his investigation, the Ombudsman tentatively concluded, pursuant to section 22(1)(d) of the Ombudsman Act, that CRAT was wrong in deciding that it had no jurisdiction over the complainant's appeal and further that, pursuant to section 22(1)(b), CRAT was unreasonable in declining to hold a full hearing as provided by section 16 of the Ontario New Home Warranties Plan Act.

In support of his conclusion, the Ombudsman reviewed the relevant legislation as well as the precedent relied upon by the CRAT in holding that it had no jurisdiction in the complainant's case.

By section 11 of the Ontario New Home Warranties Plan Act, the Ontario New Home Warranty Plan is established and consists of two schemes for consumer protection.

The first, in section 13, sets out statutory warranties implicit in the purchase of a new home. The second, in section 14, provides for compensation to be paid out of a Guarantee Fund if a purchaser comes within one of the situations described in section 14(1). Limits on the amount to be paid are set out by regulation. Section 17 of the Act provides a further remedy for the consumer. It provides that the corporation designated to administer the Act (HUDAC) may "upon the request of an owner, conciliate any dispute between the owner and the vendor".

It was noted that under section 17, the ultimate redress, should an owner be successful, comes directly from the vendor/builder, whereas under section 14, a successful owner will be compensated from monies in the Guarantee Fund administered by the Program (HUDAC). This

*(Case Summaries continued from page 15)*

distinction between the remedies set out in section 14 and section 17 is crucial where, as in the complainant's case, the vendor is no longer in business. In such cases, section 17 is not a practical remedy and would not likely be exercised by an informed owner. There was nothing in the legislation to indicate that section 14 and section 17 were mutually exclusive remedies. Thus, the position taken by CRAT did not find support in the legislation.

The Ombudsman also noted that the decision in the case of Gracien St. Onge and The Corporation Designated ... (HUDAC), 1979 8 C.R.A.T. 81, was not a useful precedent in the complainant's case as Mr. St. Onge had attempted to appeal to CRAT HUDAC's conciliation decision under section 17, while the complainant in this case was requesting a review of HUDAC's decision that his was not a section 14 claim. Under the Act, such decisions are clearly reviewable by CRAT by virtue of section 16.

Further, in this case, the complainant alleged he was not fully advised of his rights under the Act. Section 17 is to operate only at the request of an owner and he contended he would not have proceeded with conciliation had he been aware of his right to make application pursuant to section 14.

The Ombudsman tentatively recommended: pursuant to section 22(3)(e) of the Ombudsman Act, that CRAT reconsider the law on which its decision was based; pursuant to section 22(3)(g), that CRAT review the powers given to it and to HUDAC under the Ontario New Home Warranties Plan Act; and, pursuant to section 22(3)(d), that CRAT alter its practice of relying on the St. Onge decision where conciliation has occurred and consider each case on its particular merits.

The Chairman of CRAT responded to the Ombudsman indicating that CRAT was prepared to accept the tentative recommendations and assured the Ombudsman that the recommendations would be circulated to the members of the Tribunal for consideration in the future when similar issues arose.

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*In the following case, the Ombudsman suggested that an amendment be made to the Health Disciplines Act to clarify the right of any person affected by an Order of the Board to institute proceedings in the Supreme Court to enforce the Order.*

## Case Summary 10

This complainant contacted our Office to complain about a decision of the Ministry of Health not to take steps to ensure the enforcement of an order of the Health Disciplines Board which related to the treatment of the complainant's deceased husband by an attending physician. It appeared that the Minister was of the view that, since the Board had apparently exceeded its jurisdiction in making the order, it could neither enforce its decision nor reconsider it. Thus, it was believed that nothing could be done.

Our investigation revealed the following. The complainant's husband died of cardiac arrest in an Ontario hospital in the fall of 1979. The complainant was dissatisfied with the quality of medical care received by her husband and complained to the College of Physicians and Surgeons of Ontario. The College reviewed the case and concluded that there was no evidence of substandard care. The complainant applied to the Health Disciplines Board for a review of this conclusion. The Board ordered the Complaints Committee to investigate and report on this matter, and, as a result of the Committee's report, found that the doctor's actions, while not contributing to the death of the complainant's husband, fell short of good medical practice. Hence, it ordered the Committee to direct the doctor to attend at its offices "to receive a severe admonishment".

The College of Physicians and Surgeons took the position that the order amounted to the imposition of discipline on the doctor and was therefore not within the Complaints Committee's jurisdiction. Hence, it refused to direct the Committee to carry out the order.

Negotiations between the Board and the College on this issue resulted in an agreement "to establish in the public interest an effective working relationship between the Ontario College of Physicians and Surgeons and the Health Disciplines Board".

Subsequently, the complainant consulted staff at the Patients' Rights Association and, through the Association, contacted the Minister of Health with her complaint and asked him to intervene. The Minister responded that, since the

Board had exceeded its jurisdiction, it now had no authority to enforce or change its decision. The Minister stated that he hoped that the agreement reached between the Board and the College would prevent similar problems from arising in the future.

As a result of our investigation, the Ombudsman came to the possible conclusion that the decision of the Minister of Health that the order of the Health Disciplines Board was made in excess of jurisdiction was wrong. Based on this conclusion, we decided that we might be prepared to make two recommendations, outlined as follows:

1. The Health Disciplines Board ought to take all steps available to it to see that its order in the complainant's case is obeyed, including, if necessary, a request to the Minister of Health for an amendment to the Health Disciplines Act.

