



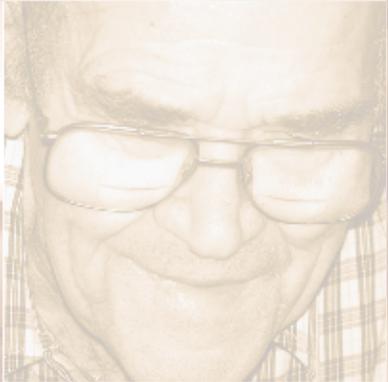
ALBERTA
OMBUDSMAN
1967~2007

Celebrating 40 Years Focused on Fairness



40th Annual Report

For the period April 1, 2006 through March 31, 2007



October 2007

The Honourable Ken Kowalski
Speaker of the Legislative Assembly of Alberta
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Mr. Speaker:

The Office of the Ombudsman is pleased to present its 40th Annual Report to you and, through you, to the Legislative Assembly. Celebrating our 40th Anniversary, we are delighted and honoured to carry the responsibility of promoting greater administrative fairness within provincial government departments, boards and agencies as pioneered by George B. McClellan, Alberta's first Ombudsman, in 1967. While our jurisdiction has expanded greatly in 40 years to include provincial government commissions, designated professional organizations and the patient concerns resolution process of Regional Health Authorities, we remain true to the original vision and we continue to focus on fairness.

This Report has been prepared in accordance with section 28(1) of the *Ombudsman Act* and covers the activities of the Office of the Ombudsman for the period April 1, 2006 through March 31, 2007.

Respectfully,



G. B. (Gord) Button
Alberta Ombudsman



Celebrating 40 Years Focused on Fairness

VISION, MISSION AND VALUES

VISION

The Alberta Ombudsman is the recognized leader for independent investigation, promotion and support of administrative fairness.

MISSION

The Alberta Ombudsman independently and impartially promotes high standards of administrative fairness through investigations, recommendations for change and education.

VALUES

To obtain our Vision and deliver our Mission, our Values are fundamental to all our interactions and communications.

We Value:

Fairness
Competency
Respect
Integrity
Equity and
Confidentiality

We also value a working environment that fosters personal and professional growth and development, collaboration and teamwork, and innovation and creativity.



TABLE OF CONTENTS

TABLE OF CONTENTS

- 1** Message from the Ombudsman
- 7** Business Plan Update
- 13** Alberta Ombudsman 40th Anniversary 1967-2007
Historical Overview
Profiles of Alberta Ombudsman
- 23** Our Role
- 27** Organizational Chart
- 29** Year in Review
- 31** Complaints by Geographical Region
- 33** Administrative Fairness - Guidelines
- 34** Administrative Fairness - Case Summaries
- 49** Own Motion Investigation
- 55** Financial Statements
- 66** Contact Information



MESSAGE FROM THE OMBUDSMAN

INTRODUCTION

It is my duty and pleasure to introduce the 40th Annual Report of the Alberta Ombudsman as required by the *Ombudsman Act*. As the forgoing statement indicates, we are celebrating a milestone this coming year with the 40th Anniversary of the establishment of the Alberta Ombudsman office, the first ombudsman office created in Canada. Similar offices now exist in every province (except Prince Edward Island) and the Yukon. Part of this report is dedicated to a retrospective of the last 40 years and as we developed the historical overview, I was struck by the significant contribution the Alberta Ombudsman has made to improving fairness in the way the Alberta government and other jurisdictional authorities deliver services and make decisions affecting citizens. While some improvements were accomplished through public reports on larger systemic investigations, much more was accomplished through the investigation of complaints from concerned Albertans. The resulting recommendations and quiet diplomacy pursued by incumbents in this chair not only resolved many complaints but encouraged authorities to improve their administrative processes. In this report, we pay tribute to the six Ombudsman who preceded me. They, and the staff who assisted them, should be rightfully proud of their contribution to the citizens and the Province of Alberta through their work over the past 40 years.

THE YEAR IN REVIEW

Terry Holmes,
Director, Rural
Utilities Division,
Alberta Agriculture
and Food, is
appreciated for his
sincere interest
and commitment
to administrative
fairness in the
operation of the
Remote Area Heating
Allowance Program.

The volume of new complaints this year was down by about 5% however we continue to experience an increase in the complexity of the issues of complaint. We received 633 new written complaints and 4179 oral complaints during the year. We carried 259 active investigations into the 2006/07 year and will carry 253 investigations into the coming year. An analysis of files at closing reveals that due to the large number of open investigations and the limited number of active files each investigator can work on at any one time, complaints are not actively investigated until several months after we receive them. Once the investigation commences, the time to conclusion is usually three to four months, which is quite acceptable, but the overall time from complaint receipt to investigation conclusion is much longer than is satisfactory to complainants, authorities or this Office. To help us address this backlog, additional investigators will be hired in the coming year and the new investigative tools I announced last year, such as Informal Resolution and Alternative Complaint Resolution, will be further enhanced. However, as I discussed last year, there is still a demonstrated need for

the Ombudsman to conduct systemic investigations on my own motion into high-profile issues. These are very resource-intensive initiatives and our ability to undertake such investigations is adversely affected by the current workload. A detailed statistical overview of our workload this year is provided later in this report.

FOCUS OF INVESTIGATIONS

In this report there are examples of the types of investigations we conducted this year and the outcomes. I made 79 recommendations to authorities for changes that were necessary to address unfairness identified during our investigations. Consistent with my experiences in past years, virtually all of those recommendations were implemented.

The Ombudsman is a “Commissioner for Complaints” and the original focus for the Alberta Ombudsman was complaint resolution. That focus has evolved over the years where we now focus on three primary dimensions during our investigations. The first is the substantive focus which attempts to resolve the complainant’s concern and where appropriate and possible, provide redress. This focus usually centers on a benefit or service the complainant was denied but feels entitled to receive. The result of this aspect of an investigation may be a recommendation that an authority reconsider a matter or render a new decision if I find the complainant was treated unfairly.

Another focus is the relationship issue. Some investigations focus on how the citizen was treated by the authority or where a breakdown in communication resulted in a loss of trust and perception of unfair treatment. Relationships between citizens and government departments or jurisdictional authorities are very important to build trust and confidence between parties. When this focus of an investigation reveals evidence supporting the complaint, I often recommend the authority issue an apology or a better explanation to the complainant and if necessary, modify policy or business practices to minimize similar occurrences in future.

The third focus is the fairness of the process. The result of this aspect of an investigation may or may not affect the complainant. However, I sometimes find procedural unfairness by the government department or jurisdictional authority that if not corrected, will negatively impact potentially hundreds or thousands of Albertans who participate in the process in future. I consider correcting unfair processes a very important and influential aspect of my responsibilities.



Complaints we investigate often contain two or all three of these aspects. We strive to ensure each element is considered and investigated equally, recognizing the importance of each aspect to the parties in an investigation.

SIGNIFICANT DEVELOPMENTS

There are several developments which stand out when I look back over the past year. On September 1, 2006, the long-awaited Patient Concerns Resolution Process Regulation came into force. This regulation requires the Regional Health Authorities (RHAs) in Alberta to establish processes to receive and investigate complaints from patients in a consistent and administratively fair manner. It also gives the Ombudsman the authority to investigate patient complaints about the fairness of the RHAs' efforts to resolve their concerns. Confidence in our health care system is significantly

affected by how patient concerns are addressed. The quality of health care services delivery can be greatly improved when those delivering services and products listen to and resolve concerns and implement improved delivery models based on what they learn. I have taken a proactive approach to this new process implementation by accepting invitations from eight of nine RHAs to make presentations on fair patient concerns resolution processes and what I will focus on when investigating patient complaints. Armed with that knowledge and a thorough understanding of their service delivery requirements, the RHAs are well positioned to develop administratively fair processes. My jurisdiction to investigate complaints about health professions continues to evolve, albeit very slowly. Currently 20 of the 28 health profession colleges have enacted their schedules which permit me to investigate complaints about their complaint handling processes, an increase of four over the past year. We are all aware of recent very high profile reminders of the need for constant diligence in how health care services and facilities are managed. I believe the

Ombudsman can become a significant factor in contributing to independent oversight on these fronts.

The second important development is the increased capacity my Office is gaining with the progress of newly-hired staff I referred to in last year's report. These additions to the Office are contributing significantly to the accomplishment of our objectives. Additionally, the Standing Committee on Legislative Offices approved my request for a budget increase effective April 1, 2007, enabling me to hire three additional investigators and another

The legal team of the Appeals Commission for Alberta Workers' Compensation (Sandy Hermiston, General Counsel, Alex Phillips, Legal Counsel and Barb Osborne, Legal Secretary) has consistently expedited investigations and inquiries from my Office.

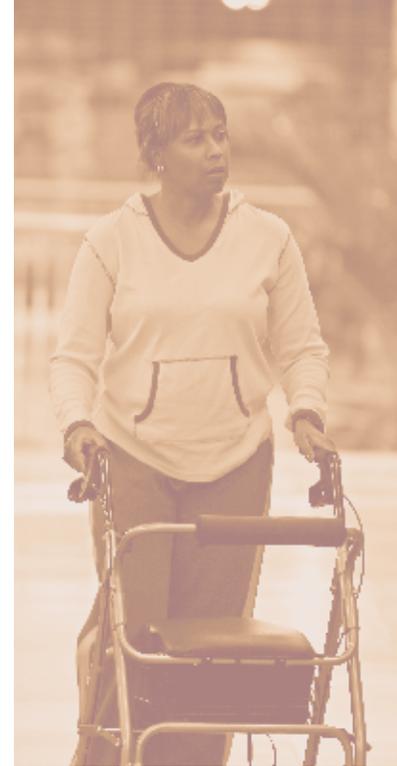
complaints analyst. This will bring my total staff complement to 24. My submission to the Standing Committee also projected the need for additional staff increases in the coming years to build the capacity of this Office to meet the needs of Albertans. It is interesting to note the Ombudsman had a complement of 16 staff back in 1973 and by 1990, staff had increased to 20. This recent increase is the first beyond 20 staff since a reduction to 17 during government-wide cutbacks in the mid-1990s. The population of Alberta, the number and complexity of services and programs delivered by government departments and jurisdictional authorities and the scope of my jurisdiction has increased significantly over that time period. It is time for our human resource complement to catch up so we can meet the demands and expectations of citizens and the Legislative Assembly of Alberta.

The third significant development is the completion of the first Ombudsman's own motion investigation initiated in many years. Although this investigation was less complex than others undertaken in the past and some looming on the horizon, it demonstrated the relevance and importance of these types of investigations. A full account of my own motion investigation is found later in this report.

Finally, in March 2007, we initiated a pilot project to make the Ombudsman and our services more easily accessible to rural Albertans. Accompanied by two of my staff, we traveled to Lacombe, Stettler, Innisfail and Red Deer for a week where we set up intake offices to receive complaints from citizens. I also gave several media interviews and a number of presentations explaining our role to local community groups. Based on the success of this venture, we intend to repeat the initiative in other areas of the province next year.

LOOKING TO THE FUTURE

As the year ended, I commenced an Organizational Structural Assessment of the Office with the input of highly-qualified external consultants. This assessment identified opportunities to gain efficiency and effectiveness in our supervisory, investigative and management functions and to align these functions with our human resources to maximize our capacity. We will implement the recommendations from this assessment in the coming year to continue building the capacity of this Office.



Dave Schneider,
Manager of Income
Support - Learners,
Alberta Employment,
Immigration and
Industry, has
demonstrated his
willingness to solve
problems.

Dr. Gordon Thompson, Executive Director and Registrar and Dr. Hugh Campbell, Commissioner and Complaints Director, Alberta Dental Association and College, have gone beyond accepting the Ombudsman's recommendations on an individual complaint to applying the recommended principles of administrative fairness to improve general college practices.

THE INTERNATIONAL OMBUDSMAN INSTITUTE (IOI)

I mentioned last year I had been honored with election to the Board of Directors of the IOI and I attended my first Board meeting in Barcelona, Spain in October 2006. I also had the pleasure of hosting delegates from the People's Republic of China in June 2006 and in March 2007, I co-hosted an IOI Board of Directors Task Force meeting in conjunction with the University of Alberta (U of A) Faculty of Law. The Task Force was formed to undertake a number of reviews and initiatives to ensure the IOI delivers services needed by its membership. The U of A has hosted IOI headquarters since its creation in 1978 and has now advised the Board of Directors it will conclude this arrangement by the next IOI World Congress in 2009. The Task Force has assumed the additional tasks of identifying a new host for IOI headquarters and facilitating an orderly transition after a decision is approved at the next World Congress.

IN CONCLUSION

As I discussed last year, initiating systemic investigations under my own motion is a priority for this Office. However, we cannot reasonably start such investigations until the complaint-generated workload is handled in an acceptable and timely manner. Every member of my staff is committed to accomplishing that objective and we look forward to making significant progress in the coming year.



G. B. (Gord) Button
Alberta Ombudsman



BUSINESS PLAN UPDATE

BUSINESS PLAN UPDATE

We are committed to creating value for our stakeholders. A tool we utilize for guidance and future direction is our three-year Strategic Business Plan, developed in 2005 and updated annually.

