



June 2004

The Honourable David Pratt, P.C., M.P.  
Minister of National Defence  
National Defence Headquarters  
Major-General George R. Pearkes Building  
101 Colonel By Drive  
Ottawa ON  
K1A 0K2

Dear Minister,

I am pleased to submit the sixth annual report from the Office of the Ombudsman for tabling in the House of Commons.

This report provides an overview of our operations from the beginning of April 2003 to the end of the fiscal year in March 2004.

Yours truly,



André Marin  
Ombudsman



## Mandate

The Ombudsman investigates complaints and serves as a neutral third party on matters related to the Department of National Defence and the Canadian Forces (DND/CF). Acting independently of the chain of command and managers, he reports directly to the Minister of National Defence.

The Office is a direct source of information, referral, and education for the men and women of DND/CF. Its role is to help individuals access existing channels of assistance or redress when they have a complaint or concern. In addition, the Ombudsman may investigate and report publicly on matters affecting the welfare of members and employees of DND/CF and others falling within his jurisdiction. The ultimate goal is to contribute to substantial and long-lasting improvements.

Any of the following may bring a complaint to the Ombudsman when the matter is directly related to DND or the CF:

- A current or former member of the CF
- A current or former member of the Cadets
- A current or former employee of DND
- A current or former non public fund employee
- A person applying to become a member
- A member of the immediate family of any of the above-mentioned
- An individual on an exchange or secondment with the CF



## How to Contact Us

There are several ways to reach the Office of the Ombudsman:

A new, secure online complaints form is now available on the Ombudsman's website. Electronic complaints are received directly in the Ombudsman's Office. The form improves confidentiality and access to Ombudsman services for members of the DND/CF community.



**NEW**

Call us toll-free at **1-88-88-BUDMAN**

(**1 888 828-3626**) and speak to an intake officer.

Write us a letter describing your situation and mail it with any supporting documents to:

**Office of the Ombudsman**

100 Metcalfe Street, 12<sup>th</sup> Floor

Ottawa ON

K1P 5M1

Send us a fax at **613 992-3167** or toll-free at **1 877 471-4447**.

For information about sending a secure fax, please call **613 992-0787**.

Visit our Office for a private consultation. Appointments are recommended.

For further information about the Office, please visit us online at:

Internet: <http://www.ombudsman.forces.gc.ca/>

Intranet: [ombudsman.mil.ca](http://ombudsman.mil.ca)

or call our general enquiries line at **613 992-0787**.



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# Ombudsman's Message

## *Demonstrating Value*

This annual report is a tangible demonstration of the value of this Office to the quality of life within the DND/CF community. Demonstrating our value is not merely a matter of accountability. We depend on our credibility and reputation in order to resolve problems effectively, so demonstrating our value is simply a strategy for continued success. By all measures, this has been a banner year for our Office, subject to one important caveat.



Since inception six years ago, this Office has been working with great success to alter a tradition of closed ranks defensiveness within the military, and to help replace it with a culture of openness, equity and self-improvement.

The success we have experienced has not been ours alone. It has been the result of a shared enterprise on the part of ministers, governments, the chain of command, and our Office, as we each have contributed to our joint mission of strengthening the Canadian Forces by improving the quality of life of its members.

**Altering a tradition of closed ranks**

## **A Change in the Wind**

After some initial resistance in the early years, our advice and counsel have generally been received graciously, and responded to constructively, by everyone concerned. Regrettably, this past year there has been a change in the wind. We have, on occasion, sensed within the chain of command a renewed defensiveness and an unwillingness to evaluate our criticisms with objectivity and introspection. This has no doubt happened because we have released some heavy-hitting reports. Of necessity, these reports have been embarrassing to some. However, I cannot shy away from my responsibility to give an open and truthful account of what I find. I cannot bury problems or mute criticism for fear that I might ruffle feathers. The entire point in having an Ombudsman is to increase openness and transparency, and to identify and deal with problems that affect the welfare of CF members. If the morale of the lower-ranking soldiers is suffering because of ongoing problems, I cannot ignore this for fear that my reports or comments will affect the morale of the senior members of the chain of command. I have to act on faith. If the problems I identify are dealt with by the chain of command, the realization that they have

contributed to improvement in the quality of life of those affected should be enough to give them comfort and still any instincts to shoot the messenger. In the interests of all, and of the Canadian Forces itself, I am hopeful that the increased defensiveness I have recently observed will give way to the kind of open-minded and constructive quest for self-improvement that had previously been exhibited. By once again demonstrating the value of this Office to those inclined to resist our efforts, I am hopeful that we can move forward with our shared mission. Hence the theme of my annual message—"demonstrating value."

This report illustrates our efficiency, highlights our bureaucracy-busting success and explains how we ferret out what I will refer to as "maladministration," as well as reveals how we act as an "agent of change."

**Our  
bureaucracy-  
busting success**

### *Value Through Efficiency*

This fiscal year, we succeeded in converting a remarkable number of complaints into solutions. We received 1,265 new complaints. Of these new complaints, we furnished solutions and closed 1,117 files. We did this by brokering settlements, or interceding to remove obstacles to resolution. We did it through shuttle diplomacy, consensus building and investigation, and by moral suasion. We did it without the stress and expense caused by technical processes and adversarial adjudication. We did it by simply doing well what Ombudsmen do best—leveraging the informality and accumulated credibility of the Office to cut to the chase.

As always, most of our contributions have been in resolving individual complaints. Some of those complaints were merely irksome. Others were career-threatening, or personally debilitating for those involved. Have a look at the CD-ROM included with this report and some of the "success stories" we recount. These cases are not the stuff of headlines, but for the men and women affected, the problems we solved are more than interesting vignettes or cartoons. They are the kinds of experiences that can cause profound distress, incite resentment or anger, and taint what should be a fulfilling career in the service of one's country.

Not all of our interventions were at the microcosmic or personal level.

We have become increasingly adept at addressing systemic problems. Some reflect destructive attitudes remnant from a bygone military culture, others are simply insensitive or inefficient practices or decisions. We have accumulated much expertise in large investigations and are proficient at pointing the way to systemic solutions of profound institutional importance.

**Addressing  
systemic  
problems**

## Value Through Results

Our efforts can be characterized, in part, by our successes in identifying and combating maladministration. By maladministration I mean decisions or practices that harm rather than help. Most of the cases we encountered were the standard fare of failed bureaucracy, involving such things as mismanaged applications for benefits or releases, or the perennial problems of delay that have plagued the formal grievance process, all of which are described in greater detail in the report. My staff provided stellar service in guiding members through the maze to get things done. When bureaucracy interferes with the quality of life, this Office provides value in helping to find solutions.

**Standard  
fare of failed  
bureaucracy**

## Rule Mentality

Sadly, we have observed a more profound form of maladministration than ordinary bureaucratic inefficiency. Rules are treated as obstacles to fairness. Decision makers failed to step back long enough to think about the impact their decisions have on the lives and morale of the personnel involved, or on the reputation of the Canadian Forces. Of course rules are important, particularly in a military organization. However, when rules are put first, the DND/CF corporate objective of “putting people first” can easily be betrayed.

**Rules are  
treated as  
obstacles  
to fairness**

Rules guide and organize; however, when applied in an unthinking manner, without initiative or reflection about their impact, rules can cause rather than solve problems. A rule mentality can actually defeat fair and just outcomes.

## Broken Promises

Perhaps the most spectacular example of a rule mentality is my *Broken Promises* report chronicling the plight of 10 soldiers from whom money, promised and paid, was clawed back. The per diem food and incidental allowance originally offered to soldiers attending a training program in Richmond, B.C. was reclaimed after it was discovered that the amounts breached administrative guidelines.

**We were  
rebuffed**

Sadly, the first impulse of those initially involved in resolving the fiasco was not to see the decision in human terms and to employ imagination to achieve a fair result. It was to retreat reflexively behind those guidelines. We tried to resolve this matter informally, through direct intervention at the level responsible for the decision to demand the clawback. When we were rebuffed we also provided our report to the Assistant Deputy Minister (Human Resources—Military) in June 2003 in an attempt to resolve the matter. Finally we were left with no other option than the intervention of the Minister with a formal report in February 2004.

What made my report compelling enough to lead the national news was not the amounts at stake, but the insensitivity of the claw-back decision. The rules invoked did not prevent fairness; they simply provided a convenient refuge from having to exercise imagination to do the right thing. As late as mid-February 2004, I was told that although a resolution of the case was still being pursued, there was “no guarantee that any or all cases will receive financial compensation.”

I know that raising the issue with the Minister and publicly releasing my report was not popular with leaders and managers in DND/CF. However, it focused attention on the matter and led to the Minister’s direct intervention and a resolution in favour of the soldiers.

### *Postscript*

Following the release of this report, I received clear messages that members of the CF leadership strongly disapproved of my decision to make it public. Many senior officials felt that I did not provide them with an opportunity to respond and do the right thing by these soldiers. By making the report public, they claimed, I had made the chain of command look uncaring. I disagree.

In a recent presentation on the case, I noted that, rather than “Broken Promises,” this report could equally have been titled “*Missed Opportunities*.” There were numerous chances for the chain of command to make the matter right before the report was published. First, we attempted to negotiate a solution within DND for a full 10 months before the report was initially issued to the chain of command. Then a further 10 months went by while the case was subject to lengthy studies by the DND/CF legal advisors and others. After all that time, we were still given no guarantee that these CF members would be compensated. And even after the report was finally sent to the Minister, we received another letter on March 5, 2004 advising that the resolution of each student’s claim still rested in the hands of military lawyers. No clear commitment was made to compensate the students until after my report’s public release, when the Minister announced on March 9, 2004 that each of them would be reimbursed in full.

Some within senior echelons of DND/CF attacked the credibility of my Office’s report, despite the Minister’s acceptance of our recommendations. They suggested that we exaggerated when we wrote that one of the students was forced to sell his house because he was debt laden and couldn’t get a loan to repay the money he was said to have been “overpaid.” They persisted that the story was untrue, despite the fact that the Department’s own lawyers wrote to the student acknowledging the forced sale of his home and offering him a significant sum to cover the amount his losses.

I was disheartened by these defensive responses. Shooting the messenger has never been constructive—what is really required to avoid future cases of broken promises is introspection and an attempt to define the lessons learned.



## A Blot on History

We encountered similar maladministration when we investigated the decades of intransigence encountered by Canadian soldiers who were seeking redress after being used, without their informed consent, as guinea pigs for chemical warfare experiments. This ghastly episode was made worse when existing regulatory regimes were expected to remedy the catastrophic results these experiments produced. The onus was put on aging veterans to learn from the media that they could apply in the standard manner for pensions, even though their records had been lost or destroyed. No initiative was shown. Existing regulations were expected, in the ordinary course, to deal with the problem, when this exceptional event required exceptional treatment. Without question, our report helped flush away decades of bureaucratic obstacles to secure compensation for these men.

**Helped flush  
away decades  
of bureaucratic  
obstacles**

These are not the only examples of maladministration in which refuge behind rules has depersonalized and de-contextualized events, causing real, personal hardship. In investigations under way we have encountered inadequate attention to detail, and the failure to keep affected parties adequately informed. These failings are not the result of cruelty or even conscious indifference. They are the product of insensitivity—not taking time to consider the impact of actions on those most affected.

We are helping to change the attitudes that permit maladministration to thrive. Our value within the institution rests in large measure in our continued commitment to help eradicate bureaucratic error, inertia and depersonalized decision making.

## Agent of Change: Influencing Policy and Practice

As our attempt to influence attitudes to reduce maladministration illustrates, much of the value of the Office emerges from our role as an effective agent of change. We have been using our unique perspective to look critically at policies and practices, and making recommendations to improve the way things are done.

## Service Income Security Insurance Plan (SISIP) Long Term Disability

In October 2003 I released a report that could and should have significant impact on the way long-term disability payments are treated.

Currently, there are two forms of disability payment that members can receive. Under the *Pension Act*, payments are intended to compensate members for loss caused by service-related injury, and the SISIP Long Term Disability insurance coverage addresses the loss of income caused by disability.

**Under  
the current  
arrangement,  
there is a  
paradox**

Under the current arrangement, there is a paradox. If a member who is injured but still able to continue with the Canadian Forces

obtains a *Pension Act* payment, the member can keep both the income and the payment. On the other hand, if a member is released from the Canadian Forces as a result of the injury, the SISIP Long Term Disability insurance payments are reduced by the amount of any *Pension Act* compensation. In effect, members who are more seriously injured lose the value of their *Pension Act* compensation as it is clawed back through reduced SISIP Long Term Disability payments, while less badly injured members get to keep their *Pension Act* compensation and their income. The scheme is arbitrary. While it has not yet been changed, both former Minister of National Defence John McCallum and the House of Commons Standing Committee on National Defence and Veterans Affairs supported my recommendation to amend the terms of the SISIP payment to remove this unjustifiable disparity. I am optimistic that this change will come about.

