

# OFFICE OF THE OMBUDSMAN

Province of New Brunswick

## ANNUAL REPORT

2003/2004



2003/2004 Annual Report

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December 20, 2004

The Honourable Bev Harrison  
Speaker  
Legislative Assembly  
Province of New Brunswick  
Fredericton, N.B.

Sir:

Pursuant to Section 25(1) of the *Ombudsman Act* and Section 36 of the *Civil Service Act*, I have the honour to present the Thirty-Seventh Annual Report of the Ombudsman for the period of April 1, 2003 to March 31, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'B. Richard', written over a faint rectangular stamp.

Bernard Richard  
Ombudsman

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## Mission Statement

Under the *Ombudsman Act*, the Office of the Ombudsman strives to ensure that individuals are served in a consistent, fair and reasonable manner by New Brunswick Government organizations.

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## FROM THE OMBUDSMAN

### Introduction

It is an honour to present my first annual report as New Brunswick's sixth Ombudsman.

The province's first Ombudsman, Dr. W. T. Ross Flemington (1967-1971), once stated that he "felt it was important for an individual to be treated justly and fairly regardless of the wording of a statute or regulation". This is how I intend to approach my work at the Office of the Ombudsman.

The Supreme Court of Canada has analyzed the function and powers of the Ombudsman in the case of *British Columbia Development Corp. v. British Columbia (ombudsman)* [1984] 2 S.C.R. 447. In this November, 1984, decision, Chief Justice Brian Dickson conferred a formal judicial recognition of the Ombudsman's unique role in our democratic society:

"The traditional controls over the implementation and administration of governmental policies and programs, namely, the legislature, the executive and the courts – are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands [p.459]. The Ombudsman represents society's response to the problem of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed [p. 461]. In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve [p. 461]."

Though it is not a panacea for everything that ails a disaffected and sometimes cynical citizenry, the Ombudsman concept has provided relief to millions throughout

the world. All complaints received at the Office of the Ombudsman are not resolved in favor of the complainant, far from it, and many complainants do not get the answer they are looking for. But it is essential that most of them at least feel that they have been listened to and that all that can be done has been done. I have quickly learned that this is not always the easiest reassurance to convey.

### **Going the Extra Mile**

Much of the content of this report is a product of the work of my predecessor, Ellen King, and her staff. Ms. King personified the image of an ideal civil servant. Competent, dedicated and caring, she ably listened to, and worked on resolving, complaints brought to her attention by the citizens of New Brunswick. She has set the bar high, and it will be difficult for me to match the quality of her service to the people of our province. I thank her for the advice and guidance she provided to me during my transition to the role of Ombudsman and for going the extra mile on behalf of our fellow citizens.

The year 2003/2004 was marked by several changes which have had an impact on our Office: the nomination of a new Ombudsman, the addition of a 1-800 line to facilitate communication with our staff, some changes in personnel, the installation of new technology and, late in the year, a sudden increase in the number of complaints. As well, we have attempted to spend more time on systemic issues and to recommend changes to improve the delivery of public services and prevent certain practices that lead to citizen complaints.

This latter initiative has proven to be especially challenging in an Office deluged with calls from frustrated and angry complainants who are much more concerned about having their current problem attended to and resolved. Not all of the complaints filed with our Office are valid, although virtually all of our complainants truly believe that they have been wronged in some way.

This report contains several examples of complaints that our office receives, the agencies involved and the outcomes achieved through our interventions. In 2003/2004, our Office received 1,973 complaints, inquiries and requests for information. This is a slight increase over the previous year (1,948) and reflects a significant surge over the months of January, February and March, 2004. The trend of those last three months did not subside in the months that followed. In fact, the number of complaints for the mid-year mark of September 30, 2004, (1,360) is an increase of fifty percent (50%) over the same-six month period in 2003 (904).

Although this increase will be discussed in much more detail in our next annual report, it is putting a noticeable stress on current resources, both financial and human. It also constrains the time and energy we are able to commit to more in-depth investigation. To cope with the increased workload as efficiently as possible, we have, somewhat reluctantly, shed some of the reporting procedures used for case management.

With the help of new technology (an electronic Case Management System) imported from the Ombudsman Office of Ontario, and by hiring summer law students and an articling law student and a co-op student this fall, we have managed to keep our heads above water, but just barely. In recent years, Ms. King had stated publicly that the complexity and difficulty of an increasing number of investigations seriously challenged the resources available to our Office. Given the increase in workload evidenced by the statistics of the first nine months of my term, that fact has been amply reinforced and confirmed.

### **Right to Information**

New Brunswick courts have determined that our *Right to Information Act* favours disclosure. This means that the exemptions contained in the legislation should be strictly interpreted. Unfortunately, that is not the practice in our province. Citizens, the media and members of the legislature are routinely deprived of information that they are entitled to.

It has become apparent that at least part of the problem is a lack of understanding of the Act by officials and applicants alike. Some officials seem to believe that any information shown to a minister constitutes “advice to a minister” and is therefore exempt from disclosure. This narrow view causes frustration for those seeking information. Conversely, some applicants think that, by asking for everything under the sun, they will get what they are actually looking for. In fact, little is accomplished when wide-ranging and obscure requests are made; the results are predestined to be disappointing. These requests are invariably costly and time-consuming and do not serve the public interest. Another problem is that municipalities are not covered by the *Right to Information Act* and the *Protection of Personal Information Act*. In an effort to promote transparency and a more open government, it is recommended that municipalities and municipal structures be included in Schedule A of the *Right to Information Act*. Following this recommendation would provide the additional benefit of increased protection for the privacy of individuals’ personal information, as inclusion of municipalities under

Schedule A of the *Right to Information Act* will bring these public bodies under the *Protection of Personal Information Act*.

- 1. The Office of the Ombudsman recommends that municipalities and municipal structures be enumerated in Schedule A of the *Right to Information Act*.**

For some months, I have been suggesting a one-day workshop for officials, MLAs, reporters, editors, interest groups and members of the public. It would help improve and clarify our mutual understanding of the *Right to Information Act* and the role it plays in an open, transparent and democratic society.

I have decided to make this suggestion a formal recommendation in this report in the hope that it will find support in both government authorities and in broader civil society.

- 2. The Office of the Ombudsman recommends that as soon as possible the Executive Council Office organize and sponsor a one-day right-to-information workshop. It is recommended that the major stakeholders be invited to participate in an open and frank discussion of the roles of the parties, and the intention and practical operation of the *Right to Information Act*.**

### **Access to Government Files**

Much of the effectiveness of any Ombudsman depends on the timely accessibility of relevant information. It is not possible to investigate a citizen complaint without having access to the information concerning the issue and the reasons motivating the administrative decision complained about.

The *Ombudsman Act* recognizes this fact in several sections which provide the Ombudsman with wide powers to conduct investigations and obtain information. In the vast majority of situations, cooperation of the various public bodies, agencies and departments is beyond reproach. However, a disagreement over access to information in one particular department requires some effort to remove obstacles to the ability of our Office to do our work.

The Department of Family and Community Services maintains that its legislation prohibits it from providing to our Office some types of information. While we disagree with their interpretation, we are much more anxious to remove the

impediments to our work. For example, if departmental investigative reports are held back, how can we assure complainants they are being treated fairly? Surely, this could not have been the legislators' intent when our Office was created in 1967.

**3. The Office of the Ombudsman recommends the following legislative amendments to eliminate this misunderstanding:**

**a) that the *Family Services Act* be amended as follows:**

**I. by adding a new paragraph (d) to the Ombudsman or to a person appointed by the Ombudsman to subsection 11(3), with the current paragraph (d) to become paragraph (e);**

**II. by adding the words or an investigation by the Ombudsman after “judicial proceedings” in subsection 30(6).**

**b) that Regulation 95-61 under the *Family Income Security Act* be amended as follows:**

**I. by adding a new paragraph (h) to the Ombudsman or to a person appointed by the Ombudsman to subsection 31(4).**

**c) that the *Ombudsman Act* be amended as follows:**

**I. by deleting subsection 18(4) and subsection 18(5).**

## **Privacy**

New Brunswick, Manitoba and the Yukon are the only three jurisdictions in Canada where the Ombudsman is also responsible for right-to-information appeals and privacy complaints. All other Canadian provinces, except P.E.I., which does not have an Ombudsman, have a separate information and privacy commissioner.

Our workload in the privacy area remains quite limited. Complaints are few, with most inquirers looking for information, and they are referred to other offices. This is surely due to the limited scope of our *Protection of Personal Information Act* (POPIA). It deals only with the protection of personal information in the hands of a number of designated “public bodies.” Unlike a growing number of other provinces, our legislation does not cover private sector entities. New Brunswick's Justice Minister has indicated that we will rely on the relatively new federal legislation (*the*

*Personal Information Protection and Electronic Documents Acts* (PIPEDA)) to do that in our province. As well, other provinces have decided to enact specific laws to protect personal health information; that is not the case in New Brunswick.

Nonetheless, security threats and resulting new intrusive legislation have raised concerns amongst civil rights advocates, both here and abroad, that privacy is taking a beating. The U.S. *Patriot Act*, enacted shortly after 9/11, is a prime example. It allows government access to personal information in the possession of U.S. companies, or their subsidiaries, anywhere in the world. While it may be premature to panic over this type of legislation, a recent B.C. case has caused more than one privacy commissioner to worry about how far the Act can reach.

We can only conclude that this is an area of jurisdiction that is likely to grow in future years.

### **Conclusion**

This report reflects the hard work and dedication of every single member of the Ombudsman Office staff, including four law students who spent the summer of 2004 with us. By means of research, writing, discussion or statistical analysis, each contributed to the final product. I am grateful for their enthusiastic involvement in a new and demanding approach to meeting our mandate.

This report contains a number of recommendations which we have highlighted to make them as clear as possible. Those requiring legislative amendments are set out in the first part of this report while the others can be found in the following pages.

