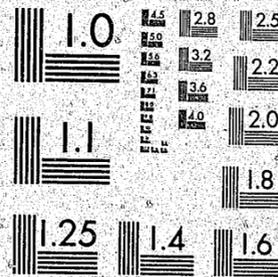


National Criminal Justice Reference Service



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Ombudsman

CANADA

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Ombudsman

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February 28, 1984

The Speaker
Legislative Assembly
Province of New Brunswick

Sir:

Pursuant to Section 25(1) of the Ombudsman Act, I have the honour to present the
Seventeenth Annual Report of the Ombudsman for the period January 1, 1983 -
December 31, 1983.

Yours very truly,

Joseph E. Bérubé
Ombudsman

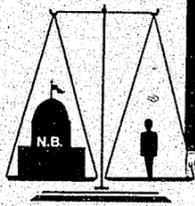


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NCJRS
JUL 13 1984
ACQUISITIONS

HIGHLIGHTS - 1983 REPORTING YEAR

- The Office received 1089 complaints against government in 1983. This represents an increase of 132 complaints or 13.8% from the 1982 reporting year (see also STATISTICS);
 - The Office received three petitions to review ministerial refusals to release information under the Right to Information Act (see also RIGHT TO INFORMATION ACT).
 - The Office received five requests to review refusals by the Minister of Social Services to release adoption information under the Family Services Act (see also ADOPTION INFORMATION).
 - One recommendation made in a previous annual report - amendments to the Liquor Control Act - was implemented (see also RECOMMENDATIONS).
 - One staff change occurred during the year when Jacqueline Hansen, bilingual secretary, resigned and was replaced by Giséle Girouard. Mrs. Hansen will be missed by the Office.
 - The remaining staff includes Charles Ferris, Solicitor to the Ombudsman; Magella St-Pierre, Assistant to the Ombudsman; and Doris Palmer, Secretary to the Ombudsman.
- Tom Cunningham, a graduate law student completed the major portion of his articling with the Office, the first law student to do so. After completing the articling process with a private law firm, Mr. Cunningham was admitted to the Bar in February, 1984. Mr. Cunningham's work was a valuable contribution to the Office.
- The series of private hearings was continued in 1983. In May, hearings were held in Bathurst, Campbellton and Newcastle. In November, two days of hearings were held in Saint John.
 - The policy of visiting provincial penal institutions, of meeting with inmates and receiving their grievances with local and central correctional officials, was continued in 1983. Hearings were held at correctional facilities in Dorchester, Dalhousie, and Perth-Andover.

RECOMMENDATIONS

NEW RECOMMENDATIONS

Damage Claims against Municipalities -

During the year, a gentleman grieved a Town's refusal to compensate him for damage allegedly resulting from a sewer line malfunction. Apparently, the Town endeavoured to clear a blockage in its sewer line by using high pressure water. In so doing, water backed up into the complainant's home causing approximately \$1,000 damage.

On the face of it, the case appeared to be an appropriate one for referral to the Small Claims Procedure of the Court of Queen's Bench. However, one or more Town Councillors had apparently advised the complainant that he should repair the damage and send the bill to the Town. Further, one of the councillors had completed repair work and his bill had allegedly been paid by the Town. However, other bills had not been paid.

The Town had a \$1,000 deductible clause in its insurance policy and, therefore, had the discretion to settle small claims.

The Town's solicitor, agreed to review the case and to advise the Office of his recommendation. He ultimately recommended payment of this claim and the appropriate cheque was subsequently forwarded to the complainant.

This case is representative of a number received by the Office with respect to small damage claims by citizens against municipal government. Technically, an existing appeal procedure is available through the commencement of an action in the Court of Queen's Bench. If the damage suffered by the complainant is \$1,000 or less, a referral is normally made to the Small Claims Procedure established under Rule 75 of the Rules of Court. In certain special circumstances such as the case cited above and those cases involving more than \$1,000 which are prohibitively expensive to pursue through legal action, the Office must determine whether or not an effective remedy is available to the complainant. In addition, the claims adjustment procedure followed by a given municipality is deemed to be a matter of administration and subject to the Ombudsman's jurisdiction.

Another case received during the year illustrates why it is proper and even necessary for the Office to review such procedures.

In October 1981, a retired widow complained regarding the refusal by the City of Saint John to compensate her for damage to her property by a municipal snowplow.

The Assistant to the City Manager and the Office subsequently spent a considerable amount of time and effort to ascertain the basis for the denial of liability by the City's insurer. Ultimately, it appeared that the basis for this denial was the complainant's inability to positively identify the snowplow which damaged her property. Regrettably, the insurer refused to yield from this onerous standard of liability. As a result, the complainant was required to pursue her claim through the Small Claims Procedure. The Office advised the complainant of this recourse and assisted her in pursuing her remedy through it.

The complainant subsequently advised the Office that she was successful in her action. In light of this development, the City was requested to review its claims adjustment procedures with its insurer to determine whether there should be some alteration of the kind of standard of proof they were requiring of citizens who have suffered damage at the incidence of the municipality. In so doing, the following guidelines

commercial or residential construction on provincially controlled access highways. In addition, the Office continues to receive complaints from persons who have been refused access permits in circumstances where neighbours of a similar status have been issued a permit.

It is therefore recommended that further consideration of this policy be undertaken.

RIGHT TO INFORMATION ACT

Three petitions under the Act were received in 1983 bringing to 21 the total received since the Act was proclaimed January 1, 1980.

In the first case received in 1983, the New Brunswick Industrial Relations Board had refused to provide the complainant with information relating to a case it had recently decided. Apparently, the Board had failed to advise the complainant of the procedure under the Right to Information Act. The Office subsequently advised him to write to the Minister of Labour and Human Resources for the desired information and to avail himself of the appeal procedures, including this Office, if he did not receive a satisfactory response.

The second case related to a request for a report by the Review Board appointed by the Lieutenant-Governor under section 547(1) of the Criminal Code of Canada. Neither the Lieutenant-Governor nor the Review Board are included in the schedule of Departments under section 1 of the Right to Information Act. On the other hand, the Office of the Attorney General - which effectively discharges the Lieutenant-Governor's responsibilities under the Criminal Code of Canada - is included under the Act. The complainant had not made a formal request to the Chairman of the Review Board and he was advised to do so prior to any possible intervention by the Office.

In the third case received in 1983, the complainant requested her student file with the Department of Community Colleges. The Department had refused to release this information to her notwithstanding the provisions of section 6(b) of the Right to Information Act. Section 6(b) confers on citizens a right to personal information held by the Government on them. On the other hand, the complainant's request was but a minor aspect of a wider ranging grievance which the complainant had against the Department and which had recently been resolved to her satisfaction. As a result, she decided not to pursue her request for the information at the present time.

Apart from the cases received by the Office in 1983, it is also noteworthy that the federal Access to Information Act was proclaimed in 1983 with Inger Hansen as Information Commissioner. The Information Commissioner under the Federal Act functions in a manner similar to the Ombudsman under the Right to Information Act. The implementation of this important legislation means that New Brunswick citizens now have a right to most information held by both the provincial and federal levels of government.

ADOPTION INFORMATION (Child and Family Services and Relations Act SNB 1980, c.C-2.1, Part V, s.93)

Five cases under this Act were received in 1983, bringing to eight the total received since the legislation was proclaimed September 1, 1981.

In the first case, a post-adoption services worker had advised an adoptee that the only adoption information held by the Department was the name of her birth mother, which was information of an identifying nature and exempt from disclosure under the Act. Notwithstanding the adoptee's failure to appeal to the Minister of Social Services, the Office commenced a review in an effort to determine whether the Government of New Brunswick was properly ascertaining all adoption information on a given applicant prior to providing a response. In this case, it was found that no contact had been made with the hospital where the adoptee was born or the adoptee's delivering physician in order to obtain additional birth information about her. These steps were subsequently taken; however, they yielded no additional information.

In the second case received during the year, the Department had orally provided the adoptee with all adoption information it held on him except the name of his birth mother. As in the first case, it was suggested that the Department make efforts to obtain birth information from other public sources and the Department agreed with this suggestion. Regrettably, it was later determined that the hospital where the adoptee was born had purged its records of all details of the birth.

The third case did not involve an adopted person. Rather, the citizen had been placed in a foster home at an early age and had lost contact with his mother. His later efforts to locate her had proved unsuccessful and he turned to the Department of Social Services for assistance. Initially, he was advised that, since he was not an adoptee, the provisions of the Act were not available to him. However, as a result of his persistence and the encouragement of the Office, he subsequently obtained some non-identifying birth information from the Department. He was then advised that, if he still wished additional information from the Department, he should request it under the provisions of the Right to Information Act.

The fourth request was from a mother who had placed a child for adoption several years earlier. She wanted to know the child's present name and residence. Such identifying birth information is exempt from disclosure under section 92 of the Child and Family Services and Family Relations Act. In such a circumstance, the mother was advised to register with the Post-Adoption Register. The Act provides that, where both birth parent and birth child register with the Department, the latter may take steps to reunite them.

The fifth case received by the Office has been the subject of a protracted review with the Department and a number of other agencies since 1982. The applicant had received a considerable amount of information about

her birth mother prior to the passage of the legislation. Indeed, she had received all the non-identifying information under the Department's control prior to 1981. On the other hand, the Department (or its predecessor, a children's aid society) had lost one of the two Government adoption files. In addition, both the court file and the hospital file relating to the applicant's adoption were also lost. As a result of a lengthy review by the Office and the Department, the files were found. The hospital file contained a small amount of additional non-identifying information and this was released to the applicant. The court file contained no new information. However, it was found with dozens of other adoption files which had also been lost and were therefore of potential benefit to a number of other adoptees. In addition, the challenges presented by this case prompted the Department to obtain new legislative access powers giving it a right of access to files held by courts and religious, medical and social service agencies or facilities.

At year's end, this one file remained opened as efforts to find the remaining missing file continue.

AVOIDING 1984 - THE NEED FOR A FEDERAL OMBUDSMAN

The introduction of the ombudsman concept to Canada was seen as a means by the legislative branch of government "to penetrate at certain specific points the shield which ... protects such a vast area of legislative and executive decisions from proper scrutiny." The first judicial pronouncements characterized the function as that of "a watchdog, designed to look into the entire workings of administrative laws." Between 1967 and 1979, nine provincial legislatures eagerly embraced the concept and appointed ombudsmen to buttress their traditional highly-personalized brand of representative democracy. The appointment of "classical" ombudsmen - independent officials, responsible to the legislature, armed with the formal power to investigate and the more informal power to correct, administrative error - was an integral means by which provincial administrations have responded to the implementation of the modern state structure in Canada.

During the same time frame, the federal government has appointed four "specialist" ombudsmen whose legislative personality parallels that of their provincial counterparts, except for the very narrow spheres of public activity over which they exercise jurisdiction. Ottawa recognized this shortcoming in its 1977 White Paper and its subsequent introduction of Bill C-43 (1978).

The death of Bill C-43 (1978) and the failure to honour subsequent 1977 & 1978 Throne Speech pledges to establish a Federal Ombudsman have left the gap unfilled. Efforts to revive the issue - notably the submission by the International Ombudsman Institute for entrenchment of federal and provincial Ombudsmen in the 'Democratic Rights' section of the Charter of Rights and Freedoms - have so far failed to revive the proposal.

Other factors - negative ones - are reviving the issue. The growth - and growing insensitivity - of the federal public sector has resulted in an unprecedented loss of public confidence in the federal government. There are approximately 450,000 445,348 federal public servants in Canada, interacting with the citizen at every turn. By comparison, there are only about 370,000 persons in all of the provincial public service combined. These public servants are called on to administer a maze of programs and services which are increasingly difficult to rationalize in terms of any coordinated goal-oriented public policy. Some commentators argue that a sense of confusion and helplessness is transforming public concern into public apathy. The most credible basis for this argument is the growing breakdown in communication between the federal public service and the citizenry. Problems in communication inevitably increase as a factor of the size and complexity of the bureaucracy. It is axiomatic that the more pervasive the activities of government, and the more its points of contact with the citizen, the more difficult it becomes for the average citizen to receive answers and to understand why we have or need our type of government.

An Ombudsman solves problems arising from the complexity of the bureaucracy. The investigative process is the cornerstone of ombudsmanship. It results in the correction of abuse or the understanding of correct government action. It is through the investigative process that proper respect is paid to the specific grievance of the average citizen. As Lord Denning, a famous British jurist, has said: "For the little man, for the grievances against maladministration, the ombudsman may be the right answer".

It is also through the investigative process that the ombudsman uncovers weaknesses in government policy and procedures, which he brings to the attention of public servants and Parliament through the recommendation process.

In executing both the investigative and the recommendatory roles, an ombudsman complements the role of the elected member - accepting referrals, rendering advice informally or by recommendations, freeing legislators to concentrate on matters of legislation, policy and non-contentious assistance to constituents.

To a considerable extent, the role is analogous to that of an auditor-general. Just as the auditor-general scrutinizes government financial operations in a manner complementary to that of an M.P., so an ombudsman acts as administrative auditor. Indeed, the State of Israel combines the two functions in the Office of State Comptroller.

In 1977, 1979 and 1982, Canadian Legislative Ombudsmen have called upon the federal government and Parliament to establish an ombudsman. This call has been based on the large number of federal complaints lodged with provincial offices - between 5% and 20% of their total complaints, (see attached Summary of Federal Complaints Received by Provincial Ombudsmen). The litany of such complaints forms perhaps the most eloquent call for a federal office:

- identical social insurance numbers issued to two different persons, resulting in incorrect Revenue Canada assessments and confusion of dates by private insurance companies; complaint unresolved after five-year battle with federal bureaucracy;
- refusal by Department of Fisheries and Oceans to return value of seized fish, notwithstanding a six-month-old court order to do so;
- high pressure collection practices by Canada Student Loan officials against university graduate while she underwent three kidney operations and dialysis treatment;
- refusal by the Department of Public Works to maintain a breakwater as it had agreed to do, resulting in massive erosion of citizen's property;
- delay of up to six months in acknowledgment of receipt of appeal form from C.P.P. disability pension applicant;
- refusal by Department of the Environment to provide environmentally-safe working conditions for employee;
- refusal to pay old age pension to retired embassy worker because records of overseas employment with Canadian government had been destroyed by Ottawa;
- termination of employee of Department of Indian and Northern Affairs following his revelation of wrongdoing by others;
- failure by Canada Employment and Immigration Commission to issue pay cheques due under federal-provincial Job Creation Program, notwithstanding efforts of provincial partner;
- refusal by Canada Mortgage and Housing Corporation to investigate complaints of improper and incorrect building practices;
- failure by Unemployment Insurance Commission to properly explain reasons for penalties, reasons for refusals, appeal mechanisms, or to communicate effectively in a multitude of ways with citizens;
- failure by Department of National Defence to follow fair procedural rules in termination of personnel on medical grounds.

The above is but a sampling of the complaints received on a daily basis by provincial ombudsmen. Most are presently referred to Members of Parliament who, as mentioned above, must ascribe an importance to them which is secondary to that of law-maker, policy-maker or job-creator - and who are partisans. Indeed, all of the cases alluded to above were resolved by provincial ombudsmen following unsuccessful overtures to and by Members of Parliament. This is not a criticism but the identification of a need.

Should the federal government fulfill its commitment to an ombudsman, the office could take one of a number of forms: an Ombudsman with a central staff accepting complaints directly from the public (e.g. Sweden and the Netherlands), an Ombudsman with central and regional staff accepting complaints directly from the public (e.g. Australia), an Ombudsman who investigates complaints referred by legislators (e.g. France and Britain) an Ombudsman Commission (e.g. New Zealand), a petitions committee of parliament with investigative staff (e.g. West Germany and Austria), or the combination of the Ombudsman and other regulatory roles (e.g. Israel). The proven structural versatility of the institution results from a recognition that what an ombudsman does and is depends on what a particular country, culture and system of government wants and needs the institution to be. This decision is properly left to Parliament itself.

Perhaps the first, most important step would be to establish a parliamentary committee to consider and recommend an ombudsman for Canada.

In closing, we commend to those charged with stewardship of Canada's government, the following observation by Dr. I. E. Nebenzahl (Israel's former Comptroller and Ombudsman):

"Today's ombudsman is a profoundly democratic institution. With the right to complain, the individual citizen is given a means of directly influencing the administration, more specifically and, in its own time and place, more powerfully, than by casting his vote as one of many in an election".

We recommend immediate steps be taken to initiate the establishment of Canada's first federal Ombudsman.

SUMMARY OF FEDERAL COMPLAINTS RECEIVED BY CANADIAN PROVINCIAL OMBUDSMEN (1981 reporting year)

Province	No. of Federal complaints received	% of total complaints received
B.C.	381	8.0
Alta.	259	9.3
Sask.	190	15.5
Man.	19*	3.6
Ont.	575	5.6
Qué.	334	4.1
N.B.	116	8.7
N.S.	124	10.5
Nfld.	83	17.5

* written complaints only

HIGHLIGHTS

Case Summaries (see also COMPLAINTS RECEIVED AND COMPLAINT SUMMARIES)

- non-compliance with employee grievance procedure by Department of Community Colleges
- insistence by Department of Education that teacher make career decision while in intensive care unit of general hospital
- complaint by parent that annual Christmas pageant violates Schools Act
- requirement that mobile homeowner pay property tax arrears of which he had no notice
- failure by vendor to notify customers of sales tax liability
- sale of vessel by Fishermen's Loan Board without written contract
- non-receipt of property tax credit under Residential Property Tax Relief Act
- correction of erroneous Sheriff's deed by Department of Municipal Affairs
- use of vulgar and abusive language by correctional officers against prisoners
- shortage of exercise periods offered to inmates
- refusal by Medicare to pay out-of-province claims
- commencement date of interest charge on loan from Fisheries Development Board
- failure by Department of Transportation to complete forms in uniform manner
- problems regarding Rural and Native Housing Program
- high pressure collection methods by Canada Student Loan officials
- refusal by Workers' Compensation Board to award widow's benefits

STATISTICS

Table 1 indicates that the Office handled 1307 complaints against provincial and municipal governments in 1983. This includes 1089 new complaints received in 1983 as well as 218 which had been carried over from the previous year.

Table 2, which sets out the geographical origin of complaints, indicates the extent to which the origin of complaints is proportional to the provincial population distribution. Thus, the five northern counties of Victoria, Madawaska, Restigouche, Gloucester and Northumberland comprise 31.2% of the provincial population and in 1983, the Office received 32.6% of its

complaints from these counties. Similarly, the four most populous counties - Westmorland, Gloucester, Saint John and York - comprise 51% of the provincial population and in 1983, 52.1% of the complaints to the office emanated from them.

Table 3 again reflects the importance of private hearings as a means of making citizens aware of their right to complain to the Ombudsman. As one Member of the Legislative Assembly succinctly stated: "I must compliment you on your efforts to make your Office more accessible to the public. Collectively, we will all benefit."

Table 3a demonstrates graphically the total number of complaints received during the year. It reflects the fact that both the total number of complaints (1623) and the number of complaints against provincial and municipal governments (1089) increased significantly over the previous year. Not included in the graph are 180 requests for information received through the year.

Table 4 identifies complaints received according to sex and official language of communication. 69.8% of complaints were received from males, a decrease of 16% from the previous year. Anglophone complaints comprised 73.6%, a decrease of .2% from 1982.

Table 5, with the statistical tables included with the case summaries, sets out the number and percentage of complaints lodged against individual public agencies. A significant decline in the number of complaints lodged against the Department of Justice may be reflective of the improved prisoner complaint procedure developed by the Department in cooperation with this Office. Significant increases in the number of complaints are noted in relation to the Departments of Health and Transportation as well as the New Brunswick Housing Corporation and the Workers' Compensation Board. No conclusions are drawn with respect to this result.

Table 6 identifies the percentage of complaints within the Office's jurisdiction. 66.1% of the complaints received were within jurisdiction.

Tables 7 and 8 explain the disposition of files closed in 1983. Table 7 includes the disposition of those files opened before 1983; Table 8, those opened during the reporting year.

Table 7 indicates that, with respect to cases commenced before 1983 and closed during the year, sixty-six (32.5%) were found to be justified or partially justified. The Office provided assistance in twenty-five (12.3%) other cases.

Table 8 reveals that 79 complaints - 7.9% of the files opened and closed in 1983 - were justified or partially justified. In addition, the Office provided assistance in 123 (12.3%) other cases.

In addition to the figures contained in the statistical tables, the reader's attention is drawn to the statistics included with the case summaries. They reflect the Office's experience with individual departments, agencies and municipal corporations.

The mode of reception of complaints in 1983 was as follows:

(a) received by letter	262
(b) received by interview	210
(c) received by telephone	601
(d) own motion	16

Appendices

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ADOPTION INFORMATION

Carried from 1982 -	1
Complaints received -	5
Declined (no jurisdiction) - No assistance possible	2
Discontinued (Ombudsman) - Partially rectified	1
Unsupported - No assistance possible	2
Under investigation	1

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Carried from 1982 -	1
Complaints received -	8
Declined (no jurisdiction) - No assistance possible	2
Declined (discretionary) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	3
Unsupported - No assistance possible	2
Justified - No assistance possible	1

83-110-6

A farmer alleged that the Department gave faulty design recommendations for the ventilation system in his piggery.

According to the complainant, the ventilation system recommended to him by the Department caused excessive humidity in the farrowing and finishing pens of his piggery, resulting in the contraction of rhinitis by large numbers of young pigs. The complainant further alleged that the deaths attributable to this disease rendered his operation financially insolvent and precipitated the sale of his piggery by the Farm Adjustment Board.

The Office completed a detailed investigation of the complaint, including an examination of Farm Adjustment Board files relating to the complainant, plans of the piggery and of its ventilation system, an inspection of the piggery with senior departmental officials and discussions with a hog-raiser whose piggery had a ventilation system similar in design to the complainant's.

As a result, the complaint was found to be unsupported.

