

June 2005

The Honourable William Graham
Minister of National Defence
National Defence Headquarters
Major-General George R. Pearkes Building
13th Floor, North Tower
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Dear Minister,

I am pleased to submit this year's annual report for the Office of the Ombudsman of the Department of National Defence and Canadian Forces for tabling in the House of Commons.

This report provides an overview of our operations from the beginning of April 2004 to the end of the fiscal year in March 2005.

Yours truly,

A handwritten signature in black ink, appearing to read 'Barbara Finlay', written in a cursive style.

Barbara Finlay
Director General, Operations



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, the Ombudsman 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/her 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 secure online complaints form is now available on the Ombudsman's website. Electronic complaints are received directly in the Ombudsman's Office. The form provides confidentiality and 24/7 access for members of the DND/CF community.
- 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, 12th 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

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



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Director General's Message

This annual report is one of the best to date and reflects an unprecedented level of success, not only in resolving individual problems, but also in terms of bringing about long-lasting and systemic change. The last fiscal year was an extremely productive one for the Ombudsman's Office. It was also a time of transition for us, with the announcement in December of the planned departure of Mr. André Marin from his position as DND/CF Ombudsman in order to take up the post of Ombudsman for the province of Ontario. You will find Mr. Marin's final parting message in the pages that follow.



As the first Ombudsman for National Defence and Canadian Forces, Mr. Marin has left an indelible impression on the DND/CF community and touched the lives of many. Mr. Marin was best known for his ability to shine the spotlight on issues affecting DND/CF members and their families and for building a tradition of a robust Ombudsman's Office that truly looks out for the underdog. He has left behind a strong team dedicated to improving the quality of life of the men and women of the defence community and a solid blueprint for improving military oversight for the future.

This is also a time of real transition for the Canadian Forces. As the 2004–2005 fiscal year wrapped up, DND/CF was abuzz with energy and optimism over the new Chief of the Defence Staff's vision to improve the Canadian Forces and the Government of Canada's forthcoming Defence Policy Review. The coming year also promises to witness real change for the defence community. It is anticipated that these changes will transform the CF and its operations in many ways. They will also impact on individuals and their families. I want to reassure members of DND/CF and their families that the Ombudsman will continue to serve as an important safeguard, promoting fair treatment and ensuring that the impact on individuals is equitable during these exciting and uncertain times.

A handwritten signature in cursive script that reads "Barbara Finlay".

Barbara Finlay
Director General, Operations

André Marin's Message

Seven Years of Making a Difference

As I leave the Office that I have served in for almost seven years, a major chapter in my life is coming to a close. It will be a difficult transition for me. On a personal level, I will miss my colleagues in the Office who have supported me and worked so tirelessly and faithfully for the betterment of the Canadian Forces. I am deeply indebted to them.

Leaving is also difficult professionally. I have had the privilege of using moral suasion and the power to report publicly to exert a measure of influence over what is happening in the Canadian Forces. I could intercede when I thought things were going badly. I could persuade others to change their minds, to change systems, to make things better. It is with regret that I will be relinquishing this influence. It will be difficult to stand on the sidelines because I have become increasingly proud of this institution that I now know intimately and I care about what happens to it. I have also made a connection with many of Canada's soldiers. I have had the privilege of meeting hundreds of them across the farthest reaches of this great country, and even had the good fortune to visit some in foreign theatres. There the work of Canada's military is not abstract or remote; it is real and urgent. Without question, standing with Canadian soldiers in the heat and dust of Afghanistan gives one the true measure of what it means to serve. Having seen their work and having heard their stories, it was easy to be motivated to improve the quality of their military experience. When I leave, I will have little to offer those men and women and this will be the hardest thing of all.

In spite of the nostalgia that personal change and professional evolution inspires, I am able to quit this post with a sense of satisfaction. Any sense of loss I am feeling is heavily outweighed by a confident sense of accomplishment. I know without question I have been part of something important – seven years of making a difference.



Looking Back

Since inception, this Office has dealt with more than 9,000 complaints, including many where internal DND/CF mechanisms had failed to resolve issues that threatened morale, and thereby threatened the quality of the Canadian Forces. We were able to resolve most of these complaints using shuttle diplomacy, avoiding the rancor, expense and delay of formalized dispute settlement processes. I am also proud that this Office was able to acquire significant expertise in investigating large, systemic problems, ultimately establishing the Special Ombudsman Response Team (SORT) to investigate such matters. Since its inception, SORT has completed high quality investigations that have led to hard-hitting and frank recommendations about some of the most entrenched and debilitating problems facing today's military. Most of those recommendations have been adopted, promising to lead to real change and improvement. In total, this Office has released 19 such reports. The amount and quality of our work is imposing.

Since this is not only a general good bye, but an Annual Report, it bears mention that again events of this past year are indicative of the contributions that the Office of the Ombudsman has made. While we have resolved hundreds of complaints using informal intercession, our most noteworthy achievement was when I released the report, *When a Soldier Falls: Reviewing the Response to MCpl Rick Wheeler's Accidental Death*, on January 27, 2005. This report, surrounding the sad aftermath of the death of MCpl Wheeler, was the most complex and longest complaint investigation undertaken during my tenure. The report dealt with complaints by MCpl Wheeler's wife and father relating to how insensitively they were treated in the days following the accident. It also dealt with inaccurate but understandable concerns of a cover-up in the accident investigation. Finally, the report dealt with complaints by the commanding Officer, LCol (ret'd) Lapeyre about the way he was eventually unfairly blamed for MCpl Wheeler's death. The investigation took on tremendous urgency not only because it treated issues that were personally important to the complainants, but because it addressed important systemic questions. The report highlighted marked deficiencies in the Canadian Forces' treatment of the family members of those who have given their lives in the service of their country, and it demonstrated a range of inadequacies in investigative practices used during the conduct of Summary Investigations and Boards of Inquiry. I am extremely gratified to have completed this important investigation before my departure.

**This Office
has dealt
with more
than 9,000
complaints**

Looking Forward

In September 2004, we launched a systemic investigation into the recruitment process. We did so because in the past few years we have received numerous complaints from applicants to the Canadian Forces, many relating to intolerable delays. Other complainants claim to have been discriminated against in the application process. This is a timely and important initiative as the federal government announced in its October 2004 Throne Speech that it planned to re-invest in our military, and that the size of the military will

increase by 5,000 Regular and 3,000 Reserve Members. The February Budget pledged significant funds to help achieve this. It is imperative that the Canadian Forces immediately resolve any recruitment problems that may impair its ability to reach these goals and to profit from these resources. This report will no doubt assist in identifying those problems and pointing the way to resolution.

A Time of Change

The work completed by this Office has not been confined to the settlement of discrete complaints, or to the important systemic investigations like those just described. We have been proactive in trying to prevent problems before they happen. Most Canadians will be familiar with images of the crippled submarine, the HMCS CHICOUTIMI, blackened by fire and being tossed about in the Atlantic. When the decision was made to conduct a Board of Inquiry into the death of a Canadian seaman and the injury to others on board the vessel, this Office took the initiative of contacting the convening authority and offering to share our acquired expertise in the conduct of Boards of Inquiry. The Chief of the Maritime Staff readily accepted this offer. Building on this experience, when a Board of Inquiry was convened to investigate the disappearance of Leading Seaman Robert Leblanc in February from the decks of the HMCS MONTRÉAL, I once again stepped up to plate and offered to help the Board of Inquiry in preparing for its task. The Director General of Operations and the Director of the Special Ombudsman Response Team traveled to Halifax to conduct preparatory briefings from our Lessons Learned.

**We have been
proactive in
trying to prevent
problems**

Similarly, I have interceded to address workload concerns raised by deployed soldiers during my return to Kabul in November of this year. As has consistently been the case when I have met soldiers in the field, the men and women of the Canadian Forces I encountered were focused and motivated, but they were exhausted from their workload. Their fatigue is directly attributable to the decision made in August 2004 to cut troop strength from 2,000 to 700, cutbacks that require soldiers to perform double duty. The problem is exacerbated by expectations that these soldiers will act as military tour guides. The Department of National Defence offers Canadian business men and women as well as community leaders the opportunity to visit Canadian troops at bases to see what they have been doing in terms of security, protecting the population and rebuilding the country. While publicizing the good work of our soldiers is laudable, looking after “military tourists” only adds to personnel shortages and is having a huge impact on morale. Upon my return to Canada, I met with the Assistant Chief of Land Staff to discuss these issues, and this Office is continuing to monitor the situation.

So, as in every other year, this Office has given real value to the institution. Without question, the Canadian Forces is a better institution as a result of the work that the Office of the Ombudsman was able to do under my watch. One need merely think back to the way things were when this Office began in June 1998.

In the Beginning

At that time the Canadian Forces was suffering a deep crisis in public credibility. The fallout from the Somalia affair, allegations of sexual harassment, the infamous hazing rituals practiced within the Airborne, a crippled grievance process, and a perception that military leadership was failing, all plagued the Canadian Forces.

Morale was low. This was a sad, indeed desperate time for Canada's military. As often happens, though, good things can come from bad.

**Morale
was low**

It took a crisis of this magnitude to impel political leaders to recognize the virtue of civilian oversight. It was the public anguish over these episodes that inspired the then Minister of National Defence to look beyond the formalized and restricted dispute settlement measures drafted in Bill C-25 and to create the Ombudsman's Office, an institution that has proven to be the most efficient and effective mechanism within the Canadian Forces for averting disputes, settling complaints and identifying systemic improvements. While this Office cannot take all of the credit for the vast improvement that has occurred, it can fairly claim a significant amount.

This Office has grown in spite of the occasional fierce resistance from within quarters of DND/CF. That resistance was borne of an exaggerated and misplaced fear that permitting civilian oversight in the military would undermine the authority of the chain of command. When this Office was created, there was a widespread belief within the chain of command that the creation of a complaints process staffed by outsiders would compromise the ability of military leaders to command the kind of unquestioning loyalty and obedience that can be required in an armed service. That the Office of the Ombudsman DND/CF has been able to grow and root itself in such a climate of suspicion is a testament to its utility and to the quality of the work we have done.

Building a Credible Investigation Process

The contributions made by this Office are also remarkable given that the Office was created without infrastructure, mandate, or direction. The then Minister of National Defence, sensing the urgency of the situation, acted decisively and appointed me to an Office that had not yet been designed, let alone developed. He charged me with the responsibility of creating not only a business plan, but also a role or a mandate. Several months later, in January 1999, I provided a blueprint in *The Way Forward – Action Plan for the Office of the Ombudsman*. This product of extensive research and deep reflection identified the principles needed for an effective ombudsman. Chief among those principles was the need for independence from the influence of the chain of command and from political leaders, the need to be able to offer complainants confidentiality and protection from reprisal, and finally, effective review and investigative powers. It was then that I embarked on my unceasing quest to achieve these things for this Office; a quest that has met with mixed and important successes, yet a quest that is still unfinished.

