

OFFICE OF THE OMBUDSMAN

2010/2011 Annual Report



NEW BRUNSWICK

2010/2011 Annual Report

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Ms. Loredana Catalli Sonier

Clerk

Legislative Assembly

Province of New Brunswick

Fredericton, NB

Madam:

Pursuant to Subsection 25(1) of the *Ombudsman Act* and Section 36 of the *Civil Service Act*, I have the honour to present the Forty-third Annual Report of the Ombudsman for the period of April 1, 2010 to March 31, 2011.

Respectfully submitted,



François Levert

Acting Ombudsman

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In Memoriam



On February 2, 2011, Sylvie Hébert, our friend and colleague, passed away after a tenacious battle with illness. During her three years as a delegate of the Child and Youth Advocate, Sylvie distinguished herself by the quality of her actions, the wisdom of her advice, and her team spirit. In addition to her ready availability and willingness to listen, her co-workers will remember her radiant smile and infectious sense of humour. She will be sorely missed.

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Message from the Acting Ombudsman

During the 2010-2011 fiscal year, the Office of the Ombudsman and Child and Youth Advocate intensified and considerably diversified its activities and work, welcomed legislative changes concerning right to information and protection of personal information, carried out various actions, and published reports recommending ways of improving the delivery of services to New Brunswickers. More notably, Bernard Richard retired from his position as Ombudsman and Child and Youth Advocate at the end of the fiscal year.



After seven years as Ombudsman and five years as the first Child and Youth Advocate, Mr. Richard was the person behind the metamorphosis in the public's perception of the concept of administrative fairness within the provincial government. His actions, the many recommendations in his reports, and the investigations carried out by the office led to a collective awakening to the rights and best interests of children and youth. Lastly, various indicators were implemented enabling government employees and the general public to measure progress achieved and the challenges remaining. Those indicators are an essential tool that makes it possible for the government to improve the delivery of services to New Brunswickers.

Mr. Richard also oversaw the export at the national and international levels of our province's innovative strategies with respect to the measures taken to ensure that the Office of the Ombudsman and, more specifically, the mandate of the Child and Youth Advocate function independently and efficiently. In addition, during the fiscal year covered by this report, our office's efforts to promote and defend children's rights prompted the Organisation internationale de la Francophonie, the Association des ombudsmans et médiateurs de la Francophonie (which Mr. Richard chaired from 2007 to 2009), and a number of member countries to join in our initiatives as partners and to support our efforts.

The Office of the Ombudsman and Child and Youth Advocate also launched and carried out initiatives at the national level under Bernard Richard's leadership. Whether those initiatives were aimed at increasing the value of good governance and administrative fairness through the Canadian Council of Parliamentary Ombudsman or at making the federal, provincial, and territorial governments accountable for the provisions of the international Convention on the Rights of the Child through the Canadian Council of Child and Youth Advocates, my predecessor acquired the enviable reputation of being a passionate officer of the Legislative Assembly of New Brunswick who fought inexhaustibly for fairness and justice.

During his final year as Ombudsman and Child and Youth Advocate, Mr. Richard showed exceptional leadership with respect to the daily operation of the office. While a number of

resources were assigned to matters coming under the *Child and Youth Advocate Act*¹ and to various initiatives promoting the rights and interests of children and youth, an important number of the individual complaints continued to come under the mandate of the Ombudsman. Of the 3,074 requests filed with our office (of which 2,324 came under our jurisdiction)², a number of them were submitted by target clientele that receive services directly from the Province. Efforts were therefore made, and continue to be refined, to improve relations between the office's investigators and provincial employees in order to deal more effectively with systemic problems or administrative disputes. In general, we are satisfied with the collaboration of public officials and their follow-up of our formal recommendations and informal suggestions.

On September 1, 2010, the *Right to Information and Protection of Privacy Act* came into force, and Anne Bertrand was appointed New Brunswick's first Access to Information and Privacy Commissioner. That signaled the official transfer of the Ombudsman's access to information and protection of personal information mandate to this new officer of the Legislative Assembly. However, since the Office of the Ombudsman still has jurisdiction over complaints and requests submitted under the *Right to Information Act* and the *Protection of Personal Information Act*, files dating back to before September 1, 2010, continued to be subject to review and recommendation pursuant to the provisions of those pieces of legislation.

The amendments made to the *Civil Service Act* in December 2009 continue to be a source of concern, particularly since they make it more difficult to fulfill our mandate. With the only option being to review allegations of favouritism when a civil service position is being filled, the absence of any general power to carry out investigations or make recommendations means that persons who are unsuccessful in civil service job competitions leave our office with the feeling that we did not intervene effectively on their behalf.

On the threshold of the 2011-2012 fiscal year, we are making some major changes at the office, including the separation of the mandates of the Ombudsman and the Child and Youth Advocate. This is being done at the express wish of my predecessor, who, with his experience as Ombudsman and Child and Youth Advocate, fully understood that exercising two mandates requires fundamentally different strategies, interventions, and practices and that New Brunswickers would be better served by that separation.

With the indefatigable support of dedicated collaborators, I foresee a year of transition that will be busy yet exciting as we prepare to meet new challenges that we hope will lead to the improvement the fair and equitable exercise of the administrative power from which the citizens of New Brunswick benefit.



François Levert, Acting Ombudsman



¹ For more details about this, please consult the 2010-2011 annual report of the Child and Youth Advocate of New Brunswick.

² This figure also includes requests that come under the jurisdiction of the Child and Youth Advocate.