2. The Minister of Health ought to reconsider the position he has taken in response to the complaint submitted to him on the complainant's behalf by the Patients' Rights Association.

We reported our possible conclusion and recommendation to the Deputy Minister. Also, because we were of the opinion that they might be "adversely affected" by our possible conclusion and recommendations, we notified other colleges subject to the Health Disciplines Act, the Health Disciplines Board, and the affected physician. Representations were received on behalf of all the parties.

The Minister of Health, in responding to our letter, pointed out that whether or not the words "severe admonishment" were generally available for inclusion in an order of the Board, in the complainant's case they were used to express a disciplinary intent. Many other responses to our letter expressed a similar opinion. While the legality of the order remains a question of some difficulty, we decided that the order could have been interpreted as disciplinary in nature and therefore beyond the jurisdiction of the Complaints Committee. In any case, we were persuaded that the physician in question had been adequately admonished by the attention the matter had received, and decided not to recommend any further action be taken against him. As a result, we did not find this complaint to be supported.

However, regarding the issue of the enforcement of orders of the Health Disciplines Board, most of the respondents to our letter were of the opinion that the Board could enforce its own order through an application to the Divisional Court under the Judicial Review Procedure Act. Nevertheless, in our view, this may still leave a person in our complainant's position with no recourse. Hence, we suggested that an amendment be made to the Health Disciplines Act to clarify the right of any person affected by an order of the Board to institute proceedings in the Supreme Court to enforce the order. We advised the complainant, the Ministry of Health and the affected parties of our conclusions.

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*The following case pertains to the rights of an involuntary patient in a mental health centre. As a result of the investigation, the Ombudsman recommended to the Ministry of Health that it review provisions of the Mental Health Act with respect to Treatment Orders.*

**Case Summary 11**

A young woman who was an involuntary patient in a mental health centre complained that she had been unreasonably placed in body restraints on two occasions without her consent, when there was no Order to Treat her without her consent. She also complained about the Order to Treat eventually issued by the Regional Review Board.

Our investigation determined that on two occasions the patient was threatened with full-body restraints unless she complied with minor ward rules: wearing socks, and not sleeping on the couch in the ward lounge. Each time she reacted by becoming verbally and physically abusive toward staff, and was then placed in restraints. She had not consented to a treatment plan which included the use of body restraints, nor was there a treatment order.

The Ombudsman accepted that after the complainant became assaultive, the Mental Health Act authorized the use of restraints. However, the Act contemplates as minimal a use of restraints or force as is reasonable. In this case, the patient was threatened with full body

restraints for refusing to put on her socks and for not getting up off a couch.

The Ombudsman concluded that while the actual use of restraints had been justified, the threat of using restraints to make a patient conform to ordinary hospital rules was unreasonable, unjust and oppressive in the absence of consent or a Treatment Order. He recommended that the practice of using the threat of restraints to make patients conform to ordinary hospital rules be altered. The administrator of the mental health centre agreed to implement this recommendation.

With respect to the Treatment Order, the complainant objected that it contained no time limit, and did not specify what types of treatment could be given under the general heading of behaviour modification and psychotherapy. Our investigation revealed that the Mental Health Act makes no provision for the automatic review of treatment orders, nor does it provide for patients to apply to have orders varied or rescinded. The chairman of the Regional Review Board argued that it is not the board's function to initiate or supervise treatment. The board presumes that authorized treatment will be administered professionally and for the sole benefit of the patient. It would have been difficult for the board to stipulate a time limit for the treatment. Rather, the board believes that a physician will end the treatment when it has run its course and the patient has been cured, or it has ceased to be effective.

The Ombudsman concluded that the board's order was in accordance with a provision of the Mental Health Act that is unreasonable, unjust and oppressive in that it does not require time limits on orders,nor does it provide any procedure for automatic review of orders or for patient applications to vary or rescind them. He recommended that in future the review board request that treatment plans be submitted with applications for orders, and that the orders should include copies of the treatment plans. He also recommended that the Ministry of Health review the Mental Health Act with a view to considering placing time limits on Treatment Orders, thereby providing for automatic reviews and/or a procedure whereby the patient may apply to have the order varied or rescinded.

The Deputy Minister of Health replied that procedures for the Regional Review Board were under review. Some time later, he wrote again to say that after a meeting of the five Regional Review Board Chairmen, it was agreed that treatment orders should be specific, time- limited, and accompanied by treatment plans.

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*In the following case, the Ombudsman's investigation was instrumental in improving examination procedures used by the Board of Directors of Chiropractic.*

## Case Summary 12

This investigation dealt with a number of complaints by an individual who had received his degree of Doctor of Chiropractic from an American facility recognized in Ontario, but had been unable to obtain his licence entitling him to practice in Ontario. He had attempted the licensing examinations on three separate occasions but had failed to obtain passing grades on some of the exams set by the Canadian Chiropractic Examining Board (CCEB). He then wrote to the Board of Directors of Chiropractic (the Board), the Ontario licensing authority, to request that it review with him all of his examination papers to determine the validity of the marks assigned, and to enable him to understand his past incorrect responses, thereby assisting him to improve his future grades. The Board refused.

The complainant was of the view that this refusal was unreasonable. He stated that the Board was a supervisory and licensing body which had the job of ensuring that the examinations administered by the CCEB meet its standards. He contended that the Board had therefore failed to properly ensure that the CCEB was exercising its statutory duty in a fair and responsible manner.

