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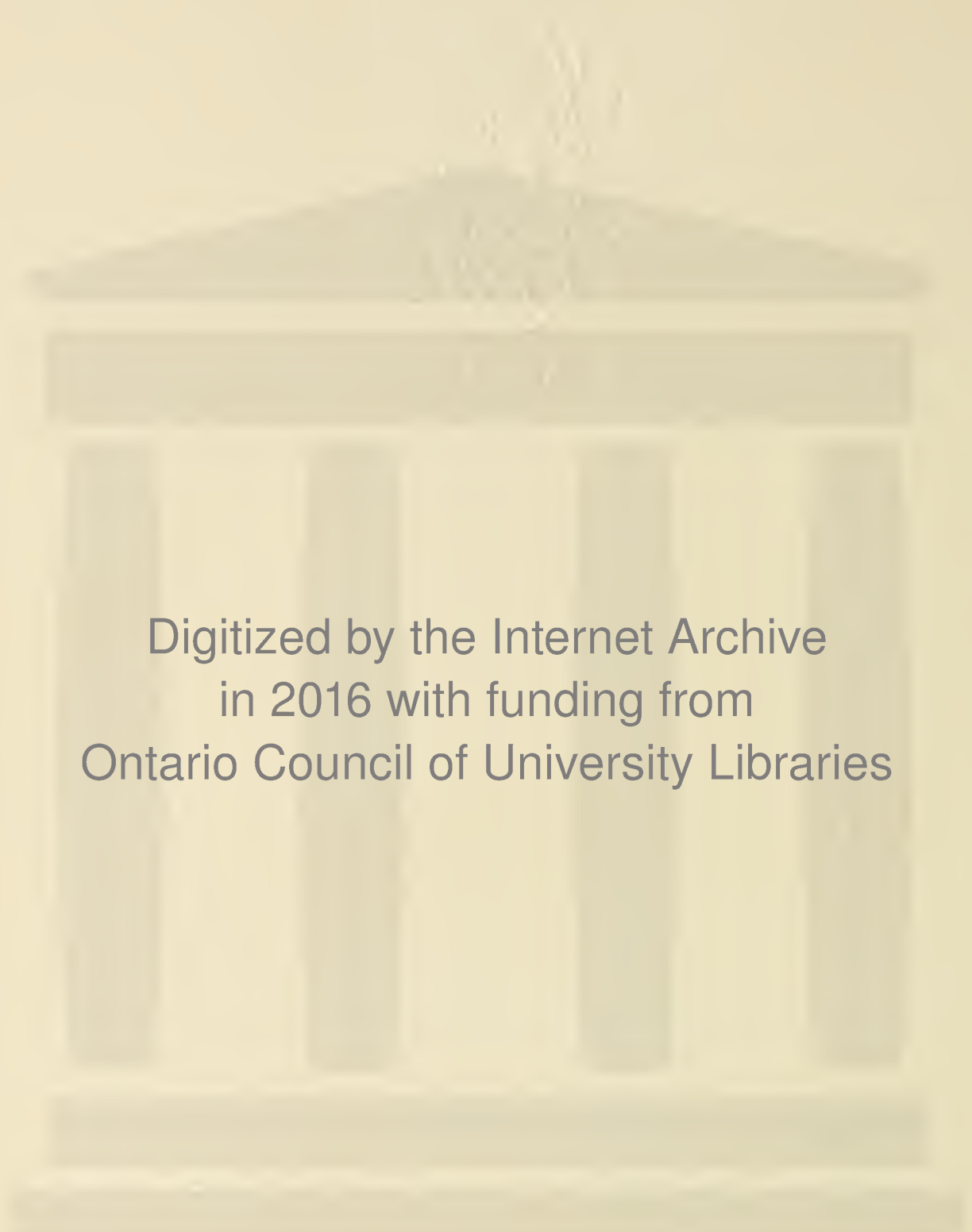
THE OMBUDSMAN OF ONTARIO

10th ANNIVERSARY

ANNUAL REPORT
1984-85

VOLUME I





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The Ombudsman | Ontario

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OMBUDSMAN

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June 28, 1985

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 Twelfth
Annual Report of the Ombudsman for the period April 1, 1984
to March 31, 1985.

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

Yours sincerely,

Daniel G. Hill



DR. DANIEL G. HILL

OMBUDSMAN'S MESSAGE

For ten years the citizens of Ontario have enjoyed the protection of an Ombudsman. This tenth anniversary year is a time for celebration, for expressions of appreciation, and for sober self-evaluation.

We are right to celebrate the Ombudsman institution, because much has been accomplished during the past decade. We have constantly refined and improved our capacity to handle complaints, which is the vital core of the Ombudsman's responsibilities.

Citizens' use of our services has increased as the Ombudsman has become better known throughout the province. During our first few years of operation, complaints and information requests averaged about six-and-a-half thousand a year. Last year's total was close to fourteen thousand.

We have become adept at referring citizens to the services they need, even when their

complaints are beyond our jurisdiction. No one leaves our Office without at least a start on a solution to his or her problem.

Many of our recommendations have had important consequences both for complainants and for provincial government agencies. For a large number of citizens, our intervention has been critical to reestablishing a sense of well-being and participation in community life. Our work has also frequently led to vitally important financial compensation for complainants who have to rely on government allowances for their basic income.

Our work has had an impact beyond the resolution of individual problems. On many occasions, we have convinced Ministries to change or clarify procedures and policies which were inequitable or needlessly complicated. In some cases, our recommendations have prompted the government to amend its legislation and regulations.

We are proud of the fact that the Office of the Ombudsman has assumed a significant role in public life. Citizens can feel confident that the Ombudsman will give them a full hearing, and strive to redress grievances if they are found to be justified.

I am pleased to report on a recent example where a complainant, on behalf of the residents of a remote Ontario Township, approached this Office for help when their petitions to Ontario Hydro to provide their community with electrical service were refused on the grounds that the number of residents did not justify the cost. This community, of less than one hundred mostly poor, Non-Status and Metis Indians, was living in near-primitive conditions without electricity. Although in the past this Office had closed the file on this complaint, I ordered that the investigation be reopened and personally pursued the matter with the Chairman of Ontario Hydro. I have now been informed by the Chairman that Ontario Hydro will be revising its customer density regulations and the Township will now be provided with electrical service at a reasonable cost.

I regret that I must be brief in my expressions of respect and appreciation, because there are many colleagues and friends who merit a special word of thanks.

Everyone at the Ombudsman's Office was deeply saddened at the death last year of Mr. Arthur Maloney, Q.C., Ontario's first Ombudsman. Mr. Maloney approached his work with a drive, intelligence and enthusiasm that are an inspiration to all his successors. It was his pioneering efforts that made the Ombudsman a force to be reckoned with in community affairs.

I express my appreciation to my colleagues in the Canadian Ombudsman community who were very gracious to share their counsel and experience with me.

I express my gratitude to the competent and committed staff who have assisted and advised me so ably in the last year. The people of Ontario can be proud of the men and women of this Office who work so hard on their behalf.

I also want to express my appreciation for the fine work of Ontario's seventy thousand civil servants. I have seen enough of their efforts to know how careful and conscientious they generally are in their dealings with citizens. I am impressed by the professionalism and probity of our public servants and by how seldom the actions of Ontario's officials provoke dissatisfaction and complaint.

As we pause for self-evaluation at the ten-year milestone, we see challenges ahead. Our most pressing need is to continue increasing public access to our Office. I am currently implementing a two-fold plan to strengthen our presence throughout the province. We are moving ahead with a decentralization plan that has already started to take shape through the five regional offices we have opened in Ottawa, Thunder Bay, North Bay, Timmins and Kenora. We have also undertaken a vigorous program of public education which includes the publication of a regular newsletter, multilingual fact sheets, and numerous other materials.

Community meetings have been held in locations across the province with the support of local and voluntary organizations. I and many members of my staff have participated in almost 300 speaking engagements in the last year throughout the province.

Also, we have made a conscious effort to make our staff more reflective of the new Ontario — multilingual, multiracial, and multicultural. I am pleased to report that we have recently added to our multilingual personnel staff members who can communicate with Native people in Cree, Oji-Cree and Ojibway.

Another challenge that this Office must address is the issue of systemic problems that come to our attention in the workings of governmental organizations. For example, in our dealings with the Workers' Compensation Board this issue has come to the forefront, and I refer the reader to my Introductory Remarks in this Report for a full explanation.

In our tradition of parliamentary democracy we affirm the equality of all people before the law. I believe this includes the right of citizens to enjoy fair and equal treatment from government authorities. This, I believe, was also the intent of our Legislature when it passed the Ombudsman Act in 1975.

The Ombudsman was originally a Swedish institution. The original Swedish word "Justitieombudsman" means "people's agent for justice". The Ombudsman's main function is the investigation of complaints of maladministration on behalf of aggrieved citizens and the recommendation of corrective action to the governmental official or department involved.

In exercising this function, the Office of the Ombudsman has become an important link in the network of human rights codes and statutes that includes the United Nations Universal Declaration of Human Rights and Canada's Charter of Rights and Freedoms. The full significance of the Ombudsman can be understood only in this context. As we enter our second decade, I am keenly aware of my responsibility to uphold the human rights of all Ontarians so that the Ombudsman will continue to serve as an authentic agent for justice.

During my first year in office, I have become increasingly aware of the large number of requests for assistance from citizens with complaints against federal government agencies. These matters are outside my jurisdiction as provincial Ombudsman. While my staff makes every effort to refer citizens with complaints of a federal nature to the appropriate agency or person, I am convinced that there is a glaring need for a federal Ombudsman.

For example, matters concerning health and welfare, delays in qualifying for or receiving veterans' benefits, unemployment insurance or income tax refunds, are all under federal jurisdiction — to name only a few.

Further, many of the issues affecting Native people are outside the jurisdiction of a provincial Ombudsman. I need not recite the

litany of past and present injustices done to our First Peoples — most concerned Canadians are well aware of them. To the concerned citizen, injustice cries for remedy. We can only take pride in our strides toward a just society if no one is left behind.

Ontario has had an Office of the Ombudsman for a decade. Let us delay no longer in creating a federal Office of the Ombudsman. I firmly believe that a federal Ombudsman would be of the utmost benefit to all Canadians.

There is another challenge that I wish to address, one that I believe is equally pressing and important.

Five years ago my predecessor, the Honourable Donald R. Morand, proposed a number of amendments to the Ombudsman Act to the Attorney General for his consideration.

When I became Ombudsman in 1984 I reviewed the still-outstanding proposed amendments and added several more which I considered to be of supreme importance to the better functioning of the Office of the Ombudsman. The effect of some of these amendments would permit the Ombudsman to more effectively perform his investigative function for the benefit of the people of Ontario.

The Ombudsman has often been criticized by complainants, members of the Legislature, and others, because he does not publicly discuss complaints which might be of public interest. For example, issues that could involve the payment of large amounts of money or that could affect a large segment of the population illustrate that the people have a right to know what the Ombudsman is doing and why he is doing it. I totally agree.

However, as many who have dealt with my Office know, the Ombudsman Act imposes a duty of secrecy that prevents me from publicly commenting on these and other matters.

One of my most important recommendations will allow me to make a special report to the Legislature or to comment publicly on matters about my responsibilities or investigations when I believe it is in the public's interest or the government's interest.

Another of my major concerns is the lack of public awareness and understanding about the Office of the Ombudsman. For the citizen to use the Ombudsman, who is one of the most important safeguards protecting the people from

government maladministration, the citizen must know about him.

I have made a start in increasing the level of public awareness and knowledge through my public education programs. But much more must be done.

Regrettably, the Ombudsman Act does not address this critical need of public education. One of my proposed amendments will remedy this if it is approved. It will make the Ombudsman responsible for providing and conducting programs of public education and information.

Another amendment involves financial compensation. From time to time the only way of rectifying a wrong done to a citizen is to pay him or her money. There are some situations where the government is willing to pay but is unable to do so because it lacks the necessary statutory authority. Through the cooperative efforts of the Select Committee on the Ombudsman and the Treasurer of Ontario, an amendment was agreed to by all concerned that would permit the payment of money where no other legal authority was available. This important amendment will allow the Ombudsman and the government to give full effect to recommendations where money should be paid to correct an injustice.

Finally, as this Office enters its second decade, I believe it is an appropriate time to consider whether or not other areas of governmental activity should be subject to the Ombudsman's investigative responsibility. During the last ten years, the Office of the Ombudsman has received hundreds of complaints about the actions and decisions of municipalities, public hospitals, universities, conservation authorities, children's aid societies, farm products marketing boards, and the Ontario New Home Warranty Program. These are all bodies that receive provincial funding or are under various degrees of regulatory control by the province, but are not within the Ombudsman's jurisdiction.

Previous Ombudsmen have considered their jurisdiction over these agencies and concluded they were not subject to the Ombudsman's investigative authority. Citizens who have complained about such organizations have been referred elsewhere, often with reluctance by the Ombudsman's staff because of our commitment and desire to help all who seek our assistance.

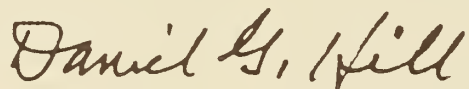
As the incumbent Ombudsman, I invite members of the Legislature, the Select Committee on the Ombudsman, and any groups or individuals

interested in this issue, to meet with me to discuss the merits of expanding the Ombudsman's jurisdiction.

I am confident that the Office of the Ombudsman is well-established and ready to serve the people of this Province as requested.

However, I will not ask the Legislature and the public to expand the Ombudsman's jurisdiction in other areas of governmental activity until a process of full and frank discussion has been completed, and a consensus has been reached about the utility of such an expansion of the Ombudsman's role in the public sector of this Province.

I am honoured to serve as the Ombudsman of Ontario, and it is my hope to give substance to words, and to take positive, constructive action in all of my endeavours.

A handwritten signature in dark ink, reading "Daniel G. Hill". The signature is written in a cursive style with a large, stylized 'D' and 'H'.