Four core objectives were identified to accomplish our goals. They are:

- To Manage the Workload in an Efficient and Effective Manner;
- To Excel in Investigations;
- To Improve Morale, Workplace Wellness and Competency through Communication, Self Development, Training, Performance Management and Adherence to our Values; and
- To Enhance Knowledge and Understanding of the Role of the Ombudsman.

Following are highlights of initiatives undertaken this year to meet our objectives.

Objective #1: To Manage the Workload in an Efficient and Effective Manner.

1. Alternative Complaint Resolution (ACR) is an informal issue resolution process resulting in better use of limited investigator resources. All jurisdictional complaints are reviewed to determine if they are appropriate for the ACR process. This year, there was a 30% decrease in ACR files attempted over last year but the successful completion rate of ACRs increased from 63% to 75%.
2. Oral and e-mail inquiries are responded to appropriately and promptly, as follows:

Target	2006/07 Actual
90% of e-mail inquiries responded to within 24 hours	98% response within 24 hours
90% of telephone inquiries responded to within 4 hours	91% within 2 hours 99% within 4 hours

3. The Alberta Ombudsman Case Tracking System was successfully updated to reflect new reporting standards and to improve statistical reporting.
4. Staffing levels were reviewed to ensure our ability to effectively manage anticipated increased workload due to expanded jurisdiction and delivery of own motion investigations. Additional funding was approved in the 2007/08 budget for three investigators and one complaints analyst.

Consultants were hired to review the managerial structure of the Office to determine an organizational framework to best support our goals and performance targets.

Objective #2: To Excel in Investigations.

1. Improvements have been made in the timely completion of investigations. Our achievements are as follows:

File Closure	2006/07 Actual
Target - All Written Files	
75% of files completed within 90 days	73.6% completed
80% of files completed within 180 days	77.2% completed
90% of files completed within 1 year	85.4% completed
100% of files completed within 2 years	98.6% completed

Complaints Resolved	2006/07 Actual
Target - Formal Investigation & ACR	
32% of files completed within 90 days	26.5% completed
50% of files completed within 180 days	36.5% completed
75% of files completed within 1 year	59.6% completed
100% of files completed within 2 years	96.1% completed

2. There was a 2% decrease in the number of active files as of March 31, 2007.
3. 100% of complainants are contacted within 14 days of receipt of their written complaint (target: 90%).
4. 97% of complainants are contacted within 10 days of assignment of the file to an investigator (target: 85%).
5. 97% of complainants are updated on the status of investigations at least every 30 days (target: 80%).



Objective #3: To Improve Morale, Workplace Wellness and Competency through Communication, Self Development, Training, Performance Management and Adherence to our Values.

1. All investigative positions are staffed.
2. All staff participate in annual performance reviews.
3. Staff development opportunities have been identified within individual learning plans, including:
 - University of Alberta Management Development Program;
 - office-wide training in time management and Appropriate Conflict Resolution Skills facilitated by the Alberta Arbitration and Mediation Society; and
 - Forum of Canadian Ombudsman investigator training.
4. We developed strategies to address attraction and retention of employees and succession planning.

Objective #4: To Enhance Knowledge and Understanding of the Role of the Ombudsman.

1. We organized an outreach tour to meet with various organizations, including services clubs, town councils, Chambers of Commerce and the media in Lacombe, Red Deer, Stettler and Innisfail. Mobile intake clinics were established to receive complaints from citizens.
2. We participated in the development of a video presentation showcasing the Alberta Ombudsman office presenting to the School-at-the-Legislature program in the Alberta Legislature Virtual Visit.
3. Our Office is promoting greater awareness of our services through:
 - authority consultations;
 - advertising in public transit;
 - stakeholder mail-outs of posters and brochures; and
 - 57 presentations to various groups, including:
 - Regional Health Authorities and health services groups on the role of the Ombudsman in the patient concerns resolution process;
 - School-at-the-Legislature program to educate grade six students on the role of the Alberta Ombudsman office;
 - Correctional Services Disciplinary Review Board members; and
 - other service clubs, conferences and municipal councils.
4. We developed the 2007/08 - 2009/10 Strategic Business Plan which builds on our existing four objectives.

LOOKING AHEAD

The following Key Initiatives are components of the 2007/08 - 2009/10 Strategic Business Plan:

Objective #1: To Manage the Workload in an Efficient and Effective Manner.

- update the Policy and Procedure Manual;
- establish electronic file management guidelines and templates;
- manage the workload with a target of 25 open files per investigator;
- oral and e-mail inquiries responded to appropriately and promptly:
 - 90% of e-mail inquiries responded to within 24 hours;
 - 90% of telephone inquiries responded to within 4 hours;
- enhancement of Case Tracking System capabilities;
- budget management system maintained with quarterly reporting;
- assess management and supervisory needs and capacity; and
- review staffing levels.

Objective #2: To Excel in Investigations.

- investigations of written complaints completed within an acceptable time frame with targets based on 2006/07 performance;
- quality of investigations: develop and implement an audit review process to provide guidance and direction at key times during an investigation to improve the quality of investigations;
- complainants contacted by investigators and progress reported early and often:
 - analysis completed within 14 days (target: 90% within 14 days; 100% within 30 days);
 - complainants responded to within 14 days of receipt of complaint (target: 90% within 14 days; 100% within 30 days);
 - complainants contacted within 10 days of receipt of file for investigation (target: 85% within 10 days; 93% within 20 days);
 - complainants updated on status of investigation within 90 days (2nd contact) and subsequently at least every 60 days (target: 90%);
- mentoring new investigators; and
- identification of programs or processes for own motion investigations.

Objective #3: To Improve Workplace Wellness and Staff Development.

- sufficient and competent investigative staff in place to meet the responsibilities of the Office;
- assess investigative position classifications to ensure relevancy;
- develop a process for reporting allegations of wrongdoing;
- perform ergonomic assessment of workspace;
- establish a resource library;
- foster a positive work environment;
- demonstrate positive and timely communication; and
- commitment to Vision, Mission and Values of the Office.

Objective #4: To Enhance Knowledge and Understanding of the Role of the Ombudsman.

- update communication strategy;
- review and update website to ensure it is user friendly and instructive;
- educate jurisdictional entities on principles of administrative fairness;
- assess satisfaction of complainants and organizations with investigational processes through a stakeholder survey; and
- maintain and annually update the Strategic Business Plan.





ALBERTA
OMBUDSMAN
1967~2007

Celebrating 40 Years Focused on Fairness



**ALBERTA OMBUDSMAN
40TH ANNIVERSARY 1967-2007**

HISTORICAL OVERVIEW

2007 marks the 40th Anniversary of the Alberta Ombudsman office, the first such office in North America. With a mandate to investigate complaints about the decisions and actions of provincial government departments, boards, agencies, commissions, designated professional organizations and the patient concerns resolution process of Regional Health Authorities, the Ombudsman undertakes confidential, impartial investigations at no cost to the complainant or refers citizens to a contact, department or complaint mechanism when the matter falls outside the Ombudsman's jurisdiction to investigate.

HISTORY

In 1965, Carlton W. Clement Q.C., chaired an independent committee which concluded Alberta needed a provincially-legislated Commissioner to respond to complaints by citizens who were dissatisfied with the service they received from provincial government departments and agencies. The Legislative Assembly agreed and appointed the first Alberta Ombudsman, George B. McClellan, on September 1, 1967. As a result, Canada became the fourth Commonwealth country – after New Zealand, Guyana and the United Kingdom – to establish an ombudsman's office.

Alberta is currently served by the seventh Ombudsman, G. B. (Gord) Button.

MAKING AN IMPACT BY IMPROVING FAIRNESS

The goal of the Ombudsman is to create fairer administration for all Albertans. Investigation of a specific complaint may raise examples of isolated unfairness, but it may also shine a spotlight on systemic issues which, when rectified, create better government experiences for all citizens.

The following specific examples highlight how in recent years the Ombudsman has prompted positive systemic change:

- The Protection for Persons in Care 2005-2006 Annual Report states their administrative fairness improved “as a result of the recommendations of the Alberta Ombudsman. To ensure that investigations completed by Protection for Persons in Care are administratively fair, significant changes were made to the complaints and investigation process.”
- Following an investigation into the administrative fairness of a review panel of the Agriculture Financial Services Corporation (AFSC), President Brad Klak indicated the AFSC will review various committees and processes to incorporate the Ombudsman's recommendations for improved fairness in all their processes.
- Millions of dollars were returned to low income mothers and children and inter-governmental communication was improved as the result of an

investigation into the Maintenance Enforcement Program and welfare interface.

- Significant changes were made to government supervision of day cares following the investigation into the circumstances surrounding a child strangulation at a day care playground.
- The Alberta Dental Association and College accepted and acted on the Ombudsman's recommendations for communicating its decisions to the public in a fairer manner.

The everyday efforts of the Alberta Ombudsman office have also improved the fairness of Citizens' Appeal Panels, policies and investigative practices on workplace harassment within government and Workers' Compensation Board review processes. The Office has successfully prompted numerous apologies for complainants over the years for unfair treatment they received and pressed for significant policy and legislative changes to improve fairness. The oversight of the Ombudsman has improved processes by creating identifiable and effective appeals, improving standards for timeliness and politeness in response to citizen complaints and promoting clearly written, plain language government documents and correspondence to complainants. The Office has promoted the right for citizens to be heard and to know the case against them and has continually refocused civil servants on their original mandate, questioning whether the intended service was provided.

Other improvements include better communication between government departments, greater separation between original decision-makers and those hearing appeals and increased independence of boards. The names of decision-makers are more readily available and there is greater accountability as the result of clearer delegation of authority. The Office has also helped provincial civil servants improve their understanding of the concepts of administrative fairness, thereby encouraging fairer government administration for all citizens.

EVOLVING JURISDICTION OVER TIME

In 1967, the Ombudsman's jurisdictional reach granted by the *Ombudsman Act* included Alberta government departments, boards and agencies. There was an immediate question of jurisdiction over the Workers' Compensation Board (WCB): legal opinions held that the WCB was not a provincial agency within the meaning of the *Ombudsman Act*. An amendment was passed and on April 25, 1968, the Ombudsman's jurisdiction expanded to include the WCB. The Ombudsman's jurisdiction was again challenged in 1969 by the Minister of Municipal Affairs who questioned the Ombudsman's ability to investigate a Provincial Planning Board decision. Chief Justice J.V.H. Milvain ruled the Ombudsman did indeed have jurisdiction to investigate.



1972: the *Ombudsman Act* was amended to allow the Ombudsman to seize original departmental documents, files and other pertinent items in an investigation and hold them for up to 48 hours.

1977: a Select Standing Committee affirmed the need for complainants to complete departmental appeals prior to complaining to the Ombudsman but refused to consider expanding jurisdiction over municipal governments and nursing homes.

1978: the *Act* was further amended to allow the Ombudsman to launch investigations based on a Ministerial Order. The amendment also excluded investigations of hospitals.

1980s: the Ombudsman's jurisdiction over mental patient complaints was challenged repeatedly with the release of the Drewry Report which led to major amendments to the *Alberta Mental Health Act*. In 1988, the new *Mental Health Act* resulted in an amendment to the *Ombudsman Act*, removing two mental health hospitals and the Mental Health Patient Advocate from the Ombudsman's jurisdiction.

1994: the Ombudsman recommended the government review the mandate of the Mental Health Patient Advocate, noting the lack of remedy for voluntary patients and some involuntary patients to mental health hospitals.

1996: the *Ombudsman Act* was amended to include protection for persons who make or assist in making a complaint under this *Act*.

1997: discussion commenced to expand jurisdiction over Regional Health Authorities and health professions. The jurisdiction over health professions was granted in 2001 with the enactment of the *Health Professions Act*, giving the Ombudsman jurisdiction over 28 health professions as their schedules are proclaimed. To date, schedules have been proclaimed by 20 of 28 health professions.

2001: the Ombudsman received jurisdiction over three accounting professions by the enactment of the *Regulated Accounting Profession Act* and two forestry professions via the *Regulated Forestry Profession Act*.

2003: the enactment of the *Veterinary Profession Act* brought this profession under the jurisdiction of the Ombudsman and a further amendment to the *Ombudsman Act* created jurisdiction over the complaint resolution process of Regional Health Authorities and the Alberta Cancer Board once the enabling legislation is proclaimed.

2006: the Patient Concerns Resolution Process Regulation was enacted which granted the Ombudsman jurisdiction over the patient concerns resolution process of Regional Health Authorities and the Alberta Cancer Board.

2007: the Ombudsman was granted expanded jurisdiction by the enactment of the *Agrology Profession Act*.

HISTORICAL PERSPECTIVE FROM A LONG-SERVING STAFF MEMBER

In 1973, Diann Bowes (photo below) was hired into the “steno pool” in the Alberta Ombudsman office. Thirty-four years later in 2007, Ms. Bowes continues in her role as an Ombudsman’s investigator. She has truly seen it all.

After stints as the lawyer’s secretary and the Ombudsman’s secretary, Ms. Bowes was promoted in 1980 to investigator/complaints analyst and hasn’t looked back. She’s outlasted every previous Alberta Ombudsman and still has the passion to promote greater administrative fairness in Alberta government.

“I know for certain that as a result of the efforts of our Office, we have made government fairer,” Ms. Bowes explains. “There is definitely a greater understanding of administrative fairness (within the jurisdictional authorities) because of us.”