The Board was of the opinion that the CCEB examinations had been fair, and that the marks had not been arbitrarily awarded. With respect to its statutory duty, the Board was of the view that it had no control over the examinations conducted by the CCEB.

During our investigation we conducted a review of the relevant legislation, the Drugless Practitioners Act and Regulation 248 thereunder. Section 17(1) of the Regulation states that:

> The Board shall prescribe examinations for the admission of chiropractors to practice in Ontario upon the subjects prescribed by subsection 2.

Subsection 2 lists nine subjects for examination. Section 18(1) of the Regulation states:

> The Board shall conduct or cause to be conducted examinations at least once a year.

In the Ombudsman's opinion the examinations referred to in sections 17(1), (2) and 18(1) are the same examinations. The Regulation permits the Board to have the option of either conducting its own examinations or causing those examinations to be conducted by another party. At issue in this complaint was whether it could be said that by requiring licensing applicants to write the CCEB examinations, the Board was causing examinations to be conducted by another party. Our investigation showed that CCEB conducted its own examinations on a yearly basis as part of its mandate, not at the instance of the Board.

The Ombudsman formed the opinion that it was open to him to conclude that the actions of the Board in requiring applicants for licensing to write the CCEB examinations, which were being conducted as part of the CCEB's mandate, would appear to be contrary to law. It appeared to the Ombudsman that two possible alternative recommendations could be made. It would be open to him to recommend that the Board seek an amendment to section 18(1) of Regulation 248 permitting it to cause examinations to be conducted by the CCEB. The Board subsequently agreed to this.

The Ombudsman also considered the issue of the complainant being allowed to review his marked examination papers. It did not seem to him that there was any good reason why the Board could not accommodate the complainant, or any other applicant, in this way. It appeared that an applicant who saw the marked examination papers would be satisfied that they had been fairly assessed and would be better able to prepare for the rewriting of the examinations in the future. In the complainant's case, however, the Board never had physical possession of the examination papers. If the Regulation were amended, however, that amendment would provide the Board with the power or authority to either review marked examination papers with students, or cause the examiners to review papers with students.

It therefore appeared open to the Ombudsman to conclude that the Board's practice not to assist applicants to review the examination papers of the CCEB was unreasonable. It also appeared open to the Ombudsman to recommend that the Board alter its practice to assist and permit applicants to review their marked examination papers with the appropriate examiner.

As required by section 19(3) of the Ombudsman Act, the Ombudsman reported his tentative conclusions and recommendations to the Chairman of the Board. Written and oral representations were received from the Chairman and Executive Secretary of the Board.

With respect to the drafting of an amendment to Regulation 248, representatives of the Board recently met with Ministry of Health officials and were assured that the proposed revision of the Regulation permitting the Board to either conduct the examinations itself, or cause the exams to be conducted by the CCEB or any similar or successor agencies, would be actioned as expeditiously as possible.

Concerning the issue of students reviewing marked examination papers, the Board confirmed that in future any examination candidate would have the opportunity to take advantage of a procedure which would entitle them to review marked, failed examination papers.

In the end result, although the Ombudsman supported the complaint, he chose not to make any final recommendations because of the planned actions on the part of the Board of Directors of Chiropractic.

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*In the following case, the Ombudsman was instrumental in advancing the eligibility date of the Ministry of Health's Drug Benefit Plan for senior citizens.*

## Case Summary 13

This complainant wrote to our Office after determining that her benefits under the Ministry of Health's Drug Benefit Plan would not commence until the second month following her 65th birthday. The complainant's group health coverage under her late husband's employer ceased on her birthday, thereby leaving a two-month gap when she would not be eligible for benefits.

In its response to the Ombudsman, the Ministry referred to what is now Regulation 318, section 25(1) of the Family Benefits Act which specifies that drug benefit coverage is provided for Ontario residents who are eligible for a pension under Part I of the Old Age Security Act (Canada), effective the month following the month in which the person receives payment of a monthly pension from the Federal government. The Ombudsman was advised that the two months' delay in the commencement of drug benefits was necessary because of the Ontario government's use of the federal computer listing, which was only made up the month after the month in which the individual turned 65.

Our investigation revealed that ministerial approval was automatically granted for the commencement of coverage in the month following receipt of either an application submitted by an eligible individual, or the month immediately following receipt of the last maintenance/ supplement cheque by eligible Ontario residents. Senior citizens who were not recipients of maintenance/supplement cheques and who did not complain to the Ministry of Health were the only individuals who had an extra month's delay before the commencement of drug benefits after their 65th birthday.

The investigation also revealed that the pamphlet issued by the Ministry of Health entitled "Ontario's Drug Benefits for Senior Citizens" did not clearly state that it would be open to individuals who had been resident of Ontario for twelve months immediately prior to their 65th birthday to complete an application form for the program, thereby resulting in the commencement of benefits one month earlier (i.e., the month following their birthday). Also, this pamphlet did not clearly state that drug coverage was not effective immediately upon turning 65.

At this stage of the investigation the Ombudsman formed the tentative opinion that the establishment of eligibility dates for recipients of benefits under the Drug Benefit Plan was in accordance with a Regulation that might be improperly discriminatory and that the omissions in the pamphlet were unreasonable. The Ombudsman was of the view that it was open to him to make two recommendations. The first was that Regulation 318 should be amended to specify that all persons who have attained the age of 65 should become eligible for the Drug Benefit Plan at the same time, i.e. the month following their 65th birthday and also that the omissions in the pamphlet should be rectified.

