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2004/2005

Ombudsman

NEW BRUNSWICK
NOUVEAU-BRUNSWICK

2004/2005 Annual Report

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January 23, 2006

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-eighth Annual Report of the Ombudsman for the period of April 1, 2004 to March 31, 2005.

Respectfully submitted,

Bernard Richard

Ombudsman

TO REACH YOUR 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

The 2004-2005 year proved to be a challenging one for me and the staff of the Ombudsman Office. Much of this challenge was the result of a 49% increase in the total number of complaints (from 1973 to 2933) including an 88% hike in complaints falling within our jurisdiction and requiring an investigation (from 936 to 1761). I am very proud of the fact that despite this dramatic surge, 86% of these complaints were handled within 30 days compared to 67% two years earlier.

There are many reasons why we managed to improve our effectiveness despite the added workload. They are worth mentioning:

- capable and knowledgeable staff who are willing to make the needed effort;
- talented and eager law clerks, students and temporary help who adjusted quickly to a demanding workplace;
- excellent cooperation by many departments, most notably the Department of Public Safety.

Striving for quality public service systemic issues.

As was the case for 2003-04, this Annual Report includes the consideration of some systemic issues that appeared to us to deserve our attention as a result of several individual complaints or significant public concern. In 2004-05, the topics that caught our attention are:

1) rights of grandparents in access disputes;
2) rights of casual provincial government employees;
3) revisiting ***Right to Information Act*** concerns; and,
4) video surveillance guidelines.

Each of these matters is related to a separate part of my mandate. Firstly, as a provincial Ombudsman of general jurisdiction; secondly, pursuant to my responsibilities under the ***Civil Service Act***; thirdly, in my capacity of "Information Commissioner" under that act; and, finally, as the complaint handling officer under our privacy legislation.

Although it is my hope that our recommendations will be taken seriously by the government, based on last year's experience, I am not optimistic. We practically had to plead with departments to provide us with responses to last year's recommendations and, when some finally did send us their comments, they were, to say the least, disappointing or, to put it more mildly, perfunctory. The one exception would be the Department of Health and Wellness which showed a genuine interest in improving the methadone program which leaves so many New Brunswickers behind and without reasonable access to treatment.

In the case of our Right to Information recommendations and our attempt to obtain all relevant information from the Department of Family and Community Services when investigating complaints there, no one bothered to respond.

Nonetheless, I intend to continue to offer options to resolve festering issues and, in some cases, glaring inequities in some public services. The legislation that governs my work clearly indicates that I may only recommend, others must decide. I accept that those are the conditions under which I must perform my duties.

Choosing a pragmatic approach

I feel very privileged to occupy the position of Ombudsman. It is a unique opportunity to glimpse into the daily operations of government, a closeup view of its successes and of its failures. We help ordinary citizens resolve problems that felt insurmountable to them. It is a free service, readily accessible to everyone. And though we are at times overwhelmed by the sheer volume of work, because we are a place of last resort, small victories mean more than they ordinarily would. They serve to confirm that democracy and institutions need not be overbearing and that, sometimes wrongs can be righted.

There have been times, such as during the pointless and embarrassing delay over the appointment of a child and youth advocate, when I have wondered whether our efforts are worthwhile. After all, in that case, legislation was proposed on April 21, 2004; passed unanimously and assented to on June 30, 2004; funding was approved as part of 2005-06 budget tabled in the Legislature on March 30, 2005 and yet, almost a full year later, despite desperate situations needing to be addressed, no one has been appointed. To have to witness the posturing, the diversions and the gamesmanship while dealing with real and heart wrenching cases crying out for such an advocate could lead anyone to despair. And at times I shared the frustration with parents and other concerned citizens. Our children deserve better than that.

Despite these moments of discouragement, we have stayed focused on the task at hand. Helping people. Looking for solutions or simply taking the time to understand and to explain. In that, I hope we have succeeded. This document will allow us to describe what we do and enlist others in our attempts to make New Brunswick a better place.

Bernard Richard
Ombudsman

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***.

GOALS

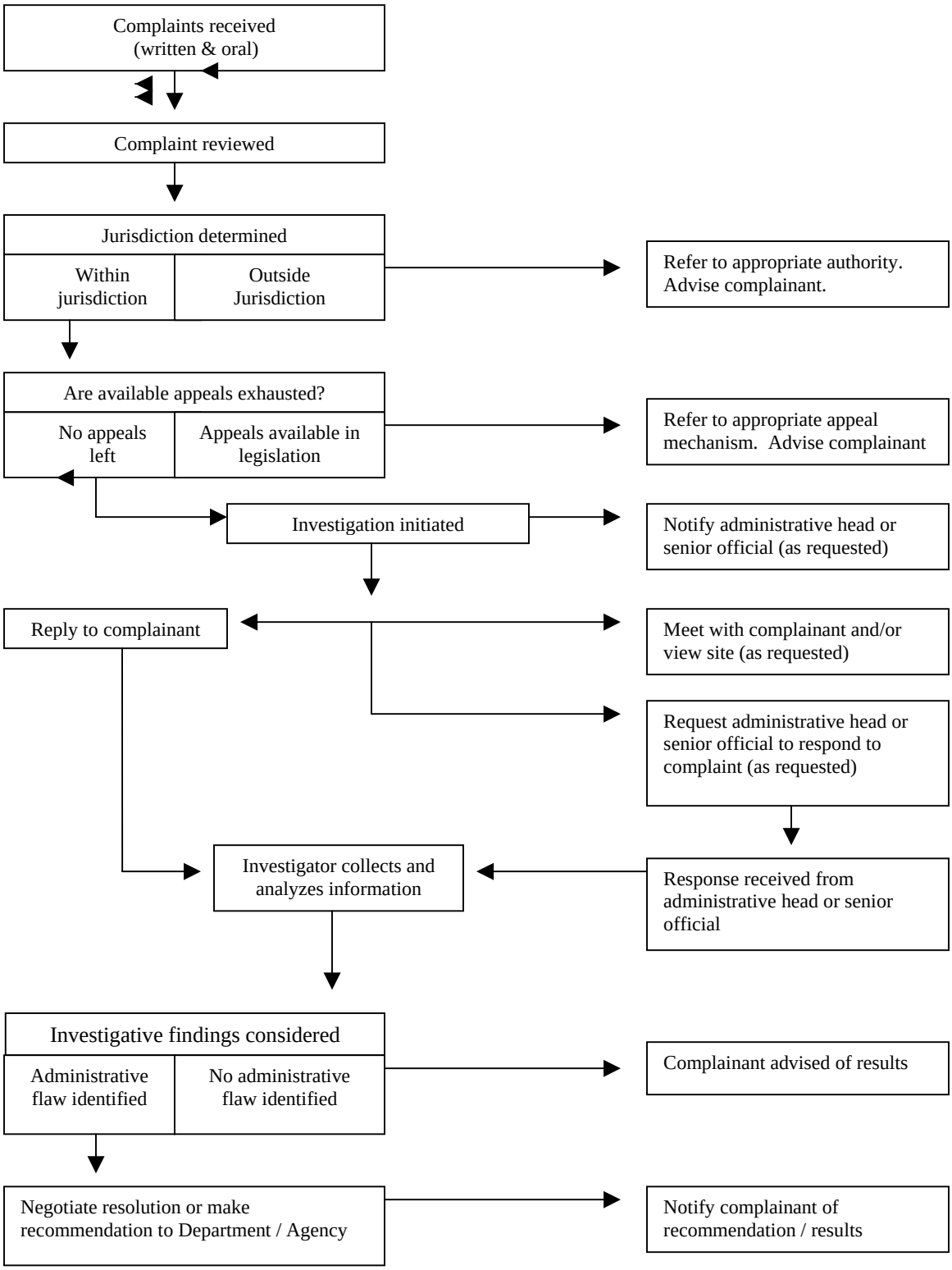
The Office of the Ombudsman is committed to the following goals:

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.

METHOD OF HANDLING COMPLAINTS



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.