Ms. Bowes says that while every Ombudsman comes to the position with a different set of experiences and priorities, the focus on fairness has remained constant throughout. What has changed over time, she says, is the nature of government.

“Government is far more complex now,” she says, “and with that change in structure comes more accountability. People with complaints definitely have a stronger demand for accountability now than in years past.”

One of her fondest memories is from the early days with Ombudsman George McClellan, who was one of a handful of mourners at the funeral of a former mental health patient at Alberta Hospital, Ponoka. Mr. McClellan was instrumental in securing the release of the patient after more than 30 years in hospital after he was held under a Lieutenant-Governor’s Warrant, without any review of his confinement. Mr. McClellan’s recommendation for the patient’s release was accepted, as was his recommendation that a monthly pension be paid to the former patient.

“I saw how committed Mr. McClellan was to this work, and it was a real lesson to me in the difference the Alberta Ombudsman office can make,” she says.

Ms. Bowes says it’s sometimes difficult for investigators to remain separate from the people and situations they encounter through investigations.

“It’s a real challenge to be detached without dehumanizing ourselves,” she says.



THE OMBUDSMAN LOOKS AHEAD

While Ombudsman G. B. (Gord) Button has about a year left in his current five-year term, his focus is much further down the road.

“We operate and manage as though there is continuity and consistency in direction,” he explains. He hasn’t yet decided if he’ll apply for a second five-year term, but regardless of who holds the position, a plan is in place to propel the Office forward into the next decade.

The Ombudsman recently released his second Strategic Business Plan, encompassing fiscal years 2007/08 through 2009/10. The Plan builds on the success already achieved in the first Plan “towards continuous improvement and fulfilling our mandate”, he says.

There are four key objectives for the next three years:

- 1) effective and efficient workload management, achieved through bolstering infrastructure, systems and staffing;
- 2) excel in investigations through timely completion, quality outcomes, good communication with complainants, staff mentoring and greater emphasis on proactive (own motion) investigations;
- 3) improved workplace wellness and staff development through such things as improved workspace ergonomics, development of a resource library and positive and timely communication, both internally and externally;
- 4) enhanced knowledge and understanding of the role of the Ombudsman through an annually-updated communications strategy (including annual rural tours throughout the province), a user-friendly and updated website and a satisfaction survey for both complainants and jurisdictional authorities.

The Ombudsman says the satisfaction survey will be a valuable tool to “assess the perception of the quality of our service. It will help identify issues where we are not necessarily meeting expectations and identify what is working or not working with our relationships with jurisdictional authorities.”

The Office is increasing staffing levels with an addition of three investigators and one complaints analyst, bringing the total staff complement to 24. This is the first time in the history of the Office that staffing levels have increased beyond 20, and the Ombudsman says the added resources will allow the Office to focus on more proactive investigations in coming years through own motion initiatives and the continued pursuit of systemic issues beyond specific complaint investigation.

“We will fulfill our role to constantly improve the way authorities deliver service,” he says. “Our focus on fairness beyond specific complaint resolution encompasses a commitment by authorities and decision-makers to be as good as they can be.”

1967 - 2007 BY THE NUMBERS

- 35,000+** written complaints received by the Ombudsman since 1967
- 15,500+** total investigations concluded
- 31,000+** total files concluded for all reasons, including jurisdictional and non-jurisdictional complaints
- 140,000+** total oral inquiries received since 1977 when oral inquiry statistics were first recorded

- 1975** first year written complaints numbered more than 1,000
- 9** number of years written complaints totaled more than 1,000
- 2,129** highest number of written complaints in one year. In 1987, more than 200 investigations were attributed to the collapse of the Principal Group of Companies.

- 6** number of Ministerial Orders resulting in investigations; the last was in 1995
- 10** number of Special Reports released by the Alberta Ombudsman office between 1970 and 1989
- 4** number of Special Reports released in 1979 alone

- 2** total staff complement in 1967 (the Ombudsman and his secretary)
- 16** total staff complement in 1973, including four in the newly-opened Calgary office
- 20** total staff complement in both 1990 and 2005 (although due to budget cuts, staff was reduced to 17 in 1994)

- 733** the average number of written complaints received annually in the last 10 years
- 5,384** the average number of oral inquiries received annually in the last 10 years

PROFILES OF ALBERTA OMBUDSMAN**George B. McClellan, 1967 - 1974**

Alberta's inaugural Ombudsman, George McClellan, took office September 1, 1967 and completed his term April 1, 1974. He made history as Alberta's first Ombudsman and the first provincial Ombudsman in Canada.

Born in Moose Jaw, Saskatchewan in 1908, Mr. McClellan joined the RCMP in 1932, serving in British Columbia, Alberta, Saskatchewan and Nova Scotia. He was appointed Commissioner in 1963 and retired in 1967.

As Ombudsman, Mr. McClellan was a passionate advocate for improving provincial government administration and gained considerable public acclaim



for the important injustices his Office rectified. His work had a lasting impact as he successfully pressed for several legislative amendments to the *Ombudsman Act* to ensure confidentiality, secrecy and independence.

Mr. McClellan was honoured with a Doctor of Laws degree by the Royal Military College in 1976 and in 1978, he was granted a similar degree by the University of Alberta. He passed away July 19, 1982 in Edmonton.

Dr. Randall E. Ivany, 1974 - 1984

As Alberta's second Ombudsman, Dr. Randall Ivany was appointed to his first five-year term on May 1, 1974. He was re-appointed to a second term in 1979.

Born in Newfoundland in 1933, Dr. Ivany was an electrical engineer prior to studying theology. Following Anglican Church ordination, he served various parishes prior to his 1964 appointment as Dean of All Saints Cathedral in Edmonton.

Dr. Ivany had a strong passion for promoting ombudsmanship internationally. As a founding member of the International Ombudsman Institute, he hosted the first International Ombudsman Institute Conference in Edmonton in 1976, welcoming 45 Ombudsman from 28 countries. He gained considerable public attention for the Office and steadfastly promoted the principles of fairer government administration.

Dr. Ivany received an honorary Doctor of Laws degree from the University of Alberta in 1981 and the Order of Canada in 1985. He passed away on September 24, 1988.

Brian Sawyer, 1984 - 1987

Brian Sawyer was Alberta's third Ombudsman from September 1, 1984 to May 15, 1987. A native of Montreal, he was born in 1930.

Mr. Sawyer began his 21-year career with the RCMP in 1951. After retiring in 1972 as Superintendent, he was appointed Chief of Police of the Calgary Police Service. Over the next 12 years, Mr. Sawyer implemented a decentralized approach and promoted greater co-operation between police and the public.

In his role as Ombudsman, Mr. Sawyer established a managerial system whereby Office investigators accepted active management of investigations once the Ombudsman initiated an investigation, concluding the file with a recommendation to the Ombudsman. This system is still in place today.

Mr. Sawyer left the Alberta Ombudsman office in 1987 to pursue a private-sector position as Director of Corporate Security.



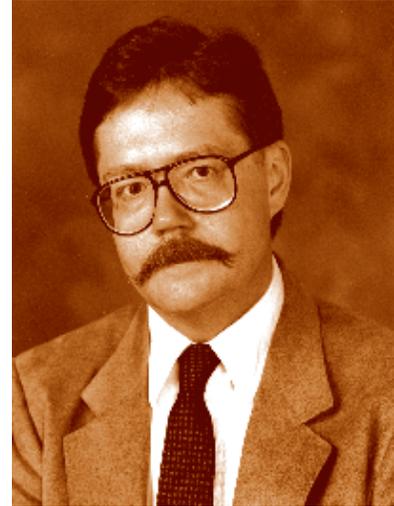
Aleck H. Trawick, 1987 - 1989

Born in Regina in 1945, Aleck Trawick served as Alberta's fourth Ombudsman from 1987 to 1989.

Mr. Trawick practiced law in Calgary after graduating with a Bachelor of Law degree from the University of Saskatchewan in 1969. He was devoted to the Law Society of Alberta, the Canadian Bar Association and several community and charitable organizations and worked extensively with the Canadian Mental Health Association.

As Ombudsman, Mr. Trawick personally conducted a major investigation into complaints against the Alberta Securities Commission and also led a two-year investigation into the government's role in the collapse of the Principal Group of Companies. This complex investigation included an in-depth look at the 30-year history of financial institution regulatory systems in Alberta.

Mr. Trawick left the Alberta Ombudsman office in 1989 and returned to the practice of law in Calgary.



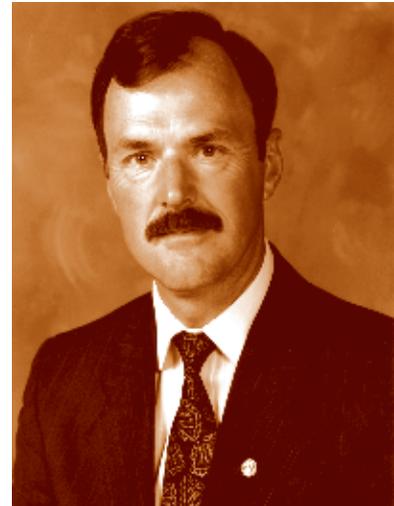
Harley A. Johnson, 1990 - 1997

Harley Johnson was appointed Alberta's fifth Ombudsman February 1, 1990. He was born in Vancouver in 1944.

Mr. Johnson began his career with the Royal Canadian Army and joined the Calgary Police Service in 1965. In 1986, Mr. Johnson was seconded to the XV Olympic Winter Games Organizing Committee as Manager of Olympic Security for the 1988 Olympic Winter Games. He returned to the Calgary Police Service in 1988 and retired from the force as Superintendent of Information Services in 1990. He was also the Executive Director of the International Ombudsman Institute.

As Ombudsman, Mr. Johnson promoted a facilitative approach to informal complaint resolution. He oversaw a major joint investigation with the Alberta Human Rights Commission and conducted three separate Ministerially-ordered investigations into the selection and approval of foster parents, government procedures relative to construction contracts with the private sector and a client suicide at the Workers' Compensation Board offices.

Mr. Johnson completed his term in March 1997. He was appointed as the first Alberta Métis Settlements Ombudsman in March 2003 and served in this position until May 2007.



G. G. S. (Scott) Sutton, 1998 - 2003

Alberta's sixth Ombudsman was Scott Sutton, who held the Office from April 1, 1998 through June 30, 2003. He was born in 1946.

Prior to his appointment, Mr. Sutton's 32-year RCMP career included postings in three provinces and the Yukon. He gained diverse experience in numerous settings, including isolated rural locations, major municipalities and at RCMP Headquarters in Ottawa. A keen advocate of and participant in community-based policing, Mr. Sutton developed great sensitivity for multiculturalism and human rights issues.

Mr. Sutton believed fairness was a standard to be practiced by all rather than a theory to be discussed or a model expected from others. During his tenure, the jurisdictional umbrella of the Office expanded to include three accounting professions, two forestry professions, veterinarians and certain health professions.

As Ombudsman, Mr. Sutton served as Vice President of the Canadian Ombudsman Association and as a member of both the United States Ombudsman Association and the International Ombudsman Institute.

G. B. (Gord) Button, 2003 - present

Gord Button was appointed September 15, 2003 as Alberta's seventh Ombudsman.

Born in Nipawin, Saskatchewan in 1951, Mr. Button joined the RCMP in 1971 and served in several postings throughout Alberta. In 1990, he was transferred to Newfoundland as Inspector and in 1999, he was transferred to Ottawa and promoted to Chief Superintendent as the Director General of Organizational Renewal and Effectiveness. He returned to Alberta in 2001, retiring in 2003 from the position of Officer in Charge of Criminal Operations for Alberta.

Mr. Button has incorporated significant changes to the way the Alberta Ombudsman office conducts business. He instituted Alternative Complaint Resolution for less formal complaint handling, he created the position of Deputy Ombudsman and he developed a long-term Strategic Business Plan for the Office. During his tenure, several more health professions have come under the jurisdiction of the Office as well as the complaint-handling processes of Regional Health Authorities and the agrologist profession.

Mr. Button serves as Past-President of the Canadian Council of Parliamentary Ombudsman and was elected to the Board of Directors of the International Ombudsman Institute, representing the North American Region.



OUR ROLE

OUR ROLE

The Alberta Ombudsman has the authority to investigate decisions, actions or recommendations made by a jurisdictional authority, which includes government departments, agencies, boards and commissions as well as various professional organizations and authorities. Individuals who have concerns or complaints about the fairness of administrative actions by jurisdictional authorities may bring these matters to the Alberta Ombudsman. Contact may be made by a phone call to the Office, through a letter or through our online complaint form located on our website. The *Ombudsman Act* states our Office can only investigate complaints submitted in writing.

If the initial contact is made by phone, the call will be directed to an intake officer who determines the caller's issues and whether the concern is with an agency jurisdictional to the Alberta Ombudsman. If the concern is not jurisdictional, the caller is referred to the appropriate source for information or resolution.

APPEAL MECHANISMS

The caller may have a concern regarding the actions of a jurisdictional authority but may not have used all available appeal processes. The *Ombudsman Act* requires complainants to take their concerns through these processes before seeking help from the Ombudsman. If all appeal processes have not been exhausted, the intake officer will provide information on options and processes available to the caller.