Statutory Responsibilities

The Office of the Ombudsman in New Brunswick has a broad legislated jurisdiction under the *Ombudsman Act*, as well as significant compliance and administrative responsibility and fairness in the public sector.

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

1. Ombudsman Act
2. Civil Service Act
3. Right to Information Act⁺
4. Archives Act
5. Protection of Personal Information Act⁺
6. Child and Youth Advocate Act

⁺Part of the year

Office of the Ombudsman Goals

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

1. To conduct independent, confidential investigations to resolve complaints.
2. To provide efficient, effective and accessible services to every client within the framework of the human and fiscal resources provided.
3. To review policies, procedures, legislation and regulations to resolve existing complaints and, where applicable, to recommend changes to improve administrative practices.
4. To initiate reviews and investigations on the Ombudsman's own motion, when appropriate, to ensure fairness in the delivery of public services to every New Brunswick resident.

The Ombudsman

The Ombudsman is an Officer of the Legislative Assembly and is independent of government. The Ombudsman is appointed and can only be removed upon the recommendation of the Legislative Assembly.

The *Ombudsman Act* provides the authority to investigate complaints into any matter of administration. 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.

What we can do

The Ombudsman and his staff investigate complaints against:

- Provincial government departments
- School districts
- Regional health authorities
- Municipalities
- Crown agencies
- Other agencies responsible to the Province including:
 - Commissions
 - Boards and corporations
 - Or any other public authority as defined under the *Ombudsman Act*.

What we can't do

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

- Federal government
- Private companies and individuals
- Judges and functions of any court
- Deliberations and proceedings of the Executive Council or any committee thereof.

Performance Indicators

The Office of the Ombudsman measures its performance in delivering the various legislated services through indicators which are identified below.

Supporting our central mission

Indicator

The Office of the Ombudsman has one central mission: to ensure that all New Brunswick citizens are treated with administrative fairness by government and its agencies. Under the *Ombudsman Act*, the Office of the Ombudsman strives to guarantee that individuals are served in a consistent, fair and reasonable manner by New Brunswick Government organizations.

Result

Our central mission is communicated through various public and government employee education activities and speaking opportunities by the Ombudsman and staff, and are reinforced via the office's Web pages, printed material and our Annual Report.

Providing service in an effective and efficient manner

Indicator

The Office of the Ombudsman ensures its staff members are properly trained and up to date on current events and challenges by providing the following:

- Internal training provided to new staff members
- External training sessions
- Regular staff meetings
- Reference tools such as newspapers, books, various contact numbers, websites and policies
- Sharing knowledge, training and experience within the Office is encouraged
- Continued self-training is expected in such areas as:
 - The authorities with which they interact
 - Relevant law and regulation related to those authorities
 - *Ombudsman Act*
 - Investigative skills, techniques and technologies

Result

The Office of the Ombudsman staff members are able to address clients' concerns in a professional, knowledgeable, reliable and timely manner.

Case Summaries

One Goal

The complainant contacted our office because she urgently needed to solve a problem she was having with the Department of Social Development. She operates a special care home, and one of the residents, whom she has been looking after for more than 30 years, who is severely disabled, and has no ability to communicate verbally, needed to undergo a medical procedure under general anesthesia outside of the Province two days later owing to a tumour that had been growing for several months.



The Department, which is the guardian of that resident under a supervisory order, refused to consent to the medical procedure because a medical report and a court order needed to be issued first. It should be noted that, owing to the possible risk associated with the surgery, the family division of the Office of the Attorney General insisted on explicit authorization for the treatment through a court order.

Even though the complainant was not the resident's legal guardian and did not have the Department's prior consent, she had nonetheless decided to go out of Province with the resident so the medical procedure could be done in two days' time.

Under the circumstances, we therefore had very little time to act, and that is why we asked the Department of Social Development and the Office of the Attorney General to take whatever measures were necessary to ensure that the medical procedure could be performed on the scheduled date. In the meantime, we asked the complainant to insist that the surgeon provide a duly signed medical opinion attesting to the urgency of the medical procedure. That opinion would enable the Office of the Attorney General to obtain the required order quickly.

With the concerted efforts of the various stakeholders involved, the surgery took place in Halifax as scheduled after the Office of the Attorney General had prepared a motion that was presented to a judge and the Department had received the court order and then immediately signed the consent required for the procedure.

Teamwork

The Office of the Ombudsman received a call from some members of a family wanting to improve their relative's quality of life. The relative suffers from a very rare medical condition, and his relatives were no longer able to provide him with the care he needed. A nursing home was prepared to take him, but the offer was conditional on the Department of Social Development's allocating the funding the home needed to absorb the costs associated with the extra hours of work required to provide him with the necessary care and meet his exceptional needs.



After several months of negotiations, the Department obtained the necessary assessments from the health care specialists and social workers involved in the case. Acting on their recommendations, the Department of Social Development agreed to intervene and allocated the home the funding it needed to provide the necessary care based on the hours required, and it agreed to do that for six weeks, after which the case would be assessed. The Department also agreed to ensure that the care provider received the equipment specifically recommended by the occupational therapist involved in the case.

In addition, the Department of Social Development assured the staff at the nursing home that the six-week period was a review period and would not result in a withdrawal of the funding allocated to cover the extra hours. The Department agreed to modify the agreement (i.e., the number of paid hours) only on the recommendation of the service providers involved in the client's care. The nursing home therefore agreed to admit the client into its care.