The Office's investigation indicated that, while start-up problems, such as those experienced by the complainant, are not uncommon among piggery operators, these may be successfully overcome by, among other things, adequate capitalization, competent management and the technical assistance of the Department. In this regard, it was noted that the Farm Adjustment Board was concerned from the outset that the

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complainant's finances might be inadequate to establish and operate a piggery. With respect to the alleged inadequacy of the ventilation system, the Office was unable to comment on its technical merits. However, the system was one recommended on the basis of its acceptance by the Federal Department of Agriculture and its proven effectiveness in other environmentally-controlled piggeries. In addition, advice was received that the other ventilation system widely used in New Brunswick piggeries was based on an intake-exhaust principle which, the complainant alleged, had created his ventilation problems.

In such circumstances, the complainant was advised of the Office's findings and referred to Legal Aid New Brunswick for possible further assistance on his allegation of negligence.

In concluding its review, the Office noted that, although the environmentally-controlled piggery operated by the complainant was one with respect to which he had no experience, the Department nevertheless waived the three-month training course normally required of new hog producers on the basis of his largely unrelated prior farming experience. In view of the results obtained by the complainant, it appeared that the Department had done him no favour in waiving this requirement.

ALCOHOLISM AND DRUG DEPENDENCY COMMISSION OF NEW BRUNSWICK

Complaints received -	3
Discontinued (Ombudsman) - No assistance possible	2
Discontinued (Ombudsman) - Assistance rendered	1

CIVIL SERVICE COMMISSION

Carried from 1982 -	2
Complaints received -	14
Declined (no jurisdiction) - No assistance possible	1
Declined (discretionary) - Assistance rendered	3
Discontinued (Ombudsman) - No assistance possible	1
Discontinued (Ombudsman) - Assistance rendered	3
Discontinued (complainant) - No assistance possible	2
Unsupported - No assistance possible	5
Partially justified - Assistance rendered	1

**DEPARTMENT OF
COMMERCE AND DEVELOPMENT**

Carried from 1982 -	1
Complaints received -	8
Declined (no jurisdiction) - No assistance possible	1
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	3
Discontinued (complainant) - No assistance possible	1
Discontinued (complainant) - Assistance rendered	1
Unsupported - No assistance possible	1
Partially justified - No assistance possible	1

CABINET SECRETARIAT

Complaints received -	1
Discontinued (complainant) - No assistance possible	1

**DEPARTMENT OF
COMMUNITY COLLEGES**

Carried from 1982 -	3
Complaints received -	17
Declined (no jurisdiction) - Assistance rendered	2
Discontinued (Ombudsman) - No assistance possible	9
Discontinued (Ombudsman) - Assistance rendered	4
Unsupported - No assistance possible	1
Justified - Rectified	2
Under investigation	2

82-371-8

A former instructor grieved regarding his dismissal as a term employee at a campus of the New Brunswick Community College.

Specifically, he complained of the refusal by the administration of the campus to provide him with a grievance form which, he alleged, resulted in delay in the processing of his grievance and its subsequent rejection by the Deputy Minister because of late filing.

The Office held discussions with the Senior Executive Officer of the Public Service Labour Relations Board and subsequently assisted the complainant in an application before the Chairman of that Board for the enlargement of time limits for filing a grievance. The complainant was successful in the application; indeed, in granting an extension of time limits to file a grievance, the Chairman of the Public Service Labour Relations Board found that "the grievor did promptly request a grievance form from the employer" that "this request

was arbitrarily refused and, on that ground alone, I would allow an extension of time for the filing of the grievance". In a subsequent hearing before an adjudicator, the complainant was awarded two months' pay because the collective agreement provided for a minimum of two months' pay in lieu of notice of termination. The complainant subsequently confirmed his receipt of financial compensation.

At the same time, he requested that the Office review of a number of more general complaints he had with the Department, including the provision of grievance forms, the definition of the phrase "term employee" and the treatment of term employees. These questions were satisfactorily dealt with by the Department's Deputy Minister. In addition, the Public Service Labour Relations Board wrote to the Director of Labour Relations of the Department of Treasury Board, reminding him of the public employer's obligation to make grievance forms available to employees on request.

The Office subsequently concluded its review of this complaint.

83-371-9 & 83-371-10

Two complainants, both instructors at a campus of the New Brunswick Community College, complained regarding their lay-off following the replacement of their subject area by a similar, but technically different one.

Both instructors had over twenty years of good service, teaching the same course on the same campus of the College. One of the two men was a war veteran with less than five years service lacking to reach normal retirement age.

The course taught by the complainants had been replaced at the instigation of the federal government, which purchased all the "seats" in the course, and a number of instructors had been laid off throughout the Province. Concurrently, new courses were being introduced. As a result, the two complainants were invited to apply for a single available position; they both refused to do so.

Unfortunately, the eclipse of the course taught by the complainants had transpired in such a way that bitter animosity was now felt by both men towards the Principal of the Campus. The younger of the two instructors claimed that these feelings were partially responsible for a recent heart attack he had incurred. In such an atmosphere, mediation proved impossible, notwithstanding the efforts of the Department's administration and the Office and the review was subsequently discontinued.

While this case pointed to a very severe breakdown of communication between manager and employees in a particular instance, the Office's experience is too limited in this sphere to determine whether such shortcomings in human relations' skills are general either within the Department or in the public service as a whole.

**COMMUNITY IMPROVEMENT
CORPORATION**

Carried from 1982 -	1
Complaints received -	2
Discontinued (Ombudsman) - No assistance possible	1
Partially justified - Rectified	1
Under investigation	1

82-340-1

A gentleman originally complained in 1976 regarding the Corporation's refusal to grant him title to a property he was occupying in Nicholas Denys.

In his 1976 grievance, the complainant stated that the Corporation had permitted him to occupy a house it had purchased as part of a resettlement program which it undertook in the 1960's and 1970's. The Corporation denied this, arguing that such occupancy would be contrary to its policy of removing the population in the Robertville area to the City of Bathurst. In the absence of any documentary evidence to support the complaint, it was found to be unsupported.

The complainant approached the office again in June, 1982, at which time he was still occupying the same house. In the interim, the Corporation had reversed its resettlement policy and was now willing to sell the house to him. Through the considerable efforts of the Corporation, Central Mortgage and Housing Corporation and this Office, the complainant was able to secure the necessary financing and obtain title to the property. Regrettably, the surveyor engaged by the Corporation placed the boundary lines of the complainant's property so as to alienate the water and septic systems from it. These systems were woefully inadequate and, through the intervention of the New Brunswick Housing Corporation, the complainant was able to obtain a partially-forgivable loan to install a new well and septic system within the metes and bounds of his property.

DEPARTMENT OF EDUCATION

Carried from 1982 -	4
Complaints received -	32

Declined (no jurisdiction) - No assistance possible	4
Declined (no jurisdiction) - Assistance rendered	1
Declined (discretionary) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	10
Discontinued (Ombudsman) - Assistance rendered	4
Discontinued (complainant) - No assistance possible	1
Unsupported - No assistance possible	5
Unsupported - Assistance rendered	1
Justified - Assistance rendered	1
Justified - Rectified	2
Under investigation	6

83-130-1

The New Brunswick Teachers' Association referred a teacher's grievance regarding the effective date of her retirement by reason of disability.

The complainant had suffered a severe heart attack in April, 1981, and had been severely disabled since that date. She used up all of her outstanding sick leave credits during the remainder of the 1980-81 school year and was then granted a leave of absence without pay. During the 1981-82 school year, her condition did not improve and she ultimately indicated, in the late spring of 1982, that she wished to resign. In discussion with School Board officials, she was advised they were prepared to accept her resignation, effective June 30, 1981. Later, the complainant was advised that the Department had refused permission to the School Board to accept such a retroactive resignation.

On review, it was determined that the Department of Finance, in its efforts to assist the complainant, had suggested she wait until her condition stabilized before making a decision on retirement. She was also advised that it would probably be possible to make her retirement date retroactive to June 30, 1981, if she ultimately decided to resign. It was also determined that the Department had decided to deny benefits to the complainant on the basis of certain provisions of the Collective Agreement between the New Brunswick Teachers' Federation and the Department of Treasury Board, which were designed to protect the rights of teachers. In reply, the Federation advised that it was quite prepared to waive this protection for the complainant's benefit and that such a waiver had been accepted by the Department previously (coincidentally, it had occurred in an earlier case involving the Office). The Department also relied, to a lesser extent, on the fact that it, and the School Board, had urged the complainant to make a decision on retirement at a much earlier date. Incredibly, it was found that a number of these requests had been made while the complainant was a patient in the intensive care unit of a public hospital. It was the opinion of the Office that this was hardly a propitious moment for a senior professional person to make an important career decision.

The Department subsequently waived its objection to the provision of a retroactive pension to the complainant, and the School Board revised her date of retirement accordingly.

83-130-8

A married woman complained of the refusal by a school board to hire her, a decision which was based partly on her husband's employment in the same School District.

The School Board had quite candidly stated that, in hiring a teacher, limited consideration would be given to the employment status of the applicant's spouse. The complainant appealed this decision through a number of avenues, including the Minister of Education, the Advisory Council on the Status of Women, the New Brunswick Human Rights Commission and her union. For a variety of reasons, each of these agencies was precluded from assisting her in meeting the specific ob-

jective of being awarded the position sought. However, the Minister expressed his concern with the decision and took steps to assist the complainant in obtaining future employment.

The New Brunswick Human Rights Commission referred the matter to the Office, because, although it had the authority to investigate complaints based on marital status, this power did not extend to the intrinsic qualities of such a status, i.e., if a person was discriminated against because he/she was married or was not married, the Commission could intervene. However, if a person was discriminated against because of who he/she was married to, the Commission had no jurisdiction. This question had been judicially determined and it, therefore, appeared that the Office had jurisdiction to proceed with its investigation.

At this point, the complainant advised that she had now obtained employment as a teacher within the School District in a subsequent job competition. However, she remained concerned about the policy which had given rise to her complaint.

The Office, therefore, continued its general review of the question. The Department was sympathetic to these overtures and, as a result, a General Memorandum was circulated to all school board chairmen, superintendents and secretaries, setting out strict guidelines regarding hiring practices based on marital status or sex.

83-130-13

The head of the physical education department in a New Brunswick school complained regarding the use of synthetic flooring in school gymnasiums in the Province.

In the complainant's opinion, the use of synthetic flooring produced an increased risk of physical injury and hindered an athlete's advancement possibilities.

The Office's role in reviewing discretionary decisions, such as this one, is to satisfy itself that the action taken is "reasonably defensible". This approach roughly parallels the more advanced judicial approach to the review of ministerial discretion.

In this case, the Director of the School Buildings Branch provided the Office with documentation indicating that synthetic gymnasium flooring is more practical than hardwood flooring, particularly in elementary and junior high schools. In a discussion with one of the Province's leading university physical educators, we were advised that synthetic gymnasium flooring is acceptable, provided that physical education instructors are aware of, and impart to students, the necessarily-different prerequisites with regard to footwear and movement on such types of flooring; he concluded that the distinction between the two types of flooring was similar to that between "a Cadillac and a Chevrolet".

The office subsequently concluded its review of the matter.

82-130-41

A parent complained of a school's decision to hold an annual Christmas pageant. In his opinion, this action was a contravention of Section 76 of the Schools Act, which states that "all schools conducted under (this) Act are to be non-sectarian".

The child's school had advised her that, based on her religious views, she would not be obliged to participate in the pageant. However, her father argued that the pageant should be non-religious so that she could participate in it. The complainant had written to the Minister of Education on this matter but was not satisfied with the response.

The complainant's viewpoint could be summarized as the argument that, under the Canadian Charter of Rights and Freedoms, the child was not receiving the equal benefit of the law because of religion. However, these Charter provisions are neither in force nor have they been adjudicated. In addition, it appeared that the prohibition contained in Section 76 assumed some religious aspect to the operation of the schools under the Act.

The complainant was advised accordingly.

DEPARTMENT OF ENVIRONMENT

Carried from 1982 -	4
Complaints received -	8
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	2
Discontinued (complainant) - No assistance possible	1
Unsupported - No assistance possible	2
Justified - Assistance rendered	1
Under investigation	5

82-270-5

A resident complained of noxious odours emanating from a municipal sewage lagoon situated about a block from his property.

On initial review with the Department and the Municipality, both stated the lagoon was functioning well and they were aware of no problems with it. However, further investigation by the Department revealed that the lagoon was being overloaded and that the system would probably have to be upgraded. The Department undertook to complete the follow-up work required to determine the extent of the upgrading needed.

This information was passed on to the complainant, who, in turn, implied that the result was satisfactory.

DEPARTMENT OF FINANCE

Carried from 1982 -	7
Complaints received -	35
Declined (no jurisdiction) - No assistance possible	3
Discontinued (Ombudsman) - No assistance possible	8
Discontinued (Ombudsman) - Assistance rendered	4
Discontinued (complainant) - No assistance possible	1
Unsupported - No assistance possible	8
Unsupported - Assistance rendered	2
Justified - Assistance rendered	1
Justified - Rectified	10
Justified - Recommendation	3
Under investigation	2

83-140-2

A homeowner grieved the refusal by a mortgage company to make interest payments with respect to money held by it in his property tax account.

On review with the Provincial Tax Commissioner, he indicated that his Department has no control over bank or other mortgage company procedures. However, he also pointed out that mortgagees have a choice to pay their property taxes through a mortgage lender or to make direct payments to the Minister of Finance. He also pointed out that it is sometimes advantageous to make direct payments because of the higher interest paid on such accounts by the Department.

This information was passed on to the complainant.

83-140-8

A school teacher complained regarding the requirement that she make additional interest payments with regard to her purchase of outside teaching service for pension purposes in 1973.

At the date of her application to purchase pension credit, the complainant was advised she would be required to pay an amount which included the amount of interest payable on the date of the application. The reverse portion of the application provided for the payment of additional interest if the purchase was by instalments. The complainant paid the price set out on the face of the application by instalments and the School Board confirmed that she had completed the purchase.

Some three years later, she received a letter stating there was a balance of \$1,241 owing, representing interest due from the date of the application to the date of the final instalment payment.

On review with the Department, it advised that, in view of the information given to the complainant by the School Board, it would not pursue its claim for the accumulated interest.

83-140-10

The owner of a mobile home complained regarding efforts by a collection agent, retained by the Department, to collect property tax arrears incurred by a previous owner of the mobile home. On review, it was determined that the complainant had no knowledge of property tax arrears on the mobile home and that none had been indicated on the various property tax notices which he and his immediate predecessor had received.

On being apprised of this, the Provincial Tax Commissioner withdrew the complainant's account from the collection agent and proceeded to write off the debt.

This action resolved the matter to the complainant's satisfaction.

82-140-20, 82-140-21, 82-140-23, 82-140-26, 82-140-30

Five purchasers of prefabricated homes grieved in the fall of 1982 regarding the Department's decision to assess sales tax penalties against them, as a result of their failure to pay sales tax at the date of their respective purchases.

The complainants, and approximately ten other persons, had purchased prefabricated homes from a New Brunswick dealer; the homes were shipped direct from the manufacturer's plant outside New Brunswick to the complainants and the dealer failed to collect sales tax on the transactions.

Under the Social Services and Education Tax Act, it is the duty of a vendor to collect sales tax on goods sold by him. The Act defines "vendor" to include "an agent of a principal located outside the province" and the New Brunswick dealer was such a person. As a result of his failure to correctly discharge his duties as an agent of the Department of Finance for the purpose of collecting sales tax, the Office informally recommended that penalties assessed against the five complainants and other purchasers of the homes be written off. This recommendation was accepted.

The complainants had a second complaint, namely, that they had not been granted a tax exemption with respect to insulation materials in the prefabricated homes. Following further review with the Department and a technical assessment by the Energy Secretariat, the homes were reassessed and tax exemptions were granted on insulation materials.

One of the purchasers had a third complaint, namely, the Department's refusal to grant him a sales tax exemption with respect to the rebated portion of the purchase price of his home. This matter remained under review at the end of the year.

82-140-24

A gentleman grieved the imposition of sales tax on the purchase of a used motor vehicle.

According to the complainant, he had recently purchased a 1974 compact car for \$150. On submitting the bill of sale and a cancelled cheque to a revenue office, he was advised that the red book value of the car was \$750, and that he would have to pay sales tax on the red book value or obtain an independent appraisal of the vehicle and submit it to the Department. According to the complainant, he was not advised of the provisions of paragraph 4(c) of the departmental policy regarding motor vehicle evaluation on private sales, i.e., that he could appeal the matter to the Provincial Tax Commissioner, without necessarily obtaining an independent appraisal. The complainant further indicated that he obtained an appraisal from an independent appraiser at a cost of \$15. The appraiser valued his vehicle at \$200, which amounted to a sales tax difference of only \$4.

On review with the Department, it obtained a report from its revenue office which indicated that the complainant had left without giving departmental officials an opportunity to explain the policy.

Notwithstanding this position, the Provincial Tax Commissioner gave the complainant the benefit of the doubt and reimbursed him the appraisal fee.

DEPARTMENT OF FISHERIES

Carried from 1982 -	3
Complaints received -	5
Discontinued (Ombudsman) - No assistance possible	2
Unsupported - No assistance possible	1
Partially justified - Partially rectified	1
Justified - Rectified	1
Under investigation	3

83-150-1

A fisherman complained regarding the commencement date of interest charges on a loan from the Fisheries Development Board.

The complainant's loan was approved by the Board on June 23, 1980, but a cheque was not issued to him until July 18 of the same year. Nevertheless, the Board charged interest on the loan from the date of its approval. At the outset of this review, the Office was advised that the practice of commencing interest charges on the date of a loan approval was a long-standing one. However, on the informal recommendation of the Office, the policy was revised to provide that interest payments would henceforth commence on the date of issuance of a loan.

80-150-4

A fisherman complained regarding the Department's refusal to compensate him for improvements which he had made to a fishing boat purchased from, and subsequently repossessed by, the Department.

The complainant obtained a repossessed boat from the Fisherman's Loan Board in May, 1976; the boat was obtained by private arrangement between the fisherman and the former Chairman of the Fisherman's Loan Board. As a result, the Fisherman's Loan Board never authorized approval to purchase the boat, never authorized the loan to the complainant, never received a loan application from him, never received a down-payment on the purchase and never authorized a \$6,000 expenditure for radar and net-hauling lines. The complainant did sign a contract to purchase the boat. However, the price and repayment terms of the contract were crossed out and no one signed it on behalf of the Fishermen's Loan Board. One of the Board's employees confirmed that the complainant had spent approximately \$4,000 to repair the boat and that this was alleged to constitute a down-payment for the vessel.

This case posed a dilemma for the office. On the one hand, the complainant, knowingly or otherwise, was a party to the breaking of practically every rule of the Fishermen's Loan Board. On the other hand, the former Chairman of the Board had initiated this action and the Board had subsequently repossessed the boat without first implementing any formal contractual arrangements with the complainant.

Given such a balance, the office sided with the complainant and recommended reimbursement of the expenses claimed by him and confirmed by the Board.

This reimbursement was subsequently made to the complainant.

DEPARTMENT OF HEALTH

Carried from 1982 -	8
Complaints received -	82
Declined (no jurisdiction) - No assistance possible	12
Declined (no jurisdiction) - Assistance rendered	4
Declined (discretionary) - No assistance possible	2
Discontinued (Ombudsman) - No assistance possible	30
Discontinued (Ombudsman) - Assistance rendered	7
Discontinued (complainant) - No assistance possible	5
Unsupported - No assistance possible	11
Unsupported - Assistance rendered	2
Partially justified - Rectified	1
Justified - No assistance possible	1
Justified - Assistance rendered	1
Justified - Rectified	5
Under investigation	9

83-160-9

A father complained that Medicare New Brunswick had refused to reimburse him for out-of-province, argon laser surgery for the treatment of a congenital capillary hemangioma (port-wine stain) for his daughter.

On review, Medicare advised that it was now prepared to reimburse persons for such treatment, but that beneficiaries who had submitted claims prior to 1983 could not be identified nor compensated.

Upon receipt of the details of the complainant's claim from the Office, Medicare reimbursed him for the treatments his daughter had received. The complainant confirmed his receipt of payment and in so doing, stated that "now I appreciate much more the work of the Ombudsman's Office".

83-160-13

A woman complained in March regarding alleged delay in the receipt of a birth certificate from the Registrar-General.

The complainant was a retiring teacher who required a birth certificate for pension purposes and who claimed she had applied for one some three to four months earlier.

A telephone call to the Registrar-General's office elicited a prompt (and friendly) response, and a few days later, the complainant received her birth certificate.

83-160-54

A newspaper reporter grieved the refusal by a hospital board to provide him with information regarding the suspension of one of its physicians.

The Office pointed out to the journalist that it has recommended an amendment to the Right to Information Act to provide greater public access to Hospital board files in both its 1981 and 1982 Annual Reports. However, this recommendation has not yet been implemented.

80-160-56

A woman complained of Medicare New Brunswick's refusal to reimburse an American hospital for hospital charges incurred following her referral to that hospital by a New Brunswick physician. Medicare had refused the claim because the referral was for elective surgery only and reimbursement was not available for such a procedure under the Department's out-of-province Medicare rules.

On review, the complaint was found to be justified.

The complainant and fourteen other patients had been referred to the American hospital by doctors whose New Brunswick hospital had recently been closed. These doctors also had visiting privileges at the American hospital and had decided to refer a number of patients to it. Like most New Brunswick physicians, these doctors administered certain aspects of the Medicare Program for the Department and, in each case, there appeared to arise a presumption that the doctors failed to advise their patients of Medicare's rules prior to treating them at the American hospital. While there was no conclusive evidence that the claimants were intentionally misled by the doctors, this was alleged to have been the case by a number of them.

Furthermore, there was evidence in Medicare files, or as a result of contact by the Office, that they received the advice that there were no beds available at the New Brunswick hospital and that they would have to be treated at the American one. Since the doctors had medical privileges at both hospitals, it was unnecessary for them to make a referral. It was possible for one to generalize that all of the affected complainants had incurred a debt as a result of an omission by a physician charged with one aspect of the administration of the Medicare Program, and it appeared unreasonable that the complainants should have to bear the expense of this omission.