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 and our Annual Report.*

Providing service in an effective and efficient manner

Indicator – *The Office of the Ombudsman has instituted a number of efficiencies since January 2004 in an effort to better serve our legislated mandate. These efficiencies include: a toll free 1-888 telephone number which makes it easier for clients outside of the greater Fredericton area to reach the office; an enhanced Web page; a number of administrative and technical improvements; regularly meeting with a variety of government departments and agencies in an effort to develop improvements in the way we conduct our respective legislated duties; and the development and introduction of an information poster for provincial correction centres.*

Result - *The percentage of complaint files closed within 30 calendar days of the date on which the complaint was received has risen from 67% in 2002/2003 to 86% in 2004/2005 despite a dramatic rise in the number of complaints received, as outlined elsewhere in this report.*

FINANCIAL INFORMATION

Budget and actual expenditure for 2004/2005 is set out in the table below.

Staff costs account for approximately 88% of the actual expenditure.

Figures below indicate that the actual expenditures for the Office of the Ombudsman were below the amount budgeted for the year. The variance was the result of savings in the wage bill component as three staff members were on leave during portions of the year (even though two positions were backfilled major savings were still realized), as well as savings in legal services and translation categories.

	2004/2005	
	Budget	**Actual**
Wages and Benefits	565.0	521.3
Other Services	104.0	60.4
Materials and Supplies	12.0	6.2
Property and Equipment	12.0	15.1
Contributions & Grants	0	1.1
	693.0	604.1

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

OFFICE OF THE OMBUDSMAN

Employees	Work Title
Albert, Jessica	Intake Officer
Dickison, Julie	Executive Secretary
Fraser, Amy	Administrative Assistant
Gilliland, Steve	Director
Lévesque, Marie-Josée *	Investigator
Murray, Jennifer *	Investigator/Legal Officer
Pitre, Claire	Legal Counsel
Richard, Bernard	Ombudsman
Savoie, Robert	Investigator

* Part time

OMBUDSMAN 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.

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 on page 10 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.

2004/2005 STATISTICS

The Office of the Ombudsman received a total of 2 933 complaints, inquiries and requests for information during the year 2004/2005. Of this number, 1 761 were complaints within jurisdiction and investigations were required, 431 were inquiries and requests for information, and 741 were complaints which were not within the jurisdiction of this Office. In addition, 137 complaints carried over from the previous year were investigated. A detailed summary of complaints received appears at pages 50 and following of this report.

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 2004/2005 will show, the majority relate to matters of administration and are open to investigation by this Office. However, it will also be noted that six complaints were received which were 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 numerous occasions during this period in the course of investigating complaints. Specific cases and general policies and procedures were discussed with institutional officials.

2004/2005 STATISTICS

In the Correctional Services area, the Office of the Ombudsman processed 483 verbal and written complaints from or relating to individuals incarcerated in provincial correctional institutions. In addition, the Office also received information requests and complaints from inmates that were not within the jurisdiction of the Office to investigate.

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. Although it is not possible to investigate all matters brought to our attention, I have decided to ask our staff, in the several matters that are of concern to many New Brunswickers and addressed in the following pages, to look beyond the individual issues raised by complainants and inquire also into the approaches taken by government offices and the systemic problems that may lie at the root of those complaints.

GRANDPARENTS RIGHTS

Due to a significant amount of complaints received by this office concerning grandparents being denied visitation and access to their grandchildren, the Ombudsman elected to exercise the powers, outlined in section 12(1) of the ***Ombudsman Act***, to proceed with an own motion investigation into the issue of access and custody of children and its impact on grandparent/grandchild relationships. Complaints heard by this office contain many overlapping themes, however, the most predominant concern is that children are being used as a pawn in family disputes. Denying access and visitation rights, according to the experience of complainants to this Office, has all too often more to do with personal disputes among adults and little to do with the best interest of the child.

Background

In the past twenty years, families have undergone a significant change in their social structure. The divorce rate has increased dramatically, and in Canada almost 40% of marriages end in divorce. Nuclear families exist in many varied and complicated forms, resulting in a significant amount of complaints to the Office of the Ombudsman regarding grandparents being denied access to or visits with their grandchildren.

Most grandparents want to play and do play a very meaningful and positive role in their grandchildren's lives. Exceptionally however, they can, like parents themselves, have a negative or stressful influence on their progeny. Canadian researchers have indicated grandparents can have a positive influence on grandchildren by providing them with comfort in times of crisis, unconditional love, special treats and entertainment, personal and moral values, leadership, and guidance. On the negative side, some grandparents can regrettably at times have the opposite effect by focusing on their own needs, using the children to gain authority over their own children, becoming over involved and interfering with the relationship between parent and child, competing for the children's affection, and/or demeaning the parents or sabotaging their efforts at discipline.

Research reveals grandparent/grandchild relationships are highly individualized. While loving and trusting relationships between grandparents and grand-children are desirable and should be fostered, it is unfortunately false to assume that all grandparent/grandchild relationships necessarily benefit the child. As grand-parenting roles are varied, and given the possibility of negative effects resulting from a relationship with the child, when disputes arise between parents and grand-parents, such access requests should be decided on a case by case basis. It is therefore important for the law to avoid any inherent bias that might jeopardize the best interests of a given child. To the extent that the law favours, by way of presumption, the natural proclivity that parents have to act first in their child's best interest, similar presumptions should arise with respect to grand-parents and the law should not limit or impede the search for truth in matters of child welfare by placing unnatural presumptions or too high a burden of proof upon grandparents.

The rights of grandparents to have access to their grandchildren has been researched in Canada by all branches of the provincial and federal government in an attempt to improve legislation and the legal systems responsible for granting access rights to children. Evidently, there are no easy answers and yet recent analyses have given rise to repeated calls for law reforms that would further strengthen and underscore the need to protect healthy grandparent/grandchild relationships when roles within the nuclear family are disrupted.

In 1997, following the defeat of a private Member's Bill in Parliament aimed at giving grandparents improved standing in custody and access cases under the *Divorce Act*, a Joint House of Commons and Senate Committee was struck to deal with such issues of custody and access. After conducting special hearings across Canada, the Special Joint Committee on Child Custody and Access released its report: *For the Sake of the Children*.[1] Government tabled its response to this report in May 1999.

Later, a Federal Provincial Territorial working group engaged in another broad round of consultations with Canadians from coast to coast. Its Final Report, *Putting Children First,* was released in November 2002[2]. The Canadian consensus which emerges from these studies confirms that grandparent/grandchild relationships are too often overlooked in determining the bests interests of the child and that

[1] *For the Sake of the Children: Report of the Special Joint Committee on Child Custody and Access* Senate and House of Commons, 1998, ISBN: 0-660-17692-0, 314 pp. http://www.parl.gc.ca/InfoComDoc/36/1/SJCA/Studies/Reports/sjcarp02/12-ch1-e.htm

[2] *Putting Children's Interests First: Custody, Access and Child Support in Canada: Federal-Provincial-Territorial Consultation,* Justice Canada, 2001, ISBN: 0-662-30565-5, 64 pp. http://dsp-psd.pwgsc.gc.ca/Collection/J2-179-2001E.pdf

legislative reforms are needed to allow the courts to correct this situation when necessary, and to avoid unnecessary litigation on this point.

Current Legislation and Case Law

Legislation

Part of the difficulty in advancing law reform initiatives in this area is that family law is an area of divided legislative responsibility in Canada. The ***Constitution Act, 1867*** provides that the provinces generally have jurisdiction over "property and civil rights in the province" and specifically over "the solemnization of marriage" but it also gives jurisdiction to the Federal government over "Marriage and Divorce". Historians note that the intent was to ensure universal recognition of marriages and divorces throughout the Dominion[3]. The Courts have determined however that the provincial grant of authority over property and civil rights is the broadest head of jurisdiction. It encompasses property and contract law and most private law relations including, matrimonial property, successions, spousal and child support, adoption, guardianship, custody, affiliation and names. Divorce is therefore the responsibility of the federal government, whereas, provincial governments are responsible for legislating family law pertaining to the separation of unmarried couples, custody where no divorce is sought, and child protection. Four Canadian provinces, Quebec, British Columbia, Alberta and New Brunswick, as well as Yukon allow for access applications by people other than parents without explicitly mentioning grandparents. ***The Divorce Act*** allows a custody or access application by any other person with leave of the Court.