Callers who have a jurisdictional complaint and have completed the appeal processes may be able to resolve their complaint through Informal Resolution. For example, the caller could be an inmate who brought a concern to the attention of the correctional centre Director but has not received a response. Rather than ask the inmate to make a formal written complaint to the Ombudsman, the intake officer may contact the Director, provide information and inquire about the status of the inmate's concern. The intake officer may determine the Director's response was sent but not yet received or the call may prompt a more timely response to the inmate. Whatever the outcome, such action by our Office is an attempt to resolve the issue in a timely fashion.

For all other oral complaints, the intake officer will explain the process of making a written complaint by using either our online complaint form or by letter. The caller will be advised of the process that will occur once a written complaint has been received by the Ombudsman.

COMPLAINT ANALYSIS

Written complaints are reviewed by a complaints analyst. The analyst will consider whether:

- the complaint is about an authority under the jurisdiction of the *Ombudsman Act*;
- the complainant has exhausted all avenues of appeal;
- the complaint is a matter before the courts;
- the complainant has been directly affected by the action or decision being complained about;
- the complainant has third-party representation; and
- the complainant has come forward in a timely manner.

The analyst will also identify the issues within the complaint. No action is taken on anonymous complaints.

If the Ombudsman accepts the complaint, there are two options for resolution: the matter could proceed to a formal investigation or Alternative Complaint Resolution may be attempted. In both cases, the file is assigned to an investigator.

ALTERNATIVE COMPLAINT RESOLUTION

Alternative Complaint Resolution (ACR) is a less formal process for handling complaints. It may be pursued for the following complaints:

- those which may have a reasonable chance of resolution within 21 days;
- those which involve fewer or less complex issues which are specific to the complainant; and
- where a less formal complaint resolution would be appropriate.

ACR is a process which is agreed to by both the complainant and the authority being complained about. Once the issues are clarified with the complainant, an authority representative is contacted and possible avenues for resolution are discussed. Examples of potential resolutions include the provision of additional information between parties or negotiation of further actions by either party. The Ombudsman's investigator facilitates the complaint resolution but does not advocate for the interests of either party. If the matter is successfully resolved, the file is closed. If ACR is unsuccessful, the matter is reconsidered for formal investigation.



FORMAL INVESTIGATION

A formal investigation begins with correspondence to the complainant and the Deputy Minister responsible for the department or the administrative head of the authority. If the complaint involves actions of more than one jurisdictional authority, files are opened with each one. The correspondence outlines parameters of issues for investigation and the letter to the authority usually includes a copy of the complaint letter or the details from the online complaint form. The authority is asked to provide a written response, including all relevant documentation, policy and legislation. The investigator reviews this response and file materials relevant to the complaint and interviews appropriate staff members to determine if there is additional information related to the identified issues. The investigator also interviews the complainant to obtain any additional information or request clarification of the issues. The investigator may interview anyone believed to have information relevant to the investigation and request copies of all pertinent documents that the complainant or others may have in their possession.

Once all information is gathered, the investigator analyzes the information based on the principles of administrative fairness and prepares an Investigation Report. This report identifies the issues investigated and provides a background for the complaint. Information relevant to each issue is described and analyzed and conclusions are explained. Based on the analysis and conclusions, the investigator recommends a resolution for each issue to the Ombudsman.

ADMINISTRATIVE UNFAIRNESS

If administrative unfairness is identified, the issue is supported. The issue is not supported if the actions or decision did not demonstrate administrative unfairness and were consistent with legislation, policy and the principles of administrative fairness. For administratively unfair issues, the Ombudsman recommends a remedy which must be consistent with the nature of the unfairness. For example, if a decision was written in an administratively unfair manner, the Ombudsman may recommend the decision be rewritten or amended to rectify the deficiencies. If a hearing was conducted in an administratively unfair manner, the Ombudsman may recommend the decision be set aside and a new hearing held.

Investigations resulting in findings of administrative unfairness are reviewed by the Ombudsman's Senior Management Team in an advisory capacity. The final decision to support the complaint and to recommend a remedy to the authority rests with the Ombudsman.



INVESTIGATION CONCLUSION

At the conclusion of the investigation, the Ombudsman reports his findings on unsupported complaints to the complainant and the authority investigated. The decision identifies each issue investigated and the findings or conclusions.

On supported complaints the Ombudsman shares his findings and recommendations with the Deputy Minister of the department or administrative head of the authority and gives that person the opportunity to respond. There are occasions when the Deputy Minister or administrative head of the authority agrees with the finding of administrative unfairness but will offer a different option for resolution. The recommendation for final resolution will be one which is acceptable to both the Ombudsman and the Deputy Minister or administrative head of the authority. When the Ombudsman makes a recommendation, he relies on the power of persuasion as he does not have the authority to require an action. Once agreement is reached on a resolution, the conclusion will be shared with the complainant.

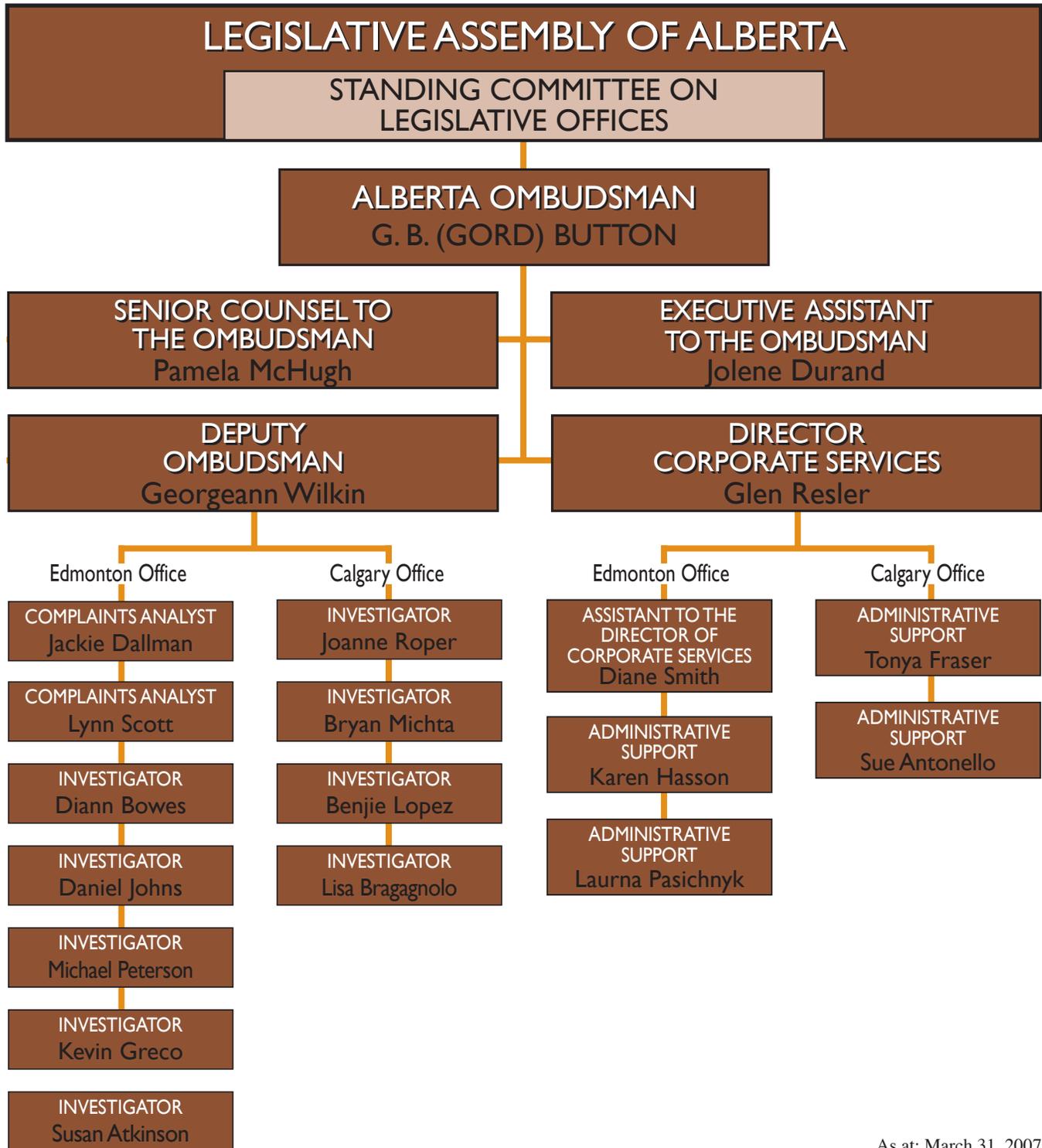
Many recommendations result in an action which directly impacts the complainant. Other recommendations correct a systemic issue which affects more than one person and improves the process or system within an authority. These systemic changes will improve services for Albertans in the future.

OWN MOTION INVESTIGATIONS

The Ombudsman has an additional investigative power to conduct an own motion investigation, initiated at his discretion. For example, an own motion investigation may result from a number of questions about the administrative fairness of a program that have come to the Ombudsman's attention through various investigations. The Ombudsman advises the Minister and the public when commencing an own motion investigation and reports publicly on his findings upon conclusion.

COMMITTEE-REFERRED OR MINISTERIALLY-ORDERED INVESTIGATIONS

The *Ombudsman Act* contains two other ways in which the Ombudsman can commence an investigation: a committee of the Legislative Assembly may refer a matter to the Ombudsman for investigation or a Minister of the Crown may order the Ombudsman to conduct an investigation. These provisions are rarely used.



As at: March 31, 2007

THURSDAY

17

10

11

YEAR IN REVIEW

YEAR IN REVIEW

April 1, 2006 through March 31, 2007

Of the 633 written complaints received, the most common authorities by volume of complaints are:

Alberta Solicitor General and Public Security

12%

Workers' Compensation Board

9%

Alberta Justice and Attorney General

8%

Alberta Employment, Immigration and Industry

8%

Appeals Commission for Alberta Workers' Compensation

6%

Alberta Seniors and Community Supports

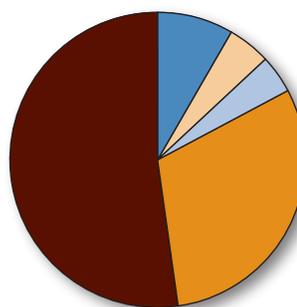
6%

Alberta Children's Services

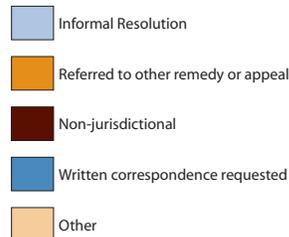
5%

4,179 Oral complaints received, down 5.8% from 2005/06

- 177 Informal Resolution *
- 1,282 Referred to other remedy or appeal
- 2,178 Non-jurisdictional
- 346 Written correspondence requested
- 196 Other

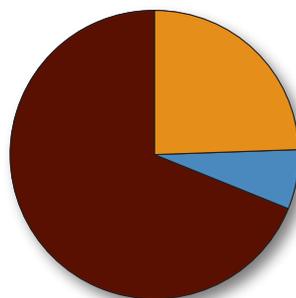


ORAL COMPLAINTS



633 Written complaints received, down 5.5% from 2005/06

- 156 New investigations
- 42 New Alternative Complaint Resolution (ACR) files
- 435 Declined for investigation (non-jurisdictional or referred to other remedy)

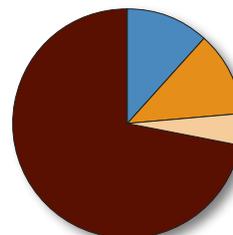


WRITTEN COMPLAINTS



68 Total ACR issues

- 49 Successfully resolved through ACR
- 8 Unsuccessful; transferred to formal investigation
- 8 Discontinued
- 3 Carried forward to 2007/08



ACR FILES



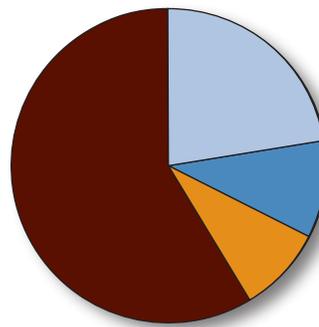
YEAR IN REVIEW (continued)

259 Files carried forward from previous years

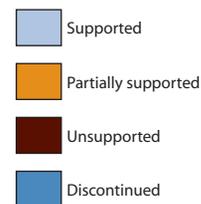
639 Files closed as of March 31, 2007

183 Formal investigations completed containing 346 issues

- 44 Supported
- 34 Partially supported
- 229 Unsupported
- 39 Discontinued

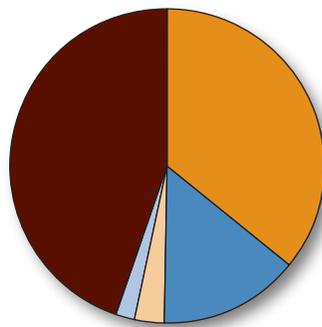


FILES CLOSED - FORMAL INVESTIGATIONS

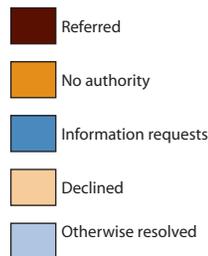


409 No investigation initiated

- 183 Referred to other remedy or appeal
- 147 No authority to investigate
- 59 Information requests
- 13 Declined on discretionary grounds
- 7 Otherwise resolved (without completing a full investigation)