On the other hand, it also appeared that the American hospital may have been, to some extent, responsible for its own misfortune since members of its medical staff admitted patients who, they may have known, were ineligible for Medicare benefits.

As a result, it was recommended that the Department approach the American hospital with a view to effecting a 50% payment of eleven outstanding accounts. In addition, it was recommended that the Department reimburse the American hospital fully with respect to two other claims which appeared to have been referrals of an emergency nature, and thus eligible for full payment under Medicare rules.

The Department's Insured Services Appeal Committee accepted this recommendation and it was subsequently implemented by the Department.

DEPARTMENT OF JUSTICE

Carried from 1982 -	55
Complaints received -	200
Declined (no jurisdiction) - No assistance possible	102
Declined (no jurisdiction) - Assistance rendered	7
Declined (discretionary) - No assistance possible	16
Discontinued (Ombudsman) - No assistance possible	60
Discontinued (Ombudsman) - Assistance rendered	11
Discontinued (complainant) - No assistance possible	2
Unsupported - No assistance possible	29
Unsupported - Assistance rendered	2
Partially justified - No assistance possible	3
Partially justified - Assistance rendered	4
Partially justified - Partially rectified	3
Partially justified - Rectified	1
Justified - No assistance possible	3
Justified - Assistance rendered	2
Justified - Partially rectified	2
Justified - Rectified	4
Under investigation	4

83-180-34, 83-180-132, 83-180-185

Three inmates complained about the use of vulgar and abusive language against them by correctional officers at two different facilities.

In each case, the complaints were justified. Happily, the Correctional Services Division took prompt remedial action without the necessity of a formal investigation.

83-180-70

A man complained regarding alleged negligence by a Crown Prosecutor in a criminal case.

The complainant alleged that he was the victim of a crime with respect to which the perpetrators had not been brought to justice. The parties against whom the prosecution was brought were convicted of vandalism, but charges of assault against them were dismissed by a Provincial Court Judge. The complainant was upset because he had suffered serious injuries in the incident, resulting in the loss of his employment.

Unfortunately, paragraph 12(2)(b) of the Ombudsman Act precludes the office from investigating complaints against public lawyers, including Crown Prosecutors.

The Crown Prosecutor had apparently failed to advise the complainant of his right to make an application for compensation under the Compensation for Victims of Crime Act. The Office provided this advice to him and suggested he obtain legal counsel to pursue such an application.

The complainant subsequently expressed his warm appreciation for this assistance.

82-180-260, 83-180-127

The office received complaints from the Saint John Regional Correctional Centre and the Fredericton Provincial Jail regarding the shortage of exercise periods offered to inmates.

Paragraph H-5.14 of the Institutional Policy and Procedures Manual states that: "Where operational requirements and weather conditions permit, all persons admitted to an institution shall be afforded a minimum of one half-hour recreation per day".

In the case received from the Saint John institution, a preliminary review at the Superintendent's level revealed that correctional officers had not complied with directions to provide a daily exercise period to inmates. This situation was corrected by the Superintendent.

The complaint from the Fredericton Provincial Jail stemmed from a departmental decision to lay off that institution's three casual employees - approximately one-third of its correctional officers. Since this action had been taken in the face of concern expressed by the Department's Correctional Services Division, the matter was reviewed at the deputy ministerial level. As a result of this review, one casual employee was reinstated to ensure compliance with institutional policy and procedures.

DEPARTMENT OF LABOUR AND HUMAN RESOURCES

Carried from 1982 -	2
Complaints received -	12
Declined (no jurisdiction) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	6
Discontinued (Ombudsman) - Assistance rendered	2
Unsupported - No assistance possible	1
Partially justified - Assistance rendered	1
Justified - Rectified	1
Under investigation	2

83-190-4

A laid-off employee of an insolvent cedar mill complained regarding the refusal by the Department to pay him and ten other former employees payments equal to the amount of vacation pay owed to them by their former employer.

Under a 1982 amendment to the Vacation Pay Act, the Minister of Labour and Human Resources had a discretion, where he was satisfied that all reasonable efforts had been made to obtain vacation pay from an employer and vacation pay remained owing, to pay an employee from funds appropriated for that purpose an amount equal to vacation pay benefits to which the employee was entitled. A number of payments were made under this provision; these served to exhaust the fund and the government decided to make no further appropriations for this purpose. The complainant believed that on the date he made his application, funds may have been available and that he may have suffered a loss as a result of this alleged delay.

On review with departmental officials, the Office was advised that payments were made by the Department only when it was clearly determined that an employer was insolvent - either by legal receivership or bankruptcy. Neither event had taken place regarding the complainant's employer, the principals of which gave the Department assurances that it would reopen under restructured ownership. Unfortunately, this never happened, and by the time the Department received final confirmation of the employer's demise, the Vacation Pay Act fund had been exhausted.

Provision had been made that, should additional Vacation Pay Act funds become available, applicants would be paid on a first-come, first-served basis. The Office was concerned that the complainant had not received advice that he should complete an application and this collateral matter was reviewed with the Department. Subsequently, the Department advised that, in the remote possibility that further funding did become available, the complainant would be paid.

82-190-5

The complainant, a stationary engineer employed by the New Brunswick Electric Power Commission, complained regarding the requirement that he upgrade his trade status of a Stationary Engineer - Class IV, to a Stationary Engineer - Class II.

According to the complainant, this qualification was not a condition of employment when he was hired by the Commission approximately three years earlier. In addition, he claimed that a Stationary Engineer - Class IV License was a sufficient qualification to operate all boiler and pressure vessel equipment at the plant where he worked. Finally, he alleged that the Commission was improperly "using" the Department of Labour and Human Resources to upgrade the qualifications of its staff.

On review with the Department, it initially stated that "the New Brunswick Electric Power Commission have the sole responsibility of determining the qualifications required to operate equipment, such as boilers, turbines, etc.". This appeared to be a somewhat startling statement, in view of the legal requirements of the Boiler and Pressure Vessel Act. On further review with the Chief Boiler Inspector, we were advised that, while the complainant had correctly stated that a Class IV License was sufficient for operating equipment at the power plant where he worked, the complainant's union had signed a Collective Agreement under the terms of which persons of his status agreed to upgrade their qualifications to that of a Stationary Engineer - Class II License. He further stated that this requirement was designed to meet an appropriate policy objective of the Commission, namely, a level of qualification on the part of the Commission's Stationary Engineers that would enable them to have the appropriate qualifications to operate any of the Commission's boiler plants.

Since the complainant had subrogated his right to that of the union, his complaint was found to be unsupported.

LEGISLATIVE ASSEMBLY

Complaints received -	2
Declined (no jurisdiction) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	1

LIQUOR LICENSING BOARD

Carried from 1982 -	1
Complaints received -	6
Declined (no jurisdiction) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	2
Unsupported - No assistance possible	1
Justified - Rectified	1
Justified - Recommendation	2

DEPARTMENT OF MUNICIPAL AFFAIRS

Carried from 1982 -	18
Complaints received -	31
Declined (no jurisdiction) - No assistance possible	6
Declined (no jurisdiction) - Assistance rendered	2
Discontinued (Ombudsman) - No assistance possible	10
Discontinued (Ombudsman) - Assistance rendered	4
Discontinued (complainant) - Assistance rendered	1
Unsupported - No assistance possible	4
Unsupported - Assistance rendered	1
Partially justified - Assistance rendered	1
Partially justified - Partially rectified	1
Partially justified - Rectified	1
Justified - Assistance rendered	1
Justified - Rectified	4
Justified - Recommendation	10
Under investigation	3

The Residential Property Tax Relief Act was passed in 1973 to afford a measure of property tax relief to New Brunswick homeowners. This program has generally been well received and well administered. However, given the sheer number of citizens affected by the Act alone, its administration has inevitably given rise to some complaints to the Office. Two types of concerns have led the Office to conduct extensive reviews of the Act with resulting recommendations to the Lieutenant-Governor in Council under Section 21 of the Ombudsman Act.

Set out below are the two formal recommendations made by the Office to the Lieutenant-Governor in Council in 1983:

(A) 79-200-1, 79-200-12, 79-200-31, 80-200-5, 83-200-29

Over the past several years, the Office has received a number of complaints from person who would have been eligible to receive Property Tax Credit had it not been for the Department's inadvertent failure to award it, and their subsequent failure to notice this omission until after the statutory time limit had passed.

On January 27, 1983 the Office made the following recommendation to the Lieutenant-Governor in Council regarding persons believed to be adversely affected by this set of circumstances:

REPORT

(1) During the past four years, my office has received a number of grievances from citizens who were eligible to receive a property tax credit in regard to their principal

residence but who, by virtue of a departmental error or omission, failed to receive the credit; and, by their own oversight and the incorrect communication of the program by government, failed to apply for a credit within the time limits prescribed by Section 6 of the Residential Property Tax Relief Act.

(2) Sections 2 and 2.1 of the Residential Property Tax Relief Act provide that the Minister of Municipal Affairs 'shall give a property tax credit to eligible persons.

Paragraph 7(2)(e) of the Real Property Tax Act states that:

"7(2) Each year on or before a date to be fixed by Regulation the Minister (of Finance) shall mail to each person listed in the tax roll a notice in the form prescribed by regulation showing;

• • •

(e) any credit applied under the Residential Property Tax Relief Act;"

(3) As initially written in 1973, Section 6 of the Residential Property Tax Relief Act stated that:

"A person

(a) who has not received a credit and who believes he is entitled thereto,

(b) who disputes the amount of a credit, or

(c) who is allowed a credit in respect only of a portion of his real property pursuant to subsection 2(7) and disputes the apportionment,

may, within 30 days of the mailing of the notice under subsection 7(2) of the Real Property Tax Act, apply in a prescribed form to the Director to have a credit applied against his obligation to pay taxes, or to have the amount of the credit or the apportionment reviewed, as the case may be."

In 1975, the words "within 30 days of the mailing of the notice under subsection 7(2) of the Real Property Tax Act" were replaced by the words "on or before December 31 in the year in which the notice under subsection 7(2) of the Real Property Tax Act was mailed".

In 1981, the words "on or before December 31 in the year in which the notice under subsection 7(2) of the Real Property Tax Act was mailed" were replaced by the words "on or before December 31 in the year following the year in which the notice under subsection 7(2) of the Real Property Tax Act was mailed".

(4) In 176 cases identified by the Department, citizens failed to receive a property tax credit because the property tax credit portion of the notice under subsection

7(2) of the Real Property Tax Act was incorrect and because applications to correct the error or omission were received after the deadline established by Section 6 of the Residential Property Tax Relief Act.

(5) The 1981 amendment to Section 6 of the Residential Property Tax Relief Act mentioned in paragraph (3) above was implemented "at the behest of (my) Office". The informal recommendation leading to this amendment was based on a perception that citizens usually discovered the departmental error or omission only upon receipt of the subsequent property tax year's Notice of Assessment. It was determined that any appeal period which expired prior to the issuance of the subsequent tax year's Notice of Assessment was of negligible value.

(6) It was also determined that the Government of New Brunswick had incorrectly communicated the program in at least two respects. First, in its initial pronouncements, it led the public to believe that the government was entirely responsible for insuring that credits would be properly applied with no corresponding obligation on the part of the citizen. Second, its initial explanatory pamphlets failed to accurately convey the citizen's obligation on the non-receipt of a credit. The pamphlet has now been discontinued by the Department.

RECOMMENDATION

I recommend that, pursuant to paragraphs 21(1)(a), (i) and j) of the Ombudsman Act, the Department take the necessary steps to award a property tax credit to those persons who would have been eligible to receive it between January 1, 1974, and January 1, 1981, except that their applications were received too late.

In my opinion, a justified grievance arose in an instance where Section 2 of the Residential Property Tax Relief Act placed a clear and absolute duty on the Minister of Municipal Affairs to grant a property tax credit to eligible persons. At the same time, Section 6 of the Act failed to provide an adequate period of time for citizens to ascertain that they had incorrectly failed to receive a property tax credit and to take steps to correct the error or omission. This legislative shortcoming has been corrected effective January 1, 1981.

I believe it is appropriate to give retroactive effect to the rectification because the money proposed to be returned was never intended to be collected and because I believe it will cause no undue administrative upset. Parenthetically, it is noted that the interest charges which have accumulated on this money, with respect to which no recommendation is made, will more than offset the administrative cost of implementing the recommendation.

In concluding, I wish to make two collateral statements. First, I believe that the legislative and administrative procedures evolved by the Department since the complaint first arose have served to rectify prospective complaints. Any future complaints received by my office in relation to the period after January 1, 1981, will be judged in light of the new legislative provisions. Second, my recommendation is in no way intend-

ed to conclude that there is maladministration of the Residential Property Tax Relief Act. On the contrary, the small number of presently and potentially known cases subject to this review and the Department's legislative and administrative response to it, are a tribute to the excellent manner in which the Act is being administered.

(B) 81-200-23, 82-200-8, 82-200-13, 83-200-19

Over the past several years, the office has received complaints from persons who reside a portion of each property tax year in an owner-occupied residence and who are declared ineligible to receive a Property Tax Credit. On August 26, 1983, the following Report and Recommendation was submitted to the Lieutenant-Governor in Council.

REPORT

(1) The complaint of a citizen, respecting the refusal by the Department of Municipal Affairs to award him a Property Tax Credit, was referred to my office on March 19, 1982. The complaint is one of a growing number received by the office from persons who reside in rented accommodation for approximately one-half of the year and in an owner-occupied residence the other half;

(2) The Department of Municipal Affairs has determined that, since these people reside in their rented accommodation on January 1 of each Property Tax Year, since they work out of their rented accommodation, have their children attend school out of it and have a year-round telephone number and post office box for it, this rented accommodation is their "principal residence" within the meaning of paragraph 2(1)(b) of the Residential Property Tax Relief Act;

(3) The objection made by the complainant and other persons of his status - for example, retired persons, clergymen and university professors - is that the law subjects them to double taxation in that they are ineligible for a Tax Credit on the property they own and indirectly pay the Real Property Tax on the rented premises, which is also ineligible for a Tax Credit.

(4) Subsection 2(1) of the Residential Property Tax Relief Act states that:

"A person in whose name real property is assessed shall be credited by the Minister against taxes owing in respect of that real property for the year 1979, or any succeeding year, a prescribed amount if

(a) the real property contains only one residence, and

(b) on January 1, 1979, or on the first day of January in any succeeding year, that person maintains his principal residence on the real property or maintains thereon a residence for his spouse or children."

It has generally been conceded that the Department has acted in a legally-correct manner in determining that the residence owned by the complainant is not a "principal residence;" for the purposes of paragraph 2(1)(b).

(5) To some extent, the structure of the Residential Property Tax Relief Act has brought the administration of Property Taxation Law into disrepute. The following concerns have been confirmed:

(a) citizens who summer in an owner-occupied New Brunswick residence and winter in Florida receive a Property Tax Credit while persons who summer in an owner-occupied New Brunswick residence and winter in a rented New Brunswick premises do not.

(b) persons capable of maintaining year-round staff in a New Brunswick residence, but whose principal residence is unknown to the Department of Municipal Affairs, are granted a Credit;

(c) a former Lieutenant-Governor of the Province received a Property Tax Credit on property which he owned elsewhere in the Province while residing in his official residence in Fredericton.

RECOMMENDATION

It is unclear whether the Legislature intended paragraph 2(1)(b) of the Residential Property Tax Relief Act to receive its present application. It is, therefore, recommended that the prerequisites contained in paragraph 2(1)(b) of the Residential Property Tax Relief Act be reexamined to determine whether they accurately reflect the legislative intent or whether it was intended that persons of the complainants' status be included within its application.

Both recommendations remained under consideration by the Lieutenant-Governor in council at the end of 1983.

82-200-16

A lawyer complained regarding the issuance of an alleged erroneous deed to his client in 1960.

The complainant had purchased a parcel of land at a sheriff's sale in 1960; the deed was supposed to have described the property in part as "the south half of Lot No. 108". Due to an apparent typographical error, this portion of the description referred to "the south half of Lot No. 107". The complainant subsequently tried to have the deed corrected by the county government, and its successor - the Province of New Brunswick. However, the sheriff's office had refused to correct the error, since it had received legal advice that this was only possible through a court action.

A similar type of complaint had arisen on at least two occasions in the recent past. In each case the Department, acting through the Department of Justice, had underwritten the cost of correcting erroneous deeds issued by public officials prior to 1967. The Office recommended similar corrective action in this case.

This recommendation was accepted.

MUNICIPALITIES

Carried from 1982 -	23
Complaints received -	87
Declined (no jurisdiction) - No assistance possible	14
Declined (no jurisdiction) - Assistance rendered	2
Declined (discretionary) - No assistance possible	4
Discontinued (Ombudsman) - No assistance possible	41
Discontinued (Ombudsman) - Assistance rendered	12
Discontinued (complainant) - No assistance possible	9
Unsupported - No assistance possible	13
Partially justified - Recommendation	3
Justified - Assistance rendered	2
Justified - Partially rectified	1
Justified - Rectified	1
Under investigation	8

83-400-9

A citizen complained of his Village's refusal to hire him for part-time work.

The Village's garbage collector was on a leave of absence and the Village decided to replace him with a number of temporary employees on a rotating basis. The complainant had submitted his name for this type of work but had not been called in. He claimed that others had been called in on more than one occasion.

On review with the mayor, he indicated that the Village had hired seven different people during the seven weeks the regular employee had been absent. He was not sure whether any other applicants had not been called and undertook to verify this.

Later, the complainant called to say that he had received two days work but remained dissatisfied.

The complainant blamed the mayor for all sorts of difficulties in the Village. These complaints were largely of a political nature. The complainant was advised that these types of concerns could be better expressed at the forthcoming municipal elections.

83-400-18

A man complained regarding a Town's refusal to hire him for the position of janitor.

The Town's Personnel Committee had recommended the complainant be awarded the position. However, the Town Council had declined to accept this recommendation and had selected another person for the position.

On review, the complaint was found to be unsupported.

It was clearly within the Council's prerogative to decline the recommended candidate and, in discussion with the Town's Clerk-Treasurer, it appeared there was a very reasonable basis for its doing so.

The Office subsequently concluded its review of the matter.

DEPARTMENT OF NATURAL RESOURCES

Carried from 1982 -	8
Complaints received -	19
Declined (no jurisdiction) No assistance possible	1
Declined (discretionary) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	6
Discontinued (Ombudsman) - Assistance rendered	7
Unsupported - No assistance possible	7
Under investigation	5

83-210-5

A gentleman grieved the Department's refusal to permit him to keep a deer in captivity.

The complainant had purchased a deer outside the Province in 1976. However, in May, 1982, a game warden had seized the deer stating that the complainant was required to hold a permit. The Chief Game Warden advised the complainant that this provision was designed to apply only to wildlife parks and denied the application. Later, another departmental employee advised him that if he could prove he purchased the deer outside New Brunswick, he might be able to obtain a permit. Still later, the complainant was advised that this was incorrect advice. He then turned to the Office.

On review, the Deputy Minister confirmed that the advice regarding the issuance of a permit for deer purchased outside New Brunswick was incorrect and apologized for any difficulty this may have caused the complainant. He went to state that: "The Department of Natural Resources does not issue permits to individuals to keep wildlife in captivity. Our position is that animals that are wild by nature should not be confined. However, the Department will issue a permit to an institution that serves a bona fide educational purpose for the general public."

This advice was passed on to the complainant and the Office then concluded its review.

82-210-21

A gentleman approached the Office claiming additional compensation for land expropriated for the Kouchibouguac National Park.

The complaint was found to be unsupported.

The matter was reviewed in detail with the Department, including a review of the complainant's file, discussions and correspondence with departmental officials, and a review of the recommendation of the LaForest-Roy Report and follow-up action taken in respect to it.

As a result, it was concluded that the compensation received by the complainant was "in line" with that offered to others of a similar status.

The complainant was advised accordingly.

NEW BRUNSWICK COAL LIMITED

Carried from 1982 -	2
Discontinued (Ombudsman) - No assistance possible	1
Discontinued (Ombudsman) - Assistance rendered	1

NEW BRUNSWICK ELECTRIC POWER COMMISSION

Carried from 1982 -	9
Complaints received -	42
Declined (no jurisdiction) - No assistance possible	2
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	24
Discontinued (Ombudsman) - Assistance rendered	3
Discontinued (complainant) - No assistance possible	2
Unsupported - No assistance possible	7
Partially justified - Assistance rendered	1
Partially justified - Partially rectified	1
Justified - Assistance rendered	1
Justified - Rectified	7
Under investigation	2

83-310-4

A homeowner complained regarding the Commission's refund policy where a customer had paid for the extension of electrical services more than 90 metres beyond the nearest existing hydro pole.

Under the Commission's policy, a customer was charged a fee for this service and was entitled to a partial refund in respect to each hook-up on the line extension during the next five years. Although this time period had recently been extended from three years to five years, the complainant believed it was still too short, given the average life expectancy of a power line (about 25 years).

The Commission reviewed its policy with the Office in detail, pointing out that it was in keeping with those of public utilities across the country.

It is always difficult to accurately assess the fairness of a given business practice by a state-owned monopoly. The practice of this Office has been to determine, first, whether a given policy has an appearance of reasonableness and, second, whether it compares favourably with the procedure followed by other utilities.

A positive finding was made in this case, and the complaint was found to be unsupported.

83-310-10

A small industrial customer of the Commission complained regarding excessively-high electric power bills received during a two-month period in 1982.

Following commencement of this review, the Office worked with the Commercial Operations Division of the Commission to mediate a settlement of the complaint. The complainant's meter had already been independently checked by federal government officials and found to be in good working order. Nevertheless, it was generally agreed that the complainant's small business could not possibly consume the amount of electricity attributed to it. It was agreed that, if the complainant could obtain independent technical advice in support of his position, the Commission would be prepared to review the account. An electrical contractor was retained by the complainant; it was his opinion that, given the particular nature of the reading on the complainant's meter, a malfunction may have taken place which would not be apparent to the testing officials of the federal Department of Consumer and Corporate Affairs. The Commission accepted this opinion and subsequently issued new bills for the two months in question, based on the billing for the same two-month period during the previous calendar year.