The strongest rights for grandparents are found in the province of Quebec, as outlined in Article 611 of the ***Civil Code of Quebec***:

> In no case may the father or mother, without grave reason, interfere with personal relations between the child and his grandparents. Failing agreement between the parties, the terms and conditions of these relations are decided by the court.

[3] Peter Hogg, Constitutional Law of Canada, 3rd ed. Carswell, 1992, p. 646. Hogg notes that the framers were also hostile towards Divorce and felt that a federal regime would be stricter than provincial ones.

Article 611, Civil Code of Quebec, S.Q. 1991, c. 62, Article 611. Courts and commentators have made it clear that under Quebec law, the onus is on the parents to demonstrate that the grandparents should not have access rights.

In New Brunswick, the ***Family Services Act*** states that access applications must be determined on the basis of the best interests of the child. Section 1 of the Act defines the best interests of the child as, inter alia, taking into consideration the "love, affection and ties that exist between the child and …where appropriate… each grandparent of the child". Section 1 of the Act also includes a grandparent along with a parent in the definition of immediate family.

Case law

Cases involving intact families, such as ***Chapman v. Chapman (N.B.)***, ***Rice v. Rice (N.B.)***, and ***Morecroft v. Morecroft (N.B.)***, regularly conclude in access being denied. Judges have consistently shown reluctance to legally intrude on intact families. The courts have generally favored the view that the frequency and nature of grandparent visits should be decided by the parents, who, the Court presumes, will make the decision based on the best interests of the child. Alternatively, this approach could be founded on respect for the privacy and inviolability of the parental home. While the best interests of the child may be served by a reconciliation between parent and grandparent, it is in the public interest that the State only intervene in such matters in egregious cases where the best interests of the child demands it, granting deference in most cases to those in parental authority. In cases where either one parent has left the home, or is deceased, grandparent requests for access may be granted if it can be demonstrated that there is an established good relationship and that it is in the child's best interests. However, if it is shown that there is hostility between the grandparents and either one, or both, of the parents, access is usually denied, as was shown in ***Cormier v. Cormier (N.B.)***.

Grandparents Standing *In Loco Parenti*

As in ***Deshane v. Perry*** (Ontario Court Provincial District), grandparents that have served as a custodial parent for the child for a significant period of time, referred to as standing *in loco parentis* to the child, may successfully argue that they served as a "psychological parent" to the child and disruption of this relationship would be psychologically unsettling for the child.

In ***Gallant v. Jackson (Ontario),*** the court adopted this perspective for paternal grandparents who provided not custodial care, but rather regular daytime care, to their grandchildren while the parents were at work. As such, the court order provided for regular access. Most of the American and Canadian decisions allow access to parents who stand *in loco parentis.*

The Best Interest of the Child Test

The best interest of the child test governs child custody and access disputes in Canada, both at the federal and the provincial level. In Canada courts have also held that absent abuse or neglect, parents have significant and controlling rights over their children's lives. Great weight must be given to the wishes of the custodial parents and care must be taken not to unduly interfere with the parent's inherent right to determine the course of their child's upbringing. International treaties ratified by Canada also preserve these rights of parenthood[4].

Issues

Many of the cases dealing with grandparent access inherently involve bitterness and hostility between the grandparents and parents, as evidenced by the fact that they have to resort to court litigation to settle the dispute. Several difficulties arise with court litigation, a significant challenge being that costs often prohibit grandparents from accessing the judicial system. When parents live in different provinces from each other, and/or from the grandparent, rights of access are difficult to enforce. Grandparents may have to return to Court to enforce their rights resulting in additional costs to them.

Mediation is increasingly the preferred dispute resolution mechanism used by parties involved in access and custody battles. Grandparents claims however face particular hurdles in accessing mediation services in the province with respect to their claims. The greater demands of parents upon the system, the limited availability for mediators and the unwillingness of parents as parties to consent to mediation for these types of claims, often lead to heart-wrenching decisions of grand-parents to abandon their claims, or, less frequently, to acrimonious litigation in respect of the issue.

In New Brunswick, as in all provinces and territories except for Quebec, the burden of proof is on the grandparent to establish that relationship exists between themselves and their grandchild. While New Brunswick's ***Family Services Act***, may have

[4] The *International Covenant on Social Economic Cultural Rights* in its Article 13 provides in part that: The States Parties to the present Covenant undertake to have respect for the liberty of parents … to ensure the religious and moral education of their children in conformity with their own convictions. Article 5 of the *Convention on the Rights of the Child* also provides that: "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention."

appeared progressive at one time, by allowing access claims from any person to be brought before the courts[5], and by referencing grandparents in its definition of the "best interests of the child", these measures have proved insufficient to allow access claims by grandparents to be meaningfully and appropriately addressed. A grandparent bearing the onus of establishing a relationship with the child has resulted in a significant amount of people not being able to gain access to their grandchildren. Further, denying a grandparent access to their grandchild, unless there is a good reason to do so, many times is not in the best interest of the child.

Another barrier which exists under the ***Divorce Act*** is requiring grandparents to obtain leave of the court to be permitted to apply for access to their grandchild.

Recommendations

There is, as stated, a broad consensus in Canada, and among expert opinion, in favour of legislative solutions to these issues. Ideally, all provinces would act in concert in this area with the federal Government in order to harmonize Canadian laws with respect to such vital interests. Unfortunately, that cooperative federal law reform process is painfully slow. New Brunswick has in the past provided leadership in supporting family-centric social policies. This is no doubt because the provincial electorate has always favoured political leadership that gives family values as privileged a place in the laws of the province as they find in the hearts and minds of New Brunswickers themselves. But we cannot afford, in my view, to further defer the legislative reforms necessary to bring a measure of peace and stability to grandparents and grandchildren in this province. New Brunswick can provide leadership again to the common law jurisdictions in Canada by following the lead of our sister province and neighbouring civil law jurisdiction, and following up on the recommendations of national studies into child access and custody in this area over the past ten years.

Based on the complaints received by this office, the comparative study of the current federal and provincial legislation surrounding child custody and access, the research done by the Department of Justice's Federal-Provincial-Territorial Family Law Committee, and the recommendations from the Special Joint Committee on Child Custody and Access, the Office of the Ombudsman makes the following recommendations with respect to the New Brunswick legislation and policy surrounding child access and custody:

[5] *Family Services Act*, c. F-2.2 RSNB 1973, s. 129(3)

1) Decision makers, including parents and judges, consider the importance of relationships between the child and other immediate family members, particularly grandparents, when determining the best interest of the child.

2) The provincial *Family Services Act* be amended to provide that maintaining and fostering healthy relationships with grandparents and other extended family members is in the best interests of children and that such relationships should not be disrupted without a significant reason related to the well-being of the child.

New Brunswick legislation be broadened by adopting a provision similar to Article 611 of the *Civil Code of Quebec*:

> **In no case may the father or mother, without grave reason, interfere with personal relations between the child and his grandparents. Failing agreement between the parties, the terms and conditions of these relations are decided by the court.**

The provisions should also place an onus upon parents to demonstrate that the grandparents should not have access rights.

3) The province adopt new measures to encourage greater and freer access by grandparents to mediation services, in the appropriate cases, to help parents and grandparents come together to work out an access arrangement that allows grandchildren to foster and maintain healthy relationships with their grandparents. Mediation as an alternative to court litigation would eliminate issues that arise from court litigation being too costly for many grandparents lacking access to their grandchildren.

Right to Information Act

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. The amendments were largely 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***.

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***.

2004/2005 STATISTICS

During the year 2004/2005, the Office of the Ombudsman received 77 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 50 investigations 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.

RIGHT TO INFORMATION ACT: TIME TO MODERNIZE

In my 2003-2004 annual report, I recorded several concerns related to the ***Right to Information Act***, particularly about the "everything under the sun" approach taken by some applicants seeking documents pursuant to the ***Act*** as well as by the unnecessarily narrow and grudging approach often adopted by government when responding to applications. I reported my view that the ***Act*** was not well understood by many of the stakeholders or by government officials. I also noted that the coverage of the ***Act*** ought to be expanded. Specifically, I recommended that 1) Schedule A of the ***Right to Information Act*** be amended to include municipalities and municipal structures and 2) that the Executive Council Office organize a seminar for major stakeholders so that "the intention and practical operation of the ***Right to Information Act***" could be discussed.