Dealing with public complaints is our central purpose and occupation. Listening, investigating, mediating and recommending are the tools of the trade. But we cannot fully accomplish the mandate set out in the *Ombudsman Act* and other legislation that defines our work unless we are able to consider systemic issues and encourage improvements to the mechanisms (procedures, policies, laws and regulations) used to serve the citizens of New Brunswick. We will continue to strive to do both, knowing that, if we succeed, New Brunswickers and the public administration will both be the ultimate winners.



Bernard Richard  
Ombudsman

## OWN MOTION INVESTIGATIONS

### An Ounce of Prevention...

Section 12 of the *Ombudsman Act* provides that the Ombudsman may “on his own motion” investigate a “matter of administration.” Although seldom used in New Brunswick, “own motion” investigations have been useful tools for ombudsmen in other jurisdictions to consider systemic issues with the goal of preventing the recurrence of complaints or simply improving public policy.

In its landmark 1984 decision, *British Columbia Development Corp. v. British Columbia (ombudsman)*, the Supreme Court of Canada defined the term “a matter of administration” as “In my view, the phrase "a matter of administration" encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the legislature and the courts from the Ombudsman's scrutiny”[p.474]. This broad interpretation allows our Office to explore issues that matter to New Brunswickers and make recommendations that can, we hope, improve their lives.

It would not be exaggerating to say that our Office has been asked to review a large number of issues and policy matters ranging from the overuse of Ritalin to the problems with the provincial health plan. Although it is not possible to investigate all matters brought to our attention, I have decided to ask our staff to look in depth beyond our core responsibility to manage individual complaints, and to investigate the issues that are addressed in the following pages.

## CHILD & YOUTH ADVOCATE

An issue that touches all New Brunswickers is the rights of our children and youth. Lacking political, social and economic power, they are, as a result, vulnerable. An increasing number of concerns relating to children and youth exist in New Brunswick today.

In January, 2004, the Office of the Ombudsman launched an internal research project on the possible creation of a Child and Youth Advocate for our province. A number of reports by coroners and death review committees have recommended establishing such an office independent from government. It has also been sought by numerous individuals and groups, including the New Brunswick Association of Social Workers.

After extensive research, our Office concluded that it was desirable to have provincial legislation which recognizes children's/youth's rights and needs, and establishes an advocate's office to work on their behalf. Our Office determined there was a need to increase community awareness regarding child welfare issues and to educate the public about recognizing signs of neglect and abuse, and about their responsibility to report it. We came to the conclusion that the province needed a Child and Youth Advocate who was not reactive but proactive, non-partisan, and a strong voice for children.

Advocacy is defined as representing people's rights and helping individuals access services to which they are entitled. It follows that it is one means by which we can work with, and on behalf of, children and youth to ensure that *their* social and protective rights receive appropriate attention.

This Office was in the process of preparing a formal recommendation to government in regards to the establishment of a Child/Youth Advocate in New Brunswick when a Bill entitled the *Child and Youth Advocate Act* was proposed and received Royal Assent on June 30, 2004. We are very pleased that, with this legislation, New Brunswick joins eight other Canadian provinces in providing advocacy services to children and youth.

The *Child and Youth Advocate Act* seeks to create an independent Child and Youth Advocate Office that would report directly to the Legislative Assembly. It will be set

up in similar fashion to the Office of the Ombudsman. According to section 3 of the Act, this new office is charged with:

- a) “ensuring that the rights and interests of children and youths are protected;
- b) ensuring that the views of children and youths are heard and considered in appropriate forums, where those views might not otherwise be advanced;
- c) ensuring that children and youths have access to services, and complaints that children and youths might have about those services receive appropriate attention;
- d) providing information and advice to the government, government agencies, and communities, about the availability, effectiveness, responsiveness, and relevance of services to children and youths; and
- e) acting as an advocate for the rights and interests of children and youths generally”.

The Advocate may also undertake investigations on his/her own initiative. Children often aren't informed about their rights or are too intimidated to come forward. The Advocate will be their voice.

We commend the members of the Legislative Assembly for recognizing and acting on this important need. We encourage government to establish the Office of the Child and Youth Advocate as soon as possible, and we are extremely hopeful about the positive effects this Office will have on our New Brunswick children and youth.

## METHADONE MAINTENANCE

Complaints to the Office of the Ombudsman regarding the availability of methadone treatment programs in New Brunswick prompted the Office to examine the situation. In the Provincial Health Plan, 2004-2008, the provincial government indicated it would develop an organized methadone maintenance service targeted at opiate addicts. According to the plan, “this service will reflect evidence-based ‘best practices’ that include administering, monitoring compliance, counselling and long-term follow-up.” No details were given. Our examination of the current situation has led to several recommendations.

### **Background on Methadone & Opioid Dependence**

Methadone is used to treat opioid dependence. This group of drugs includes codeine, morphine, heroin, and others derived from the seed pod of the Asian poppy. Opiate addiction is caused by illegal drug use, and it can also result from use of prescribed medications. People dependent on opioids often lead chaotic lives, with health and social problems that range from homelessness, to drug overdoses, even to violence<sup>1</sup>. Methadone maintenance treatment is considered effective in reducing the use of opioids and other substances, and, as a consequence, in decreasing criminal activity and the rate of mortality<sup>2</sup>.

### **Financial Perspective**

Opioid dependence costs society dearly<sup>3</sup>. In this province, the cost of treating each addicted person, including physician visits, emergency room visits, hospital stays and overhead, is estimated to be more than \$4,700 per year<sup>4</sup>. Additional justice costs for one opiate-addicted individual, including corrections, policing, courts and crime costs, are estimated to be nearly \$42,000<sup>5</sup>. By contrast, the methadone program costs for one individual are estimated to be about \$3,000<sup>6</sup>. It can easily be seen that, by

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<sup>1</sup> Health Canada, « Methadone Maintenance Treatment », (2002), Her Majesty the Queen in Right of Canada, Ottawa, 13 pages.

<sup>2</sup> Centre for Addiction and Mental Health, “Methadone Maintenance Treatment-Client Handbook”, (2001), Toronto, page 134.

<sup>3</sup> Health Canada, “Best Practices-Methadone Maintenance Treatment”, (2002), Her Majesty the Queen in Right of Canada, Ottawa, 94 pages.

<sup>4</sup> John Campbell, “Cost-Benefit Analysis of a Methadone Treatment Program, July 27<sup>th</sup>, 2004, page 4.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

having a methadone program, New Brunswick could realize a net savings ranging from \$1,700 to \$43,700 per individual.

### **Current Methadone Maintenance Treatments**

In Canada, policies vary, but certain elements are mandatory to ensure that methadone treatment works<sup>7</sup>. Components of a successful methadone maintenance treatment program include proper dosage, supplementary medical care, treatment of other addictions, counselling and support throughout the treatment process, mental health services, health promotion and disease prevention services, and an established link with other community-based support groups.

New Brunswick has two publicly run methadone maintenance treatment programs, in Moncton and in Fredericton. In its December 2, 2004 speech from the throne, the government announced its intention to establish new clinics in Saint John and Miramichi.

In 2003, the Fredericton Community Health Clinic, run by the Faculty of Nursing at the University of New Brunswick, started a methadone maintenance treatment program, taking an integrated approach to treatment and attending to the patients' social, mental, physical and emotional needs. Earlier this year, the program ran into funding problems that received much media attention. This past fall, the Department of Health and Wellness – Addiction Services took over responsibility for the Fredericton program. About 50 individuals are being treated, and more are on the waiting list. Most are considered stable clients. They receive a daily dose of methadone at the Addiction Services Out- Patient Clinic, participate in weekly group counselling, and are under the care of a physician.

The Department of Health and Wellness - Addiction Services also runs the Moncton clinic. Individuals are accepted into the program according to an established process. Once in the program, a participant is seen by a doctor every week. Before receiving a daily dose of methadone, the patient undergoes a urine test to determine if he or she is currently abusing any substance. Once the dosage is stable, the tests are done randomly. According to doctors and counsellors, 80% of the patients have been stabilized; only 20% need more counselling. The waiting list for the Moncton program is six months to a year.

In Quebec, the Methadone Maintenance Program is the responsibility of SAM (service d'appui pour la methadone), which is under the supervision of CRAN (centre

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<sup>7</sup> Ibid.

de recherche et d'aide pour les narcomanes). The program, first established privately in 1975, became a public program in 1986. Methadone is distributed through the community health centers, where they are available; in rural regions, where no community health centers exist to dispense methadone, it is done by individual doctors. The SAM program strives for an integrated approach to methadone treatment, including counselling and addressing mental health issues. While counselling is encouraged, it is not mandatory. Program guidelines come from physicians and pharmacists' associations. The Provincial Health Minister is currently developing a province-wide reference guide.

Since 1996, the province of Ontario has benefited from a provincially funded methadone program. Guidelines for the program were established by the Ontario Substance Abuse Bureau of the Ministry of Health, the Centre for Addiction and Mental Health (CAMH) and the Ontario College of Pharmacists (OCP). The guidelines are not intended to replace sound clinical judgment. The guidelines cover admission criteria, assessment of the patient, dosing issues, urine drug screening, counselling, the carry policy, involuntary dismissal from care, and methadone maintenance treatment in correctional facilities. The primary focus of the Ontario program is prevention and providing available treatment. The secondary focus is trying to limit the drug supply. The program seeks to achieve short-term goals and to reduce drug consumption. Ontario, like other provinces, has a lengthy wait listing, extending from months to years. There are approximately 750 places where individuals can receive treatment, but only 50 prescribing physicians.

### **Issues**

The overriding issue with the methadone programs in New Brunswick is availability. Only two cities have methadone programs run by the province, both of which have long waiting lists. In addition, private initiatives undertaken by doctors, social workers and nurses in other areas need funding. The Office of the Ombudsman is encouraged that the Department of Health and Wellness has addressed the issue in the Provincial Health Plan, 2004-2008. Unfortunately, little information is provided in the Health Plan, and the situation is a growing concern. Many medical professionals, law enforcement officials and concerned citizens have recently expressed alarm.