**The scheme  
is arbitrary**

### Environmental Exposure

I have also been focusing my efforts on securing changes to policies and practices relating to “environmental exposure,” an area of perennial concern among deployed soldiers. When I visited Kabul, soldiers serving there were understandably anxious about the long-term health implications of breathing the fouled air hanging over the city. Their anxiety was fuelled by information allegedly passed on by German authorities that the dust visible in the air is composed largely of fecal matter from the open sewers snaking through the city. When I made those concerns public, they were greeted with disdain and summarily dismissed in some quarters, reflecting the kind of attitude that has caused many soldiers to lose faith in the commitment by the Canadian Forces to securing the welfare of its members. Fortunately, after I alerted the Chief of the Defence Staff (CDS) to these concerns, he was quick to implement new programs to acquire information and communicate it to the field troops.

**Greeted with  
disdain**

As the fiscal year ends, we are continuing to work on policies and practices related to environmental exposure. We are finalizing a related systemic investigation inspired by the complaint of a 1991 Gulf War veteran who was involved in the clean-up after an accidental explosion at an American weapons depot. When this report is released, a series of recommendations will be provided to further improve environmental exposure practices and policies.

Not only the larger, systemic reports led to changes in practices and policies. The resolution of particular complaints can influence military culture in a way that inspires improved policies and practices. From the public response to the Broken Promises report, there is every reason to expect that in the

**Changes in  
practices and  
policies**

future, similar problems will be dealt with more sensitivity. While it is significant that we helped obtain financial compensation for the Suffield chemical experiment veterans, potentially the most important impact was when, on behalf of the Government of Canada, the Minister of National Defence publicly expressed regret that this unfortunate episode had ever happened. These were not cheap words. This apology represents a profound acknowledgement of the worth of soldiers as individuals, as humans, who deserve respect and who need to be treated with dignity. This experience should guide any case where the Canadian Forces begins to lose perspective on how it treats its members.

We will continue to be a positive agent of change. The benefits of our efforts at improving policies and practices will be reaped in the near future. We are completing several major systemic reports proposing important changes. Two of those reports relate to military practices and policies for the investigation of accidental deaths and serious injuries. The first involves the death of a soldier who was run over by an armoured personnel carrier during a training accident. The second examines the tragic illness of a young officer cadet who collapsed during a vigorous training exercise. Both reports will make extensive recommendations about the manner in which these events are investigated, and about the treatment of those most affected by such catastrophic events.

We are also examining CF policies and practices dealing with the provision of decompression time following deployments, so soldiers are not removed directly from the field back into their own homes, without an opportunity for a more gentle transition.

### *Recognizing Value*

We helped to make the DND/CF community a better place than we found it. We did so efficiently and effectively. Our efforts and the results we have attained since our inception vindicate the vision of then-Minister of National Defence Art Eggleton, who, in 1997, decided to introduce a civilian Ombudsman into the Canadian Forces at the same time that amendments were being made in Bill C-25 to the *National Defence Act*. It is obvious from history and public record that this Office was created because of concern that existing internal statutory dispute resolution mechanisms provided for in the *National Defence Act* were inadequate for achieving the level of openness, transparency and progress required to optimize the quality of life within the Canadian Forces.

The lack of a statutory basis puts the Ombudsman's Office in a vulnerable position, leaving it dependent on the goodwill of the very people and institutions it oversees and at times must criticize. This Office requires and deserves permanence and institutional shelter. As

**Investigation  
of accidental  
deaths**

**Ombudsman's  
Office in a  
vulnerable  
position**

many of you know, even though the Office of the Ombudsman was created at the time of the Bill C-25 initiative, it is not a creature of legislation. It is effectively the product of a memo, a set of Ministerial Directives from the Minister of National Defence that can be removed with a simple stroke of a pen. In spite of all we have accomplished and all our efforts, the informal, impermanent nature of our mandate still causes some to doubt our jurisdiction and our legitimacy.

I have expressed this concern annually, but I particularly regret having to do so again. When the Ministerial Directives were published in September 2001, it was suggested that the appropriate vehicle for finalizing and formalizing the Ombudsman's mandate would be the statutorily mandated five-year review of the *National Defence Act*. That review occurred last year.

To our deep disappointment, when then-Minister John McCallum assigned the former Chief Justice of Canada, the Right Honourable Antonio Lamer, to conduct the review, this Office was excluded. Only the institutions described in Bill C-25 were examined. Military and civilian legal advisors had persuaded the Minister that the review provision in Bill C-25 did not include our Office. This position perplexed former Chief Justice Lamer, as much as it confounds us. It is ironic that this Office, which expends so much of its energy attempting to put people first and to combat technical rule-bound decision making, would be excluded from the five-year review—in spite of a promise to the contrary—purportedly on technical or legalistic grounds.

Just as I have done on behalf of so many constituents since our inception, I am calling on the Minister and the Government of Canada to put our soldiers first by making a permanent commitment to this Office and by removing any potential for arguments about jurisdiction and authority. We have now missed the five-year review, but there is nothing to prevent grounding this Office in legislation. Time and again, in dramatic ways and with real results, we demonstrated our value to the quality of life within DND/CF. It is past time to recognize that value formally, and to secure this Office for the future.

**Put our  
soldiers first**

# The Year In Review: Highlights

## *Ombudsman Visit to Afghanistan*



*André Marin and Gareth Jones in Kabul*

The Ombudsman, along with the Special Ombudsman Response Team (SORT) Director, Gareth Jones, visited Canadian Forces troops in Kabul, Afghanistan, in November 2003. They met a large number of CF members, including Major-General Andrew Leslie, who was at the time Deputy Commander of the International Security Assistance Force (ISAF).

The Canadian contingent were doing superb work in very difficult and dangerous circumstances. They faced tough, unpredictable and sometimes precarious situations daily with courage and enthusiasm.

The Ombudsman was pleased to see the results of the continuing emphasis DND/CF has placed on ensuring an improved quality of life for deployed members. Living conditions for the troops were excellent, and the camp facilities were recognized as superior not only by our own troops but also by other countries.

The Ombudsman noted three issues of concern to CF members: air quality, workload and a decompression period.

### **Air Quality**

In Kabul the Ombudsman gathered valuable insights and information on members' concerns about the environment. Many of the issues raised will be addressed in his Special Report on the systemic investigation into how the CF treats members who believe they have been exposed to environmental hazards on deployment.

A large number of troops of all ranks told the Ombudsman they were uneasy about the quality of the air they were breathing. The city of Kabul is surrounded by mountains and is subject to sandstorms. A heavy veil of smog often hangs over the city. There was dust everywhere and it was impossible to avoid it. Even mild exercise often resulted in reddening of the eyes and coughing.

**Environmental  
hazards on  
deployment**

CF members were very concerned that the air circulating in the camp consisted of dust and fecal matter. Many told the Ombudsman they feared that they were not getting the facts on the potential risks. Although air quality testing had been done by deployed Environmental Industrial Health Hazard Teams in June and October 2003, the results were not available to the troops on the ground in Kabul. The lack of concrete information was creating a fertile ground for suspicion. One senior member told the Ombudsman that he wanted to see independent air quality testing by civilians because he and his men had lost faith in the CF system.

The members were afraid that if they experienced adverse health effects later and needed to make a claim to Veterans Affairs Canada (VAC) for a disability pension, there would be no record on their files, or elsewhere, of the pollution they were exposed to in Kabul.

When the Ombudsman returned to Canada, he immediately brought the members' concerns to the attention of the CDS. This resulted in a quick response in Ottawa, including the development of new programs to get information directly to the troops in the field. The CF Medical Group developed an information presentation about air quality in Afghanistan for CF members, and an article was published for members and their families in the CF national newspaper, *The Maple Leaf*.

Some troops subsequently told the Ombudsman that, unfortunately, the information was not presented to them until the very end of the tour, when the operational tempo was extraordinarily high. Many were unable to attend briefings or were so overloaded with work they had a tough time absorbing all the information. Nevertheless, the swift action by senior DND/CF officials to the concerns the Ombudsman brought back from Afghanistan was encouraging. The information on the air quality issue will be available to those on the current rotation, and it is hoped that it will be updated as new facts and test results become available.

**Operational  
tempo was  
extraordinarily  
high**

The Ombudsman noted that CF members need information directly about the environment they are working in and potential hazards, so they can make informed judgements about the risks. This prevents rumours and suspicions from festering and helps rebuild CF members' trust in their medical system.

### Workload

The second issue to come up during the Ombudsman's visit was the heavy workload. Many members said they were working 12 to 18 hours and performing back-to-back shifts and patrols. Despite the heavy workload and high levels of stress related to both the work and the dangerous environment, morale was generally very high. CF members felt they were doing a worthwhile job and were justifiably proud of the results.

## Decompression

The third issue CF members raised with the Ombudsman in Kabul was whether there would be a decompression period before they returned home to their families. When the 3rd Princess Patricia's Canadian Light Infantry Battle Group came back from Kandahar in August 2002, they had a decompression trip to Guam for several days before going home. This trip allowed them to relax after the stresses of a very difficult mission, while receiving information and training, for example, on how to recognize warning signs associated with Operational Stress Injuries.

The Ombudsman was told that it had not been decided whether the Kabul contingent would have a similar decompression period. He learned, however, that the senior leadership in Kabul was not in favour of one. A number of factors were being considered, including the number of traumatic events that occurred during the tour compared to the Kandahar mission and the fact that the troops had had the benefit of the Home Travel Leave Allowance.

The CF does not have any guidelines in place to inform decision makers of the principles behind the decompression process, practices in other countries and what they should consider in deciding whether to organize a decompression trip after a deployment. Instead, decisions are being made ad hoc, without the benefit of any expertise or guiding criteria.

**Decisions  
are being  
made ad hoc**

The Ombudsman relayed his observations to the CDS and offered the services of his SORT to conduct an investigation into the theory behind the use of decompression periods, methods of decompression, and practices followed in other militaries, weighing the advantages and disadvantages of each approach. The CDS accepted the Ombudsman's offer. The Ombudsman's report will contain a set of clearly articulated criteria based on research, to be used by commanders to make informed decisions on whether to organize a decompression period after a deployment and what format may be used.

## Review of the National Defence Act

The Ombudsman's Office was conceived in 1997 as part of initiatives introduced within DND/CF to improve the military justice system, streamline internal review mechanisms and promote greater openness, accountability and transparency. Some of the initiatives, such as the streamlined redress of grievance system and CF Grievance Board, were implemented in 1998 by changes to the *National Defence Act* brought about by Bill C-25. This Bill contained a requirement that the *National Defence Act* be subject to an independent review of its provisions and operation every five years.

Because of concerns about how the Ombudsman model would function in a chain of command and the perception of threats to command authority, the Ombudsman's Office received its mandate outside the *National Defence Act* by Ministerial Directives enacted in 1999. In recognition of the ultimate need for a legal framework for the Office, the original Directives explicitly provided that after a period of six months of operation of the Office, they would be reviewed and amended as required and incorporated into law. This did not happen. Instead, after many months of negotiations, the Ministerial Directives for the Ombudsman's Office were revised in 2001. DND/CF lawyers and officials insisted at that time that the review of the *National Defence Act* scheduled for 2003 would provide an appropriate vehicle for the Office's mandate to be finalized and ultimately recognized in law.

In March 2003 the Honourable John McCallum, then-Minister of National Defence, appointed the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, to conduct the first review of the *National Defence Act*. The review was limited by the Minister of National Defence to the provisions of the Act which were specifically created or changed by Bill C-25, as opposed to the entire Act. The scope of the review was based on interpretations put forward by military and civilian legal advisors.

During the course of the review, Ombudsman staff provided ongoing assistance and information to former Chief Justice Lamer and his legal staff on trends in complaints received by the Ombudsman's Office and issues they had uncovered, including problems and deficiencies noted in existing complaint mechanisms such as the CF grievance system.

Both former Chief Justice Lamer and former Minister McCallum were urged by the Ombudsman to recognize the need to enshrine the Ombudsman's mandate in law. Similar submissions were made by current and former DND/CF members and the Canadian Bar Association.

**Need to  
enshrine the  
Ombudsman's  
mandate in  
law**

The Ombudsman's submission to former Chief Justice Lamer noted that:

- The Office was created as part of the same initiatives as led to the creation of Bill C-25 in order to improve complaint mechanisms and accountability in the Department.
- Unlike the Canadian Forces grievance system and the Military Police Complaints Commission, the Ombudsman's Office has a unique mandate to conduct reviews of systemic issues affecting large numbers of CF members and their families. This mandate is deserving of legal recognition.
- Enshrining the Office in law would provide CF members and the public with the necessary assurance that the Office's existence would continue and that it would remain independent from DND/CF and could not be abolished by the stroke of a Minister's pen.



- The Office requires legal recognition of its ability to review the process of existing DND/CF statutory complaint mechanisms, including the CF redress of grievance system.