Our office is an office of last resort, but, in this case, we became involved to ensure that the client was able to receive services as quickly as possible in order to prevent his condition from deteriorating. We also played the role of intermediary between the services and the family. The representatives of the Department of Social Development showed exemplary determination in coming up with funding to accommodate this person who suffers from a rare medical condition. The family's persistent efforts to find an appropriate placement for their brother deserves mention as well. Finally, we should recognize the willingness of the employees of the nursing home to cooperate with the efforts of the Department and the family. Thanks to the collaboration of everyone concerned, that person enjoys a better quality of life and better care.

Some discretion, please.

The Office of the Ombudsman received a grievance regarding a municipality's internal complaints process. The main issue revolved around allegations that the process lacked discretion and that the relevant information's confidentiality was not safeguarded. In the case at hand, the complainant accused the municipality of mishandling the distribution of a document to a third party.

Our initial discussions with municipal representatives revealed that in fact, improvements could be made to the internal complaints policy in order to provide a person facing a complaint with an appropriate level of discretion and confidentiality. Staff from the Ombudsman Office came forward with a number of suggestions that would allow a more effective management of complaint all the while respecting the confidentiality of the process.

The favorable reception of the suggestions made by the Office of the Ombudsman lead to a review of the internal complaints policy and to the implementation of several mechanisms allowing for a heightened precaution amongst managers as well as an increased level of confidentiality.



The municipality confirmed it would be incorporating our suggestions and would ensure their distribution and promotion amongst all concerned parties. Furthermore, municipal representatives indicated they remained interested in communicating with the Office of the Ombudsman in the future to discuss the review of their code of conduct and complaints intake process.

Accolades

The daily exercise of our mandate is often facilitated by the cooperation of many dedicated civil servants. As a result, these persons play an important part in promoting administrative fairness within the public service. Our thanks – and accolades – go out to the following public servants who, amongst others, have demonstrated a particular interest in working proactively with the Office of the Ombudsman.

Rachelle Boudreau, Program Manager, Department of Social Development (Bathurst/Chaleur Region) – Rachelle stands out namely due to the effectiveness of her interventions. She is quick to provide the information requested and does so without hesitation. Rachelle is proactive and consults with her colleagues to provide us with additional information and more in-depth explanations. She has also demonstrated openness in attempts made to elaborate solutions.

Jayne Curtis, Deputy Superintendent, Moncton Detention Centre – Jayne is consistently prompt, respectful and very helpful when interacting with investigators from the Office of the Ombudsman. He is thorough in his review of particular issues and complaints, he acts on inquiries from this office in a timely manner and he always provides useful information that allows for a better appreciation of the broader context involving a complaint.

Diane Green, Executive Assistant to the Chairperson and to the President and CEO, WorkSafe NB – Diane is known to be very vigilant in returning calls from our office as well as in offering detailed explanations. She is consistently polite with investigators and always remains patient when answering questions. Her commitment to fairness is demonstrated namely by her willingness to provide prompt service and examine issues closer when required.

Lynn Ouellette-Sauvageau, Program Manager, Department of Social Development (Edmundston) – In those files that fall within the ambit of her jurisdiction, investigators from the Office of the Ombudsman can always rely on Lynn to have quick and effective response to our inquiries. Furthermore, Lynn does not hesitate to guide us to the appropriate services when a file does not fall within her field of expertise. She has also proven to apply a creative approach in managing and resolving problematic issues.

Robyn Stickles, Customer Care Agent, NB Power – In our dealings with her, Robyn has proven herself to be a person dedicated to administrative fairness. Aside from providing timely and detailed responses to every inquiry made by investigators from the Office of the Ombudsman, Robyn has also demonstrated that she is willing and able to work collaboratively in ensuring that problematic situations are resolved in a fair and reasonable manner. Ombudsman staff members are unanimous in stating that Robyn is always helpful.

Office Financial Information

	Budget (\$)	Actual (\$)
Personal Services	1,429,600	1,485,501
Other Services	243,000	144,746
Materials and Supplies	30,500	21,520
Property and Equipment	26,100	17,042
Contributions and Grants	0	2,725
Debt and Other Charges	0	216
Total	1,729,200	1,671,750

Staff Members

<i>Name</i>	<i>Work Title</i>
<i>Albert, Jessica</i>	Investigator
<i>Basque, Lyne</i>	Investigator
<i>Bourque, Annette</i>	Clinical Director
<i>Cronkhite, Amy</i>	Administrative Assistant
<i>Daigle, Jennifer</i>	Investigator
<i>Dickison, Julie</i>	Executive Secretary
<i>Doyle, Anne⁺</i>	Delegate
<i>Gilliland, Steve</i>	Executive Director
<i>Guthrie, Janel⁺</i>	Administrative Assistant
<i>Hébert, Sylvie⁺</i>	Delegate
<i>Lafrenière, Robert</i>	Delegate
<i>LeBlanc, Mélanie</i>	Delegate
<i>Lever, François</i>	Senior Investigator/Legal Officer/Delegate
<i>Levesque, Marie-Josée*</i>	Investigator
<i>McGraw, Denise⁺</i>	Receptionist
<i>McKinney, Lori</i>	Delegate
<i>Murray, Jennifer*⁺</i>	Investigator/Legal Officer
<i>Richard, Bernard</i>	Ombudsman/Child and Youth Advocate
<i>Savoie, Robert</i>	Investigator
<i>Whalen, Christian</i>	Legal Counsel
<i>Woods, Marcelle⁺</i>	Delegate

*Part-time

+Part of the year

Ombudsman Act

Under the *Ombudsman Act*, the Office of the Ombudsman conducts independent and confidential investigations into complaints from individuals regarding administrative matters involving provincial government departments and other related organizations such as school districts, regional health authorities and municipalities.