Based on the current situation, our discussions with various stakeholders involved in the Moncton and Fredericton programs, and guidelines from the New Brunswick Pharmaceutical Society, the Province of Ontario and the Government of Canada, the Office of the Ombudsman makes the following recommendations with respect to the establishment of a province-wide methadone maintenance program.

- 4. The Office of the Ombudsman recommends that methadone maintenance programs should be established in each of New Brunswick's seven health regions.**
  - a. The methadone maintenance service should provide an integrated approach, similar to the one that had been run by the Fredericton Community Health Clinic before it closed. In addition to methadone dosing, the service should include prevention, counselling and mental health services.**
  - b. Methadone consumption should be supervised and safety measures put in place to prevent abuse.**
  - c. Groups such as the New Brunswick Pharmaceutical Society and the College of Physicians and Surgeons should be involved in establishing standard dosage guidelines.**

## **REPORT ON THE DEPARTMENT OF FAMILY AND COMMUNITY SERVICES**

Because a large number of the complaints the Office of the Ombudsman receives each year pertain to services provided by the Department of Family and Community Services, the Ombudsman has elected to exercise his power (outlined in section 12(1) of the *Ombudsman Act*) to investigate, on his own motion, certain administrative procedures used by the Department.

Accordingly, this report addresses the following issues:

- I. Eviction of tenants from New Brunswick Housing;
- II. Charges to New Brunswick Housing tenants for damages to publicly owned units and subsidized units;
- III. The appeal process for decisions made by the Human Resources Development division of the Department of Family and Community Services.

### **New Brunswick Housing**

#### **I. Eviction of tenants from New Brunswick Housing units**

The public housing program in New Brunswick (including the administration of publicly owned units and publicly subsidized housing units) provides rental accommodations to low-income individuals in demonstrable need of affordable housing. Tenants accepted into the public housing program pay 30% of their income for accommodations.

The Public Housing Administration Manual cites two (2) situations that can result in an eviction: arrears and breach of covenants.

According to policy, the process to be followed when evicting a tenant because of arrears should be initiated when there is no satisfactory repayment activity. Eviction is to be a last resort and is to be enforced *only* when the Department has exhausted all avenues of arrears collection, and the tenant, either implicitly or explicitly, has shown that he or she is not prepared to honour the terms of his or her lease.

The Public Housing Administration Manual indicates that eviction of a tenant due to breach of covenants should take place *only* when the tenant is unwilling to acknowledge and rectify the breach.

Documents received by the Office of the Ombudsman (from clients and from the Department of Family and Community Services) through the investigation of complaints have indicated that section 16(a) of the Public Housing Lease has been cited as the reason for terminating tenancies. Section 16(a) of the Public Housing Lease reads as follows:

*The Lessor and the Lessee agree that either party may at any time terminate this Lease at the expiration of the month subsequent to the month in which the notice is given by giving notice in writing to the other.*

Clients and representatives of the Department of Family and Community Services have informed the Office of the Ombudsman that tenants are not always told the reason(s) for their eviction, although (as stated above) the Public Housing Administration Manual indicates that all reasonable steps are to be taken to avoid eviction of public housing tenants.

Because publicly subsidized housing units are privately owned and administered, tenants are expected to abide by the terms of the lease for their unit. The policies and procedures regarding evictions that are to be followed by landlords of privately owned, publicly subsidized housing units are not necessarily the same as those followed by the Department of Family and Community Services.

There is no appeal process established by the Department of Family and Community Services whereby tenants facing eviction may contest the eviction.

**5. The Office of the Ombudsman makes the following recommendations with respect to the termination of tenancies from publicly owned and publicly subsidized housing units:**

**a. A one month notice should not be cited as the reason for terminating tenancies.**

**b. Tenants should always be provided with reasons for their eviction.**

## **II. Charges to tenants for damages to publicly owned or publicly subsidized housing units**

According to the Public Housing Administration Manual, when a tenant moves in to a New Brunswick Housing unit, an inspection of the unit is to be performed, and all deficiencies are to be listed on an inspection form. This form is to be signed by the new tenant and a Family and Community Services staff member.

According to policy, when a tenant gives notice that he or she will vacate a housing unit, New Brunswick Housing should send a move-out letter indicating the responsibilities of the tenant, the payment of rent, arrangements for outstanding arrears, general cleaning responsibilities of the tenant, and the method of returning keys. The policy also states that, as soon as possible after the tenant's notice is received, a preliminary inspection of the housing unit should be conducted. The preliminary inspection report should identify tasks for which the tenant would be held responsible if not completed before he or she moves out. Once the unit becomes vacant, a follow-up inspection should be conducted to confirm that the tenant completed all required cleaning and addressed all deficiencies.

This Office has been in contact with representatives of the Office of the Rentalsman, and we have been advised that landlords of privately owned housing units (whether or not rent is supplemented by the Department of Family and Community Services) are supposed to conduct move-in inspections and vacancy inspections of their units. This process, we are advised, is practiced in order to protect both landlords and tenants if claims are made for damages to housing units.

Through investigating complaints pertaining to charges to tenants for damages to publicly owned or publicly subsidized housing units, this Office has learned that adequate inspection forms are not always completed when a tenant moves into or vacates a publicly owned or subsidized housing unit. More often, inspection reports are not signed by the tenant. It is understandable that certain scenarios might prevent tenants from being present at inspections, despite the Department's efforts to schedule those inspections at convenient times. But, in some cases, although the tenant gave the required month's notice, the inspection took place well after the tenant's move-out date.

This Office has been advised by representatives of the Department of Family and Community Services that some New Brunswick Housing regions charge tenants for the full cost of certain repairs to a housing unit, and other regions charge a percentage

of the cost to the tenant. This percentage, we are advised, is proportional to the amount of time a tenant has occupied a particular unit.

**6. The Office of the Ombudsman makes the following recommendations with respect to charges to tenants for damages to publicly owned or publicly subsidized housing units:**

- a. Standard inspection forms should be completed at the time of all move-ins to publicly owned or publicly subsidized housing units.**
- b. Standard inspection forms should be completed at the time of all vacancies from publicly owned or publicly subsidized housing units.**
- c. All reasonable efforts should be made to ensure that inspection reports are signed by tenants of publicly owned or publicly subsidized housing units.**
- d. All New Brunswick Housing regions should adopt the practice of charging tenants amounts for repairs (such as painting) that reflect the length of the tenancy.**

**III. Appeal Process for Decisions made by Family and Community Services, Human Resources Development division.**

A person may request a review under section 15(1) of the Family Income Security Regulation 95-61 if:

- the person's application for assistance is denied;
- the person's application for assistance is granted, but the person believes that the initial amount of financial assistance granted is insufficient or inappropriate for the person's needs within the limitations imposed by the regulations;
- the financial assistance being received by the person is suspended or cancelled;
- the amount of financial assistance being received by the person is varied, and the person is not satisfied with the variation; or
- the person believes that there has been unreasonable delay in the making of a decision respecting any matter affecting the person's receipt of financial assistance.

A person may file a request for review within thirty (30) days of receiving notice of one of the decisions listed above. The area reviewer will review the person's case and make a decision, and will deliver to the person a written notice of the decision within fifteen (15) days after the request for review was received. According to the Regulation, the reviewer's written notice will contain the particulars of the decision and the reasons for the decision. It will outline the manner in which the person may appeal the decision (if applicable), and will include an appeal form which the person may choose to file.

Most decisions made by an area reviewer may be appealed to the Family Income Security Appeal Board. Within twenty (20) days of the person receiving the reviewer's decision, a person may serve a notice of appeal on the Chairperson of the Family Income Security Appeal Board. The Family Income Security Appeal Board is a quasi-judicial, independent tribunal which operates at arm's length from government. Board members are appointed by the Lieutenant-Governor in Council. Upon receiving the notice of appeal, the Chairperson will arrange a hearing to be held within twenty (20) days from the date of receipt. The appellant will be served a written notice of hearing at least five (5) days before the date of the scheduled hearing. Hearings are to be conducted in the official language of the appellant's choice. An appellant may be represented by counsel or by another representative of his or her choice. An appellant may call witnesses at the hearing. The Department of Family and Community Services is represented at the hearing by a designated officer, who will present evidence and may also call witnesses. The Family Income Security Appeal Board will render a written decision within fifteen (15) days of the date of the hearing, and will distribute copies to all parties to the appeal.

As a result of consulting with the Department of Family and Community Services, this Office understands that, in cases where an investigation of an Income Assistance recipient has resulted in the determination that the recipient is ineligible to receive financial benefits, clients of the Department of Family and Community Services are not provided with the investigation report that led to the termination of their benefits. This Office has been advised that copies of investigation reports are not provided to those seeking a review or an appeal because these reports often contain identifying information about third parties—for example, witnesses interviewed during the investigation.

This Office has been advised, through complaints received, and by representatives of the Department of Family and Community Services, that before an appeal, recipients of Income Assistance are not provided with an opportunity to respond to allegations

which dispute their eligibility for financial assistance before their Income Assistance benefits are discontinued.

- 7. The Office of the Ombudsman makes the following recommendation with respect to the appeal process for decisions made by the Human Resources Development division of the Department of Family and Community Services:**
  - a. The facts on which decisions to discontinue benefits are based should be provided to clients so that clients of the Department of Family and Community Services know the evidence that will be presented against them at their review and appeal hearing.**

The recommendations in this report result from recurring issues in complaints received by the Office of the Ombudsman. After consulting with other Ombudsman's offices across Canada, this Office understands that many of the above issues are not unique to New Brunswick; they also pose problems in other Canadian provinces. This Office makes its recommendations with the hope that they will improve transparency and fairness in the provision of these important government services.

The Office of the Ombudsman wishes to thank the Department of Family and Community Services, the Family Income Security Appeal Board, the Canadian Ombudsman's offices across Canada, the *Urban Core Support Network*, *Comité des 12 pour la justice sociale* and the *Advocacy Collective* for their input and contributions to this report.

## **NEW BRUNSWICK NURSING HOMES: A NETWORK IN NEED OF REFORM?**

Nearly 3900 New Brunswickers reside in nursing homes across the province, according to the Department of Family and Community Services. It is safe to assume that, as the population ages, this number will steadily increase.