Former Chief Justice Lamer commented in his September 3, 2003 report to former Minister McCallum that limiting the review of the *National Defence Act* to only the amendments made by Bill C-25 defied logic. However, he concluded that according to the terms of his mandate from former Minister McCallum, he could not make any recommendations to recognize the Ombudsman's Office in the *National Defence Act*.

## Defied logic

While the Ombudsman agreed with many of former Chief Justice Lamer's findings and recommendations with respect to military justice and existing DND/CF complaint mechanisms, he expressed to former Minister McCallum his disappointment about the missed opportunity to address the need for a statutory framework for the Ombudsman's Office. The Ombudsman had not only welcomed scrutiny by the former Chief Justice into the operations of his Office, but was specifically requesting it. He further noted that all other military Ombudsmen are enshrined in statute. There are no legal reasons not to include the Ombudsman's Office in the *National Defence Act* along with other complaint review mechanisms that serve the DND/CF community. The Ombudsman will continue to raise this issue as the recommendations from the independent review of the *National Defence Act* are being considered, in the hope that ultimately the Office will receive the legal mandate it requires to ensure its long-term effectiveness.

## *Minister's Advisory Committee on Administrative Efficiency*

In spring 2003, the Ombudsman and his Director General, Operations met with members of the Minister's Advisory Committee on Administrative Efficiency. They briefed the members on the creation of the Office, its operational structure and the results it has achieved. Information was also provided on:

- trends in complaints; and
- roadblocks and hurdles encountered by the Office in attempting to break through the bureaucracy and resolve problems at the lowest possible level in the civilian management and the military chain of command.

When the Minister's Advisory Committee submitted its report *Achieving Administrative Efficiency* to the Honourable John McCallum, then-Minister of National Defence, on August 21, 2003, it did not identify any need for improvement in administrative efficiencies in the Ombudsman's Office.

## Special Reports



### *Taking Care of the Injured and Disabled*

On October 30, 2003 the Ombudsman released his Special Report *Unfair Deductions From SISIP Payments to Former CF Members*. The report followed an investigation sparked by many complaints received by the Office from former CF members concerning their long term disability coverage.

SISIP Long Term Disability coverage is mandatory for all Regular Force members who joined the CF after April 1, 1982. The plan provides former CF members with 75 percent of their salary if they are released for medical reasons or if they become totally disabled.

*Pension Act* benefits are administered by Veterans Affairs Canada and are awarded to those who suffered a permanent disability related to their military service. These disability pensions are not treated as income and are non-taxable because they are compensation for a disability related to military service.

CF members are entitled to collect a disability pension while still serving and collecting a salary. The Ombudsman concluded that it was unfair that amounts received by injured or disabled former CF members under the *Pension Act* are deducted from their disability insurance benefits on the basis that they constitute income. He also found that this created a discrepancy in treatment, as those injured or disabled members who could continue to serve in the CF could still receive a pension and not have their total income reduced, whereas members who were too injured or disabled to serve and who had to rely on their disability insurance benefits lost the financial benefit of the disability pension.

**This created  
a discrepancy  
in treatment**

The Ombudsman recommended that the Minister present a submission to the Treasury Board and ensure all other necessary steps are taken to change the SISIP Long Term Disability policy so that *Pension Act* disability pensions do not reduce the amount of long term disability benefits payable to former CF members.

He also recommended that in the interests of equality, former CF members who had their income replacement disability benefits reduced under SISIP be reimbursed as of October 27, 2000. This is the date when changes to the *Pension Act* came into effect, allowing serving CF members to receive disability pensions while still serving and earning income in the CF, regardless of where their service-related injury occurred.

The Ombudsman's investigation also found that many CF members and their families do not have a clear understanding of the benefits they can expect to receive from their insurance plan should they become injured or disabled and no longer be able to work. Many CF members are unaware of the extent of their coverage and how to apply. The Ombudsman recommended that:

- SISIP administrators make documentation, including copies of the Long Term Disability policy, available to the public on its website;
- A Canadian Forces General Message be issued annually to inform members about their disability insurance coverage, its limitations and its benefits; and
- All CF Bases, wings and formations appoint an officer to act as a resource person and assisting officer for CF members and their families with respect to their long term disability insurance benefits.

Then-Minister of National Defence John McCallum wrote to the Ombudsman on October 8, 2003 indicating, “I am in agreement with your recommendations and I wish to thank you for your team’s quality work in producing this thoughtful and timely report.”

The Ombudsman presented his report to the House of Commons Standing Committee on National Defence and Veterans Affairs on October 30, 2003. The committee members supported the report’s findings and all recommendations. On November 4, 2003 the committee passed a unanimous motion imploring the Defence Minister and the Government to accept and enact the Ombudsman’s recommendations without delay.

**Unfortunately no submission has yet been made to Treasury Board**

Unfortunately no submission has yet been made to Treasury Board. The Ombudsman raised the issue during his first meeting with the Honourable David Pratt, who was appointed Minister of National Defence on December 12, 2003. The Ombudsman is hopeful that his recommendations will be speedily implemented.

### *A Blot on History*

The Ombudsman released his Special Report *Complaints Concerning Chemical Agent Testing During World War II* on February 19, 2004. The release followed a special announcement from the Prime Minister of Canada of the Government’s commitment to set aside a \$50-million compensation fund for victims of mustard gas and other chemical agent testing during World War II. The announcement came only 25 days after the Ombudsman forwarded his recommendation for compensation for the gas test victims to the Minister of National Defence.

The Ombudsman applauded the Prime Minister and the Government for their swift action in responding to his recommendations, stating “We’ve been able to give the story legs...the Government accomplished in 25 days what it could not achieve in 60 years.” He commended the Government for its acknowledgement of the veterans and finally awarding them reasonable compensation for what he termed “a blot on our history,” noting that “in the ethically stilted world of legal technicality in which we live it would have been easy for the Government to let the courts decide.” This, however, would have been disastrous for the veterans, many of whom are in their



eighties and who have fought for years to achieve recognition for the appalling treatment they received at the hands of their country. The Ombudsman also heralded the courage and tenacity of the two former gas test subjects who brought the matter forward to his office, veterans Harvey Freisen and Bill Tanner. He noted that they were the true champions: “These people fought this war valiantly just like you would expect any Canadian soldier, hitting up against brick walls, defiance and disbelief, with little chance or hope of succeeding.”

During World War II, the Canadian, British and US governments joined in secret chemical warfare experiments, expecting that Germany or Japan might use such weapons on Canadians and our allies. Among these experiments, tests of the effects of mustard gas and other chemicals were done on Canadian soldiers primarily at military labs in Suffield, Alberta and in Ottawa, Ontario. The test subjects were young Canadian soldiers with little military experience. About 3,500 young men were persuaded to join a top-secret mission with promises of good food, comfortable beds, an extra dollar a day and a few days’ extra leave. They had no idea about the real purpose of this assignment.

Hundreds of experiments were conducted. Some soldiers were sprayed with liquid mustard gas from planes or crawled through contaminated earth. Some sat in gas chambers wearing clothing impregnated with gas. Many subjects suffered immediate burns and painful and grotesque blisters, and some were hospitalized for several weeks. Some developed skin disorders, scarring, respiratory illnesses and other medical problems that continued for years. In other cases, conditions such as cancers, sexual dysfunction and lung problems arose later.

The Ombudsman’s Office began receiving complaints from the victims of the World War II experiments and their family members even before the Office began operations in 1999. In 2001 a review revealed that that former test subjects had been refused Veterans Affairs Canada pensions and medical care because of the secrecy surrounding the tests and the lack of records, and some were told they were fabricating their stories or were delusional. As a result, the Honourable Art Eggleton, then-Defence Minister, approved an investigation into these allegations.

**Told they were  
fabricating their  
stories or were  
delusional**

Ombudsman staff made numerous efforts to draw attention to this issue within the upper echelons of DND/CF and Veterans Affairs Canada. In 2003, a joint DND/VAC committee began to consider the issue and a researcher was hired to go through World War II files to try to identify gas test subjects. A planned campaign to reach other gas test subjects through the media didn’t get off the ground. In the fall of 2003, two former test subjects who had made complaints to the Ombudsman’s Office began to conduct their own publicity campaign, inviting others who had participated in testing at Suffield to contact them with a view to launching a class action suit against the Government.

The Ombudsman's report, submitted to the Minister of National Defence on January 25, 2004, urged DND to take serious and immediate steps to identify the gas test subjects, to provide Veterans Affairs Canada with the information to process their pension claims and to award the test subjects reasonable financial compensation. It also recommended that the Minister apologize on behalf of the Department and the Canadian Forces.

In response, on February 19, 2004 it was announced that \$50 million had been set aside for a two-year program during which veterans and their primary beneficiaries could apply for \$24,000 each in tax-free compensation. A DND/VAC program was established to administer the compensation packages and to encourage veterans to apply to Veterans Affairs Canada for disability pensions. The Honourable David Pratt, Minister of National Defence, also acknowledged the veterans in the House of Commons on February 20, 2004: "On behalf of the Prime Minister and the Government of Canada, I want to express our deepest regrets to these veterans and their families who have suffered far too long in silence. All Canadians owe them a debt of gratitude." During a press conference to announce the details of the compensation package, the Minister also conveyed his appreciation to the Ombudsman for his report and recommendations, noting that he would like to "recognize, congratulate and thank André Marin, the Ombudsman, for his work with respect to the file."

**All Canadians  
owe them a debt  
of gratitude**

### ***Broken Promises***

On March 8, 2004 the Ombudsman released his Special Report *Broken Promises, Complaints Concerning Meal Allowance For Extended Temporary Duty*. This report dealt with the plight of 10 CF corporals and master corporals who agreed to attend a 15-week training course for the new Military Automated Air Traffic System in Richmond, B.C. in 2002. The course was arranged through the Project Management Office for the Military Automated Air Traffic System (PMO MAATS) and included the 10 military students and two civilians.

A month before the course began the students received written notice that they would get a meal allowance of \$50 a day while on the course. On this basis, they arranged for cash advances to cover their expenses. Two weeks into the course, the students were told there might be a mistake in the daily allowance. It appeared they should have received only \$17.50 a day rather than the \$50 originally promised. The students were told that PMO MAATS would try to resolve the matter.

By the end of the course the matter was still not resolved. When they got home, they submitted their travel claims, which, for nine of the 10, were accepted at the \$50 rate. Three months later, the students were told that the correct rate was, in fact, \$17.50 and they would have to pay back approximately \$3,000 each. The tenth student's



claim was settled at the \$17.50 rate and he was required to repay \$3,000, which he had taken as an advance.

The military students contacted the Ombudsman's Office out of frustration. They felt that clawing back this money was unfair.

They relied on the information the Project Management Office provided and agreed to go on this voluntary course. If they had known they would get only \$17.50 a day, they would not have gone. They also argued that \$17.50 was not enough to cover meals and incidentals (including a restaurant lunch because facilities for storing or heating a brown bag lunch were inadequate) in a relatively high-cost area. Notice of the reduced rate came too late for them to make different arrangements or to leave the course.

**Clawing back  
this money  
was unfair**

Repaying the difference between the promised \$50 per day rate and the CF-approved \$17.50 per day caused real financial hardship for the students. Two of them had to take loans to repay the amounts and a third had to sell his house to come up with the money.

The PMO MAATS personnel acknowledged to the Ombudsman's Office that they had made an error and were willing to pay the students at the rate promised. They had reviewed financial regulations before sending the students on the course, but had not been aware of the rule stating that CF members on temporary duty for more than 60 days and with cooking facilities were eligible for only 35 per cent of the full per diem. However, PMO MAATS had been advised by officials at National Defence Headquarters that it was not authorized to reimburse the students.

The two civilians on the same course received \$50 per diem for all 102 days. As well, in the same apartment hotel, and with the same facilities as these students, was a military group taking a different course. Those members were entitled to the full per diem for the duration of their course because it lasted only 58 days.

The Ombudsman concluded that it was unfair that the students were promised the original \$50 amount and then subsequently had this promise broken when they had already completed the course and submitted their claims. He found that the students should not have to bear the burden of the DND/CF error and recommended that the CF find a way to compensate them for the difference between the amount approved and the full \$50 daily allowance they were originally promised. He also recommended that those students who had to incur loan interests costs as a result of the clawback be reimbursed.

The Ombudsman forwarded his report and recommendations to the Assistant Deputy Minister (Human Resources—Military) on June 9, 2003. The ADM replied to the Ombudsman on July 22, 2003, stating that the matter required further study and directed his staff to “conduct an analysis of the applicable legislations.” Another letter was received from the ADM, on December 1, 2003, raising the possibility of an ex gratia payment to the members and stating that the matter had been forwarded to the Office of the CF Legal Advisor Claims and Civil Litigation for yet further consideration. Subsequently Ombudsman staff were advised that each student had to make a claim to the CF legal advisor to negotiate repayment and detail the amount spent on meals to justify being repaid.

Vice-Admiral G.E. Jarvis, the Assistant Deputy Minister (Human Resources—Military), confirmed in writing on February 16, 2004 the process each member would have to follow while indicating that there was “no guarantee that any or all cases will receive financial compensation.”