As required by section 19(3) of the Ombudsman Act, the Ombudsman reported his tentative conclusions and recommendations to the Deputy Minister of Health. With respect to the matter of the effective date, the initial written representations received from the Ministry did not, in the Ombudsman's view, speak to his tentative conclusions and recommendations. It was therefore necessary for the Ombudsman to restate his position.

In the end result the Ministry advised that it had reexamined the issue of different dates for the commencement of coverage under the Drug Benefit Plan for senior citizens and had arrived at a resolution. All senior citizens qualifying for drug benefits would become eligible on the first of the month following their 65th birthday. The implementation of the change was complicated and the Ministry advised that it would be delayed for a few months pending coordination between the Ministries of Health and Community and Social Services, and the Department of National Health and Welfare. In addition, changes were necessary in the Ministry of Health's computer and administrative processes.

With respect to the Ombudsman's possible recommendation concerning omissions in the pamphlet, we were advised that a revised pamphlet had been released which rectified the omissions specified in the Ombudsman's letter to the Ministry.

Although it remained the Ombudsman's view that eligibility dates for recipients of benefits under the Drug Benefit Plan were in accordance with a Regulation that may be improperly discriminatory, at the conclusion of the investigation the Ombudsman felt that it was unnecessary for him to make a recommendation in view of the Ministry's planned action. Further, as the omissions in the pamphlet were rectified, the Ombudsman also felt that a recommendation on this issue was unnecessary.

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*The following case illustrates that an investigation conducted by the Ombudsman can often become a mediation process whereby a complaint is resolved.*

**Case Summary 14**

This complainant, the Chairman of a leaseholders' association representing 97

leaseholders on 13 different lakes in northwestern Ontario, alleged that the Ministry of Natural Resources had acted unreasonably in relying upon an appraisal completed by an independent appraiser it had retained in determining the value of Crown cottage lots the members had the option of purchasing.

As of 1971, the Ministry began leasing, as opposed to selling, Crown cottage lots. Each lease was for a thirty-year term renewable for two further ten-year terms. The annual rent was subject to adjustment every ten years. The Ministry policy was to set the annual rent at 10% of the appraised market value of the lot in 1971; in 1981 and 1991 the rent would be adjusted for the next ten-year period to reflect the appraised market value of the lots in those years.

The February 21, 1978 Speech from the Throne promised a program to sell Crown cottage lots, and the Regulations made under the Public Lands Act were amended accordingly.

The Ministry implemented the conversion program of leasehold to freehold tenure by having each of the 2,100 Crown cottage lots affected in the province appraised by the Ministry of Government Services. The lessees could either purchase the lots at appraised market value or continue to lease for the remaining 43 years of the lease, under the terms of the original lease.

In February of 1980, the Minister of Natural Resources announced that the lots would be sold at their current market values less all rent paid by the lessees to the date of purchase. If a lessee was dissatisfied with the appraised value established by the Ministry of Government Services, he could obtain a second appraisal for which the Ministry of Natural Resources would pay one- half of the cost. If agreement still could not be reached, the Ministry could order, and pay for, a third appraisal and the Ministry would use all three appraisals as the basis for further negotiations with the purchaser.

For purposes of simplicity, this summary will deal with the appraisals of the nine cottage lots on one of the 13 lakes.

In 1979, the Ministry of Government Services valued the nine cottage lots at $12,000 each. The leaseholders were dissatisfied with the appraisal and had a second appraisal done by an appraiser of their choice. This appraiser valued two of the lots at $6,500, four at $7,000 and three at $7,500. Because of the wide spread between the appraisals done by the Ministry of Government Services and the independent appraiser, the Ministry hired an independent appraiser to do a third appraisal and to review the appraisals already completed. He appraised lots 1 to 7, inclusive, at $12,500 each and lots 8 and 9 at $13,900 each.

The Ministry offered to sell the nine Crown cottage lots at the appraised market value estimated by its independent appraiser less any rent paid during the time of the lease. Each of the leaseholders purchased their lots; however, they did so under protest as it was their opinion that the purchase price was too high. The Ministry made a downward adjustment of the appraised values of the lots and offered to sell the lots to the leaseholders for that amount. The Association offered a total of $1,004,300 for the 97 lots. The Minister responded and made a final offer of $1,052,800 , or $500 more per lot than that offered by the Association.

As a result of this Office's involvement, the Association offered, and the Ministry accepted, $1,028,550 for the 97 lots, or $250 per lot more than the Association had offered the Ministry and $250 less per lot than the Ministry's counter offer. The Ministry agreed to the Association's suggestion that the $250 per lot reduction take the form of $125 deductions on each of the last two payments, for those paying on the four-year instalment plan, and a refund of $250, without interest, for those who had paid for their lots in full.

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*The disabled have special needs. In the following case, the Ombudsman's involvement assisted a paraplegic student to have a mechanical lifting device installed at his school. Hopefully this precedent will be followed by all local school boards.*

## Case Summary 15

The complainant objected to the action taken by the Ministry of Education in not requiring a local school board to install an elevator in the school to assist her handicapped son so he need not climb the stairs.

The complainant's son has paraplegia in his legs and must use a wheelchair. It is very difficult, tiring and hazardous for him to climb stairs. His doctors indicated a fall could have resulted in complete and irreversible paralysis. The school that this boy wanted to attend has two levels, with no elevator. When presented with a request to assist this student, the school board refused to install an elevator in that school, although it had been pointed out to the board by the complainant's M.P.P. that a substantial portion of the cost of purchasing and installing an elevator could be subsidized by a grant from the Ministry of Education. The complainant told us that there were other types of mechanical lifting devices which were less expensive and more practical than an elevator for transporting the physically handicapped up and down stairs, and that she would be satisfied with such a device. The Ministry advised it was supportive of the student's special needs and undertook to discuss it with the school board.