While I have had informal discussions with government representatives about my report in the year that has elapsed, I have received no formal reply to my recommendations. I believe that frustration on the part of applicants continues. I understand that government officials are also frustrated with many of the requirements of the ***Act***, particularly the short timeframes for reply and the lack of flexibility in communicating with applicants. I believe that many stakeholders and officials would welcome a modernized ***Act*** that reflects the latest in case law developments and where the administrative regime governing applications and compliance was both clearer and more flexible.

The New Brunswick ***Right to Information Act*** has not been significantly amended since its enactment in 1978. A number of other Canadian jurisdictions have improved their legislation and administration in recent years or are in the process of so doing. I believe that the time has come for New Brunswick to do the same. I am encouraged that the most recent Throne Speech pledges the provincial government to bring forward amendments "to modernize the ***Right to Information Act***". We ought to ensure that our Act and its administration reflect the most recent legal pronouncements as well as the best practices of other jurisdictions.

However, it is not only the content of legislation that is important; the process for developing legislation is also critical to its legitimacy. An open and accessible

process for reviewing our ***Right to Information Act*** would go some distance to dispel the frustration and cynicism that surround the ***Act*** and its administration. There are many considerations and competing interests to weigh when fashioning reforms to an ***Act*** that is fundamental to our democracy. While there can be no retreat from the principle of open government, it is acknowledged that a measure of confidentiality is essential to the proper functioning of government. In this regard, it would be salutary if there were a public discussion about the criteria and process for determining what ought to remain confidential in government.

The terms of reference for the review ought to be the subject of a resolution of the Legislative Assembly and an independent and qualified individual ought to be appointed to conduct the review.

Finally, it is important to face one specific political reality; namely, that no government will spend its limited political capital on such a comprehensive review unless the review is framed and conducted in a way that lifts the subject matter above "politics as usual". Bipartisan support for the review is essential if this ***Act*** is to be modernized in a timely fashion.

Therefore, I recommend that, before the end of the current session of the Legislative Assembly:

1) The Legislative Assembly approve a resolution setting out terms of reference for a review of the *Right to Information Act*, such resolution to include a requirement for public input and for the consideration of best practices in other jurisdictions;

2) An independent and qualified individual acceptable to the two House Leaders be appointed to conduct the inquiry and that there be periodic progress reports given jointly to the House Leaders;

3) The Legislative Assembly provide sufficient resources for the review and

4) Upon completion of the review, the report is tabled in the Legislative Assembly.

Civil Service Act

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.

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.

2004/2005 STATISTICS

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 however both were subsequently withdrawn.

In 2004/2005, the Office of the Ombudsman conducted nine investigations under section 33 of the ***Civil Service Act***, and five investigations related to the WorkForce Adjustment Program. In addition, the Office of the Ombudsman received and responded to seven inquiries under section 33 of the ***Civil Service Act*** and six inquiries under Section 32 of the ***Civil Service Act***.

THE STATUS AND TREATMENT OF CASUAL WORKERS IN THE CIVIL SERVICE

In New Brunswick, employment relationships in the public sector are primarily regulated by two provincial statutes, the ***Public Service Labour Relations Act*** and the ***Civil Service Act***. The former sets out a framework for the application of collective agreements and related matters, while the latter prescribes rules for appointments to the Civil Service, as well as conditions of employment. Consistent with his general jurisdiction to investigate complaints against provincial authorities, under sections 32 and 33 of the ***Civil Service Act***, the Ombudsman is charged with considering complaints and inquiries received by his Office as well as hearing appeals (section 32) and conducting investigations (section 33) whenever appropriate. The Ombudsman may also, by "personal initiative" (section 31), conduct investigations into the operation of the ***Civil Service Act*** and its regulations.

The Office of the Ombudsman has received, between January 2004 and March 2005, 23 complaints related to casual workers.

According to the 2004-2005 Workforce Profile published by the Office of Human Resources, as of December 31, 2004, there were more than 44,000 people working in Part I (departments and agencies), Part II (school system) and Part III (hospital system) of the Public Service.

The ***Civil Service Act*** governs the appointment of permanent and temporary workers to the Civil Service, that is, appointments to the departments and agencies listed in Regulation 93-137 under the ***Civil Service Act***. There were approximately 12,000 people working in the Civil Service in 2004-2005 of which, approximately 82% were permanent employees and approximately 18% were temporary workers. The ranks of temporary workers consist of casual workers as well as workers on personal service contracts and workers in place for a specific term. The majority of temporary workers are "casuals".

Permanent civil service employees are usually appointed following a competitive process intended to establish the relative merit of the various candidates who apply. On the other hand, casual workers are appointed through less transparent processes. Casual workers are those who are appointed for limited time periods at the discretion

of the "deputy head", in most cases the Deputy Minister of a government department. The term of appointment for a casual worker cannot exceed six months of continuous service in any one department although a second consecutive term of up to six months is possible within the same department. Within the terms of the ***Civil Service Act***, casual employees are envisaged as a reserve workforce that can help to meet incremental temporary work requirements or that can stand in on short notice for regular employees who are absent from work. In this way, the casual regime is intended to support the effective delivery of public services and the efficient management of human resources in the Civil Service.

Whether appointments are made through competitive or other processes, the ***Act*** contemplates appointments based on merit. Insofar as the casual regime relies on non competitive processes which lack transparency, the process for making casual appointments in the public sector constitutes an exception to the general rules of the game.

While deputy heads sign off on the appointment of casual workers, it has been a long time practice for Ministers, their political staff and government MLAs to control the identification of prospective casual employees. However, the point of this section of the Annual Report is not to analyze in depth the comparative risks, benefits and issues associated with different appointment processes; rather, it is to highlight the significant difference in treatment accorded to casual workers when compared to the treatment of permanent employees. Casual employees do not have health, dental or pension benefits or other benefits such as vacation and sick leave that are enjoyed by permanent employees.

To date, the Office of the Ombudsman has resisted dealing with such complainants on the basis that casual appointments are discretionary under the ***Civil Service Act***. The cases that have come to our attention are unsettling in that they raise questions about the proper and improper use of discretionary power. Similar cases in other jurisdictions have occasionally led to charges of political favouritism and resulted in human rights-based grievances[6]. Since the New Brunswick Legislature adopted in June 2004 modifications to the ***Human Rights Code*** adding political belief and affiliation as grounds of discrimination, it may be timely to consider again the established practices of government departments in the hire of casual employees.

Labour analysts generally classify casual public sector work as "precarious employment," and stress the need for policies and legislation that would diminish

[6]For example, *Condon v. Gov't PEI and HRC*, 2004 PESCTD 36.

some of the intrinsic insecurity. In a recent discussion paper, the Law Commission of Canada connects precarious employment to a variety of social ills, concluding that "a significant percentage of the workforce finds its well-being seriously compromised" and that "many workers receive inadequate compensation and lack access to important rights, benefits and protections."[7] Likewise, the cases which have been brought to our attention underscore the casual regime's shortcomings here in New Brunswick.

The treatment of casual workers has repeatedly come under attack from organized labour in this Province. In fact, several unions have commenced legal action on behalf of these workers. Since I have received nearly two dozen complaints from casual workers in the past year alone, I am obliged to report on these complaints and to make appropriate recommendations; however, since legal action in relation to some of these matters is underway I have chosen to limit my commentary and my recommendations.

Public sector unions in New Brunswick are not alone in their misgivings about the appropriateness of the treatment accorded to casual workers. The International Labour Organization (ILO), a United Nations agency responsible for the enforcement of Canada's international treaty obligations in the field of labour relations, has been critical of the treatment of public sector casual workers in New Brunswick. In March 2001, the ILO accepted a complaint made by several casual employees against the Government of New Brunswick and recommended, as the international organ responsible for the enforcement of Canada's labour treaty obligations, that the Province of New Brunswick take prompt action to recognize the right of casual employees to establish and join unions and bargain collectively as do regular employees and all private sector employees. While it left to Government the task of determining the appropriate legislative response, the ILO decision noted that, in New Brunswick, the ***Industrial Relations Act*** does not allow such differential treatment between casual and regular employees in the private sector and emphasized that under international legal precedents such distinctions were discriminatory. The implication of the ILO view is that the distinction should be removed from the ***Public Service Labour Relations Act***.