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 into the delivery of public services by government officials.

2010/2011 Statistics

The Office of the Ombudsman received a total of 2,672 complaints, inquiries and requests for information under the *Ombudsman Act* during the year 2010/2011.

Depending upon the nature of a complaint, it is sometimes possible to resolve the complaint informally. If an investigation identifies that an administrative error or injustice 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.

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.

Complaints

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

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.

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 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.

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*

2010/2011 Statistics

In the Correctional Services area, the Office of the Ombudsman processed 662 verbal and written complaints from or relating to individuals incarcerated in provincial correctional institutions. In addition, the Office also received numerous information requests as well as complaints from inmates that were not within the jurisdiction of the Office to investigate.

administration,” which the courts have interpreted broadly to include any government matter other than matters relating to the affairs of the Courts or the Legislature.

For instance, in some cases where complaints alleging a criminal assault have been brought forward, the Ombudsman has exercised his discretion not to investigate and has instead referred the matter to appropriate police authorities. 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.

As inmates are within the care of the Province of New Brunswick, every complaint that is within the jurisdiction of this Office to investigate is acted upon as expeditiously as possible. This usually requires that the matter be brought to the attention of the Department of Public Safety so that the Department in addition to the correctional facility concerned are 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.

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 was made responsible to hear appeals and investigate complaints regarding the selections for appointment to the Civil Service. However, in December 2009, new amendments to the *Civil Service Act* significantly reduced the Ombudsman’s authority.

2010/2011 Statistics

During 2010/2011, the Office of the Ombudsman received 21 complaints and enquiries in regards to the *Civil Service Act*.

On December 1, 2009 substantial amendments to the *Civil Service Act* came into effect and, as a result, the way by which an appointment within the New Brunswick Civil Service can be reviewed or challenged has changed considerably. One of these modifications involves the basis on which a review or challenge of an appointment can be initiated by an unsuccessful candidate. Pursuant to the amended *Act*, where a candidate is screened-in for further assessment in the context of an open or closed competition but is not successful, this person may challenge an appointment “*if the candidate has reason to believe that the successful candidate was appointed to the position because of favouritism*” (subsection 33.1(1), *Civil Service Act*).

Favouritism is the only ground on which a complaint may be submitted pursuant to the amended *Civil Service Act* under the complaint process. Favouritism means giving preference to a candidate that is based on factors that supersede the assessment of qualifications, and that is attributable to a relationship or connection that is external to the workplace.

In accordance with established practice and the relevant provisions of the *Civil Service Act*, the first level of review is done by an unsuccessful candidate requesting from the department an explanation as to the reasons why they were not successful in obtaining an appointment to the vacant position. The task of responding to this request will likely be delegated to departmental human resources staff.

If an unsuccessful candidate remains unsatisfied with the initial response and once they have been notified that a person has been appointed to the position, they may, within 30 days, forward a complaint to the appropriate Deputy Minister and clearly state how they believe that the appointment of the successful candidate was based on favouritism. The Deputy Minister may choose to investigate the matter or dismiss the complaint.

Finally, if, after receiving the Deputy Minister's response to a request to have an appointment process investigated, the unsuccessful candidate remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombudsman alleging that the successful candidate was appointed on the basis of favouritism.

The Office of the Ombudsman cannot intervene in the process before the two first steps outlined above have been taken.

In summary, the three steps available to screened-in candidate to challenge the appointment of the successful candidate to the relevant position are as follows:

1. Send a written request to the HR branch of the department requesting feedback as to why they were not successful in obtaining the appointment.
2. If an individual remains unsatisfied after receiving feedback from the HR branch, they can send a formal complaint to the Deputy Minister of the department which ran the competition indicating how they believe that the appointment of the successful candidate was based on favouritism.
3. After receiving the response from the Deputy Minister, if the individual remains unsatisfied, they may, within 30 days, file a complaint with the Office of the Ombudsman.

If the Ombudsman investigation finds that a complaint has merit, the Ombudsman can make a recommendation to government. The Ombudsman cannot revoke an appointment.

2010/2011 Statistics

A total of 21 files were opened by the Office of the Ombudsman under the *Civil Service Act* between April 1, 2010 and March 31, 2011.

This included one "favoritism" investigation under Section 33 of the current *Civil Service Act* which was amended in December 2009, and two section 32 investigations under the previous version of the *Civil Service Act*. (These investigations were subject to the old *Act* because the competitions in question were held prior to the *Act* being amended). The "favoritism" investigation was not substantiated and the complaint was dismissed. One of the Section 32 investigations resulted in a recommendation to government which was accepted, while the other Section 32 investigation was unsubstantiated and was dismissed.

There were also 15 inquiries filed with the Office of the Ombudsman under Section 33 of the current *Civil Service Act*, in which clarification and/or information was provided. There were also three investigations related to casual employment.

Right to Information & Protection of Privacy

On September 1, 2010, the *Right to Information and Protection of Privacy Act* came into effect in the province of New Brunswick. This *Act* sets out the public's right of access to public information and the requirements for appropriate handling of personal information held by public bodies. The *Act* created an Office of the Access to Information and Privacy Commissioner. The new legislation replaces the former *Right to Information Act* and the *Protection of Personal Information Act* and deals with both access and privacy issues in one comprehensive statute.

New Brunswick's first Privacy Commissioner, Anne Bertrand, took office on September 1, 2010.