Daniel G. Hill

HIGHLIGHTS

This is the twelfth occasion for tabling an Annual Report in the Legislative Assembly. The report deals with the activities of the Ombudsman's Office from April 1, 1984 to March 31, 1985.

- This report is published in two volumes. Volume I is an overview of the operations of the Ombudsman. Volume II deals with recommendations made by the Ombudsman that were denied by various governmental organizations.
- Legislative amendments to the Ombudsman Act are outlined for discussion. (p. 3)
- A summary of the major reorganization of the intake and investigative functions of the Office is detailed. (p. 7)
- Improved management techniques have been implemented and others proposed. (pp. 9-10)
- A new outreach program has been started with the aboriginal communities and organizations in Ontario. (p. 10)
- A new emphasis has been placed on regionalization to make the Ombudsman more accessible. (p. 10)
- A comprehensive communications and public education program is now in operation to make the Ombudsman better known. (p. 11)
- Conciliation and mediation techniques are utilized to resolve issues and reduce confrontation with governmental agencies. A new initiative with the Ministry of Correctional Services is outlined. (p. 11)
- Solutions are proposed for systemic problems with the Workers' Compensation Board. (p. 11)
- The Ombudsman's jurisdiction is again challenged by a governmental organization. (p. 13)
- Statistical Information presented includes the disposition of all complaints handled by this Office in fiscal year 1984-85. (pp. 17 to 20)
- Budgetary expenditures including the budgetary planning process are presented. (p. 20)
- This report marks the tenth anniversary of the Office of the Ombudsman of Ontario. It includes a special remembrance of its founder, Mr. Arthur Maloney, Q.C. (p. 39)

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INTRODUCTION

This report covers the fiscal year from April 1, 1984 to March 31, 1985.

The Annual Report has been divided into two volumes.

Volume I provides an overview of our last fiscal year and includes a selection of case summaries which illustrate the varied complaints that come before the Ombudsman.

Volume II is devoted entirely to detailed summaries of recommendation-denied cases and tables of all recommendations outstanding from past reports. Volume II will be made available to any interested reader.

FISCAL YEAR 1984-85

In commenting on the past fiscal year, 1984-85, I am pleased to report that our trend toward greater efficiency is still continuing. There was no significant change from the previous year in the number of complaints and information requests received (13,458). These included 5,366 jurisdictional complaints, 5,048 non-jurisdictional complaints, and 3,044 information requests.

During the past year, the statistical record-keeping functions of this Office were reviewed for the purpose of presenting statistical information that is simple, accurate, readable and more reflective of the work performed.

In the "Statistical Information" section of this report, I have discontinued many of the graphs presented in previous reports in favour of what I believe to be more relevant and reflective information; namely, the number of complaints we received, and how those complaints were handled.

When our new computerized data and word processing system comes on-line, more detailed statistical analyses will be available for the benefit of the Select Committee on the Ombudsman.

We have already reorganized the word processing functions in the Office and the turn-around time for word processing assignments has been reduced from over a week to two or three days.

REORGANIZATION

Early in the fiscal year, it became apparent that a new office structure was needed to improve efficiency, case handling and morale. After a careful process of study and discussion, a system has now been introduced which emphasizes the investigation process as the central aspect of our work. This system features a new way of working and improved support services for investigators.

Office reorganization began with the hiring by tender of management consultant Marshall Pollock, formerly Assistant Deputy Minister to the Attorney General. He was asked to study the current structure and recommend changes. I accepted his October, 1984 report as the framework for reorganization.

An Implementation Task Force of seven staff members was appointed to work with Mr. Pollock. The Task Force consulted with staff and met on 11 occasions to discuss its work. In early March, we received the Task Force's final report from Mr. Pollock.

The proposed new structure provides for five Investigative teams and one Intake and Information team. The team organization corresponds to policy fields which formerly were handled by individual investigators. One team, for example, includes labour-related issues such as Employment Standards, the Labour Relations Board, and the Grievance Settlement Board.

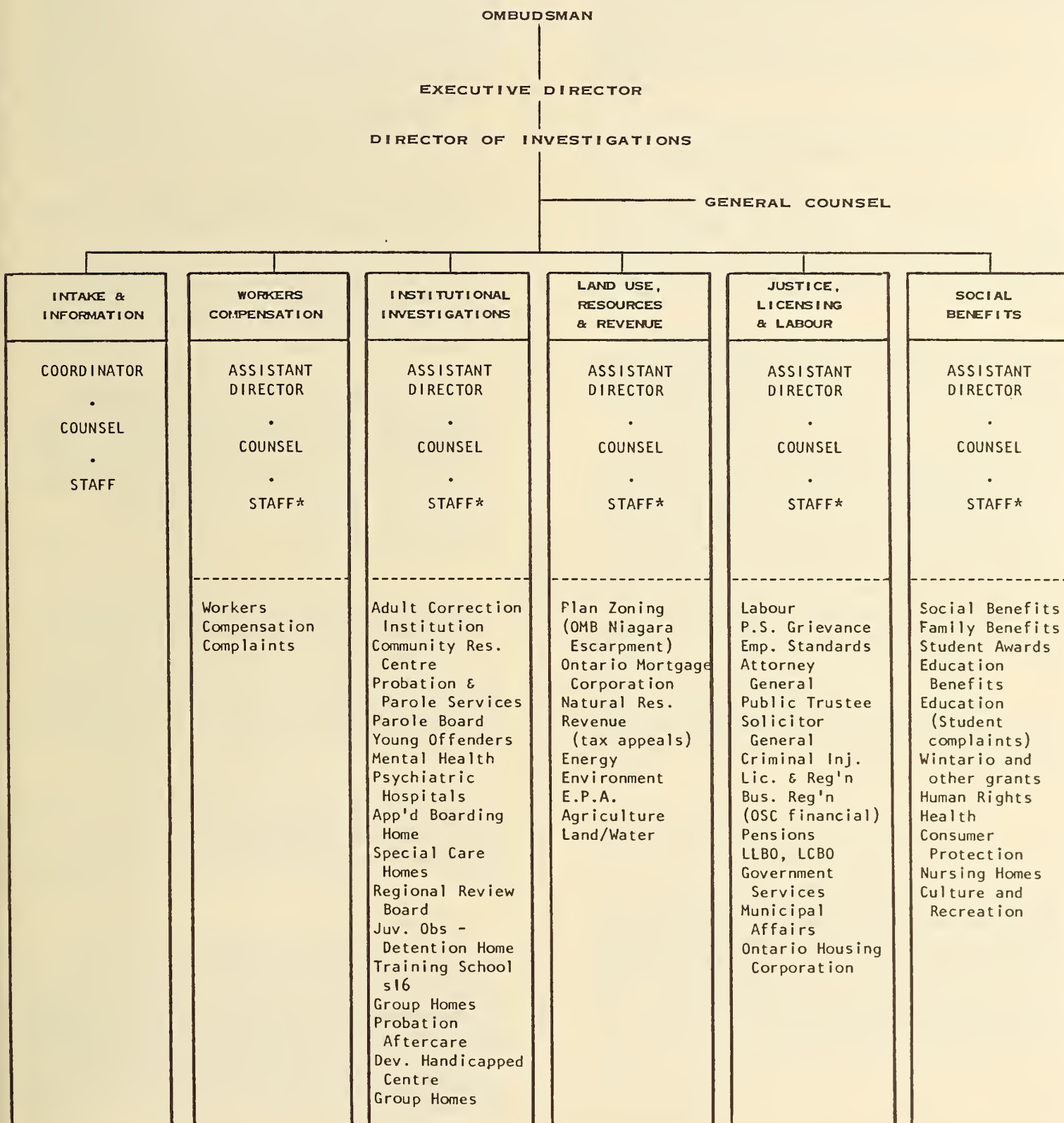
The report also recommended the dissolution of the Legal Directorate, and advised that lawyers instead participate in investigative teams. The need for a new position of General Counsel — the Office's senior legal advisor — was also outlined in the Task Force report and subsequently adopted.

We held additional meetings with senior staff and members of each new team to elicit cooperation and advice in the implementation of the new organization. A physical reorganization of the Office to conform to the new system was completed in April, 1985. The Office was redesigned to give investigators more privacy and to improve working relationships. Prior to the relocation, 47 investigators had nine private offices; they now have 23.

The teams are currently working out new case-handling procedures. Their chief emphasis

Reorganization

REORGANIZATION CHART - INTAKE AND INVESTIGATIONS



*Staff includes: Senior Investigators, Investigators, Research/Investigators, Administrative Assistants, Clerical Assistants, Word Processors.

is on speed in casework, without sacrificing quality in professional case-handling.

My next step is reorganization of our Regional Offices. I am considering a regional plan to service the entire province, which will be developed over the next few years.

The Office structure and policy areas are illustrated in the chart on page 8.

SALARY ADMINISTRATION

In an effort to introduce a fair and equitable salary classification system, I had each position in the Office (including the Regional Offices) classified according to its job description. Salary ranges were then assigned to each job category.

The system was patterned after the classification system in the Ontario Civil Service. Now, positions in the Office of the Ombudsman can be compared to similar positions across government, and employees are aware of the salary ranges and job specifications for every position in the Office. Each position was classified and examined to determine if its present salary fell within the new salary classification range. Where a position was found to be in a higher salary bracket than the assigned range, the employee's salary was red-circled (i.e., frozen). Where a position was found to be below the range, salary adjustments were made to bring the salary into the range.

The new salary classification system underlines my commitment to fair treatment, not only in the Province at large, but also within the Office of the Ombudsman.

GRIEVANCE PROCEDURE

Prior to this year this Office had no grievance procedure. To remedy this situation I asked for and received reports and submissions which are currently under consideration. It is my intention to implement an equitable and comprehensive grievance procedure for this Office before the end of the fiscal year.

MANAGING BY RESULTS

To carry out my mandate, I need a competent staff and an adequate budget. However, I must also have a sound system of fiscal and management control in order to make the best use of my staff and the public's money. I have already adopted the Ontario Manual of Administration as a guideline for compliance with policies and procedures.

To ensure the economy, efficiency and effectiveness of the services we provide, I have implemented a planning and budgetary process that involves the participation of all levels of management, from the beginning of the budgetary planning process to their accountability for achieving results. Much of the philosophy for our planning and budgeting practices will be based on the Ontario Public Service's management series booklet, "Operational Planning, Budgeting and Reporting Processes."

In specific terms, the Office has adopted the concept of Managing by Results (MBR). This concept places equal emphasis on resources and results. MBR will provide a formal record of expected results against which to measure actual performance expressed in terms of client-complainant benefits.

STAFF TRAINING AND DEVELOPMENT

With the myriad of complaints which come to my Office, I am aware of the need for a highly professional and well-trained staff. For this reason, I created the position of Chief, Staff Training and Development in August, 1984.

The incumbent serves as a human resources person to advise staff wishing to upgrade their qualifications and to arrange training programs for managers, line staff and support staff.

With the opening of District Offices in Timmins and Kenora, I realized the need for a Training Manual for field staff. This has now been completed. In addition the Chief, Staff Training and Development is also preparing an Orientation Manual for the entire organization, and rewriting the Ombudsman's Administrative Procedures Manual outlining internal Office policies and procedures.

PERFORMANCE APPRAISAL

Shortly after assuming my responsibilities, I realized the need for an equitable system of performance appraisal for staff members. I asked the Chief, Staff Training and Development to consult with various Ministries and to assist in the design of a system suited to the needs of this Office. The new system will be tailored to a Management by Results (MBR) philosophy. The system will be introduced during the summer of 1985 once the training of managers has been completed.

NATIVE PROGRAMS

In order to give all aboriginals an equal opportunity to utilize our Office, I have appointed a Native Programs Officer who is responsible for my outreach initiative to encourage Native people to use our services.

My intention is eventually to consult with all provincial aboriginal leaders — Status, Non-Status, Metis and Inuit — and make contact with all the Native organizations in Ontario.

This program is now well underway. To date we have met with the following organizations:

Native Council of Canada
Ontario Native Council on Justice
Ontario Federation of Indian Friendship Centres
Union of Ontario Indians
Association of Iroquois and Allied Indians
Ontario Native Women's Association
Grand Council Treaty 3
Nishnawbe-Aski Nation
Ontario Regional Liaison Council

Later this summer I intend to start a series of personal visits to establish contact with some of the more remote reserves in Ontario.

REGIONALIZATION

I have set a high priority on making this Office as accessible as possible to all of Ontario. To fulfil a commitment I made when I assumed the position of Ombudsman, I opened District Offices in Timmins and Kenora in this fiscal year. As both of these areas have a large Native

population, I felt that the community would best be served by staff members who speak at least one Native language. My District Officer in Kenora speaks both English and Oji-Cree, the predominant language in that district. Since Timmins also has a large Francophone population, my District Officer there speaks French and Cree in addition to English.

I am confident that both of these Offices will soon become well-established and effective in their communities.

But District Offices are only one method of improving accessibility. Over the past year I have, together with my senior staff, explored a number of ways to reach out beyond our current regional structure.

We have looked at creating additional satellite or branch offices, but are deterred by the cost of the infrastructure required to establish and maintain them.

We have examined the "private hearing" format in which an itinerant representative of the Ombudsman travels to remote areas of the province in accordance with a predetermined schedule. We concluded that the cost-benefit of this format did not warrant its continuation.

We have tried the ad hoc approach of sending a representative to a trouble-spot when the need arose. While it proved effective in dealing with the more remote areas of the province, it was extremely costly and did not satisfy the need for a more permanent presence in the community.

To satisfy this need I am presently reviewing reports prepared by one of my staff who operated as Chief, Regional Planning and Development, and by the management consultant, Mr. Pollock. I will be considering a number of other options including the idea of a resident local agent or Ombudsman's representative who could, on a part-time basis, act as a liaison person in a number of communities across the province.

We have been heartened by the number of voluntary and public agencies who have offered us low-cost accommodation to locate in their communities.

COMMUNICATIONS AND PUBLIC EDUCATION

Soon after my appointment I created, within the existing resources of this Office, a Directorate of Communications and Public Education in the belief that worse than not having an Ombudsman is to have one that nobody knows about.