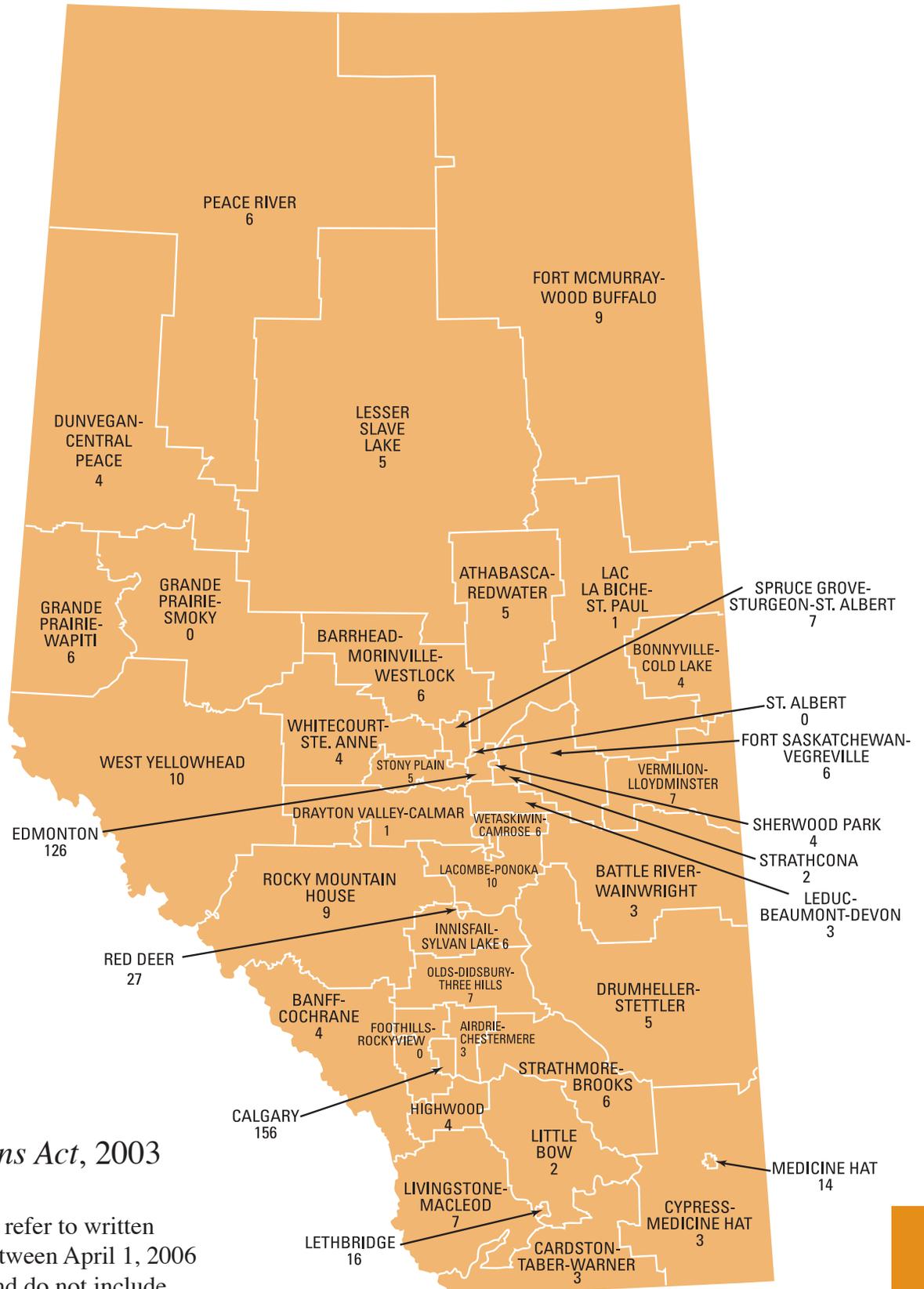
FILES CLOSED - NO INVESTIGATION



47 ACR files closed

253 Files carried forward to 2007/08

*4% of oral complaints received were resolved in discussion with the authority without requiring a formal investigation



PROVINCIAL ELECTORAL DIVISIONS

as defined by the *Electoral Divisions Act, 2003*

The figures on the map refer to written complaints received between April 1, 2006 and March 31, 2007, and do not include complaints that originated from individuals in provincial correctional centres (56), federal penitentiaries (3) and out of province (62).



ADMINISTRATIVE FAIRNESS

ADMINISTRATIVE FAIRNESS GUIDELINES

Through the investigative process, we determine whether the actions or decisions being complained about are administratively fair. We determine fairness by applying the following guidelines to each case.

1. ***Chain of legislative authority.*** What legislation created the authority or power to make a decision and to which decision-maker was the power granted?
2. ***Duty of fairness.*** The courts require that decision-making which affects the rights of individuals must follow a fair process. This duty of fairness means there must be procedural fairness in decision-making. We look for greater procedural protection if there is:
 - no right of appeal established within the statute;
 - no further appeal mechanism provided by the jurisdictional authority; and
 - a substantial effect on the individual's rights (i.e. loss of financial benefits).
3. ***Participation rights.*** Was the complainant given a full and fair opportunity to present their case to the decision-maker? Was there full disclosure of the case against the person, to the person?
4. ***Adequate reasons.*** There must be a rational connection between the evidence presented and the conclusions reached by the decision-maker. The decision and the reasons must be communicated clearly and identified by the decision-maker.
5. ***Reasonable apprehension of bias.*** We look for impartiality and independence of the decision-maker including relationships to all parties in the matter, both internally and externally.
6. ***Legitimate expectation.*** Did the decision-maker fail to honour a commitment or follow regular procedures?
7. ***Exercising discretionary power.*** We look to see how the discretion is established in the Act, Regulation or Policy Guidelines, etc. Discretionary decisions are reviewed to determine if there is evidence of bad faith, improper purpose or irrelevant considerations.
8. ***Was the decision reasonable?*** A reasonable decision does not equate to whether the decision is wrong or whether it might have been decided in a different way. A reasonable decision should indicate how the decision-maker considered and assessed the arguments and evidence.



ADMINISTRATIVE FAIRNESS CASE SUMMARIES

INTRODUCTION

Responses from authorities to the Ombudsman's recommendations this year have been positive and we have noticed steady improvement to fairness in the administration of programs and services. When the Ombudsman finds an administrative error and is making recommendations, we work with authority contacts to identify a resolution that is appropriate for the complainant and the authority and is acceptable to the Ombudsman.

There are several common themes to the administrative unfairness identified in these Case Summaries and in the recommendations and resolutions; for example, the adequacy of decisions. The Ombudsman recommended improvements to decision documentation, including:

- identification of the decision-maker;
- citing legislative authority and applicable policy;
- adequacy of reasons for conclusion; and
- explanation of the evidence and arguments considered and the weight applied to each.

These changes will enhance accuracy and consistency of legislation or policy application, provide adequate information to complainants, clarify information communicated to all parties, eliminate potential for bias and support the principles of administrative fairness.

The Ombudsman identified a number of cases of inadequate communication, including inadequate information about appeal processes, appropriate action steps and timelines. Clarification about policy application and exercise of discretion was recommended and changes to appeal processes were recommended and accepted.

The Ombudsman also made recommendations for improvement to complaint resolution processes, including reinforcing the need for accurate and complete documentation and communication to the complainant about the process and the outcome.

This year, we determined most decisions and actions of the authorities we investigated were reasonable and administratively fair. When we made recommendations for improvement, we did so with the dual intent of seeking remedy for the complainant and/or creating fairer processes and decision-making so that in future, all Albertans will benefit from fairer treatment. We typically receive positive responses from the authorities we investigate, illustrating their genuine desire to operate under administratively fair processes.

Following are explanations of how the administrative fairness principles are applied and examples of cases where recommendations by the Alberta Ombudsman resulted in improved processes.

1. CHAIN OF LEGISLATIVE AUTHORITY

When commencing an investigation, we examine the relevant legislation since all powers of government departments and agencies are derived from statute. We look at whether the legislation has delegated decision-making powers to a department, a board, a panel or an individual. A statute may grant the authority the ability to make regulations, grant decision-making power or it may grant the decision-maker the authority to exercise discretion based on parameters set out in regulation or in department directives and policy.

If there are no specific powers in the legislation, we look at the *Government Organization Act*. This *Act* establishes the general authority of a department or agency to create programs, delegate powers, enter into agreements or establish boards or tribunals.

Once legislative authority is determined, we look at whether the person making the decision in question had the authority to make the decision and whether it was made in a process consistent with that required in legislation, regulation or policy. We also confirm the legislation, regulation or policy relied upon was in place at the time of the decision.

Case summary: Alberta Seniors and Community Supports (now Alberta Municipal Affairs and Housing)

After a citizen complained she received an administratively unfair decision from the housing advisor, **Alberta Seniors and Community Supports** staff commenced an appeal process which was believed to be available for decisions made by municipal housing authorities. The Ombudsman's investigation found the housing advisor does not have the legislative authority to sit as an appeal body to hear appeals. The housing advisor only acts as a consultant to the municipal authorities when they are making housing decisions but there is no provision to hear an appeal of those decisions. The Ombudsman recommended clarification of the housing advisor's role to all those affected and suggested the development and implementation of appropriate legislation and policy if the department wishes to provide an appeal function. The department apologized to the complainant for the error.

2. DUTY OF FAIRNESS

The courts require decisions affecting the rights of individuals must follow a fair process. Decisions made by administrative bodies often have a more immediate and profound impact on people's lives than a court decision. Flowing from these decisions is a duty to act fairly and to make procedurally fair decisions. It is the legislative mandate of the Alberta Ombudsman to ensure the administrative decisions of jurisdictional authorities comply with this duty of fairness.

This obligation is flexible and variable, depending on the statute involved and the nature of the decision. The degree of fairness required is dependent on the effect of the decision on the rights of the individual and whether there is an avenue of appeal established in legislation. If there is no established right of appeal, or if this is the final level of decision-making, the requirement for procedural protection, or fairness, is greater.

Procedures used by administrative tribunals vary depending on several factors, including:

- the nature of the decisions;
- the level of legal sophistication and expertise of the panel members; and
- whether this is the last level of consideration.

For example, a government employee's decision in response to a citizen's request may be communicated differently from the decision of an administrative tribunal. The decision may be communicated verbally or in writing, depending on the circumstances. The **Maintenance Enforcement Program** in Alberta Justice and Attorney General frequently communicates with clients through e-mail due to the high volume of interactions with clients. An e-mail response in some situations is deemed sufficient and administratively fair. In other situations, such a response is inadequate and therefore unfair.

Greater procedural protection is required when there is a substantial effect on an individual's rights such as loss of financial benefits, disciplinary suspension or the right to continue in a profession or employment. Professional regulatory bodies under the *Health Professions Act* have stringent discipline procedures set out in legislation and regulation. Administrative fairness requires strict adherence to the rules.

A decision of the **Appeals Commission for Alberta Workers' Compensation** is an example of a final avenue of appeal where the decision will have a significant impact on the individual worker. The Appeals Commission has a clearly defined appeal process. The Appeals Commission Rules of Procedure include rules such as notice and disclosure, recording of proceedings and requirements of written decisions. The Appeals Commission meets the duty of fairness by following the established rules.

Case summary: Alberta Solicitor General and Public Security - Victims of Crime Financial Benefits Program

The Ombudsman investigated the administrative fairness of a decision by the **Victims of Crime Financial Benefits Program** to deny benefits to an applicant. The applicant applied for the benefit within the two-year application period as required under the *Victims of Crime Act*. The application was denied without further consideration because the maximum benefit allowed per incident was already paid out to another beneficiary. The Ombudsman found although the department showed compassion by providing a timely payout to the initial applicant, it was administratively unfair to consequently deny the availability of any benefit to any other potential applicants who might also apply within the two-year time period. It has been agreed the legislation and policy will be reviewed. The department has offered a financial settlement to the complainant.

Case summary: Agricultural Financial Services Corporation Appeal Committee

Two complaints were investigated regarding the administrative fairness of the appeal process within the **Lack of Moisture Insurance for Pastures Program** administered by the Agricultural Financial Services Corporation (AFSC). The Ombudsman found the process was administratively unfair and made a number of recommendations for improvement to the appeal process and to the decisions rendered. Decisions were rewritten to detail the evidence and arguments considered and how they were weighed. Decisions were also signed by the decision-makers. The appeal process was changed to include a provision to disclose possible conflicts of interest at the outset of a hearing. The AFSC Guidelines and Procedures Manual was revised to reflect practices regarding the retention of legal counsel by the parties or by the panel.

Case summary: Alberta Education

The mother of a student complained about the actions of the **Alberta Education Attendance Board** during a hearing regarding her son's attendance. She complained about several issues and the Ombudsman made a finding of administrative unfairness on some points which have resulted in changes to the hearing process. For example, the Ombudsman found documents and records were provided to the parties at the outset of a hearing. The process has been improved to provide documents in advance of the hearing so that all parties have an adequate opportunity for review prior to the hearing. The investigation also found part of the hearing proceeded without the mother's legal counsel present.



The Board's Guidelines have been revised to deal with adjournments involving temporary absences. It was noted the Board may register its Orders pertaining to school attendance in the Court of Queen's Bench and the Ombudsman recommended the establishment of guidelines for this process.