Prior to the establishment of the Access to Information and Privacy Commissioner, the Office of the Ombudsman was mandated to investigate complaints under the *Right to Information Act* and the *Protection of Personal Information Act*. This mandate continued until September 1, 2010. While on-going investigations remained with our office, any new complaints were referred to the Access to Information and Privacy Commissioner. The transfer of this mandate to the Office of the Access to Information and Privacy Commissioner meant that two staff members who had worked in this area left the Office of the Ombudsman to work for the Commissioner. As a result, this has caused some delay and difficulty in processing outstanding files under these former mandates.

Right to Information Act

While the *Right to Information Act* is no longer in effect in the province, it remained the legislative framework within which the Office of the Ombudsman was to investigate the ongoing Right to Information complaints it had received before September 1, 2010.

Under the *Right to Information Act* an individual may request information by applying to the appropriate Minister as defined in 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. The Ombudsman is to conduct, within 30 days, independent reviews of refusals to release information. The Ombudsman is to render his recommendation as soon as possible thereafter. The *Act* allows the Ombudsman to inspect the information that the Minister has refused to release, if such information exists. This review is conducted in private. Usually the Ombudsman inspects the information on-site but the records or copies of them may also be provided to the Ombudsman for ease of reference in preparing a recommendation. Depending on the nature of the information requested, this inspection may involve a review of a single document or file but can consist of many boxes of files. 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, the Ombudsman may determine whether or not the information was properly excluded from release under one of the grounds listed in section 6 of the *Act*. 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*.

2010/2011 Statistics

During the year 2010/2011, the Office of the Ombudsman received 32 complaints or inquiries regarding the refusal or non-response to a request to disclose information to an individual under the *Right to Information Act*.

Protection of Personal Information Act

While the *Protection of Privacy Act* is no longer in effect in the province, it remained the legislative framework within which the Office of the Ombudsman was to investigate the ongoing privacy complaints it had received before September 1, 2010.

The *Protection of Personal Information Act* (POPIA), like the *Right to Information Act*, entrusts the Office of the Ombudsman with the compliance function regarding complaints under the *Act*. POPIA guarantees the citizen's right to know what information government holds about them and their right to have that personal information treated confidentially.

The *Protection of Personal Information Act* is a law which gives statutory authority to the 10 privacy principles set out in the Model Privacy Code of the Canadian Standards Association. The enforcement mechanism is by way of complaint to the Ombudsman who has a power of recommendation, rather than an authority to issue legally binding orders to a public body, as is the case in some other jurisdictions.

2010/2011 Statistics

During the year 2010/2011, the Office of the Ombudsman received 14 complaints and enquiries in regards to the *Protection of Personal Information Act*. We received complaints about a variety of privacy concerns and alleged breaches, including the use of biometric technology in school cafeterias, the prescription drug monitoring program, and disclosure of patient histories recordings, to name a few.

2010/2011 Statistics

- The Office of the Ombudsman and Child and Youth Advocate received a total of 3,074 complaints, inquiries and requests for information during the year 2010/2011. Of this number, 1,498 were complaints within jurisdiction and investigations were required, 826 were inquiries and requests for information, and 750 were complaints which were not within the jurisdiction of this Office. In addition, 187 complaints carried over from the previous year were investigated.
- During the year 2010/2011, the Office of the Ombudsman received 32 complaints or inquiries regarding the refusal or non-response to a request to disclose information to an individual under the *Right to Information Act*.
- The Office of the Ombudsman conducted 20 reviews leading to recommendations and also provided general information to a number of individuals who were seeking advice regarding the procedure to follow when requesting information contained in government documents.
- A total of 21 files were opened by the Office of the Ombudsman under the *Civil Service Act* from the period April 1, 2010 to March 31, 2011. This included one “favoritism” investigation under Section 33 of the current *Civil Service Act* which was amended in December 2009, and two section 32 investigations under the previous version of the *Civil Service Act*. (These investigations were subject to the old *Act* because the competitions in question were held prior to *Act* being amended). The “favoritism” investigation was not substantiated and the complaint was dismissed. One of the Section 32 investigations resulted in a recommendation to government which was accepted, while the other Section 32 investigation was unsubstantiated and was dismissed. There were also 15 inquiries filed with the Office of the Ombudsman under Section 33 of the current *Civil Service Act*, in which clarification and/or information was provided. There were also three investigations related to casual employment.
- During the year 2010/2011, the Office of the Ombudsman received 14 complaints and enquiries in regards to the *Protection of Personal Information Act*.
- In the Correctional Services area, the Office of the Ombudsman processed 662 verbal and written complaints from or relating to individuals incarcerated in provincial correctional institutions. In addition, the Office also received numerous information requests as well as complaints from inmates that were not within the jurisdiction of the Office to investigate.
- In order to improve statistical reporting as well as the management of our files, a new electronic case management system was designed and implemented for all staff members in August 2010. Amongst other features, the new case management system offers a variety of options that enable investigative staff to manage individual files more effectively. It also provides tools that may result in more in-depth systemic investigations by cross-referencing various matters as well as linking similar issues.

Types of Complaints by Department

The following tables provide the number of complaints by type and by Department investigated in the year 2010/2011. In consideration of the confidentiality provisions of the *Ombudsman Act*, only those Departments with more than 10 complaints are set out in the tables below.