This Directorate has launched a number of public education initiatives. These have included the publication of our quarterly newsletter, "Equal Times"; our bilingual Annual Reports; and a pamphlet entitled "The Ombudsman of Ontario — At Your Service". In addition we have produced multilingual fact sheets in Italian, Greek, Portuguese, Spanish, Vietnamese, Finnish, Polish, Croatian, Serbian and Hindi, among others. Supplementary audiovisual materials are presently in production. A 24-hour telephone answering service has been introduced at our Toronto location. This Directorate has also put into service a mobile information-display unit where a staff member is available to distribute information and receive complaints. Launched successfully at City Hall in Toronto, this unit is being used in various locations in Ontario.

Public meetings on the role and function of the Ombudsman, organized in cooperation with local community and voluntary groups in locations where we do not have offices, is another ongoing program.

As much use as possible is made of the media. This includes public service radio announcements, participating in open-line talk shows and community cable TV programs, as well as soliciting media coverage via interviews and press releases.

All requests for speaking engagements and invitations to attend community functions are accepted whenever possible and all groups are welcome to tour our facilities.

NEW INITIATIVES MEETINGS WITH THE MINISTRY OF CORRECTIONAL SERVICES

During the past year, senior members of my staff have met every two months with senior officials of the Ministry of Correctional Services to discuss complex cases. The objective is to try to resolve worthy cases which my investigators were

unable to resolve at the local level with institutional staff before a final report is issued. I am pleased to report that the committee has been successful in coming to agreement in cases dealing with issues such as:

- permitting inmates charged with drinking alcohol to request urinalysis tests to prove or disprove the charge.
- advising inmates, who have lost the right to earn remission due to misbehaviour, of their rights of appeal.
- the right of inmates to be paid interest on money held for them by the Ministry.

These meetings are proving to be extremely valuable and I am hoping to introduce this procedure with other Ministries in the near future.

SYSTEMIC PROBLEMS — THE WORKERS' COMPENSATION BOARD

This year, as in previous years, complaints against the Workers' Compensation Board account for the majority of my recommendations which have been denied. I believe it is incumbent upon me to point out two major areas of concern that account for some of our ongoing disagreements.

In my opening remarks to the Select Committee last year, I pointed out some systemic problems of the Workers' Compensation Board. In particular, I noted that the Board, when reaching decisions and drafting policy, does not always avail itself of legal advice or concern itself with case law in appropriate cases. This problem is highlighted by Detailed Summary No. 14 in Volume II.

In that case, the worker did not suffer an accident in the commonly understood sense, but in my opinion, suffered a disability which arose out of his work as a crane operator. He did not receive any compensation from the Board. There are various court decisions which hold that this type of disability is compensable. The Board denied entitlement in this case, as it had done in numerous similar cases that have come before me and my predecessors, because there was no

specific accident. If the Board followed the case law in this area, many such injured workers would have received the compensation to which I strongly feel they are entitled.

As a matter of basic principle, the Board cannot conduct itself as though it were above the law. Judges and administrative tribunals must have regard for established legal principles and the statutory and common law rules that govern their process. Although the Board must have regard for the "real merits and justice" of the cases before it, that does not mean disregard for the rule of law.

During the Select Committee hearings last fall, I met with the Board's representatives on the issue of legal advice. I was assured that my suggestion concerning more legal input would be considered by the Corporate Board, but to date I have heard nothing from the Board. It is my sincere hope that, when the new Corporate Board and the Workers' Compensation Appeal Tribunal are appointed on July 1, 1985, they will make it a matter of policy to obtain legal advice in appropriate cases. I also believe that it is imperative for these bodies to retain legal counsel to provide advice on procedures at their formative stages.

Again this year, many of the complaints against the Workers' Compensation Board involve a conflict over medical evidence. The treating physicians are of one view and the Board's physicians hold a conflicting view. In the cases that come before me, more often than not the Board accepted the opinion of its physicians regardless of whether the worker's doctors are specialists or recognized experts in the relevant field of medicine.

Because precedence is given to the opinions of Board medical staff, the doctors have been placed in the role of decision-makers. Clearly, it is the responsibility of Adjudicators and Commissioners to weigh and evaluate all the evidence before them without giving preference to the opinions of Board doctors. It is then the responsibility of Adjudicators and Commissioners to provide to the injured worker clear reasons for their preference for one medical opinion over another. These reasons may include the qualifications of the doctors, and the accuracy and thoroughness of medical reports. I would urge the Board to take steps to ensure that the appropriate reasons are given in all cases.

Workers' dissatisfaction with the assessments of permanent disability awards

continues to account for a significant portion of our cases. My predecessor, the Honourable Donald R. Morand, issued a report and made recommendations in 135 cases on the interpretation of section 43 of the Workers' Compensation Act. I am in complete agreement with Mr. Morand that the Board has improperly limited its authority when assessing pensions by only considering the worker's medical condition. Although the Select Committee in its Eighth Report agreed with our position and supported a recommendation to change the Board's procedure, the Legislature did not agree. The Committee then recommended in its Ninth Report that the determination of the proper interpretation of section 43 be referred to the Supreme Court of Ontario.

Decisions made by the Workers' Compensation Board can have serious consequences to the over 400,000 workers injured in this province every year. By implementing my suggestions, the Board will ensure that workers are being treated in accordance with the principles of natural justice.

As a new Ombudsman, I share my predecessor's concern about this issue. I would ask the Select Committee to again consider the Board's policy in this area, and reaffirm the recommendation made by the Committee in its Ninth Report.

SUPREME COURT OF CANADA, BRITISH COLUMBIA OMBUDSMAN

In my previous Annual Report, I discussed the intervention of this Office, as well as the Ombudsman Offices in Saskatchewan and Quebec, in an appeal by the British Columbia Ombudsman before the Supreme Court of Canada, involving a challenge to the Ombudsman's jurisdiction by the British Columbia Development Corporation.

At issue was the meaning to be given to the term "a matter of administration". This Office took the position that a decision of the British Columbia Development Corporation to refuse to renew a 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.

I am pleased to report that on November 22, 1984, the Supreme Court rendered a unanimous decision in favour of the British Columbia Ombudsman. All the provincial Ombudsmen were vitally concerned with the outcome of this important case, and the Court's decision vindicated our efforts to protect the effectiveness of the Ombudsman institution throughout Canada.

JURISDICTIONAL CHALLENGE

I must report that the Office of the Ombudsman is again involved in litigation with a governmental organization over the issue of jurisdiction. We had hoped that previous court cases (e.g., The Ontario Ombudsman and the Health Disciplines Board of Ontario) had resolved such issues. However, the Ontario Labour Relations Board has challenged the Ombudsman's authority to consider the merits of Board decisions.

All efforts to resolve this matter informally have failed, so we have instructed counsel, John Sopinka, Q.C., to bring an application under section 15(5) of the Ombudsman Act before the Divisional Court to obtain a declaration on my investigative jurisdiction over the Ontario Labour Relations Board.

We consider this to be a major challenge to the effectiveness of the Ombudsman and hope it will be quickly resolved. An update will be provided in my next report.

SPECIAL REPORTS

In other years, the Ombudsman has included in his Annual Report cases where a government agency had declined to implement the Ombudsman's recommendation. In 1984, in one instance I did not wait for the publication of this Annual Report and I issued a special report in the case of Mr. N. The report was submitted to the Select Committee in August of 1984.

My decision to issue this special report was based on the serious nature of the complaint and my wish to resolve the complaint as quickly as possible. This action did indeed result in the expeditious resolution of the complaint, thereby serving the best interests of the complainant and the government agency involved.

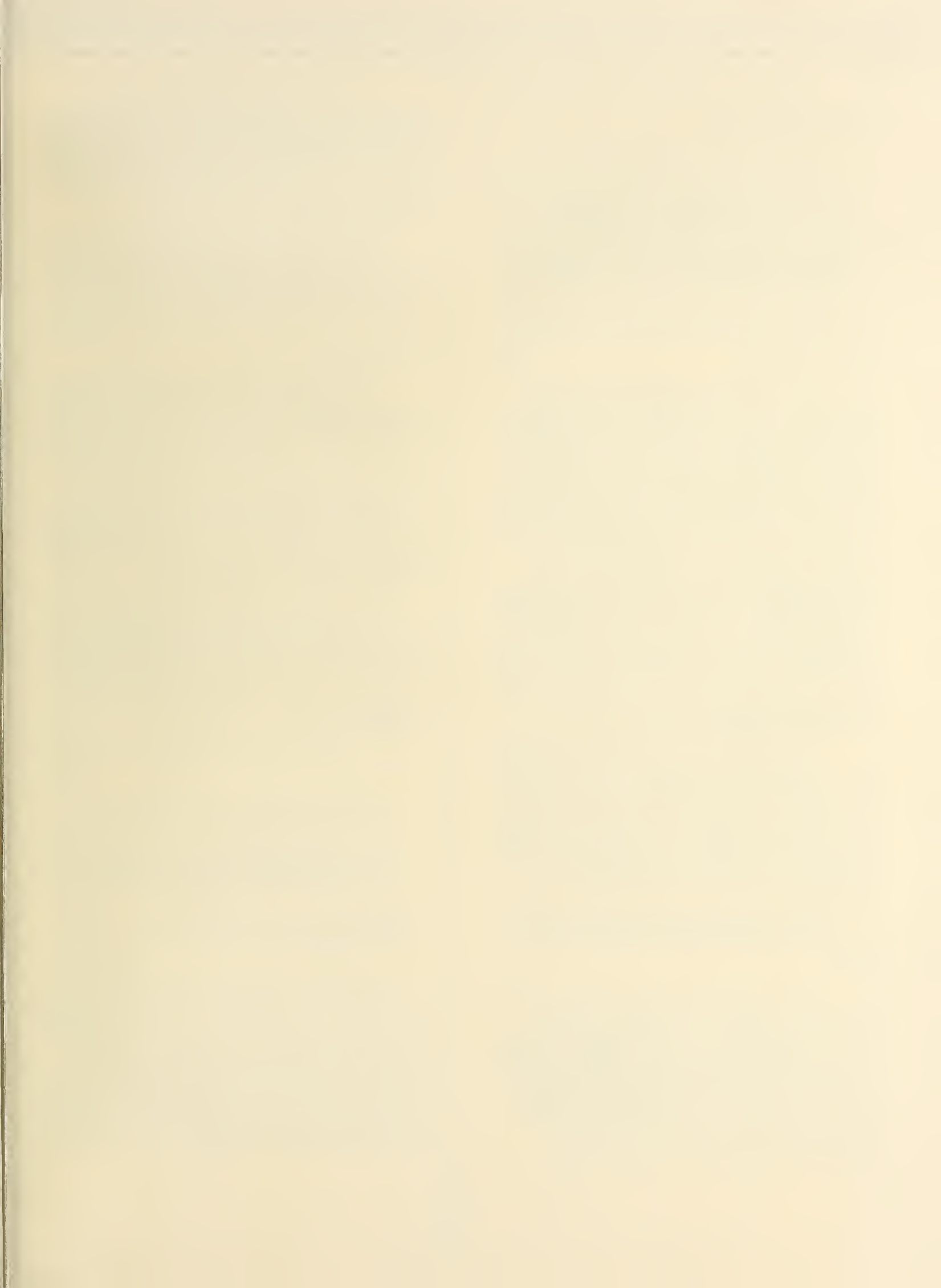
In the coming year it is my intention to issue other special reports as the need arises.

INTERNATIONAL OMBUDSMAN CONFERENCE

In June of 1984 I attended the International Ombudsman Conference in Sweden. As a newcomer to the Ombudsman community, this conference provided me with a unique opportunity to learn from the experience of other jurisdictions and confirm my belief that Ontario has an Ombudsman's Office that is well respected by its peers.

I was delighted to see that Ontario's Select Committee on the Ombudsman was able to send five representatives to the important gathering in Sweden and I urge the Committee to continue its participation in further meetings.

I look forward to furthering my excellent working relationship with the other provincial Ombudsmen at the Canadian Conference of Legislative Ombudsmen to be held in Quebec City in June of 1985.



CASE SUMMARIES

The Ombudsman believes that the right to notice and the right to make representations are principles of natural justice which should be liberally upheld by government authorities. In the following case, the interests of a third party were adversely affected because of failure to do so.

Case Summary 1

This complaint by a trucking company was against the Ministry of Transportation and Communications and the Highway Transport Board. The complainant offered to buy the operating licences of another trucking company which was bankrupt. The Minister, rather than initiating a transfer hearing before the Highway Transport Board, reviewed the bankrupt's licences and exercised his discretion to suspend the operating licences. In that circumstance, our complainant was not entitled to receive notice, nor was he given a right to request a hearing. The bankrupt company and the trustee in bankruptcy received such notice. The complainant and its solicitor made repeated inquiries of the Ministry regarding the status of the transfer application, but received no notice of the hearing. The trustee omitted to request a hearing in time so the Minister cancelled the licences.

The complainant believed that it should have been afforded a hearing because the Ministry was aware of the complainant's economic interest in the licences. Negotiations had begun between the complainant and the trustee for the purchase of the licences, and documents had been filed with the Ministry alerting the Ministry to the negotiations.

We began an investigation that focused primarily on the Ministry as the major decision-maker.

The Ministry indicated that when a transfer application is made to the Highway Transport Board, the Minister has no input in that decision until the Board makes a recommendation to the Minister. By contrast, when the Minister initiates a proposal to cancel or suspend a licence, he is required to notify the licence holder only. The licence holder is given an opportunity for a hearing, but if no hearing is requested, the Minister can then proceed to exercise his

discretion to cancel or suspend the licences. The Ministry was also concerned that public notice of a licence review by the Minister might breach the Minister's obligation of confidentiality. Licence holders are required to file certain confidential financial information with the Ministry.

The Ombudsman concluded on the particular facts of this case that the actions of the Minister were unreasonable and unjust to the complainant. It was unfair to the complainant that the licences were suspended without affording the company an opportunity to make representations.