82-310-23

A woman complained regarding the Commission's refusal to compensate her for appliance damage allegedly resulting from a "burnt line". The complainant stated that a tube in her television "blew out" following the malfunction of a Commission power line and that the Commission denied any responsibility for this damage.

Following an informal review with the Commission, the claim was reviewed and allowed. Later the complainant confirmed receipt of the appropriate cheque and her satisfaction with the result obtained.

83-310-38

A woman telephoned November 25, 1983, regarding the Commission's refusal to hook up her electric power supply.

According to the complainant, the Commission had agreed to hook up the power on November 24. However, on arriving at her property, it was found that Commission-owned equipment was defective. The Commission advised her that it would come back on November 25. However, on this date, she was advised that the work could not be completed until the following week.

The complainant stated that she and her husband and their two and a half-year old daughter had no other accommodation available and urgently required electrical power.

The complainant was advised to contact two different Commission officials who were actively engaged in handling customer complaints. The complainant unsus-

cessfully tried to reach both these persons; the Office then intervened directly on her behalf and, through the cooperation of other Commission officials, a temporary hook-up of the complainant's power supply was completed the same day.

NEW BRUNSWICK HOUSING CORPORATION

Carried from 1982 -	15
Complaints received -	77
Declined (discretionary) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	32
Discontinued (Ombudsman) - Assistance rendered	9
Discontinued (complainant) - No assistance possible	1
Discontinued (complainant) - Assistance rendered	1
Unsupported - No assistance possible	14
Partially justified - Assistance rendered	6
Partially justified - Partially rectified	2
Partially justified - Rectified	2
Justified - No assistance possible	1
Justified - Assistance rendered	2
Justified - Partially rectified	1
Justified - Rectified	10
Under investigation	10

79-360-33, 79-360-41

Two neighbours complained, in 1979, regarding construction deficiencies in homes built for them under the Rural and Native Housing Program. On review, one of the two homes was found to have the following construction deficiencies: (1) sewage system constructed uphill from house, resulting in sewage back-up; (2) mildew; (3) cemented-over cellar drain; (4) cracking in basement wall; (5) malfunctioning heaters; (6) cracked kitchen floor tiles, resulting from improperly laid sub-floor; (7) malfunctioning electrical outlet; (8) improperly-installed basement door casing; and, (9) cracks in kitchen ceiling.

As a result of the Office's continuing intervention over a three and a half-year period, these deficiencies were corrected.

In the other house, a review by the Office revealed the following construction deficiencies, namely: (1) cracks in kitchen floor resulting from improper installation of sub-floor; (2) ceiling cracks in several rooms; (3) wall cracks; (4) over-sized window and door frames; (5) cemented-over basement drain; (6) improperly-installed bathroom tiles; and, (7) improper plumbing.

As in the previous case, it took the Office approximately three and a half years to have agreed-upon deficiencies completed to the complainant's satisfaction.

The files were subsequently closed.

83-360-8

A homeowner grieved the Corporation's refusal to award him a \$500 homeownership grant.

Under a federal-provincial program, the federal government provided \$500 home construction grants commencing in April, 1978. After July, 1981, these grants, which were administered by the Corporation, were contingent on the completion of basement insulation.

The complainant had build his home beginning in June, 1980, but did not complete construction until sometime after July 1981. He said he spoke with two unnamed officials of the Corporation, both of whom advised him that he would be ineligible for the grant unless he first insulated his basement. He eventually decided to raise the matter with the Office.

On review, the complaint was found to be justified.

The Corporation's head office advised that the relevant date for determining grant eligibility was the construction commencement date and not the date the grant application was made.

On the basis of this information, the complainant was advised to complete an application for the grant and to contact the Office if further assistance were required.

82-360-45

A homeowner grieved December 14, 1982, regarding alleged delay in the receipt of insurance money for a November 12, 1981 fire that totally destroyed her home.

On review, the Corporation advised that settlement of the complainant's claim had been delayed by difficulty in obtaining an insurance adjustor's report. However, immediately following the intervention by the Office, the Corporation's Mortgage Forgiveness Fund Committee reviewed the claim, resulting in the forgiveness of the complainant's mortgage and the release of appropriate funds to her.

83-360-48

The Brantville Social Justice Project requested the Office's intervention in the case of an elderly gentleman who had encountered difficulties obtaining financial assistance for the installation of a bathroom in his home.

Following the initiation of the Office's investigation, the Corporation stated that the complainant had spent the money allotted to him for a new bathroom on other non-approved items. Nevertheless, the corporation indicated it would request a more detailed review of the matter. Shortly afterwards, the Corporation advised that the complainant, a man over 80 years old, had been misled and victimized by a contractor. The Administrative Assistant to the President of the Corporation stated that he would endeavour to obtain additional funding for the complainant.

Still later, an official of the Brantville Social Justice Project confirmed that the complainant had received sufficient additional financing to install a new bathroom in his home.

83-360-61

A mortgagee of the Corporation complained regarding the allegedly excessive mortgage interest rate charged to him between April and November, 1982.

According to the complainant, he received and promptly completed and returned a mortgage renewal application in February, 1982. One of the terms of the mortgage renewal was a reduction of the mortgage interest rate from 17% to 9%. The Corporation did not implement the lower mortgage interest rate until November, 1982, and refused to make the reduction retroactive to the intended date of the mortgage renewal.

The Corporation initially advised the Office that the complainant had delayed returning the mortgage renewal document until late October, 1982, and that it was not prepared to reimburse him the difference between the higher and lower interest rates.

The complaint had been referred to the Office by a third party. In response to our request for comments on the Corporation's position, the third party stated in part:

In early February of 1982, I filled out the necessary forms for renewal for the N.B.H.C. mortgage. We phoned in N.B.H.C. to ask where to send the information and we were told to send it to Fredericton. We did so on or about February 12, 1982 which is the date on the contract. The material was returned by mail to the (complainants) and they assumed all was well until they received their payment booklet indicating the larger payments.

At that point, our nine-month struggle began. I wrote to N.B.H.C. in Fredericton to explain the error and to ask that it be corrected. I received no answer. I wrote again and received no answer. I then phoned Fredericton and was told that the inquiry should have been directed to the (regional) office. The person in Fredericton said that the office was understaffed, which is why the letters were not answered or forwarded to (the regional office). I wrote the (regional) office to try to have the error corrected. I received no answer. I phoned the (regional) office and was told that (the officer responsible) would have to deal with the problem, but that he was not in. I was told that he would return my call. He did not return my call. I phoned again and spoke to (the appropriate officer) who said he would look into the matter and phone back. He did not phone back. I phoned again and again he said he would look into the matter. This time, he phoned back and asked the (complainant) to resubmit the tax and renewal forms. We did so immediately and the contract was sent back stamped with the date you mentioned and with the changes in the payment. The fact that the contract was not stamped when it was first received in Fredericton is only another indication that the file was mishandled by that office.

It is interesting to know that I have been in contact with N.B.H.C. in Fredericton three times since then. Each time, the person I spoke to said that they would

get back to me about the problem of the over-payment. (A Corporation official) told me that the excess amount had been credited against the principal and that he would send me a statement to that effect. No one ever wrote.

On submitting this response to the Corporation, it adjusted the complainant's mortgage account in the manner requested by him.

NEW BRUNSWICK HUMAN RIGHTS COMMISSION

Complaints received -	3
Discontinued (Ombudsman) - No assistance possible	1
Discontinued (complainant) No assistance possible	1
Under investigation	1

NEW BRUNSWICK LIQUOR CORPORATION

Carried from 1982 -	1
Complaints received -	5
Declined (no jurisdiction) - No assistance possible	2
Discontinued (Ombudsman) - No assistance possible	3
Unsupported - No assistance possible	1

83-320-2

One of the Corporation's customers grieved its refusal to accept the return of empty beer bottles. The complainant claimed that the inconvenience created by this policy was heightened by the absence of a bottle exchange in his area.

On review, the Corporation's General Manager advised that the Corporation had investigated the possibility of accepting empty beer bottles in the past. However, the decision not to do so is based on the large number of private bottle dealers in the Province (approximately 400) who provide reasonable service and considerable private sector employment.

In addition, the Corporation located a bottle dealer in the complainant's area and provided details on his location. The Office passed this information to the complainant, together with its opinion that the Corporation's policy was a reasonable one.

NEW BRUNSWICK POLICE COMMISSION

Complaints received -	2
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	1

**PROVINCIAL PLANNING
APPEAL BOARD**

Carried from 1982 -	1
Complaints received -	1
Discontinued (Ombudsman) - No assistance possible	1
Discontinued (Ombudsman) - Assistance rendered	1

PUBLIC UTILITIES BOARD

Complaints received -	2
Declined (no jurisdiction) - No assistance possible	2

RIGHT TO INFORMATION ACT

Complaints received -	3
Declined (no jurisdiction) - No assistance possible	1
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	1

DEPARTMENT OF SOCIAL SERVICES

Carried from 1982 -	9
Complaints received -	135
Declined (no jurisdiction) - No assistance possible	71
Declined (no jurisdiction) - Assistance rendered	2
Declined (discretionary) - No assistance possible	3
Discontinued (Ombudsman) - No assistance possible	23
Discontinued (Ombudsman) - Assistance rendered	11
Discontinued (complainant) - No assistance possible	2
Unsupported - No assistance possible	20
Partially justified - No assistance possible	1
Partially justified - Assistance rendered	1
Justified - Partially rectified	1
Justified - Rectified	1
Under investigation	8

83-240-54

A solicitor complained regarding the level of benefits received by her client. At the same time, she was concerned that the Social Welfare Appeals Board had misdirected itself in refusing the client's application form benefits.

After reviewing the applicable regulations, the Office confirmed that the complainant was ineligible for social assistance benefits, and that the Social Welfare Appeals Board's decision was a correct one. However, the Board had inadvertently failed to receive a copy of recently revised regulations and had thus provided an incorrect statutory citation in its decision.

The Office advised the solicitor of its findings and concluded the review.

82-240-102

A gentleman grieved the termination of his social assistance benefits by the Department.

On reviewing the complainant's documentation, it was noted that an area reviewer had spoken of a departmental belief that the complainant and another party were living in a "common law" relationship. The earnings of the other party in this alleged relationship rendered the unit ineligible for social assistance benefits.

It did appear that the complainant was "cohabiting" with another party and that this might very well render him ineligible for social assistance benefits. On the other hand, there was no evidence that this was a "common law" relationship. Indeed, the latter terminology is absent from the Department's governing legislation, the Child and Family Services and Family Relations Act.

The Deputy Minister readily agreed that the area reviewer had made an inappropriate characterization, which he believed was an "isolated slip". Nevertheless, he undertook to remind his staff to respect the departmental policy and not to use the term "common law" in future decisions.

**DEPARTMENT OF
SUPPLY AND SERVICES**

Carried from 1982 -	1
Complaints received -	8
Declined (discretionary) - No assistance possible	2
Discontinued (Ombudsman) - Assistance rendered	4
Discontinued (complainant) - No assistance possible	1
Unsupported - Assistance rendered	1
Under investigation	1

83-230-1

A public servant complained of alleged inadequate air circulation in her office and the lack of response to her complaints about it.

Following commencement of the Office's review, the Department engaged the Research and Productivity Council to study the entire ventilation system of the large office building in which the complainant worked. The Department subsequently indicated that corrective measures had been recommended by R.P.C. and that money would be made available to implement them.

83-230-3

A long term employee of the Department complained regarding its refusal to extend his retirement date from September 30, 1983 to December 31, 1983. The complainant stated that he needed the extension because of his wife's medical expenses and his own lack of income.

As a preliminary measure, the Office assisted the complainant in obtaining admission to a pre-retirement training seminar of the Department of Labour and Human Resources. Later, his case was reviewed with the New Brunswick Human Rights Commission, which informally recommended an extension to the Minister of Supply and Services. The Minister accepted the Commission's recommendation.

The complainant expressed his satisfaction with this result and the file was closed.

DEPARTMENT OF TOURISM

Carried from 1982 -	1
Complaints received -	4
Declined (discretionary) - No assistance possible	1
Discontinued (complainant) - No assistance possible	1
Unsupported - No assistance possible	1
Justified - Rectified	2

DEPARTMENT OF TRANSPORTATION

Carried from 1982 -	14
Complaints received -	78
Declined (no jurisdiction) - No assistance possible	12
Declined (no jurisdiction) - Assistance rendered	2
Declined (discretionary) - No assistance possible	1
Discontinued (Ombudsman) - No assistance possible	29
Discontinued (Ombudsman) - Assistance rendered	11
Unsupported - No assistance possible	16
Unsupported - Assistance rendered	1
Justified - No assistance possible	1
Justified - Rectified	4
Justified - Recommendation	4
Under investigation	11

83-170-16

The complainant, a landed immigrant from Great Britain, complained in regard to the requirement that she surrender her British driver's license in order to obtain a New Brunswick one.

In discussions on the matter, departmental officials advised that, upon receiving an applicant's British driver's license, the Department returned it to the British Government.

On further review with the Parliamentary Commissioner for Administration (Ombudsman) for Great Britain, the Office was advised that, upon receiving a returned British driver's license, the British Department of Transport destroys it to guard against the possibility of fraudulent use. However, if a former British resident (such as the complainant) were to return to Great Britain, she would be able to reapply for the issue of a license. In most cases, such as the complainant's, where the license which had been surrendered was the current green type of license (valid until age 70), details would be retained on a computer and the applicant would then simply be issued with a replacement license, valid until the applicant's seventieth birthday provided, of course, the application was made before reaching that age. A license would still be issued if an applicant applied any time before his/her eightieth birthday but it might then be issued to run for a limited period.

This information was passed on to the complainant, who seemed very much reassured by it.

83-170-30, 83-170-6

During the year, the Office received complaints from two seasonal workers regarding the Department's refusal to recall them for the 1982-83 winter season. After an extensive review, it was determined that, in each case, the Department had acted in a technically-legal manner in refusing to recall the complainants and they were so advised.

A collateral matter arose in the course of this investigation, when it was determined that the two District Transportation Offices concerned were completing employee seniority cards and employee record forms in two different ways. Since one of the major purposes of any form is to ensure a standardized gathering of information, it was suggested to the Department that it adopt uniform completion procedures with respect to the forms under review.

83-170-41

A man complained in July regarding difficulties in obtaining a new culvert from the Department. The complainant indicated he had made the request to the local District Transportation Office, but had received no positive response.

On review, the Department stated that the delay was caused by the complainant's failure to submit a written request. However, there was no indication that it had solicited such a written request.

In any event, the Department processed the request and the culvert was promptly and satisfactorily installed.

81-170-45

On August 22, 1983, the following draft Report and Recommendation was submitted to the Deputy Minister of Finance and Transportation.

REPORT and RECOMMENDATION DRAFT

(1) the complainant grieved September 24, 1981, regarding the alleged incorrect transfer of the registered ownership of a (late model automobile) by the Departments of Finance and Transportation;

(2) the complainant and (a third party) purchased a motor vehicle, and had it registered in their names jointly. On May 2, 1980, (the third party) with neither the knowledge or consent of (the complainant), signed an application for the transfer of the registered ownership of the motor vehicle to (an auto dealer). The Department of Finance, acting on behalf of the Registrar of Motor Vehicles, transferred the registered ownership of the motor vehicle. In this regard, it is noted that the complainant signed his name on the change of address portion of the motor vehicle registration certificate; however, given staff experience, this would appear to have no bearing on the ultimate disposition of this matter;

(3) (the auto dealer) sold the motor vehicle to (a fourth party) on May 16, 1980, and he remained the registered owner of its until April 13, 1982;

(4) the complainant's unrefuted evidence of his action subsequent to this transfer of registration is as follows:

"In the latter part of May, 1980, I was in contact with the Motor Vehicle Department for the first time to try to get the registration straightened out. They told me, at that time, that there was no mistake in the form. When I asked to see the form, I was told I could not. After approximately one week, I went to Motor Vehicle Head Office to get a copy of the document. I was told that it had not been processed yet and would be within one week. I went back two weeks later but to no avail. There was a backlog in the computer and it wasn't up to date. At this point, I talked to (a departmental official), who told me it would just be a short time before I could get a copy. I went back approximately two weeks later, only to find out they would not give me a copy. I talked to (another departmental official) at this point, who said that the registration was lost in the computer. I waited for one - two hours while they tried to find the document. I contacted my lawyer at this point and turned everything over to him. During the next few months (my lawyer) was in contact with most of the same people I had been, with the same results. Then, just by chance one day, I went to the Motor Vehicle (Branch) with another matter and I gave the girl the license number of the car and she brought me a copy of both front and rear of the document. I took these to (the lawyer) and we got back on the case. I then found out that the vehicle had been sold to (a fourth

party). I contacted the R.C.M.P. to try to get them involved, but after a few weeks, they told me it was between me and Motor Vehicle and the Department of Transportation to get the car back. Back to Square One! We were then sent between (the Department of Finance) and the Department of Transportation. For over one year, they both claimed the other was responsible. Some few months passed and I could not get anyone to change their mind so I turned to the only spot left - the Ombudsman". (Complainant to the Office of the Ombudsman, August 16, 1982);

(5) following the commencement of its review, the Office was advised that a "mistake" had been made, that an "error" had been made by the Department of Finance, in that the registration of the motor vehicle was transferred on only one signature. This information was provided by the Deputy Minister of Transportation and on reviewing that Department's documentation on December 14, 1981, it did appear that the Department of Finance had made the error which precipitated the transfer of the motor vehicle. As a result, a review was commenced with the Department of Finance on January 4, 1982. On January 13, 1982, the Director of the Field Services Division of the Department of Finance confirmed that his officials had erroneously transferred the vehicle on the basis of one signature. He also confirmed that, by a directive dated January 7, 1982, he requested all Regional Supervisors of Revenue Offices "that your staff be reminded that the signatures of all registered owners are required on transfer and to be extra cautious in the obedience of rules and the processing of our various tasks";

(6) as a result of further review between our Office and the Departments of Transportation and Finance, the Deputy Minister of Transportation confirmed on March 3, 1982, "there appears to be little question that the signatures of both (the third party) and (the complainant) should have been on the transfer portion of the registration to initiate the change of registration name". At the same time, he pointed out that Section 4 of the Motor Vehicle Act protects departmental employees from liability for errors made in the performance of their duties, as long as they are acting in good faith. Section 4 states that:

4. Neither the Registrar, nor any person appointed under the provisions of this Act or the regulations, nor any person acting under the instructions of any of them, is personally liable for any loss or damage suffered by any person by reason of anything in good faith done or omitted to be done by him or them pursuant to, or in the exercise or supposed exercise of, the powers given to him or to them under the Act or the regulations.

The Deputy Minister stated, however, that "we are satisfied that there has been an error in the registration of this vehicle and are prepared, pursuant to Section 72 of the Motor Vehicle Act to revoke the registration, we would then notify the person presently in possession of the vehicle to return the evidence of registration, plates, etc., to the Central Office of our Division in Fredericton". Paragraph 72(a) of the Motor Vehicle Act states:

72. The Registrar is hereby authorized to suspend or revoke the registration of a vehicle, registration certificate, or registration plate, or any non-resident operating privilege or other permit in any of the following events:

(a) when he is satisfied that such registration, car, plate, or permit was erroneously issued...";

(7) on March 12, 1982, the Office wrote to the Deputy Minister of Transportation, requesting that his Department complete the proposed action under paragraph 72(a) of the Motor Vehicle Act. In so doing, concern was expressed with regard to "the delay involved in settling this matter" as well as the apparent incorrect advice earlier given to the complainant, namely, that the registration transfer had been properly completed and that no recourse was available to him. On receipt of this letter, the Deputy Minister of Transportation issued instructions on March 19, 1982, that (the fourth party) be (contacted) and advised of the revocation of the registration";

(8) regrettably, the implementation of this directive was inexplicably delayed until June 24, 1982. In the meantime, (the fourth party) transferred the motor vehicle to (another auto dealer) on April 13, 1982, and on April 26, 1982, (this auto dealer) transferred ownership to (a fifth party). When the Deputy Registrar of Motor Vehicle finally took action under paragraph 72(a), he advised (the fifth party) that he had cancelled the registration and the license plates for the vehicle, and requested that these be returned to the Department in Fredericton. (The fifth party) subsequently returned the vehicle to (the auto dealer) and received an appropriate settlement from the dealership. He, in turn, apparently contacted (the fourth party). Unfortunately, in the course of these proceedings, a pulp loader apparently "accidentally" crushed the motor vehicle while it was sitting in (the auto dealer's) yard, rendering it valueless. The registration and plates were subsequently sent to Fredericton.

(9) in lodging his complaint, the complainant stated that the motor vehicle was worth approximately \$3,000 and the Department's action had cost him the equivalent of his one-half interest in it or \$1,500. In a July 21, 1982 conversation, he advised us that, when (the fourth party) traded the vehicle in April, 1982, he had received approximately \$1,600 as a trade-in allowance on the value of the motor vehicle. As a result, it would appear that his interest in the motor vehicle was still intact as late as April, 1982;

(10) in reviewing the responsibility of the Departments of Transportation and Finance, two questions must be answered - first, does the initial error by the Department of Finance, in incorrectly transferring the registered ownership of the motor vehicle, provide a basis for compensation of the complainant; second, does the inordinate delay in the extension of cooperation to the complainant, and the implementation of the remedial measures of paragraph 72(a) of the Motor Vehicle Act by the Department of Transportation, provide a basis for providing compensation to the complainant?

RECOMMENDATION

It would appear that, while neither of these individual items necessarily provides a basis for a recommendation by this Office for the payment of compensation to (the complainant), the combination of error by the Department of Finance and omission by the Department of Transportation, provides such a basis. Accordingly, I recommend the payment of a total of \$1,500 compensation to (the complainant) by the Department of Finance and/or the Department of Transportation.

This informal recommendation was accepted.

83-170-47

A woman complained regarding the Department's refusal to adjust her property taxes on a property purchased from her in 1982, or to have the assessed ownership changed.

On review, the complaint was found to be justified.