I recognize that significant financial as well as policy and legal consequences would arise if the distinction were to be eliminated in all parts of the Public Service. The Government may wish to refuse the ILO's recommendation, or it may choose to accept it by giving it immediate effect or, alternatively, by implementing the required

[7]Law Commission of Canada, *Is Work Working?- A Discussion Paper*, Her Majesty the Queen in Right of Canada, 2004, p.58.

legislative amendments in stages. Four years of silence on the subject, however, is not an appropriate response. Canada's and New Brunswick's position in the international community is diminished and our efforts in support of improved trading relationships and democratic development are jeopardized when we fail to hold ourselves to the same level of scrutiny and accountability in international forums that we expect of others. I would for these reasons, encourage the Government to respond publicly to the ILO recommendations in detailed fashion.

Having said that, given the complaints I have received, there is one dimension of the casual worker situation that requires, in my view, a more immediate response because it raises a fundamental question of fairness. My principal concern is for that segment of the casual workforce which is engaged in work of a cyclical or seasonal nature. Such workers can be found in departments like Transportation, Natural Resources and Tourism and Parks. Over the course of the past two years, the vulnerability of workers engaged in cyclical or seasonal work for the public sector has repeatedly come to the attention of this Office. In a series of similar cases, casual workers have sought our intervention when, notwithstanding satisfactory work histories, their seasonal or cyclical jobs with the province have not been renewed. In one particularly compelling case, an unskilled road worker learned that as far as the Province was concerned, his nineteen years of consecutive service were of no consequence when, in year twenty, "his" job went to someone else.

The absence of a right of recall for seasonal casuals in New Brunswick is to be contrasted with the situation in the neighbouring province of Prince Edward Island, where a right of recall has figured in that province's *Civil Service Act* since 1998. I believe basic fairness obliges the government to consider a similar right for casual seasonal workers in New Brunswick. The provision of the P.E.I. Civil Service Act that addresses the right of recall reads as follows:

> 10.5). " ... *where a person has received a satisfactory performance evaluation in a seasonal, temporary job, it shall be re-offered to the person in the immediately succeeding season, should that job be available...*" (*Civil Service Act*, R.S.P.E.I. 1988, c. C-8, s. 10(5))
>
> **Therefore, in order to alleviate the job insecurity faced by casual seasonal workers in New Brunswick, the Office of the Ombudsman recommends that all appropriate legislative changes be made to provide for a right of recall for seasonal casuals. Pending legislative action, we recommend that recall mechanisms be adopted and implemented at the policy level, by all departments regularly engaged in the hiring of casual seasonal workers.**

Protection of Personal Information 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.

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***.

2004/2005 STATISTICS

During the year 2004/2005, the Office of the Ombudsman received 12 complaints and enquiries in regards to the ***Protection of Personal Information Act***.

NB VIDEO SURVEILLANCE GUIDELINES

Several public organizations and some individuals asked us to consider the issue of video surveillance cameras during the past year. It very quickly became apparent that New Brunswick required guidelines which could be used by public bodies considering the use of such devices.

Given concerns about the effectiveness of video surveillance cameras, we determined that clear guidelines, based on precedent existing in other provinces, could be offered that ensured that best practices were followed by authorities and that appropriate accountability measures would be available to the public.

The publication of these guidelines is aimed at increasing public debate on the effectiveness of these means of surveillances and the criteria which should guide their use by public authorities.

The Office of the Ombudsman notes the following preliminary considerations:

- New Brunswickers, like Canadians in other provinces are concerned by the fact that surveillance cameras are being installed without proper prior research and without proper guidelines – thereby infringing the right to privacy without proven effectiveness;

- since the Ombudsman's mandate, under both the ***Ombudsman Act*** and under the ***Protection of Personal Information Act***, confers a particular role in respect of privacy protection and administrative fairness in public authorities, we feel it is appropriate to focus these guidelines on video surveillance of public places by public bodies, recognizing also that New Brunswickers are also concerned about private sector use of surveillance cameras;

- these guidelines have been formulated with the hope that public authorities will willingly adopt them as a means of avoiding complaints to our office, however, if these practical suggestions are not adopted, then a stricter regulatory approach may be required; and finally,

- it is in the public interest that the approach to this issue and the protection of privacy interests in play be consistent and harmonized from one province to the next in Canada; other privacy commissioners have studied the issue at length and these guidelines are therefore based on the guidelines established in Quebec (Commission d'accès à l'information), Newfoundland (Office of the Information and Privacy Commissioner) and Ontario (Information and Privacy Commissioner).

I. Guidelines prior to opting for camera surveillance

1) The video surveillance must be lawful. Public bodies must determine if they have the statutory authority to collect, use and disclose personal information. Public bodies should also consider the implications of the *Canadian Charter of Rights and Freedoms*.

2) The public body should identify the precise and important purpose sought to be addressed by means of video surveillance. Specific and verifiable (not anecdotal) reports of incidents of crime or public safety concerns are required to justify each video surveillance camera. The goals and/or purpose of the proposed surveillance program must be clear and must address these specific and serious incidents.

3) A video surveillance system should only be considered after less intrusive measures (such as foot patrols or increased lighting) have been considered or tested and found to be not feasible or substantially less effective. Using video surveillance systems is acceptable only if the practice meets all statutory requirements and is utilized as a last resort.

4) An assessment of the impact of camera surveillance should be conducted prior to adopting video surveillance. This assessment should identify ways to minimize privacy intrusions to that which is necessary to achieve the stated goals, such as limiting the hours of surveillance and restricting the ability of camera operators to adjust or manipulate the equipment. As well, other advantages and disadvantages of the measure should be weighed, including potentially undesirable effects such as shifting criminal activity to another location.

5) Public consultations, as to the system's necessity and acceptability, should be held prior to adopting a video surveillance system. The populations affected should be consulted and involved before the decision is made. Once the decision is made, reasonable and adequate notice should be provided to the public before the system is implemented.

II. Guidelines for Developing the Policy for a Video Surveillance System

After making the decision to use video surveillance, the public body should adopt comprehensive written policies and procedures for the operation of the system. These policies should include:

- The rationale and objectives for implementing the video surveillance system.

- Guidelines for how the system's equipment will be used, including: the location of the reception equipment; which personnel are authorized to operate the system; and the times when video surveillance will be in effect.

- Details of the institution's obligations with respect to the notice, access, use, disclosure, retention, security and disposal of records in accordance with applicable legislation, including: who can view recordings and under what circumstances, and when recorded information will be erased (normally between 48 and 72 hours for information not viewed for law enforcement or public safety purposes).

- The name and/or title of the senior staff member designated to be responsible for the institution's privacy obligations under its policy and applicable legislation.

- A requirement that the institution will maintain control of and responsibility for the video surveillance system at all times.

- A requirement that any agreements between the institution and service providers state that the records dealt with or created while delivering a video surveillance program are under the institution's control and subject to applicable legislation.

- A requirement that employees and service providers sign written agreements indicating they have reviewed and will comply with the policy and with applicable legislation in performing their duties and functions related to the

operation of the video surveillance system, subject to established penalties for breach.

• A requirement that there is a process in place to appropriately respond to any inadvertent disclosures of personal information.

• The incorporation of the policy into training and orientation programs for employees and service providers. Training programs addressing staff obligations, including confidentiality, should be conducted on a regular basis.

• The requirement that the policy should be reviewed and updated regularly, at least once every two years.

III. Guidelines for Designing and Installing the Video Surveillance Equipment

1) Equipment should be installed in such a way that it monitors only those spaces that have been identified as requiring surveillance and only during necessary periods. Cameras should not be directed to look through the windows of adjacent buildings, or into areas where the public has a higher expectation of privacy (e.g., washrooms). Operators should not be allowed to adjust the cameras to overlook areas not intended to be covered by the surveillance program. The use of cameras should be limited to specific times of day and/or to specific times of the year when a higher likelihood of crime has been demonstrated.