The Ombudsman recommended that the Minister reinstate the licences of the bankrupt company and give notice to the complainant that a review of these licences was proposed. This would afford the complainant an opportunity to request a hearing and make representations. The Ombudsman also recommended that in future, when the Minister proposed to suspend or cancel an operating licence, he should give notice to any party of whom he is aware who has an economic interest in public transport licences.

The Minister agreed to give effect to the first recommendation and issue a new notice of his proposal to cancel the licences. This then afforded the complainant a chance to request a hearing. A subsequent change to the existing legislation made the acceptance of the second recommendation unnecessary.

The right to privacy and the issue of government handling of confidential information are of great concern to many citizens. The following case illustrates the Ombudsman's role in effecting changes in government policy to ensure the privacy of the individual.

Case Summary 2

The issue in this complaint concerned the confidentiality of a tenant's medical information as it related to eligibility for housing in Ontario Housing accommodations. The tenant complained to the Ombudsman that a Housing Authority employee had violated an oath of secrecy by improperly releasing medical information concerning him to the manager of the building in which he resided, and through this person, to other tenants of the building.

Because the Housing Authority was following established procedures in referring the complainant's file, including medical information, to the housing manager, the Ombudsman did not support the complainant's contention that an oath of secrecy had been broken.

However, it appeared to the Ombudsman that while confidential medical information is sometimes necessary for a specific purpose, such as establishing an applicant's eligibility for housing, there is no reason to retain this information on file once this purpose has been satisfied.

Following a meeting with the Ombudsman to discuss the matter, the Chairman of the Ontario Housing Corporation referred the matter to the Board of Directors of the Ontario Housing Corporation and to the Advisory Council of Housing Authority Chairmen.

As a result of their review, the Ontario Housing Corporation circulated a revised policy statement relating to confidential medical information. Under the revised policy, in those situations where confidential medical information is required to establish eligibility, the documents will be destroyed after review, and the applicant will be so advised. Should the applicant prefer to have the information retained on file in the event of an emergency, the applicant must sign a release indicating consent.

The effect of this new policy is that medical information will no longer be transferred to housing managers once an applicant is accepted for housing, thus assuring the tenant's privacy.

Sometimes our complainants' affairs have been needlessly complicated because of the differing requirements of government agencies. In this case, our Office was able to hasten a family's access to a new home by helping to coordinate the actions of local welfare officials and the Housing Authority.

Case Summary 3

A northern Ontario couple with four children had been living for some time in one room above a restaurant, with no refrigerator or stove, and a shared bathroom in the hall. Although they had been on the waiting list for assisted

housing since 1982, they have not yet been provided with accommodation.

In November, 1984, our investigator met personally with an official from the Housing Authority and was informed that the couple was near the top of the waiting list. Soon after, the complainants were informed that a four-bedroom house had become available for them. The couple signed a lease to start January 1, 1985, but they then discovered that under Housing Authority policy they could not move in without their own refrigerator and stove. The couple did not have enough money to buy these appliances. They applied for special welfare assistance to purchase them.

Our investigator found that the refrigerator and stove which had originally been in the house were in storage. The Housing Authority was unwilling to put them back in the house. In any case, the stove was propane and the house had been converted to take only an electric stove. The Housing Authority was unwilling to provide other appliances, and would not allow the family to move in without them.

Then the couple's present landlord asked them to vacate the room above the restaurant by December 14, 1984. The couple's application for special welfare assistance to buy the appliances had not yet been approved, although it appeared that it would be shortly.

Our Office again contacted the Housing Authority to discuss the problem, and also contacted officials of the Ontario Housing Corporation in Toronto and in the northern Ontario region. On December 12, 1984 our investigator was informed by the Housing Authority that as soon as the welfare application had been approved, the Housing Authority would allow the complainants to occupy the house and would lend them appliances for their use during the three weeks required for delivery of new appliances. The application was approved the same day, and the complainants were able to move into their new house without delay.

The Ombudsman strives to ensure that Ministry officials abide by the principles of natural justice. In the following example, the Ombudsman asserted the right of a citizen to be heard before authorities make a decision which is against his interest.

Case Summary 4

(Case Summaries continued on page 21)

This complainant believed he had been treated unfairly by the Ministry of Transportation and Communications. He was president of a private vocational transport training centre, which in April 1983 had been granted recognized authority under the Ontario Driver Certification program to train and license its own students. However, on September 29, 1983, he received a letter from the Ministry notifying him that his authority was cancelled effective September 26, 1983, on the grounds that the Centre's training program did not encompass the required number of hours.

The Ministry had been acting in response to recommendations of the report of the Ontario Commission on Truck Safety, issued in April 1983. Included was a recommendation, accepted by the government as policy in September 1983, against extending the Ontario Driver Certification program to private vocational schools until a review of the curricula in other jurisdictions had been completed and course upgrading recommendations had been reviewed. During an August 1983 inspection of the Centre, the Ministry had noted that the curriculum for one training course fell short of the required hours, and that in the other course, half the required performance objectives had been deleted, and the required hours of training had not been met.

In March 1983, the complainant had signed an acknowledgement outlining the conditions under which the Centre should operate, and had acknowledged that the Ministry could revoke the Centre's authority if these conditions were not met. Thus the Ministry could revoke the Centre's authority.

However, the Ombudsman noted that the Ministry had given the complainant no prior warning or notice that the training programs were inadequate, nor was he given an opportunity to amend the courses to comply with the performance objectives.

In October 1984, the Ombudsman notified the Ministry of his possible conclusion that the Ministry unreasonably omitted to advise the complainant of its intent to revoke the recognized authority, and unreasonably omitted to give him an opportunity to respond. He further stated that he might possibly recommend that the Ministry reinstate the recognized authority conditional upon curricula which met the required performance objectives.

Statistical Information

COMPLAINTS & INFORMATION REQUESTS BY ORGANIZATION

FISCAL YEAR 1984-85

ORGANIZATION COMPLAINED AGAINST	WITHIN JURIS- DICTION	OUTSIDE JURIS- DICTION	INFORMA- TION REQUESTS	TOTAL
AGRICULTURE & FOOD	<u>16</u>	<u>16</u>	<u>8</u>	<u>40</u>
ATTORNEY GENERAL	22	50	44	116
ONTARIO MUNICIPAL BOARD	41	10	15	66
PUBLIC TRUSTEE	17	5	12	34
TOTAL ATTORNEY GENERAL	<u>80</u>	<u>65</u>	<u>71</u>	<u>216</u>
COLLEGES & UNIVERSITIES	<u>55</u>	<u>27</u>	<u>35</u>	<u>117</u>
COMMUNITY & SOCIAL SERVICES	113	90	72	275
SOCIAL ASSISTANCE REVIEW BOARD	61	13	9	83
TOTAL COM. & SOC. SERVICES	<u>174</u>	<u>103</u>	<u>81</u>	<u>358</u>
CONSUMER & COMMERCIAL RELATIONS	<u>104</u>	<u>34</u>	<u>90</u>	<u>228</u>
CORRECTIONAL SERVICES	91	17	27	135
CORRECTIONAL CENTRES	811	74	158	1043
DETENTION CENTRES	1504	90	258	1852
JAILS	1149	56	105	1310
TOTAL CORRECTIONAL SERVICES	<u>3555</u>	<u>237</u>	<u>548</u>	<u>4340</u>
CITIZENSHIP & CULTURE	<u>3</u>	<u>2</u>	<u>5</u>	<u>10</u>
EDUCATION	<u>27</u>	<u>7</u>	<u>8</u>	<u>42</u>
ENERGY		1		1
ONTARIO HYDRO	36	11	20	67
TOTAL ENERGY	<u>36</u>	<u>12</u>	<u>20</u>	<u>68</u>
ENVIRONMENT	<u>39</u>	<u>2</u>	<u>11</u>	<u>52</u>
GOVERNMENT SERVICES	<u>19</u>	<u>8</u>	<u>7</u>	<u>34</u>
HEALTH	90	15	33	138
PSYCHIATRIC HOSPITALS	114	18	16	148
O.H.I.P.	24	11	30	65
TOTAL HEALTH	<u>228</u>	<u>44</u>	<u>79</u>	<u>351</u>
INDUSTRY & TRADE DEVELOPMENT	<u>2</u>		<u>3</u>	<u>5</u>
INTERGOVERNMENTAL AFFAIRS		<u>1</u>		<u>1</u>
LABOUR	60	20	32	112
HUMAN RIGHTS COMMISSION	29	8	25	62
WORKERS' COMPENSATION BOARD	565	382	463	1410
TOTAL LABOUR	<u>654</u>	<u>410</u>	<u>520</u>	<u>1584</u>
MUNICIPAL AFFAIRS & HOUSING	89	11	46	146
ONTARIO HOUSING CORPORATION	18	20	30	68
TOTAL MUNICIPAL AFFAIRS & HOUSING	<u>107</u>	<u>31</u>	<u>76</u>	<u>214</u>
NATURAL RESOURCES	<u>73</u>	<u>12</u>	<u>27</u>	<u>112</u>
NORTHERN AFFAIRS	<u>3</u>	<u>5</u>	<u>2</u>	<u>10</u>
REVENUE	<u>35</u>	<u>15</u>	<u>15</u>	<u>65</u>
SOLICITOR GENERAL	<u>40</u>	<u>39</u>	<u>38</u>	<u>117</u>
TOURISM & RECREATION	<u>10</u>	<u>3</u>	<u>3</u>	<u>16</u>
TRANSPORTATION & COMMUNICATIONS	<u>86</u>	<u>54</u>	<u>50</u>	<u>190</u>
TREASURY & ECONOMICS	<u>4</u>	<u>1</u>	<u>1</u>	<u>6</u>
ONTARIO GOVERNMENT OTHER	<u>16</u>	<u>48</u>	<u>426</u>	<u>490</u>
ONTARIO GOVERNMENT TOTAL	<u>5366</u>	<u>1176</u>	<u>2124</u>	<u>8666</u>
COURTS		352	40	392
FEDERAL		627	183	810
PRIVATE		2119	503	2622
MUNICIPAL		695	85	780
INTERNATIONAL		11	6	17
OTHER PROVINCES		40	29	69
NO ORGANIZATION SPECIFIED		28	74	102
TOTAL	<u>5366</u>	<u>5048</u>	<u>3044</u>	<u>13458</u>

Statistical Information

DISPOSITION OF JURISDICTIONAL

ORGANIZATION COMPLAINED AGAINST	COMPLAINT SUPPORTED			INDEPENDENTLY RESOLVED	UNSUBSTANTIATED	INV ABANDONED
	NO RECOMMENDATION	FORMAL RECOMMENDATION				
		ACCEPTED	DENIED			
AGRICULTURE & FOOD	0	0	0	0	10	1
ATTORNEY GENERAL				1	2	5
<i>Ontario Municipal Board</i>				0	14	1
<i>Public Trustee</i>				1	1	1
TOTAL ATTORNEY GENERAL	0	0	0	2	17	7
COLLEGES & UNIVERSITIES	3	0	0	1	14	2
COMMUNITY & SOCIAL SERVICES		2	3	9	15	6
<i>Social Assistance Review Board</i>		0	3	0	35	1
TOTAL COMMUNITY & SOCIAL SERVICES	0	2	6	9	50	7
CONSUMER & COMMERCIAL RELATIONS	2	0	9	1	24	7
CORRECTIONAL SERVICES	1	2	20	3	4	16
<i>Correctional Centres</i>	1	1	0	83	10	244
<i>Detention Centres</i>	0	0	0	113	13	535
<i>Jails</i>	0	0	1	87	28	510
TOTAL CORRECTIONAL SERVICES	2	3	21	286	55	1305
CITIZENSHIP & CULTURE	1	0	0	0	0	0
EDUCATION	0	0	0	1	8	1
ENERGY						
<i>Ontario Hydro</i>					6	6
TOTAL ENERGY	0	0	0	0	6	6
ENVIRONMENT	0	0	0	1	11	4
GOVERNMENT SERVICES	0	0	0	0	6	0
HEALTH	4	0	0	1	29	3
<i>Psychiatric Hospitals</i>	1	0	0	8	2	23
<i>O.H.I.P.</i>	0	0	1	2	2	0
TOTAL HEALTH	5	0	1	11	33	26
INDUSTRY & TRADE DEVELOPMENT	0	0	0	0	0	0
INTERGOVERNMENTAL AFFAIRS	0	0	0	0	0	0
LABOUR	0	0	0	0	22	4
<i>Human Rights Commission</i>	0	0	0	0	15	1
<i>Workers' Compensation Board</i>	5	9	21	13	277	16
TOTAL LABOUR	5	9	21	13	314	21
MUNICIPAL AFFAIRS & HOUSING	0	4	0	3	11	7
<i>Ontario Housing Corporation</i>	0	0	0	0	2	3
TOTAL MUNICIPAL AFFAIRS & HOUSING	0	4	0	3	13	10
NATURAL RESOURCES	0	0	0	1	28	5
NORTHERN AFFAIRS	0	0	0	0	0	0
REVENUE	0	1	0	2	4	3
SOLICITOR GENERAL	0	0	0	2	4	1
TOURISM & RECREATION	0	0	0	0	1	1
TRANSPORTATION & COMMUNICATIONS	0	1	0	1	27	6
TREASURY & ECONOMICS	0	0	0	0	1	0
ONTARIO GOVERNMENT OTHER	2	0	0	0	5	2
ONTARIO GOVERNMENT TOTAL	20	20	58	334	631	1415

COMPLAINTS FOR FISCAL YEAR 1984-85

DISCONTINUED OWN SECTION 18	COMPLAINANT ASSISTED	TOTAL
2	0	16
5	3	22
17	0	41
3	3	17
25	6	80
12	9	55
12	24	113
9	7	61
21	31	174
12	13	104
9	5	91
103	46	811
316	112	1504
132	74	1149
560	237	3555
1	0	3
7	3	27
	0	0
4	12	36
4	12	36
10	5	39
2	2	19
36	3	90
9	8	114
3	10	34
48	21	228
0	0	3
0	0	0
16	5	60
11	1	29
107	37	565
134	43	654
14	20	89
3	4	18
17	24	107
16	4	73
2	0	3
11	4	35
20	2	40
4	1	9
11	14	86
1	1	4
4	0	16
924	432	5366

GLOSSARY

COMPLAINT SUPPORTED

NO RECOMMENDATION - At times the Ombudsman will support a complaint but decide no recommendation is appropriate given all the circumstances.