The Ombudsman decided that this was not a satisfactory response. He commented, “I am baffled by the unnecessary complexity of the proposed solution. DND/CF has a clear moral obligation to treat these members fairly. There is no need to make them initiate individual claims or jump through more hoops in order to reach a just conclusion.”

**DND/CF has a  
clear moral  
obligation to  
treat these  
members fairly**

Following the public release of the Ombudsman’s report on March 8, 2004, the Minister directed the CF to implement the recommendations. He announced that the Department had now agreed to reimburse the members their \$50 per diem and to compensate for financial hardship caused.

The case received wide media coverage and elicited significant response from the public, with comments such as one on the Internet CBC Message Boards asking that the men and women who risk their lives for our freedom be taken care of.

**No one is saying that we want a military the size of the US’s,  
but for god’s sake take care of these men and women that  
risk their lives for our freedom. Bickering over \$32 a day  
in meal expenses is a total slap in the face.**

**—CBC Message Boards**

## Work in Progress

Ongoing cases include the death of a CF member during a training accident, the serious injury of an officer cadet, environmental exposure, CF treatment of Operational Stress Injuries and systemic delays in the CF redress of grievance system.

### *Death of CF Member During a Training Accident*

UPDATE

This incident will be made public in an Ombudsman's Special Report to be released this year. SORT investigated complaints related to the accidental training death in 1992 of a CF member at Canadian Forces Base Suffield who was run over by an armoured personnel carrier. The member, who belonged to 2nd Battalion Princess Patricia's Canadian Light Infantry, left behind a wife and two young daughters. His widow complained to the Ombudsman about how she was treated by the CF, the lack of information about her husband's death, and the inadequacy of the original CF internal investigation into the incident, which found her husband partly responsible for his own death. The deceased member's former Commanding Officer complained to the Ombudsman that a subsequent internal board of inquiry was biased and incomplete and that he was unfairly found to be indirectly responsible for the member's death.

**Board of inquiry  
was biased and  
incomplete**

Both complainants raised systemic issues about the way the CF responds to and investigates deaths of its members. Because the accident pre-dated the Ombudsman's mandate, the Office requested and received Ministerial approval to investigate.

The Ombudsman's investigation focused on three areas:

- how the CF investigates deaths of its members;
- the information and support available to family members in the wake of a death; and
- the treatment of people who might be negatively affected by an investigation into an incident that resulted in a death.

SORT investigators, with the assistance of Ombudsman's Special Advisors Colonel Gary Furrrie (Retired) and Chief Petty Officer 1st Class George Dowler (Retired), interviewed more than 100 people and reviewed over 20,000 pages of documentation, including three criminal and three administrative investigations related to the member's death. They analysed the 1992 regulations and policies for military police investigations, summary investigations and boards of inquiry, pensions, casualty administration and access to information and privacy, and they compared them to those in effect today. They also studied how civilian investigators and police forces,



as well as other militaries, deal with similar issues. Investigators interviewed the family and chain of command of a soldier killed in a training accident in 2002 to compare the CF's response then and now.

The investigation revealed that since 1992 the CF has made a number of significant improvements in how wrongful deaths are investigated and how surviving families are treated. For example, duty-related deaths are now routinely investigated by the Canadian Forces National Investigation Service (CFNIS), and regulations have been updated to improve the processes to be followed by boards of inquiry. However, a number of areas where further improvement is required were identified.

Our investigation also deals with concerns that the former Commanding Officer of the deceased member was not fairly treated during the board of inquiry. A subsequent internal administrative review by the chain of command in 2003 found the board's conclusions to be flawed and concluded that the initial finding that the former CO was indirectly responsible for the member's death could not be supported. Until this time, the former CO's attempts to clear his name had been unsuccessful, and the repeated delays in responding to his concerns caused him undue stress and anguish, resulting in his losing faith in the system's ability to treat him fairly.

The Special Report will be forwarded to the Minister of National Defence and released publicly later in 2004. It will make wide-ranging recommendations to address systemic problems, including improving training and resources for boards of inquiry and the services and information provided to families subsequent to a service-related death of a member.

### *Serious Injury of an Officer Cadet*

In January 2004 the Ombudsman submitted an interim report on *Review of Board of Inquiry Examining Cause and Circumstances Leading to Serious Injury of an Officer Cadet* to the complainant and the chain of command for feedback and comments. The Ombudsman's final report will be submitted to the Minister of National Defence and later released to the public.

This case was referred to the Ombudsman by former Minister of National Defence Art Eggleton. The former Minister requested an independent investigation after the complainant's father raised concerns about the thoroughness of an internal military board of inquiry to determine what led to his son's serious injury during a race at the Royal Military College of Canada (RMC) in Kingston in the fall of 2000. The son, an officer cadet, collapsed during a five-kilometre race and was later diagnosed with acute compartment syndrome: his muscles had become so swollen that the muscle tissue trapped in the compartment of his legs began to break down, resulting in kidney failure. He was significantly disabled as a result of his injuries and medically released from the CF in 2002.



**The former  
Minister  
requested an  
independent  
investigation**

Both the complainant and his father believed that the collapse was caused by cumulative overtraining and exhaustion as a result of his training at the Basic Officer Training Course at Canadian Forces Leadership and Recruit School in Saint-Jean, Quebec in the months before he arrived at RMC. The complainant alleged that instructors during the Basic Officer Training Course had abused their authority and that training standards were excessively harsh and consistently being raised by the instructors so that the students could never meet them.

The Ombudsman investigation included over 50 witness interviews and a review of hundreds of documents, including testimony and reports from the internal board of inquiry and a review of training standards at the Basic Officer Training Course and RMC.

The Ombudsman found that the board of inquiry's conclusion that the complainant's injury was caused solely by his overexertion during the five-kilometre race needed to be re-examined. He recommended that the military retain an independent medical expert with a specialty in sports medicine and related fields to examine the complainant and his medical documents to get a better idea of what led to the complainant's injuries.

The Ombudsman noted that no medical advisor was appointed to the board of inquiry and that the board of inquiry members had relied heavily on the advice of two military doctors who acknowledged that they did not have expertise in sports-related injuries and who also did not have complete information regarding the complainant's training experience. He also found that the complainant did not have an opportunity to be represented before the board to call evidence and make submissions, but was treated like any other witness. This was felt to be unfair, given the direct interest the complainant had in the board of inquiry proceedings and that the board was examining the circumstances surrounding how he came to suffer a serious injury.

**This was felt  
to be unfair**

The Ombudsman found that the complainant's assertion that his platoon was forced to adhere to high and almost impossible standards through the Basic Officer Training Course at Saint-Jean and that he arrived at RMC both physically and mentally exhausted was well and independently corroborated. He noted that the possibility that a course of rigorous training contributed to the complainant's injury was not fully explored by the board of inquiry, in part because they did not have the necessary medical expertise available to them and in part because the military doctors they did consult did not have all the necessary information about the complainant's training experience.

An Ombudsman investigator followed up with the chain of command at the CF Leadership and Recruit School and was able to confirm that concrete steps have been taken since 2000 to improve the application of training standards, and ultimately the learning experience students receive during the program.

It was noted that the issues with this board of inquiry were similar to those in another case being examined by the Office. Some of the problems with the 2000 board of inquiry held in the complainant's case were reminiscent of those shortcomings observed with the 1997 board of inquiry held to determine the circumstances and issues of responsibility in the death of a CF member during a training accident in 1992.

### *Environmental Exposure*

Last year the Ombudsman announced the launch of a systemic investigation into how the Canadian Forces responds to concerns of CF members that they have been exposed to environmental hazards. The Ombudsman issued a public call for submissions by anyone with information that may be of value to the investigation. All submissions were closely reviewed and considered when the issues to be examined were defined.

The complaint that sparked this investigation was submitted to the Ombudsman by a retired combat engineer officer who expressed concerns about the health and welfare of his former subordinates. A number of the men and women who had served under the complainant had become seriously ill and some had died from their illnesses. The complainant's unit was drawn from 1 Construction Engineering Regiment (1 CER) and had served in the Kuwait area immediately after the 1991 Gulf War. They were assigned to the region to help with the difficult and dangerous de-mining operations that would eventually allow the land to return to civilian use. During the tour many of them had been involved in a rescue operation following an accidental explosion at an American forces depot that abutted their compound. Many feared that they were exposed to toxic substances during this emergency that could eventually lead to severe health problems. A CBC documentary reported that a disproportionately high number of members of this unit suffered from a variety of unexplained medical problems, beyond what one would expect to see in the civilian population. CF members and their families were worried considerably by the documentary.

Other former members who had served in the Gulf region also came forward and publicly complained about how they were treated by the Canadian Forces when trying to get help for medical problems they believed were a result of their service. They complained that DND/CF had dismissed their concerns as unfounded.

SORT began the investigation in June 2003. By the end of this fiscal year, 348 interviews had been completed, approximately 23,000 pages of documentation reviewed, and some preliminary observations formulated. SORT worked very closely with Ombudsman Special Advisor Brigadier-General Joe Sharpe (Retired), who had



**Many feared  
that they were  
exposed to toxic  
substances**

presided over the Croatia Board of Inquiry in the fall of 1999. That board of inquiry examined concerns raised by members about potential exposure to hazardous materials while on deployment in Croatia and made extensive recommendations to improve the CF's assessment of environmental hazards during operations and its handling of members' concerns about their short- and long-term safety.



*André Marin briefs Base Commanders on environmental exposure investigation*

The first phase of the investigation examined the specific concerns of the members of 1 CER who had deployed to Kuwait in 1991 and assessed whether these CF members were experiencing medical problems at a greater rate than expected and whether there were any trends in the problems being experienced.

Investigators spoke to 251 of the original 300 members of the 1 CER group that deployed to Kuwait. These current and former CF members were advised of the scope of the Ombudsman's investigation and were asked for some basic information about the current state of their health. In-depth follow-up interviews were conducted with a number of these members to gather information about their experiences in dealing with the CF and more detailed health information. The members and families welcomed the opportunity to have their concerns heard. Approximately 60 members reported health concerns that they felt were related to a deployment.

The second phase of the investigation focused on systemic issues, generally assessing how deployed CF members are treated when they come forward with concerns about exposure to environmental hazards. The investigation closely examined the process used to evaluate and respond to soldiers' concerns rather than looking at the medical or scientific causes of any specific conditions and whether they related back to a specific deployment. This phase of the investigation included an examination of the progress made in implementing the recommendations from the Croatia Board of Inquiry, which were intended to improve the process for handling members' concerns about potential hazardous exposures. To put a current perspective on the issue, the investigation also examined how environmental issues and members' concerns about potential exposure were handled during Operation Apollo in 2002.

### **Concerns about exposure to environmental hazards**

Investigators contacted members who had served on Operation Apollo to hear first-hand their experience and how they felt about the application of environmental policies on this recent deployment. One troubling issue that emerged was that the CF is still not capable of accurately and quickly producing a nominal roll of members on a specific deployment. With hard work and perseverance, however, a significant number of Operation Apollo members were identified and contacted. Concerns and issues related to environmental exposures were also discussed with members of Operation Athena during the Ombudsman's visit to Kabul in 2003.

The third phase of the investigation examined how militaries in other countries, such as the United Kingdom, the United States, Italy, Australia and Saudi Arabia, deal with environmental concerns of their troops, in order to identify and benefit from new ideas and best practices.

A preliminary review of the information collected reveals that the CF has made significant progress since the Croatia Board of Inquiry, in how it deals with environmental hazards and concerns about exposures when members deploy. In some areas, Canada appears to be leading other countries and has served as a model to its allies.

Much remains to be done, however, as concerns raised by troops about the air quality in Kabul, Afghanistan during the Ombudsman's visit illustrates. The Ombudsman noted at that time that trust in the medical system needs to be rebuilt through an open flow of information. There is a need for improvement in education and direct communication with members at the ground level about potential hazards and risks, testing and test results so that they can be better informed and make their own judgements.

When soldiers are concerned about an environmental issue like the air quality in Kabul, they deserve quick, accurate and credible answers to their questions.

SORT investigators observed as well that record keeping needs to be improved. It is unacceptable that an organization as information-rich as the CF cannot quickly and accurately identify every individual on a specific deployment. Without knowing precisely who was in an area, accurate follow-up is impossible.

The investigators were also told by soldiers and their families that they continue to be concerned about the information that is recorded, or not recorded, on their files after a mission. They want to be assured that if they seek compensation for an injury or illness that shows up years later, their medical records will contain the information medical personnel and Veterans Affairs Canada need.

The Ombudsman's Special Report on this investigation is being prepared.

**Need for  
improvement in  
education  
and direct  
communication**

## *CF Treatment of Operational Stress Injuries*

UPDATE

In February 2002 the Ombudsman released his Special Report *Systemic Treatment of CF Members with PTSD* (post traumatic stress disorder), detailing how the CF responds to members who suffer from Operational Stress Injuries. Nine months later he issued a follow-up report on the CF's implementation of the 31 recommendations in the first report. A further report, on the "crazy train" incident, was issued in early 2003. It revealed that stigma associated with Operational Stress Injuries was still very much alive and that further education and leadership were required.