Under the *Nursing Homes Act*, the province exercises extensive regulatory power over a network of some 61 institutions. The province is involved in the establishment, operation and maintenance of homes, and in the provision of assistance to residents in need. Through its Nursing Home Services branch, the Department of Family and Community Services has responsibility for granting and revoking operating licenses, conducting inspections, enforcing operational standards, approving new residents, and for providing assistance to residents in need. In short, the provincial government is extensively involved in all aspects of the nursing home system, from one-on-one contact with prospective residents to the projection of needs on a provincial scale.

### **Two Categories of Complaint**

In the past year, the Office of the Ombudsman has heard a series of complaints from seniors groups and individuals concerning the administration, operation, and organization of the nursing home network. These concerns have led to our decision to address the issue.

Nursing home residents are an extremely vulnerable population group. They are people often unable to voice their own concerns or to defend their own interests. A consultant's report commissioned by Family and Community Services in 2002 described an "increasingly frail, dependent resident population with escalating acuity levels." The report noted that the percentage of nursing home residents suffering from cognitive impairment, dementia, and other psychiatric disorders requiring behavioral management had reached 80% by 2002<sup>88</sup>, a doubling since 1989. Given these circumstances, it is obvious that the well-being of nursing home residents requires outside vigilance. Indeed, the 2003 Annual Statistical Report of Nursing Home Services says that inspectors identified infractions of one sort or another in 97.9 per cent of homes surveyed.

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<sup>88</sup> DMR Consulting, *Final Report – Resident Care Needs Project*, February 19, 2002, p.29.

The grievances brought to the attention of the Office of the Ombudsman can be grouped into two categories. First, advocacy groups have criticized the financial framework in which nursing homes operate; there is a perception that the Standard

Family Contribution Policy administered by the Department of Family and Community Services unduly depletes residents' financial resources, directly or indirectly penalizing their families and dependents. Second, there are complaints about the quality of life for individual residents in nursing homes. Negligence alleged by advocacy groups and reports of chronic loneliness, boredom and isolation suggest a discrepancy between residents' actual long-term care needs and the limited human and financial resources actually sustaining the nursing home network. The aforementioned consultant's report described a "vicious cycle" of understaffing, increased demand, and decreased quality of service.

### **A System in Evolution**

With regard to the first category of complaints, the Office of the Ombudsman notes with approval the recently announced modifications to the Standard Family Contribution Policy. These changes will moderately alleviate the financial burden experienced by the families and spouses of nursing home residents by safe-guarding a portion of liquid assets, real property and monthly income. However, the principle that New Brunswickers are responsible for the cost and provision of long-term care services to their family members remains intact. In other words, the provincial government continues to position itself as a "payer of last resort."<sup>9</sup>

In reality, however, government is obliged to provide partial or total assistance to more than 80% of nursing home clientele. In the year ending March 31, 2003, resident subsidization payments accounted for 62.6% of total funding to nursing homes in the province.

It is the opinion of the Office of the Ombudsman that these figures are cause for concern. The average length of stay of nursing home residents in New Brunswick is just over three years. The 80% subsidy rate indicates that, under typical circumstances, the Standard Family Contribution Policy engenders an extremely rapid depletion of family resources, causing economic distress to residents, spouses and sometimes entire families. Daily contact with some of New Brunswick's most

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<sup>9</sup> Department of Family and Community Services, Nursing Home Services, *Annual Statistical Report – Year Ending March 31, 2003*, p. 35.

disadvantaged citizens informs this Office's misgivings concerning the real-life effects of "spreading costs" in this way.

While the recently announced modifications to the Standard Family Contribution Policy will provide for a slightly more forgiving financial framework, New

Brunswick's nursing home clientele and their families will remain subject to the most extensive asset liquidation requirements in Canada. Naturally, the challenges associated with providing long-term care to the elderly are familiar to governments across Canada. Approaches, however, vary from jurisdiction to jurisdiction.

### **Nova Scotia Sets the Pace for Nursing Home Reform**

As of January, 2005, the Province of Nova Scotia will join the list of other Canadian jurisdictions, including Ontario, British Columbia, and the Prairie Provinces, where asset liquidation requirements have been entirely phased out. The ability of Nova Scotian nursing home residents to contribute to their nursing homes costs will henceforth be based on a simple income test. We view these changes with approval.

#### **8. The Office of the Ombudsman recommends that calculation of family financial contribution for nursing home services to New Brunswick residents be based on income only.**

Nova Scotia is raising the bar for nursing home administration in the Atlantic region in other ways. In particular, it plans to assume the full cost of health care services for seniors residing in nursing homes, beginning in 2005. In so doing, the province addresses a longstanding contention that nursing home residents, arguably our society's most vulnerable demographic, are unjustly excluded from the humane umbrella of public health insurance. This is supported by the argument that nursing homes provide medically necessary palliative care that would be ensured if administered in a hospital context.

Interestingly, parallel concerns have arisen in foreign jurisdictions and have led to active intervention by this Office's counterparts. Only last year, the British Health Service Ombudsman ruled that persons in nursing homes primarily because they have a medical need should have their fees paid by Britain's National Health Service. The ruling is based on common traditions of compassion and social responsibility.

- 9. The Office of the Ombudsman recommends that the costs of health care services to nursing home residents in New Brunswick be the responsibility of the provincial government.**

### **A Vulnerable Clientele**

At present, roughly 77 per cent of New Brunswick's nursing home clientele is 75 years of age or older<sup>10</sup>. On average, 65 per cent of residents are admitted directly from hospital. A majority of residents are cognitively impaired, and require assistance in dressing, grooming and hygiene. Nearly half cannot eat a meal without help<sup>11</sup>.

Given these circumstances, there is an onus on caregivers, doctors, families, and the provincial government to ensure the well-being of people in nursing homes. Although we are not aware of any investigations conducted in New Brunswick, research in Ontario and elsewhere suggests that older adults are particularly vulnerable to abuse in institutional settings<sup>12</sup>. In the nursing home setting, a key concern is **neglect**, i.e. the failure of a caregiver to meet the needs of an older adult who is unable to meet those needs alone. Naturally, the potential for neglect is exacerbated by such factors as understaffing and increased resident dependence.

### **Focusing on the Individual: a Residents' Bill of Rights**

- 10. The Office of the Ombudsman recommends that the existing *Nursing Homes Act* should be complemented by the addition of a concise and easily understandable residents' Bill of Rights, like that found in Ontario's *Nursing Homes Act*.**

The proposed Bill of Rights would make explicit guarantees that are already implicit in the various provisions of the *General Regulation - Nursing Homes Act* regarding minimum standards of care, and provide New Brunswick lawmakers with a new opportunity to rethink and reaffirm their commitment to seniors' well-being.

The Office of the Ombudsman envisions a statement that would accomplish the following objectives:

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<sup>10</sup> Ibid, p. 18.

<sup>11</sup> DMR Consulting, *Final Report – Resident Care Needs Project*, February 19, 2002, p.29.

<sup>12</sup> See Health Canada's National Clearinghouse on Family Violence publication "Abuse of Older Adults in Institutions", available at [www.hc-sc.gc.ca/hppb/familyviolence](http://www.hc-sc.gc.ca/hppb/familyviolence)

- Shift the legislative focus to the **individual resident**;
- **Empower** residents and their substitute decision-makers;
- **Affirm** the dignity of all nursing home residents.

A standard-setting Bill of Rights, firm enough to be brought to bear on real-life situations and written into law, would constitute an invaluable instrument for residents and their advocates.

### **Creative Solutions for Changing Times**

Keeping pace with the health care needs of an aging population presents New Brunswickers with unprecedented challenges. The increasing vulnerability of long-term care recipients has prompted the Office of the Ombudsman to seek ways to increase our oversight of residential care providers in New Brunswick. Provided resources are available, we intend to move proactively and devote more of our time to the issues affecting the residents of nursing homes and special care homes. We believe our Office can cost-effectively provide this type of oversight, pending establishment of a specific long-term care advocate's office. Long-term care facilities are not, however, public bodies and are therefore not covered by our Act.

- 11. To ensure that our office has the necessary legislative authority, the Office of the Ombudsman recommends that the *Ombudsman Act* be amended to permit the Ombudsman to carry out our investigations and exercise oversight with regard to residential facilities operating under the *Nursing Home Act* or as licensed by the Department of Family and Community Services.**

## SUMMARY OF RECOMMENDATIONS

### Executive Council

1. The Office of the Ombudsman recommends that municipalities and municipal structures be enumerated in Schedule A of the *Right to Information Act*
2. The Office of the Ombudsman recommends that as soon as possible the Executive Council Office organize and sponsor a one-day right-to-information workshop. It is recommended that the major stakeholders be invited to participate in an open and frank discussion of the roles of the parties, and the intention and practical operation of the *Right to Information Act*.

### Justice

3. The Office of the Ombudsman recommends the following legislative amendments to eliminate the misunderstanding with Family and Community Services as to our right to access information pertaining to a complaint received by our Office.
  - a. That the *Family Services Act* be amended as follows:
    - I. by adding a new paragraph (d) to the Ombudsman or to a person appointed by the Ombudsman to subsection 11(3), with the current paragraph (d) to become paragraph (e);
    - II. by adding the words or an investigation by the Ombudsman after “judicial proceedings” in subsection 30(6).
  - b. That Regulation 95-61 under the *Family Income Security Act* be amended as follows:
    - I. by adding a new paragraph (h) to the Ombudsman or to a person appointed by the Ombudsman to subsection 31(4).

c. That the *Ombudsman Act* be amended as follows:

I. by deleting subsection 18(4) and subsection 18(5).

### **Health and Wellness**

4. The Office of the Ombudsman recommends that methadone maintenance programs should be established in each of New Brunswick's seven health regions.
  - a. The methadone maintenance service should provide an integrated approach, similar to the one that had been run by the Fredericton Community Health Clinic before it closed. In addition to methadone dosing, the service should include prevention, counselling and mental health services.
  - b. Methadone consumption should be supervised and safety measures put in place to prevent abuse.
  - c. Groups such as the New Brunswick Pharmaceutical Society and the College of Physicians and Surgeons should be involved in establishing standard dosage guidelines.