FORMAL RECOMMENDATION ACCEPTED - Those complaints where the governmental organization agrees to implement the Ombudsman's recommendation.

FORMAL RECOMMENDATION DENIED - Those complaints where the governmental organization refuses to implement the Ombudsman's recommendation. The discrepancy between the total number (58) and the fact that only 19 case summaries are presented in our Volume II is explained as follows: many cases are resolved between the end of our fiscal year (when our statistics are compiled) and the publication date of our report.

INDEPENDENTLY RESOLVED - Many complaints are resolved independent of the Ombudsman's involvement. This can occur at any point in the investigative process prior to the Ombudsman issuing a final report.

UNSUBSTANTIATED - Those complaints where the Ombudsman's investigation reveals no grounds to support the complainant's contention.

INVESTIGATION DISCONTINUED - The Ombudsman uses his discretion to discontinue an investigation at any point prior to issuing a final report for a number of reasons:

ABANDONED - Attempts to communicate with the complainant are unsuccessful (eg., complaints from inmates of correctional facilities who are released in the course of our investigation and leave no forwarding address.)

WITHDRAWN - At the request of the complainant. In many cases information is provided to the complainant and, although there is no resolution the complainant does not wish us to pursue the matter.

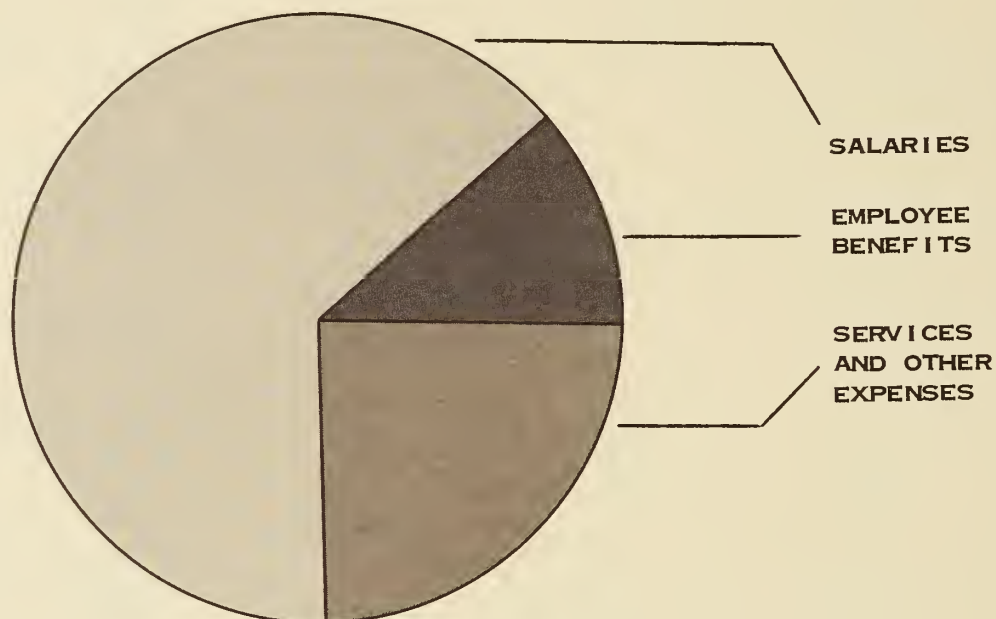
SECTION 18 - Refers to Section 18 of the Ombudsman Act which allows the Ombudsman the discretion to discontinue the investigation if, for example, there is an adequate alternative remedy or the complaint is frivolous or having regard to all the circumstances no further investigation is necessary.

COMPLAINT ASSISTED - Those complaints where the Ombudsman renders assistance and usually involve tangible corrective action taken by the governmental organization.

Statistical Information

DISPOSITION OF NON-JURISDICTIONAL COMPLAINTS, INFORMATION REQUESTS/SUBMISSIONS

Organization	Information Provided	Inquiries Made	No Action Possible	Total	Percent
Provincial	2744	436	120	3300	40.7
Federal	706	90	14	810	10.0
Municipal	689	78	13	780	9.6
Private	2498	86	38	2622	32.4
Courts	369	11	12	392	4.8
Other Provinces	65	4	0	69	1.0
No Organization Specified	82	2	18	102	1.3
International	16	1	0	17	.2
TOTAL	7169	708	215	8092	100.0



ACTUAL EXPENDITURES FOR THE FISCAL YEAR 1984-85

Salaries	\$3,716,100		
Employee Benefits	666,600	Furniture & Office Equipment	62,500
Travel & Relocation	171,200	Office Supplies & Devices	63,200
Telephone, Mailing & Delivery	180,500	Books & Publications	66,400
Building Rent	495,600	Other Supplies & Equipment	60,100
Equipment & Other Rental	180,600	Transfer Payment To The International Ombudsman Institute	3,000
Professional Services	91,700		
Other Services	117,500		
TOTAL	\$5,875,000		

However, at a meeting held to discuss the matter, the Ministry stood by its actions, stating that the situation had required urgent action, and it therefore had no choice but to cancel the Centre's certification powers. Ministry officials stated further that it was now governmental policy not to permit private enterprise to certify truck driving students.

In his report, the Ombudsman stated that the rules of procedural fairness require notice and an opportunity to be heard before a decision is rendered. While he recognized that the courses may have fallen short of the performance objectives, and that this may have constituted a breach of the agreement between the complainant and the Ministry, this breach should not operate to deprive the complainant of fair treatment. In the Ombudsman's view fair treatment would have included an opportunity for the complainant to know and respond to the Ministry's criticism of the courses before the decision was made to revoke the recognized authority.

During the course of our investigation the school was closed for reasons other than the decision to revoke its recognized authority. The Ombudsman therefore could not recommend in his final report that the recognized authority be reinstated.

The Ombudsman will support a complaint when government authorities do not comply with legislation. In the following example, the Housing Authority failed to comply with a provision in the Residential Tenancies Act requiring 90 days' notice of rental increases.

Case Summary 5

This couple, both senior citizens, were informed in September 1983 that the rent for their Housing Authority accommodation would be increased on December 1, 1983 from \$214 to \$251 per month. They were of the view that this was an unreasonable increase for the size of their unit and, for this reason and other health reasons, applied for a transfer. When the transfer was denied in November 1983 they did not appeal, but instead found other accommodation as of February 1, 1984 in the private sector.

They did not pay the increased rental during December and January, but rather paid

(Case Summaries continued from page 16)

the old rent of \$212. When the Housing Authority requested payment of \$78 in rent arrears for the two months, the couple contacted the Ombudsman.

In response to the Ombudsman's notice of his intention to investigate the matter, the Housing Authority stated that as the complainants had not received the full 90 days' notice of the rent increase, the increase for December would be waived, leaving a balance of \$39 owing for January.

In March 1984 the couple received an invoice from the Housing Authority in the amount of \$44 covering maintenance work in the apartment, required after the complainants had vacated it. The complainants agreed with only \$2 of these charges, and sent the Housing Authority a money order for that amount. The total amount owing, according to the Housing Authority, was then \$81. The Housing Authority then referred the matter to a collection agency, which thereupon contacted the complainants on several occasions.

The original notice of rent increase, which fell short of the required 90 days, had never been reissued to the complainants. Our legal research indicated that the complainants had therefore not received the required 90 days' notice for the January increase as required by the Residential Tenancies Act. The area Housing Authority's General Manager agreed to discuss this with his legal counsel, and subsequently informed our Office that the January rent increase would be waived on this basis.

When the complainants were informed of this, they stated that they would be willing to pay \$39 to the Housing Authority if it agreed to cease pursuing the matter. This proposal was acceptable to the Housing Authority, and the complaint was resolved.

The Ombudsman uses his knowledge of the law to help citizens and government officials alike live up to the spirit of provincial legislation. In this case, the Ombudsman pointed out to the Ministry of Revenue a section of the Retail Sales Tax Act that enabled the complainant to enjoy a retail sales tax rebate that he deserved, despite the fact that he was unable to meet all the requirements of a special rebate program.

Case Summary 6

This complainant decided to purchase a new 1981 car under an incentive program established by the government to stimulate sales in the automobile industry. Under the program, a purchaser would qualify for a retail sales tax rebate if he signed an agreement to purchase a new 1981 car by November 28, 1981, and took delivery of the car between November 6, 1981 and December 5, 1981.

On Saturday, November 28, 1981 the complainant signed an agreement to purchase a car, paying \$672 in retail sales tax. He arranged to take delivery of the car on Monday, November 30, 1981. However, on Sunday, November 29, 1981, the man suffered a heart attack and was hospitalized until December 14, 1981. It was not until December 24, 1981 that he was able to take delivery of the car and pay the balance of the purchase price. His application for a rebate, which showed the delivery date to be December 24, was dated the same day, and was sent to the Ministry of Revenue along with a note from the complainant's doctor and a letter explaining that delivery had originally been arranged for November 30. The Ministry denied the rebate because the complainant had not taken delivery within the time period specified in the regulation.

In May, 1984 the Ombudsman wrote the Ministry of Revenue advising that he was considering a possible recommendation that the Ministry grant the complainant the rebate. He stated that this complainant had purchased the new 1981 car because of the incentive offered through the rebate program, and it was only due to the special circumstances caused by his heart attack that he was unable to take delivery of the car by the required time. All other criteria had been met. The Ombudsman pointed out that under section 7(1) of the Retail Sales Tax Act, the Minister of Revenue, with the approval of the Lieutenant Governor-in-Council (Cabinet), may exempt a purchaser from payment of the whole or any part of retail sales tax, if owing to special circumstances it is deemed inequitable that the whole amount of the tax be paid.

After reconsidering the matter, the Ministry agreed that the complainant was entitled to the rebate. An order-in-council was passed, giving the Ministry authority to grant the rebate. In September, 1984 our Office was informed that the cheque had been processed and would be forwarded to the complainant.

Often Ministry officials will readily acknowledge responsibility for an error, but may believe that they do not have the statutory authority to compensate even a minor financial loss to the complainant. The following example illustrates the Ombudsman's ability to intercede and assist the two parties in rectifying the matter.

Case Summary 7

On July 22, 1982, the Ombudsman issued a final report in which he concluded that the Ministry of Revenue had been wrong in almost doubling the complainant's 1980 property assessment. In order to straighten out this situation, the complainant had incurred out-of-pocket expenses of \$30.35 and the Ombudsman recommended that the Ministry take appropriate steps to reimburse him. In response, the Deputy Minister expressed regret at the error, but stated that a thorough review of the Assessment Act and the Ministry of Revenue Act revealed no statutory authority under which the payment might be made. He stated, nevertheless, that the Ministry remained receptive to any proposal that would permit it to reimburse the complainant. Our Office subsequently suggested to the Ministry that it could possibly pay the complainant on the basis that his complaint could have been the subject of litigation against the Ministry. In November, 1982, the Ministry requested a legal opinion from the Ministry of the Attorney General, and in November, 1984, the Deputy Minister of Revenue advised that an opinion had been received indicating that the complainant's claim could be settled. The Ministry offered the complainant \$30.35 plus interest at 12% from the date of the original letter advising the Ministry of the Ombudsman's intention to investigate the complaint.

In February, 1985, the Ministry sent our Office a cheque for \$43.27 which was delivered to the complainant.

The following example demonstrates how the Ombudsman will support a complainant who relies, to his detriment, on wrong information inadvertently given by a Ministry official.

Case Summary 8

The complainant held a \$100,000 second mortgage on an inn in Eastern Ontario. When the mortgagors defaulted on their payments, he repossessed the establishment as mortgagee in possession under the terms of the mortgage. For several months, however, the mortgagors had not remitted retail sales tax collected on sales to consumers, and a Ministry of Revenue audit showed \$9,219.27 owing. The complainant alleged that the Ministry's auditor had informed him that the liquor licence to continue operating the inn would not be issued unless the amount was paid. The mortgagors could not pay, so the complainant undertook to do so on their behalf in exchange for a \$5,000 interest-free promissory note due in five years. The complainant felt that the Ministry had not acted vigorously enough in collecting tax from the mortgagors and had misled him to believe that if he did not pay their liability, no liquor licence would be issued and the inn's business would be jeopardized. Our investigation confirmed that the Ministry instituted no collection proceedings against the mortgagors, that the liquor licence which was ultimately issued by the LLBO was not conditional upon payment of any tax, although the Ministry's auditor believed that to be the case, and that the complainant had no legal obligation to pay the tax.

In response to the Ombudsman's letter stating that he might support the complaint, the Ministry maintained that it should not have to compensate the complainant for his decision to assume the mortgagors' tax liability, and it denied that the auditor misled the complainant. In response to the Ombudsman's final report supporting the complainant, the Deputy Minister acknowledged that the complainant believed that the liquor licence would not be issued unless he paid the tax, and that he was therefore under considerable pressure to do so. The Deputy Minister informed the Ombudsman that he would direct his staff to process a refund of \$4,219.27 to the complainant, being the total amount paid less the \$5,000 which the complainant had previously recovered on the basis of the promissory note.

It is often difficult to establish clear facts about environmental problems. For this reason, environmental questions are often vital to those who want complete answers about their situations. In this case, our Office was not able to reach a firm conclusion about the cause of the

death of a five-year-old boy. We were at least able to reassure his mother that it was impossible to assign definite responsibility.

Case Summary 9

The complainant was convinced that the death of her five-year-old son from Reye's Syndrome was caused by the September 1975 spraying of Baygon Pesticide in the area of southern Ontario near her home.