The complainant had sold the property to the Department in April, 1982, at which time the Department omitted to adjust the 1982 property taxes, i.e., to reimburse her that portion of the year's taxes attributable to its ownership. Immediately after the Office commenced its review, steps were taken by the Department to adjust the 1982 taxes and to ensure that future assessment and tax notices were issued in its name.

DEPARTMENT OF TREASURY BOARD

Complaints received -	2
Declined (no jurisdiction) - No assistance possible	2

WORKERS' COMPENSATION BOARD

Carried from 1982 -	22
Complaints received -	142
Declined (no jurisdiction) - No assistance possible	75
Declined (no jurisdiction) - Assistance rendered	1
Discontinued (Ombudsman) - No assistance possible	33
Discontinued (Ombudsman) - Assistance rendered	7
Discontinued (Ombudsman) - Partially rectified	1
Discontinued (complainant) - No assistance possible	4
Unsupported - No assistance possible	10
Unsupported - Assistance rendered	1
Partially justified - Partially rectified	3
Partially justified - Rectified	3
Justified - Rectified	2
Justified - Recommendation	1
Under investigation	23

82-330-38

A widow grieved the Board's refusal to award her family and her death benefits. The Board held that her husband, who had drowned in a diving accident, was not covered by the Workers' Compensation Act because he was acting as an independent contractor and not as an employee at the date of his death. In a related quasi-criminal action, the deceased diver's employer had been found guilty of negligence under the Occupational Health and Safety Act.

In reviewing this case, it readily became clear that it would be very difficult to determine whether or not the complainant was an independent contractor or an employee of the person who engaged him as a diver. Even if it was determined that he was in the latter classification, it would still be necessary to determine whether he was an 'employee' for purposes of the Act. Section 2 of Regulation 80-200 excluded industries from the scope of the Act unless they had throughout their operation "in the year at least three workmen at the same time usually employed therein".

At the conclusion of its investigation, the Office submitted an informal report to the Board in which it concluded that the complainant was an employee and should receive coverage under the Act. The report suggested that, if the Board were unable to agree with this conclusion, it should state the case to the Court of Appeal of New Brunswick under the provisions of the Workers' Compensation Act.

The Board accepted this latter suggestion and, in so doing, undertook to reimburse all legal expenses incurred by the complainant in pursuing the case.

82-330-54

A firefighter complained regarding the level of benefits awarded to him by the Board.

The complainant fractured his back when he fell down a set of stairs while fighting a fire in 1979. This injury, combined with an existing degenerative back condition, ultimately forced him to retire. The Board initially awarded him a 15% pension, and as a result of efforts by a third party, this was increased to 25%. The complainant remained dissatisfied and the third party referred him to this Office.

On review, it was evident that the complainant was more than 25% disabled. However, it was also clear that part of this disability was caused by a degenerative arthritic condition in his back and that this aspect of his disability was not compensable. Had the complainant's injury occurred after September 1, 1980, he might have been eligible for a higher pension under the Workers' Compensation Act. It provides that, where an industrial injury or disease is superimposed on any prior existing disease or condition, the pre-existing condition will not affect the level of benefits received by the worker unless it had affected the worker's employment. Since this provision did not apply to the complainant's case, no recommendation was made for a further upgrading of his pension.

On the other hand, the Office discovered that when the Board had upgraded the complainant's pension from 15% to 25%, it had failed to make the award retroactive even though the increase was based on a condition which existed from the date of the initial pension award to him.

The Board subsequently corrected this oversight.

83-330-87

The vice-president of a produce company complained regarding the alleged incorrect assessment levied against her company in 1982.

According to the complainant, her company was originally assessed at the incorrect rate of \$.35 per \$100 of wages in 1982 and this was revised upwards to \$2.45 per \$100 of wages in 1983. The complainant had appealed this new assessment and, eventually, it was changed to \$.50 per \$100 of wages but only for 1983. The Board refused to make this rate retroactive to 1982.

On review, the Board agreed to revise the 1982 rate in conformity with the new 1983 rate. Still later, it agreed to write off interest charges which had been levied in regard to the incorrect assessment.

The file was subsequently closed.

DEPARTMENT OF
YOUTH AND RECREATION

Carried from 1982 -	1
Complaints received -	8
Discontinued (Ombudsman) - No assistance possible	3
Discontinued (Ombudsman) - Assistance rendered	1
Discontinued (complainant) - No assistance possible	1
Unsupported - No assistance possible	1
Justified - Rectified	2
Under investigation	1

83-250-2

A graduate complained regarding the Department's refusal to reimburse her under its loan remission program.

Under the provisions of the program, a portion of all Canada Student Loans in excess of \$3,000 are reimbursed to university graduates who pursue post-graduate studies.

The Department's refusal was based on its information that the complainant had obtained \$5,000 in Canada Student Loans, that she had paid back \$2,200 of this amount and was therefore precluded from benefitting from the program. However, the documentation which the complainant had forwarded to the Office clearly indicated that she had an outstanding Canada Student Loan debt of \$4,600.

On receipt of this documentation the Department issued the appropriate remission cheque to the complainant.

81-250-5

A university graduate complained regarding collection methods followed by the Canada Student Loan Program.

According to the complainant, she obtained Canada Student Loans totalling approximately \$3,000 while attending university. Following graduation in 1976, the complainant made repayments of approximately \$500.

The complainant suffers from kidney disease, because of which she had undergone two kidney transplants since 1977, in addition to long periods of dialysis treatment. The complainant had limited employment opportunities, as well as considerable out of pocket expenses for medication. As a result, she was unable to make regular loan payments. Notwithstanding this, Canada Student Loan officials and a collection agency they engaged subjected her to more or less continuous pressure to repay the loan.

The Department has no real control over the collection methods followed by the federal Canada Student Loans Program and the matter was technically outside the Office's jurisdiction. Nevertheless, in view of the gravity of the injustice inflicted on the complainant, the Office and the Director of the Student Aid Program conducted a protracted review with the Canada Student Loans authorities. As a result, federal officials agreed to write off the accumulated interest during the periods the complainant underwent treatment, provided the complainant accelerated her repayment schedule.

The complainant, who had now substantially recovered from her illness and was gainfully employed, accepted this settlement offer and later confirmed that the matter had finally been resolved to her satisfaction.

**BUDGETARY REVIEW/
REVUE BUDGETAIRE**

YEAR/ANNÉE	EXPENDITURES/ DÉPENSES
1978-79	142,981
1979-80	171,927
1980-81	181,481
1981-82	229,099
1982-83	247,025

Accommodation and maintenance provided by the
Department of Supply and Services/Installation
matérielle et entretien ménager fournis par le
ministère de l'Approvisionnement et des Services

Statistical Tables

Statistiques

TABLE 1/TABLEAU 1
COMPLAINTS HANDLED IN 1983/PLAINTES TRAITÉES EN 1983

ORIGINATION ORIGINE	NUMBER NOMBRE	PERCENTAGE POURCENTAGE
Received in 1983/Reçues en 1983	1089	83.3
Carried over from December 31, 1982 A l'étude au décembre 1982	218	16.7
TOTAL	1307	100.0

TABLE 2/TABLEAU 2
COMPLAINTS BY PLACE OF ORIGIN/PLAINTES PAR LIEU D'ORIGINE

COUNTY/COMTE	POPULATION		AVERAGE - 12 years/ MOYENNE - 12 ans		1982	
	TOTAL	%	(1971-1982)	TOTAL	%	
Albert	23,632	3.4	1.3	12	1.1	
Carleton	24,659	3.5	2.6	31	2.8	
Charlotte	26,571	3.8	3.5	56	5.1	
Gloucester	86,156	12.4	13.1	124	11.4	
Kent	30,799	4.4	2.7	16	1.5	
Kings	51,114	7.3	4.1	50	4.6	
Madawaska	36,432	5.2	5.0	79	7.3	
Northumberland	54,134	7.8	6.3	69	6.3	
Queens	12,485	1.8	1.4	16	1.5	
Restigouche	40,593	5.8	6.1	83	7.6	
Saint John/Saint-Jean	86,148	12.4	10.1	155	14.2	
Sunbury	21,012	3.0	4.0	34	3.1	
Victoria	20,815	3.0	3.3	55	5.1	
Westmorland	107,640	15.5	13.6	108	9.9	
York	74,213	10.7	19.9	180	16.6	
Out of Province/ Hors de la Province			3.0	21	1.9	
TOTAL	696,403	100.0	100.0	1089	100.0	

NOTE: Population counts from 1981 Census/Dénombrement de la population du recensement 1981

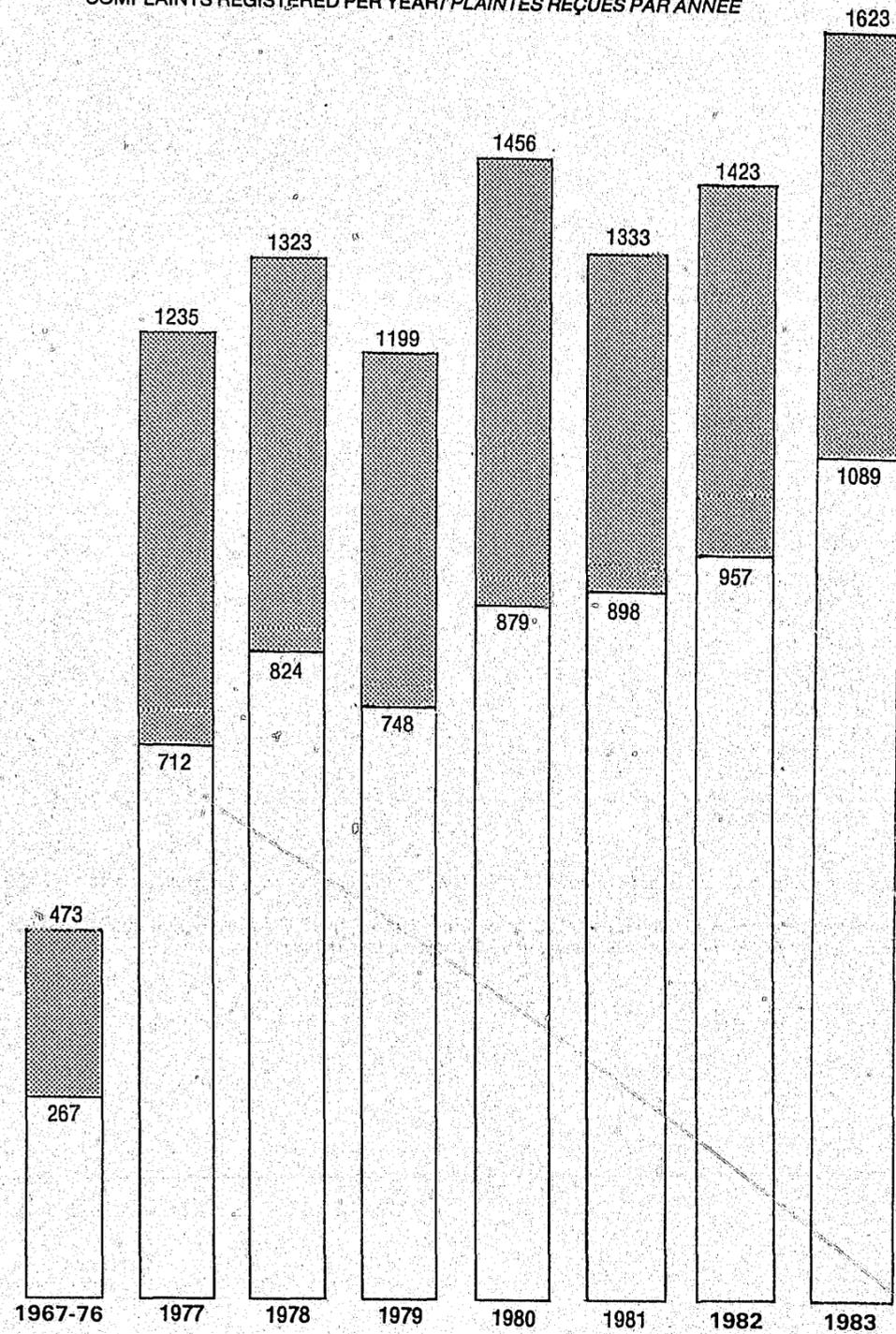
TABLE 3/TABLEAU 3
COMPLAINTS REGISTERED MONTHLY/PLAINTES REÇUES PAR MOIS
AVERAGE/MOYENNE

MONTH/MOIS	PREVIOUS YEARS/ANNÉES PRÉCÉDENTES	1983
January/Janvier	56	87
February/Février	58	67
March/Mars	74	95
April/Avril	71	70
May/Mai	83	185
June/Juin	62	72
July/Juillet	47	77
August/Août	46	97
September/Septembre	48	66
October/Octobre	55	65
November/Novembre	69	144
December/Décembre	44	65
TOTAL	713	1089

* Average since Office opened in October, 1967/Moyenne depuis l'ouverture du bureau en octobre 1967

Complaints against areas of non jurisdiction are included prior to 1980 but excluded since/Les plaintes dans les domaines de non juridiction sont incluses avant 1980 mais exclues depuis.

TABLE 3a/ TABLEAU 3a
 COMPLAINTS REGISTERED PER YEAR/ PLAINTE REÇUES PAR ANNÉE



Shaded Areas - Complaints in areas of non-jurisdiction.
 Parties ombragées - plaintes dans les domaines de non juridiction.

TABLE 4/TABLEAU 4
 COMPLAINTS IDENTIFIED ACCORDING TO SEX AND LANGUAGE OF COMMUNICATION
 PLAINTE IDENTIFIÉES D'APRÈS LE SEXE ET LA LANGUE DE COMMUNICATION

1983		
	Number Nombre	Percentage Pourcentage
Sex/ Sexe		
Masculine/Masculin	760	69.8
Feminine/Féminin	312	28.6
Group/Groupe	17	1.6
TOTAL	1089	100.0
Language of communication/Langue de communication		
English/Anglais	802	73.6
French/Français	287	26.4
TOTAL	1089	100.0

TABLE 5/TABLEAU 5
COMPLAINTS IDENTIFIED BY PARTY GRIEVED/
PLAINTES IDENTIFIÉES D'APRES LA PARTIE EN CAUSE

PARTY/PARTIE	1981		1982		1983	
	Total	%	Total	%	Total	%
Provincial departments and agencies/Ministères et organismes provinciaux						
Adoption Information/Renseignements concernant les adoptions			3	.3	5	.5
Agriculture and Rural Development/Agriculture et aménagement rural	7	.8	7	.7	8	.7
Alcoholism and Drug Dependency Commission/Commission de l'alcoolisme et de la pharmacodépendance	3	.3	2	.2	3	.3
Cabinet Secretariat*Secrétariat du Conseil des Ministres					1	.1
Civil Service Commission/Commission de la fonction publique	12	1.4	6	.6	14	1.3
Commerce and Development/Commerce et développement	2	.2	3	.3	8	.7
Community Colleges/Collèges communautaires	1	.1	16	1.7	17	1.6
Community Improvement Corporation/Société d'aménagement régional	1	.1	1	.1	2	.2
Education/Education	40	4.5	42	4.4	32	2.9
Environment/Environnement	6	.7	7	.7	8	.7
Finance/Finances	27	3.0	31	3.3	35	3.2
Fisheries/Pêches	1	.1	3	.3	5	.5
Health/Santé	58	6.5	44	4.6	82	7.5
Historical and Cultural Resources/Ressources historiques et culturelles			1	.1		
Justice/Justice	205	22.8	269	28.1	200	18.4
Labour and Human Resources/Travail et ressources humaines	5	.6	7	.7	12	1.1
Legislative Assembly/Assemblée législative					2	.2
Liquor Licensing Board/Commission des licences et permis d'alcool	5	.6	3	.3	6	.5
Municipal Affairs/Affaires municipales	24	2.7	23	2.4	31	2.8
Natural Resources/Ressources naturelles	29	3.2	21	2.2	19	1.7
N.B. Coal Limited	4	.4	2	.2		
N.B. Electric Power Commission/Commission d'énergie électrique du N.B.	35	3.9	40	4.2	42	3.9
N.B. Housing Corporation/Société d'habitation du N.B.	40	4.5	46	4.8	77	7.1
N.B. Human Rights Commission/Commission des droits de l'homme du N.B.	2	.2	1	.1	3	.3
N.B. Liquor Corporation/Société des alcools du N.B.	4	.4	8	.9	5	.5
N.B. Occupational Health and Safety Commission/Commission de l'hygiène et de la sécurité au travail du N.B.	1	.1				
N.B. Police Commission/Commission de police du N.B.			1	.1	2	.2
N.B. Research and Productivity Council/Conseil de recherche et de productivité du N.B.	1	.1				
Premier's Office/Cabinet du premier ministre	2	.2	1	.1		
Provincial Planning Appeal Board/Commission provinciale d'appel en matière d'urbanisme			4	.4	1	.1
Public Service Labour Relations Board/Commission des relations de travail dans les services publics	3	.3	2	.2		
Public Utilities Board/Commission des entreprises de service public	2	.2			2	.2
Social Services/Services sociaux	104	11.6	117	12.3	135	12.4
Supply and Services/Approvisionnement et services	8	.9	7	.7	8	.7
Tourism/Tourisme	4	.4	4	.4	4	.4
Transportation/Transports	59	6.6	56	5.9	78	7.2
Treasury Board/Conseil du trésor	3	.3	3	.3	2	.2
Workers' Compensation Board/Commission des accidents du travail	114	12.7	95	10.0	142	13.0
Youth, and Recreation/Jeunesse, et loisirs	7	.8	7	.7	8	.7
Municipal Corporations/Conseils municipaux	76	8.5	70	7.3	87	7.9
Right to Information Act/Loi sur le droit à l'information			4	.4	3	.3
Community Colleges/Collèges communautaires	1					
Labour and Human Resources/Travail et ressources humaines	1					
Lieutenant-Governor's Office/Bureau du Lieutenant-gouverneur	1					
TOTAL	898	100.0	957	100.0	1089	100.0

TABLE 6/TABLEAU 6
COMPLAINTS IDENTIFIED BY JURISDICTION/PLAINTES IDENTIFIÉES PAR JURIDICTION
(DECEMBER 31/31 DÉCEMBRE)

Year/Année	Total	Under investigation/A l'étude	Jurisdiction/Jurisdiction		No jurisdiction/Sans juridiction	
			Total	%	Total	%
1967-79	664	84	258	47.0	322	53.0
1980	879	128	564	75.1	187	24.9
1981	898	140	578	76.2	180	23.8
1982	957	182	588	76.9	187	24.1
1983	1089	93	658	66.1	338	33.9

N.B. For the period 1967-1979 complaints against areas of non jurisdiction are included. They are excluded from 1980./
Les plaintes dans les domaines de non juridiction sont incluses pour la période 1967-1979. Elles sont exclues depuis 1980.

TABLE 7/TABLEAU 7
DISPOSITION OF COMPLAINTS CARRIED OVER FROM 1982
CLASSIFICATION DES PLAINTES REPORTÉES DE 1982
(as of December 31, 1983/au 31 décembre 1983)

DISPOSITION/CLASSIFICATION	NUMBER/ NOMBRE	PERCENTAGE/ POURCENTAGE
Declined (no jurisdiction)—No assistance possible/ Refusée (sans juridiction)—Aucune aide possible	7	3.2
Declined (no jurisdiction)—Assistance rendered/ Refusée (sans juridiction)—Aide accordée	2	.9
Declined (discretionary)—No assistance possible/ Refusée (discrétionnaire)—Aucune aide possible	8	3.6
Discontinued (Ombudsman)—No assistance possible/ Discontinué (Ombudsman)—Aucune aide possible	60	27.5
Discontinued (Ombudsman)—Assistance rendered/ Discontinué (Ombudsman)—Aide accordée	20	9.2
Discontinued (Ombudsman)—Partially justified/ Discontinué (Ombudsman)—Partiellement redressée	2	.9
Discontinued (complainant)—No assistance possible/ Discontinué (plaignant)—Aucune aide possible	6	2.8
Discontinued (complainant)—Assistance rendered/ Discontinué (plaignant)—Aide accordée	1	.4
Unsupported—No assistance possible/ Non fondée—Aucune aide possible	29	13.3
Unsupported—Assistance rendered/ Non fondée—Aide accordée	2	.9
Partially justified—No assistance possible/ Partiellement fondée—Aucune aide possible	3	1.4
Partially justified—Assistance rendered/ Partiellement fondée—Aide accordée	5	2.3
Partially justified—Partially rectified/ Partiellement fondée—Partiellement redressée	7	3.2
Partially justified—Rectified/ Partiellement fondée—Redressée	3	1.4
Partially justified—Recommendation/ Partiellement fondée—Recommandation	3	1.4
Justified—No assistance possible/ Fondée—Aucune aide possible	3	1.4
Justified—Assistance rendered/ Fondée—Aide accordée	6	2.8
Justified—Partially rectified/ Fondée—Partiellement redressée	4	1.8
Justified—Rectified/ Fondée—Redressée	20	9.2
Justified—Recommendation/ Fondée—Recommandation	12	5.5
Under investigation/A l'étude	15	6.9
TOTAL	218	100.0

TABLE 8/TABLEAU 8
DISPOSITION OF COMPLAINTS CARRIED OVER FROM 1983
CLASSIFICATION DES PLAINTES REPORTÉES DE 1983
(as of December 31, 1983/au 31 décembre 1983)

DISPOSITION/CLASSIFICATION	NUMBER/ NOMBRE	PERCENTAGE/ POURCENTAGE
Declined (no jurisdiction)—No assistance possible/ Refusée (sans juridiction)—Aucune aide possible	312	28.6
Declined (no jurisdiction)—Assistance rendered/ Refusée (sans juridiction)—Aide accordée	26	2.4
Declined (discretionary)—No assistance possible/ Refusée (discrétionnaire)—Aucune aide possible	28	2.5
Discontinued (Ombudsman)—No assistance possible/ Discontinué (Ombudsman)—Aucune aide possible	288	26.4
Discontinued (Ombudsman)—Assistance rendered/ Discontinué (Ombudsman)—Aide accordée	87	8.0
Discontinued (complainant)—No assistance possible/ Discontinué (plaignant)—Aucune aide possible	30	2.8
Discontinued (complainant)—Assistance rendered/ Discontinué (plaignant)—Aide accordée	2	.2
Unsupported—No assistance possible/ Non fondée—Aucune aide possible	135	12.4
Unsupported—Assistance rendered/ Non fondée—Aide accordée	8	.7
Partially justified—No assistance possible/ Partiellement fondée—Aucune aide possible	2	.2
Partially justified—Assistance rendered/ Partiellement fondée—Aide accordée	10	.9
Partially justified—Partially rectified/ Partiellement fondée—Partiellement redressée	4	.4
Partially justified—Rectified/ Partiellement fondée—Redressée	6	.6
Justified—No assistance possible/ Fondée—Aucune aide possible	4	.4
Justified—Assistance rendered/ Fondée—Aide accordée	6	.6
Justified—Partially rectified/ Fondée—Partiellement redressée	1	.1
Justified—Rectified/ Fondée—Redressée	39	3.6
Justified—Recommendation/ Fondée—Recommandation	8	.7
Under investigation/A l'étude	93	8.5
TOTAL	1089	100.0



CHAPTER O-5

Ombudsman Act

Chapter Outline

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 officer — fonctionnaire
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1 In this Act

“department or agency” means a department or agency, incorporated or otherwise, of the Government of the Province or of a municipality within the Province; 1976, c.43, s.1.