### **Family and Community Services**

5. The Office of the Ombudsman makes the following recommendations with respect to the termination of tenancies from publicly owned and publicly subsidized housing units:
  - a. A one month notice should not be cited as the reason for terminating tenancies.
  - b. Tenants should always be provided with reasons for their eviction.
6. The Office of the Ombudsman makes the following recommendations with respect to charges to tenants for damages to publicly owned or publicly subsidized housing units:
  - a. Standard inspection forms should be completed at the time of all move-ins to publicly owned or publicly subsidized housing units.



## STATUTORY RESPONSIBILITIES

The Office of the Ombudsman in New Brunswick has the broadest legislated jurisdiction of all the provincial Ombudsman Offices in Canada.

The Office of the Ombudsman currently has responsibilities under five Statutes.

1. *Ombudsman Act*
2. *Civil Service Act*
3. *Right to Information Act*
4. *Archives Act*
5. *Protection of Personal Information Act*

As evident from the above, the Office of the Ombudsman in New Brunswick has not only the traditional responsibilities under the *Ombudsman Act* but also additional responsibilities under the *Civil Service Act*, the *Right to Information Act*, *Archives Act* and the *Protection of Personal Information Act*.

## OMBUDSMAN ACT

In 1967, the Government of New Brunswick introduced legislation creating the Office of the Ombudsman. The Ombudsman is an independent officer of the Legislative Assembly with a mandate under the New Brunswick *Ombudsman Act* to conduct independent investigations of complaints.

The Office of the Ombudsman has jurisdiction to investigate complaints of an administrative nature in respect to government departments, municipalities, school districts, hospital corporations, Crown agencies, and other agencies responsible to the Province including commissions, boards and corporations as defined under the *Ombudsman Act*.

Depending upon the nature of a complaint, it is sometimes possible to resolve the complaint informally. If an investigation identifies that an administrative flaw has occurred, and the matter cannot be resolved informally, the *Act* provides for the Ombudsman to make a recommendation to the administrative head of the authority concerned.

## ***CIVIL SERVICE ACT***

In 1994, the Civil Service Commission was amalgamated with the Office of the Ombudsman. Through a change to the *Civil Service Act*, the Ombudsman is responsible to hear appeals and investigate complaints regarding the selections for appointment to the Civil Service.

The *Civil Service Act* gives the Ombudsman certain powers and duties for the purpose of protecting the merit principle as the basis for effecting appointments to or from within the Civil Service. Specifically, the *Act* provides for the Ombudsman to:

- hear appeals from employees relating to appointment decisions;
- investigate complaints from non-employees who have been unsuccessful candidates in open competitions.

Appeals and complaints may be filed in respect to appointment decisions made by all departments and agencies which comprise the Civil Service of the Province of New Brunswick. The *Act* requires the Office to hear and decide on appeals within very tight time periods.

## ***RIGHT TO INFORMATION ACT***

The *Right to Information Act*, which was proclaimed in 1980, provides individuals with an opportunity to access public information. The *Act* was amended on several occasions since it came into force with the amendments largely being related to the categories of exceptions in respect to which there is no right to access specific information.

Under the *Right to Information Act*, the Ombudsman is to conduct, within 30 days, independent reviews of refusals to release information to citizens by all Departments and Agencies as outlined in the regulations under the *Act*.

### ***PROTECTION OF PERSONAL INFORMATION ACT***

The protection of personal information retained by government departments was formalized in New Brunswick with the introduction of the **Personal Privacy Code** which came into effect in December 1994. At that time, the Office of the Ombudsman was designated as the independent body responsible for investigating complaints with respect to the privacy of personal information.

The Government of New Brunswick introduced a *Protection of Personal Information Act* in 1998. The *Act* received Royal Assent on February 26, 1998 and came into effect on April 1, 2001.

### ***ARCHIVES ACT***

The Office of the Ombudsman has duties under the *Archives Act* similar to its duties under the *Right to Information Act*.

## **GOALS**

The Office of the Ombudsman is committed to the following goals:

To conduct independent, confidential investigations to resolve complaints.

To provide efficient, effective and accessible services to every client within the framework of the human and fiscal resources provided.

To review policies, procedures, legislation and bylaws to resolve existing complaints and, where applicable, to recommend reviews or changes to improve administrative practices.

## 2003/2004 STATISTICS

- The Office of the Ombudsman received a total of 1,973 complaints, inquiries and requests for information during the year 2003/2004. Of this number, 936 were complaints within jurisdiction and investigations were required, 444 were inquiries and requests for information, and 593 were complaints which were not within the jurisdiction of this Office. In addition, 59 complaints carried over from the previous year were investigated.
- The Office of the Ombudsman received 2 appeals in accordance with section 32 of the *Civil Service Act* during this report period. Both appeals were scheduled for formal hearings with one appeal being dismissed and one being withdrawn.
- In 2003/2004, the Office of the Ombudsman received 13 formal complaints from unsuccessful candidates under section 33 of the *Civil Service Act*. In addition, the Office of the Ombudsman received and responded to a number of inquiries and requests for information regarding matters related to the *Act*.
- During the year 2003/2004, the Office of the Ombudsman received 26 applications regarding the refusal or non-response to a request to disclose information to an individual under the *Right to Information Act*. In addition, the Office of the Ombudsman conducted 5 investigations and provided general information to a number of individuals who were seeking advice regarding the procedure to follow when requesting information contained in government documents.
- During the year 2003/2004, the Office of the Ombudsman received 13 complaints and enquiries in regards to the *Protection of Personal Information Act*.
- In the Correctional Services area, the Office of the Ombudsman processed 325 verbal and written complaints from or relating to individuals incarcerated in provincial correctional institutions. In addition, the Office received 9 information requests and complaints from inmates that were not within the jurisdiction of the Office to investigate.

## THE OMBUDSMAN

The Ombudsman is an Officer of the Legislative Assembly and is independent of government. The approval of all political parties of the Legislative Assembly is obtained prior to the appointment of an Ombudsman.

The *Ombudsman Act* provides the authority to investigate complaints of an administrative nature. In accordance with the *Act*, all investigations are carried out in a confidential manner and information is only divulged where necessary in furtherance of the investigation. Accordingly, all files of the Office of the Ombudsman are confidential.

The Ombudsman and his staff investigate complaints against provincial government departments, school districts, regional health authorities, municipalities, Crown agencies, and other agencies responsible to the Province including commissions, boards and corporations as defined under the *Ombudsman Act*.

The Ombudsman and his staff do **not** have authority to investigate complaints concerning :

- Federal Government
- Matters which are of a criminal nature
- Private companies and individuals
- Judges and functions of any court
- Deliberations and proceedings of the Executive Council or any committee thereof.

## COMPLAINTS UNDER THE *OMBUDSMAN ACT*

### Access

The Office of the Ombudsman is accessible to every person in the Province of New Brunswick. People who feel they have a problem with a provincial government agency can contact the Office in either Official Language.

The Office of the Ombudsman receives complaints in a variety of ways: by letter, by telephone, by fax, by E-mail and by personal interview at our Office or in the client's community. The Office accepts oral and written complaints.

### Complaints

The Office of the Ombudsman investigates an extremely diverse cross-section of complaints related to government departments, municipalities, school districts, hospitals, crown agencies and other bodies responsible to the Province as defined under the *Ombudsman Act*.

Depending upon the nature of a complaint, it is sometimes possible for this Office to resolve the complaint informally. Upon receiving the details of the complaint from the client, this Office contacts the department or agency concerned to obtain further information regarding the complaint. In this manner a number of complaints are successfully resolved. However, where a resolution is not readily forthcoming, and where a complaint falls within the jurisdiction of the *Ombudsman Act*, a thorough and impartial investigation is undertaken.

### Investigation

In accordance with the *Ombudsman Act*, the Office conducts independent and confidential investigations into complaints from individuals regarding administrative matters.

In conducting an investigation, staff of the Office of the Ombudsman may be required to critically analyze and review policies, procedures, legislation, case law, and examine government records. Also, information is obtained from officials either through meetings or correspondence. In addition to receiving information from

clients through interviews or correspondence, investigators may obtain additional information through site visits conducted throughout the province.