In 1982, she contacted the Ministry of Health and the Ombudsman to protest the approval and financing of the spraying by the Ministry. Our Office's extensive investigation of the matter included interviews with Ministry officials, independent sources, and medical staff who had been involved with the preparation, management and follow-up to the spraying program. We studied numerous primary and secondary sources, as well as medical, scientific and technical journals.

The spraying had been done to combat an outbreak of St. Louis Encephalitis in the area. The first case was reported in July 1975. Within a few months, 66 cases had been confirmed. Five of the fifty cases in the area were fatal.

After it was established that the epidemic was carried by mosquitos, the Medical Officer of Health — working in consultation with the Mayor, advisors from the Health and Environment Ministries, and Guelph University experts — decided to spray 100,000 acres in the area.

Before the spraying a hotline was set up to handle public inquiries, and efforts were made to inform the public about the need for the spraying. Persons with respiratory diseases and problems were advised to stay indoors. The complainant and her son were in their yard on the afternoon of the spraying, and pesticide droplets touched both of them. Her son fell ill a month later, and died of Reye's Syndrome within a week.

Our research showed that after the spraying, no further human cases of St. Louis Encephalitis were reported in the area. Known environmental or human problems which could be traced to the spraying were apparently non-existent or very limited.

There have been extensive studies on the possible causes of Reye's Syndrome, a disease which almost exclusively attacks children.

To date, the cause or causes of Reye's Syndrome have not been conclusively identified, although several, including pesticides, are suspected. Several studies point to pesticides and insecticides as a possible cause. Many studies note that children in rural areas where insecticides are commonly used are more susceptible than children in areas where insecticides are less frequently used. But other studies do not find this relationship.

The complainant studied the results of our research and thanked our Office for our thorough review of current information on Reye's Syndrome.

For citizens who are unable to work because of prolonged illness or disability, even relatively small sums of money can be vitally important. This case illustrates how the Ombudsman can help recipients of Family Benefits to secure sums that have been delayed because of review processes or other complications.

Case Summary 10

In this case, the father of a Family Benefits recipient purchased a \$1,500 Guaranteed Investment Certificate in April 1980. He used \$1,000 of his own money and \$500 of his son's. The GIC was registered in the son's name to reduce the father's taxes.

The certificate increased the son's assets to an amount above the maximum allowed to Family Benefits recipients at that time. The Ministry of Community and Social Services cancelled the son's Family Benefits in September 1980 and requested the return of an overpayment of \$469.11 for the months April to September 1980.

To rectify this situation, the GIC was transferred to the father's name on September 15, 1980. The Director of Family Benefits, however, decided that the transfer had been made for an "inadequate consideration", and that the son was still ineligible for Family Benefits.

In January 1981, the father appealed both the cancellation of Family Benefits eligibility and the request for repayment of benefits to the Social Assistance Review Board. He argued that most of the money used for the purchase was his own.

The Board at first upheld both Ministry actions, but in August 1982 agreed to grant benefits for the months of October, November, and December 1980. The Board acknowledged that most of the GIC money was the father's, and agreed that the transfer of the certificate to the father was not for an insufficient reason. Because the GIC had been registered in the son's name from April to September 1980, however, the Board still upheld the decision to require the return of an overpayment.

The father contacted the Ombudsman's Office in November 1983 because the son had never received payment for the months of October, November and December 1980. He also complained that it was unreasonable to deny his son benefits for the month of September 1980, although he now agreed that an overpayment had been made from April to August 1980.

The Ombudsman did not support the complainant's argument that benefits should be paid for September 1980, because the GIC was transferred on September 16, 1980. According to Family Benefits legislation, the son became eligible to receive his allowance on the first day of the following month.

Discussion between representatives of our Office and the Ministry reaffirmed that benefits should be paid for the months of October, November and December 1980. This sum was subsequently paid to the complainant's son.

The Ombudsman believes that citizens are entitled to government decisions based on all relevant information, and only on relevant information. In this case, the omission of pertinent data from consideration of the complainant's case had resulted in the denial of government benefits that he badly needed.

Case Summary 11

The complainant was a recipient of General Welfare Assistance who had applied for Family Benefits on the grounds that he was permanently unemployable. He approached our Office with the claim that in November 1983, the Social Assistance Review Board had unreasonably upheld a decision to deny him Family Benefits. He said that the Review Board had refused to consider medical evidence which he attempted to submit at the hearing.

Our review of the complainant's file at the Ministry turned up information substantiating his assertion that he was permanently unemployable. Further investigation showed that the Director's submission to the Review Board had not included all relevant information. It appeared to the Ombudsman that the Board might have reached a different conclusion if it had considered all information.

In November 1984, the Ombudsman and members of his staff met with Ministry officials to discuss the matter. After reviewing the complainant's file, the Ministry agreed that the complainant was disabled, and Family Benefits entitlement was made retroactive to May 1983.

The complainant received a cheque for the difference between the General Welfare Assistance allowance and Family Benefits from May 1983 to November 1984. In December 1984, he started receiving regular Family Benefits.

In some cases, the Ombudsman's investigation provides the complainant the moral and social support he needs to solve his problem, even when we cannot support his claim against the government. In this case, our Office was able to dissuade the complainant from drastic but ineffective action that he hoped would afford him some relief.

Case Summary 12

The complainant was distraught about the financial difficulties he was having with his fast food restaurant. He contended that the Ministry of Transportation and Communications was responsible for his problems. He decided to go on a hunger strike until the Ministry accepted responsibility and compensated him.

The complainant constructed his restaurant in 1977-1978 on land adjoining a northern Ontario highway. Before he started construction, he had contacted the Ministry of Transportation and Communications to inquire about the projected paving of a nearby road. He was given to understand that the nearby road would continue as a gravel access road for forest products, and would not be paved for another ten years. The complainant proceeded on the basis of this information to plan a restaurant catering to seasonal traffic.

By October 1980, the alternate highway had been completely paved. The complainant contacted the Ministry in 1982 and claimed that he had been misled. He asked for compensation based on his contention that his business was suffering because of reduced traffic on the older highway.

When the Ministry declined to accept responsibility, the complainant contacted the Ombudsman, his MPP, and the media. He planned a hunger strike to begin in August 1984.

Members of our staff met with the complainant, his family, and the complainant's MPP in an effort to dissuade him from the hunger strike. Our investigator stressed the health dangers associated with a hunger strike. The complainant postponed his hunger strike to September 1984 and later to October 1984. The MPP wrote a letter thanking us for our assistance, and for the care and attention our Office had given to the complainant.

After an extensive investigation, the Ombudsman issued his report on the case in October 1984. He could find no evidence to substantiate the complainant's contention that the Ministry had deliberately misled him. The employee who had given the information about the road knew only that it was originally intended to be used for forest access. At that time, its paving was being discussed only at the highest levels in the Ministry.

We also found that the restaurant had lost money during the three years before the road was paved. Our review indicated that even the diversion of all traffic from the new road to the old road would only bring the restaurant to the break-even point, assuming that it maintained its market share.

The complainant finally did begin his hunger strike on October 10, 1984. But on October 16, 1984, he told our Office that he had discontinued it because his family had provided him financial assistance to pay his debts. He said that he planned to reopen his restaurant in the spring, and keep in contact with us.

The Ombudsman often helps complainants to achieve a livable solution to their problems, even when he cannot support their claims against the government. In this case, the Ombudsman was able to negotiate an agreement

that eased the financial burden on a pensioner who had to return an overpayment she had received from the Teachers' Superannuation Commission.

Case Summary 13

When the Teachers' Superannuation Commission discovered that, through its own administrative error, it had overpaid a 72-year-old retired teacher the sum of \$4,020.63, it advised the pensioner that she would be required to repay the money either in a lump sum or by twelve monthly payments. When the former teacher advised that she was unable to repay the money, the Fund began deducting the sum of \$50 per month from her pension.

The teacher had retired in June 1974 at age 64, and began receiving her pension in July 1974. The Teachers' Superannuation Act requires that the pension of a retired person must be reduced when the pensioner turns 65 years of age, and begins receiving a Canada Pension Plan pension. The amount of the reduction and the amount of the CPP pension are the same, with the result that the retired person receives exactly the same amount of money, although the money then comes from two different sources. In this case, the Teachers' Superannuation Fund did not make the reduction when the teacher turned 65 in September 1974, and the error was not discovered for eight years.

The debt was a sizable one, and the episode caused the complainant much anguish. Her standard of living was altered, and income tax problems complicated the matter.

The Commission took the view that the debt was a lawful one, which it was obliged to recover, and submitted that to waive the debt would be unfair to the other contributors to the Fund, and to Ontario taxpayers.

The Ombudsman could not support the complainant's contention that the Fund should not recover the overpayment. However, in an effort to relieve the complainant's financial burden, the Ombudsman proposed that the deductions be reduced by 50% to \$25 per month. The Commission agreed to this solution.

The Ombudsman's services are available to the corporate citizen, as well as to individual

aggrieved citizens. In this case, the Ombudsman's investigation helped to ensure fairness in the marketing of drugs. At our suggestion, the Ministry of Health amended its guidelines for the inclusion of products in the comparative drug index formulary.

Case Summary 14

The president of a pharmaceutical company complained to the Ombudsman that the company had been treated unfairly by the Ministry of Health. At issue was the inclusion in the Ministry's July 1982 comparative drug index formulary of a competitor's drug which had not met the Ministry's guidelines for inclusion in the formulary. The competitor's drug had been listed as interchangeable with a drug manufactured by the complainant's company, and was listed as available at a much lower price. As a result, the complainant's company suffered considerable losses in sales of its drug.

The formulary, issued semi-annually, serves as a guide to the identification of quality drugs and comparative products, and is used by practitioners, pharmacists and hospitals. Under the Ministry's guidelines, distributed in October 1980, only drugs available on the market at the time of the submission to the Ministry, that is, drugs with federal government approval, could be considered for listing in the formulary. A Notice of Compliance, issued by the federal government to indicate its approval of the drug for sale in Canada, was to be included with each submission. It was clear from the language used in the guidelines that compliance with the stated requirements was compulsory.

Prior to publication of the July 1982 formulary, the complainant learned of the listing of the competitor's drug. However, he knew the federal Notice of Compliance for this drug had not been received by the manufacturer until January 27, 1982, almost a month after the December 30, 1981 deadline established by the Ministry for submissions of additional products for listing in the formulary. The complainant wrote first to the Ministry, stating his objections, and later to the Ombudsman.

The Ministry advised our Office that its written guidelines were merely administrative guidelines. In this case it had accepted the manufacturer's indication that there would be substantial savings to the public if its drug was listed.

It appeared that those manufacturers which adhered to the written guidelines were at a disadvantage, while manufacturers which disregarded the guidelines could presumably benefit. The Ombudsman wrote the Ministry stating that it might be open to him to recommend either that the guidelines be amended to accurately reflect the Ministry's practice, and that procedures be established for exceptional situations, and for notification to manufacturers negatively affected by these exceptions, or, in the alternative, that the Ministry follow without exception its stated 1980 guidelines to ensure fairness and equality of treatment among manufacturers.

The Ministry reviewed the matter and amended its guidelines. Manufacturers were advised that completed submissions must be received by the Ministry's stated deadline before a drug will be considered for inclusion in the formulary. Exceptions will only be made in those rare situations where a new drug product is considered to be a major therapeutic advancement and is recommended for early listing. In those cases, affected manufacturers will be notified of the planned exception and provided with an opportunity to make written representations to the Ministry on any matters of contention.

Although in his June 1984 report the Ombudsman supported the complainant's contention that his company had been treated unfairly by the Ministry, he made no recommendation in this case. In light of the Ministry's amendments to the guidelines, he considered that the events that had given rise to this complaint would not occur again.

The Ombudsman personally involves himself in the process of resolving the more difficult, complex complaints that come to our Office. In this case he was able to secure an agreement with the Ministry of Correctional Services that the complainant should be paid post-judgment interest on an award made by the Crown Employees Grievance Settlement Board against the Ministry.

The intervention of the Ombudsman has also prompted the government to consider legislative changes that will empower the Grievance Settlement Board and other boards, agencies and commissions to grant post-judgment interest on their awards.

Case Summary 15

The complainant had been employed as a correctional officer at an Ontario Correctional Centre since 1973. In March 1978, the Ministry of Correctional Services introduced a policy concerning correctional officers' facial hair. This policy required all male correctional officers to shave in a manner that made it possible for an air-mask and tear-gas mask to be properly sealed around their faces and jaw lines. This policy was meant to ensure that correctional officers could function effectively in emergency situations.

The complainant was a member of the Sikh religion, which includes as one of its tenets a requirement that men not cut their hair or beards, and, consequently, the complainant refused on religious grounds to adhere to the Ministry's policy on facial hair.

The Ministry offered the complainant several lower-paid alternative positions, which required relocations for which no expenses would be paid. These were rejected by the complainant and in May, 1978, he was demoted to the position of Clerk 2, Supply, at the Correctional Centre.

The complainant took the matter to his union, and his grievance was heard before the Crown Employees Grievance Settlement Board in November 1979. In its November, 1980 award, the Grievance Settlement Board ordered that the complainant should be reinstated to the rank of Correctional Officer 2, effective November 14, 1979. The Board also ordered that the complainant should be paid the difference between his salary and benefits as a Correctional Officer 2 and the salary and benefits that he had been paid in his demoted position as a Clerk 2, Supply.

In January, 1981, the Ministry appealed to the Divisional Court for a judicial review of the award. After this application was dismissed, the Ministry obtained leave to appeal to the Court of Appeal. However, the appeal was dismissed by the Court of Appeal in April 1982.

In May 1982, the Ministry sent the complainant's union a cheque for \$10,067, which was the net amount of the difference between his salary as a Correctional Officer and his salary as a Clerk 2, Supply. The union then asked the Ministry to pay post-judgment interest on this sum of money from the November 1980 date of the award until the date the cheque was sent to the union, some one-and-a-half years later. When the Ministry denied this request, the union asked the Grievance Settlement Board to

reconvene to consider the question of post-judgment interest on the back pay awarded to the complainant.