The Office has continued to receive complaints from members and their families about how such injuries are viewed within the CF and how those who suffer from them are treated. The Office has closely monitored how DND/CF has tackled these issues, and although significant progress has been made there are a number of emerging trends in complaints that indicate more work needs to be done. This is of even greater concern as Canada's commitment continues to deployments in unstable and dangerous situations, such as those in Afghanistan and Haiti.

An investigation on Operational Stress Injuries will determine what progress has been made by the CF in dealing with this issue that affects members and their families and to see whether further improvements can be made. The Ombudsman SORT team will conduct the investigation with a targeted completion date of February 2005.

## *Systemic Delays in the CF Redress of Grievance System*

UPDATE

This year the Ombudsman received 72 complaints related to the handling of grievances. Delays in the adjudication of grievances accounted for 28 of these complaints. Twelve were delayed at the initial authority level, 12 at the CDS level and four at the Canadian Forces Grievance Board. The longest outstanding grievance delay reported to the Ombudsman this year was eight years.

As an Office of last resort, the Ombudsman will not normally investigate an individual complaint of unfair treatment until existing mechanisms, including the CF grievance process (for military members), have been exhausted. The Ombudsman refers many individuals to the redress of grievance system to give the chain of command an opportunity to address their concerns. Members continue to report that they are experiencing significant delays in getting responses to their grievances and are growing increasingly frustrated. Many state that they have lost faith in the system's ability to provide effective, timely and fair redress.

**Significant  
delays in getting  
responses to  
their grievances**

Part of the Ombudsman's role is to ensure that existing CF complaint mechanisms function fairly and effectively for the members and their families. In an attempt to resolve individual complaints of delays in the redress process, Ombudsman investigators will contact those responsible for the grievance file and encourage them to contact the complainant directly with a status report on the file and a time line or target date for completion of the grievance. In cases of lengthy delays, investigators will monitor the file, with regular follow-ups and detailed status checks, and will encourage DND/CF officials to speed up completion of the file wherever possible. This may include drawing the attention of the senior chain of command to specific delays, facilitating the provision of additional information from the complainant and drawing the attention of DND/CF officials to undue stress and hardship the complainant may be experiencing because of the delay.

In June 2000 the CF introduced its streamlined grievance system. It includes a new two-tiered system where grievances are considered by an initial level of authority and then the CDS, who is the final level. Certain more serious grievances at the final level are referred to the CF Grievance Board to review and make findings and recommendations to the CDS. Although the new system reduced the number of bureaucratic levels involved in deciding grievances and eliminated levels of appeal, it failed to produce the results anticipated. The new levels of decision making inherited large backlogs of cases, and response times continued to lag, with delays stretching into years for many cases.

Since the "new and improved" streamlined redress of grievance system was set up, each year in his Annual Report the Ombudsman has reported on continued and inordinate delays and inefficiency in the treatment of grievances. The Ombudsman was not the only outside observer to note the problems with the CF grievance system this past year. Former Chief Justice Antonio Lamer, during his five-year review of the *National Defence Act*, noted that "although the grievance process that was created seems to be sound, the way that it has operated is not." His September 2003 report recommends sweeping measures to end the unacceptable delays, reduce bureaucracy and increase transparency.

In its report *Achieving Administrative Efficiency*, the Minister's Advisory Committee on Administrative Efficiency noted that it had received numerous comments from CF members on the inefficiency of the grievance process and recommended that the process be monitored.

In response to the growing trend of delays and backlogs in the grievance system, the CDS directed that reforms be implemented in an attempt to remove some of the bureaucracy from the system, clear backlogs of older files and reduce delays. The first

**It failed to  
produce the  
results  
anticipated**

of these reforms was the creation of the position Director General Canadian Forces Grievance Authority. A direction was also issued that by December 2004 the time line for completion of grievances would be fixed at 12 months.

The Ombudsman's Office has noticed mixed success in the implementation of reforms to the grievance system. The CF Grievance Administration section reported that for the first time in five years, more grievances were resolved than were received. A new work plan has also been implemented whereby the time taken to analyse recommendations from the CF Grievance Board and present them to the CDS has been reduced to 30 days.

**Mixed  
success**

The recent improvements to the system are certainly laudable. Much work still remains however. It is yet unclear whether the December 2004 target of having all grievance files adjudicated within one year will be met. A goal to clear all grievances at the CDS level dating from before 2001, by the end of the 2003–2004 fiscal year, was not met.

The Ombudsman's Office still receives many complaints and concerns about the grievance system. Much scepticism over the ability to fix the system still remains and many wonder whether the current efforts will be sufficient to turn the system around or if it is permanently broken. Ombudsman staff noted that the system is still dealing with significant backlogs and that many files have been languishing for years. As time goes by, chances of reaching a just conclusion on such cases grows smaller and smaller. It was also noted that plans to establish a national grievance system to track all grievances, which was to have been implemented in 2004, have been delayed by a year in order to allow more time to tackle the backlog.

The Office also continues to encounter significant delays at the initial level of authority. When the responsible level is unable to process a grievance within 60 days, it must obtain an extension from the grievor, who may either agree to an extension or insist that the grievance be sent to the CDS (second and final level). Many grievors report to the Ombudsman that initial authorities are routinely requesting extensions of three, six and sometimes nine months to arrive at a decision on a grievance file.

The Ombudsman will be closely following the promised improvements to the grievance system to see what happens over the next 12 months.

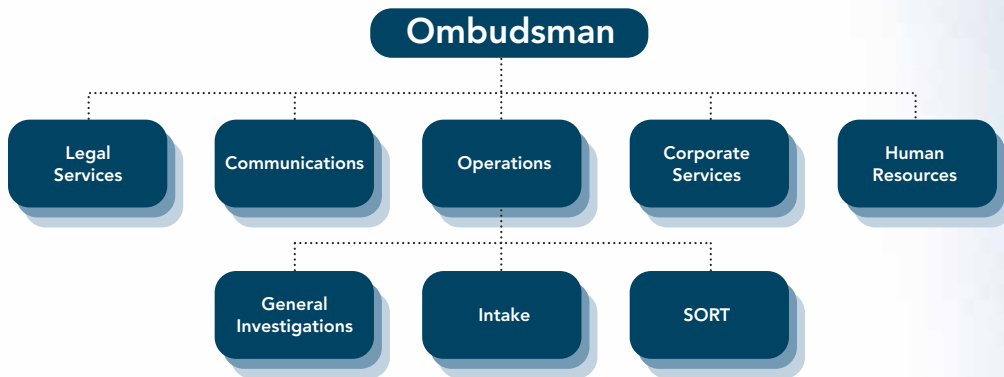


## About the Office

The Office of the Ombudsman was created in 1998 as part of a larger commitment by the Minister and CF leadership to improve fairness and openness in the CF and to strengthen the effectiveness and transparency of DND/CF oversight mechanisms.

Ombudsman André Marin was appointed on June 9, 1998 for a three-year term. He was then re-appointed for a term of five years, effective June 9, 2001. It is a Governor in Council (Cabinet) appointment pursuant to section 5 of the *National Defence Act*. This section allows Cabinet to designate someone to exercise any power or perform any function that may be exercised by the Minister under the Act.

The Office consists of over 50 dedicated staff members, all of whom are civilians who have sworn an oath of confidentiality. They are divided into the following groups: Legal Services, Communications, Corporate Services, Human Resources, and Operations—which includes Intake, General Investigations, and the Special Ombudsman Response Team.



### *Intake*

The intake team is the front line of the Ombudsman's Office, receiving complaints by phone, fax, mail or e-mail or in person. Over the past fiscal year, Ombudsman intake staff handled 2,274 complaints. There were 1,353 new cases.

Staff determine whether a complaint fits within the mandate of the Ombudsman. If it is outside the mandate, they help the complainant contact the right agencies. They also provide options, information and support to individuals to enable them to try to resolve their problems themselves rather than proceed with a formal complaint or appeal.

If the complainant has used existing internal DND/CF complaint mechanisms to no avail or there appear to be compelling circumstances, the intake officer summarizes the complaint, obtains supporting documentation and determines which internal policies, orders and procedures apply. The file is then forwarded to an investigator, with a recommendation for attempted resolution or a full investigation. In some cases intake officers make informal inquiries in an attempt to resolve problems or to help complainants learn the status of their complaint within existing DND/CF systems, such as the CF grievance system or the harassment investigation process.

### *General Investigations*

The General Investigations team handles individual complaints and tries to resolve them at the lowest level possible in the military chain of command or civilian management. The investigators are specialists in using conflict resolution techniques to diffuse volatile disputes and to negotiate win-win solutions to difficult problems.

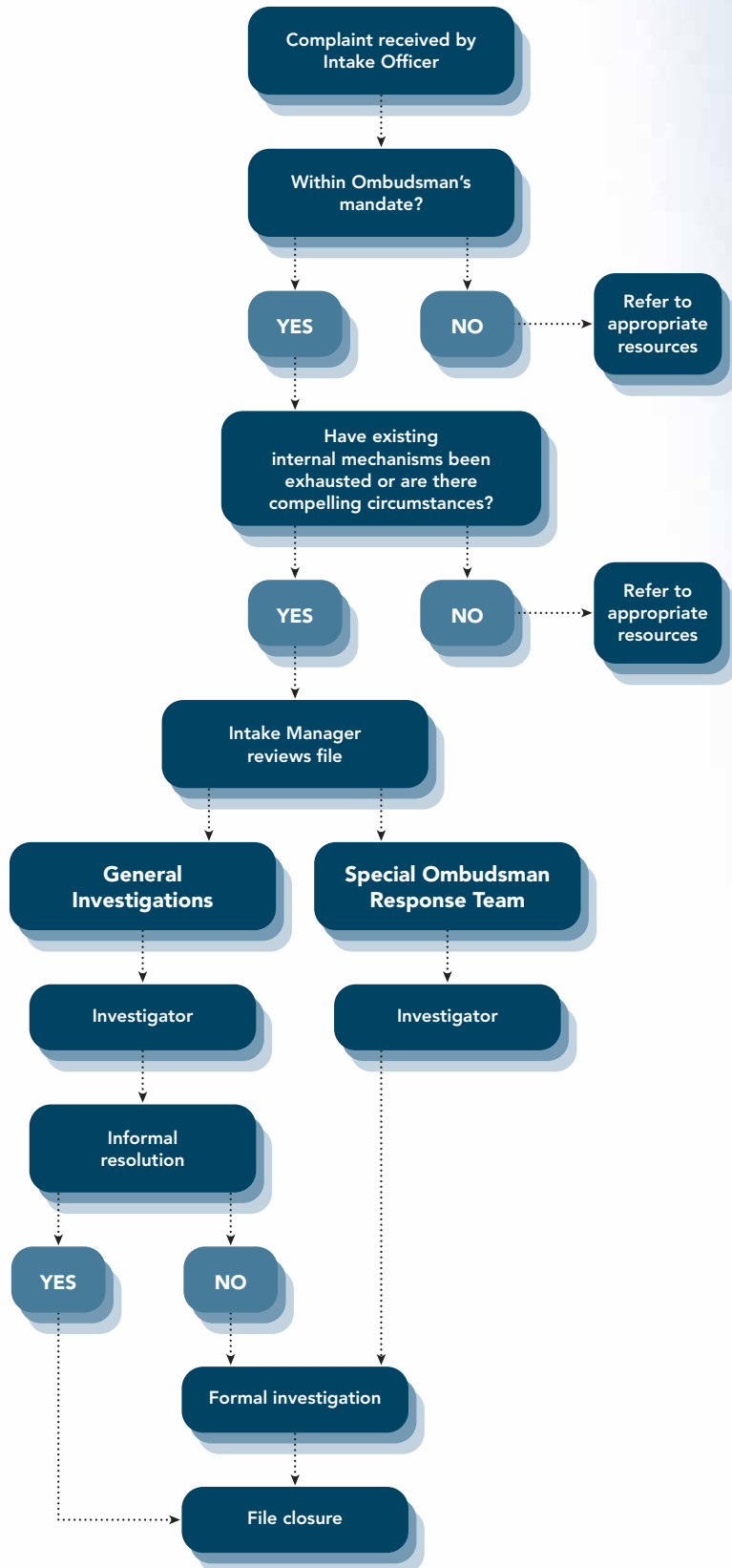
When an individual complaint cannot be resolved, a formal investigation determines whether the complaint is substantiated. Members of the General Investigations team are also experts in reviewing voluminous files on grievances and other types of complaints that have been handled by existing internal mechanisms, to spot any flaws in the process that may have led to unfair treatment of an individual.