Case summary: Alberta Advanced Education and Technology - Learner Assistance

The Ombudsman investigated a number of complaints about the administrative fairness of the student finance appeal process of the **Learner Assistance** program for students who are appealing decisions about overpayment and demands for repayment. In the past, process timeframes were inconsistent and undefined. As a result of the Ombudsman's finding of administrative unfairness, the department agreed to place timelines on the appeal process. The department has also agreed to improve communication about the process on its website and in correspondence. The Ombudsman also noted not all communication was signed and advised that individuals are entitled to know the identity of decision-makers. The department is reviewing systemic improvements to make this information available.

Case summary: Personnel Administration Office (now Corporate Human Resources)

A group of provincial employees complained they were unfairly denied an appeal of the classification of their position by the **Personnel Administration Office** (PAO) because it was designated as a "benchmark" position. The Ombudsman found that although an appeal of the classification was available, it was not transparent and it was not adequately communicated to employees. As a result of the Ombudsman's recommendation, PAO has improved communication about the classification appeal process available to employees who are in benchmark positions. The complainants were given another opportunity to appeal their classification to the Classification Appeal Board.

Case summary: Alberta Solicitor General and Public Security

Two inmates complained about the administrative fairness of the **disciplinary board** hearing process. The Ombudsman found unfairness in the process and improvements were made to ensure inmates can make



a final statement regarding the evidence and punishment imposed. The department also agreed improvements could be made to the decision document to show a rational connection between the evidence presented and conclusions reached, applicable legislation and policy.

3. PARTICIPATION RIGHTS

There are two elements to participation rights. Firstly, a person is entitled to a full and fair opportunity to present his or her case to the decision-maker. A jurisdictional authority demonstrates this by requesting information from the person and ensuring sufficient time for the person to respond. A tribunal invites all parties to provide written submissions or present orally at a hearing, ensuring there is sufficient notice of the hearing. The tribunal provides a meaningful opportunity to be heard when all parties have sufficient time to state their position.

Citizens' Appeal Panels are a good example of how participation rights are protected in a tribunal process. Persons who disagree with decisions about certain financial benefits have the right to appeal those decisions to the Citizens' Appeal Panel. Appellants are notified in writing of the hearing time, date and place. At the hearing, appellants can make a presentation, either orally or in writing, and can make a final statement prior to the hearing's conclusion.

Another example is the process followed by the **Alberta Human Rights and Citizenship Commission**. During the Commission's investigative process, information obtained during interviews is transcribed and submitted to the person who was interviewed. The person can then correct any errors or omissions before decisions are made about the issue under investigation.

The second element to participation rights is a person's entitlement to full disclosure of the case. This includes access to all reports prepared by decision-makers or any other report or information that a decision-maker has relied upon in making a decision.

Case Summary: Alberta Solicitor General and Public Security

Two former employees complained separately about the fairness of complaint investigations conducted by the Human Resources office of **Alberta Solicitor General and Public Security**. In one instance, the Ombudsman found the complainant was not interviewed and the department agreed with the Ombudsman an interview would have been administratively fair. The Ombudsman also found although the complainant was not entitled to a copy of the investigative report, the department should have provided an explanation for not providing it.

In the second file, the complainant was not advised by the department of the decision not to investigate and documentation was not retained in the file. In both cases, the department agreed there should be a written explanation of the outcome of an investigation. The Ombudsman recommended advising complainants about the resolution of their complaints and better record-keeping of the process and actions undertaken. The department also agreed to reinforce this information with Human Resources staff.

Case Summary: Workers' Compensation Board

The Ombudsman investigated a complaint about the **Workers' Compensation Board's** (WCB) handling of surveillance evidence. The Ombudsman found it was administratively unfair to omit the existence of video surveillance evidence from the claim file. The WCB and the Ombudsman agreed on this file, and in the future, relevant surveillance information will be included in the claim file.

4. ADEQUATE REASONS

Canadian courts have imposed a common law obligation on administrative decision-makers to provide written reasons, which must be adequate. It is not enough to outline the evidence and arguments made by the parties and the decision. There must be a rational connection made between the evidence and the conclusions, including a clear explanation of how the relevant legislation, regulation or policy was applied. This does not mean every piece of evidence must be cited and discussed. Generally, it is only necessary to refer explicitly to evidence directly relevant to the issue. Decision-makers should explain what evidence was relied on to make the decision, but also what evidence was not used in reaching the decision, and why that evidence was omitted. A well-written decision must address the arguments raised by all parties.

The decision and reasons must be communicated clearly and in language that can be understood by a reasonably-informed person. It should answer the question, "Why did the decision-maker make that decision?"

Case summary: Alberta Dental Association and College

Two individuals complained about the fairness of the complaint handling process of the **Alberta Dental Association and College** (ADA&C). The Ombudsman found the decision letters to the complainants were administratively unfair and following the recommendations of the



Ombudsman, the ADA&C agreed to make changes to its process. In future decision letters, unprofessional conduct will be defined and the specific conduct investigated will be clarified, the legislative authority will be identified and the information considered and weighed will be explained. Previously, decisions from the Complaints Committee were unsigned and did not provide names of committee members. The ADA&C has agreed to include identification of decision-makers unless there is a justified reason to omit that information.

Case summary: Alberta Municipal Affairs and Housing - Underground Petroleum Storage Tank Remediation Program

The Ombudsman investigated a complaint about the administrative fairness of a decision to deny funding through the **Underground Petroleum Storage Tank Remediation Program**. The Ombudsman found the decision was fair but the decision letter was unfair: it did not explain the eligibility criteria or how it was applied in this case. The department accepted the Ombudsman's recommendation to write the complainant explaining the program's eligibility criteria and how it was applied.

Case summary: Alberta Children's Services Appeal Secretariat

A day care operator complained the **Alberta Children's Services Appeal Secretariat's** decision to cancel his day care license was administratively unfair. The Ombudsman found the license cancellation was fair but the communication of the decision was administratively unfair because it did not clarify the legislative authority, demonstrate how the evidence and arguments were considered or provide adequate reasons for the decision. The department agreed with the Ombudsman's recommendation to write a new decision letter to address the issues of unfairness. The department also agreed to review policies, procedures and practices used when considering the decision to modify or cancel a license.

Case summary: Alberta Solicitor General and Public Security - Correctional Services

An inmate complained about the adequacy of the **correctional centre** Director's response to his complaint his mail was withheld. The Ombudsman found the decision to withhold the mail was reasonable but the decision was not adequately communicated to the inmate and the policy applicable to the decision was not communicated to all inmates. As a result of the Ombudsman's recommendations, the policy was reviewed and information about the policy is now included in the inmate handbook.

Case summary: Out-of-Country Health Services Appeal Panel

Three individuals submitted separate complaints about the administrative fairness of appeal decisions following denial of their out-of-country health benefit claims. Each individual submitted a claim requesting reimbursement of health care expenses incurred outside Alberta. Each claim was denied and the applicants then appealed the decisions to the **Out-of-Country Health Services Appeal Panel**. The appeals were also denied.

Through his investigation, the Ombudsman found the three decisions were administratively unfair because in each case, the panel's decision failed to state the legislative authority for the decision, the evidence relied upon to reach the decision and how the evidence and arguments were weighed. The Ombudsman recommended a new hearing for each appeal.

5. REASONABLE APPREHENSION OF BIAS

Decisions must be made by impartial and independent decision-makers. "Impartial" applies to the state of mind or attitude of the decision-maker so that the decision-maker has no bias, either real or perceived. Impartial decisions are made based on objective criteria. "Independent" extends beyond the state of mind or attitude of the decision-maker. To be independent, the decision-maker must be free from interference by the executive and legislative branches of government and from other external forces such as business, corporate interests or other pressure groups. A widely-quoted excerpt from a 1978 decision of the Supreme Court of Canada established the test for reasonable apprehension of bias as follows:

"What would an informed person, viewing the matter realistically and practically...conclude? Would he think that it is more likely than not that (the decision-maker), whether consciously or unconsciously, would not decide fairly?"

To be impartial and independent, decision-makers should declare real or potential conflicts of interest. The appearance of impartiality is necessary to maintain confidence in the decision-making process. In cases that raise the appearance that decision-makers would not be objective even when they feel they could make an unbiased and fair decision, they have an obligation to disclose the potential conflict or excuse themselves from a case.

Decision-makers should be careful not to form opinions about the person or the case before reviewing the documentation and hearing from all parties. An appearance of bias might result from the behavior of a decision-maker at a hearing, such as repeatedly silencing a party or behaving in an overly

aggressive or sarcastic manner. If the decision-maker was involved in the case prior to the hearing, then it may appear to a reasonable person the decision-maker has pre-judged the matter.

Case summary: Alberta Infrastructure and Transportation

The Ombudsman investigated a complaint that an **Out-of-Province Motor Vehicle Inspection Certificate** was unfairly revoked. The investigation found the vehicle in question failed inspection on three occasions and the department decided to verify mechanical deficiencies in the vehicle. Following an inspection, a Special Constable's report identified the outstanding deficiencies. After the vehicle owner complained to the department, a review of the decision was conducted by the Registrar who was responsible for the initial decision to inspect the vehicle.



The Ombudsman found the department acted within its legislative authority to revoke the certification of the vehicle. He also found there was administrative unfairness because the Registrar reviewed his own decision. The Ombudsman recommended the establishment of a review process independent from the original decision-maker. The Ombudsman also found administrative unfairness in communication regarding the inspection decisions and the decision to ultimately revoke the certificate. The communication did not explain the legislative authority for doing an inspection, reasons for the inspection or other available options for the performance of an inspection. As a result of the Ombudsman's recommendations, the process has been revised, the complainant has received an adequate explanation and he was also given the opportunity for another vehicle inspection.

6. LEGITIMATE EXPECTATION

Legitimate expectation is based on the principle that promises or regular practices of the administrative decision-maker should be taken into account. A person has a legitimate expectation that when an application form is submitted, the jurisdictional authority will actually process the application. When a person challenges a decision, it is important and administratively fair for the decision-maker to honour promises made about following procedure, unless the decision-maker can provide a high level of procedural rights in a different form. Failing to meet legitimate expectations in decision-making may be as simple as an official not following through after agreeing to take

an action or write a decision letter; it becomes more complex if the authority fails to follow what may be considered a regular procedure, therefore treating an individual in an unfair manner.

When an inmate in a provincial **correctional centre** is charged with an institutional violation, he or she receives a form stating procedural expectations for the disciplinary hearing, such as:

“If you have questions you may direct them to the Chairperson who will then ask the witness the question. You will be allowed to present evidence to the Board on your own behalf and it may be checked by the Chairperson to verify its accuracy.”

These are procedural expectations for both parties and Ombudsman investigations examine whether those legitimate expectations were met.

Case summary: Alberta Seniors and Community Supports - Assured Income for the Severely Handicapped

A complainant claimed the department unfairly denied him **Assured Income for the Severely Handicapped** services to which he believed he was entitled, without explanation. The investigation found the department made sufficient and reasonable attempts to assist the complainant and was justified in its decision to deny further services. However, the Ombudsman partially supported this complaint due to inadequate communication to the complainant from the department about the reasons for the decision. As a result, the department provided further correspondence to the complainant outlining the reasons.



Case summary: Alberta Solicitor General and Public Security - Correctional Services

The Ombudsman investigated a complaint from a **correctional centre** inmate that he was unfairly denied the opportunity to make collect calls to a cell phone. The Inmate Call Control System does not permit calls to cell phones except in cases of exceptional circumstances which require approval by the centre management. Although the Ombudsman accepted the reason for the call restriction, he found this information was not adequately communicated to inmates. As a result of the Ombudsman's recommendations, changes were made to the inmate handbook.

Case summary: Appeals Secretariat, Alberta Human Resources & Employment (now Alberta Employment, Immigration and Industry)

In three separate files, individuals complained about the administrative fairness of **Citizens' Appeal Panel** decisions. The Ombudsman found the panels were unfair because they failed to cite the legislative authority to support a Director's decision to deny benefits, they failed to clarify issues of appeal and they failed to adequately explain reasons for their decision. The Chairman agreed with the Ombudsman's recommendation to write addendums to the decisions to address shortcomings in the decisions.

Case summary: Workers' Compensation Board

A worker complained there was an unreasonable delay in the referral of his **Workers' Compensation Board** (WCB) file to the Medical Panel Office for review. The Ombudsman found although the delay was not unreasonable, the review process was not adequately communicated to the complainant. The WCB has modified the process to include improved communication to the worker about review processes and the status of their file.

Case summary: ATB Financial

The Ombudsman investigated a complaint about the adequacy of an **ATB Financial** (ATB) complaint investigation. The Ombudsman found there was no documented record of the investigation and the complainant was not given an opportunity to present her issues. It was also determined ATB had no formal complaint-handling policy in place. ATB agreed with the Ombudsman's recommendations to develop a policy dealing with customer complaints and documenting investigations.

Case summary: Alberta Children's Services

Parents complained they were not provided with reasonable or adequate explanation for failure to hold a planned case conference. **Alberta Children's Services** agreed with the Ombudsman's recommendation that parents should receive a written explanation of the reasons for the decision to cancel a planned case conference. It was also agreed there should be improved documentation of contact between the department and families. The Deputy Minister further agreed to review the process followed when pursuing orders such as temporary guardianship or medical treatment.