Correctional Institutions		
Health Issues	2009/2010	2010/2011
Assault/Abuse – Physical, Sexual, etc.	10	7
Dental	9	19
Glasses, Eye Care	3	6
Medical Appliance	5	10
Medical Treatment	11	~
Mental Health	4	13
Physiotherapy	1	~
Prescriptions Requested or Denied	50	45
Request to go to Hospital	10	9
Request to see Nurse / Doctor	39	34
Special Diet	11	1
Threat of Suicide	<u>1</u>	<u>3</u>
Subtotal	154	147
Living Conditions		
Cleanliness	20	26
Clothing and Bedding	33	22
Food	29	23
Heat and Ventilation	~	5
Maintenance and Repairs	5	1
Overcrowding	<u>6</u>	<u>6</u>
Subtotal	93	83
Abandoned By Inmate	17	7
Administration	14	3
Admission - Discharge	1	~
Classification / Transfer	32	28
Complaint regarding staff	4	20
Contraband	3	2
Correspondence	8	7
Courts	3	7
Discipline	36	32
Legal Aid	4	4

Parole	2	5
Personal / Inmate Property	34	18
Placement within Institution	39	22
Probation	1	1
Program Privileges	14	10
Recreation	17	14
Request for House Arrest	7	7
Request Form	9	14
Requests for Items Denied	22	4
Segregation	28	16
Sentence / Remission Calculation	7	5
Services - Official Languages	2	2
Smoking	1	2
Staff Conduct and Department	40	18
Telephone Use	26	18
Temporary Absence Program	7	7
Threatened by Other Inmates	9	1
Use of Restraints	2	~
Verbal Abuse/Swearing	5	2
Visiting Privileges	16	14
Other (includes Non Jurisdiction & Inquiry)	<u>133</u>	<u>142</u>
Subtotal	543	432
Total	790	662

Public Safety

	2009/2010	2010/2011
Administration	1	1
Complaints Regarding Staff	4	3
Emergency Measures	1	3
Employment	~	4
Permits / Licenses	17	8
Victim Services	3	2
Others (includes Non Jurisdiction & Inquiry)	<u>24</u>	<u>10</u>
Total	50	31

Social Development

2009/2010

2010/2011

Income Assistance Benefits		
Amount/Calculation	16	18
Delay	7	7
Denied	26	37
Discontinued/Reduced	48	35
Eligibility Criteria	25	17
Long Term Needs	6	7
Repayment	<u>9</u>	<u>8</u>
Subtotal	137	129
Housing Unit		
Availability	31	27
Evictions	10	8
Inspections	9	~
Repairs	37	19
Tenant Rights	9	32
Transfers	<u>6</u>	<u>7</u>
Subtotal	102	93
Administration	9	8
Adoptions	16	4
Appeal Board	1	4
Appeal Process	1	9
Complaints Regarding Staff	14	22
Employment	3	4
Health Card	28	13
Heat Supplement	7	8
Housing Loans/Grants	27	6
Medical Issues	6	9
Nursing Homes/Residential Services	29	18
Protection Services	106	147
Transportation	4	7
Other (includes Non jurisdiction & Inquiry)	<u>72</u>	<u>86</u>
Total	562	567

Health and Wellness

	2009/2010	2010/2011
Addiction Services	2	3
Administration	1	3
Ambulance Services	3	~
Complaints regarding Staff	1	7
Extra Mural Services	1	~
Hospital Employment	1	5
Medicare	11	16
Mental Health	11	23
Permits/Licenses	2	1
Placement Services	~	1
Public Health	11	3
Medical Treatment	~	11
Admission-Discharge	~	4
Others (includes Non Jurisdiction & Inquiry)	<u>24</u>	<u>20</u>
Total	68	97

Regional Health Authorities

	2009/2010	2010/2011
Administration	2	~
Harassment	~	1
Complaint Regarding Staff	2	3
Employment	3	2
Extra Mural Services	1	5
Mental Health Services	1	3
Treatment	1	3
Other (includes Non Jurisdiction & Inquiry)	<u>14</u>	<u>6</u>
Total	24	23

Workplace Health, Safety and Compensation Commission

	2009/2010	2010/2011
Compensation		
Amount/Calculation	7	6
Discontinued/Reduced	26	15
Long-term Disability Benefits	<u>5</u>	~
Subtotal	38	21
Administration	5	6
Appeals Tribunal	4	11
Benefits -Delay	~	~
Claim Denied	4	15
Complaints Regarding Staff	~	3
Deeming	2	2
Employability Assessments	2	4
Employment	2	3
Health and Safety	2	~
Medical Payments	4	3
Medical Rehabilitation	2	7
Permanent Partial Impairment	1	1
Retraining	2	~
Others (includes Non jurisdiction & Inquiry)	<u>27</u>	<u>15</u>
Total	95	91

Justice and Attorney General

	2009/2010	2010/2011
Administration	1	2
Complaint Regarding Staff	4	~
Employment	1	5
Insurance Branch	2	2
Support Payment and Orders	8	9
Legal Aid	~	~
Others (includes Non Jurisdiction & Inquiry)	<u>18</u>	<u>16</u>
Total	34	34

Education/School Districts

	2009/2010	2010/2011
Access to School Property	2	2
Access to School Records	3	1
Administration	4	~
Appeal Process	1	~
Bullying	3	7
Children with Special Needs	21	37
Closing of schools	1	2
Complaints Regarding Staff	4	10
Employment	10	4
French Immersion Program	3	5
Home Schooling	3	1
Student Transfer	1	6
Protection services	1	~
Suspensions	11	19
Transportation	4	4
Others (includes Non Jurisdiction & Inquiry)	<u>40</u>	<u>51</u>
Total	112	149