### *Special Ombudsman Response Team*

Created in 2001, SORT handles complex complaints received by the Ombudsman that raise high-profile systemic issues, often affecting large segments of the DND/CF community. Cases investigated by SORT frequently involve disputed and controversial details and difficult questions of policy and law. A SORT investigation will be prompted by a developing trend in complaints, a serious high-profile occurrence or a referral to the Ombudsman from the Minister or the highest levels of the military chain of command or civilian management.

Every SORT investigation begins with a detailed investigation plan and involves witness interviews. Often investigations require the review of hundreds of pages of documentation.

## How Your Case is Handled



## *Ombudsman Staff Professional Development*



*Ombudsman Staff at Professional Development Session*

Ombudsman staff continually keep abreast of developments within DND and the CF, including initiatives under way, as well as resources and benefits available to CF members and former members, cadets, civilian employees, and their families.

Two professional development sessions were held for Ombudsman staff. In September 2003 the CDS met the Ombudsman and his staff and discussed their mutual commitment to the welfare of CF members and their families. The CDS spoke on the challenges facing the CF today and the important role the Ombudsman plays in assisting CF leaders in meeting those challenges.

Following the success of the Chief of the Defence Staff's address, the Ombudsman invited both the Judge Advocate General and the Assistant Deputy Minister (Human Resources—Military) to address his staff at a second professional development session in December 2003. Although the Judge Advocate General was not available to attend, the Assistant Deputy Minister (Human Resources—Military) at the time, Lieutenant-General J.M.C. Couture, accepted the invitation. Ombudsman staff heard Lieutenant-General Couture's observations on military human resource issues after a distinguished tenure as Assistant Deputy Minister and just before his retirement. Lieutenant-General Couture began by recognizing the collaborative and productive relationship that had developed between his Office and the Ombudsman's staff and the many positive results for individual CF members who had turned to the Ombudsman for help. In turn the Ombudsman thanked Lieutenant-General Couture for the strong support he demonstrated for the Office and the recognition he has given to the Office's work over the years.

## *Special Advisors*

The Ombudsman's three highly respected special advisors provide knowledge and insight on DND/CF culture and experience—in particular the realities of the operational pressures and challenges faced by the CF today. The three retired members, representing all three elements of the CF, are Chief Petty Officer 1st Class George Dowler, Brigadier-General Joe Sharpe, and Colonel Gary Furrie. They assist by facilitating cooperation, identifying sources of information and crafting recommendations that are both innovative and practical. They also serve as the Ombudsman's "sounding board."

In addition to the three element special advisors, the Ombudsman from time to time receives advice from experts outside government in areas such as the



Chief Petty Officer 1st Class George Dowler (Retired)



Brigadier-General Joe Sharpe (Retired)



Colonel Gary Furrrie (Retired)

interpretation of the Office's mandate and recommendations he intends to make in reports. The Office is fortunate to receive such advice from professors Ed Ratushny and David Paciocco, both distinguished academics from the University of Ottawa Faculty of Law. Professor Ratushny is one of the foremost experts in administrative law in Canada, and Professor Paciocco is a leading expert in the *Canadian*

*Charter of Rights and Freedoms*. The Ombudsman wishes to acknowledge the contribution made to the Office by all his special advisors.

### ***Ombudsman Advisory Committee***

Complementing the civilian-staffed Ombudsman's Office, the serving and retired military members of the Ombudsman Advisory Committee provide military knowledge and experience. Because of confidentiality, the committee members do not have access to case files. Instead, their role is a broad but significant one: they advise the Ombudsman on matters relating to the well-being and fair treatment of members of DND/CF, they make recommendations regarding systemic problems, and they act as a reference for initiatives or recommendations being considered by the Ombudsman.

The committee members are:

- Professor Ed Ratushny (Chair)
- Lieutenant-General Michael Caines (Retired)
- Sergeant Tom Hoppe (Retired)
- Colonel Rick Williams
- Brigadier-General Patricia Brennan
- Master Warrant Officer Mike Spellen (Retired)
- Chief Warrant Officer Camille Tkacz

## Ombudsman Commendations

At a special ceremony held on Parliament Hill on March 30, 2004, the Ombudsman honoured two Canadian Forces personnel and one National Defence civilian employee with 2004 Ombudsman Commendations. The Honourable David Pratt, Minister of National Defence, also took part in the ceremony. The Ombudsman's Commendations, awarded annually, recognize exemplary dedication to the values of integrity, honesty, fairness and openness, as well as exceptional problem-solving and complaint resolution skills.



Chief Warrant Officer Frank Emond received the Ombudsman's Commendation in Complaint Resolution in recognition of his "consistent personal commitment to helping Canadian Forces members under stress find positive ways to deal with their concerns." CWO Emond has worked closely with the Office of the Ombudsman

on cases involving CF members who have been diagnosed with Post Traumatic Stress Disorder or other forms of Occupational Stress Injury. On receiving his award, CWO Emond stated that "it is so easy for many of us to understand the rules and regulations that relate to the CF, but when Operational Stress Injury affects a member it is a totally different matter." He believes that although there are rules and regulations, there is room for flexibility and common sense.

Karin Kratz, Network Services Manager, 19 Wing Comox, B.C. was awarded the Ombudsman's Commendation for Ethics for providing "outstanding leadership to her team of military and civilian staff, treating others with genuine respect and becoming a voice for them." A native of Fort Vermillion, Alberta, Ms. Kratz is a strong



advocate for a harassment-free work environment who has set an example of leadership in promoting a positive workplace for her staff. Ms. Kratz, the first civilian

to be awarded the Ombudsman's Commendation, described the Ombudsman's service as a "hidden ray of sunlight for the defence team." She paid tribute to the thousands of persons who quietly serve Canada with pride, dignity and integrity, whether as civilian public servants or as military personnel.



Chief Warrant Officer Kent Griffiths was awarded the Ombudsman's Commendation for Ethics for his "demonstrated leadership that combines energy and resourcefulness with ethics and integrity." CWO Griffiths, a member of the Reserve Force for 27 years, has gained recognition for his commitment to the personal development of young

soldiers and civilians and for his work as a Harassment Advisor. CWO Griffiths talked of the difficulty in making decisions when dealing with human life. He pointed out that the balance of following orders and upholding personal principles is less arduous where there's a trust in the ethical fibre of those issuing the orders.

"The Office of the Ombudsman has the best interest of the entire defence community in constant view, both military and civilian, and I commend all of you for your untiring work on its behalf," said Minister Pratt in concluding the ceremony. "Your Office brings value to defence by working together with individuals such as Ms. Kratz, CWO Emond and CWO Griffiths to ensure fair treatment for all."

Members of the DND/CF community are encouraged to submit nominations for next year's Commendation for Ethics. The deadline for nominations is October 25, 2004.



*Award Recipients with Ombudsman André Marin and Defence Minister David Pratt*

## Good to Hear from You: Feedback

I would like to formally congratulate you and Mr. Marin on your excellent report (chemical agent testing). Not only was it detailed and factual but, more importantly, it was the final impetus that pushed the government into recognizing this group of individuals. I would like to think that the information that we were able to discover and exchange assisted in the settlement of this case. Feel free to share this e-mail with Mr. Marin so that he is aware that your efforts have been appreciated at VAC.

– VAC staff member

I appreciate the concern you have shown for Canadian servicemen. I am glad that the Ombudsman Office is available to represent the junior servicemen and have their case brought forward to the public.

– member of the public

I am pleased that the Office of the Ombudsman for the CF has been created, and I wish to thank you for the work you do in supporting Canadian Forces personnel in an unfriendly environment.

– former CF member

Reduction of meal rates can greatly reduce spending but at a great cost to the welfare of the troops. Again, I thank you for the work you are doing for us and for the information that you are passing on to the Canadian public.

– Corporal

The fact that this entire Standing Committee on National Defence and Veterans Affairs voted in favour of changing SISIP should send a strong message to the Defence Minister. Our Canadian Forces put their lives on the line every day in defence of this country. This Minister owes it to them to act now to ensure they receive the care they deserve.

– Deborah Grey, M.P.



As a retired serviceman I would like to say that it is great to see the work your office is doing and always look forward to visiting your web site.

*– retired member*

I would like to take this occasion to make you aware of the outstanding service I have received from your office. I initially had the opportunity to meet with you at CFB Halifax in 1998. Quite frankly, I was somewhat sceptical, as were many others, of your usefulness to our organization. Today I am your biggest supporter. (The Ombudsman investigator) has been an outstanding example as a positive force in the service of the Canadian Forces. Everything she committed to me was delivered on time, and as described. Her positive mental attitude and infectious enthusiasm for her job inspired me at a time when I needed it most. She often extended her working day, just to call and see how I was doing, knowing I was having a difficult time. Her reassurances were gratefully received.

*– Lieutenant-Commander (Retired)*

I heard Mr. Marin on the news the other day and while I am glad of the openness and action that seems to be happening, why does it take DND so long to get it? Anyway kudos to you and your staff for the hard work you all do and for the good results.

*– Captain*

I would like to thank you and your staff for the commendable effort put forth to bring this case to its final conclusion. Please rest assured the army will make use of your capabilities as required in the future.

*– Lieutenant-General R.J. Hillier*

Thank you. I know you'll be able to help. It was your willingness to hear me that has given me faith.

*– Captain*

Very happy SISIP investigation finally completed. I hope your recommendations are accepted. I believe it will bring SISIP's policy in line with existing law.

– *former member*

I recently read the Ombudsman's comments in the November 12 issue of the Maple Leaf regarding the clawback of LTD benefits when a member is also receiving a VAC pension. I am so happy for our members that they will no longer be "dinged". Your office has rectified an injustice and for this I salute you and your staff for your excellent work. Again, my very best to you and keep up the great work!

– *CF member*

My family wishes to thank you for your outright honesty last night (on The National news). I have been trying to show the DND/CF exactly what you stated last night.

– *CF member*

It is difficult to comprehend that five years have passed so quickly. In that time, however, great progress has been made in improving the welfare of our personnel, and many systemic irritants have been eradicated. Although we have not always been in 100% agreement on how to make the required improvements, we have made progress because of our shared altruistic visions of putting the needs of the people first. I congratulate you on behalf of the men and women of the CF and DND.

– *Lieutenant-General J.M.C. Couture (Retired)*

I have worked often with personnel in your office and have a particularly good relationship with Joe Sharpe whom I have known for a number of years. Rest assured that I will contact your office if the need arises and I would request that you feel free to do the same.

– *Brigadier-General Dennis C. Tabernor*

Your role in the CF is clearly invaluable, so an awareness of that role is equally important. Your success in influencing necessary changes on a systemic and, of course, an individual level speaks for itself. I am positive that each member of HMCS TORONTO's crew is comforted to know that there is someone of your experience and skill set working to make the CF a more efficient and effective organization.

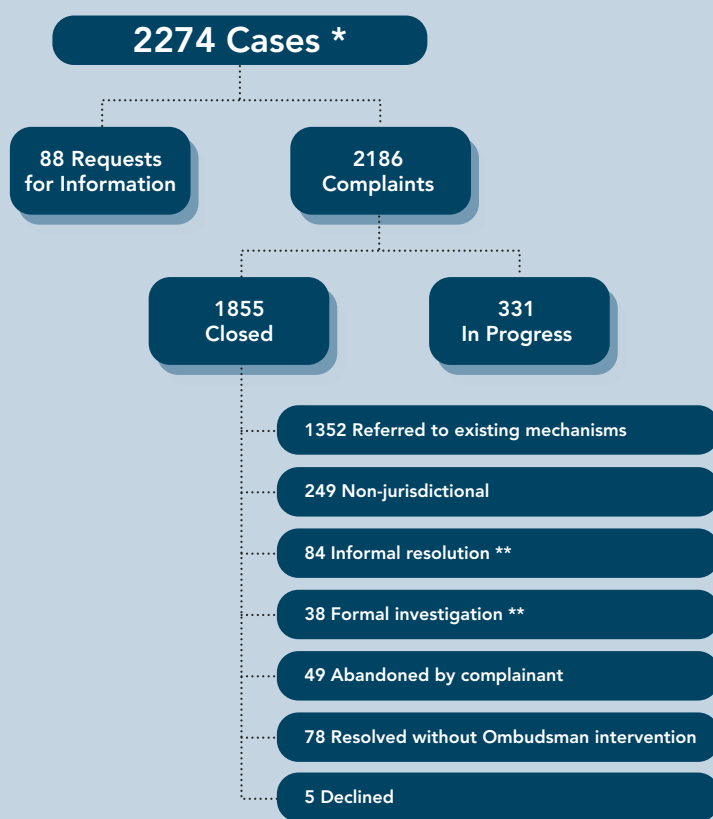
*– Commander B.W. Belliveau*

My family and I applaud all of the recommendations that have been made by the interim report and wish to express our gratitude to the Ombudsman Office for their sincerity and effort to see that my complaint was dealt with efficiently... . As my father and I both believed, our mission was not solely to ensure that my family and I were given a fair and even-handed board of inquiry investigation, but to ensure that the soldiers and families of the future do as well. It is my hope that the recommendations made by your Office can make this possible.