“Minister” means a member of the Executive Council;

“officer” means an official, employee or member of a department or agency. 1967, c.18, s.1.

CHAPITRE O-5

Loi sur l’Ombudsman

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1 Dans la présente loi

«fonctionnaire» désigne un cadre, un employé ou un membre d’un ministère ou d’un organisme;

«ministre» désigne un membre du Conseil exécutif;

«service ou organisme» désigne, selon le cas, un ministère, service ou organisme, constitué en corporation ou non, du gouvernement ou d’une municipalité de la province. 1967, c.18, art.1; 1976, c.43, art.1.

1.1 Where in the French version of this Act the expression "ministère ou organisme" appears, that expression shall be read as reference to "service ou organisme". 1976, c.43, s.2.

2(1) There shall be an Ombudsman appointed by the Lieutenant-Governor in Council on the recommendation of the Legislative Assembly.

2(2) Unless his office sooner becomes vacant, the Ombudsman holds office for ten years

(a) from the date of his appointment under subsection (1), or

(b) from the date of his appointment under section 4,

and if otherwise qualified, is eligible to be reappointed.

2(3) The Ombudsman may resign his office by notice in writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from New Brunswick, to the Clerk of the Legislative Assembly.

2(4) The Ombudsman receives the same salary and pension as a judge of The Court of Queen's Bench of New Brunswick. 1967, c.18, s.2; 1979, c.41, s.90.

3(1) On the recommendation of the Legislative Assembly, the Lieutenant-Governor in Council may remove or suspend the Ombudsman from office for cause or incapacity due to illness or any other cause.

3(2) When the Legislature is not in session, a judge of The Court of Queen's Bench of New Brunswick may, upon an application by the Lieutenant-Governor in Council, suspend the Ombudsman from office for cause or incapacity due to illness or any other cause. 1979, c.41, s.90.

3(3) Where the Lieutenant-Governor in Council makes an application under subsection (2) the practice and procedure of The Court of Queen's Bench of New Brunswick respecting applications applies. 1979, c.41, s.90.

3(4) Where a judge of The Court of Queen's Bench of New Brunswick suspends the Ombudsman under subsection (2) that judge

(a) shall appoint an acting Ombudsman to hold office until the suspension has been dealt with by the Legislative Assembly, and

(b) shall table a report of the suspension within ten days following the commencement of the next ensuing session of the Legislature. 1979, c.41, s.90.

1.1 Chaque fois que l'expression «ministère ou organisme» est utilisée dans la version française, cette expression doit être entendue comme voulant dire «service ou organisme». 1976, c.43, art.2.

2(1) Un Ombudsman est nommé par le lieutenant-gouverneur en conseil sur la recommandation de l'Assemblée législative.

2(2) A moins que son poste ne devienne vacant plus tôt, l'Ombudsman reste en fonctions pendant dix ans

a) à compter de la date de sa nomination en application du paragraphe (1), ou

b) à compter de la date de sa nomination en application de l'article 4,

et il peut être nommé de nouveau s'il réunit les conditions voulues.

2(3) L'Ombudsman peut démissionner en adressant un avis écrit à l'Orateur de l'Assemblée législative ou, s'il n'y a pas d'Orateur ou si l'Orateur s'est absenté du Nouveau-Brunswick, au greffier de l'Assemblée législative.

2(4) L'Ombudsman reçoit le même traitement et la même pension qu'un juge de la Cour du Banc de la Reine du Nouveau-Brunswick. 1967, c.18, art.2; 1979, c.41, art.90.

3(1) Sur la recommandation de l'Assemblée législative, le lieutenant-gouverneur en conseil peut destituer ou suspendre l'Ombudsman pour un motif valable, une incapacité due à la maladie ou pour toute autre raison.

3(2) Lorsque la Législature ne siège pas, un juge de la Cour du Banc de la Reine du Nouveau-Brunswick peut suspendre l'Ombudsman pour un motif valable, une incapacité due à la maladie ou pour toute autre raison, à la demande du lieutenant-gouverneur en conseil. 1979, c.41, art.90.

3(3) Lorsque le lieutenant-gouverneur en conseil fait une demande en application du paragraphe (2), la pratique et la procédure de la Cour du Banc de la Reine du Nouveau-Brunswick relatives aux demandes sont applicables. 1979, c.41, art.90.

3(4) Lorsqu'un juge de la Cour du Banc de la Reine du Nouveau-Brunswick suspend l'Ombudsman en vertu du paragraphe (2), ce juge

a) doit nommer un Ombudsman intérimaire qui doit rester en fonctions jusqu'à ce que l'Assemblée législative ait statué sur la suspension, et

b) doit présenter un rapport de la suspension dans les dix jours de l'ouverture de la session suivante de la Législature. 1979, c.41, art.90.

3(5) No suspension under subsection (2) shall continue beyond the end of the next ensuing session of the Legislature. 1967, c.18, s.3.

4(1) Where the Ombudsman dies, retires, resigns or is removed from office, the vacancy shall be filled in accordance with subsections (2) and (3).

(a) the office of Ombudsman becomes vacant when the Legislature is in session but no recommendation is made by the Legislative Assembly before the close of that session, or

(b) the office of Ombudsman becomes vacant when the Legislature is not in session,

the Lieutenant-Governor in Council may appoint an Ombudsman to hold office until his appointment is confirmed by the Legislative Assembly in accordance with subsection (3).

4(3) Where an appointment under subsection (2) is not confirmed within 30 days of the next ensuing session of the Legislature, the appointment terminates and the office of Ombudsman is vacant. 1967, c.18, s.4.

4.1(1) Where the office of Ombudsman is vacant or the Ombudsman has been suspended under subsection 3(1), the Lieutenant-Governor in Council may appoint an acting Ombudsman to hold office until a person is appointed as Ombudsman or until the suspension has elapsed.

4.1(2) An acting Ombudsman, while in office, has the powers and duties and shall perform the functions of the Ombudsman and shall be paid such salary or other remuneration and expenses as the Lieutenant-Governor in Council may fix. 1981, c.57, s.1.

5 The Ombudsman may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office without prior approval in each particular case by the Legislative Assembly or the Lieutenant-Governor in Council when the Legislature is not in session. 1967, c.18, s.5.

6(1) Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

3(5) Aucune suspension en vertu du paragraphe (2) n'est valable après la clôture de la session suivante de la Législature. 1967, c.18, art.3.

4(1) Lorsque l'Ombudsman décède, prend sa retraite, démissionne ou est destitué, il est suppléé à la vacance conformément aux dispositions des paragraphes (2) et (3).

4(2) Lorsque

a) le poste d'ombudsman devient vacant pendant une session de la Législature mais que l'Assemblée législative ne fait pas de recommandation avant la clôture de la session, ou

b) que le poste d'ombudsman devient vacant alors que la Législature ne siège pas,

le lieutenant-gouverneur en conseil peut nommer un Ombudsman qui reste en fonctions jusqu'à ce que l'Assemblée législative approuve sa nomination conformément aux dispositions du paragraphe (3).

4(3) Lorsqu'une nomination faite en vertu du paragraphe (2) n'a pas été approuvée dans les trente jours du début de la session suivante de la Législature, la nomination prend fin et le poste d'ombudsman devient vacant. 1967, c.18, art.4.

4.1(1) Lorsque le poste d'Ombudsman est vacant ou lorsque ce dernier a été suspendu en vertu du paragraphe 3(1), le lieutenant-gouverneur en conseil peut nommer un Ombudsman suppléant pour remplir le poste jusqu'à la nomination d'un Ombudsman ou la fin de la suspension.

4.1(2) Un Ombudsman suppléant en fonction a les pouvoirs et les attributions de l'Ombudsman et il doit en remplir les fonctions et il reçoit le traitement ou autres rémunérations et indemnités que peut fixer le lieutenant-gouverneur en conseil. 1981, c.57, art.1.

5 L'Ombudsman ne peut pas être député de l'Assemblée législative et ne doit pas détenir un poste de confiance ou un emploi rémunéré autre que son poste d'ombudsman, ni remplir des fonctions rémunérées autres que les fonctions de son poste sans avoir obtenu, pour chaque cas particulier, le consentement préalable de l'Assemblée législative ou du lieutenant-gouverneur en conseil lorsque la Législature ne siège pas. 1967, c.18, art.5.

6(1) Avant de commencer à exercer ses fonctions, l'Ombudsman doit prêter le serment de remplir les fonctions de son poste avec loyauté et impartialité et de ne divulguer aucun renseignement qu'il a reçu en vertu de la présente loi, si ce n'est en vue de l'application de celle-ci.

6(2) The Speaker or the Clerk of the Legislative Assembly shall administer the oath referred to in subsection (1). 1967, c.18, s.6.

7 Notwithstanding section 6, the Ombudsman may disclose in a report made by him under this Act any matters that in his opinion are necessary to disclose in order to establish grounds for his conclusions and recommendations. 1967, c.18, s.7.

8(1) The Ombudsman may appoint such assistants and employees as he deems necessary for the efficient carrying out of his functions under this Act.

8(2) Before performing any official duty under this Act a person appointed under subsection (1) shall take an oath, administered by the Ombudsman, that he will not divulge any information received by him under this Act, except for the purpose of giving effect to this Act. 1967, c.18, s.8.

9(1) The Ombudsman may, in writing under his signature, delegate to any person any of his powers under this Act except the power of delegation and the power to make a report under this Act.

9(2) A person purporting to exercise power of the Ombudsman by virtue of a delegation under subsection (1) shall produce evidence of his authority to exercise that power when required to do so. 1967, c.18, s.9.

10 For the purposes of this Act, the Ombudsman is a commissioner under the *Inquiries Act*. 1967, c.18, s.10.

11 This Act does not apply

(a) to judges and functions of any court of New Brunswick, and

(b) to deliberations and proceedings of the Executive Council or any committee thereof. 1967, c.18, s.11.

12(1) Subject to subsection (2), the Ombudsman may, either on a written petition made to him or on his own motion, investigate

(a) the administration of any law of the Province by a department or agency or any officer thereof, or

(b) the administration of any law of a municipality within the Province by a department or agency or any officer thereof

6(2) L'Orateur ou le greffier de l'Assemblée législative doit déferer le serment visé au paragraphe (1). 1967, c.18, art.6.

7 Nonobstant l'article 6, l'Ombudsman peut divulguer, dans un rapport qu'il présente en application de la présente loi, toute affaire dont la divulgation est à son avis nécessaire afin de fonder ses conclusions et ses recommandations. 1967, c.18, art.7.

8(1) L'Ombudsman peut nommer les adjoints et employés qu'il juge nécessaires pour assurer l'exercice efficace des fonctions que lui confère la présente loi.

8(2) Avant d'exercer toute fonction officielle que lui confère la présente loi, une personne nommée en application du paragraphe (1) doit prêter devant l'Ombudsman le serment de ne divulguer aucun renseignement qu'il a reçu en vertu de la présente loi, si ce n'est en vue de l'application de celle-ci. 1967, c.18, art.8.

9(1) L'Ombudsman peut, au moyen d'un document revêtu de sa signature, déléguer, à toute personne tout pouvoir que lui confère la présente loi, à l'exclusion du pouvoir de délégation et de celui de présenter un rapport en application de la présente loi.

9(2) Quiconque prétend exercer tout pouvoir de l'Ombudsman en vertu d'une délégation prévue au paragraphe (1) doit fournir la preuve qu'il est autorisé à exercer ces pouvoirs lorsqu'il en est requis. 1967, c.18, art.9.

10 Pour l'application de la présente loi, l'Ombudsman a la qualité d'un commissaire selon la *Loi sur les enquêtes*. 1967, c.18, art.10.

11 La présente loi ne s'applique pas

a) aux juges ni aux fonctions de toute cour du Nouveau-Brunswick, ni

b) aux délibérations et aux travaux du Conseil exécutif ou de tout comité de ce Conseil. 1967, c.18, art.11.

12(1) Sous réserve du paragraphe (2), l'Ombudsman peut, sur requête écrite à lui adressée ou de sa propre initiative, enquêter

a) sur l'application d'une loi ou règle de droit provinciale par un service ou organisme de la province ou un de leurs fonctionnaires, ou

b) sur l'application d'une loi ou règle de droit municipale par un service ou organisme d'une municipalité de la province ou par un de leurs fonctionnaires

whereby any person is aggrieved or, in the opinion of the Ombudsman, may be aggrieved. 1976, c.43, s.3.

12(2) Notwithstanding subsection (1), the Ombudsman shall not investigate

(a) any decision, recommendation, act or omission in respect of which there is under any Act an express right of appeal or objection or an express right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until that right of appeal or objection or application has been exercised in the particular case or until the time prescribed for the exercise of that right has expired, or

(b) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Province or for a municipality within the Province. 1976, c.43, s.3.

12(3) Where a question arises as to the jurisdiction of the Ombudsman to investigate a grievance under this Act, he may apply to The Court of Queen's Bench of New Brunswick for a declaratory order determining the question. 1967, c.18, s.12; 1976, c.43, s.3; 1981, c.57, s.2.

13(1) A person may apply by written petition to the Ombudsman to investigate a grievance.

13(2) Notwithstanding sections 15, 21 and 22, a committee of the Legislative Assembly may refer any petition that is before the committee for consideration or any matter relating to such a petition to the Ombudsman for investigation and report.

13(3) Notwithstanding sections 15, 21 and 22, where a matter has been referred to the Ombudsman under subsection (2), the Ombudsman, subject to any special directions of the committee, shall investigate the matter as far as it is within his jurisdiction and shall make such report to the committee as he thinks fit.

13(4) Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction of any offence or by any inmate of any private sanatorium or mental hospital is addressed to the Ombudsman, it shall be immediately forwarded unopened to the Ombudsman by the person in charge of the place or institution where the writer of the letter is detained or of which he is an inmate. 1967, c.18, s.13.

si l'application qui en est faite cause ou peut, à son avis, causer un préjudice à une personne. 1976, c.43, art.3.

12(2) Indépendamment du paragraphe (1), l'Ombudsman ne peut enquêter

a) sur une décision, recommandation, action ou omission pour laquelle une loi prévoit expressément un droit d'appel ou d'opposition ou le droit de demander une révision au fond devant toute cour ou tout tribunal constitué sous le régime d'une loi, avant que cette voie de recours n'ait été exercée en l'espèce ou qu'ait expiré le délai imparti pour l'exercer, ou

b) sur une décision, recommandation, action ou omission d'une personne agissant en qualité d'avocat ou de conseil de la province ou d'une municipalité de la province. 1976, c.43, art.3.

12(3) Lorsque la compétence qu'a l'Ombudsman d'enquêter sur un grief en application de la présente loi est remise en question, celui-ci peut demander à la Cour du Banc de la Reine du Nouveau-Brunswick de rendre une ordonnance déclaratoire sur la question. 1967, c.18, art.12; 1976, c.43, art.3; 1981, c.57, art.2.

13(1) Toute personne peut demander à l'Ombudsman d'enquêter sur un grief en lui faisant parvenir une requête par écrit.

13(2) Nonobstant les articles 15, 21 et 22, un comité de l'Assemblée législative peut renvoyer toute requête qui lui est soumise, ou toute question relative à une telle requête, à l'Ombudsman pour qu'il fasse une enquête et présente un rapport.

13(3) Nonobstant les articles 15, 21 et 22, lorsqu'une question a été renvoyée à l'Ombudsman en application du paragraphe (2), celui-ci doit, sous réserve des instructions spéciales qu'il peut recevoir du comité, enquêter sur l'affaire dans les limites de sa compétence et présenter au comité le rapport qu'il juge approprié.

13(4) Nonobstant toute loi, lorsqu'une lettre écrite par une personne sous garde après avoir été accusée ou déclarée coupable d'une infraction ou par une personne qui est placée dans un sanatorium ou un hôpital psychiatrique privés est adressée à l'Ombudsman, elle doit lui être transmise immédiatement, sans avoir été ouverte, par le responsable du lieu ou de l'établissement où l'auteur de la lettre est sous garde ou placé. 1967, c.18, art.13.

14 Notwithstanding any other Act that provides that a decision, recommendation, act or omission is final or that no appeal lies in respect thereof or that no proceeding, decision, recommendation, act or omission of a department or agency or officer thereof is to be challenged, reviewed, quashed or called in question, the Ombudsman may exercise the powers of his office. 1967, c.18,

15(1) The Ombudsman, in his discretion, may refuse to investigate or may cease to investigate a grievance if

(a) an adequate remedy or right of appeal already exists whether or not the petitioner has availed himself of the remedy or right of appeal,

(b) it is trivial, frivolous, vexatious or not made in good faith,

(c) having regard to all the circumstances of the case, further investigation is unnecessary,

(d) it relates to any decision, recommendation, act or omission that the petitioner has had knowledge of for more than one year before petitioning,

(e) the petitioner does not have a sufficient personal interest in the subject matter of the grievance, or

(f) upon a balance of convenience between the public interest and the person aggrieved, the Ombudsman is of the opinion that the grievance should not be investigated.

15(2) Where the Ombudsman decides not to investigate or to cease to investigate a grievance he shall inform the petitioner and any other interested person of his decision and may state his reasons therefor. 1967, c.18, s.15.

16 Before investigating a grievance, the Ombudsman shall inform the administrative head of the department or agency administering the law of the Province or of a municipality within the Province whereby any person is aggrieved, or, in his opinion, may be aggrieved, of his intention to investigate. 1967, c.18, s.16; 1976, c.43, s.4.

17(1) Every investigation under this Act shall be conducted in private.

17(2) Subject to this Act, the Ombudsman may hear or obtain information from any person and may make inquiries.

14 L'Ombudsman peut exercer les pouvoirs de sa charge nonobstant toute autre loi prévoyant que des décisions, recommandations, actes ou omissions sont définitifs et ne peuvent faire l'objet d'un appel et que nulle procédure, décision, recommandation, nul acte ou nulle omission d'un ministère ou d'un organisme ou d'un de leurs fonctionnaires ne doit être contesté, révisé, annulé ou mis en question. 1967, c.18, art.14.

15(1) L'Ombudsman peut, à sa discrétion, refuser ou cesser d'enquêter sur un grief

a) s'il existe déjà un recours suffisant ou un droit d'appel, que le requérant s'en soit prévalu ou non,

b) si ce grief est futile, frivole, vexatoire ou est fait de mauvaise foi,

c) si, étant donné les circonstances en l'espèce, il n'est pas nécessaire de pousser l'enquête plus loin,

d) si ce grief a trait à une décision, une recommandation, un acte ou une omission dont le requérant a eu connaissance plus d'un an avant de faire la requête,

e) si le requérant n'a pas un intérêt personnel suffisant dans ce qui fait l'objet du grief, ou

f) si, après avoir mis en balance l'intérêt public et celui de la personne lésée, l'Ombudsman est d'avis qu'il n'y a pas lieu d'enquêter sur le grief.

15(2) Lorsque l'Ombudsman décide de ne pas enquêter ou de cesser d'enquêter sur un grief, il doit en informer le requérant et tout autre intéressé et peut donner les motifs de sa décision. 1967, c.18, art.15.

16 Avant d'enquêter sur un grief, l'Ombudsman doit informer de son intention le chef administratif du service ou de l'organisme chargé de l'application de la loi ou règle de droit provinciale ou municipale, du fait de laquelle un préjudice est causé ou peut, à son avis, être causé à une personne. 1967, c.18, art.16; 1976, c.43, art.4.

17(1) Toute enquête effectuée en application de la présente loi est menée à titre confidentiel.

17(2) Sous réserve de la présente loi, l'Ombudsman peut entendre toute personne ou obtenir d'elle des renseignements et mener des enquêtes.

17(3) The Ombudsman may hold hearings under this Act but, subject to subsection (4), no person is entitled as of right to be heard by the Ombudsman.

17(4) Where during an investigation the Ombudsman is satisfied that there is *prima facie* proof that a department or agency or officer thereof administered a law of the Province or of a municipality within the Province so as to cause a grievance or to give cause for a grievance, he shall so advise the administrative head of the department or agency or officer thereof and shall give that department or agency or officer thereof an opportunity to be heard. 1976, c.43, s.5.

17(5) A department or agency or officer thereof appearing at a hearing under subsection (4) is entitled to counsel.

17(6) The Ombudsman may at any time during or after an investigation consult any Minister who is concerned in the matter of the investigation.

17(7) On the request of any Minister in relation to an investigation or in any case where an investigation relates to a recommendation made to a Minister, the Ombudsman shall consult that Minister after making the investigation and before forming a final opinion on any matter referred to in subsection 21(1).

17(8) Where during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department or agency or officer thereof, he shall refer the matter to the administrative head of that department or agency. 1976, c.43, s.5.

17(9) Subject to this Act and any rules made under section 26, the Ombudsman may regulate his procedure. 1967, c.18, s.17.