The Minister later advised our Office that the School Board decided to purchase a mechanical lifting device which would be less costly than an elevator and more practical for transporting physically handicapped students up and down the stairs of that school. Furthermore, the school was going to make an application to the Ministry for a grant to finance the cost of purchasing and installing this device and the Ministry intended to agree to this application. Our Office was later informed by the Ministry that other school boards in the province are anxious to purchase the same device.

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*The Ombudsman's Office is intended to be the "last resort" for the aggrieved citizen. The following case illustrates the Ombudsman's effectiveness when the time limits for proceeding with other actions have expired.*

**Case Summary 16**

The complainant had owned several tourist businesses at a river crossing on a highway. In 1964, the highway was upgraded; the crossing relocated downstream; and the old bridge removed. The complainant's operations were now at the end of an eight mile dead-end road and so he was forced to close his businesses.The land adjacent to the new crossing was owned by the Ministry of Natural Resources (MNR). The complainant negotiated with MNR to lease land on which to rebuild his operations. Prior to the signing of a lease, the complainant was required to obtain an access permit from the Ministry of Transportation and Communications (MTC) to allow access from the new highway to the site he proposed to lease. MTC refused to grant such a permit as this section of the highway had been designated as a controlled access highway. The complaint to this Office was that MTC should allow the access permit.

Our investigation revealed that a Ministry Survey filed at the local Land Titles Office in 1962 had shown the highway to be a controlled access highway. Such designation generally precludes private commercial access. MTC appeared to have good reason for so designating this portion of the new highway.

However, it was clear that the complainant had suffered a financial loss due to the relocation. The time limitation for proceeding with an action for injurious affection against MTC had passed, but the complainant seemed to have had a cause of action in 1964. This right of action had lapsed during his negotiations with MNR.

The Ombudsman wrote to the Deputy Minister of MTC, pursuant to section 19(3) of the Ombudsman Act, advising that he might recommend that MTC negotiate a settlement for the injurious affection and subsequent expenses in attempting to resolve the matter.In response, the Deputy Minister agreed to examine the complainant's claim for injurious affection and recommend appropriate payment.

The Deputy Minister argued, however, that expenses incurred by the complainant in negotiations with MNR should not be reimbursed by his Ministry. He characterized these expenses as "speculatively incurred ... for his private gain". The complainant maintained that he should be compensated for these expenses.

On reconsideration, the Ombudsman felt that the complainant had ample opportunity to know, prior to his negotiations with MNR, of the restrictions attached to the highway. The costs incurred in his negotiations with MNR were, therefore, speculative. The Ombudsman concluded that MTC was not acting improperly in declining to consider compensating the complainant for these costs.

## WORKERS' COMPENSATION BOARD

### DISABLEMENT:

*Workers' compensation is normally associated with traumatic accidents on the job, like falling off a ladder or being hit by a piece of falling debris; however, the Workers' Compensation Act also protects workers who suffer disabilities which arise out of and in the course of their employment in the absence of a specific accident. These "disablement" cases form a significant portion of the complaints registered with the Ombudsman. They are often difficult cases to resolve because the onset of symptoms is gradual; medical science is only now evolving in this area and there may be several factors, work-related and non-work-related, contributing to the disability.*

### Case Summary 17

An auto worker's assembly line job required a great deal of bending and twisting. He began to experience back problems in 1978 and eventually underwent surgery in 1981.

In 1981, he claimed benefits from the Workers' Compensation Board for his lost time necessitated by his surgery. The worker's family doctor and two orthopaedic surgeons supported his claim that his work contributed to his disability. A physician employed by the Board also supported a relationship. The claim was, however, rejected by the Board because its surgical consultant was unaware of any claims that had been allowed where no heavy lifting was involved.

Following rejection of his claim, the worker approached the Ombudsman. Several unsuccessful informal attempts were made at bringing the information to the Board's attention in an effort to resolve the complaint. Having regard for the nature of the work and the overwhelming medical evidence in support of the complaint, a tentative recommendation was made by the Ombudsman that the Appeal Board revoke its decision and allow the claim.

Before responding to the tentative recommendation, the Board advised us of its opinion that there was a conflict of medical opinion between the orthopaedic surgeon and the Board's surgical consultant. Hoping to resolve the apparent conflict, the Board referred the matter to an independent medical specialist.

After receiving the opinion of an independent specialist some three months later, the Board advised us that there was a preponderance of medical evidence in support of a causal relationship. The Board then revoked its 1982 decision and granted the claimant entitlement to benefits in 1984.

The complainant was very pleased with the results of our investigation.

### Case Summary 18

In 1977, the complainant laid off work because of hand, arm and shoulder problems. She attributed the disability to the repetitive nature of her work as a hand sewer, as well as the slightly bent over, neck-flexed position that she was required to adopt during the course of her work.

She claimed benefits from the Workers' Compensation Board and although the claim was initially allowed, the decision was overturned by the Appeal Board.

After a review of the documentation submitted by the Board and the complainant, the Ombudsman tentatively concluded that the nature of the work and the medical evidence supported the worker's contention. A tentative recommendation was made by the Ombudsman that the Appeal Board revoke its decision and allow the claim.