*– complainant*

# Appendix I: Common Complaints and Trends

*Table 1*  
Disposition of Cases



\* Includes cases received or re-opened in 2003–2004 and cases carried over from a previous year.

\*\* Combined, these categories consist of 96 fully or partially substantiated cases and 26 unsubstantiated cases.

**Referred to existing mechanisms:** Complainants are referred to an existing recourse mechanism within DND/CF, such as the CF redress of grievance process, the civilian grievance process, the harassment complaint process, or alternative dispute resolution. Ombudsman staff provide information on how to access these mechanisms, how to file a complaint and what complainants can expect when they do so.

**Non-jurisdictional:** These are cases that fall outside the Ombudsman's mandate, such as allegations of criminal activity, decisions of a court or military tribunal, complaints about legal advice, issues that are not under DND/CF control or that fall under the mandate of Veterans Affairs Canada. They are referred to the appropriate appeal or complaint mechanism.

**Informal resolution:** Ombudsman investigators attempt to resolve individual complaints at the lowest possible level, using a variety of techniques, including negotiation, persuasion, shuttle diplomacy and informal mediation, in an attempt to achieve a just result that serves the interests of both the individual and DND/CF as a whole.

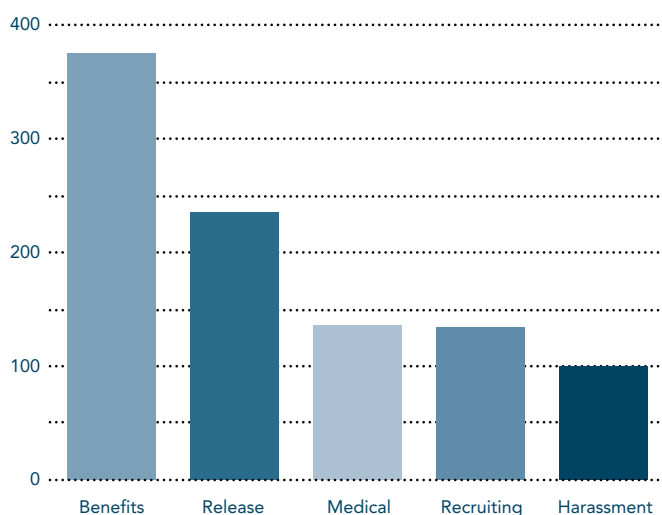
**Formal investigation:** Cases that cannot be resolved informally or cases that raise systemic issues, including those that affect a number of CF members or indicate a possible need for policy change, are the subject of formal investigations. Formal investigations are concluded by a finding of either substantiated (the complaint has merit and is founded) or unsubstantiated (the complaint has no merit and is unfounded). When a complaint is determined to have merit, recommendations are made, where appropriate, to remedy the problem or to prevent further unfair treatment.

**Abandoned by complainant:** Individuals no longer wish to proceed with their complaint or the Office is unable to maintain contact with the individuals to obtain the necessary information to deal with their complaint.

**Resolved without Ombudsman intervention:** Individuals have been successful in resolving their problem through existing internal mechanisms, before any intervention by the Ombudsman's Office.

**Declined:** The Ombudsman's Office decides not to proceed with a complaint. A number of factors are considered before a complaint is declined: the age of the complaint, whether the complainant has a personal interest in the matter, and whether an investigation of the complaint would be a judicious and efficient use of resources.

**Table 2**  
**Top Five Complaints**



The following is an overview of the most common types of complaints received by the Ombudsman's Office:

### 1. Benefits

The Office received 375 complaints about benefits. Examples:

- Unfair denial of benefits afforded under the Integrated Relocation Program;
- Pensions—including delays, miscalculation and eligibility for pensions. Although complaints about pensions under the *Pension Act* are referred to Veterans Affairs Canada, the Ombudsman's Office will examine how any action, inaction or policy on the part of DND/CF affects an individual's ability to obtain a pension; and
- The forced repayment of monies by members after a promise was made or there was an administrative error.

## 2. Release

The Office received 235 complaints about release. Examples:

- Involuntary releases—Members feel they are being unjustly released from the Canadian Forces or feel the release category being assigned to them is inaccurate (for example, an “unsuitable for further employment” category is imposed instead of a medical release category);
- Voluntary releases—Members’ voluntary release requests are delayed by administrative error or the members are denied release because of policy and they allege that undue hardship is being imposed on them; and
- Medical releases—Members are contesting the assessment of their medical condition and that they are being released under the CF universality of service requirements, or members have concerns about their access to medical services and benefits following their release.

## 3. Medical

The Office received 136 complaints regarding medical issues. Examples:

- Treatment of people who believe they have been exposed to hazardous substances in the workplace or on deployment;
- Inadequate medical treatment and follow-up care; and
- Access to medical and supporting services such as social workers and caseworkers.

## 4. Recruiting

The Office received 134 complaints about the CF recruitment process. Examples:

- Unfair rejection of applications;
- Too strict and rigid application of the medical conditions for enrolment; and
- Delays in the recruitment process and in the occupational and component transfer process.

## 5. Harassment

The Office received 100 complaints relating to harassment and the process for investigating harassment complaints. Examples:

- CF members or DND employees feel they have been victims of harassment in the workplace and are seeking information and assistance;
- Delays in the process following the submission of a formal harassment complaint; and
- Unfair or incomplete harassment investigations.

**Table 3****Types of Complaints**

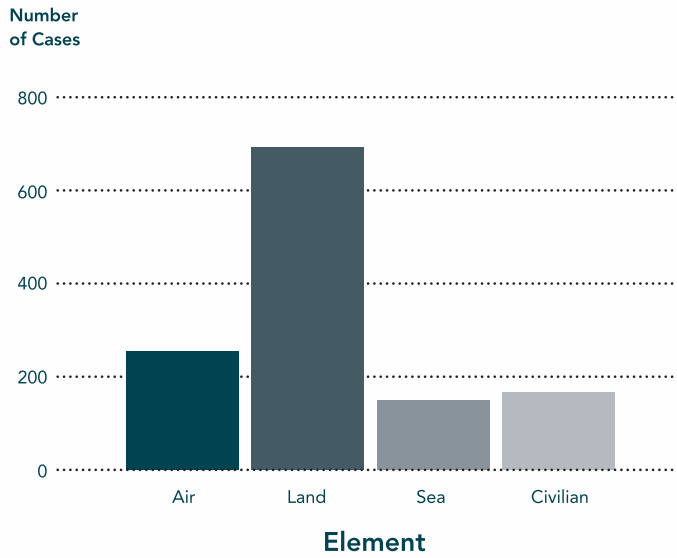
Benefits	375
Release	235
Medical	136
Recruiting	134
Harassment	100
Posting	77
Redress of Grievance	72
Post Traumatic Stress Disorder	71
Military Justice	53
Contracts	41
Promotions	34
Abuse of Power	31
Leave	31
Married Quarters	28
Disciplinary Action	27
Personnel Evaluation Report	27
Discrimination	21
Training	21
Access to Info / Privacy	17
Deployment Issues	14
Assault to the Complainant	12
Awards / Medals	12
Civilian Grievance	10
Conflict of Interest	7
Dismissal (Civilian)	7
Travel	5
Sexual Assault	4
Demotions	3
Taxation	3
Policy	2
Board of Inquiry	1
Obligatory Service	1
Safety	1
Security Clearances	1
Wrongful Death	1
*Other	57
<b>Total</b>	<b>1,672</b>

\* Includes complaints such as private business issues, international relations, etc. that do not fall into any of the established categories, as well as complaints that are too general to categorize.



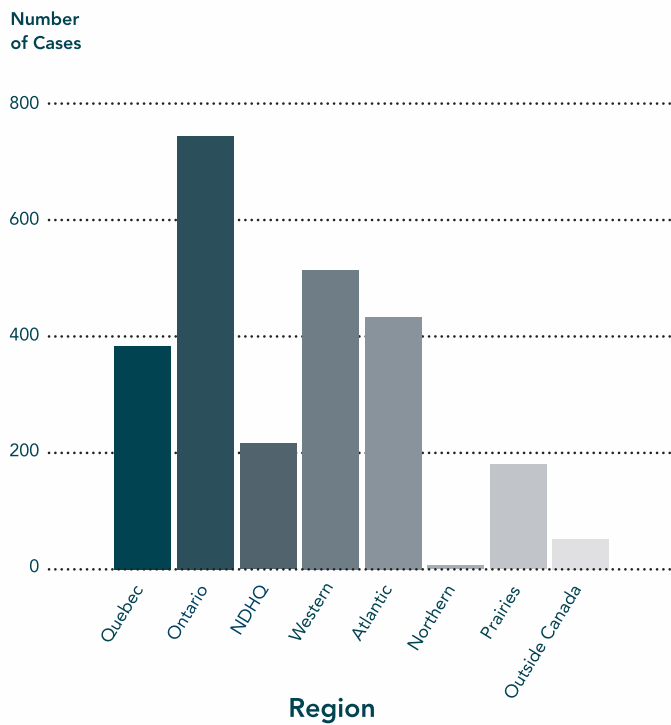
**Table 4**

**Complaints by Element**



**Table 5**

**Complaints by Region**



- Legend:**  
**Quebec**  
**Ontario**  
**National Defence Headquarters (NDHQ)**  
**Western:** Alberta, British Columbia  
**Atlantic:** Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador  
**Northern:** Yukon, Northwest Territories, Nunavut  
**Prairies:** Manitoba, Saskatchewan  
**Outside Canada**

*Table 6*

Complainant Category

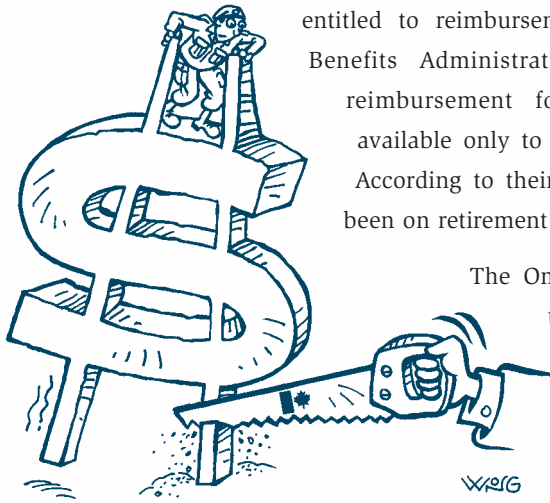
Regular Force	648
Former Military	230
Reserve Force	162
Family Member	64
Civilian Employee	43
Applicant Regular Force	39
Applicant Reserve Force	12
Cadet	8
Former DND Employee	6
Anonymous	3
Non Public Fund Employee	3
Other	47

## Appendix II: Some of Our Success Stories

### *A Long and Winding Road*

A master corporal in British Columbia learned that his mother, who lived in Ontario, was critically ill. He was given authority to travel and was told that on his return he'd receive a refund of the travel costs. So off he went and spent the Christmas holidays with his mother.

When he returned to his unit, the master corporal was told that administrative staff had made a mistake: he wasn't entitled to reimbursement. Director Compensation and Benefits Administration (DCBA) officials said that reimbursement for those expenses is normally available only to members on compassionate leave. According to their records, the master corporal had been on retirement leave.



The Ombudsman investigator determined that the master corporal had taken all the necessary steps before departure. The error occurred at the local level because his status had not been changed before he was authorized to travel for

compassionate reasons. For the next two years the investigator worked with the unit administration and DCBA officials. Finally, after considering the situation from the point of view of administrative fairness, DCBA reversed the original decision, and the master corporal was refunded the money he spent in travelling to visit his dying mother.

### *Compromise*

After being informed by his career manager that he would not be moving from his present location, a non-commissioned member mortgaged his house and proceeded with major renovations. A short time later he was told he would be promoted and posted to a Base 300 kilometres away. The member requested a contingency cost move and even said that he would forgo a promotion to stay at his present Base. His request was refused and he went to his new Base unaccompanied. A month later, his spouse hurt her knee, limiting her ability to cope on her own. With the full support of his unit, the member requested a compassionate posting back to his former Base.

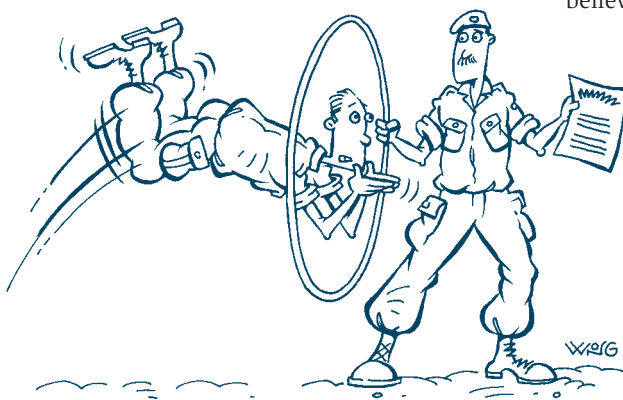
The member told our investigator that he had been preparing himself through technical courses for a second career and planned to leave the military the following year, when his 20-year contract ended. He was prepared to request his release right away and to select his previous Base as his intended place of residence on release.