**The need for
independence**

Almost immediately after I assumed the position, I encountered the first attempt to undercut the authority of this Office. Fearful of outside interference, the chain of command sought to render this Office still-born by denying it any investigative powers at all, thereby controlling the flow of information. Information, of course, is power. The chain of command tried to deprive this Office of the fuel that could drive change. It sought to make the Ombudsman little more than a referral service that would point complainants to internal DND/CF dispute resolution mechanisms. Our sole role in fact-finding was to recommend that matters be investigated by the military by convening Summary Investigations or Boards of Inquiry. In spite of this, after six months, we obtained the mandate to conduct independent investigations, including the right to investigate the quality of investigations that Summary Investigations and Boards of Inquiry conduct, and to review systemic problems in the practices they employ. There is poignant irony in all of this. Instead of being beholden to these forms of military investigations for fact-finding, this Office now oversees their processes. I say this not to revel publicly in the delicious irony of it all. I make the point to demonstrate the folly in the initial attempt to deprive this Office of the tools it needs. Had the Chain of Command got what it wanted, we could never have helped Mrs. Wheeler and LCol (ret'd) Lapeyre. We could never have made the raft of recommendations for improving Boards of Inquiry. And we would not have been a resource for the Boards of Inquiry investigating the HMCS CHICOUTIMI and HMCS MONTRÉAL tragedies. This episode should serve as a cautionary tale: self-interested efforts to curtail the authority of this Office should be firmly rejected so that its potential to do good work can be fully realized.

Without question, winning the power to investigate was key to the success we have achieved. Almost as important was the entitlement we were granted by the then Minister of National Defence to report publicly. It was always understood that we could make recommendations to those caught in the throes of disputes, but ideas, even wise ones, may not always command respect on their own merits, particularly not where credibility, egos and self-interest are at work. The ability to invoke public pressure to force serious consideration of proposals has been instrumental in softening resistance.

**Power to
investigate
was key to
the success**

Walking a Fine Line

Of course, this important power to report publicly carries with it a great responsibility. Public reporting can embarrass and intimidate. I have been careful to issue public reports only when a matter was worthy of public attention, and only after great consideration. I appreciate that the use of this tool has not been entirely painless for everyone, and that some of the public criticisms I have made have not gone over well in all circles within DND/CF. Indeed, after last year's Annual Report I was told by the Chief of the Defence Staff that he was "taken aback" by the tone of my introductory message where I spoke of cooperation difficulties with the chain of command and of a growing sense of defensiveness I was encountering. Of course, I did not decide to make this disturbing

trend public in order to embarrass anyone. It was my responsibility to the institution to identify problems and to expose those problems to the sanitizing light of day, and to invoke the cleansing powers of public opinion. Remember that for a time this institution lost public credibility precisely because of a habit of denying and burying problems rather than dealing with them. This Office is about transparency and accountability, traits now inevitably linked to the credibility of this institution. As painful as publicity can be for some, this power of public reporting is a key to the success that this Office has achieved.

Military “Filibustering”

In this past year, resistance has continued. There is the defensive reaction that some of our recommendations have received. There is also a trend of referring an increasing number of matters to military lawyers or to the CF Legal Advisor (Claims and Civil Litigation) for evaluation before attempting to resolve problems. This impedes quick resolution, and takes on the appearance of filibustering. Others employ the same tool that was initially tried to deny us authority, by controlling the flow of information. Remarkably, even though we were asked by the Chief of the Defence Staff to conduct an investigation into how CF snipers, who were seconded to the United States military in Afghanistan in 2002, were treated by the Canadian Forces upon their return, we have been confounded by unmeritorious *Privacy Act* objections to the supply of information. We have had to fight for the release of information that should have come directly to us, and we can have no confidence that we have received all that we should have access to.

I do not dredge up and criticize the refusal of some to buy into the role of this Office in order to berate or inflame. I do it to signal a note of caution to the Government of Canada, the Minister, and to my successor. Without question, in spite of all it has accomplished, this Office is at a crossroad because of my departure. While the Office is much larger than I am and is staffed with exceptional people who are up to the task, there is a risk that those who oppose civilian oversight may take my departure as an opportunity to weaken the Office. I think back to the 1995 Report issued by Brig.Gen.(ret’d) Larry T. Doshen. While the Report called for a military ombudsman, the ombudsman envisaged was a far cry from the Office we have today. Brig.Gen (ret’d) Doshen had in mind an institutional ombudsman who would report to the Chief of the Defence Staff, and who would be little more than a go-between, or honest broker.

**This Office
is at a
crossroad**

A Time for Change

While the Office has done well in acquiring credible investigative and review powers, there are nonetheless shortcomings that should be addressed. There are still important restrictions on the mandate that keep us from being a “full service” office, and there are information gathering tools that should be available to us, but that are not.

The biggest deficit in achieving the principles of success, however, is the continuing lack of institutional independence for the Office. As I have noted time and again, institutionally, this Office is vulnerable. The Ombudsman exercises delegated power from a government Minister, and although tremendous respect has been given by each Minister to the need for our autonomy, the Office remains beholden to the Minister and therefore subject to pressure, should it be exerted. Moreover, the Office is created by Ministerial Directives that can be deleted with the stroke of a pen.

The absence of a legislative foundation has caused jurisdictional problems, and undermined the authority of the Office in the eyes of some. The one regret I have is that I could not achieve a legislative mandate. Some say that in this regard, we have been a victim of our own success – that given all we have done, it is evident that this

Office does not need a legislative mandate. I reject this view. It is a disingenuous reply, an argument of convenience. Those who truly support the Office would not leave it susceptible to political fortune. They would not leave it to fend off objections based on its supposed illegitimacy. They would give the Office the institutional support it requires.

The need for institutionalized recognition remains pressing because there are still pockets of resistance within DND/CF. While many within the chain of command are innovators and visionaries, others resist change and remain resentful of outside advice, whatever its merits. Some have the idea that the Office of the Ombudsman was punishment for the Somalia affair. They believe that they have served their time so the Office can now go away. They are so wrong. This Office is much more than a temporary band-aid to hide unsightly sores until they faded away. It is a centrally important institution within the Canadian Forces, an institution that has demonstrated its value and earned a permanent place. It should not be sloughed off or marginalized by those who want to return to a world without accountability, now that the sense of crisis has abated.

Parting Words

In spite of the pockets of resistance that I have struggled to overcome, I have every confidence that this Office will endure and thrive. I am heartened that the sniper investigation, which was commenced in the past year, marked the first time that the Chief of the Defence Staff asked us to initiate an investigation. If there is a stamp of approval for our Office, this is it. And I am heartened that the Chief of the Maritime Staff was quick to accept our offer to contribute our expertise on proper investigative techniques. This takes us a long way from a vision for our Office that we were initially offered, that would have us depend on Boards of Inquiry for our own fact-finding. But I am heartened most of all by the fact that current Minister Bill Graham has exhibited tremendous confidence in, and support for, this Office. He is the first Minister to have publicly acknowledged the receipt of one of our reports, *When a Soldier Falls*, and he was quick to give public endorsement to its recommendations. He has been a steadfast supporter, and in his hands I am confident that wise decisions will be made.

Absence of a legislative foundation

As I prepared to leave this Office, I set pen to paper to outline the path for civilian oversight of the military that builds on our experiences, expertise and successes. Based on my reflections, I outlined my vision for the future of this Office. On March 30, 2005, I released my discussion paper entitled, *Overhauling Oversight: Ombudsman White Paper*, which I hope can serve as a springboard to turn hindsight into foresight.

It has been a privilege to serve in this important post. As I say, the experience of being Ombudsman has been a personal watershed, and I believe it has been something of an institutional watershed as well—seven years of making a difference. Of course, it would have been simpler for me had I become a “yes man,” but that would have been wrong. I leave here knowing that the difficult course we in the Office of the Ombudsman have been forging together was the right one to take, the only one to take. It has made the military a stronger organization and improved the lives of many. To my successor, I offer the following advice—your responsibility will be great, but if you have the courage to insist on accountability, transparency and fair treatment for members, even in the face of opposition and resistance, your rewards will be greater still.

**We improved
the lives
of many**



André Marin
Ombudsman (June 1998 – March 2005)

The Year in Review

Highlights

Ombudsman Visit to Kabul, Afghanistan

The Ombudsman, accompanied by the Office's Director General of Operations visited Camp Julien in Kabul, Afghanistan from November 20–24, 2004, which included a stopover the Theatre Support Element for Task Force Kabul at Camp Mirage.

Camp Mirage

The approximately 200 CF members who served at Camp Mirage were not eligible for the tax exemption provided to CF members serving on specific operations, because of the lower risk level accorded to their mission. The Ombudsman was advised that this had an extremely negative impact on morale at the camp, as the CF members serving in Afghanistan, who the camp supports, are eligible for a tax exemption during the mission. Members at Camp Mirage had constructed a "tax exemption wishing well" as a symbol of their frustration over the issue. Many felt that the denial of the exemption demonstrated a lack of awareness and appreciation for their work and the important supporting role they play for the task force. They felt that they too should be entitled to the exemption based on the hardship they experience during the mission and that this benefit should not be based solely on risk.

Camp Julien

During his two-day visit to Camp Julien, the Ombudsman participated in patrols of Kabul both in an armoured personnel carrier and on foot. Rotation 2 of Operation Athena, consisted of approximately 700 military personnel from Land Forces Western Area in Edmonton including members of 3 PPCLI, 1 Combat Engineer Regiment, 1 Service Battalion Edmonton, 1 PPCLI and 1 Field Ambulance, as well as 380 civilian contractors.



The facilities at Camp Julien continued to be top notch and the CF members whom the Ombudsman met were very proud of the job they were doing and positive about their participation in the mission. The one over-riding concern, raised by members of all ranks, was the shortage of personnel and the overwhelming workload they faced.

The Ombudsman was advised that the personnel shortage had led to over-tasking, stress and frustration. Many felt they were on the point of burnout. The extreme situation had a negative impact on morale and on unit cohesion, as staff were being required to work extra shifts and do jobs for which they had not been trained. Senior members of the chain of command felt they were short approximately 70 positions including a platoon of 37 to assist with force protection. The mission draw down team, which had been assisting with force protection, returned to Canada when the camp was scaled-down. This had a large impact, as those remaining assumed extra duties.

**Many felt
they were
on the point
of burnout**

The Deputy Chief of the Defence Staff at NDHQ in Ottawa was advised of the personnel shortage; however, a request for additional personnel had been refused, on the recommendation of the then Acting Chief of the Land Staff.

Generally, members at the camp felt that personnel levels had been scaled back too drastically. They noted that the remaining 700 personnel were too few. Many were under the impression that requests for additional personnel had been turned down as a result of a need to provide relief and rest to other troops in anticipation of additional mission requirements in 2005–2006. Although the number of personnel had been reduced, many of the support duties had not decreased proportionally: force protection duties remained the same and support and accommodations still had to be maintained for a camp of approximately 1,800 when you take into account the 380 civilian employees plus International Security Assistance Force (ISAF) members staying or transiting through the camp.