On November 22, 1983, the Chairman of the Workers' Compensation Board advised this office that the Appeal Board had carefully studied the information submitted by the Ombudsman, as well as further information received from the accident employer, and decided that a relationship existed between the repetitive movements required by the worker's job and the development of her symptoms. The Board then revoked its 1979 decision and granted the claimant entitlement to benefits in 1984.

The complainant, who was then residing in Italy, was advised of the Ombudsman's successful resolution of her complaint. She would have benefits coming to her for the period that she was totally disabled as a result of her condition, and, as well, the Workers' Compensation Board advised this office that arrangements would be made through its agreement with the Italian government to have the complainant examined for a permanent disability rating in Italy.

## MEDICAL REFERRAL:

*In many Workers' Compensation Board decisions the medical evidence is the crucial factor. In some of the cases the Ombudsman is asked to investigate, the medical evidence is conflicting or inconclusive. To resolve these complaints we attempt to clarify the opinions by writing to the doctors who have treated the injured worker or engaging an independent specialist in the appropriate field of medicine. In some cases, the additional evidence supports the worker's contention and in other cases the new evidence confirms the decision reached by the Board. In all cases, the worker who has come to the Office has the knowledge that the crucial medical issues have been fully considered.*

### Case Summary 19

This complainant suffered a serious injury to his low back in 1972 when he fell off a conveyor belt he was attempting to repair. Despite a variety of treatments, his pain and restriction of movement grew progressively worse over the years.

Initially, the Workers' Compensation Board granted him a 35% pension for his back disability. In 1979, upon reexamination, his pension was increased to 45%, and later to 50%. The examining Board doctors noted in their reports that there was a very marked organic disability.

The complainant was of the opinion that the 50% award did not fully compensate him for the disability. He claimed that he was completely disabled with severe back pain, which repeated attempts at treatment had failed to alleviate. The Appeal Board heard his claim and ordered that further medical evidence be obtained. On the basis of this evidence, it ordered a 60% award.

The complainant thereupon registered his complaint with the Ombudsman, again claiming that he was 100% disabled. The Ombudsman's investigation showed that the complainant's doctors, particularly his specialists, had provided the Board with fairly strong evidence to the effect that the complainant was substantially disabled by his condition, and that it was unlikely he would return to work. A further opinion was obtained by the Ombudsman from the neurosurgeon treating the complainant. This report was very supportive of the complainant's position and indicated that the complainant was unable to perform even light work without exacerbating his problems and causing possible deterioration. This report was forwarded to the Board for consideration as new evidence. Upon review of the claim, the Appeal Board agreed with the medical opinion submitted by the Ombudsman, and granted the complainant 100% permanent disability benefits, including a retroactive award to December 1, 1981.

### Case Summary 20

A worker in the bush of Northern Ontario experienced the release of a blood clot in his right leg while swinging a sledgehammer during the course of his employment. The worker was taken by car to the nearest hospital and subsequently transferred by air ambulance to a hospital in Thunder Bay. Surgery was performed some six hours after the initial onset of pain, but the worker eventually lost his leg above the knee due to the lack of circulation for an extended period of time. The Workers' Compensation Board determined that the cause of the blood clot was pre- existing, and that the action of swinging the sledgehammer did not trigger this incident which ultimately led to the worker's losing his right leg. Our Office sought an opinion from a specialist in the field of vascular surgery, who indicated that while the condition was pre-existing, it could be concluded that the stress of swinging the sledgehammer could cause the clot to begin moving and ultimately block circulation.

This report was submitted to the Appeal Board and after reviewing the report, the Board concluded that the worker did sustain personal injury by accident arising out of and in the course of his employment. The worker is now in receipt of

temporary total disability benefits dating back to the time of the accident and, as of the end of February 1984, he has received in excess of $28,000.

## Case Summary 21

In this case, the individual came to our Office because the Board had denied that his present back problems were related to industrial accidents of 1957, 1966 or 1975. To complicate matters, the man had moved to Alberta in 1978 and sustained an injury there. The Alberta Workers' Compensation Board closed his claim in 1979, ruling any ongoing problems were related to his Ontario accidents. The Ontario Board determined in the absence of medical evidence of continuing problems between 1975 and 1978 that the current disability was related to his accident in Alberta.

During the course of our Office's involvement, the investigator obtained chiropractic reports indicating that the man had received regular treatments for his back between 1975 and 1978 in Ontario. These reports were forwarded to the Ontario Board, which then reopened the case and eventually allowed the claim for an ongoing back disability.

As a footnote, the claim was allowed in November of 1983. After receiving an inquiry from the complainant, we pursued the matter with the Board and were advised the payment had eventually been processed in March, 1984.

## PSYCHIATRIC DISABILITIES:

*Industrial accidents cause psychological disabilities as well as physical injuries. The Ontario Workers' Compensation Board has recognized psychological disabilities for many years. The Ombudsman is often asked to investigate decisions concerning the degree, duration and existence of psychological disabilities. Psychiatric opinions as well as information about the worker's previous work and social history are important factors the Ombudsman must consider during these investigations.*

On November 20, 1968, the then 28-year- old complainant wrenched his back while working on a furnace. Treatment was conservative initially; however, he underwent back surgery in March 1969 and again in October 1970. The complainant received a 30% permanent disability award for his residual low back disability. This pension was subsequently increased to 60%.

In June 1975, the complainant was granted a 20%, one-year lump sum award for his psychiatric disability. This award expired in June 1976. Although a Board physician estimated in October 1976 that the complainant was 50% disabled on a psychiatric basis, the Board's Adjudication Branch did not act upon the doctor's comments.