Case summary: Alberta Children's Services

A citizen complained **Alberta Children's Services** did not adequately inform him of the conclusion of the investigation into his complaint of alleged child abuse. Following the Ombudsman's recommendation, it was agreed written information will be provided that will respond generally to concerns about how complaints of abuse are handled but will not include information about the conclusions of the confidential investigation process.

7. DISCRETIONARY POWERS

Although considerable deference is given to decision-makers to allow them to make their own decisions and determine the scope of their jurisdiction, discretion must still be exercised within a reasonable interpretation of the legislation. We examine how the discretion is established in the act, regulation or policy guidelines. Discretionary decisions are reviewed or questioned on limited grounds such as evidence of bad faith, the exercise of discretion for an improper purpose or the use of irrelevant considerations. There may be more than one way to decide a matter, but whatever decision is made, it must be done fairly.

It is important to ensure the discretion is not incongruent with the power established in the act and that the person making the decision has the authority to exercise discretion. When exercising discretionary decision-making powers, the decision-maker must proceed only under his own legislation, must make a decision and must complete only what he/she is authorized to perform.

In many statutes governing the actions of the jurisdictional authority, there is the opportunity for senior executives or an appeal panel to exercise discretionary power. The Ombudsman will comment when errors occur or where there is inappropriate interpretation or use of the delegated discretionary power.

In this reporting year, there are no cases of note where the Ombudsman made this finding.

8. WAS THE DECISION REASONABLE?

A reasonable decision should indicate how the decision-maker considered and assessed arguments. In assessing the reasonableness of a decision, it is important to relate how the evidence was weighed and give reasons for how the decision-maker considered and assessed the arguments and evidence. A reasonable decision is made within the statutory mandate and is grounded in the evidence presented.

The Ombudsman is not a substitute decision-maker, rather, he looks at the reasonableness of decisions based on available evidence. When the Ombudsman concludes a decision is reasonable, he is not making a determination whether the decision was right or wrong or whether it may have been decided differently. If the decision is not reasonably based on the arguments and evidence presented and accepted by the decision-maker, the Ombudsman may find the decision unreasonable. Although there may be administratively unfair components of the decision, the decision itself is rarely found to be unreasonable.

Case summary: Workers' Compensation Board - Dispute Resolution and Decision Review Body

A citizen complained the **Dispute Resolution and Decision Review Body (DRDRB)** made a decision on an issue which was not the subject of his appeal. The Ombudsman found this was administratively unfair and inconsistent with DRDRB processes. Following the Ombudsman's recommendation, the decision was rewritten to exclude this issue and an explanation was provided to the complainant.

IN CONCLUSION

The Alberta Ombudsman continues to work with jurisdictional authorities to improve the administrative fairness of their processes. Their cooperation and ability to recognize unfairness ensures services and programs are delivered in a fair manner. We continue to strive to improve the services we provide and focus on problem resolution for complainants in a timely manner.





OWN MOTION INVESTIGATION

REMOTE AREA HEATING ALLOWANCE PROGRAM

Ivan Phillips complained to the Alberta Ombudsman that he was unfairly denied rebate compensation by Alberta Agriculture, Food and Rural Development (now Alberta Agriculture and Food), Rural Utilities Branch, for fuel he purchased in 2003 under the Remote Area Heating Allowance Program. The investigation of Mr. Phillips' complaint found he was unfairly denied rebate compensation for two fuel purchases dated February 20 and September 10, 2003. Mr. Phillips applied to the department for a rebate on December 10, 2004.

BACKGROUND

The department's authority to administer the program is established in Section 2 of the *Natural Gas Rebates Act*, R.S.A. 1980, Chapter N-4, and in the *Natural Gas Rebates Regulation*, Alta. Reg. 356/80. The program was established in 1980 to assist rural Albertans without access to natural gas service and has been renewed several times with a current expiry date of March 31, 2011. Under the program, applicants receive a rebate of up to 25 percent of the cost of their heating fuel purchases (less GST) to a maximum of 18,185 litres of propane or 12,275 litres of heating oil per year, or a proportionate combination of both. The average rebate is approximately \$450.

The Heating Oil and Propane Regulation, Alta. Reg. 78/03, amended through Order-in-Council 138/2003 on March 26, 2003, changed the time frame for receipt of rebate applications to no more than one year from the date of fuel purchase from the previous time limit of two years. The two-year time frame was a policy in effect from the program's origin, but was not formally stipulated in the Heating Oil and Propane Regulation, Alta. Reg. 78/03.

To qualify for a rebate, the applicant must:

- purchase heating oil or propane for use or consumption outside the boundary of a natural gas franchise area;
- submit original fuel invoices or other proof of purchase of heating oil or propane that the Minister considers appropriate;
- submit an application not more than one year after the purchase date of the heating oil or propane for which the rebate is being claimed; and
- not exceed a combined volume of heating oil or propane during a calendar year to 18,185 litres of propane or 12,275 litres of heating oil per year, or a proportionate combination of both.

SUMMARY OF MR. PHILLIPS' COMPLAINT

The Ombudsman supported Mr. Phillips' complaint because the investigation found the department was administratively unfair. The unfairness occurred because Mr. Phillips was not advised of a program rule change requiring receipt

of a rebate application within one year of the fuel purchase date as stipulated by Order-in-Council 138/2003. To remedy this unfairness, the Ombudsman recommended Mr. Phillips receive compensation for his February 20 and September 10, 2003 fuel purchases which were previously disallowed because his application was received beyond the one-year limit.

The department's review of this matter identified a number of other program applicants who were not advised of the application deadline rule change and consequently had fuel purchase rebate applications disallowed. The Ombudsman met with the Deputy Minister and other department officials in May 2006 to discuss his findings on Mr. Phillips' investigation and to discuss the larger issue of remedies for other similarly affected applicants. The department agreed to implement the Ombudsman's recommendations on Mr. Phillips' investigation thus requiring an amendment to the Heating Oil and Propane Regulation, Alta. Reg. 166/06. The amendment was passed by Order-in-Council 297/2006 on July 13, 2006, allowing the Minister discretion to compensate Mr. Phillips and other similarly affected applicants.

The Ombudsman launched an investigation on his own motion pursuant to Section 12(2) of the *Ombudsman Act*, R.S.A. 2000, Chapter 0-8. The department readily agreed to cooperate with the investigation and a collaborative approach was established whereby the department developed a process to identify similarly affected applicants and the Ombudsman monitored the department's progress and provided input on criteria for developing and implementing an administratively fair review.

OWN MOTION INVESTIGATION OBJECTIVES

The objectives of this own motion investigation were to determine whether:

- the process established and implemented by the department to identify applicants who should be reconsidered for rebate compensation under the program was administratively fair; and
- changes to the program policy and application process will ensure administrative fairness for future applicants.

THE DEPARTMENT'S RECONSIDERATION PROCESS

The department reviewed program database records and identified 728 applicants who were notified by letter between April 1, 2003 and March 31, 2005 that some or all of their fuel purchases were ineligible for rebate as their fuel receipts were older than one year, but may have been within the previously allowed two-year time frame.

Of the 728 applications, the department identified 429 for reconsideration based on agreed-upon criteria outlined below (see Findings).



The department contacted the 429 applicants by letter on November 9, 2006, allowing them until March 2, 2007 to resubmit receipts or other proof of purchase for fuel purchases previously disallowed. To help applicants identify applicable receipts, the department provided application date information on disallowed receipts and on eligible rebated receipts.

The department received 71 responses to its letter of which 31 applications resulted in qualification for reimbursement. Total rebates paid by the department through this process were \$7,084.59.

OWN MOTION INVESTIGATION FINDINGS AND RECOMMENDATIONS

FINDINGS

The Ombudsman found the process established and implemented to identify applicants who should be reconsidered for rebate compensation under the program was administratively fair. The department identified all program applicants who had fuel receipts disallowed between April 1, 2003 and March 31, 2005 because the fuel purchase was made more than one year prior to the rebate application.

The department applied the following criteria to identify applicants for reconsideration. These criteria were reviewed during the Ombudsman's investigation and determined to be administratively fair.

- For new applicants who made their first application after April 1, 2003 and had fuel purchases disallowed because they were more than one year old, they were not offered reconsideration because they had an obligation to understand the program rules prior to their application. The Ombudsman found this position fair and consistently applied to all applicants within this category.
- For current applicants whose first application was between April 1, 2003 and March 31, 2005 and had receipts disallowed because the fuel purchase was more than one year old, applicants were likely unaware of the change in program rules. The department recognized its responsibility to offer reconsideration if there was no indication on file the applicant was previously advised of the rule change. The Ombudsman found the department's position on this matter fair and it was consistently applied to all applicants in this category.

Program applicants who felt they were unfairly treated as a result of the department's reconsideration process were encouraged to write the Ombudsman directly, requesting an investigation of their specific situation.

RECOMMENDATIONS

The Ombudsman's investigation also resulted in the following recommendations which will increase the fairness of program delivery to all applicants.

Recommendation No. 1

The department amend the Remote Area Heating Allowance Program Information and Application form (subsequently revised February 2007) to state the program expiration date and the one-year application deadline on the application side of the form in addition to the reverse, where it is currently stated.

Rationale:

- The information and application form is double-sided. The department accepts photocopies or faxes showing only the application side. As the application side did not contain the application deadline or the expiry date, the rules were not readily apparent to the applicant.
- A random survey of applicants found many were not aware of the applicable timelines and some applicants confused this program with the Natural Gas Rebate Program. The department should take every opportunity to make potential applicants aware of the program's terms and conditions.

Recommendation No. 2

The department retain copies of fuel purchase receipts it rejects along with those accepted for payment.

Rationale:

- The department identified early in the investigation it did not retain copies of rejected fuel purchase receipts. Therefore, it could not identify similarly affected applicants by the specific date of rejected fuel receipts.
- Good business practice requires the department retain relevant supporting documents on all files regardless of whether claims are paid.

Recommendation No. 3

The department reject Remote Area Heating Allowance Program Information and Application forms submitted without a signature.

Rationale:

- In the past, the department has accepted unsigned application forms. Since the signature is a declaration of the validity of the information provided, all forms should be signed by the applicant before an application is considered.

Recommendation No. 4

The department ensure the date stamp noting receipt of an application is consistent with the date entered into the Claim Detail Report database.

Rationale:

- The Claim Detail Report is the basis for the calculation of the one-year time limit for application submission. There should be consistency in the receipt date and the report date in view of the significance of the date of receipt as stipulated in the Regulation.

CONCLUSION

The Alberta Ombudsman's investigation was conducted with the full cooperation of the Minister and staff of Alberta Agriculture and Food. The review process developed by the department and supported by the Ombudsman identified a significant number of citizens who may have been unfairly treated as a result of the department's failure to adequately inform them of a change to the time frame to apply for compensation under the Remote Area Heating Allowance Program. The Ombudsman is satisfied the department has now fully met its responsibility to offer a fair reconsideration process, communicated the process to the applicants and allowed applicants an opportunity to reapply.

During the course of this investigation and review of the department's files, the Ombudsman's investigators found department staff to be very flexible in accommodating rebate applications even though a significant number of submissions did not follow the established process. For example, many applications were submitted on outdated forms and lacked signatures or other required information. While this helpful effort by department staff is to be applauded, the Ombudsman observed it may lead to problems when the department is required to demonstrate the fairness of their actions. Appropriate policy establishment and adherence in program delivery leads to consistency and transparency, which are hallmarks of administrative fairness. This observation is a commonly-identified concern arising in Ombudsman investigations and it is being brought to the attention of this and other departments to enhance the quality and fairness of services provided to Albertans.

This investigational outcome is a positive example of the fairness achieved when provincial government Ministers and departments recognize and acknowledge unfairness when it is identified and work in cooperation with the Alberta Ombudsman to rectify the problem, provide appropriate redress and make improvements to department processes.

While Alberta Ombudsman investigations are confidential, Mr. Phillips authorized the Alberta Ombudsman to publish his name in the Annual Report regarding the investigation into his complaint and the subsequent own motion investigation.





FINANCIAL STATEMENTS

FINANCIAL STATEMENTS

- 56** Auditor's Report
- 57** Statement of Financial Position
- 58** Statement of Operations
- 59** Statement of Cash Flows
- 60** Notes to the Financial Statements
- 64** Schedule 1 - Salary and Benefits Disclosure
- 65** Schedule 2 - Schedule of Allocated Costs



Auditor's Report

To the Members of the Legislative Assembly

I have audited the statement of financial position of the Office of the Ombudsman as at March 31, 2007 and the statements of operations and cash flows for the year then ended. These financial statements are the responsibility of the Office's management. My responsibility is to express an opinion on these financial statements based on my audit.

I conducted my audit in accordance with Canadian generally accepted auditing standards. Those standards require that I plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In my opinion, these financial statements present fairly, in all material respects, the financial position of the Office as at March 31, 2007 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

Original Signed by Fred J. Dunn, FCA
Auditor General

Edmonton, Alberta
June 27, 2007

The official version of the Report of the Auditor General, and the information the Report covers, is in printed form.