Many members the Ombudsman spoke to reported working 10–12 hour days, often seven days per week and complained of fatigue and burnout. When members left on their allocated leave, they were not replaced, adding to the burden of those remaining behind. Even those recently returned from leave reported feeling stressed and overwhelmed by the volume of work waiting for them when they returned. Many reported having to do double duties, such as clerks and drivers doing guard duty at the gate in addition to their normal workloads. Concerns were raised about the lack of unit cohesion and the added element of risk posed by such arrangements.

The Health Services personnel at the camp confirmed that members were stressed and overtaxed as a result of being required to work extra shifts with little time off and the mental health nurse acknowledged that people were very tired. The chaplain reported that some soldiers who normally attended church services had not been showing up because they couldn't get time off.

Flu Shots

Some platoon commanders felt that all members should be ordered to take the flu shot. If the flu were to spread around the camp, it would exacerbate the staffing situation. They were already overtasked and short staffed. The camp medical staff on the other hand felt that flu shots should not be mandatory, as there was insufficient scientific proof of its effectiveness. Members were encouraged to take the flu shot and about 50 percent of personnel already had. It was noted, however, that the controversy led to undue pressure on some to take the shot. Some platoon commanders demanded lists of those who had not taken the shot. That request was refused. One member reported that their platoon was required to sign a form and explain to their platoon commander why they had not taken the shot. This was raised with the acting commanding officer of the camp, who agreed that this was against camp policy and took steps to resolve the issue.

Military Tourism

It was estimated that at least 30 visitors passed through camp each week. The high number of visits was a source of morale problems and frustration for the troops. Of particular note was the DND/CF outreach program, which invited select business men and women, academics and other community members to visit the camp. These people observed first-hand the work being done on the operation, and thus they could return home and promote the contribution the CF was making in Afghanistan and increase public support. Although many agreed that the program was an excellent idea in theory, the high number of visitors and the work involved, especially given the existing personnel shortage, was taking its toll. Some of the visitors were not well prepared for visiting an operational theatre and were unclear or unable to articulate exactly why they were there. One member of the outreach group said “I have no idea why I’m here, but I look at it as the adventure of a lifetime.”

**30 visitors
passed through
camp each week**

Some troops referred to the outreach participants as “military tourists” and resented the extra administrative burden their visits posed. Some noted that unlike the Ombudsman who spent approximately two days in total at camp, with all of his time being spent directly with the troops, the outreach visitors remained for up to two weeks and required constant guiding and shuttling into Kabul for sightseeing and meetings with different government officials and dignitaries. The added work involved was difficult for the troops to accept when faced with already overwhelming demands.

Air Quality

The Ombudsman was pleased that considerable progress had been made in responding to concerns about air quality, an issue that had been a major preoccupation during his visit to Operation Athena in 2003. Troops were now provided with pre-deployment briefings on air quality as part of arrival assistance procedures and although some still had questions about the quality of air and the degree of dust, they appreciated receiving information on

what was being done to deal with the problem. Furthermore, many of the concerns had decreased with the closure of Camp Warehouse, which had been most affected and that air quality testing had continued. The Ombudsman did note, however, that health services staff were unaware of the status of air quality test results and that no plan seemed to be in place to communicate the tests results to the members, when they became available. On a positive note, the ISAF surgeon had implemented a system to track different illnesses and complaints raised by members including respiratory complaints.

Proactive Approach for the Future: Sharing our Lessons-learned

Subsequent to the fire on HMCS CHICOUTIMI on October 5, 2004, off the coast of Scotland and the death of Lieutenant (N) Chris Saunders, the CF announced the convening of a Board of Inquiry to investigate the incident. Upon hearing this announcement, the Ombudsman contacted the Chief of the Maritime Staff, who was the convening authority for the Board to offer the Office's assistance: we could provide a briefing to the Board on lessons that had been learned with respect to improving the Board of Inquiry process and conducting thorough, open and transparent investigations. The Chief of the Maritime Staff readily accepted the Ombudsman's offer and on October 10, 2004, the Director of the Special Ombudsman Response Team and the Director General Operations for the Ombudsman's Office, went to Faslane, Scotland, to brief the newly appointed Board of Inquiry members.

Improving the Board of Inquiry process

The briefing was based on the Ombudsman's review of earlier major and complex Boards of Inquiry into serious injuries and deaths, including the training death of MCpl Rick Wheeler in 1992 and the Tarnak Farms and Jowz Valley Boards of Inquiry. The session focussed on three main themes: principles of effective investigations; information and support for families; as well as ensuring openness and transparency. The Office outlined some pitfalls as well as some successful practices observed with previous Boards of Inquiry including the following:

Pitfalls

- board members having inadequate training and experience to conduct complex investigations;
- lack of preparation time;
- failure to consult experts;
- lack of procedural fairness; and
- a lack of involvement and availability of information for family members.

Successful Practices

- appointing an investigative expert to assist in conducting the investigation and interviewing witnesses;
- giving families input into terms of reference and allowing family members to attend the inquiry;
- publishing the terms of reference;
- establishing a website; and
- publishing interim reports and full findings, recommendations and transcripts at the end of the process.

The president and members of the Chicoutimi Board of Inquiry were very receptive to the information and acknowledged that it would be useful as they launched their investigation. In response to the advice provided, the Board president informed the Office that he would arrange to include the Saunders family in the process as much as possible including allowing a family member to attend the proceedings and arranging for Mrs. Saunders to visit the submarine at her request. He also acknowledged that the family had been provided a copy of the terms of the reference, which were to be made public the next day. The Board also established a website to update the public on its progress and posted regular situational reports throughout its hearings.

Drawing on the success of the Chicoutimi Board of Inquiry briefing, the naval chain of command turned to the Ombudsman's Office for a second lessons-learned briefing, after a Board of Inquiry was convened to examine the disappearance of Leading Seaman Robert Leblanc from the decks of HMCS MONTRÉAL on February 8, 2005. This briefing, which was equally well received, was provided by the Director of the Special Ombudsman Response Team and Director General of Operations in Halifax on February 17, 2005.

Calls for a Veterans Ombudsman

In the wake of the release of the Ombudsman's Special Report, *A Blot on History: Complaints Concerning Chemical Agent Testing During World War II*, a number of CF Veterans and their families have advocated for the creation of a Veterans Ombudsman to ensure fair treatment of veterans. In doing so, they have cited the success that the DND/CF Ombudsman has had in contributing to substantial and long lasting improvements to the quality of life of CF members and their families. Unfortunately, the DND/CF Ombudsman is limited to dealing with issues affecting veterans only where the issue falls within the control of the CF. The Ombudsman's reach does not extend to Veterans Affairs matters, such as the allocation of disability pensions, funding for medical treatment and other benefits for veterans and their families. Often veterans are left with nowhere to turn if they are unable to solve such a problem themselves or with the help of the Royal Canadian Legion.

**Ensure fair
treatment of
veterans**

On December 6, 2004, the Ombudsman was called before the Veterans Affairs Subcommittee of the Standing Committee on National Defence and Veterans Affairs (SCONDVA) on the concept of a Veterans Ombudsman. In his remarks, the Ombudsman explained how the Ombudsman's concept successfully works in DND/CF to the benefit of the organization, its members and their families. In his view, an Ombudsman would bring many of the same benefits to veterans. The Ombudsman noted that although the Royal Canadian Legion did excellent work in assisting veterans and promoting their interests, he disagreed with the Legion's position that it served the same function as an Ombudsman. The Legion does not have the same access to Veterans Affairs officials as an Ombudsman would, nor does it have powers to investigate, make recommendations and issue public reports. Members of SCONDVA asked if the DND/CF Ombudsman's Office could assume the functions of a Veterans Ombudsman. The Ombudsman replied that given the Office's seven years of experience in assisting serving and former members of DND/CF and their families, the Office would be extremely qualified and capable of providing such services with respect to Veterans Affairs.

Technological Improvements

The Ombudsman's Office continues to leverage the latest technology in order to improve services to the defence community. In May 2004, the Office launched its online complaint form, which allows complaints to be filed electronically through the Office's website, in a secure format. The new complaint form has proven to be very popular, with 579 electronic complaints being submitted since its inception.

In December 2004, the Office launched a new search capability on its website, so that members of the public can easily search through summaries of complaints that the Office has resolved. The new search capability allows defence community members to search whether the Office has treated problems similar to their own or to just browse through the cases dealt with over the years to get a sense of the contributions the Office has made to the lives of DND/CF members and employees, veterans and their families. This new search capability has quickly become one of the most accessed pages on our Website.

**New secure
online
complaint
form**

The Office has also implemented technological improvements that allow cases to be assigned to investigators working in the regions electronically using Virtual Private Networking (VPN). These investigators are now also able to directly access the Office's computerized Case Tracking Management System so that they can research cases online and track the status of their own caseloads.

The Ombudsman extends his appreciation to members of the DND/CF Information Management Group Information Services for their support and assistance in making these improvements possible.

Updates

Taking Care of the Injured and Disabled

In October 2003, the Ombudsman issued his Special Report, *Unfair Deductions From SISIP Payments to Former CF Members*. The report, which was profiled in last year's Annual Report, made several recommendations to improve the degree of information available to serving and former CF members with respect to the long-term disability benefits available to them under the Service Income Security Insurance Plan (SISIP). The Ombudsman also reported that the practice of clawing back former CF members' disability insurance payments by the amounts they received from Veterans Affairs Canada for disability pensions under the *Pension Act* was unfair. This was particularly inequitable, given that since 2000, CF members have been eligible to collect disability pensions while still serving in the CF, but these members do not have their service incomes reduced.

The Ombudsman recommended that the Minister make a submission to the Treasury Board of Canada and ensure all other necessary steps are taken to change the terms of the SISIP long-term disability plan to abolish the clawback of disability pension amounts from former CF members' insurance payments. He also recommended that former CF members who had their disability insurance benefits clawed back be reimbursed as of October 27, 2000, the date that serving CF members became eligible to collect disability pensions while still receiving an income from the CF.

On October 8, 2003, then Minister John McCallum responded that both he and the Chief of the Defence Staff supported the recommendations. The House of Commons Standing Committee on National Defence and Veterans Affairs, also passed a unanimous motion in November 2003 imploring the Minister of National Defence and the government to "accept and enact the recommendations forthwith."

Subsequent to the release of the Ombudsman's Report, a Veterans Affairs Program and Service Modernization Task Force was created in September 2003. The results of this task force will dramatically change the pension scheme for disabled CF members this spring. It is hoped that these changes will eliminate the future need for clawbacks of pension amounts from disability insurance payments. These changes will not, however, address the unfair situation faced by former CF members since October 2000, or the Ombudsman's recommendation that they be reimbursed for the amounts of the unfair clawbacks.

Since the release of the Ombudsman's Special Report in October 2003, the Office has received calls from more than 100 serving and former CF members, inquiring about when the recommendation with respect to the elimination of disability insurance clawbacks will be implemented. Many calls have come from serving CF members expecting medical release and concerned about financial hardship if their long-term disability insurance benefits are reduced because they also collect a disability pension from Veterans Affairs.