In January 1983, the Ombudsman wrote to the Chairman of the Workers' Compensation Board, outlined the results of our preliminary investigation, and made a tentative recommendation that the Board revoke its decision and grant the complainant ongoing entitlement for his psychiatric disability.

In May 1983, our office was advised that the Appeal Board had reconsidered the matter and granted the complainant an additional award of 25%, on a provisional basis for three years, in recognition of his residual psychiatric disability. In addition, this award was paid retroactively to June 1976. That decision satisfactorily resolved the complaint.

## SECTION 8(11) AND 8(10):

*When a worker is injured in the course of his employment, he is eligible for benefits from the Workers' Compensation Board, but is prohibited from taking legal action against his employer. The exception to this rule occurs when a third party, someone other than the worker and the employer, is involved in the accident (for example, motor vehicle accidents). In these cases, the worker may be able either to collect Workers' Compensation Board benefits or to sue the driver or owner of the other vehicle.*

### Case Summary 22

A worker involved in a car accident was notified by the Board of his possible options. After consulting his lawyer, he decided to take legal action against the leasing company which owned the other vehicle. Shortly before the court date, the leasing company approached the Board to determine if the worker had the right to sue. (It is the responsibility of the Board to make this determination.) The Board determined that the worker did have the right to sue, but the Board, at the instruction of the court in a previous case, also ruled that the worker had no right to recover damages. The worker was eventually granted benefits under the Workers' Compensation Act.

When confronted with this anomaly, being granted the right to sue but being denied the right to recover damages, the worker registered a complaint against the Board's decision with our Office. Following an extensive review of the legislation and several court decisions, we determined that the decision of the Board was not unreasonable. The Board had interpreted the law in accordance with numerous court decisions and made its findings in accordance with a direction from the courts.

We, however, were of the opinion that this anomaly should be corrected. During our investigation, correspondence from a previous Minister of Labour came to our attention wherein he acknowledged the need to clarify the legislation. We suggested to the current Minister of Labour that this would be a good time to correct the anomaly. The Minister has referred the matter to his legal department for consideration of the proposed amendments. Unfortunately, any future changes to the legislation would not have retroactive implications and therefore would not be of benefit to the complainant. However, it is hoped that the implementation of this suggestion will benefit workers involved in similar situations in the future.

## ENTITLEMENT FOR SPOUSE:

*The dependent spouse of a worker who has died may be entitled to benefits from the Workers' Compensation Board if the industrial disease was a significant factor in his death.*

### Case Summary 23

A miner, who had worked for 33 years in the gold mines of northern Ontario, retired and several years later developed silicosis. His claim was accepted by the Board and at the time of his death he was receiving a 50% pension. His widow then applied to the Board for dependent's benefits. Subsequently, the Board denied her request because it had determined that her husband's death was caused by his heart condition, and not by silicosis.

The matter was complicated somewhat by the fact that the attending cardiologist, who had stated that the man's death was as a result of his silicotic condition, was no longer in Canada, and it was not possible for us to clarify the basis of his opinion.

We asked a leading physician in respiratory diseases to provide us with an expert opinion on the cause of death. The independent specialist wrote a report which noted that the worker's heart at the time of death showed changes that could be attributed only to left- sided heart failure, and did not reveal changes which would have been consistent with silicosis. The specialist was unable to state that silicosis significantly contributed to the cause of death, heart failure. Therefore the widow's claim was not substantiated, but she expressed her appreciation that the matter had been reviewed by a leading medical expert.

*An obstacle frequently encountered by the Ombudsman in the course of an investigation is the length of time that has elapsed between the accident and our involvement.*

**Case Summary 24**

At 1:26 a.m. on the evening of July 6, 1960, a service station manager's car was struck by a train. He was allegedly travelling to his employer's home to pick up a car for servicing. The complainant suffered severe multiple injuries, including amnesia. On her husband's behalf, the complainant's wife requested compensation benefits. The Board conducted an investigation and concluded that the accident did not arise out of and in the course of the complainant's employment. In the Board's view the complainant was travelling home at the time of the accident. Twenty years later, after regaining his memory, the complainant appealed the Board's decision not to grant him compensation benefits. The Board conducted two further investigations prior to upholding its initial decision.

Twenty-three years after the accident, our office conducted an investigation which included reviewing microfilmed material, maps of the accident site and routes taken prior to the accident, police reports and all the statements taken pertaining to the complainant's intentions and activities prior to and at the time of his accident. Because of the length of time that had passed since the accident, we were confronted with statements about the worker's activities which were inconsistent. There was insufficient evidence to establish that the complainant was in the course of his employment at the time of the accident and therefore the Ombudsman was unable to support the complaint.

## RECOMMENDATIONS DENIED

This year there were 19 cases in which the Ministry or Board concerned refused to implement a recommendation made by the Ombudsman. I am also reporting one case in which the recommendation was made last year.

Two cases concerned the Ministry of Correctional Services. In one case, the Ombudsman recommended that the Ministry compensate a homeowner whose property was vandalized by inmates who had escaped from a correctional camp. In the other case, the Ombudsman recommended that the Ministry compensate an inmate who had lost his job when his Temporary Absence Pass was suspended.