18(1) Subject to subsections (2) to (7) and section 19, where the Ombudsman requests a person who in the opinion of the Ombudsman is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that in the opinion of the Ombudsman relate to the matter and that may be in the possession or under the control of that person whether or not that person is an officer of a department or agency,

17(3) L'Ombudsman peut procéder à des auditions en application de la présente loi, mais, sous réserve du paragraphe (4), nul ne peut exiger de plein droit d'être entendu par l'Ombudsman.

17(4) S'il acquiert, au cours d'une enquête, la conviction qu'il existe une preuve *prima facie* qu'un service ou un organisme ou un de leurs fonctionnaires a appliqué une loi ou règle de droit provinciale ou municipale d'une façon causant ou pouvant causer un préjudice, l'Ombudsman doit en informer le chef administratif du service, de l'organisme ou du fonctionnaire en cause et leur donner l'occasion de se faire entendre. 1976, c.43, art.5.

17(5) Tout ministère ou organisme ou un de leurs fonctionnaires comparissant à une audition en application du paragraphe (4) a le droit d'être représenté par un conseil.

17(6) L'Ombudsman peut, en tout temps pendant ou après une enquête, consulter tout ministre que le sujet de l'enquête concerne.

17(7) Sur demande d'un ministre à l'occasion d'une enquête ou dans toute affaire où une enquête se rapporte à une recommandation faite à un ministre, l'Ombudsman doit consulter ce ministre après avoir enquêté et avant de se faire une opinion définitive sur toute question visée au paragraphe 21(1).

17(8) Lorsque, pendant ou après une enquête, l'Ombudsman est d'avis qu'il y a des preuves qu'un service ou un organisme ou un de leurs fonctionnaires a manqué à ses devoirs ou a fait preuve d'inconduite, il doit en référer au chef administratif du service ou de l'organisme. 1976, c.43, art.5.

17(9) Sous réserve de la présente loi et de toutes règles établies en application de l'article 26, l'Ombudsman peut fixer les procédures qu'il entend suivre. 1967, c.18, art.17.

18(1) Sous réserve des paragraphes (2) à (7) et de l'article 19, lorsque l'Ombudsman demande à une personne qu'il juge capable de fournir des renseignements concernant une affaire sur laquelle il est en train d'enquêter, de fournir ces renseignements, cette personne doit le faire et produire les documents et les pièces qui, selon l'Ombudsman, se rapportent à l'affaire et qui peuvent être en sa possession ou sous son contrôle, que cette personne soit ou non fonctionnaire d'un ministère ou d'un organisme et que ces documents

and whether or not the documents and papers are in the custody or under the control of that department or agency.

18(2) The Ombudsman may summon before him and examine on oath

(a) any officer of a department or agency who in his opinion is able to give any information referred to in subsection (1),

(b) any petitioner, and

(c) with the approval of the Minister of Justice, any other person who in the opinion of the Ombudsman is able to give any information referred to in subsection (1).

18(3) The oath referred to in subsection (2) shall be administered by the Ombudsman.

18(4) Subject to subsection (5), where a person is bound by an Act to maintain secrecy in relation to, or not to disclose any matter, the Ombudsman shall not require that person to supply any information or to answer any question in relation to that matter or to produce any document or paper relating to the matter that would be a breach of the obligation of secrecy or non-disclosure.

18(5) With the prior consent in writing of the petitioner the Ombudsman may require a person to whom subsection (4) applies to supply information or answer questions or produce documents or papers relating only to the petitioner and that person shall do so.

18(6) The rules for taking evidence in The Court of Queen's Bench of New Brunswick apply to evidence given by a person required to give information, answer questions and produce documents or papers under this Act. 1979, c.41, s.90.

18(7) Any person required to attend a hearing under this Act is entitled to the same fees, allowances and expenses as if he were a witness in The Court of Queen's Bench of New Brunswick. 1979, c.41, s.90.

18(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

ou ces pièces soient ou non sous la garde ou le contrôle de ce ministère ou de cet organisme.

18(2) L'Ombudsman peut sommer de comparaître devant lui et interroger sous serment

a) tout fonctionnaire d'un ministère ou d'un organisme qu'il juge capable de fournir tout renseignement visé au paragraphe (1),

b) tout requérant, et

c) avec l'approbation du ministre de la Justice, toute autre personne qu'il juge capable de fournir tout renseignement visé au paragraphe (1).

18(3) L'Ombudsman fait prêter le serment prévu au paragraphe (2).

18(4) Sous réserve du paragraphe (5), lorsque, en application d'une loi quelconque, une personne est tenue au secret relativement à une question ou est tenue de ne faire aucune divulgation relativement à une question, l'Ombudsman ne doit pas exiger qu'elle fournisse des renseignements ou réponde à une question à propos de cette question ou produise des documents ou pièces ayant trait à cette question, ce qui constituerait un manquement à son obligation de garder le secret ou de ne faire aucune divulgation.

18(5) Après avoir obtenu au préalable le consentement écrit du requérant, l'Ombudsman peut exiger d'une personne à laquelle le paragraphe (4) est applicable qu'elle fournisse des renseignements, réponde à des questions ou produise des documents ou des pièces concernant uniquement le requérant, et cette personne doit obtempérer.

18(6) Les règles d'administration de la preuve devant la Cour du Banc de la Reine du Nouveau-Brunswick sont applicables à la preuve fournie par une personne tenue de communiquer des renseignements, de répondre à des questions et de produire des documents ou des pièces en application de la présente loi. 1979, c.41, art.90.

18(7) Quiconque est tenu de comparaître lors d'une audition en application de la présente loi a droit au paiement des mêmes indemnités et frais que s'il était un témoin devant la Cour du Banc de la Reine du Nouveau-Brunswick. 1979, c.41, art.90.

18(8) Sauf dans le cas d'un procès pour parjure, la preuve apportée par une personne dans des procédures devant l'Ombudsman et la preuve recueillie lors de toute procédure devant l'Ombudsman n'est pas admissible à l'encontre d'une personne devant un tribunal ou dans des procédures de nature judiciaire.

18(9) No person is liable for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this Act. 1967, c.18, s.18.

19(1) Where the Minister of Justice certifies that the giving of any information or the answering of any question or the production of any document or paper may disclose

(a) deliberations of the Executive Council, or

(b) proceedings of the Executive Council or any committee of the Executive Council relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or the document or paper produced, but shall report the giving of such a certificate to the Legislative Assembly.

19(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman. 1967, c.18, s.19; 1968, c.44, s.1.

20(1) For the purposes of this Act the Ombudsman may enter upon any premises occupied by any department or agency and, subject to sections 18 and 19, carry out any investigation within his jurisdiction.

20(2) Before entering any premises under subsection (1) the Ombudsman shall notify the administrative head of the department or agency of his intention to do so. 1967, c.18, s.20; 1976, c.43, s.6.

21(1) Where upon investigation the Ombudsman is of the opinion that a grievance exists or may exist because a department or agency or officer thereof administered or is administering a law of the Province or of a municipality within the Province

(a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to a rule of law, enactment or practice that so results;

(b) under mistake of law or fact, in whole or in part;

18(9) Nul ne peut être poursuivi en raison d'une infraction à une loi quelconque parce qu'il s'est conformé à une exigence de l'Ombudsman en application de la présente loi. 1967, c.18, art.18.

19(1) Lorsque le ministre de la Justice certifie que la communication de renseignements, la réponse à toutes questions ou la production de documents ou de pièces peut divulguer

a) la teneur des délibérations du Conseil exécutif, ou

b) les travaux du Conseil exécutif ou de ses comités concernant des affaires de nature secrète ou confidentielle qui seraient préjudiciables à l'intérêt public,

l'Ombudsman ne doit pas exiger ces renseignements, ces réponses ou ces documents ou pièces, mais doit présenter à l'Assemblée législative un rapport indiquant que ce certificat a été donné.

19(2) Sous réserve du paragraphe (1), une règle de droit qui autorise ou exige la rétention de documents, pièces ou objets, ou le refus de répondre à toutes questions, pour le motif que le fait de divulguer ces documents, pièces ou objets, ou de répondre à ces questions serait préjudiciable à l'intérêt public, ne s'applique pas aux enquêtes de l'Ombudsman ni aux procédures qui ont lieu devant lui. 1967, c.18, art.19; 1968, c.44, art.1.

20(1) Pour l'application de la présente loi, l'Ombudsman peut pénétrer dans tout local occupé par un ministère ou un organisme et, sous réserve des articles 18 et 19, effectuer une enquête dans les limites de sa compétence.

20(2) Avant de pénétrer dans tout local en vertu du paragraphe (1), l'Ombudsman doit aviser le chef administratif du service ou de l'organisme de son intention. 1967, c.18, art.20; 1976, c.43, art.6.

21(1) Lorsque, après une enquête, l'Ombudsman est d'avis qu'un motif de grief existe ou peut exister en raison du fait qu'un service ou un organisme ou un de leurs fonctionnaires a appliqué ou applique une loi de la province ou d'une municipalité de la province

a) de façon déraisonnable, injuste, opprimante ou discriminatoire, ou conformément à une règle de droit, un texte législatif ou une pratique qui produit ce résultat;

b) en commettant une erreur de droit ou de fait, en totalité ou en partie;

(c) wrongly;

(d) contrary to law; or

(e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given;

and if the Ombudsman is of the opinion that

(f) the grievance should be referred to the department or agency or officer thereof for further consideration;

(g) an omission should be rectified;

(h) a decision should be cancelled or rectified;

(i) a practice by reason of which the grievance arose or may arise should be altered;

(j) a law by reason of which the grievance arose or may arise should be reconsidered;

(k) reasons should be given for the use of a discretionary power; or

(l) other steps should be taken as he may advise;

the Ombudsman shall report his opinion, his reasons therefor and any recommendation to the administrative head of the department or agency concerned. 1976, c.43, s.7.

21(2) Where the Ombudsman makes a recommendation under subsection (1) he may request the department or agency to notify him within a specified time of the steps it proposes to take to give effect to his recommendations.

21(3) Where, after the time stated under subsection (2), the department or agency does not act upon the recommendation of the Ombudsman, refuses to act thereon, or acts in a manner unsatisfactory to the Ombudsman the Ombudsman may send a copy of his report and recommendation to the Lieutenant-Governor in Council and may thereafter make a report to the Legislative Assembly.

c) fautivement;

d) contrairement à la loi; ou

e) en usant d'un pouvoir discrétionnaire dans un but répréhensible ou en se fondant sur des motifs qui ne sont pas pertinents, ou en tenant compte de considérations non pertinentes, ou en ne motivant pas l'exercice d'un pouvoir discrétionnaire lorsqu'il devrait le faire;

et qu'il est d'avis:

f) que le grief devrait être renvoyé au service ou à l'organisme ou à leur fonctionnaire pour être examiné à nouveau;

g) qu'une omission devrait être réparée;

h) qu'une décision devrait être annulée ou corrigée;

i) qu'une pratique qui a donné lieu ou peut donner lieu au grief devrait être changée;

j) qu'une loi qui a donné lieu ou peut donner lieu au grief devrait être révisée;

k) que les motifs de l'exercice d'un pouvoir discrétionnaire devraient être donnés; ou

l) que d'autres mesures qu'il peut conseiller devraient être prises;

il doit présenter un rapport énonçant son opinion sur la question, les motifs sur lesquels elle s'appuie et ses recommandations au chef administratif du service ou de l'organisme concerné. 1976, c.43, art.7.

21(2) Lorsque l'Ombudsman fait une recommandation en application du paragraphe (1), il peut demander au ministère ou à l'organisme de l'aviser, dans un délai déterminé, des mesures envisagées pour donner suite à ses recommandations.

21(3) Lorsque, après expiration du délai visé au paragraphe (2), le ministère ou l'organisme ne donne pas suite à la recommandation de l'Ombudsman, refuse d'y donner suite, ou prend des mesures qui ne satisfont pas l'Ombudsman, celui-ci peut transmettre une copie de son rapport et de sa recommandation au lieutenant-gouverneur en conseil et présenter ensuite un rapport à l'Assemblée législative.

21(4) The Ombudsman shall include with any report made under subsection (3) a copy of any comment made by the department or agency upon his opinion or recommendation.

21(5) In any report made by him under this Act the Ombudsman shall not make any finding or comment that is adverse to any person unless it gives that person an opportunity to be heard. 1967, c.18, s.21; 1969, c.62, s.1.

22(1) Where the Ombudsman makes a recommendation under subsection 21(1) and the department or agency does not act upon such recommendation to his satisfaction, the Ombudsman shall inform the petitioner of his recommendation and may add any comment.

22(2) The Ombudsman shall in any case inform the petitioner in the manner and time he deems proper of the result of the investigation. 1967, c.18, s.22.

23 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman shall be challenged, reviewed, quashed or called in question in any court. 1967, c.18, s.23.

24(1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for anything he may do or report or say in the course of the exercise or intended exercise of any of his functions under this Act whether or not that function was within his jurisdiction, unless it is shown he acted in bad faith. 1976, c.43, s.8.

24(2) The Ombudsman or any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise of any of his functions under this Act whether or not that function was within his jurisdiction. 1967, c.18, s.24; 1976, c.43, s.8.

25(1) The Ombudsman shall report annually to the Legislative Assembly on the exercise of his functions under this Act.

25(2) The Ombudsman, in the public interest or in the interests of a person, department or agency, may publish reports relating generally to the

21(4) L'Ombudsman doit joindre à tout rapport qu'il présente en application du paragraphe (3) une copie des commentaires du ministère ou de l'organisme au sujet de son opinion ou de sa recommandation.

21(5) Dans tout rapport qu'il présente en application de la présente loi, l'Ombudsman ne doit tirer aucune conclusion ni faire de commentaires défavorables à une personne à moins de lui donner l'occasion de se faire entendre. 1967, c.18, art.21; 1969, c.62, art.1.

22(1) Lorsque l'Ombudsman fait une recommandation en application du paragraphe 21(1) et que le ministère ou l'organisme n'y donne pas suite de façon satisfaisante, il doit aviser le requérant de sa recommandation et peut ajouter des commentaires.

22(2) Dans tous les cas, l'Ombudsman doit aviser le requérant du résultat de l'enquête de la manière et au moment qu'il juge opportuns. 1967, c.18, art.22.

23 Aucune procédure de l'Ombudsman n'est nulle en raison d'un vice de forme et aucune procédure ou décision de l'Ombudsman ne peut être contestée, révisée, annulée ou mise en question devant une cour, sauf s'il y a eu défaut de compétence. 1967, c.18, art.23.

24(1) L'Ombudsman, et toute personne occupant un poste ou remplissant des fonctions relevant de l'Ombudsman, ne peut faire l'objet de procédures en raison d'actes qu'il peut faire, de rapports qu'il peut présenter ou de choses qu'il peut dire en exerçant ou en voulant exercer l'une de ses fonctions en application de la présente loi même si elle a été exercée hors des limites de sa compétence à moins qu'il ne soit démontré qu'il a agi de mauvaise foi. 1976, c.43, art.8.

24(2) L'Ombudsman, et toute personne qui occupe un poste ou remplit des fonctions relevant de l'Ombudsman, ne peut être appelé à déposer devant une cour ou dans toute procédure de nature judiciaire au sujet de ce qu'il a pu apprendre dans l'exercice de l'une de ses fonctions en application de la présente loi même si elle a été exercée hors des limites de sa compétence. 1967, c.18, art.24; 1976, c.43, art.8.

25(1) L'Ombudsman doit présenter à l'Assemblée législative un rapport annuel sur l'exercice de ses fonctions en application de la présente loi.

25(2) Dans l'intérêt public ou dans l'intérêt d'un particulier, d'un ministère ou d'un organisme, l'Ombudsman peut publier des rapports ayant

exercise of his functions under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the Legislative Assembly under this Act. 1967, c.18, s.25.

26 The Legislative Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act 1967, c.18, s.26.

27 Every person who

(a) without lawful jurisdiction or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his functions under this Act,

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act, or

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act,

is guilty of an offence and on summary conviction is liable to a fine not exceeding five hundred dollars and in default of payment thereof to imprisonment in accordance with subsection 31(3) of the *Summary Convictions Act*. 1967, c.18, s.27.

28 This Act does not affect, abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any substantive or procedural right or remedy existing elsewhere or otherwise than in this Act. 1967, c.18, s.28.

N.B. This Act is consolidated to February 28, 1982.

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trait à l'exercice général de ses fonctions en application de la présente loi ou à tout cas particulier qu'il a examiné, que les questions traitées dans le rapport aient ou non fait l'objet d'un rapport à l'Assemblée législative en application de la présente loi. 1967, c.18, art.25.

26 L'Assemblée législative peut adopter des règles générales pour guider l'Ombudsman dans l'exercice de ses fonctions en application de la présente loi. 1967, c.18, art.26.

27 Quiconque

a) délibérément et sans compétence ni justification légale, empêche l'Ombudsman ou une autre personne dans l'exercice de ses fonctions en application de la présente loi, le gêne ou lui résiste,

b) sans compétence ni justification légale, refuse de se conformer ou ne se conforme pas délibérément à une exigence légitime de l'Ombudsman ou de toute autre personne en application de la présente loi, ou

c) fait délibérément une fausse déclaration à l'Ombudsman ou à toute autre personne dans l'exercice de ses fonctions en application de la présente loi ou l'induit ou tente de l'induire en erreur,

se rend coupable d'une infraction et est passible, sur déclaration sommaire de culpabilité, d'une amende de cinq cents dollars au plus et, à défaut de paiement, de la peine d'emprisonnement prévue au paragraphe 31(3) de la *Loi sur les poursuites sommaires*. 1967, c.18, art.27.

28 La présente loi n'abroge, ne restreint ni ne viole les droits ou recours quant au fond et à la procédure qui existent ailleurs ou autrement que dans la présente loi, ni ne leur porte atteinte, et n'autorise pas leur abrogation, leur restriction ou leur violation. 1967, c.18, art.28.

N.B. La présente loi est refondue au 28 février 1982.



CHAPTER R-10.3

Right to Information Act

Assented to June 28, 1978

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 In this Act

"appropriate Minister" means the Minister responsible for the administration of the department in which the information is kept or filed, and in the case where a minister is not responsible for the administration of a department, means the person responsible for such department in the Legislative Assembly;

"department" means

(a) any department of the Government of the Province;

(b) any Crown Agency or Crown Corporation;

(c) any other branch of the public service;

(d) any body or office, not being part of the public service, the operation of which is effected through money appropriated for the purpose and paid out of the Consolidated Fund,

as set out in the regulations;

"document" includes any record of information, however recorded or stored, whether in printed form, on film, by electronic means or otherwise;

"information" means information contained in a document;

"personal information" means information respecting a person's identity, residence, dependents, marital status, employment, borrowing and repayment history, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics or mode of living;

CHAPITRE R-10.3

Loi sur le droit à l'information

Sanctionnée le 28 juin 1978

Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick décrète:

1 Dans la présente loi

«affaires publiques» désigne toute activité ou fonction exercée ou accomplie par un ministère;

«document» comprend toute information, quelle que soit la manière dont elle est consignée ou conservée, que ce soit sous une forme imprimée, sur film, au moyen de système électronique ou autrement;

«information» désigne une information contenue dans un document;

«ministère» désigne

a) tout ministère du gouvernement de la province;

b) tout organisme ou corporation de la Couronne;

c) toute autre direction des services publics; et

d) tout organisme ou bureau qui ne fait pas partie des services publics mais dont le fonctionnement est assuré par des crédits votés à cet effet et imputés sur le Fonds consolidé,

dont le nom figure dans les règlements;

«ministre compétent» désigne le ministre responsable de la direction du ministère qui garde ou qui est dépositaire de l'information, et, lorsque la direction d'un ministère n'est sous la responsabilité d'aucun ministre, désigne la personne qui en est responsable devant l'Assemblée législative;

«renseignement personnel» désigne toute information concernant l'identité d'une personne, son adresse, sa famille, son état matrimonial, son emploi, un rapport sur les emprunts et rem-

"public business" means any activity or function carried on or performed by a department.

2 Subject to this Act, every person is entitled to request and receive information relating to the public business of the Province.

3(1) Any person may request information by applying to the minister of the department where the information is likely to be kept or filed, and the appropriate Minister shall in writing within thirty days of the receipt of the application grant or deny the request.

3(2) The application shall specify the documents containing the information requested or where the document in which the relevant information may be contained is not known to the applicant, specify the subject-matter of the information requested with sufficient particularity as to time, place and event to enable a person familiar with the subject-matter to identify the relevant document.

3(3) Where the document in which the information requested is unable to be identified the appropriate Minister shall so advise the applicant in writing and shall invite the applicant to supply additional information that might lead to identification of the relevant document.

3(4) Where a minister receives a request for information that is not kept or filed in the department for which he is appointed, he shall, in writing, notify the applicant of such fact and advise the applicant of the department in which the information may be kept or filed.

4(1) Where a request for information is granted by an appropriate Minister or a judge of The Court of Queen's Bench of New Brunswick, the appropriate Minister shall

(a) upon payment of the fee prescribed by regulation, allow the information to be inspected, and, at the discretion of the appropriate minister having regard to cost to be reproduced in whole or in part;

(b) where the information requested is published, refer the applicant to the publication, or

(c) if the information is to be published or is required to be published at a future date, inform the applicant of such fact and the approximate date of such publishing. 1979, c.41, s.111.

boursements qu'elle a faits, son revenu, ses avoirs et dettes, sa solvabilité, sa formation, son caractère, sa moralité, sa santé, ses particularités physiques ou personnelles ou son mode de vie.

2 Sous réserve de la présente loi, toute personne a le droit de demander et de recevoir toute information concernant les affaires publiques de la province.

3(1) Toute personne peut demander une information en en faisant la demande au ministre dont le ministère est susceptible d'en avoir la garde ou d'en être le dépositaire et le ministre compétent accepte ou rejette cette demande dans les trente jours à compter de sa réception.

3(2) Le demandeur doit préciser dans sa demande les documents contenant l'information sollicitée ou, s'il ne connaît pas le document qui peut la contenir, y indique le sujet de l'information sollicitée avec des détails tels que la date, le lieu et les circonstances, qui permettront à une personne connaissant ce sujet de trouver le document correspondant.