NB Power Corporation

	2009/2010	2010/2011
Administration	2	~
Billing-Amount / Calculation	16	7
Damage Claims	~	4
Complaints regarding staff	1	~
Disconnection	28	13
Employment	1	~
Payment Schedules	8	4
Security Deposit	2	~
Service Issues	5	1
Other (includes Non Jurisdiction & Inquiry)	<u>21</u>	<u>8</u>
Total	84	37

Transportation

	2009/2010	2010/2011
Access/Right of Way	3	~
Complaints Regarding Staff	2	1
Damage Claims	2	1
Employment	6	6
Expropriation Procedures	2	3
Property Issues	6	2
Road/Bridge Maintenance	4	3
Others (includes Non Jurisdiction & Inquiry)	<u>10</u>	<u>5</u>
Total	35	21

Municipalities

	2009/2010	2010/2011
Administration	4	2
Complaints regarding staff	2	1
Employment	1	1
Expropriation	1	~
Permits-Licenses	1	3
Privacy	2	2
Property Issues	5	3
Right to Information	2	~
Roads/Streets	~	2
Services	2	~
Water/Sewage	7	6
Zoning	1	1
Others (includes Non Jurisdiction & Inquiry)	<u>13</u>	<u>4</u>
Total	41	25

Environment and Local Government

	2009/2010	2010/2011
Administration	7	1
Complaint Regarding Staff	~	1
Local Service Districts	9	2
Pollution – Air quality	~	1
Property Issues	~	2
Water/Sewage	~	1
Other (includes Non Jurisdiction & Inquiry)	<u>16</u>	<u>9</u>
Total	33	17

Service New Brunswick

	2009/2010	2010/2011
Administration	1	~
Complaint Regarding Staff	1	2
Employment	1	1
Permits/Licenses	18	8
Property Assessment	6	5
Property Assessment – Appeal Procedures	1	~
Registry Office – Procedures	1	~
Rentalsman	29	21
Vital Statistics	2	2
Other (includes Non Jurisdiction & Inquiry)	<u>11</u>	<u>6</u>
Total	71	45

Post-Secondary Education and Training

	2009/2010	2010/2011
Administration	2	~
Community College – Admissions Procedures	2	2
Community College – Others	5	13
Community College – Programs	1	2
Community College – Testing	1	3
Complaint Regarding Staff	3	5
Employment	6	3
Employment Programs	1	3
Grants-Loans	5	2
Permits-Licenses-Certificates	1	~
Student Loans	14	8
Others (includes Non Jurisdiction & Inquiry)	<u>4</u>	
Total	45	41

Natural Resources

	2009/2010	2010/2011
Access to Property	1	2
Crown Land-Leases	3	~
Employment	~	2
Expropriation	2	~
Permits – Licenses	2	2
Property Ownership	~	1
Others (includes Non Jurisdiction & Inquiry)	<u>4</u>	<u>5</u>
Total	12	12

Statistics Table 2010/2011

Outcome of Complaints within Jurisdiction

(Does not include inquiries or non-jurisdiction complaints or complaints still under investigation at year end)

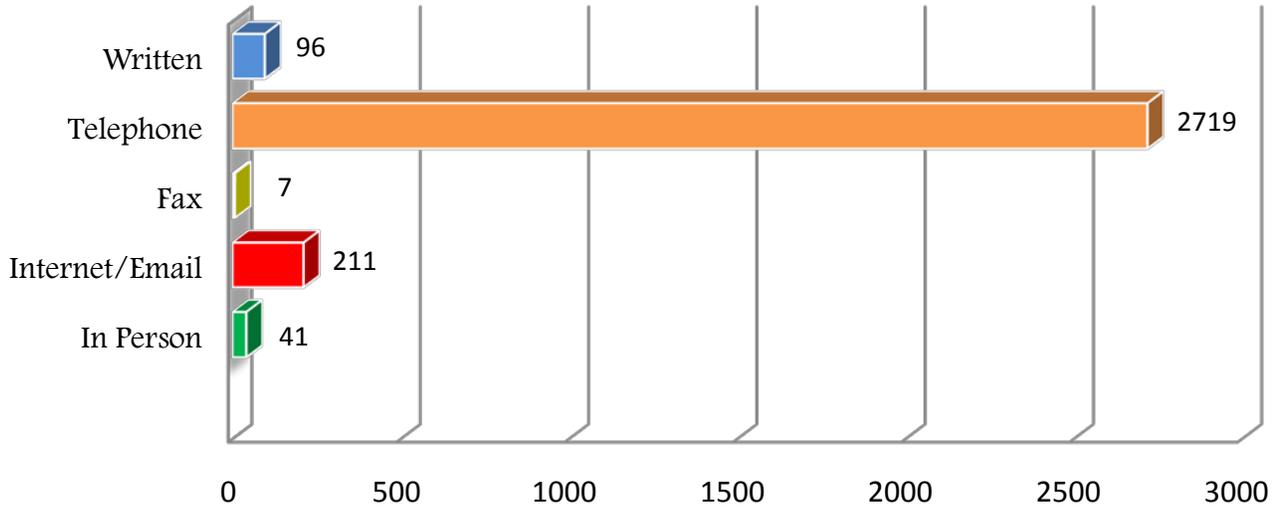
Departments/Agencies	Total	Assistance Rendered	Recommendation Made	Referral Given/ Clarification Provided	Not Substantiated	Discontinued by Client/ Ombudsman
Public Safety & Corrections	635	95	-	288	120	132
Social Development	446	78	6	232	67	63
Education/School Districts	98	29	-	53	2	14
Workplace Health, Safety and Compensation Commission	75	8	1	51	4	11
Health and Regional Authorities	75	11	3	30	10	21
NB Power Corporation	32	6	-	13	4	9
Post-Secondary Education, Training and Labour	29	1	2	18	3	5
Service New Brunswick	25	1	1	10	10	3
Justice	23	2	-	15	1	5
Municipalities	15	-	-	10	-	5
Transportation	14	1	-	8	1	4
Natural Resources	12	-	-	11	-	1
Other**	206	22	7	71	17	89
Total	1,685	254	20	810	239	362