Four recommendations denied related to pensions. In one case, the Ombudsman recommended that the Public Service Superannuation Board or the Ministry of Government Services compensate the complainant for the loss arising from his ill-advised transfer from the Public Service Superannuation Fund to another pension fund. In another case, the Ombudsman recommended that the Ontario Northland Transportation Commission compensate a retired employee for whom no pension provision had been made in the event of early retirement caused by illness. In two cases the Ombudsman recommended to the Ministry of Colleges and Universities that it make up pension losses suffered by two employees as a result of transfers in and out of Ministry employment.

The Ombudsman made recommendations to the Ministry of Municipal Affairs and Housing in relation to complaints arising from the North Pickering land assembly.

In another case the Ombudsman recommended that the Solicitor General provide similar benefits to a Special Constable in the Indian Policing Service as would be provided to a Provincial Police Officer. Also the Ombudsman recommended that the Ministry of the Environment pay interest to a contractor under the Public Works Creditors Payment Act.

Finally, the Workers' Compensation Board refused to implement recommendations in nine cases which the Ombudsman decided to report to the Legislature. Four cases involved recognition of an accident or disability; three cases concerned entitlement to further benefits; one case dealt with the method used to calculate benefits; and the final case dealt with entitlement to benefits for a psychiatric condition.

The detailed summaries for all of these cases appear in Volume II.

## CITIZENS' COMMENTS

*It is gratifying to be able to report some feedback from citizens who approached this office and were pleased with the service they received. In future reports, examples of negative feedback will also be published.*

Dear Sir & Staff:

I have received the cheque from the Ministry and am very thankful and grateful to all who helped achieve this.

The money which I received reimbursed me for the initial cost of my wheelchair and paid off the bank loan I had to take out to pay my debts.

Your investigation, on my behalf, was both quick and professional. It was a wonderful comfort to find that there is someone "out there" who actually cares, and is willing to go that extra step to set wrong to right.

Belleville

I hope my letter is read by all your readers because I am so angry and distressed at comments made against our Ombudsman. Therefore I am one woman who has been helped and I would like people to know about this. Thank you Donald R. Morand our Ombudsman.

Toronto

My husband had exhausted all avenues of rectification when he heard, by way of car radio, that the Ombudsman was in Kingston - the rest is history. We are specially gratified that there is someone or some place one can turn to if one feels they have been rendered an unfair judgement.

Kingston

Please thank all your investigators for their thorough work throughout the whole procedure. Although you found my complaint unsupported the fact that the Ombudsman office did act and investigate was indeed a comfort to a helpless concerned parent.

Sudbury

Thank you for your letter regarding the decision by the Workers' Compensation Board to reverse their decision in my favour.... This decision has certainly restored my faith in the democratic process and may I express to you my appreciation that the Ombudsman's Office exists in Ontario.

London

Premier W. Davis:

I had occasion to enlist the aid of the Ombudsman's Office to resolve a policy problem with the Ministry of Natural Resources. It is to the credit of the Government of Ontario that a system is in place and that it does work.

North Bay

I wish to thank your office and your staff for the help and support your office gave me in a recent settlement regarding a correctional institution matter.

Burritt's Rapids

I wish to comment on the prompt action of your office....

I telephoned today to find out if there was a time limit to your office and was told that all your officers were busy but that one would call me back.

In less than one half hour I was called back and received quick, clear, and concise advise. It has been a long time since I have received such service, public or commercial, over the telephone.

Toronto

I wish to thank the two gentlemen from your office who worked on the above investigation....

The handling of this case seemed to me to be innovative and the end result was so satisfying to everyone concerned, that I felt it should be drawn to your attention .... They took the role of "conciliators" and concentrated on getting open communications going....

Thunder Bay

## ONTARIO OMBUDSMAN STAFF

## MARCH, 1984

ALLAN, John
ARKELL, Tim
BAILIE, Sam
BERNARD, Mitchell
BOHNEN, Linda
BOOTHBY, Paula
BOROWYK, Laryssa
BOURNS, Maureen
BOYER, Corinne
BRADBURY, Laura
CAP, Wanda
CARLINO, Gerry
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COOLMAN, Joyce
CRESSMAN, Stephen
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GLEASON, Marie
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KEIL, Martha
KERSHAW, Janet
KING, Dianne
KNUDSON, Inez
LANGELIER, Pierre
LA ROSA, George
LATINCIC, Mary Ann
LeFEVRE, Robin
LEGARDO, Lourdes
LEWIS, Cathy
LUCAS, Lourine
LYNCH, Gwen
MACDONALD, Andrew
MACEROLLO, Bob
MACKEY, David
MACNEE, Katie
MALOUF, Katy
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McLEOD, Maret
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MORRISON, Gail
MORTON, Margaret
MOXLEY, Susie
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O'CONNOR, Tom, Q.C.
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PALLASCIO, John
REID, David
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ROWE, Robin
RUBINSTEIN, Mark
SCHARBACH, Stephen
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SEMENCIW, Joe
SKENE, Tom
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THEN, Milan
THOMS, Jo-Anne
TIMOL, Yunus
TORRANCE, William
VAN KLEEF, Joy
VIRC, Elizabeth
WALSH, Sally
WARNER, Maxine
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*The staff of the Ombudsman's Office is multilingual. We can communicate in 22 languages.*

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## ONTARIO OMBUDSMAN OFFICES

### TORONTO

125 Queen's Park
Toronto, Ontario
M5S 2C7
Tel: (416) 596-3300

### OTTAWA

#604, 255 Albert Street
Ottawa, Ontario
K1P 6A9
Tel: (613) 234-6421

### NORTH BAY

#203, 591 Main Street East
North Bay, Ontario
P1B 1B7
Tel: (705) 476-5800

### THUNDER BAY

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