The Ombudsman wrote to the Minister in December 2004, expressing his concern that there is no clear plan to address the inequities that are being experienced by CF veterans and that have persisted for the past four years. From the Office's discussion with members of the Veterans Affairs task force, it does not appear as though the issue will be addressed conclusively anytime in the near future, even though immediate measures need to be taken to deal with the issue. The Minister's correspondence unit responded to the Ombudsman on December 21, 2004, stating, "this is a complex issue and will require advice, interdepartmental consultation and senior leadership input" and assuring the Office that a response from the Minister would, however, be forthcoming. As of the date of this report, a response is still pending.

**No clear plan
to address
the inequities**

A Blot on History: Complaints Concerning Chemical Agent Testing

The Ombudsman released his Special Report, *Complaints Concerning Chemical Agent Testing During World War II* on February 19, 2004. This report dealt with complaints from CF veterans that during the Second World War, the Canadian government secretly experimented with mustard gas and other similar chemical agents in Suffield, Alberta and in Ottawa, using unwitting Canadian soldiers as guinea pigs. Many of the test subjects suffered immediate painful effects and serious long-term damage to their health. For more than 50 years, information about the tests was hidden and denied, despite the efforts of veterans, Members of Parliament and others to get recognition and compensation for the test subjects' suffering.

In response to the Ombudsman's report, the Prime Minister of Canada announced the creation of a \$50-million recognition program for subjects of chemical agent testing during the Second World War. Under the terms of this program, each veteran who was a test subject is entitled to a certificate recognizing their contribution and tax-free compensation \$24,000.

In the year since the program was announced, more than 2,300 applications for compensation have been submitted. As of February 2005, \$15 million has been paid out to 625 applicants; 736 applications were rejected for not meeting the program criteria. In addition, Veterans Affairs Canada has taken measures to ensure that veterans and their widows who, because of secrecy and the lack of records, previously could not establish a claim to disability pensions for medical problems stemming from the experiments have been able to access pensions and other assistance at a stage in their lives when help is sorely needed.

**Help is
sorely
needed**

Since the announcement of the compensation program, many veterans of the experiments and their family members have contacted the Ombudsman's Office. The Office has assisted them by working collaboratively with staff at the Chemical Warfare Agent Testing Recognition Program and with DND and VAC officials. In one case, the

widow of a veteran was diagnosed with a virulent cancer and had only a short time to live. Her daughter asked if her application for compensation could be expedited. When the Office took the case to LCol Brian Sutherland, the CF officer responsible for administering the compensation program, he made it a priority and a cheque was issued to the widow in a few short weeks. She died a week later (see *Your Successes are Our Successes*).

Mr. Bill Tanner and Mr. Harvey Friesen, both 78, two of the Suffield test subjects who brought their cases to the Ombudsman, worked tirelessly for years to get recognition for what they and others suffered with no concrete response from the veterans' organizations, government ministers and officials to whom they wrote, called and faxed at significant personal expense. Their efforts were recognized by the launch of the compensation program and also when Mr. Tanner laid a wreath on behalf of the Chemical Warfare Agent Testing Veterans at the National Remembrance Day ceremonies in Ottawa.

The Ombudsman's Office also arranged for Mr. Sam Gordon, 86, of Winnipeg, another of the test subjects, to lay a wreath at the Remembrance Day ceremonies in Winnipeg, with the help of the Royal Canadian Legion and the personnel at 17 Wing, Winnipeg. Mr. Gordon, whose dream of a real certificate of recognition finally came true, was honoured and particularly proud to have his grandchildren and Ombudsman Investigator Bob Howard witness the event.

For some World War II veterans, the recognition came too late. Exposure to mustard gas can cause a raft of long-term ailments. Coupled with the passage of sixty years since the tests took place, many of the original test subjects are no longer living. The compensation portion of the recognition program, allows that where the veteran is deceased "certain primary beneficiaries" are eligible to receive the compensation award on production of a will.

The requirement for a will, however, has posed significant problems for some applicants. Among them, the Ombudsman's Office has heard from several widows who applied for and have been refused compensation because they were unable to produce a will, as required by the program criteria. Although service records clearly confirm their husbands' participation in the chemical warfare experiments, they were refused compensation. DND/CF Officials argued that the requirement for a will was imposed as a condition for compensation because the Government is not in a position to interpret the unwritten intentions of a veteran who dies intestate.

The widows were devastated. They explained that their husbands' estates were so small that wills had seemed unnecessary; they couldn't have imagined years ago that the government would award compensation to their husbands or further that a will would be required for them to receive it.

At the time of publication of this report, the Office is working with officials from the office of the Assistant Deputy Minister (Human Resources–Military) in an attempt to resolve to the problem. We are hopeful that a solution will be soon forthcoming.

Former Cpl Christian McEachern's Ongoing Battle

In March 2001, Mr. McEachern drove his vehicle into the Garrison Headquarters at Canadian Forces Base Edmonton out of frustration over the lack of understanding and awareness of operational stress injuries in the CF and the poor treatment he received from the CF after developing Post Traumatic Stress Disorder.

In response to Cpl Christian McEachern's complaint concerning how the Canadian Forces treats soldiers who suffer from Operational Stress after deployments, the Ombudsman released the Special Report: *Systemic Treatment of CF Members with PTSD* in February 2002. In his report, the Ombudsman found that Mr. McEachern's complaints were justified and that he was stigmatized and isolated from his unit, without the support he deserved. The Ombudsman's report made 31 wide-reaching recommendations to improve how the CF treats members who suffer from PTSD and their families.

In March 2004, former Cpl McEachern turned once again to the Ombudsman for help. He reported that on March 11, 2004, he was served with a lawsuit by DND/CF seeking damages in the amount of \$222,758.31, as a result of the incident at Edmonton Garrison Headquarters. Mr. McEachern reported that he was extremely distraught upon receipt of the lawsuit and both members of the Ombudsman's Office as well as staff from the DND/CF Operational Stress Injury Social Support Program became concerned about his well-being. On March 29, 2004, the lawsuit against Mr. McEachern was withdrawn by the CF.

The Ombudsman responded to Mr. McEachern's complaint by announcing an investigation into the process that led to the lawsuit being launched and then withdrawn.

The Ombudsman's investigation reached a roadblock during the summer of 2004, when lawyers from the DND/CF Legal Advisor's office indicated that they could only provide the Ombudsman with general information on how lawsuits are launched and refused to discuss any specific aspects of Mr. McEachern's case with

the Office. The Ombudsman met with the then Acting Deputy Minister and the CF Legal Advisor in an attempt to resolve the problem. During this meeting, the Ombudsman clarified that the Office was not attempting to review the quality of or second-guess the legal advice provided to DND/CF by its legal advisors, but rather to examine the process to determine what information was considered when the decision was taken to launch the legal action against

Mr. McEachern. As a result, the CF Legal Advisor agreed to meet with Ombudsman investigators to explain what had happened with respect to the McEachern file.

**The
investigation
reached a
roadblock**

The CF Legal Advisor acknowledged that the service of the statement of claim on Mr. McEachern was a serious and unintended error. The file was erroneously treated like a routine collection file and proceeded on the assumption that the money would be collected from the insurance company involved, and not from Mr. McEachern. The file had been sent out to the Edmonton Department of Justice office for collection as a normal “debt collection file”. The two junior legal counsel who were responsible for the decision to serve the claim were no longer working for the Department of Justice.

The CF Legal Advisor also confirmed that the Judge Advocate General’s Office was not involved in directing the lawsuit against Mr. McEachern and that senior members of the CF chain of command were not aware of the lawsuit until after Mr. McEachern had been served. Other members of DND/CF interviewed during the investigation also confirmed that senior members of the chain of command were visibly displeased when they learned from the media that Mr. McEachern had been served with a statement of claim.

**Serious and
unintended
error**

Safeguards were being developed by the CF Legal Advisor to ensure that a similar situation would not re-occur. This included a requirement to inform the Assistant Deputy Minister (Human Resources–Military), when such lawsuits are being considered. She also confirmed that a lessons-learned discussion was held at a DND/CF Legal Advisor staff meeting after the lawsuit against Mr. McEachern was withdrawn, and that an article was being prepared for the Department of Justice internal newsletter to increase awareness of the potential consequences of such decisions.

The Ombudsman concluded that former Cpl McEachern’s complaint was substantiated but did not make any formal recommendations, in light of DND/CF’s acknowledgement of the error and the steps that were taken to improve the process and prevent similar cases from re-occurring.

Systemic Delays in the CF Grievance System

Since 2001, the Ombudsman has reported in four consecutive Annual Reports on continued systemic delays in the streamlined CF grievance system, which was introduced in June 2000.

In 2004–2005, the Ombudsman received 91 complaints from CF members related to the handling of grievances. Delays accounted for 21 of those complaints: 14 complaints were received about delays at the initial authority level, 5 at the Chief of the Defence Staff level and 2 with respect to the delays at the Canadian Forces Grievance Board.

In last year's Annual Report, the Ombudsman reported that plans to establish a national grievance system to track all grievances were delayed until 2005 to allow more time to tackle the backlog. A goal to clear all grievances at the CDS level dating from before 2001 by the end of fiscal year 2003–2004 had not been met.

Although many improvements were noticed in 2004–2005, the Ombudsman remains concerned about delays and backlogs in the CF grievance system. To date, the system has experienced considerable challenges in meeting the goals and objectives set in order to eliminate the backlog. For example, the December 2004 deadline set by the CDS for the grievance timeframes to be reduced to 12 months had to be extended until December 2005. And yet it is still unclear whether this new target will be met.

Delays at the Initial Authority Level

Initial authorities are those offices in DND/CF that are responsible for the subject matter the grievor is complaining about and that make decisions on grievances at the first level. Significant delays continue to persist at this level. When the initial authority is unable to respond to a grievance within 60 days, it must obtain an extension from the grievor who may either agree to an extension or request that the grievance be forwarded to the final authority, the Chief of the Defence Staff, for a decision. Initial authority offices reported almost unanimously that they are not meeting their 60-day deadlines. Two of the largest initial authority offices, Director General of Military Careers and Director General of Compensation and Benefits, both report that they are receiving more grievances than they are processing.

The office of the Director General of Military Careers reported a turn-around time of 15 months for grievances, with the grievance file waiting an average of 12 months before it was even looked at. At the end of December 2004, this office had 342 open grievance files to process, the oldest dated back to 2001. In comparison, the Director General of Compensation and Benefits had 61 grievance files open as of the end of 2004 and reported a turn-around time of four to five months (150–180 days). This office requests extensions for 60–70 percent of the grievances it receives. Both offices have recommended that separate dedicated grievance sections be established in order to more effectively deal with the backlog and the growing caseload of new grievances. The Director General of Compensation and Benefits has created such a new section as of March 14, 2005. Most of its positions have been filled but it will not be fully staffed until June 1, 2005. They anticipate that the new section will be able to eliminate the backlog over the next three to six months.