2) The public should be clearly notified at the perimeter of each area that is or may be under surveillance. Notices, such as large signs, should be placed at a reasonable distance from the area under surveillance, so the public has reasonable and adequate warning before entering any area under video surveillance. The notification should include the name/title and contact information of the staff member responsible for overseeing the surveillance program and practices. Any additional legislative requirements can be met through other means of notification, such as pamphlets explaining the purposes for which the personal information collected is intended to be used, and/or copies of applicable policies posted on the public body's website.

3) Access to the monitors and to recorded images should be restricted. Only those personnel with proper authorization under the policy should have access to the monitoring equipment and recordings. Video monitors should not be in a position that enables public viewing. Storage devices not in use should be kept in a securely locked area with limited access by authorized personnel only.

IV. Guidelines Concerning Management of Information

1) Only the necessary recordings should be made. If the cameras are continuously monitored, the authorized employee should only start recording when there are reasonable grounds to believe that an offence will be committed. If the cameras are not continuously monitored, recordings should be destroyed once they are no longer necessary.

2) Any information obtained by way of video surveillance systems should only be used for the program's stated purposes. Information should not be retained or used for any other purposes.

3) Subject to exceptions in applicable legislation, the recordings should not be disclosed to third parties. Policies should address when recorded images may be viewed and by whom they may be viewed. A log should be maintained documenting disclosures of recordings, including to whom and for how long, and listing the authority under which they are being disclosed.

4) Recordings should be stored in an orderly and secure manner and destroyed in accordance with the retention schedule. The recording media should be numbered and dated for each site that has been the object of surveillance. Apart from judicial requirements and police or administrative investigations, the recordings should be erased or destroyed as soon as their retention is no longer necessary. Disposal methods may include shredding, burning or magnetically erasing the personal information to prevent retrieval or reconstruction.

5) Subject to applicable legislation, a person is entitled to access the information concerning him or her. Access to an individual's own personal information may be granted, in whole or in part, depending upon statutory exemptions applied under legislation. Access to an individual's own personal information in these circumstances may also depend upon whether any exempt information (e.g. personal information of others) can be reasonably severed from the record. Policies and procedures should recognize this right and accommodate any access requests.

V. Guidelines Concerning Regular Audits of the Surveillance Program

1) Video surveillance programs/practices (including subcontractors') should be subject to annual audits. The audit should also address the institution's compliance with the operational policies and procedures. An external body may be retained in

order to perform the audit. Any deficiencies or concerns identified by the audit must be addressed immediately. Results of audits should be publicly available to ensure transparency and openness. This audit should consider, but not be limited to:

- whether the initial grounds for implementing the program still exist;
- whether the program has proven as effective as expected and if not, why not;
- whether the limits on use have been respected;
- whether any inappropriate uses have been identified and if so, how rectified;
- whether less intrusive means could be adopted instead.

Summary of 2004/2005 Statistics

2004/2005 STATISTICS

- The Office of the Ombudsman received a total of 2 933 complaints, inquiries and requests for information during the year 2004/2005. Of this number, 1 761 were complaints within jurisdiction and investigations were required, 431 were inquiries and requests for information, and 741 were complaints which were not within the jurisdiction of this Office. In addition, 137 complaints carried over from the previous year were investigated.

- During the year 2004/2005, the Office of the Ombudsman received 77 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 5 investigations 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.

- 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 however both were subsequently withdrawn.

- In 2004/2005, the Office of the Ombudsman conducted nine investigations under section 33 of the ***Civil Service Act***, and five investigations related to the WorkForce Adjustment Program. In addition, the Office of the Ombudsman received and responded to seven inquiries under section 33 of the ***Civil Service Act*** and six inquiries under Section 32 of the ***Civil Service Act***.

- During the year 2004/2005, the Office of the Ombudsman received 12 complaints and enquiries in regards to the ***Protection of Personal Information Act***.

- In the Correctional Services area, the Office of the Ombudsman processed 483 verbal and written complaints from or relating to individuals incarcerated in provincial correctional institutions. In addition, the Office also received information requests and complaints from inmates that were not within the jurisdiction of the Office to investigate.

STATISTICAL TABLE 2004/2005

OUTCOME OF COMPLAINTS RECEIVED IN 2004/2005

Departments/ Agencies	Total	Resolved	Partially Resolved Referral Given/ Information Provided	Not Substantiated	Discontinued by Client/ Ombudsman
Education	79	4	51	9	15
Environment and Local Government	41	4	23	9	5
Family and Community Services	457	31	245	73	108
Health and Wellness	129	18	74	19	18
Human Rights Commission	22	-	11	9	2
Justice	44	4	30	6	4
Natural Resources	14	3	4	5	2
NB Power Corporation	77	19	40	10	8
Municipalities	41	2	25	8	6
Office of Human Resources	17	-	13	1	3
Public Safety	537	41	303	140	53
Service New Brunswick	30	1	21	4	4
Training and Employment Development	30	4	20	4	2
Transportation	57	3	39	8	7
Workplace Health, Safety and Compensation Commission	152	6	111	26	9
**Other	34	2	23	7	2
Total	***1,761**	**142**	**1,033**	**338**	**248**

*This number does not include 137 investigations which were continued from the previous year.

** Departments/agencies/Acts with 15 or less complaints during 2004/2005.

*** 115 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 2004/2005. 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. The tables that do not include the previous year statistics were not included in last year's annual report because the complaints were below 15.

CORRECTIONAL INSTITUTIONS

Verbal and Written Complaints and Requests for Information

	2004/2005	2003/2004
Health Issues		
Prescriptions Requested or Denied	50	35
Request to see Nurse / Doctor	34	28
Dental	11	4
Request to go to Hospital	9	3
Glasses, Eye Care	2	5
Special Diet	1	2
Threat of Suicide	2	3
Physiotherapy	1	-
Mental Health	3	2
Medical Appliance	3	1
Medical Treatment	4	-
Subtotal	120	83
Living Conditions		
Clothing and Bedding	11	7
Cleanliness	9	5
Food	11	6

Heat and Ventilation	4	2
Overcrowding	5	4
Smoking	8	7
Maintenance and Repairs	3	3
Other	-	-
Subtotal	51	34
Administration	1	15
Temporary Absence Program	5	8
Discipline	30	18
Personal / Inmate Property	28	12
Classification / Transfer	38	26
Request for House Arrest	2	6
Visiting Privileges	12	15
Recreation	10	12
Placement within Institution	20	33
Program Privileges	8	12
Telephone Use	14	6
Correspondence	8	11
Sentence / Remission Calculation	11	2
Use of Restraints	4	2
Contraband	3	4
Segregation	24	4
Staff Conduct and Deportment	15	13
Threatened by Presence of Other Inmates	3	2
Request Form	3	4
Requests for Items Denied	5	2
Abandoned By Inmate	3	1
Subtotal	418	325
Non Jurisdiction		
Physical Assault	6	1
Courts	5	3
Parole	2	-
Legal Aid	3	1
Sexual Assault	-	-
Verbal Abuse and Swearing (Staff)	5	3
Total	**439**	**334**

FAMILY AND COMMUNITY SERVICES

	2004/2005	2003/2004
Income Assistance Benefits		
Discontinued / Reduced	31	32
Denied	20	26
Amount / Calculation	19	1
Eligibility Criteria	32	15
Long Term Needs	10	12
Repayment	11	10
Delay	4	6
Subtotal	127	102
Housing Units		
Repairs	20	12
Availability	32	19
Evictions	14	12
Inspections	6	3
Tenant Rights	7	-
Transfers	4	3
Subtotal	83	49
Complaints Regarding Staff	24	21
Administration	14	3
Special Benefits	-	-
Health Card	18	15
Protection Services	29	11
Heat Supplement	5	4
Adoption	8	2
Medical Issues	8	11
Training/Work Programs	5	2
Loans / Grants-Housing	17	12
Nursing Homes/Residential Services	35	19
Employment	5	2
Appeal Board	6	3
Appliances/Furniture	4	3
Total	**388**	**259**