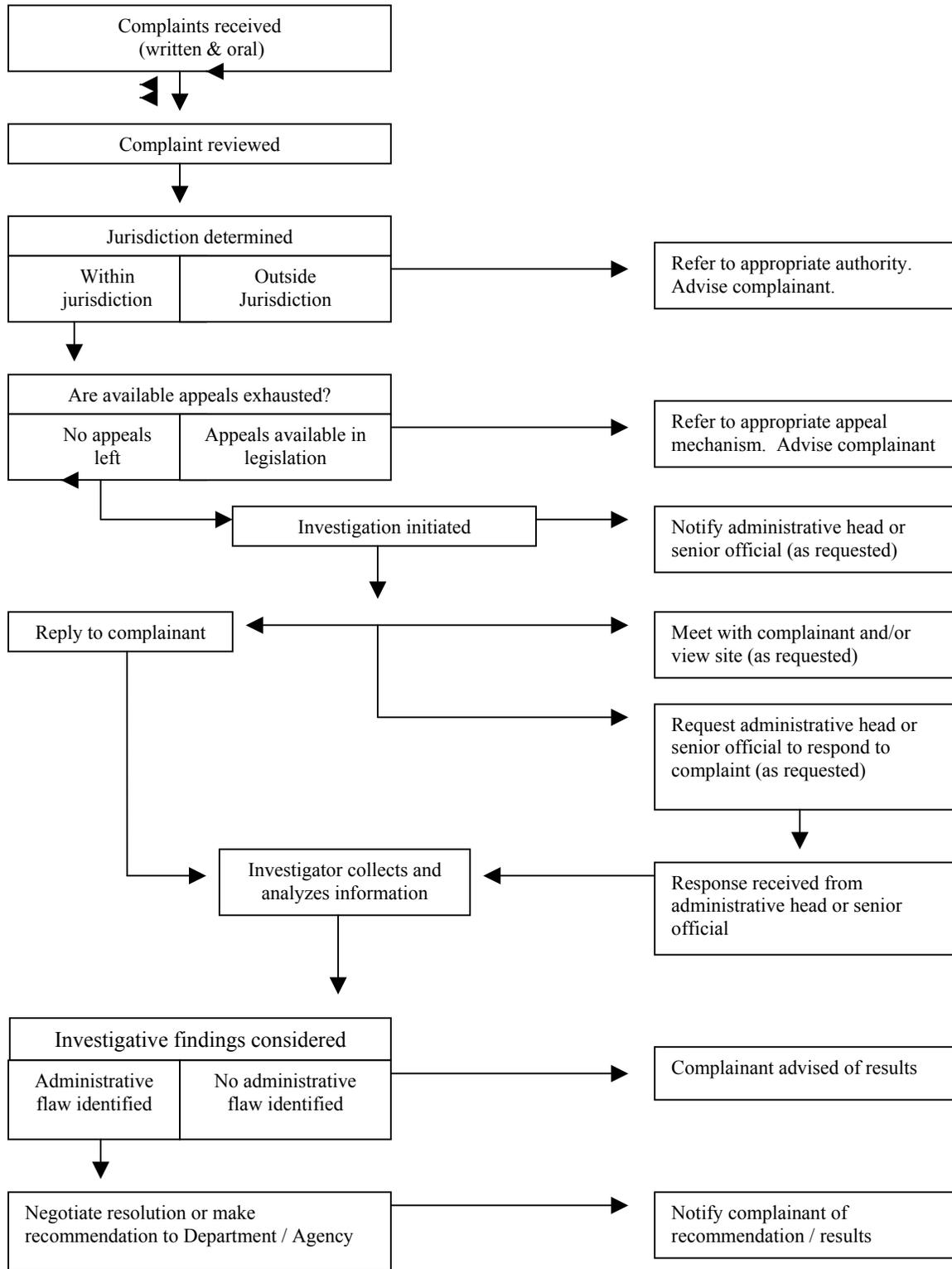
As a result of the information gathered through the investigation, the Office of the Ombudsman makes a finding. If, on the conclusion of the investigation, the finding supports the client's complaint, the Ombudsman will facilitate a resolution or, in the alternative, make a recommendation for corrective action. The Ombudsman does not have the authority to require the government to act, however, negotiation has proven to be very effective. Where there is insufficient evidence to establish that the complaint is justified, the investigation is discontinued and the client is advised of the results in writing.

### **Providing Information and Referrals**

When a complaint is outside the Ombudsman's jurisdiction to investigate, the Office provides information and, where appropriate, refers individuals to other complaint mechanisms or possible sources of assistance.

The flow chart which follows illustrates the typical manner in which written and oral complaints are handled by the Office of the Ombudsman. Exceptions may occur at the discretion and direction of the Ombudsman.

## METHOD OF HANDLING COMPLAINTS



## APPEALS AND COMPLAINTS UNDER THE *CIVIL SERVICE ACT*

Under the *Civil Service Act*, employees can submit appeals to the Office of the Ombudsman in respect to appointments made both to and from within the Civil Service. As well, unsuccessful candidates in open competitions who are not employees can make a complaint to the Office regarding the results of a competition.

### Appeals

The primary objective of the appeal process under section 32 of the *Civil Service Act* is to ensure that the principle of selection by merit is respected in effecting appointments to and from within the Civil Service.

The appeal process is an integral component of the staffing process and provides employees the opportunity for an independent and impartial review of appointment decisions.

Employees may submit their notices of appeal against appointments directly to the Ombudsman. They may also choose to first apply to the Deputy Minister of the Office of Human Resources or her delegate for a statement of reasons why they were not appointed, or for such other information that would assist in determining whether or not to appeal.

The *Act* prescribes specific time limits for filing an appeal, holding a hearing, and issuing a decision. There can only be two outcomes to an appeal; it can be allowed or dismissed. Where an appeal is allowed, the Ombudsman shall deny or revoke the appointment that gave rise to the appeal.

### Complaints

The objective of the complaint process under section 33 of the *Civil Service Act* is to protect the merit principle as the basis for effecting appointments by competition. This process provides non-employees, who have been unsuccessful in an open competition, with a redress mechanism by which the selection for appointment can be impartially examined. The inquiry and complaint provisions under the *Act* also serve to increase the openness of the hiring process.

Before complaints can be filed with the Ombudsman, unsuccessful candidates are obliged by the *Act* to formally apply to the Deputy Minister of the Office of Human Resources or her delegate for a statement of reasons why they were not appointed. If unsuccessful candidates are not satisfied with the reasons provided, they may make a complaint in writing to the Ombudsman within the time limits set out in the *Act*.

The Ombudsman does not have the authority to revoke an appointment as a result of this process even if it has been determined that merit was not respected. The Ombudsman can, however, submit recommendations to the Deputy Minister of the Office of Human Resources as a result of the findings from an investigation.

## **REFERRALS UNDER THE *RIGHT TO INFORMATION ACT***

Under the *Right to Information Act*, an individual may request information as contained in a document(s) by applying to the appropriate Minister as defined by the *Act*. Where the Minister does not, or is unable to, provide the document(s) requested, the individual may refer the matter to either the Ombudsman or to a judge of The Court of Queen's Bench.

When a request for information is referred to the Office of the Ombudsman, the *Right to Information Act* requires the Ombudsman to review the matter referred within 30 days of having received the referral.

The *Act* provides for the Ombudsman to inspect the information that the Minister has refused to release, if such information exists, and the inspection is to be made in private.

To determine if the information should be released, the Ombudsman inspects the information on-site. Depending on the nature of the information requested, this inspection may involve a review of a single document or file, or a folio of documents or boxes of files.

If the information that a client requests is contained in a document, the Ombudsman's inspection may extend beyond paper documents as the *Right to Information Act* defines a document as including "*any record of information, however recorded or stored, whether in printed form, on film, by electronic means or otherwise*".

At the conclusion of the review, if the Ombudsman finds that the information requested is not exempted for release under the *Right to Information Act*, a recommendation is made to the Minister to release the information in accordance with the *Act*.

There is no right under the *Act* to access information which falls within the categories which are listed as exceptions in section 6 of the *Act*.

## COMPLAINTS UNDER THE *PROTECTION OF PERSONAL INFORMATION ACT*

The Office of the Ombudsman is an independent body which is responsible for investigating complaints with respect to the privacy of personal information held by the departments and agencies of the government.

This protection of personal information was formalized in New Brunswick with the introduction of a **Personal Privacy Code** in December 1994.

While the adoption of a Privacy Code provided a framework for information management practices, the Ombudsman had recommended to the Government that a Privacy Act or Protection of Personal Information Act be introduced at the earliest possible time to ensure even greater protection of privacy.

A *Protection of Personal Information Act* came into effect on April 1, 2001. The *Act* is designed to regulate the collection, confidentiality, correction, disclosure, retention and use of personal information. The *Act* applies to those public bodies set out under the *Right to Information Act* and to any other public body that may be designated by regulation. In the *Act*, the Ombudsman was given responsibility for investigating complaints regarding violations of the *Act*.

While the Office of the Ombudsman is responsible to investigate complaints under the *Protection of Personal Information Act*, it is the responsibility of departments and agencies of the government to manage personal information in accordance with the *Act*.

## CORRECTIONAL INSTITUTIONS

Section 13(4) of the *Ombudsman Act* provides that any person in custody has a right to have a letter forwarded to the Office of the Ombudsman unopened, thereby ensuring them the opportunity of bringing their complaints in respect to **matters of administration** to this Office for investigation.

Inmates are provided with an orientation manual by the Department of Public Safety on admittance to each of the Correctional Institutions. The manual advises the inmate that the Office of the Ombudsman investigates complaints from individuals who feel they have been treated unjustly.

While the Office received inquiries and complaints regarding a wide range of issues, Section 12 of the *Ombudsman Act* empowers the Office to investigate complaints “*with respect to a matter of administration*” and not matters which are of a criminal nature.

As the statistics relating to the complaints and inquiries received in 2003/2004 will show, the majority relate to matters of administration and are open to investigation by this Office. However, it will also be noted that one complaint was received which was of a **criminal nature** i.e. assault. Such a complaint is a matter for investigation by a police authority. In those instances, this Office brought the matter to the attention of the Department of Public Safety immediately. This Office subsequently confirmed with the Department of Public Safety that the police had been notified regarding the complaint.

In other instances where an inquiry or a complaint does not fall within the jurisdiction of the *Ombudsman Act*, individuals are referred to the appropriate body i.e. Parole Board.

As inmates are within the care of the Province of New Brunswick, each complaint that was within the jurisdiction of this Office to investigate was acted upon as expeditiously as possible. This usually required that the matter be brought to the attention of the Department of Public Safety so that the Department is also given the opportunity to be heard.

On receiving information from both parties and in carrying out any further reviews that may be necessary, this Office concludes the investigation and the inmate is advised accordingly.

Staff from the Office of the Ombudsman traveled to the Province's Correctional facilities on nine occasions during this period in the course of investigating complaints. Specific cases and general policies and procedures were discussed with institutional officials.

## **PERFORMANCE INDICATORS**

The Office of the Ombudsman is currently reviewing our performance indicators, with the view of developing and adopting relevant indicators to assist us in our goal of improving service for all clients.

The decision to undertake this review at this time has been prompted by a number of factors, including the following: a new computerized Case Management System (CMS) was introduced midway through the 2003-2004 reporting year; there was a substantial change in personnel during the 2003-2004 reporting year, including a new Ombudsman; a toll free 1-800 telephone number was introduced which makes it easier for clients outside of the greater Fredericton area to reach the office; a number of administrative efficiencies were introduced to the office during the final three months of the 2003-2004 reporting year; there was a sharp increase in the number of new complaints during the last three months of the 2003-2004 reporting year (this trend has continued during the first six months of the 2004-2005 reporting year); and the fact that we have been meeting with a variety of government departments and agencies in an effort to develop improvements in the way we conduct our respective legislated duties.