**A turn-around
time of
15 months for
grievances**

For their part, members report that they are reluctant to complain about delays at the initial authority level, as they do not want to “rock the boat” with the analysts who are giving an opinion on their file and so they will often agree to extensions. One member reported that he received three requests for an extension from the office responsible for deciding his grievance. At this point, his grievance had been at the first level for over a year. He reported that he felt that he was in “a real catch-22 situation” – should he keep granting extensions or forward his grievance to the second and final level, the Chief of the Defence Staff, where there is no deadline for when he will receive a decision. Another CF member waiting for a first-level decision described feeling like he is “being held hostage by the process.”

In one case, a CF member who had filed a grievance about his 1999–2000 Performance Evaluation Report, complained that he had not heard from the initial grievance authority for over a year and despite several calls, he was unable to get an update from them. In June 2004, the Ombudsman investigator contacted the responsible director who re-assigned the file to another analyst. About two months later, the member was notified that his grievance had been partially granted by the CDS. However, by the time he finally received what he considered to be a disappointing decision, he had already retired from the CF and there was no point in pursuing the matter further.

Disappointing decision

Delays at the Final Authority Level

The Ombudsman also continues to receive complaints of delays at the final authority level. Members continue to report that they are frustrated and discouraged by the amount of time it takes for them to receive a final decision from the Chief of the Defence Staff. This is especially of concern given that they must use all existing internal mechanisms, before the Ombudsman can review their complaint.

Delays at the CF Grievance Authority

The Director General CF Grievance Authority is delegated by the Chief of the Defence Staff to decide any grievances that are not referred to the Canadian Forces Grievance Board. This section also analyses findings and recommendations that are made by the Canadian Forces Grievance Board, prior to the Chief of the Defence Staff rendering a final decision.

The CF Grievance Authority resources for 2004–2005 were once again dedicated to eliminating the inherited grievance backlog of 803 cases over 13 years. The Authority staff report that considerable progress has been made and that as of February 1, 2005, this backlog has been reduced to 112 cases ranging in age from two to eight years with the majority stemming from 2002 onwards. They predict that this backlog will be eliminated by early in fiscal year 2005–2006.

The CF Grievance Authority reported receiving 275 grievances in 2004 and resolving 522 grievances, thus closing 1.9 files for every new file received. A total of 453 grievances remained outstanding at the CDS level.

Overall, the CF Grievance Authority reports that the time from initial submission of a grievance to final decision has been shortened from 48 months to 30 months. They anticipate that this will continue to decrease, estimating that “at the current rate of progress, the projected objective for achieving a one-year grievance portfolio and positioning the Final level for a one-year resolution rate should be attained by December 31, 2005.” It remains to be seen, however, whether this is a realistic forecast. Although much progress has been made, given the continuing delay issues at the initial authority level, drastic improvements will need to be seen in order to reduce the overall timeframe for completion of a grievance from 30 months to 12 in this calendar year.

Delays at the CF Grievance Board

In 2004, the CF Grievance Board reported that it was implementing an operational plan to bring it to a steady state of operations, meaning that for the first time, it would actually complete more files than it received. During fiscal year 2003–2004, the Board received a budget increase of \$425,000, which was devoted to adding six professional staff and one clerical position in support of its operational plan.

As of December 31, 2004, the Board had received 107 cases and completed 170 during the year. Grievance Board staff report that they have successfully met their goal of closing 1.6 files for every file received.

As of December 2004, 207 files remained outstanding with the Board, which is lower than in previous years. Over half of the remaining outstanding files have been with the Board for more than 12 months; however, the Board reports that it is dealing with these files on a priority basis.

The Grievance System Overall

Although much progress has been made at the final level both at the CF Grievance Board and in the CF Grievance Authority, overall the grievance system continues to experience delay problems. Members are not well served by a system that takes a year or more to resolve problems affecting them and their families now. The CF grievance system was intended to be an informal process through which matters that affect CF members can be dealt with quickly. As former Chief Justice Lamer

The grievance system continues to experience delay problems

noted in *The First Independent Review of the Provisions and Operation of Bill C-25*, the current system is far more complicated and bureaucratic than ever intended. Former Chief Justice Lamer commented at page 86 of his report that “Soldiers are not second class citizens. They are entitled to be treated with respect, and in the case of the grievance process, in a procedurally fair manner... It is essential to the morale of CF members that their grievances be addressed in a fair, transparent and prompt manner.”

After four years of operations, the grievance system finally managed to reach a state where its output exceeds the number of new cases at the final authority level. This has been a hard-won victory for those working in the system and is to be commended. However, at the initial authority level, even this has not been achieved. First level grievance authorities continue to face large backlogs and are consistently forced to request extensions to their 60-day deadlines for new cases. Even if the final authority level manages to continue at its newly achieved steady state, it is still not clear whether the already extended December 2005 deadline for grievances to be completed in a 12 month timeframe will be met.

Special Reports

From Tents to Sheets

The Ombudsman released the Special Report, *From Tents to Sheets: An Analysis of the CF Experience with Third Location Decompression after Deployment* on September 7, 2004. This report was prepared as a result of the Ombudsman's observations during his visit to Operation Athena in Kabul, Afghanistan, in November 2003.

On his return, the Ombudsman relayed his concerns to the CDS that the CF did not have any guidelines in place to assist the chain of command in deciding whether a decompression period was necessary after a deployment and further that decisions were being made on an ad-hoc basis without the benefit of any expertise or guiding criteria. The CDS accepted the Ombudsman's offer to conduct an investigation and produce recommendations that could be used to guide future decision-making.

**Decisions
were being
made on an
ad-hoc basis**

The Ombudsman reported that the process of third location decompression was used successfully on the return of the 3 PPCLI Battle Group from Operation Apollo in Kandahar, Afghanistan, in August 2002. At that time, members of the battle group spent several days in Guam before returning home as part of their re-integration plan. The decompression period allowed them to relax after the stresses of a very difficult mission while receiving information and training on how to recognize warning signs associated with Operational Stress Injuries. Overall, the feedback from members who took part in the Guam decompression period was positive. Many felt that this was a clear sign of their chain of command's commitment to take care of them.

From Tents to Sheets reviewed the theory behind decompression and highlighted experiences in other countries, including the Netherlands, where decompression has been used extensively to assist troops returning from deployments. The report also set out 14 recommended principles for operational commanders to consider in deciding whether a decompression period is warranted, including mission tempo; living conditions;

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the number/circumstances of casualties; the ability to communicate with loved ones; leave provisions; and the length of the tour. Finally, the report noted the importance of open communication with members and their families, so that they are aware of the potential for a decompression period, its importance as a part of re-integration to home life and that such periods should be considered a necessary part of the winding down of a rotation.

The Ombudsman's report was well received both within DND/CF and externally. The CDS thanked the Ombudsman for the "excellent report," which was both timely and useful in finalizing the CF policy on screening and re integration. He noted that principles contained in the report were carefully considered when finalizing the CF policy. The Inspector General of the Netherlands Armed Forces also wrote to the Ombudsman noting that the practice described by the Ombudsman in his report is common in the Royal Netherlands Marine Corps and commending the Ombudsman on the quality of his report.

When a Soldier Falls

The Ombudsman released the Special Report: *When a Soldier Falls: Reviewing the Response to MCpl Rick Wheeler's Accidental Death* on January 27, 2005. This report, which was the most comprehensive report released by the Office to date, stemmed from separate complaints received from Mrs. Christina Wheeler, MCpl Wheeler's widow, and LCol (ret'd) Jay Lapeyre, his former commanding officer. The report reviews the CF investigations following the death of MCpl Wheeler during a training exercise at CFB Suffield in 1992 and the treatment of his family after his death.

The initial investigation incorrectly and unfairly blamed MCpl Wheeler for his own death by failing to get out of the way of the armoured vehicle that ran him over. Mrs. Wheeler, his wife, was given sketchy information, and came to suspect a cover-up. She spent the years following her husband's death struggling to obtain information about the circumstances of the accident that killed him and to absolve him from the blame that the military had ascribed to him.

In 1997, facing pressure from the media and presented with new information by Mrs. Wheeler, the military re-investigated the accident through a Board of Inquiry. The Board of Inquiry found that MCpl Wheeler was in no way responsible for his own death. It did, however, hold two senior officers, one of whom was LCol Lapeyre partly responsible for the death. The Board of Inquiry results were made public by the military, despite LCol Lapeyre's immediate complaints that its conclusions were unfounded. This negatively affected LCol Lapeyre's reputation.

**Mrs. Wheeler
spent years
struggling to
obtain
information**

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After countless efforts on LCol Lapeyre's part to have the Board of Inquiry conclusions set aside, the CF convened its own internal Administrative Review Board, which completed its review of the Board of Inquiry in 2003. The Administrative Review Board found that the Board of Inquiry processes were indeed unfair with respect to LCol Lapeyre and that a number of its conclusions were unwarranted. The Administrative Review Board recommended that the Board of Inquiry results be amended and that LCol Lapeyre be compensated for the harm to his reputation.

The Ombudsman found that the original investigation into MCpl Wheeler's death was inadequate and that MCpl Wheeler's family was let down by the system. He also found that LCol Lapeyre was unfairly treated: LCol Lapeyre was one of the last witnesses to testify at the Board of Inquiry, the day before it submitted its report, and that he was denied basic procedural protections during the process.

The Ombudsman's investigation focussed not only on the problems specific to the CF treatment of the Wheeler family and LCol Lapeyre, but also on crafting recommendations that would improve the way in which the CF conducts investigations into duty-related deaths and the way in which it handles casualty administration. The Report compared the Wheeler investigation to more recent CF investigations into accidental deaths and the treatment of the Wheeler family to how families have been treated by the CF in more recent cases. The Ombudsman noted that although some progress had been made, much work still needs to be done.

The Ombudsman commented in releasing his report that "the way in which the military carries out these investigations is outdated and has not kept up with the modern accountability standards that society demands and indeed richly deserves." He recommended that the CF National Investigation Service be immediately notified of every unexpected death of a CF member, as this agency has the resources and is the most qualified in the CF to conduct complex investigations. The Ombudsman also recommended that immediately after a fatal incident, steps be taken to ensure that witnesses' recollections not be tainted; all witnesses be ordered not to discuss their evidence with anyone until after they have been interviewed by investigators; and, wherever possible, they be segregated from each other until they have been interviewed.

The Ombudsman also noted that the initial administrative investigation into MCpl Wheeler's death was done through a summary investigation. A junior officer with no experience or training in complex investigations had been assigned to the case. Unsurprisingly, his investigation, which was reviewed and approved by senior levels in the CF chain of command, was incomplete and inadequate.

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**Much work
still needs
to be done**

The Ombudsman cited two more recent cases where the Canadian Forces had investigated deaths by summary investigation. In both cases, family members of the deceased also complained about the inadequacy of the investigation, leading the CF to convene boards of inquiry to re-investigate the deaths, months after the fact. Upon releasing his report, the Ombudsman commented that “the current investigative approach to non-combat deaths or injuries is so seriously flawed that the results of investigations are rarely accepted at face value and almost inevitably lead to allegations of cover ups.”