The Board issued a decision in December 1983, stating that it did not have the legal authority to deal with this issue further, or, in any event, to award post-judgment interest on its awards. The Board referred to section 19(6) of the Crown Employees Collective Bargaining Act which, in its opinion, provides a mechanism for the enforcement of the Board's awards and the consequent payment of post-judgment interest. Under this section, a decision of the Crown Employees Grievance Settlement Board is enforceable as an order of the court when a copy of its decision is filed at the Office of the Registrar of the Supreme Court of Ontario.

In January, 1984, the complainant contacted our Office with the complaint that the Ministry of Correctional Services had unreasonably refused to pay him post-judgment interest on the Board's award. The complainant was also dissatisfied with the December 1983 decision of the Grievance Settlement Board. The Ombudsman then notified both the Ministry of Correctional Services and the Crown Employees Grievance Settlement Board of his intention to investigate these complaints.

Our investigation revealed that the position taken by the Crown Employees Grievance Settlement Board is valid with respect to its decision that it had no legal authority to grant post-judgment interest on its awards. As the enforcement of awards made by the Crown Employees Grievance Settlement Board is dealt with under section 19(6) of the Crown Employees Collective Bargaining Act, any attempt by the Board to enforce its own awards would be in excess of its jurisdiction and in conflict with the specific provisions set forth in section 19(6) of the Act. The Ombudsman therefore advised the complainant that he could not support the complaint against the December 1983 decision of the Crown Employees Grievance Settlement Board.

Our investigation further showed that the complainant's union had failed to utilize the enforcement procedures provided for under section 19(6) of the Crown Employees Collective Bargaining Act. The representative of the union advised our Office that at the time of the award in November, 1980, judicial review of Grievance Settlement Board decisions was uncommon. As the union was not familiar with this enforcement process and its consequences, the union did not file the award pursuant to section 19(6) of the Act.

Our investigation revealed that the complainant, through no fault of his own, had lost the opportunity to earn over one-and-a-half years' interest on the Grievance Settlement Board's award. Had the union filed the award with the court, the Ministry would have paid interest on the award, so that the payment of interest to the complainant at this time would not have placed the Ministry in any different financial position than it would have otherwise expected itself to be in. The Ministry did not make any financial compensation to the complainant during this time, but the Ministry had the benefit of the use of these monies in its early budget and these monies remained invested in the Treasurer's account with interest accruing. The Ministry would appear to have been unjustly enriched by this non-payment of interest on the award during the one-and-a-half year period in question.

The Ombudsman found that although the Ministry of Correctional Services had no legal obligation to pay post-judgment interest to the complainant, it had an equitable obligation to do so.

The Ombudsman recommended that the Ministry of Correctional Services pay post-judgment interest on the sum of \$10,067 from November 6, 1980 to May 21, 1982. Our Office also recommended that the Ministry of Labour develop and recommend appropriate legislative amendments to the Crown Employees Collective Bargaining Act that would empower the Grievance Settlement Board to grant post-judgment interest on its awards.

In March 1985 the Ombudsman met with the Deputy Minister of Correctional Services to discuss his recommendation, which the Ministry subsequently agreed to accept. The complainant is to receive a cheque for \$2,785 representing post-judgment interest at the rate of 18% per annum on the Grievance Settlement Board award.

The Ombudsman also received a letter from the Minister of Labour, in response to our Office's recommendation concerning the Crown Employees Collective Bargaining Act. The Minister advised that he will bring the matter of post-judgment interest to the attention of the Deputy Attorney General, and will pursue the ramifications of legislative change to the powers of the Grievance Settlement Boards, as well as other boards, agencies and commissions, to award post-judgment interest. The Ombudsman accepted this communication as an adequate and appropriate response to his recommendation.

CORRECTIONAL INVESTIGATIONS

It is unreasonable to expect persons whose rights are legally curtailed because of their status as inmates to respect the rights of other citizens when those inmates are returned to the community unless fair, just and reasonable treatment is accorded them while in custody.

Inmates of correctional facilities are entitled to certain basic rights, for example, the right to a safe and healthy environment, the right to basic amenities, and the right to have all relevant information considered for parole and Temporary Absence Pass applications.

The following cases illustrate how the Ombudsman can assist the Ministry of Correctional Services in protecting some of the basic rights of those charged to its care.

Case Summary 16

An inmate at a detention centre complained that he was required to share a razor with five other inmates. He contended that this was an unsanitary practice, and that the possibility existed that infectious blood diseases, such as AIDS or hepatitis, could be transmitted from one inmate to another.

Our investigator discussed the complaint with the medical staff at the detention centre. He was informed that the Chief Medical Officer and the Nursing Coordinator shared the inmate's concern, because there is no way to identify an individual inmate with an infectious blood disease until a complaint is made and blood tests are completed.

After our Office had established that the practice of sharing razors among inmates was common in provincial correctional institutions, we advised the Deputy Minister of our intention to investigate the matter. He then arranged to have the problem discussed at the Divisional Management Committee of the Ministry.

As a result, a new policy was formulated: each inmate was to have his own disposable razor, or else the razor and blade being shared must be disinfected each time they are transferred from

one inmate to another. A Ministry Directive outlining the new policy was forwarded to the Superintendents of all provincial correctional institutions.

Case Summary 17

An inmate at a Northern Ontario jail complained that his cell had been sprayed with pesticide notwithstanding that he and a fellow inmate were confined within. His repeated requests to be released from the cell until the odour dissipated had been ignored. When our investigator discussed the matter with the Superintendent, the Superintendent readily agreed to spray pesticides only during those times when the cells were empty.

The Superintendent told our investigator that although the chemical used, Diazinon, did emit an odour, the odour was not overwhelming, and the Pest Control Service had assured him that it would not constitute a health hazard.

Our investigator recalled that our Office had investigated a similar complaint at another Ontario jail where the same chemical, Diazinon, had been used to spray the cells. During that investigation, the Ministry of the Environment confirmed that Diazinon could cause nausea, headaches, and other health problems. As a result of that investigation, the jail discontinued using Diazinon, and substituted a less toxic, odourless material called Ficam.

On February 11, 1985, the investigator wrote the Deputy Superintendent, outlining in detail the findings of our earlier investigation. On February 25, 1985, the Deputy Superintendent advised our Office that following discussions with the District Pesticides Officer of the Ministry of the Environment, the spraying of Diazinon would be discontinued and Ficam would be used in its place.

Case Summary 18

An inmate who had been placed in a segregation cell under close confinement as punishment for an institutional misconduct, complained that he had not been allowed a mattress to sleep on.

A review of the institutional policy at the correctional centre where the complainant was incarcerated revealed that inmates found guilty of a misconduct and sentenced to close confinement were not entitled to the use of a mattress while in the segregation cells.

Our investigator then conducted a survey of other provincial correctional institutions and established that most other institutions provide mattresses at night, unless an inmate attempts to destroy the mattress.

When the investigator advised the Superintendent of the Correctional Centre of the results of the survey, the Superintendent agreed to discuss the matter with the Regional Director.

Subsequently, the Superintendent wrote our Office stating that the institution's standing orders had been revised, and that inmates undergoing punishment in segregation cells would be allowed to have mattresses during night hours, in accordance with the practice at other Ministry institutions, which had previously been endorsed by the Deputy Minister.

Case Summary 19

This resident of a Community Resource Centre had been denied parole at a hearing held on August 13, 1984 before a Regional Parole Board of the Ontario Board of Parole. When his written application for a rehearing, made the same day, was also denied, he contacted the Ombudsman's Office.

The complainant had immediately applied for a rehearing because he felt he had not conducted himself well before the Board. In his application, he explained to the Board that he had been poorly prepared for the hearing because he was unfamiliar with Board procedures.

The Vice-Chairman of the Regional Board advised our Office that the parole had been denied because in the opinion of the Board the complainant would benefit from continued counselling at the Community Resource Centre. The Board had not granted a rehearing as it could find no valid reason to change its original decision. The Vice-Chairman advised our Office, however, that in light of the information our Office had supplied, the matter would be reviewed at its next Regional Board meeting.

At its meeting the Board decided to grant the complainant a further parole hearing. On November 2, 1984, the Vice-Chairman informed our Office that the complainant had been paroled on October 24, 1984.

Case Summary 20

An inmate at a correctional centre contacted the Ombudsman because his several applications for a Temporary Absence Pass had been denied on the grounds that there were six criminal charges against him still outstanding in the Province of Quebec. The complainant was unsuccessful in his attempts to convince the prison authorities that these charges had already been dealt with. He was anxious to be granted the pass as he wanted to look for a job prior to his release date.

Our investigator checked with the correctional centre's records department and was informed that although a letter had been sent to the Chief Prosecutor in Quebec inquiring as to whether the charges still existed, as yet no reply had been received.

The investigator then telephoned the Chief Prosecutor and was referred by him to the Crown Attorney in Montreal to whom the Chief Prosecutor had assigned the inquiry. The Crown Attorney confirmed that there were no outstanding charges against the complainant in Quebec, and at our investigator's request readily agreed to telephone this information to the correctional centre and follow it up immediately with a written confirmation. Shortly thereafter, the complainant was granted an early release Temporary Absence Pass.

Case Summary 21

Before he was incarcerated in a correctional centre, this complainant had subscribed to a Marxist-Leninist newspaper. He arranged to have the newspapers forwarded to the institution, but when they arrived, the Superintendent refused to allow him access to them. Instead, each copy was put with the personal belongings held in safekeeping for the complainant pending his release.

The Superintendent explained to our investigator that because inmates had access to all local newspapers, certain periodicals and newspapers of the type subscribed to by the complainant were not given to them, but were placed with their property.

The Ministry's Manual of Standards and Procedures states that an inmate can subscribe to any book, periodical or newspaper that is legally permitted to be sold. When our investigator reviewed the Ministry policy with the Superintendent, the Superintendent pointed out that the Manual also gives him the authority to refuse to give an inmate anything he considers not to be in the best interests of the inmate, or which might affect the security of the institution. However, the Superintendent said that he would reconsider his position in this case.

Subsequently, our investigator was informed that the Superintendent had revised his policy. The staff had been instructed to allow the complainant access to all copies of his newspaper as they were received, and he was also given those copies which had previously been withheld.

WORKERS' COMPENSATION BOARD

APPEALS

The Workers' Compensation Board does not have a time period limiting appeals. It is always open to a worker to appeal a decision some time in the future. We are sometimes asked to investigate a decision which deals with an accident that happened 20 years ago. In this case, we were able to assist a worker who suffered an accident 40 years ago; however, without assistance from other sources, we can be limited in obtaining information about events which happened many years ago.

Case Summary 22

On September 11, 1944, a 27-year-old Timmins woodcutter was injured when a pile of wood fell, struck him on the back of his head, and pushed him forward onto a circular saw. He suffered severe lacerations to his face and subsequently lost his right eye. At the time of the accident, he was told that his employer had no Workers' Compensation Board coverage. His employer had a contract with the Town of Timmins to cut firewood for families on relief.

Thirty-seven years later, he requested that the Board grant him entitlement. His request was prompted by a suggestion of a Board employee when he was being examined for another compensable condition.

In 1983, the Board concluded that the business of the individual for whom he worked was not covered under the Act in 1944 and therefore, he was not entitled to benefits.

During our preliminary investigation, with the kind cooperation extended by the City of Timmins, additional documentation was obtained and referred to the Board for its consideration. The information concerned the nature of the contracts that the employer had signed with the Town of Timmins.

Based on the information submitted by my Office, the Board revoked its previous decision, and found that although the employer was not covered, the Town of Timmins was ultimately responsible for the worker's coverage.

In July 1984, forty years later, the Board granted the injured employee entitlement for the eye he lost in 1944.

MEDICAL EVIDENCE

Medicine does not always provide us with definitive statements on cause and effect. The Workers' Compensation Board is therefore left with the difficult task of deciding cases in the absence of clear scientific knowledge and must be dependent on the opinions of experts. In the following case, we obtained a further opinion which contributed to the Board's reconsideration of the degree of compensable disability, and resulted in an increase in the complainant's permanent disability award.

Case Summary 23

In March 1965, while working as a shoe repairman, this worker, then aged 45, injured his low back and right shoulder while assisting another worker moving machinery weighing 200 to 300 pounds. Although at the time of the accident he felt only a twinge of discomfort, by the next day he was suffering severe pain. The pain persisted, and when the worker later returned to work he found he could work only part-time, when his condition permitted. Although he consulted numerous orthopaedists, none could diagnose the reason for his continuing pain in the lumbosacral area.

It was not until 1971, when the worker first underwent a series of examinations by rheumatologists, that he was diagnosed as having ankylosing spondylitis, a progressive inflammatory disease affecting the larger joints of the body. In 1975, following a report by a Board doctor that the worker was then disabled by ankylosing spondylitis, and that he had been considerably more disabled in the past, the Board increased the 10% permanent disability pension awarded in 1971 to 50%, on the basis that the accident had aggravated a pre-existing condition. The Board also awarded arrears, but the arrears were minimal, commencing in September 1975, only three months prior to the worker's medical examination. In November 1979, the Appeal Board denied the worker's appeal for arrears covering a longer period.

The worker's general health continued to deteriorate; he developed gastrointestinal difficulties and weight loss. It was agreed by both the Board doctors and the worker's treating physicians that the drugs necessary to treat ankylosing spondylitis can lead to gastrointestinal upset. In July 1982, the Appeal Board denied the worker's claim for compensation for gastrointestinal difficulties on the basis that ankylosing spondylitis was a totally non-compensable condition. At the same time, the Appeal Board denied the worker's request for permanent disability benefits to 100%. Although the Appeal Board recognized that the worker was totally disabled, it stated that it could only compensate him for disability arising in the low back and right shoulder.

In view of the Board's reluctance to admit a full causal relationship between the accident and the activation of the ankylosing spondylitis, our Office sought the opinion of a rheumatologist. The specialist reported that this disease rarely manifests itself after the age of 45. In his mind, there was no doubt that the 1965 injury was associated with the appearance of the disease.