WORKPLACE HEALTH, SAFETY AND COMPENSATION COMMISSION

	2004/2005	2003/2004
Compensation		
Discontinued / Reduced	26	23
Amount / Calculation	11	10
Long-term Disability Benefits	6	2
Subtotal	43	35
Appeals Tribunal	16	7
Claim Denied	16	8
Administration	12	4
Medical Payments	6	3
Deeming	1	1
Complaints Regarding Staff	10	4
Retraining	1	1
Medical Rehabilitation	2	6
Permanent Partial Impairment	6	-
Total	**113**	**69**

EDUCATION

	2004/2005	2003/2004
Administration	5	1
Transportation	4	3
Children with Special Needs	5	3
Student Loans	18	6
Employment	12	2
Student Transfer	-	1
Suspensions	6	2
Curriculum/Testing	1	-
Complaints Regarding Staff	9	1
French Immersion Program	1	-
Heritage	-	-
Total	**61**	**19**

NB POWER CORPORATION

	2004/2005	2003/2004
Employment	5	-
Service Issues	6	31
Disconnection	21	-
Payment Schedules	7	5
Billing-Amount / Calculation	16	12
Security Deposit	1	2
Administration	1	1
Damage Claims	3	3
Total	**60**	**54**

HEALTH AND WELLNESS

	2004/2005	2003/2004
Mental Health	8	6
Hospital Corporations	-	-
Employment	6	1
Administration	4	1
Complaints Regarding Staff	1	-
Medicare	17	6
Permits / Licenses	3	-
Special Needs Programs	2	-
Placement Services	-	-
Public Health	6	4
Adoption	-	-
Prescription Drug Program	-	1
Addiction Services	4	5
Vital Statistics	2	3
Total	**53**	**27**

TRANSPORTATION

	2004/2005	2003/2004
Road / Bridge Maintenance	13	11
Employment	16	5
Damage Claims	3	6
Access / Right of Way	1	-
Property Issues	7	5
Administration	2	3
Expropriation Procedures	4	1
Complaints Regarding Staff	1	-
Permits / Licenses	-	-
Total	**47**	**31**

PUBLIC SAFETY

	2003/2004	2003/2004
Permits / Licenses	14	13
Administration	5	-
Complaints Regarding Staff	3	4
Coroner Services	3	1
Emergency Measures	2	1
Employment	2	1
Other	8	1
Total	**37**	**21**

JUSTICE AND ATTORNEY GENERAL

	2004/2005
Administration	2
Complaint Regarding Staff	3
Employment	3
Support Payments and Orders	8
Others	28
Total	**44**

MUNICIPALITIES

	2004/2005
Administration	1
Complaint Regarding Staff	4
Employment	2
Expropriation	1
Municipal By Laws	5
Property Issues	3
Right to Information	1
Roads/Streets	1
Services	4
Water Sewage	10
Zoning	1
Others	6
Total	**40**

ENVIRONMENT AND LOCAL GOVERNMENT

	2004/2005
Administration	5
Inspections	3
Local Service Districts	1
Permits-Licenses	6
Pollution	2
Property Issues	3
Unsightly premises	2
Water Sewage	4
Others	12
Total	**38**

REGIONAL HEALTH AUTHORITIES

	2004/2005
Administration	4
Admission	2
Complaint Regarding Staff	4
Employment	3
Harassment (Employment)	2
Labour Relations Issues	5
Mental Health Services	3
Treatment	3
Others	9
Total	**35**

SERVICE NEW BRUNSWICK

	2004/2005
Administration	1
Complaint Regarding Staff	1
Employment	2
Permits/Licenses	3
Property Assessment	8
Property Assessment-Appeal Procedures	5
Others	10
Total	**30**

TRAINING AND EMPLOYMENT DEVELOPMENT

	2004/2005
Community College-Admission Process	1
Community College-Programs	1
Community College-Others	3
Employment	8
Employment Programs	2
Grants-Loans	3
Licenses-certificates	1
Others	11
Total	**30**

NB HUMAN RIGHTS COMMISSION

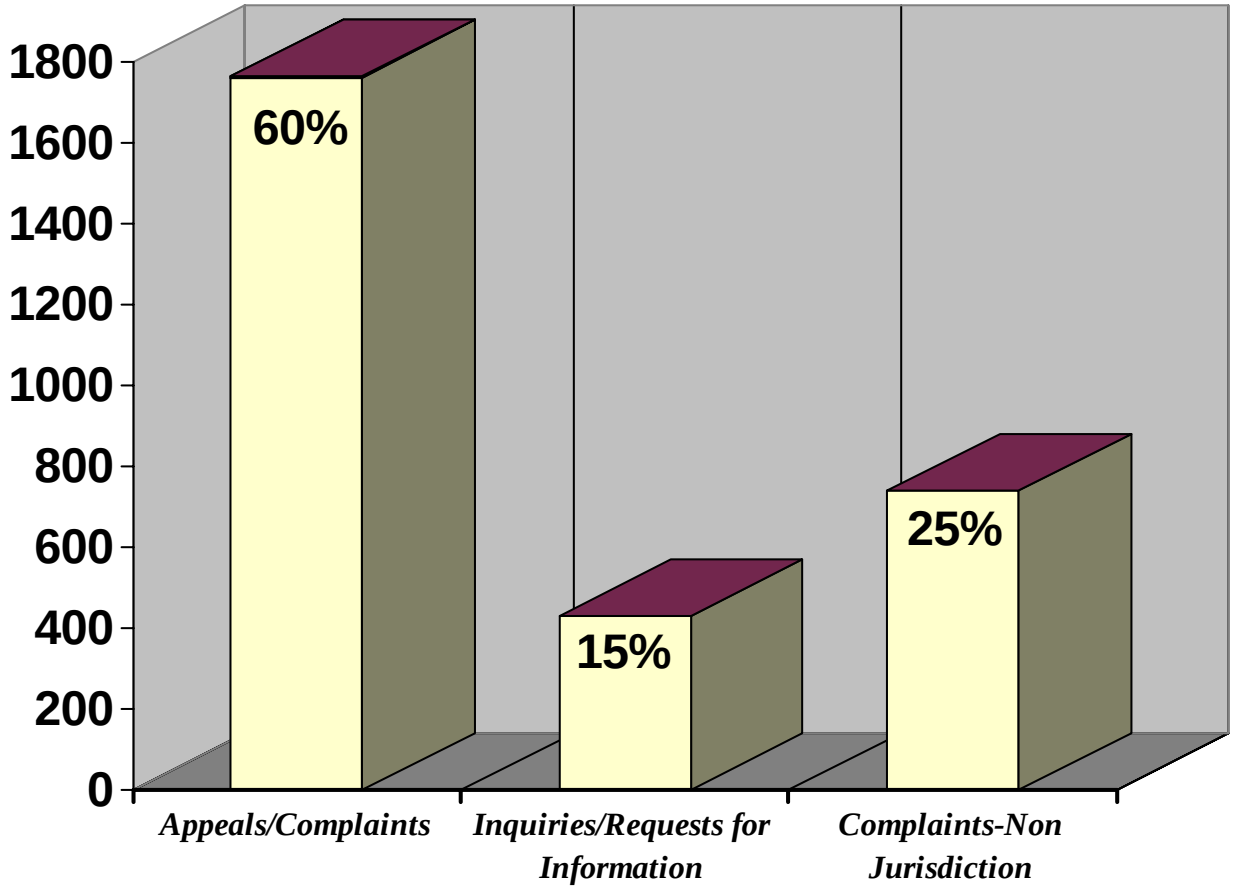
	2004/2005
Administration	3
Complaints Regarding Staff	4
Investigation Procedures	7
Others	11
Total	**25**