The Ombudsman concluded that all unexpected duty-related deaths in the CF should be investigated by means of a Board of Inquiry. He also recommended that Board of Inquiry members receive specialized training on how to conduct complex investigations and that those Officers responsible for reviewing and approving the investigation have the information required to conduct a meaningful review. Finally, the Ombudsman recommended that family members of deceased CF members be given standing at Boards of Inquiry, giving them direct access to information about the death, and ensuring that they have a voice in the process. The Ombudsman encouraged the CF to draw from the success of the coroner’s system in Ontario, which routinely grants standing to the family members of the deceased when examining the circumstances of a death.

**Ensuring
families have
a voice in
the process**

With respect to the treatment of families of deceased CF members, the Ombudsman recommended that the CF adopt a national policy on casualty administration. He also noted the need for a case management approach to ensure that families’ concerns do not fall through the cracks of the system. The Ombudsman also recommended that Assisting Officers for families be given the necessary training and resources to do their job effectively.

The Ombudsman also made specific recommendations to improve the amount of information provided to family members so that they are not forced to resort to Access to Information (ATIP) legislation. It is distressing for families to have to submit ATIP requests to get copies of investigation reports and other information related to the death of their loved one. Moreover, when the documents they receive are full of blacked out severances, it creates the impression of a cover-up. The Ombudsman recommended that CF directives be amended to ensure that families of CF members, who die in circumstances related to duty, be provided with all information relevant to the death including copies of all investigation reports as soon as such information is available. He also recommended that the CF ensure that requests for information from the families of deceased CF members are handled on a priority basis, using a compassionate, open and transparent approach.

The Minister commended the Ombudsman for his detailed report and noted that in response to the report, the Chief of the Defence Staff had directed a fundamental and comprehensive review of the Board of Inquiry and casualty administration processes.

In releasing his report, the Ombudsman stated that “if the Canadian Forces can learn from its mistakes, then it will not be doomed to repeat them and that is truly the heart of my recommendations.” He cautioned the CF, however, that reform is urgently needed and encouraged the Chief of the Defence Staff to personally oversee the reforms to the Board of Inquiry Process, noting that this would truly demonstrate the CF commitment to its objective of “putting people first.”

**FINAL
REPORT**

Review of Board of Inquiry Examining Serious Injury

The Ombudsman released the Special Report, *Ministerial-directed Investigation: Review of Board of Inquiry Examining Serious Injury* on February 17, 2005.

This investigation reviewed the results of a Board of Inquiry that was conducted after Mr. Adam Orfanakos, a first-year cadet at the Royal Military College of Canada (RMC) in Kingston, Ontario, collapsed during a five-kilometre race in September 2000. Mr. Orfanakos was rushed to hospital where he was diagnosed with acute compartment syndrome; a swelling of his leg muscles that led to renal failure. His injuries were so severe that he had to be released from the Canadian Forces for medical reasons and now receives a disability pension.

The Orfanakos family alleged that Mr. Orfanakos' injury occurred because he was exhausted and had been pushed beyond his limits while at the CF Leadership and Recruit School program at St-Jean, Quebec, which he completed just prior to arriving at RMC.

A Board of Inquiry was convened to investigate the incident. The Board found that Mr. Orfanakos was to blame for his injuries because he over-exerted himself during the five-kilometre race. The Board of Inquiry also concluded that there was no relationship between Mr. Orfanakos' injuries and how he was treated at the Leadership and Recruit School in St-Jean.

Mr. Orfanakos and his family were dissatisfied with the Board of Inquiry conclusions. They also felt that the Board of Inquiry members had not been completely objective in their inquiries and that they themselves had effectively been excluded from the process and had had no voice in the matter. They complained to the then Minister, the Honourable Art Eggleton. Dissatisfied with the proposed internal DND/CF response to the Orfanakos' complaint, the Minister referred the case to the Ombudsman for an independent investigation.

**Family were
dissatisfied**

The Ombudsman found that the Orfanakos' complaints were substantiated. He noted that although the Board of Inquiry members were acting in good faith, they were dealing with complex medical issues for which they had not obtained medical expertise or advice. To further compound the problem, the information that they did receive was misunderstood. The Ombudsman recommended that experts in the areas of emergency medicine, orthopedics and sports medicine conduct an independent medical review of Mr. Orfanakos' case. The Assistant Deputy Minister (Human Resources–Military) immediately agreed with this recommendation and directed that such a review take place.

The Ombudsman also recommended that CF orders and procedures be amended to ensure reasons are given when medical advisors are not appointed to Boards of Inquiry examining a death, injury, serious illness or other health issue. Finally, the Ombudsman recommended that when medical expertise is sought by a Board of Inquiry: procedures be established to require that any expert has access to all relevant information collected by the Board; the evidence provided by the expert be properly documented; and the expert be given an opportunity to review any reports that rely on their advice to confirm that it is properly understood and applied.

CF orders and procedures be amended

The Board of Inquiry had expressed concerns about training at the CF Leadership Recruit School and the school's rigid application of training standards. The Ombudsman's investigation found that since 2000, significant positive changes had been made at CF Leadership Recruit School to improve the quality of instruction and consistency in the application of training standards.

The Ombudsman ultimately concluded that the Board of Inquiry's process in this case had been seriously flawed. The Board of Inquiry members had received no specialized training, and no medical advisor had been appointed to the Board. The Ombudsman commented in releasing the report that "the CF provides intensive training for anyone wanting to become a soldier. Training is also systematized for officers conducting summary trials or harassment investigations. But when it comes to training for Boards of Inquiry, in spite of the extremely important and complex matters they deal with, members are merely expected to fly by the seat of their pants."

The Orfanakos family had effectively been excluded from the Board of Inquiry process. This created a cloud of suspicion about the fairness and thoroughness of the Board's investigation. The Ombudsman made similar recommendations to those in his special report *When a Soldier Falls* to ensure that Board of Inquiry members receive specialized training and that persons with a vested interest in the outcome be allowed to participate in the inquiry process. He commented, "it serves no purpose to exclude CF members and their families from the Board of Inquiry process. They should be allowed

to participate fully to ensure that the ultimate goal of any Board of Inquiry – the successful search for the truth – is achieved.”

The complainant wrote to the Ombudsman subsequent to the Report’s release, thanking him and his staff for the care, time and effort that had been put into his complaint and noting that:

You have created a report that not only addressed and aired out the concerns that I initially made but have made recommendations that I feel attack the heart of the matter of why I was initially disappointed with the BOI and my time at St Jean. Not only have you done this but you have done so in a remarkably concise, poignant and entertaining way. I cannot imagine another report addressing my complaint that would be superior to the one you have completed.



Making Things Right

The Ombudsman released the Special Report, *Making Things Right: Unfair Treatment in the CF Redress of Grievance System* on March 18, 2005.

The complainant in this case was a former CF member who had submitted a grievance about the CF’s denial of his request for reimbursement for mortgage interest differential charges, which he had to pay to his bank upon the sale of his home as a result of a posting change. The complainant felt that he was entitled to have this amount (\$3500.10) reimbursed as a relocation expense. Shortly before the complainant’s claim for the expense was dealt with, DND changed its policy based on an existing Government of Canada Treasury Board directive, which stated that mortgage interest differential charges were not reimbursable as relocation expenses.

The CDS denied the complainant’s grievance on February 9, 1998. His grievance was then forwarded to the Minister of National Defence in December 1999.

In June 2000, the new streamlined CF grievance system came into effect. This system removed the Minister as the final authority for grievances and created a two-tier system with the CDS being the final level. It also provided for specific grievances including those of a financial nature to be referred to the Canadian Forces Grievance Board to make findings and recommendations prior to the CDS rendering a decision.

The complainant’s grievance was still outstanding in 2000, when the changes to the system came into effect. Because the CDS had already decided on the grievance, it was not channelled into the new system but instead remained in the Minister’s Office waiting for a decision.

On November 18, 2002, then Minister John McCallum denied the complainant's grievance, noting that there was no provision for the reimbursement of amounts defrayed to discharge interest that would have been incurred had the complainant not been posted. He concluded that the complainant was treated in a fair and equitable manner.

The complainant brought his case to the Ombudsman, requesting a review of the process followed in deciding his grievance. He argued that the treatment of his grievance was unfair.

The Ombudsman's investigation found that the complaint was substantiated. The investigation uncovered three other cases where CF members had had their mortgage interest differential charges reimbursed by the CDS after filing grievances. The Ombudsman noted that the CF Grievance Board had found in each of these cases that the members were entitled to repayment of mortgage interest differential rates pursuant to Queen's Regulations and Orders for the Canadian Forces (QR&Os) Chapter 209.96, which provided for a reimbursement of early repayment penalties of up to six months interest. The CDS had accepted this finding in each of the three cases and directed that the affected members be reimbursed.

The Ombudsman found that there was no relevant distinction between the complainant's case and the other three cases. He also noted that there was no indication in the complainant's grievance file that the Minister was aware of the Grievance Board's findings, which were first issued in 2001, when he denied the complainant's entitlement to be reimbursed in 2002. The Ombudsman concluded that had the complainant's grievance been dealt with under the new grievance system, the complainant would also have been reimbursed the mortgage interest differential charge. The failure of the CF to recognize the complainant's entitlement to the reimbursement, where it has been recognized for others in the same situation, had contributed to the complainant's mistrust and lack of confidence in the CF grievance system to treat its members fairly.

**Treat
members
fairly**

The Ombudsman attempted to facilitate a resolution of the complainant's case with the Director General CF Grievance Administration. The Director General acknowledged that his Office was aware of the complainant's case and that a review of the case had been initiated but he would not provide the Ombudsman with any information as to when the review would be concluded or what its purpose was. The Director General also informed the Ombudsman's Office that in his view, the current Minister did not have the authority to intervene and reconsider the complainant's case based on new information. He felt that the original Minister, in deciding the complainant's grievance, was acting in the same capacity as an adjudicator of an administrative tribunal and that in law, the Minister was "functus officio."

FINAL REPORT

The Ombudsman disagreed with the Director General's position. He noted that the Director General's characterization of the grievance system was inconsistent with the intention of the *National Defence Act*. The Ombudsman referred to the position of the former Chief Justice of Canada, the Right Honourable Antonio Lamer, who in his independent review of the provisions and operations of the 1998 amendments to the *National Defence Act*, noted that while grievances must be treated fairly and with administrative justice, they should be seen as human resource issues, as they involve matters that affect the morale, well-being and quality of life of Canadian Forces members.

The Ombudsman urged the Minister to take the appropriate steps to acknowledge the unfair treatment the complainant had experienced and to ensure that he was reimbursed the mortgage interest differential charges, pursuant to his entitlement under QR&O Chapter 209.96. He also encouraged the Minister to turn a critical and questioning eye to any attempts to put bureaucratic hurdles and legal precepts in the way of ensuring that the complainant received the benefit to which he was entitled and which other CF members in the same position had received. The complainant was advised after the Ombudsman's report was issued that the Minister accepted the Ombudsman's recommendation and that he would receive a reimbursement of the mortgage interest.

In an interview with his local newspaper, the complainant was quoted as saying "This is good that it's over." And in response to his case being slow, he replied, "that's one of the understatements of the century. World War II only lasted six years."