Our aim is to continue to develop efficiencies and improvement in the way we conduct and process our business, and to report on these developments in our 2004-2005 report.

## FINANCIAL INFORMATION

Budget and actual expenditure for 2003/2004 by primary classification is set out in the table below. The approved budget for the 2004/2005 year is presented for comparison purposes.

Staff costs account for approximately 82% of the budget.

Figures below indicate that the actual expenditures for the Office of the Ombudsman exceeded the amount budgeted for the year. However, money was transferred in-year via the supplementary budget process to offset costs associated with retirements, updating of office technology and personnel changes.

	2004/2005	2003/2004	
	Budget	Budget	Actual
Wages and Benefits	569.2	531.7	544.8
Other Services	92.0	74.5	89.8
Materials and Supplies	12.0	12.5	10.1
Property and Equipment	22.0	14.3	22.1
	695.2	633.0	666.8

**Note: Budget and actual expenditure (thousands of dollars)**

## STATISTICAL TABLE 2003/2004

### OUTCOME OF COMPLAINTS RECEIVED IN 2003/2004 AND INVESTIGATIONS CONTINUED FROM 2002/2003

Departments/ Agencies/ Acts	Total	Resolved	Partially Resolved Referral Given/ Information Provided	Not Substantiated	Discontinued by Client/ Ombudsman
<i>Civil Service Act</i>	21	-	6	9	6
Education	28	4	14	4	6
Environment and Local Government	15	2	6	5	2
Family and Community Services	228	7	88	78	55
Health and Wellness	57	5	22	23	7
Justice	19	3	12	3	1
Natural Resources	8	2	5	1	-
NB Power Corporation	51	7	12	27	5
Municipalities	21	2	6	7	6
<i>Protection of Personal Information Act</i>	13	1	11	1	-
Public Safety	331	34	111	175	11
<i>Right to Information Act</i>	50	22	27	1	-
Service New Brunswick	10	-	7	2	1
Training and Employment Development	19	1	5	9	4
Transportation	27	3	14	6	4
Workplace Health, Safety and Compensation Commission	58	2	34	9	13
**Other	39	8	9	15	7
<b>Total</b>	<b>*995</b>	<b>103</b>	<b>389</b>	<b>375</b>	<b>128</b>

\*This number includes 59 investigations which were continued from the previous year.

\*\* Departments/agencies/Acts with 5 or less complaints during 2003/2004.

\*\*\* 137 complaints were still under investigation at year end.

## TYPES OF COMPLAINTS BY DEPARTMENT

The following tables provide the number of complaints by type and by Department investigated in the year 2003/2004. In consideration of the confidentiality provisions of the *Ombudsman Act*, only those Departments with more than 15 complaints are set out in the tables below.

### EDUCATION

	2003/2004	2002/2003
Administration	1	7
Transportation	3	7
Children with Special Needs	3	6
Student Loans	6	5
Employment	2	4
Student Transfer	1	3
Suspensions	2	3
Curriculum/Testing	-	2
Complaints Regarding Staff	1	2
French Immersion Program	-	1
Heritage	-	<u>1</u>
<b>Total</b>	<b>19</b>	<b>41</b>

## FAMILY AND COMMUNITY SERVICES

	2003/2004	2002/2003
<b>Income Assistance Benefits</b>		
Discontinued / Reduced	32	20
Denied	26	19
Amount / Calculation	1	14
Eligibility Criteria	15	14
Long Term Needs	12	7
Repayment	10	4
Delay	<u>6</u>	<u>4</u>
<b>Subtotal</b>	<b>102</b>	<b>82</b>
<b>Housing Units</b>		
Repairs	12	12
Availability	19	11
Evictions	12	10
Inspections	3	5
Tenant Rights	-	4
Transfers	<u>3</u>	<u>2</u>
<b>Subtotal</b>	<b>49</b>	<b>44</b>
Complaints Regarding Staff	21	15
Administration	3	14
Special Benefits	-	11
Health Card	15	10
Protection Services	11	6
Heat Supplement	4	6
Adoption	2	5
Medical Issues	11	3
Training/Work Programs	2	3
Loans / Grants-Housing	12	2
Nursing Homes/Residential Services	19	2
Employment	2	1
Appeal Board	3	-
Appliances/Furniture	<u>3</u>	<u>-</u>
<b>Total</b>	<b>259</b>	<b>204</b>

## HEALTH AND WELLNESS

	2003/2004	2002/2002
Mental Health	6	13
Hospital Corporations	-	6
Employment	1	5
Administration	1	4
Complaints Regarding Staff	-	4
Medicare	6	4
Permits / Licenses	-	3
Special Needs Programs	-	3
Placement Services	-	2
Public Health	4	1
Adoption	-	1
Prescription Drug Program	1	1
Addiction Services	5	-
Vital Statistics	<u>3</u>	<u>2</u>
<b>Total</b>	<b>27</b>	<b>49</b>

## NB POWER CORPORATION

	2003/2004	2002/2003
Service Issues	31	21
Payment Schedules	5	6
Billing-Amount / Calculation	12	3
Security Deposit	2	3
Administration	1	1
Damage Claims	<u>3</u>	<u>1</u>
<b>Total</b>	<b>54</b>	<b>35</b>

## PUBLIC SAFETY

	2003/2004	2002/2003
Permits / Licenses	13	13
Administration	-	2
Complaints Regarding Staff	4	1
Coroner Services	1	1
Emergency Measures	1	-
Employment	1	-
Other	<u>1</u>	<u>1</u>
<b>Total</b>	<b>21</b>	<b>18</b>

**TRANSPORTATION**

	2003/2004	2002/2003
Road / Bridge Maintenance	11	9
Employment	5	5
Damage Claims	6	4
Access / Right of Way	-	3
Property Issues	5	2
Administration	3	1
Expropriation Procedures	1	1
Complaints Regarding Staff	-	-
Permits / Licenses	<u>-</u>	<u>-</u>
<b>Total</b>	<b>31</b>	<b>25</b>

## WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION

	2003/2004	2002/2003
<b>Compensation</b>		
Discontinued / Reduced	23	16
Amount / Calculation	10	7
Long-term Disability Benefits	<u>2</u>	<u>-</u>
<b>Subtotal</b>	<b>35</b>	<b>23</b>
Appeals Tribunal	7	13
Claim Denied	8	5
Administration	4	4
Medical Payments	3	3
Deeming	1	2
Complaints Regarding Staff	4	2
Retraining	1	2
Medical Rehabilitation	6	1
Permanent Partial Impairment	<u>-</u>	<u>-</u>
<b>Total</b>	<b>69</b>	<b>55</b>

## CORRECTIONAL INSTITUTIONS

### Verbal and Written Complaints and Requests for Information

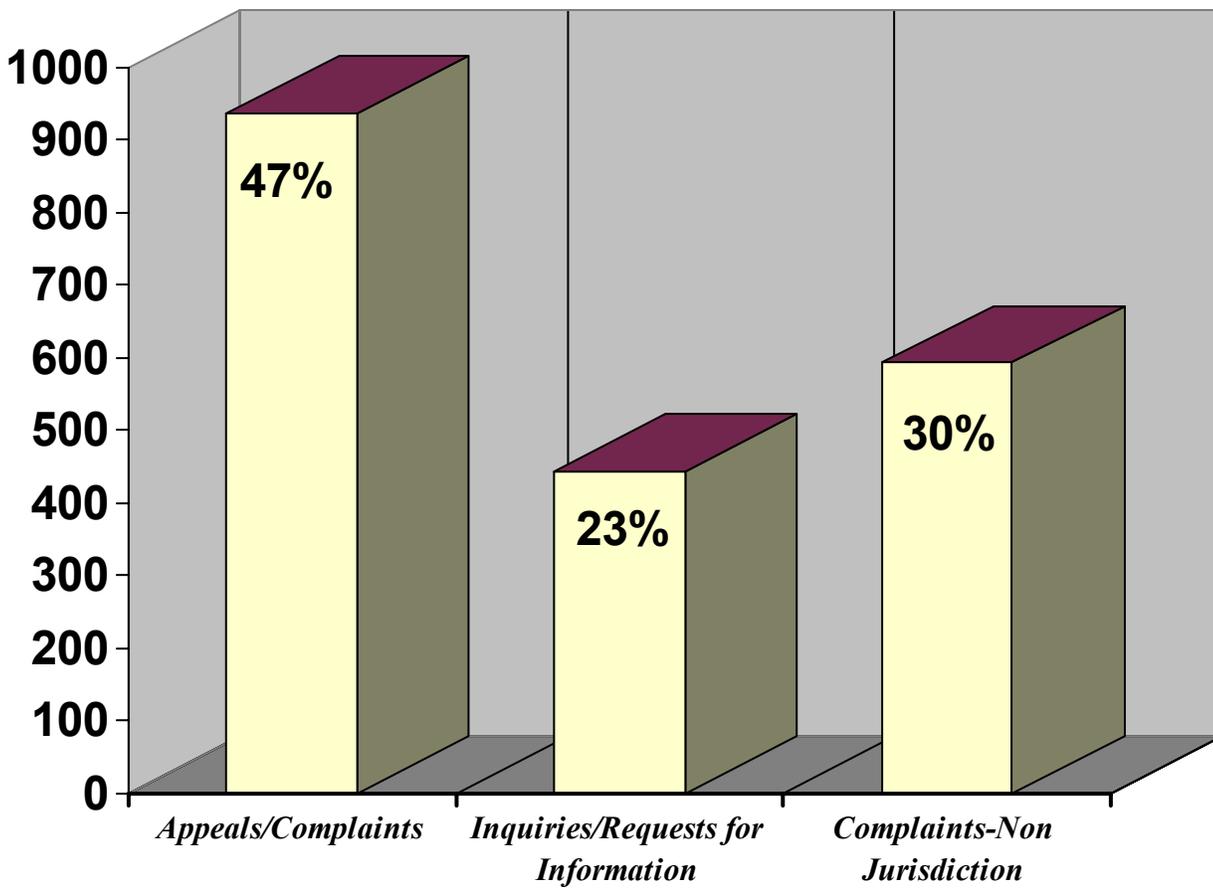
	2003/2004	2002/2003
<b>Health Issues</b>		
Prescriptions Requested or Denied	35	29
Request to see Nurse / Doctor	28	16
Dental	4	14
Request to go to Hospital	3	9
Glasses, Eye Care	5	3
Special Diet	2	2
Threat of Suicide	3	2
Physiotherapy	-	1
Mental Health	2	-
Medical Appliance	<u>1</u>	<u>-</u>
<b>Subtotal</b>	<b>83</b>	<b>76</b>
 <b>Living Conditions</b>		
Clothing and Bedding	7	8
Cleanliness	5	7
Food	6	7
Heat and Ventilation	2	3
Overcrowding	4	2
Smoking	7	1
Maintenance and Repairs	3	1
Other	<u>-</u>	<u>1</u>
<b>Subtotal</b>	<b>34</b>	<b>30</b>