STATEMENT OF FINANCIAL POSITION

AS AT MARCH 31, 2007

	2007	2006
Assets:		
Cash	\$ 400	\$ 400
Accounts receivables	-	2000
Advances	5,800	5,800
Tangible capital assets (<i>note 3</i>)	26,726	32,407
	\$ 32,926	\$ 40,607
Liabilities:		
Accounts payable and accrued liabilities	\$ 115,769	\$ 152,745
Accrued vacation pay	187,991	157,440
	303,760	310,185
Net liabilities:		
Net liabilities at beginning of year	(269,578)	(206,686)
Net operating results	(2,255,748)	(2,178,091)
Net transfer from general revenues	2,254,492	2,115,199
Net liabilities at end of year	(270,834)	(269,578)
	\$ 32,926	\$ 40,607

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF OPERATIONS FOR THE YEAR ENDED MARCH 31, 2007

	2007		2006
	Budget	Actual	Actual
Revenues:			
Other revenue:		\$ 5,606	-
		\$ 5,606	-
Expenses (note 5):			
Voted:			
Salaries, wages and employee benefits		\$ 1,765,731	\$ 1,607,422
Supplies and services		459,391	536,982
	\$ 2,327,000	2,225,122	2,144,404
Non Budgetary			
Capitalization of assets expensed as supplies		-	(17,154)
Amortization of capital assets		5,681	5,681
Valuation adjustment			
Provision for vacation pay		30,551	45,160
		36,232	33,687
Net operating results		\$ (2,255,748)	\$ (2,178,091)

The accompanying notes and schedules are part of these financial statements.

STATEMENT OF CASH FLOWS FOR THE YEAR ENDED MARCH 31, 2007

	2007	2006
Operating transactions		
Net operating results	\$ (2,255,748)	\$ (2,178,091)
Non-cash items included in Net operating results		
Amortization	5,681	5,681
	(2,250,067)	(2,172,410)
(Increase) decrease in accounts receivable	2,000	(2,000)
Increase (decrease) in accounts payable and accrued liabilities	(36,976)	31,555
Increase in accrued vacation pay	30,551	45,160
Cash applied to operating transactions	(2,254,492)	(2,097,695)
Capital transactions		
Acquisition of tangible capital assets	-	(17,154)
Cash applied to capital transactions	-	(17,154)
Investing transactions		
Advances	-	(250)
Cash applied to investing transactions	-	(250)
Financing transactions		
Net transfer from general revenues	2,254,492	2,115,199
Increase in cash	-	100
Cash, beginning of year	400	300
Cash, end of year	\$ 400	\$ 400

The accompanying notes and schedules are part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 2007

Note 1 - Authority and Purpose

The Alberta Ombudsman is an officer of the Legislature who operates under the authority of the *Ombudsman Act*. The net cost of the operations of the Office of the Ombudsman (the Office) is borne by the General Revenue Fund of the Province of Alberta. Annual operating budgets are approved by the Standing Committee on Legislative Offices.

The Office promotes fairness in public administration within the Government of Alberta, certain professional organizations and the patient concerns resolution process of Regional Health Authorities and the Alberta Cancer Board.

Note 2 - Summary of Significant Accounting Policies and Reporting Practices

These financial statements are prepared in accordance with Canadian generally accepted accounting principles for the public sector as recommended by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants.

a) Reporting Entity

The reporting entity is the Office of the Ombudsman which is a legislative office, for which the Alberta Ombudsman is responsible.

The Office operates within the General Revenue Fund. The Fund is administrated by the Minister of Finance. All cash receipts of the Office are deposited into the Fund and all cash disbursements made by the Office are paid from the Fund. Net transfer from General Revenues is the difference between all cash receipts and all cash disbursements made.

b) Basis of Financial Reporting

Revenues

All revenues are reported on the accrual basis of accounting. Cash received for which goods or services have not been provided by year end is recorded as unearned revenue.



Expenses

Expenses represent the costs of resources consumed during the year on the Office's operations.

Pension costs included in these statements comprise the cost of employer contributions for current service of employees during the year.

Certain expenses, primarily for office space, incurred on behalf of the Office by government departments are not reflected in the Statement of Operations but are disclosed in Schedule 2.

Valuation Adjustments

Valuation adjustments represent the change in management's estimate of future payments relating to vacation pay.

Assets

Tangible capital assets are recorded at historical cost and amortized on a straight-line basis over the estimated useful lives of the assets as follows:

Computer hardware and software	3 years
Furniture and other office equipment	10 years

Assets are capitalized if their useful life is expected to be longer than 1 year and purchase price is \$5,000 or greater. A full year of amortization is taken in the year of acquisition.

Net Liabilities

Net liabilities represent the difference between the recorded value of the assets of the Office and its liabilities.

Valuation of Financial Assets and Liabilities

Fair value is the amount of consideration agreed upon in an arm's length transaction between knowledgeable, willing parties who are under no compulsion to act.

The fair values of cash, advances, and accounts payable and accrued liabilities are estimated to approximate their carrying values because of the short term nature of these instruments.

Note 3 - Tangible Capital Assets

	2007			2006
	Cost	Accumulated Amortization	Net Book Value	Net Book Value
Computer hardware and software	\$ 7,027	\$ 4,685	\$ 2,342	\$ 4,685
Furniture and other office equipment	33,387	9,003	24,384	27,722
	\$ 40,414	\$ 13,688	\$ 26,726	\$ 32,407

Note 4 - Lease Obligations or Commitments

The Office leases certain equipment under operating leases that expire on various dates to 2010. The aggregate amounts payable for the unexpired terms of these contractual obligations are as follows:

2008	\$ 5,453
2009	4,437
2010	4,077
Total	\$ 13,967

Note 5 - Budget

Expenses:	
2006-07 authorized budget ^(a)	\$ 2,327,000
2006-07 actual expenses (excluding valuation adjustments)	2,225,122
2006-07 unexpended (excluding valuation adjustments)	\$ 101,878

^(a) Legislative Assembly Estimates approved on March 22, 2006

Note 6 - Defined Benefit Plan (in thousands)

The Office participates in the multi-employer Management Employees Pension Plan and Public Service Pension Plan. The Office also participates in the multi-employer Supplementary Retirement Plan for Public Service Managers. The expense for these pension plans is equivalent to the annual contributions of \$145 for the year ended March 31, 2007 (2006 – \$124).

At December 31, 2006, the Management Employees Pension Plan reported a deficiency of \$6,765 (2005 deficiency – \$165,895) and the Public Service Pension Plan reported a surplus of \$153,024 (2005 deficiency \$187,704). At December 31, 2006 the Supplementary Retirement Plan for Public Service Managers had a surplus of \$3,698 (2005 surplus – \$10,018).

The Office also participates in two multi-employer Long Term Disability Income Continuance Plans. At March 31, 2007, the Bargaining Unit Plan reported an actuarial surplus of \$153 (2006 deficiency \$8,699) and the Management, Opted Out and Excluded Plan an actuarial surplus of \$10,148 (2006 surplus \$8,309). The expense for these two plans is limited to employer's annual contributions for the year.

Note 7 - Approval of Financial Statements

These financial statements were approved by the Senior Financial Officer and the Ombudsman.



SCHEDULE 1: SALARY AND BENEFITS DISCLOSURE FOR THE YEAR ENDED MARCH 31, 2007

	2007			2006	
	Base Salary ⁽¹⁾	Other Cash Benefits ⁽²⁾	Other Non-Cash Benefits ⁽³⁾	Total	Total
Senior official Ombudsman ⁽⁴⁾	\$ 160,000	\$ -	\$ 36,948	\$ 196,948	\$ 184,462
Deputy Ombudsman	\$ 119,172	\$ 8,342	\$ 31,121	\$ 158,635	\$ 146,777

(1) *Base salary includes regular base pay.*

(2) *Other cash benefits include bonuses, vacation payouts, overtime and lump sum payments.*

(3) *Other non-cash benefits include government's share of all employee benefits and contributions or payments made on behalf of employees including pension, health care, dental coverage, group life insurance, short and long-term disability plans, professional memberships and tuition fees.*

(4) *Automobile provided, no dollar amount included in other non-cash benefits.*

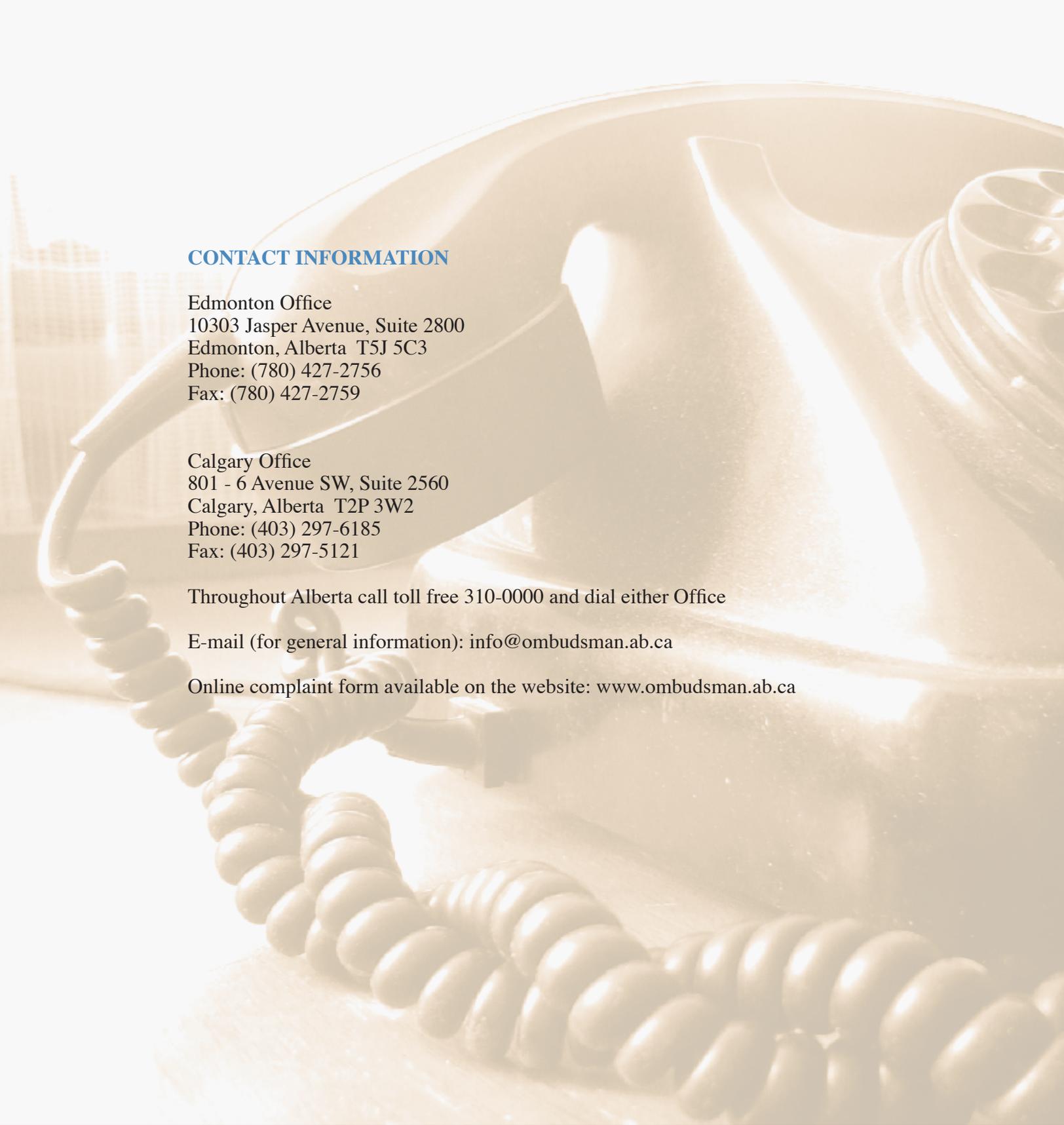
SCHEDULE 2: SCHEDULE OF ALLOCATED COSTS FOR THE YEAR ENDED MARCH 31, 2007

Program	2007			2006	
	Expenses ⁽¹⁾	Expenses Incurred by Others	Valuation Adjustments ⁽³⁾	Total Expenses	Total Expenses
		Accommodation Costs ⁽²⁾	Vacation Pay		
Operations	\$ 2,225,122	\$ 210,088	\$ 30,550	\$ 2,465,760	\$ 2,373,707

(1) *Expenses - Directly incurred as per Statement of Operations, excluding valuation adjustments.*

(2) *Costs shown for Accommodation (includes grants in lieu of taxes), allocated by square footage.*

(3) *Valuation Adjustments as per Statement of Operations.*



CONTACT INFORMATION

Edmonton Office
10303 Jasper Avenue, Suite 2800
Edmonton, Alberta T5J 5C3
Phone: (780) 427-2756
Fax: (780) 427-2759

Calgary Office
801 - 6 Avenue SW, Suite 2560
Calgary, Alberta T2P 3W2
Phone: (403) 297-6185
Fax: (403) 297-5121

Throughout Alberta call toll free 310-0000 and dial either Office

E-mail (for general information): info@ombudsman.ab.ca

Online complaint form available on the website: www.ombudsman.ab.ca

CONTACT INFORMATION





40 ALBERTA
OMBUDSMAN
1967~2007

Celebrating 40 Years Focused on Fairness