Work In Progress

Following-up on the CF's Treatment of Members Suffering from OSIs

UPDATE

In February 2002, the Ombudsman released the Special Report: *Systemic Treatment of CF Members with PTSD (Post Traumatic Stress Disorder)*. This report was issued in response to complaints brought forward by Cpl Christian McEachern with respect to how the Canadian Forces treats soldiers who suffer from Operational Stress after deployments. The Ombudsman stated in that report that Post Traumatic Stress Disorder (PTSD) “is a very real illness that affects many CF members and their families.” He concluded that the CF “must take significant steps to improve education and awareness of PTSD and its effects to change the climate of disbelief and skepticism surround this illness.” The Ombudsman’s report contained 31 systemic recommendations designed to improve how the CF deals with the issue of PTSD and how members who develop this illness and their families are treated.

Upon the release of his Special Report, the Ombudsman stated that given the high public interest in resolving issues related to PTSD in the CF, he intended to publish a follow-up report on CF progress in implementing his recommendations within nine months. This follow-up report entitled *Review of DND/CF Actions on Operational Stress Injuries* was released in December 2002. The Ombudsman concluded at that time that the CF had made progress in the implementation of a number of initiatives designed to deal with operational stress injuries (OSI), which include PTSD. He highlighted a number of successful initiatives including the creation of the CF Operational Stress Injury Social Support Program, which provides peer support and counselling for members suffering from OSI and conducts education and training about OSIs in the CF. He also identified areas where improvements were still needed, including coordination of PTSD education, training and initiatives. At the conclusion of his report, the Ombudsman noted his commitment to continued reporting on DND/CF progress in improving the way it treats members who suffer from Operational Stress Injuries.

**Improvements
still needed**

Since December 2002, the Ombudsman’s Office has continued to receive complaints about the treatment of CF members suffering from Operational Stress Injuries. These complaints represent approximately five percent of the Office’s caseload. The complaints have raised many similar issues to those reported on in the original Special Report and the Follow-up Report, including the administration of the Service Personnel Holding List; difficulties in obtaining Occupational Transfers; issues related to treatment obtained at Operational Trauma Stress Support Centres; lack of support from members’ units; and the need for improved support for family members.

In March 2004, the Ombudsman announced a second follow-up investigation to determine what progress has been made by the CF since the follow-up report was issued. The second follow-up investigation was conducted by the Special Ombudsman Response Team. The team interviewed over 275 witnesses from across Canada during the investigation.

During this investigation, the Ombudsman noted the high quality of care being provided at Operational Stress Injury Support Clinics and the increased level of funding committed to the treatment of Operational Stress Injuries. Furthermore, the Operational Stress Injury Social Support group continues to prove successful: it has provided peer support to over 1,000 CF members and developed and delivered training and education packages to CF members and the chain of command. The Ombudsman was pleased that the group's mandate will be extended to provide services to families including a family support program. The Ombudsman's investigation also concentrated on several areas where work still needs to be done, including training and education to change attitudes about operational stress injuries; communications between the operational chain of command and those who provide treatment to CF members suffering from Operational Stress Injuries; and coordination of OSI training, education and initiatives across the CF.

**The Operational
Stress Injury Social
Support group
continues to prove
successful**

The Ombudsman's Second Follow-up Report will be submitted to the Minister of National Defence and issued publicly in 2005.

Environmental Exposure

The Ombudsman's systemic investigation into how the Canadian Forces responds to concerns of CF members that they have been exposed to environmental hazards was completed in early 2005.

This investigation was launched in response to a complaint submitted by a retired CF Officer from 1 Combat Engineer Regiment (1 CER), which had served in Kuwait following the Gulf War in 1991. The complainant expressed concerns with respect to the long-term health of soldiers who had been under his command during this deployment. While they were deployed to Kuwait, the complainant and his unit were involved in a heroic rescue operation following an accidental explosion at an adjacent US forces ammunition depot. Rumours and questions swirled about what might have been released during the explosions. The complainant was concerned that his former subordinates were exposed to toxic substances during this emergency and that they were at risk of severe health problems as a result. His fears were aggravated by a CBC documentary, which reported that disproportionately high numbers of 1 CER veterans of the Kuwait deployment suffered from a variety of unexplained medical problems.

**A variety of
unexplained
medical
problems**

ONGOING

The investigation, conducted by the Special Ombudsman Response Team, examined both the health status of the 1 CER Gulf War veterans and what progress the CF has made to date with respect to mitigating environmental risks that CF members may be exposed to during international operations. The Ombudsman's investigation was assisted by BGen (ret'd) Joe Sharpe, who had chaired the Croatia Board of Inquiry in the fall of 1999. The Board made extensive recommendations to improve the way in which the CF assesses environmental hazards and the responsibility it takes for long-term health concerns of its members.

During the first part of the investigation, Ombudsman investigators identified and contacted as many of the 1 CER veterans of the Kuwait deployment as possible. While incomplete records of those deployed presented significant challenges, the Office ultimately managed to contact 251 of the original 300 members.

These serving and former CF members were briefed on the scope of the Ombudsman's investigation and asked to provide information about their current health. In some cases, detailed follow-up interviews were conducted to learn more about the members' experiences in dealing with the CF regarding their health concerns. The vast majority of members, former members and their families contacted by the Ombudsman's

Office welcomed the opportunity to share their concerns and were pleased that their experiences were being looked at. Of the 251 people contacted, 60 reported health concerns they believed were related to a deployment.

The second phase of the Ombudsman's investigation focussed on the current system, including the implementation of the Croatia Board of Inquiry recommendations and how environmental concerns and related health issues have been dealt with during more recent deployments in Afghanistan. The Ombudsman noted that the CF has made a great deal of progress in how potential environmental risks are assessed and dealt with. For example, the CF deployed advance teams to Afghanistan as part of Operation Athena to assess potential environmental hazards and their possible health impacts. This information was used by the Commanding Officer to prepare for the potential hazards they might face and for CF medical staff to ensure preventative measures could be taken where possible.

The Ombudsman's investigation also focussed on a number of areas where significant attention is still needed. These include the issue of communication with members about potential risks, testing procedures and test results, tracking of CF members deployed on operations and recording potential exposures and members' health concerns.

The Ombudsman's Special Report on this investigation will be presented to the Minister and issued publicly in the fiscal year 2005–2006.

ONGOING

**Of the
251 people
contacted, 60
reported health
concerns**

Unfair Treatment of CF Snipers During Operation Apollo

This complaint was referred to the Ombudsman by former Chief of the Defence Staff Gen Ray Henault. The complainant is the father of a former CF member who served as a sniper and deployed with 3 PPLCI on Operation Apollo in Afghanistan in February 2002. The complainant's son was temporarily attached to the US 101st Airborne Division on Operation Anaconda, along with five other CF snipers.

ONGOING

The complainant wrote to the Minister of National Defence on April 25, 2002, alleging that his son and the other snipers he was deployed with were treated unfairly upon return from Operation Anaconda to the 3 PPCLI Battle Group. Specifically, he alleged that there was a lack of debriefing on what they had experienced, a lack of any kind of post-traumatic stress counselling to deal with their experiences, and a lack of recognition for what they had done. He also alleged that, as a result, the health and careers of some of the snipers have been adversely affected. In subsequent interviews, the complainant's son supported his father's allegations. The complainant also addressed his complaints to the Prime Minister of Canada, Members of Parliament and senior officials in the Canadian Forces.

Lack of counselling and lack of recognition

As a result of the complaint, the Canadian Forces conducted an internal inquiry. The complainant rejected the findings of the inquiry, prompting the former CDS to request the Ombudsman to review the matter from a fresh perspective and identify what else, if anything, might be done to address the complainant's lingering concerns.

The investigation, being conducted by the Special Ombudsman Response Team, is focussing on the specific treatment of the complainant's son and whether he is receiving adequate care from the CF; whether the snipers were adequately prepared for the mission; how the snipers were treated during and after the mission, including whether adequate counselling and support was provided; and what effects, if any, the snipers have suffered as a result of the mission.

To date, the Ombudsman's investigation has been met with resistance from DND/CF, preventing the Office from accessing documents and completing witness interviews. In late September and October 2004, the Ombudsman's Office requested in writing and by phone key documents including the transcripts of a Board of Inquiry examining the career of one of the snipers; the War Diaries of 3 PPCLI Battle Group during Operation Apollo; and documents with respect to awards, honours and commendations. The Chief of the Land Staff took the position that all information provided to the Ombudsman must be screened and edited by army personnel under the supervision of DND/CF ATIP analysts, pursuant to the *Privacy Act*.

Resistance from DND/CF

The Ombudsman takes the view that screening and editing of information by the army is unwarranted and unnecessary. As a delegate of the Minister, the Ombudsman is entitled to view information and documents held by DND/CF in unedited form, where they are required to fulfill his functions. The screening and editing of what in the end will likely constitute thousands of pages of documents, is an unnecessary expenditure of army resources. Furthermore, the Office has expressed concerns that information edited from the documents pertains to actions of DND/CF officials in the course of their duties and may be directly relevant to the Ombudsman's investigation. Clearly, only the Ombudsman and his investigators, and not army personnel, are in a position to evaluate this.

The Ombudsman forwarded his concerns with respect to the editing of documents by army staff and the impact on his investigation to the Minister, requesting his immediate assistance to remedy the problem.

ONGOING

Systemic Investigation into the CF Recruiting System

In September 2004, the Ombudsman announced a systemic investigation into the CF Recruiting system in response to an announcement by the Prime Minister of Canada that CF personnel levels would be increased by 5,000 Regular Force and 3,000 Reserve Force members.

As of September 2004, the Ombudsman's office had received 570 complaints related to the treatment of applicants to the CF. These complaints centred around such areas as the unfair rejection of applications, a strict and rigid application of the medical conditions for enrolment, and delays in the processing of applications and in the process for transferring from the Reserves to the Regular Force.

The initial phase of the Ombudsman's investigation, which was completed in the fall of 2004, involved fact-gathering visits to the CF Recruiting Centres across Canada as well as the Canadian Forces Recruiting Group Headquarters at CFB Borden. During these visits Ombudsman investigators conducted interviews with key stakeholders and undertook an extensive documentation review, including examining the regulations, policies, and procedures that govern CF recruitment of and application processes for new members.

**570 complaints
related to the
treatment of
CF applicants**

Ombudsman investigators are currently engaged in the second phase of the investigation, which involves a more in-depth examination of key issues. It also includes interviews with applicants, the chiefs of the Air, Land and Maritime staffs, human resources policy makers and personnel who provide support and services to the recruiting system.

In the final phase, Ombudsman investigators will examine the standards and practices of other organizations who recruit large numbers of personnel, such as other military organizations and civilian police forces.

This investigation will be concluded during fiscal year 2005–2006.