The investigator informed the career manager of the member's intention to ask for a transfer back to the old Base for the remainder of his service. The investigator negotiated with the chain of command, and thanks to the cooperation of both units, the member was able to return to his previous Base while still being attached to the new one.

### *Clearing Out Cleared Up*

A former reservist said he had voluntarily left the CF in 1997. When he applied three years later to join the Regular Force, he was told that he could not re-enrol because his former reserve unit had not given him a voluntary release but had released him as "unsuitable for further service." And he was told that he owed the Crown more than \$3,000 for unreturned clothing and equipment.

When the former reservist called us, he believed that the problem of missing items had been resolved but was concerned that the negative release category was still on his file. Our investigator discovered that the debt to the Crown had never been cleared. The unit could not change the release category until the Judge Advocate General had cleared the debt, so we



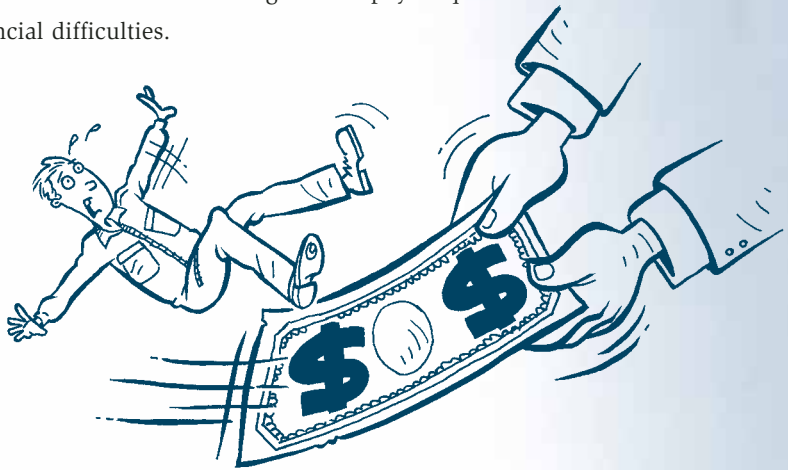
asked the Assistant Judge Advocate General to review the file. AJAG concluded that all the missing items had in fact been accounted for.

When we went back to the unit about the release category, there was no evidence on file that the former reservist had completed voluntary release paperwork, and he himself had no copies of the documents he thought he had signed. The unit had no basis on which to change the release category. However, with his debt officially cleared, the former reservist can request re-enrolment in the CF, and he is satisfied with this conclusion.

### *Paid in Full*

A CF member who was finalizing his release was told that his last paycheque would be withheld to cover a debt he had with the Canadian Forces Exchange System (CANEX). The member told the release section that he had already made arrangements with CANEX to have the amount owed taken out of his severance entitlement. He also told them that having his last paycheque withheld would cause financial difficulties.

The involvement of the Ombudsman's Office immediately prompted the release section to review the member's file and to reverse its decision to withhold his last paycheque.



### *Promotion Granted*

A member was a successful candidate under the Special Requirements Commissioning Plan (SRCP) and was posted effective March 2002. The member and his spouse, both senior non-commissioned members, were transferred to a location where he was expected to fill an officer's position once he met the promotion criteria—which he did a few months later.

But a grievance was lodged against the selection process and the member's career manager decided not to proceed with the SRCP. The member then lodged his own grievance, because his posting had been based on a promotion.

Meanwhile, the member's spouse was being considered for a promotion and posting to another province, and the possibility of another move was causing tremendous stress for both of them. He asked us to look into the delays in the grievance process. Our investigator obtained information from the military careers directorate, and the member was given an opportunity to respond. The result? The member was commissioned, retroactive to the date when he had met the SRCP requirements. He will not have to move again and can fully concentrate on the challenges of his new position.

## *Making Reality Fit the Rules*

A frustrated father contacted this Office on behalf of his son, who was a member of the Regular Force when an accident left him permanently disabled. For 12 years following the accident, he lived in an extended-care hospital facility and received the 24-hour care he needed. Sun Life Insurance paid for his room.

Unfortunately, the facility closed and the former member's family had to move him to another extended-care home. The family was shocked to discover that his room was no longer being paid for, even though his needs had not changed. The social worker at the new facility tried, without success, to get answers from Sun Life Insurance.

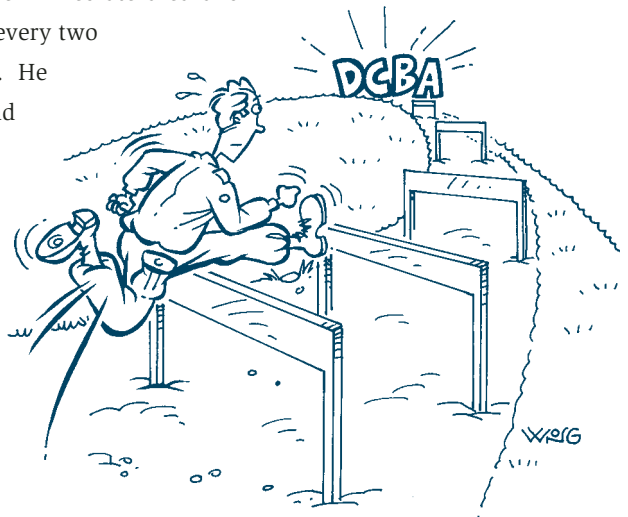
When the Ombudsman investigator contacted Sun Life Insurance, he was referred to the Public Service Health Care Plan Trust. The trust administrator explained, after the trust had considered the case, that the provincial Ministry of Health determines which facilities are classified as hospitals and therefore which ones the insurance plan will cover. The new facility did not meet the Province's criteria. However, the administrator pointed out that there was another facility nearby, and that if the son could be transferred there, his room would be paid for.

Although the answer was not the one the father was hoping for, he was grateful that his son's care had been carefully reviewed and that he had been provided with the reasons for the decision.

## *On Second Thought ...*

A member who was medically released from the CF after being diagnosed with PTSD selected an isolated community up north for his intended place of residence upon release. He chose that location because he had family there who could support him.

While on his house-hunting trip, the member discovered that the special treatment he required wasn't available in the immediate area and he'd have to travel 700 kilometres every two weeks for medical appointments. He consulted with his psychiatrist and decided it would be preferable and prudent to stay in the area where he was released. He therefore decided to remain where he was. Because he had changed his mind, DCBA was refusing to pay his \$4,000 claim for his trip up north.



The member contacted us, and our investigator contacted DCBA. The investigator explained the member's medical situation and determined exactly what information was needed to substantiate his request. The member provided the required physician's letter, and DCBA agreed to refund the full amount of the house-hunting claim.

### *Show Me the Money*

A captain filed a grievance in 1998 concerning the benefits awarded to single members sent on training courses. Although the Minister of National Defence decided in his favour, 15 months went by without any news about the possibility of financial compensation. The captain asked the Ombudsman's Office to look into the delay, and our investigator contacted officials at DCBA and the CF Grievance Authority.

The investigator found out that DCBA officials had two other cases like the captain's, and they were waiting for information from the Bases involved so they could complete all three cases at the same time. When it became evident that the records DCBA wanted no longer existed, the Grievance Authority and DCBA developed a theoretical model and made the needed calculations. The investigator requested updates, but there were still unavoidable administrative delays, until finally, after five years, the captain received his money.

### *A Belated Wedding Present*

A private contacted the Office seeking help in speeding up his release from the CF. He had applied for a release in July 2003 and was told that it would take about a year to complete. The private wanted to get out faster for two main reasons: his working environment was creating personal hardship and he was separated from his newly-wed wife.

The investigator learned that the proper release papers hadn't actually been submitted until the fall of 2003. Moreover, disciplinary actions involving the member had slowed down the release process. The investigator followed up with the private's unit and with Canadian Forces Recruiting Group in Borden. Thanks to the investigator's persistence and the Recruiting Group's cooperation, the member was released from the Canadian Forces at the end of January.



## *Co\$tly Mi\$information*

A former CF member, while he was still serving, bought a house after getting information from Base officials about his entitlements. Following the purchase he was told that he had been given incorrect information. Base officials wanted the former member to be reimbursed for his legal fees and disbursements, but DCBA officials said that he was not entitled.

The Ombudsman investigator forwarded the case documentation to DCBA staff, who eventually agreed that the former member should not have to suffer as a result of bad advice. The former member then received a cheque that covered his legal fees, disbursements and house inspection costs—a relief to both him and Base personnel.

## *Where There's a Will There's a Way*

A member with a learning disability was returned to his unit when he was unable to keep pace with a course that was to qualify him for his chosen occupation. Following his return to the unit, he asked our Office for help.

The member's unit had to assess the severity of his learning disability to determine which occupation would best suit him. The member himself was adamant about staying in the occupation he had chosen and for which he had been recruited.

The investigator put the unit in contact with the Military Gender Integration and Employment Equity section at NDHQ. The section determined that the CF had a duty to accommodate the member, since he was not putting himself or anyone else at risk and he was able to fulfil the duties of the chosen occupation. The member was put on the next course and was allowed to follow the career path he had chosen.

Our Office was able to arrange for all those involved to exchange information, and although the process took considerable time, the lessons learned will speed up the resolution of similar cases.



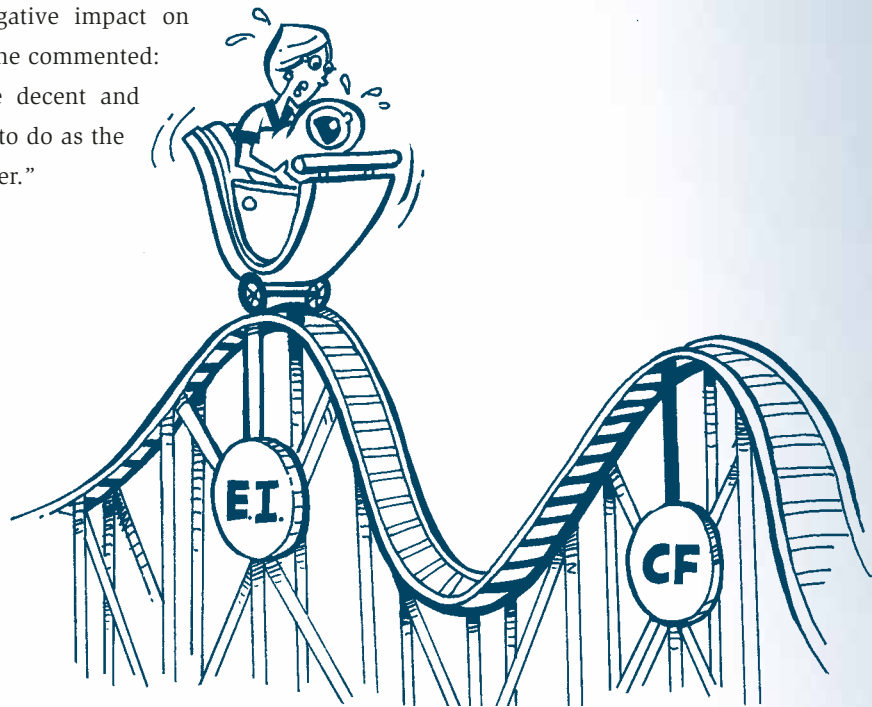
## *A Roller Coaster Ride*

A reserve member called our Office in tears. She had a newborn baby and had been seriously injured in an accident a few weeks after starting maternity leave. She was concerned that she wouldn't have a job to return to after her 12-month leave. The member took a civilian job, and then was informed that she might have to pay back a portion of the maternity benefits she had just received. Her benefits were paid by both the CF and Employment Insurance (EI), but the two bureaucracies weren't speaking to each other and no one would give her a straight answer.

The investigator called the member's unit, then continued up the chain. A military administrator in Ottawa assigned an analyst, who determined that the member did not have to pay back any money to the CF, and the member was then able to resolve her issue with EI.

Despite the positive outcome, the military administrator in Ottawa was disappointed that the issue took nine months to resolve—and only after it had been brought to her attention by the Ombudsman's Office. She encouraged the unit to take a more proactive role when other bureaucracies are having a negative impact on members' lives. She commented:

"I think it is the decent and responsible thing to do as the member's employer."



## Appendix III: Summary of Expenditures

During fiscal year 2003–2004, the total budget allocated for the Office was \$6.87 million. In response to the Government's request to exercise fiscal restraint, the Office carried out its functions under budget, as its actual expenditures were \$5 million. The largest category of expenditures was salaries at \$2.8 million, which accounts for 56 per cent of our total expenditures.

The Minister of National Defence approved the Ombudsman's budget.

### *Summary of Expenditures*

	(\$000)
Salaries	\$2,830
Professional and special services	491
Office rent	796
Transportation	215
Acquisition of computers and other equipment	249
Telecommunications	91
Communications and public outreach	178
Materials and supplies	80
Training and professional dues	39
Courier services	14
Miscellaneous	3
<b>Total</b>	<b>\$4,986</b>