**This number includes Departments/agencies with 10 or less complaints during 2010/2011.

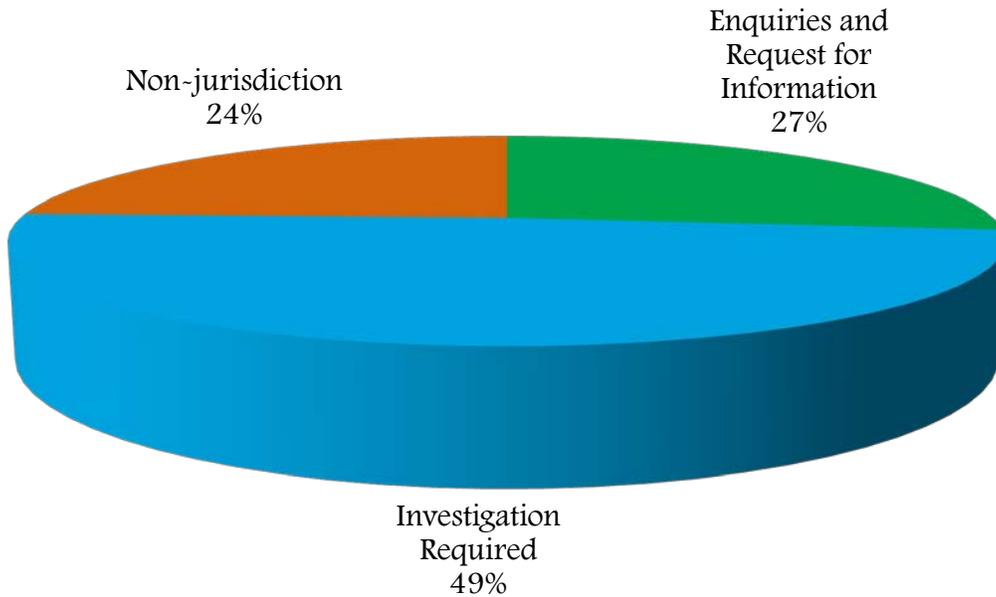
This number includes investigations which were continued from the previous years.
187 complaints were still under investigation at year end.

Charts

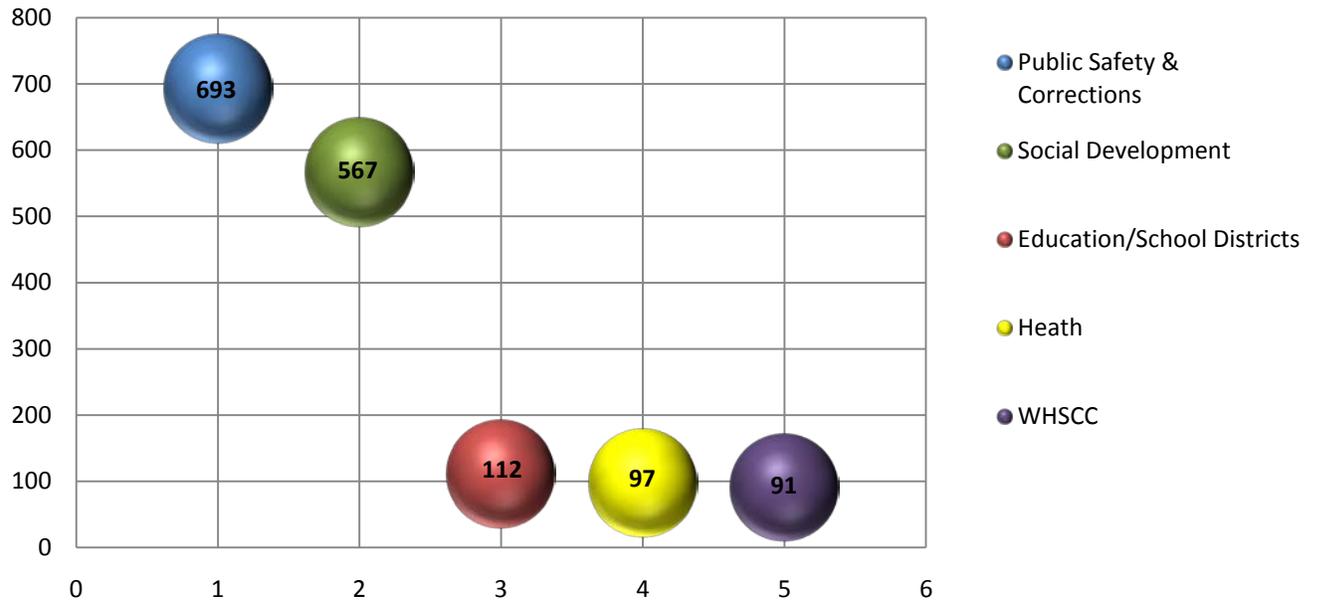
Complaints Received by Reception Method



Complaints by Intake Type



Five Major Sources of Complaints



Outcome of Complaints