3(3) Lorsqu'il est impossible de déterminer quel document contient l'information sollicitée, le ministre compétent en informe par écrit le demandeur et l'invite à fournir de plus amples renseignements qui pourraient permettre de trouver ce document.

3(4) Tout ministre qui reçoit une demande au sujet d'une information non déposée au ministère pour lequel il a été nommé ni gardée par celui-ci, en avise par écrit le demandeur et lui indique le ministère qui peut en être le dépositaire ou en avoir la garde.

4(1) Lorsqu'une demande d'information est acceptée par un ministre compétent ou par un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, le ministre compétent doit

a) permettre, contre paiement d'un droit fixé par règlement, que les documents contenant l'information soient consultés et à sa discrétion, compte tenu des frais, soient reproduits totalement ou partiellement;

b) lorsque l'information sollicitée est publiée, renvoyer le demandeur à la publication, ou

c) si elle va être publiée ou doit être publiée à une date ultérieure, en informer le demandeur et lui indiquer la date approximative de cette publication. 1979, c.41, art.111.

4(2) Where a portion of a document contains some information that is information referred to in section 6, and that portion is severable, that portion of the document shall be deleted and the request with respect to the remaining portion of the document shall be granted.

4(3) Where a request for information is granted, the information shall only be provided in the language or languages in which it was made.

4(4) When the document containing the information that is the subject matter of an application has been destroyed or does not exist, the appropriate Minister shall advise the applicant of such fact.

5(1) An appropriate Minister may only deny a request for information or a part thereof in accordance with subsection 4(4) and section 6 and where that Minister denies a request for information he shall, in writing, advise the applicant of the denial stating the reasons for such denial and shall provide the applicant with the necessary forms for a review under this Act.

6 There is no right to information under this Act where its release

(a) would disclose information the confidentiality of which is protected by law;

(b) would reveal personal information, given on a confidential basis, concerning another person;

(c) would cause financial loss or gain to a person or department, or would jeopardize negotiations leading to an agreement or contract;

(d) would reveal financial, commercial, technical or scientific information

(i) given by an individual or a corporation that is a going concern in connection with financial assistance applied for or given under the authority of a statute or regulation of the Province, or

(ii) given in or pursuant to an agreement entered into under the authority of a statute or regulation, if the information relates to the internal management or operations of a corporation that is a going concern; 1982, c.58, s.1.

4(2) Lorsqu'une partie d'un document contient des informations correspondant à celles citées à l'article 6, et que cette partie est séparable, elle doit être supprimée et la demande concernant la partie restante du document doit être acceptée.

4(3) Une information n'est communiquée, lorsqu'une demande à son sujet est acceptée, que dans la langue ou les langues dans lesquelles elle a été émise.

4(4) Lorsque le document contenant l'information faisant l'objet d'une demande a été détruit ou n'existe pas, le ministre compétent en avise le demandeur.

5(1) Le ministre compétent ne peut rejeter totalement ou partiellement une demande d'information qu'en vertu du paragraphe 4(4) et de l'article 6, et lorsqu'il rejette une telle demande, il en avise par écrit le demandeur, lui indique les raisons de ce refus et lui fournit les formulaires nécessaires pour exercer un recours en vertu de la présente loi.

6 Le droit à l'information conféré par la présente loi est suspendu lorsque la communication d'informations

a) pourrait entraîner la divulgation d'information dont le caractère confidentiel est garanti par la loi;

b) pourrait dévoiler des renseignements personnels concernant une autre personne et donnés à titre confidentiel;

c) pourrait occasionner des gains ou des pertes financières pour une personne ou un ministère, ou pourrait compromettre des négociations en vue d'aboutir à la conclusion d'un accord ou d'un contrat;

c.1) pourrait révéler une information financière, commerciale, technique ou scientifique

(i) donnée par un particulier ou une corporation qui est une corporation en activité en relation avec une aide demandée ou fournie sous l'autorité d'une loi ou d'un règlement de la province, ou

(ii) incluse dans une entente ou donnée conformément à une entente conclue sous l'autorité d'une loi ou d'un règlement, si l'information est liée à la gestion ou aux opérations internes d'une corporation qui est une corporation en activité; 1982, c.58, art.1.

(d) would violate the confidentiality of information obtained from another government;

(e) would be detrimental to the proper custody, control or supervision of persons under sentence;

(f) would disclose legal opinions or advice provided to a person or department by a law officer of the Crown, or privileged communications as between solicitor and client in a matter of department business;

(g) would disclose opinions or recommendations by public servants for a Minister or the Executive Council;

(h) would disclose the substance of proposed legislation or regulations;

(i) would impede an investigation, inquiry or the administration of justice.

7(1) Where an applicant is not satisfied with the decision of an appropriate Minister or where an appropriate Minister fails to reply to a request within the time prescribed, the applicant may in the prescribed form and manner either

(a) refer the matter to a judge of The Court of Queen's Bench of New Brunswick, or

(b) refer the matter to the Ombudsman. Am. (a), 1979, c.41, s.111.

7(2) Where the applicant refers the matter to a judge of The Court of Queen's Bench of New Brunswick under subsection (1),

(a) the applicant may not thereafter refer the matter to the Ombudsman under paragraph (1)(b) or under the *ombudsman Act*, and

(b) the Ombudsman, in such case, may not act under the authority of this Act or the *Ombudsman Act* with respect to that matter. 1979, c.41, s.111.

7(3) Where the applicant refers the matter to the Ombudsman under subsection (1), the applicant may not, subject to subsection 11(1), refer the matter to a judge of The Court of Queen's Bench of New Brunswick. 1979, c.41, s.111.

7(4) The Ombudsman, subject to section 19 of the *Ombudsman Act*, and The Court of Queen's Bench of New Brunswick judge may, with respect to any matter referred to them, inspect the information that is the subject matter of the referral, if such information exists, in order to determine the referral, but such inspection shall be

d) pourrait porter atteinte au caractère confidentiel d'une information reçue d'un autre gouvernement;

e) pourrait être préjudiciable à la détention ou à la surveillance d'une personne condamnée;

f) pourrait entraîner la divulgation de consultations juridiques données à une personne ou à un ministère par un légiste de la Couronne, ou violer le secret professionnel, qui existe entre l'avocat et son client, à propos d'une affaire d'ordre ministériel;

g) pourrait entraîner la divulgation d'avis ou de recommandations faites par un fonctionnaire à un ministre ou au Conseil exécutif;

h) pourrait entraîner la divulgation du contenu d'un projet de loi ou de règlement;

i) pourrait entraver le cours d'une enquête ou d'une recherche, ou l'exercice de la justice.

7(1) Tout demandeur non satisfait de la décision d'un ministre compétent, ou si ce dernier omet de répondre à une demande dans le délai prescrit, peut, dans les formes prescrites,

a) soit soumettre l'affaire à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, ou

b) soit la soumettre à l'Ombudsman. Mod. a), 1979, c.41, art.111.

7(2) Lorsque le demandeur soumet l'affaire à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick en vertu du paragraphe (1),

a) il ne peut, par la suite, la soumettre à l'Ombudsman en vertu de l'alinéa (1)b) ou en vertu de la *Loi sur l'Ombudsman*, et

b) ce dernier, dans ce cas, ne peut intervenir sous le régime de la présente loi ou de la *Loi sur l'Ombudsman* au sujet de cette affaire. 1979, c.41, art.111.

7(3) Le demandeur qui soumet l'affaire à l'Ombudsman en vertu du paragraphe (1), ne peut, sous réserve du paragraphe 11(1), la soumettre à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick. 1979, c.41, art.111.

7(4) L'Ombudsman, sous réserve de l'article 19 de la *Loi sur l'Ombudsman*, et le juge de la Cour du Banc de la Reine du Nouveau-Brunswick peuvent, au sujet de toute affaire qui leur est soumise, consulter les documents contenant l'information, objet du recours, si celle-ci existe, afin de délimiter le recours, mais cette consultation doit se faire à

made *in camera* without the presence of any person. 1979, c.41, s.111.

8(1) The Court of Queen's Bench of New Brunswick judge shall upon the applicant's request hold a hearing, and

(a) in the case where a minister denied the request for information or a part thereof, may order the minister to grant the request in whole or in part;

(b) in the case where the minister failed to reply to a request, shall order that the appropriate Minister,

(i) grant the request, or

(ii) deny the request;

(c) may make any other order that is appropriate. 1979, c.41, s.111.

8(2) A copy of the decision of The Court of Queen's Bench of New Brunswick judge shall be sent to the applicant and the appropriate Minister. 1979, c.41, s.111.

8(3) No appeal lies from the decision of The Court of Queen's Bench of New Brunswick judge under subsection (1). 1979, c.41, s.111.

9 The Ombudsman shall in accordance with this Act and the power, authority, privileges, rights and duties vested in him under the *Ombudsman Act* review the matter referred to him within thirty days of having received the referral.

10(1) Upon having reviewed the matter referred to him, the Ombudsman shall forthwith, in writing, advise the appropriate Minister of his recommendation and shall forward a copy of such recommendation to the person making the referral.

10(2) The Ombudsman may in such recommendation

(a) recommend to the appropriate Minister to grant the request in whole or in part;

(b) in the case where the appropriate Minister failed to reply to a request, recommend to the appropriate Minister

(i) to grant the request, or

(ii) to deny the request.

huit clos sans qu'aucune personne ne soit présente. 1979, c.41, art.111.

8(1) Le juge de la Cour du Banc de la Reine du Nouveau-Brunswick doit, sur la demande du demandeur, convoquer une audience, et

a) dans le cas où un ministre a rejeté totalement ou partiellement la demande d'information, peut lui ordonner de l'accepter totalement ou partiellement;

b) dans le cas où le ministre a omis de répondre à une demande, doit ordonner au ministre compétent

(i) d'accepter la demande, ou

(ii) de rejeter celle-ci;

c) peut rendre tout autre ordonnance qui est nécessaire. 1979, c.41, art.111.

8(2) Une copie de la décision du juge de la Cour du Banc de la Reine du Nouveau-Brunswick est adressée au demandeur et au ministre compétent. 1979, c.41, art.111.

8(3) La décision prise par un juge de la Cour du Banc de la Reine du Nouveau-Brunswick en vertu du paragraphe (1) est sans appel. 1979, c.41, art.111.

9 L'Ombudsman, conformément à la présente loi et aux pouvoirs, attributions, prérogatives, droits et devoirs que lui a conférés la *Loi sur l'Ombudsman*, examine l'affaire qui lui a été soumise dans les trente jours de la réception de la demande de recours.

10(1) Après avoir examiné l'affaire qui lui a été soumise, l'Ombudsman doit aussitôt faire connaître, par écrit, sa recommandation au ministre compétent et en envoyer une copie à l'auteur du recours.

10(2) L'Ombudsman peut par cette recommandation

a) recommander au ministre compétent d'accepter totalement ou partiellement une demande;

b) dans le cas où le ministre compétent a omis de répondre à une demande, recommander au ministre compétent

(i) d'accepter la demande, ou

(ii) de la rejeter.

10(3) The appropriate Minister referred to in subsection (2) shall, upon reviewing the recommendation of the Ombudsman, carry out the recommendations of the Ombudsman or make such other decision as he thinks fit and upon making his decision, that Minister shall notify, in writing, the person making the referral and shall forward to the Ombudsman a copy of such decision.

11(1) Where the person making the referral is not satisfied with the decision of the appropriate Minister under subsection 10(3), that person may appeal the matter to a judge of The Court of Queen's Bench of New Brunswick. 1979, c.41, s.111.

11(2) Subsection 7(4) and section 8 apply *mutatis mutandis* to an appeal made under subsection (1).

12 In any proceeding under this Act, the onus shall be on the Minister to show that there is no right to the information that is the subject of the proceeding.

13 Where a matter is referred or appealed to a judge of The Court of Queen's Bench of New Brunswick, the judge shall award costs in favour of the applicant

(a) where the applicant is successful, or

(b) where the applicant is not successful, if the judge considers it to be in the public interest. 1979, c.41, s.111.

14 The Lieutenant-Governor in Council may make regulations

(a) prescribing the form and manner of referrals under this Act;

(b) prescribing forms;

(c) prescribing the departments for the purposes of this Act;

(d) prescribing fees for the purposes of this Act;

(e) prescribing such other procedures as may be necessary to carry out the intent and purposes of this Act.

15 This Act is subject to review by the Legislative Assembly after thirty months following the coming into force of this Act.

N.B. This Act comes into force on January 1, 1980.

N.B. This Act is consolidated to June 18, 1982.

10(3) Le ministre compétent visé au paragraphe (2) doit, après examen de la recommandation de l'Ombudsman, la mettre à exécution ou prendre toute autre décision qu'il juge convenable et, après avoir pris sa décision, il la notifie, par écrit, à l'auteur du recours et en envoie une copie à l'Ombudsman.

11(1) Tout auteur d'un recours, qui n'est pas satisfait de la décision que le ministre compétent a prise en vertu du paragraphe 10(3), peut en appeler à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick. 1979, c.41, art.111.

11(2) Le paragraphe 7(4) et l'article 8 s'appliquent *mutatis mutandis* à un appel interjeté en vertu du paragraphe (1).

12 Dans toute procédure en vertu de la présente loi, il appartient au Ministre d'établir que le droit à l'information est suspendu.

13 À la suite d'un recours ou d'un appel devant un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, ce dernier doit statuer sur les frais en faveur du demandeur qui

a) a gain de cause;

b) n'a pas gain de cause lorsque, de l'avis du juge, il y va de l'intérêt public. 1979, c.41, art.111.

14 Le lieutenant-gouverneur en conseil peut, par voie de règlements,

a) prescrire les modalités de l'exercice du recours prévu par la présente loi;

b) établir des formules;

c) énoncer les ministères concernés par l'application de la présente loi;

d) fixer les droits payables en vertu de la présente loi.

e) établir toutes les autres procédures qui peuvent être nécessaires à l'application de l'objet de la présente loi.

15 L'Assemblée législative pourra réexaminer la présente loi trente mois après son entrée en vigueur.

N.B. La présente loi entre en vigueur le 1^{er} janvier 1980.

N.B. La présente loi est refondue au 18 juin 1982.

Excerpt from C-2.1, Child and Family Services and Family Relations Act (Part V - Adoption, s.90-93 inclusive)

90(1) Where there has been substantial compliance with the requirements of this Part no adoption order shall be set aside on appeal or otherwise by reason only of a defect or irregularity in complying with the requirements unless there has been a substantial miscarriage of justice.

90(2) Except on appeal, an adoption order shall not be set aside unless the order was procured by fraud, and unless it is in the best interests of the child to set aside the order.

91(1) Subject to section 92, all records and documents relating to the adoption of any person on file with the court and with the Registrar General of Vital Statistics are confidential.

91(2) Subject to section 92, all records and documents in the possession of the Minister relating to the adoption of any person are confidential.

91(3) A request for information relating to the adoption of a person shall be made to the Minister.

92(1) Subject to subsection (5), where a request respecting the release of nonidentifying information relating to an adoption is made by an adopting parent, an adopted person, a natural parent or any other person who, in the opinion of the Minister, has an interest in the matter and a reason acceptable to the Minister, the Minister may comply with the request.

92(2) Notwithstanding section 11, where a request for identifying information relating to the adoption of a person is received from

(a) subject to subsection (5), an adopted person;

(b) a person who consented to the adoption;

(c) a person whose consent to the adoption was waived;

(d) the adopting parent; or

(e) any other person who, in the opinion of the Minister, has an interest in the matter and a reason acceptable to the Minister;

Extrait de C-2.1, Loi sur les services à l'enfant et à la famille et sur les relations familiales (Partie V - L'adoption, art. 90-93 inclusivement)

90(1) Lorsqu'il a été satisfait en substance aux prescriptions de la présente Partie, l'annulation d'une ordonnance d'adoption en appel ou de toute autre façon en raison exclusive d'une irrégularité ou d'un vice survenu en se conformant à ces prescriptions ne pourra être prononcée que s'il s'est produit une erreur judiciaire grave.

90(2) Sauf en appel, une ordonnance d'adoption ne peut être annulée que si elle a été obtenue par fraude et que s'il est dans l'intérêt supérieur de l'enfant de prononcer son annulation.

91(1) Sous réserve de l'article 92, sont confidentiels tous les dossiers et documents concernant l'adoption d'une personne qui se trouvent en dépôt auprès de la cour et du Registraire général des statistiques de l'état civil.

91(2) Sous réserve de l'article 92, sont confidentiels tous les dossiers et documents concernant l'adoption d'une personne qui se trouvent en la possession du Ministre.

91(3) Une demande de renseignements concernant l'adoption d'une personne doit être adressée au Ministre.

92(1) Sous réserve du paragraphe (5), le Ministre peut accéder à une demande de communication de renseignements non identificateurs, concernant une adoption, présentée par un adoptant, un adopté, un parent naturel ou toute autre personne qui, selon le Ministre, a un intérêt en l'espèce et invoque une raison qu'il juge acceptable.

92(2) Par dérogation à l'article 11, lorsqu'une demande de renseignements identificateurs concernant l'adoption d'une personne est reçue

a) d'un adopté, sous réserve du paragraphe (5);

b) d'une personne qui a consenti à l'adoption;

c) d'une personne dont le consentement a fait l'objet d'une dispense;

d) de l'adoptant; ou

e) de toute autre personne qui, selon le Ministre, a un intérêt en l'espèce et une raison acceptable,

the Minister may release identifying information under the following circumstances, namely

(f) where an adult has voluntarily registered his name on a register that shall be kept by the Minister to record the names of adults who wish to contact their natural parents, children or siblings, and the person sought to be contacted has also voluntarily registered his name on the register;

(g) where it is necessary to avoid a situation in which a person, having obtained identifying information from another source, contacts a natural parent or child without the prior preparation of the person contacted;

(g.1) where it is necessary to settle the estate of a deceased; 1982, c.13, s.2.

(h) when the information is necessary for the preparation of a medical or psychosocial history for purposes of treatment; or

(i) where the Minister is satisfied that all persons who will be directly affected by the release of information have consented to its release, and that there is no compelling reason in the public interest to refuse the request.

92(3) Where an application is made to the Minister under subsection (2), the Minister may

(a) search the files to ascertain the identity of any person named or referred to in the request; and

(b) make contact with any person on a confidential basis to

(i) obtain that person's consent to the release of identifying information,

(ii) attempt to obtain information specified in the application, or

(iii) arrange contact between the applicant and the person contacted.

92(4) Where the person named or referred to in a request under subsection (2) is dead, the Minister may give identifying information concerning that person to the person requesting if the Minister is satisfied that the circumstances surrounding the request warrant the release and that the information would have been released under subsection (2) had the person been alive and consented to its release.

le Ministre peut communiquer ces renseignements dans les circonstances suivantes, à savoir

f) lorsqu'un adulte a volontairement fait inscrire son nom sur un registre dans lequel le Ministre doit inscrire et conserver les noms des adultes désirant prendre contact avec leurs parents naturels, enfants, frères ou sœurs, et que la personne avec qui le contact est souhaité a aussi fait inscrire son nom sur le registre;

g) lorsqu'il est nécessaire d'éviter une situation dans laquelle une personne, ayant obtenu des renseignements identificateurs d'une autre source, prend contact avec un parent naturel ou un enfant sans qu'on y ait préparé ceux-ci; ou

g.1) lorsqu'il est nécessaire de régler la succession d'une personne décédée; 1982, c.13, art.2.

h) lorsque les renseignements sont nécessaires pour établir les antécédents médicaux ou psycho-sociaux d'une personne en vue d'un traitement; ou

i) lorsque le Ministre est convaincu que toutes les personnes qui seront directement touchées par la communication des renseignements y ont consenti et qu'il n'existe aucune raison impérieuse d'opposer un refus à la demande dans l'intérêt public.

92(3) Le Ministre peut, lorsqu'il est saisi d'une demande en vertu du paragraphe (2),

a) procéder à une recherche dans les dossiers afin de déterminer l'identité de toute personne nommée ou visée dans la demande; et

b) prendre contact avec toute personne à titre confidentiel afin

(i) d'obtenir son consentement à la communication des renseignements identificateurs,

(ii) de tenter d'obtenir les renseignements précisés dans la demande, ou

(iii) d'organiser la mise en contact du demandeur avec cette personne.

92(4) Lorsque la personne nommée ou visée dans une demande formulée en vertu du paragraphe (2) est décédée, le Ministre peut fournir des renseignements identificateurs à son sujet à l'auteur de la demande s'il est convaincu que les circonstances entourant la demande en justifient la communication et que ces renseignements auraient été communiqués en vertu du paragraphe (2) si la personne était encore en vie et avait consenti à leur communication.

92(5) Where a request has been filed by an adopted person who is under the age of majority, the Minister shall not provide that person with

(a) nonidentifying information without the consent of the adopting parent, or

(b) identifying information without the consent of the adopting parent and the natural parent,

unless he is satisfied that special circumstances warrant the release of information notwithstanding the absence of that consent.

92(6) Where a person is not satisfied that the Minister has dealt properly with a request under this section, he may, in accordance with section 15, request the Minister to review his decision.

93 Where a person is not satisfied that the Minister has dealt properly with a request for a review under subsection 92(6), he may request the Ombudsman to review the Minister's decision and to advise the Minister of his recommendations.

92(5) Lorsque la demande a été déposée par un adopté mineur, le Ministre ne peut lui fournir

a) des renseignements non identificateurs sans le consentement de l'adoptant, ou

b) des renseignements identificateurs sans le consentement de l'adoptant et du parent naturel,

à moins qu'il ne soit convaincu qu'il existe des circonstances particulières justifiant la communication de ces renseignements en dépit de l'absence du consentement requis.

92(6) Toute personne qui n'est pas convaincue que le Ministre a donné une suite convenable à une demande présentée en vertu du présent article peut lui demander de réviser sa décision conformément à l'article 15.

93 Toute personne qui n'est pas convaincue que le Ministre a donné une suite convenable à une demande de révision présentée en vertu du paragraphe 92(6) peut demander à l'Ombudsman de réviser la décision du Ministre et d'aviser celui-ci de ses recommandations.

END