OFFICE OF HUMAN RESOURCES

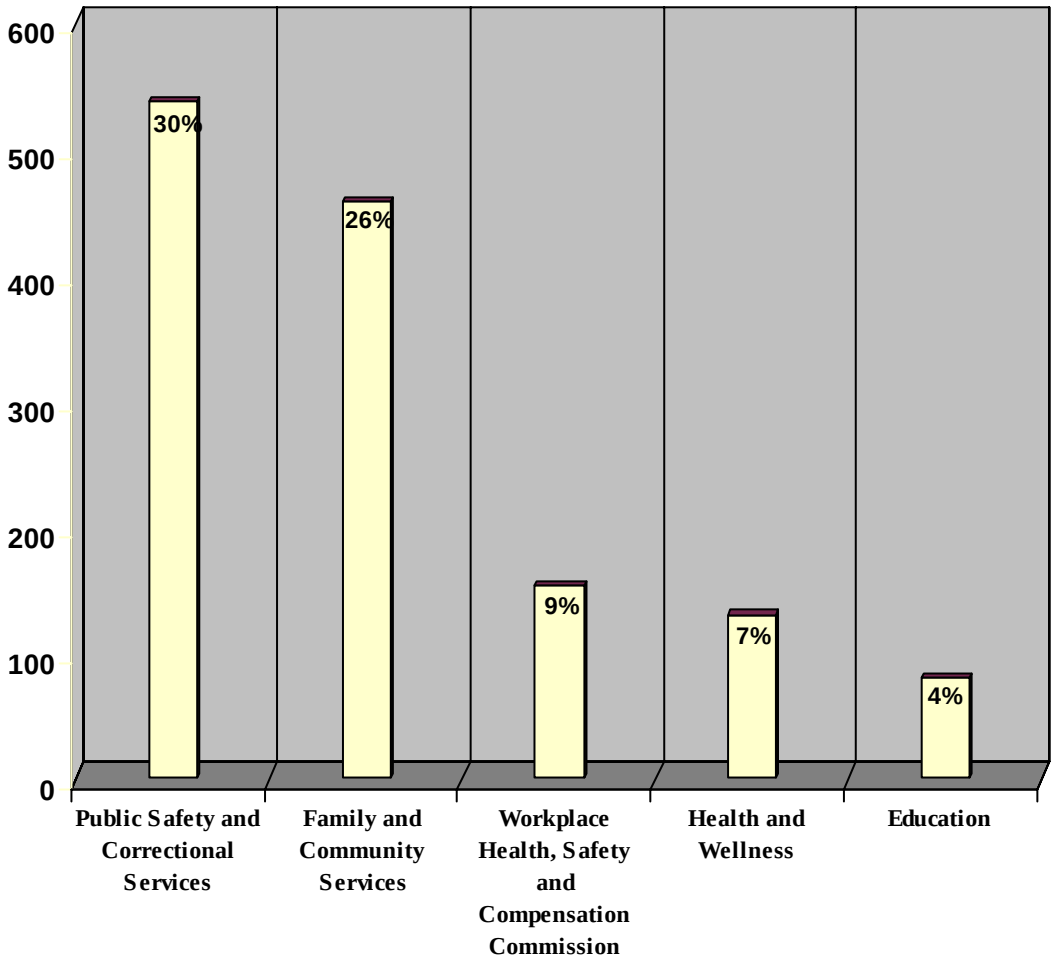
	2004/2005
Benefits-Long Term Disability	2
Equal Employment Opportunity	3
Job Classification	2
Labour Relations	1
Pensions	7
Programs	1
Others	3
Total	**19**

CHARTS

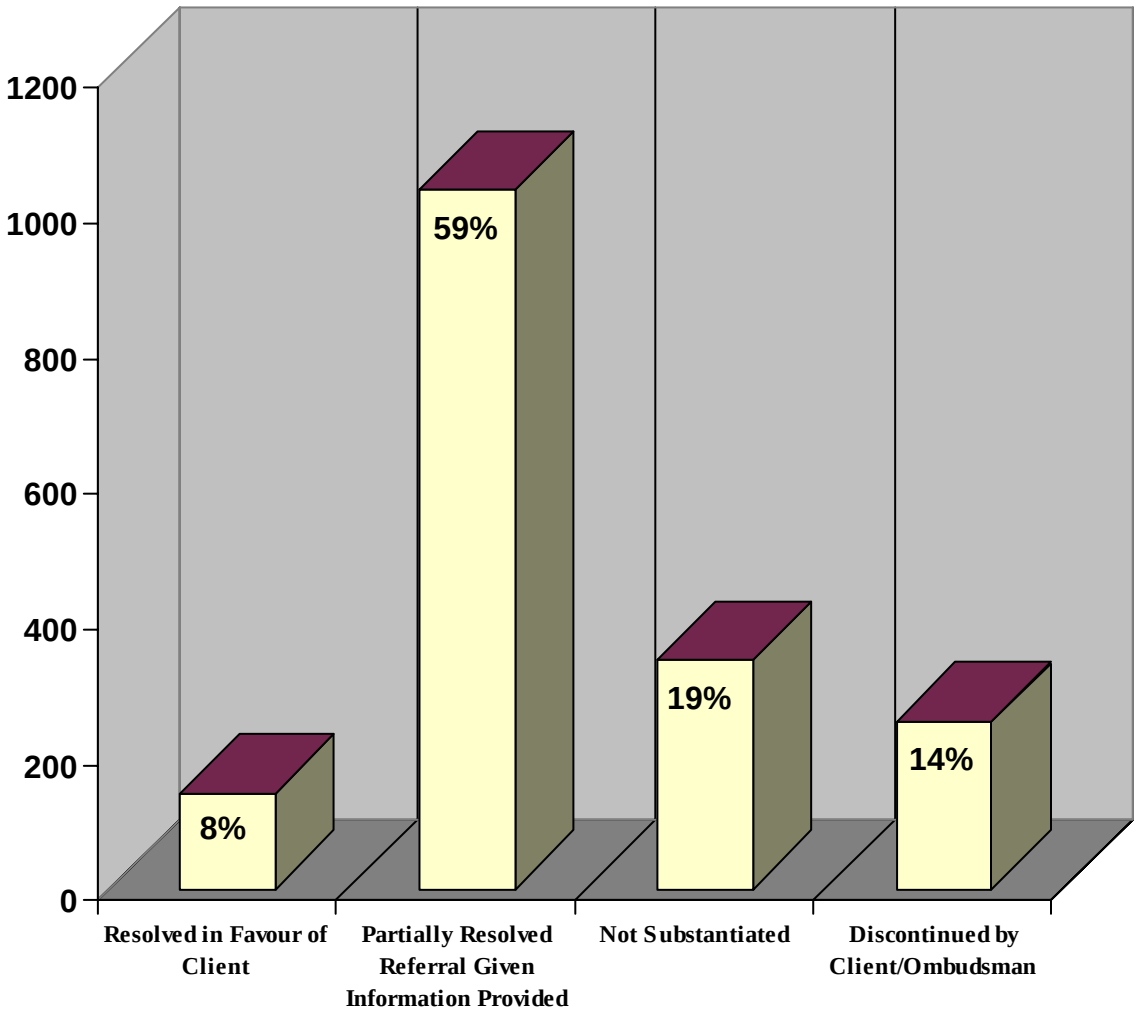
COMPLAINTS, INQUIRIES AND REQUESTS FOR INFORMATION RECEIVED IN 2004/2005



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	1.5 (0.7)
Carleton	27 184	3.7	3.6 (2.4)
Charlotte	27 366	3.8	2.2 (1.6)
Gloucester	82 929	11.4	17.0 (13.3)
Kent	31 383	4.3	3.0 (2.6)
Kings	64 208	8.8	2.1 (2.2)
Madawaska	35 611	4.9	7.4 (13.1)
Northumberland	50 817	7.0	5.6 (4.7)
Queens	11 862	1.6	0.3 (1.0)
Restigouche	36 134	5.0	4.6 (5.7)
Saint John	76 407	10.5	8.6 (13.3)
Sunbury	25 776	3.5	2.3 (2.0)
Victoria	21 172	2.9	3.7 (3.7)
Westmorland	124 688	17.1	16.5 (13.5)
York	87 212	12.0	14.1 (14.4)
	729 498	**100**	**92.5 (94.2)***

Notes: Population from 2001 Census
Does not include complaints from correctional institutions (2003/2004 % in brackets)
**Out of Province or unknown origin– 7.5% (5.7%)*