In January 1984, the Temporary Ombudsman wrote the Chairman of the Workers' Compensation Board, making a tentative recommendation that the Board grant the complainant 100% compensation commencing September 1975; entitlement for the gastrointestinal and weight loss problems; and an award greater than 10% commencing July 1972.

In his response, the Chairman declined to grant greater benefits, citing the opinion of the Board doctors that the injury had been minor in

nature, and was not associated with the development of the ankylosing spondylitis. The Board also relied on a search of scientific literature on this condition, which had apparently failed to reveal a causal connection between the activation of ankylosing spondylitis and trauma.

The Ombudsman disagreed that the injury was minor in nature, as the worker had been able to work only part-time following the accident. He pointed out that the medical literature was inconclusive and contradictory, and stated that reliable and credible evidence had been obtained from the specialists in rheumatic diseases, who are knowledgeable about current thought in the field. He stated that while the Board doctors may have knowledge about trauma, they are not experts in rheumatic diseases or the etiology of ankylosing spondylitis. The Ombudsman was of the view, based on the evidence, that prior to the accident the complainant's condition was dormant, and in view of his age the condition may well have remained dormant for the remainder of his life, but for the accident.

Following further discussions between members of our staff and that of the Board, the Board agreed to increase the complainant's permanent disability award to 75% effective September 1975, and to increase his permanent disability award from 10% in July 1972 to 20% in July 1973, and 30% in July 1974.

The complainant was pleased with the resolution of his complaint and sent a note of thanks to our Office.

RATING SCHEDULE

The Workers' Compensation Board relies on a rating schedule to determine the degree of permanent disability. There are some conditions which are not referred to in Ontario's schedule and for those situations, the Board can refer to other schedules for guidance such as the American Medical Association's schedule. The following case illustrates how reference to the American Medical Association's schedule benefited an injured worker.

Case Summary 24

The worker suffered a knee injury and was required to take many painkillers for this

problem. As a result of the medication, he developed an ulcer which the Board did include in his entitlement.

Following an examination in June, 1982 for a pension assessment, a Board doctor recommended that this complainant receive an award of 20% for a dumping syndrome, a condition demonstrated by frequent regurgitation, nausea, and sweating, which had developed following gastric surgery for his ulcer. As part of a December 1982 decision, the Appeal Board stated that there had been no appreciable change in the complainant's stomach disability since his pension examination in June 1982, and denied an increase in benefits.

In a September 1984 letter, we requested clarification from the Board as to how the 20% figure had been arrived at. We noted that the Board's Ontario Rating Schedule does not contain criteria for evaluating gastric impairment. We had been advised that in the past, when the Ontario Schedule does not contain a specific rating, the Board looks to the American Medical Association's schedule for guidance. We pointed out that the AMA Guide to the Evaluation of Permanent Impairment is specific as to a rating for the condition suffered by the complainant, and we pointed to an example given in the AMA Guide of a woman who developed dumping syndrome after a gastric resection where the impairment was rated at 30%.

Following receipt of our letter, the Appeal Board reconsidered this portion of its December 1982 decision, and rated the gastric problem at 30%, stating that since the Board's own Rating Schedule does not contain criteria for evaluating gastric impairment, it would be reasonable to accept the guidelines established by the American Medical Association's Guide as the appropriate standard by which to assess the complainant's gastric disability.

DETERMINATION OF BENEFITS

The same medical diagnosis does not always result in the same type of payment. The degree of disability, and the extent to which the compensable accident contributed to the disability, are major factors in the determination of the benefits to be granted by the Board. In the two cases cited below, each worker suffered from leg ulcers brought on by accidents at work. The

amount of compensation paid was significantly different.

Case Summary 25

In 1966, while working, this man suffered a deep puncture wound to his right lower leg. Following his injury, he had recurrent ulcers on his leg which were painful and limited his mobility.

The Workers' Compensation Board recognized that he suffered damage to his veins as a result of his accident, and also accepted that the recurring ulcers were a manifestation of his vascular problems. The worker was granted a 35% permanent disability award to compensate him for his ongoing leg problems.

In February 1983, the Board was advised that the worker had been off work since November 1982, and temporary total disability benefits were requested from that date. However, in a November 1983 decision, the Appeal Board denied benefits, stating that the medical evidence did not support the worker's claim that he was disabled to a greater extent since November 1982 than that recognized by his permanent disability pension.

Our review of the medical information revealed that, although the worker's treating physician had submitted a report to the Board stating that he had seen the worker in November, 1982 for a stasis ulcer, the doctor did not comment on the degree of disability at that time.

We therefore wrote the attending physician requesting further information. The physician stated that the ulcer was still open when he examined the worker in January 1983, rendering the worker disabled. By the worker's next visit in June 1983, the ulcer had completely healed.

On the basis of this new information, and after a review of the physician's report by its Surgical Consultant, the Appeal Board, in a December 1984 decision, granted the worker temporary total disability benefits from November 7, 1982 until June 7, 1983.

Case Summary 26

An auto worker banged his leg at work and developed an open sore, which took some time to heal. The Workers' Compensation Board

recognized that an accident had occurred during the course of employment. Because the worker did not lay off from work, no benefits were paid directly to him.

In 1971 and again in 1978, he suffered further leg injuries which eventually healed. The worker is still employed in the auto industry, although he does have recurring ulcers on his leg.

The worker requested a permanent disability award for his recurring ulcers. The Board denied this request because it was of the opinion that the recurring problem was caused by an underlying vascular problem.

During our discussions with the complainant, he adamantly denied any ulcer problem prior to the original accident at work.

In order to gather further medical information on the compensable nature of the worker's disability, we corresponded with the worker's treating dermatologist. The dermatologist stated that the worker unquestionably suffered from work-induced ulcerations, complicated by his proneness to varicose veins and to diabetes. He did not consider that the varicose vein condition was related to his occupation, but stated that the worker would always be prone to skin ulcerations.

The dermatologist's report was submitted to the Board as new information. However, the Board did not consider the report to be sufficient evidence to cause it to change its view of the claimant's case, stating that it considered that its responsibility had ended when the ulceration cleared.

Because the Ombudsman felt that the dermatologist's report was in some ways supportive of the worker's claim, a second independent medical opinion was sought from an expert in occupational and environmental health. This doctor reported that the venous abnormality in both legs would have been present irrespective of whether the complainant sustained the industrial injuries. The doctor therefore felt that the worker would not have been entitled to additional compensation benefits.

In this case the Ombudsman did not support the worker. Although one independent medical opinion was supportive of the worker's claim that his ulcerations were work-induced, both opinions related the condition to a predisposing varicose vein problem, which had to be present before the dermatitis and related

complications could occur. We therefore concluded that the Board had not acted unreasonably by limiting the worker's entitlement to those periods when the ulcers were clearly related to work incidents.

CALCULATION OF BENEFITS

Once the decision to grant entitlement for an accident has been made by the Workers' Compensation Board, there still remain decisions concerning the calculation of benefits. The methods of calculation are not specifically outlined in the the Workers' Compensation Act. The Board must make decisions in terms of policies which are publicly available. During our investigation of such cases, we rely heavily on the Board's policies in order to determine the reasonableness of the Board's practices.

Case Summary 27

This complainant, the owner/operator of a tractor-trailer truck, had only been employed for nine days at a trucking firm when he fell approximately 12 feet from the top of his truck while placing a tarpaulin over his load, suffering significant injuries. He had begun work at 4:00 a.m. that day, and completed one trip. It was while loading for a second trip at 1:30 p.m. that the accident occurred.

The worker appealed the amount of compensation awarded by the Workers' Compensation Board, contending that the calculation of his earnings basis should have included his earnings on the day of the injury. If the earnings for the day of accident were included in the calculation of his payments, his benefits would have been higher.

In July 1983, the Appeal Board concluded that the compensation rate had been calculated correctly and in accordance with the Workers' Compensation Board policies and procedures, and denied the appeal.

In February 1984, the Ombudsman wrote the Chairman of the Workers' Compensation Board, pointing out that while the Workers' Compensation Act states that a worker's average earnings shall be computed in a manner best calculated to give the rate per week or month, it gives no details as to how the computation should be made. He stated further that while it is reasonable for the Board to exclude earnings on

the day of an injury when the worker has completed only a portion of the day's work and earned only a portion of the day's pay before an accident occurs, this method of computing a worker's average earnings penalized the worker in the present case. The worker had completed eight and one-half to nine hours' work before his accident, and had earned more than on previous full days. Excluding his earnings on the day of his injury therefore artificially deflated his average earnings. The Ombudsman tentatively recommended that the Appeal Board revoke its decision and include the worker's earnings on the day of his accident in the calculation of his earnings.

After considering the Ombudsman's submissions, the Appeal Board agreed that the Workers' Compensation Act does not preclude the use of earnings on the day of an accident if by so doing the worker will derive some benefit, and in an April 25, 1984 decision concluded that the compensation rate should be adjusted to take into account the worker's earnings on the day of his accident.

Case Summary 28

This complainant was injured in March, 1976 when he was struck and knocked down by a portable tire rack.

He returned to work in March, 1977 and in 1979 was granted a partial pension for a back disability.

In June 1980, the complainant laid off work with back trouble, receiving \$250.05 per week in compensation benefits based on his June, 1980 earnings. Following improvement in his condition, the Board agreed to sponsor an upgrading course beginning in March 1981, granting him a maintenance allowance of \$197.15 per week based on his pre-accident, March 1976 earnings. However, the Board later raised the maintenance allowance to \$250.05 per week on the basis of "need".

The complainant remained in the upgrading course until February 1983, a total of 104 weeks, but was refused a legislative amendment adjustment to his maintenance allowance, on the basis that he was already being paid in excess of the benefits to which he was entitled. The amendment provided for a 10% increase in payments if the worker had been in receipt of benefits for more than 52 weeks.

On February 17, 1984, the Temporary

Ombudsman wrote the Chairman of the Workers' Compensation Board, in accordance with section 19(3) of the Ombudsman Act, and tentatively recommended that the Appeal Board revoke its decision and grant the complainant entitlement to the legislative amendment adjustment to his maintenance allowance.

The Temporary Ombudsman's tentative recommendation was based on his belief that the complainant had been entitled to the \$250.05 weekly maintenance allowance as of right, not on the basis of need, and the complainant was therefore entitled to the legislative amendment adjustments. It was the Temporary Ombudsman's view that in February 1981, the Board should have continued basing computation of the benefits on the complainant's earnings in June, 1980 when the complainant stopped working following a recurrence of his disability, rather than on his 1976 pre-accident earnings.

The Chairman responded on June 4, 1984, stating that since the complainant was not in receipt of temporary disability benefits in February 1981, he was not entitled under the Workers' Compensation Act to legislative amendment adjustments, and therefore the Board was prevented by statute from complying with the Temporary Ombudsman's tentative recommendation.

A further review of the matter by this Office revealed that Board practice does not confine application of the legislative amendment adjustments to temporary disability benefits. Application is, in fact, extended to maintenance allowances. In light of this information, the Chairman was contacted on October 24, 1984 with the request that the Appeal Board reconsider its decision.

On January 4, 1985, our Office was advised that after considering relevant Board policy and practices in the context of the complainant's claim, the Board had reconsidered. The complainant was granted an adjustment in his benefits for the period February 5, 1981 to February 14, 1983.

RECOMMENDATIONS DENIED

This year I am reporting 19 cases in which the Ministry or Board concerned refused to implement my recommendations.

In one case I recommended that the Ministry of Consumer and Commercial Relations honour

certain commitments made to members of a homeowners association.

In another case I made several recommendations to the Ministry of Community and Social Services and the Social Assistance Review Board concerning a complainant's contention that the cancellation of his Family Benefits was unreasonable.

In another case I recommended that the Liquor Licence Board of Ontario compensate a former inspector who contended that he had been unfairly pressured into resigning his position.

Two cases involved the Ministry of Consumer and Commercial Relations and the Residential Tenancy Commission. In both cases I recommended that the Commission reconsider a decision and that the Ministry prepare appropriate legislative amendments to the Residential Tenancies Act.

Two cases involved the Ministry of Health and the Ontario Health Insurance Plan. In one case, I recommended that the Public Hospitals Act be amended to require public hospitals to accept referrals from chiropractors and osteopaths for radiology services in hospital out-patient departments. In the other case I recommended that OHIP reimburse a complainant for out-of-province medical treatment and that a section of the Health Insurance Act be amended to remove an existing discriminatory gap between mental and physical illness.

Another case involved the Ministry of Transportation and Communications where the construction of a highway reduced the value of a complainant's property. I recommended that the Ministry of the Attorney General refer the issue of compensation for injurious affection arising from the use of public works to the Ontario Law Reform Commission for a report and recommendations.

Finally, the Workers' Compensation Board refused to implement recommendations in eleven cases which I decided to report to the Legislature. Seven cases involved entitlement to benefits. One case involved an award for a psychiatric condition. Two cases dealt with the level of pensions granted. One dealt with the method of calculating the pension award as well as initial entitlement for a disability.

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

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IN MEMORIAM



ARTHUR EDWARD MARTIN MALONEY, Q.C., LL.D.
1919-1984

During the tenth anniversary year of this Office it is fitting to commemorate the death of its most illustrious pioneer.

On September 20, 1984, Arthur Maloney, Q.C., our first Ombudsman, passed away after a lengthy illness. His death was a great loss not only to all of us who knew him, but also to all Ontarians and, in fact, all Canadians.

He was one of Canada's most distinguished champions of human rights. As a fervent and eloquent advocate before the courts, as a progressive and compassionate Member of Parliament, and as a tireless and extraordinary Ombudsman, his dedication to the preservation of our civil liberties is legendary.

We at this Office will always be grateful to Arthur Maloney — for his personal friendship, for his excellent work of creating an Ombudsman's function that he was fond of describing as "second to none in the world", and for his very gracious counsel and assistance up to the time of his death.

If a man's size can be measured by his service to the humble and underprivileged, the disadvantaged and those who have no voice, then Arthur Maloney was a giant.

His life was an inspiration for all who aspire to serve the public. For that we thank him.