Administration	15	17
Temporary Absence Program	8	14
Discipline	18	13
Personal / Inmate Property	12	12
Classification / Transfer	26	11
Request for House Arrest	6	11
Visiting Privileges	15	11
Recreation	12	9
Placement within Institution	33	8
Program Privileges	12	6
Telephone Use	6	5
Correspondence	11	4
Sentence / Remission Calculation	2	4
Use of Restraints	2	4
Contraband	4	2
Segregation	4	2
Staff Conduct and Deportment	13	2
Threatened by Presence of Other Inmates	2	2
Request Form	4	1
Official Languages – Service	-	1
Requests for Items Denied	2	-
Others	-	1
Abandoned By Inmate	<u>1</u>	<u>7</u>
<b>Subtotal</b>	<b>325*</b>	<b>253*</b>
Information Requests	1	33
Non Jurisdiction	-	-
Physical Assault	1	10
Courts	3	2
Parole	-	1
Legal Aid	1	-
Sexual Assault	-	-
Verbal Abuse and Swearing (Staff)	<u>3</u>	<u>-</u>
<b>Total</b>	<b>334</b>	<b>299</b>

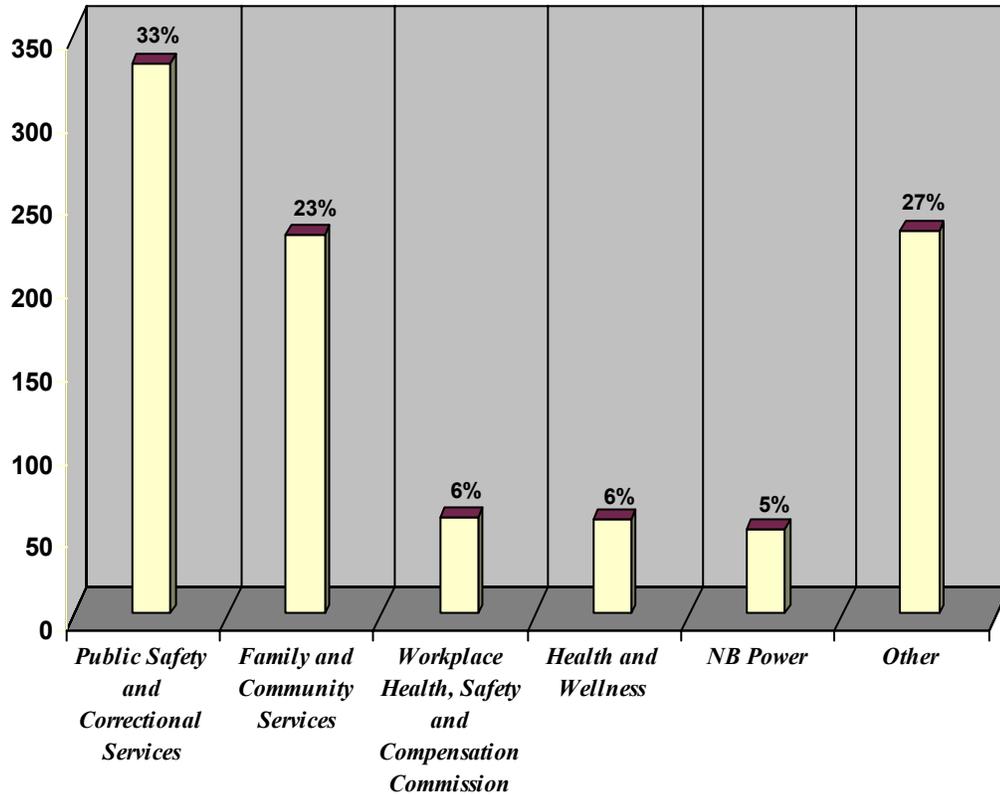
\*Sometimes a number of inmates join together to lodge a group complaint. Group complaints relate to areas of common interest such as living conditions, food, smoking or recreation.

## CHARTS

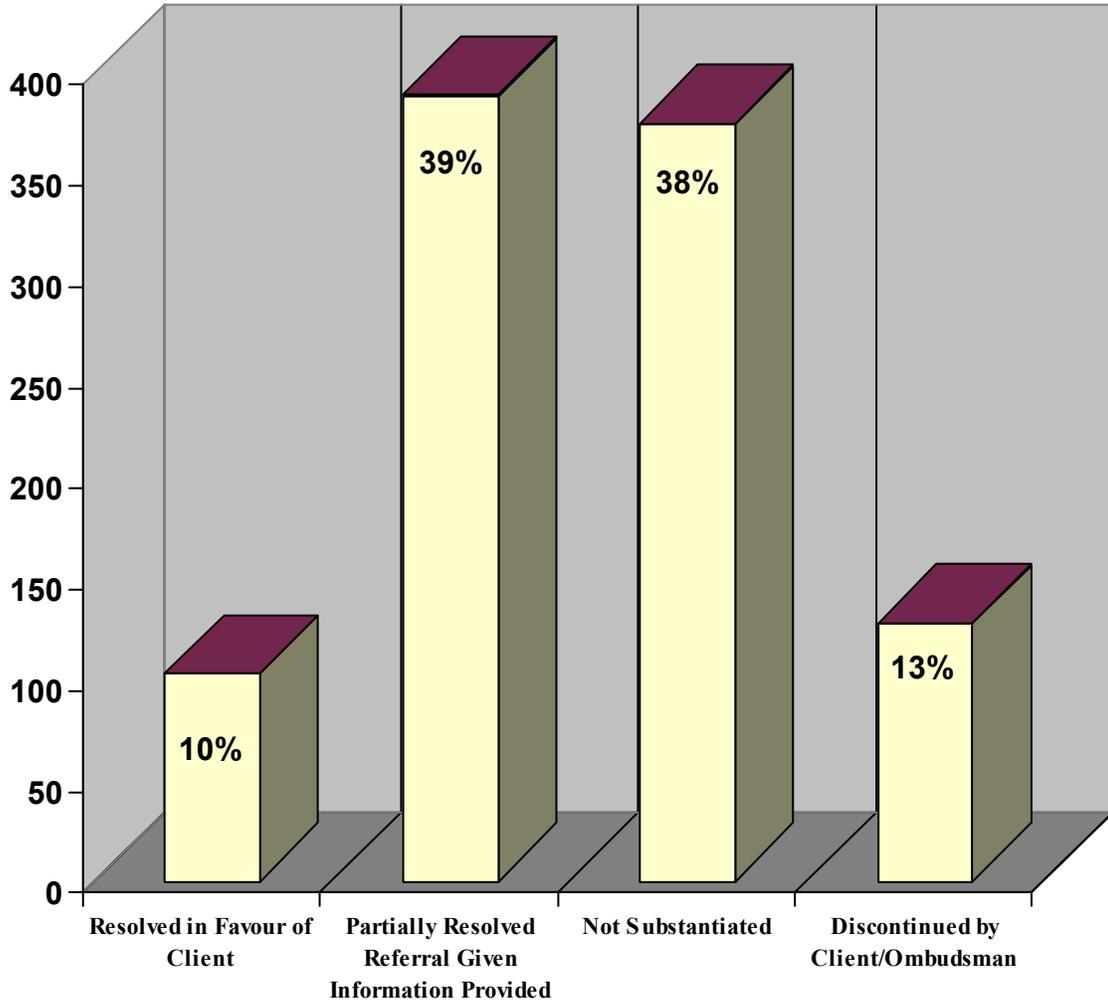
### COMPLAINTS, INQUIRIES AND REQUESTS FOR INFORMATION RECEIVED IN 2003/2004



## FIVE MAJOR SOURCES OF COMPLAINTS



## OUTCOME OF COMPLAINTS



## POPULATION AND COMPLAINTS BY COUNTY

County	Population	Percentage of Population	Percentage of Complaints
Albert	26 749	3.7	0.7 (1.7)
Carleton	27 184	3.7	2.4 (2.5)
Charlotte	27 366	3.8	1.6 (1.7)
Gloucester	82 929	11.4	13.3 (19.2)
Kent	31 383	4.3	2.6 (2.7)
Kings	64 208	8.8	2.2 (4.2)
Madawaska	35 611	4.9	13.1 (10.5)
Northumberland	50 817	7.0	4.7 (4.6)
Queens	11 862	1.6	1.0 (1.7)
Restigouche	36 134	5.0	5.7 (7.8)
Saint John	76 407	10.5	13.3 (8.4)
Sunbury	25 776	3.5	2.0 (2.9)
Victoria	21 172	2.9	3.7 (5.5)
Westmorland	124 688	17.1	13.5 (11.8)
York	87 212	12.0	14.4 (13.3)
	<b>729 498</b>	<b>100</b>	<b>94.2 (98.5)*</b>

*Notes: Population from 2001 Census*

*Does not include complaints from correctional institutions  
(2003/2004 % in brackets)*

*\*Out of Province or unknown origin– 5.7% (1.5%)*