About the Office

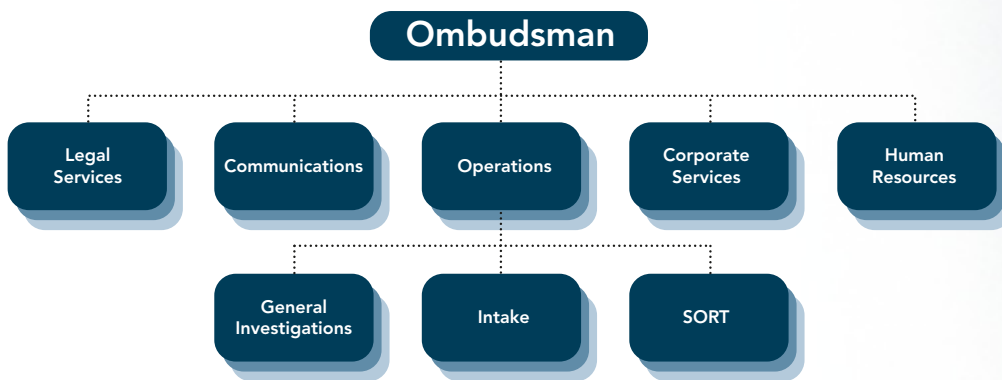
The Office of the Ombudsman was created in 1998 as part of a larger commitment by the Minister and CF leadership to improve fairness and openness in the CF. This commitment also aims to strengthen the effectiveness and transparency of DND/CF oversight mechanisms.

The position of Ombudsman 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.

Mr. André Marin was appointed as the first Ombudsman for DND/CF on June 9, 1998 and led the Office until March 31, 2005, when he left to take on the role of Ombudsman for the Province of Ontario.

The Staff

The Office consists of about 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. The Operations group is divided into three sections: Intake, General Investigations and the Special Ombudsman Response Team (SORT).





Staff at the Ombudsman's Office on March 29, 2005.

Operations

Intake

The intake team is the front line of the Ombudsman's Office, receiving complaints by phone, fax, mail or e-mail, as well as in person. Over the past fiscal year, the Intake staff has handled 2,417 complaints. There were 1,793 new cases.

Intake officers 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 possible level in the military chain of command or with civilian managers. General Investigations cases often involve situations where there are compelling circumstances that need to be dealt with quickly due to the potential for hardship to the complainant or their families. Investigators on this team use alternative dispute resolution techniques to diffuse volatile conflicts and to negotiate win-win solutions to difficult problems, whenever possible.

When an individual complaint cannot be resolved through informal means, a formal investigation determines whether the complaint is founded and appropriate action is recommended. Members of the General Investigations team also review the process followed on grievances and other types of complaints that have been handled by internal DND/CF mechanisms, to assess whether individuals have been treated fairly.

Special Ombudsman Response Team

The Special Ombudsman Response Team (SORT) is responsible for the conduct of major case investigations in the Ombudsman's Office. These are cases that have a high public interest component as well as broad systemic implications. Often such investigations are launched after a trend is observed in the number of complaints received with respect to a specific issue, indicating a potential underlying systemic problem.

SORT is also charged with investigations that are referred to the Ombudsman by the Minister or members of the senior DND/CF leadership.

SORT cases are often complex and can involve interviewing hundreds of witnesses and reviewing thousands of pages of documents. All SORT investigations are conducted using a team approach and begin with an extensive investigation plan, which sets out the issues and/or allegations to be investigated, what the evidence gathering process will be, including what witnesses must be interviewed, what documents are required and anticipated timelines for conducting the investigation.

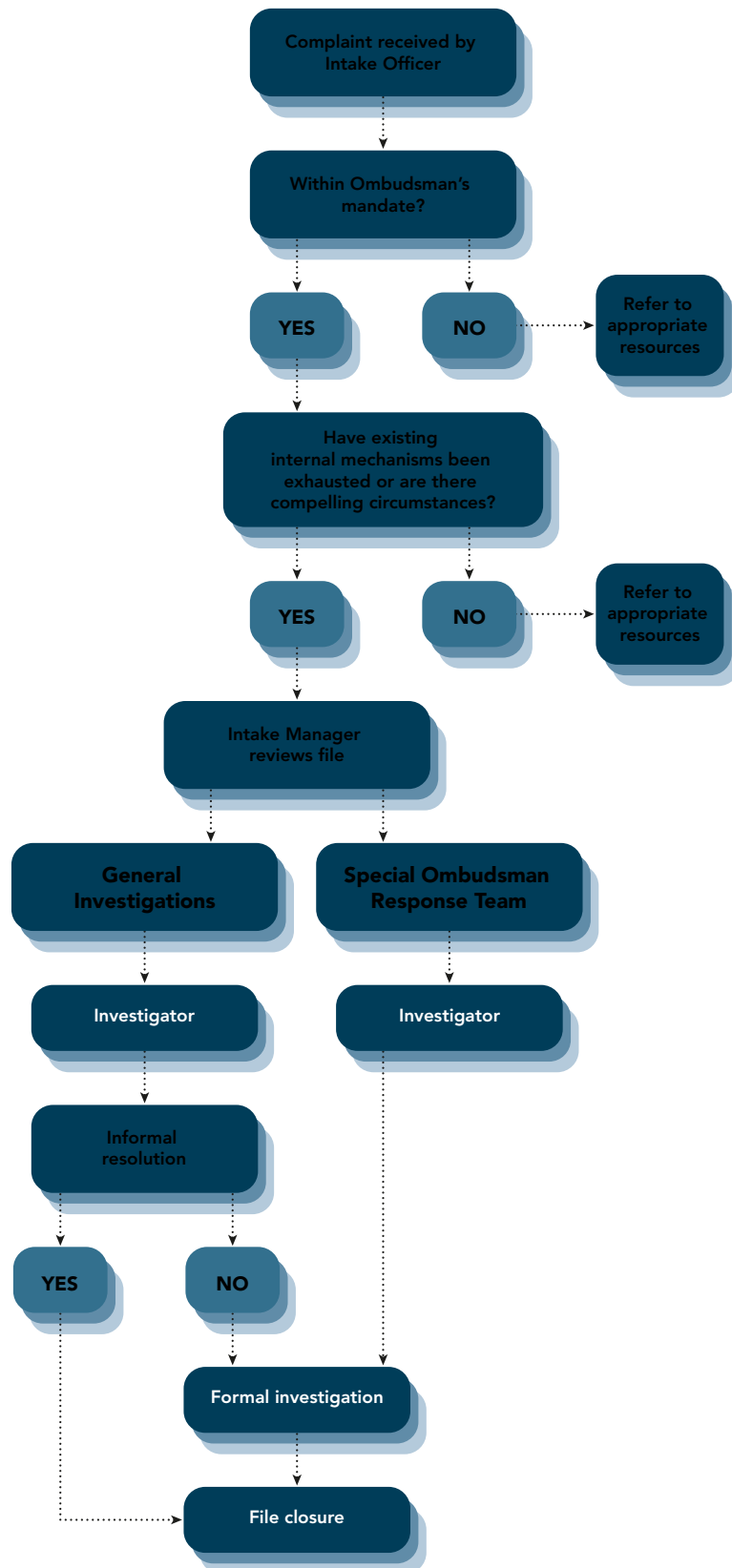
Ombudsman Advisory Committee

The Ombudsman also benefits from the military knowledge and experience of the members of the Ombudsman Advisory Committee. It acts as a sounding board for initiatives or recommendations being considered by the Ombudsman. The group does not make decisions on specific complaints; therefore, the confidentiality of the cases is preserved. The Committee consists of the following members:

- Professor Ed Ratushny, Chair
- Lieutenant-General (Retired) Michael Caines
- Mr. Thomas Hoppe
- Mr. Mike Spellen
- BGen P.L. Brennan
- CWO Camille Tkacz

Col Rick Williams retired from the Committee in November 2004. Mr. Bill Tanner was nominated to join the Ombudsman's Advisory Committee in March 2005.

Handling Your Case from A to Z



Ombudsman Staff Professional Development

Ombudsman staff continually keep abreast of developments within the staff's specific professional areas of expertise as well as within DND and the CF. Such developments include initiatives under way as well as resources and benefits available to CF members and former members, cadets civilian employees, and their families. The professional development sessions also provide the Ombudsman's investigation staff, who are located across the country, with an opportunity to share information on the investigations currently underway.

Two professional development sessions were held for Ombudsman staff:

In September 2004, there were a wide variety of topics covered—Veterans Affairs, Grievances and Communications to name but a few. The Vice Chief of the Defence Staff, Vice-Admiral Buck; the Acting Chief of the Land Staff, MGen Caron, and the Judge Advocate General, MGen Pitzul, each gave presentations about their respective areas of expertise. Ken Miller, from the Veterans Affairs Canada Pension Modernization Task Force, provided the staff with key information about the work that the task force is undertaking. Lastly, Barry McLoughlin, a media relations expert, discussed media relations in the Ombudsman context, while a panel of three journalists, Allan Thompson, Mike Blanchfield and Stephanie Rubec discussed media and defence issues. A writing skills workshop was also held.



*The Hon. Dr. Keith Martin,
Parliamentary Secretary to the
Minister of National Defence*

In December 2004, the focus of the session was the Human Resource challenges facing the Department of National Defence and the Canadian Forces. In opening a panel on Reserve Employment Issues, the Parliamentary Secretary of National Defence, the Honourable Dr. Keith Martin spoke of the importance of the military to Canada. Once again, the Office of the Ombudsman received valuable presentations from CF leaders, including the Chief of the Maritime Staff, VAdm MacLean, and the Chief of the Air Staff, LGen Pennie, as well as two Canadian Forces members who described their personal experiences in Afghanistan serving with Operation Athena.

Ombudsman Commendations

The Ombudsman's Commendations, which are awarded annually, recognize exemplary dedication to the values of integrity, honesty, fairness and openness as well as exceptional problem-solving and complaint resolution skills.

At a special ceremony held on Parliament Hill on March 24, 2005, the Ombudsman honoured three Canadian Forces personnel and five National Defence civilian employees with 2005 Ombudsman Commendations. Unfortunately, two of the recipients, Chief Warrant Officer Robert Goch and Mr. Pierre Lessard, were unable to attend. The Honourable Bill Graham, Minister of National Defence, also took part in the ceremony, and numerous Parliamentarians as well as VAdm Bruce Maclean, Chief of the Maritime Staff, were present to recognize these outstanding members of the defence community.

And the 2005 Commendations are awarded to...



Back Row From Left to Right: Major Louis St-Laurent; VAdm Bruce Maclean, Chief of the Maritime Staff; Chief Petty Officer Second Class Allan Walker; Honourable Bill Graham, Minister of National Defence; Clément Laforce; Ombudsman André Marin.

Front Row From Left to Right: Anne Pennington, David Eisenhau, Annie Côté.

Absent: Chief Warrant Officer Robert Goch and Pierre Lessard

Commendations for Complaint Resolution

Mr. Clément Laforce

Mr. Clément Laforce, Deputy Director General Defence Research and Development Canada (Suffield), received the Ombudsman's Commendation in Complaint Resolution in recognition for his assistance with the Ombudsman's investigation on the chemical warfare agent testing at Suffield during WWII. His co-operative attitude and willingness to provide information were outstanding. Without his contribution, the Chemical Agent Testing investigation and the compensation program that subsequently was created would not have been possible. On receiving his award, he thanked the Ombudsman for taking on this part of our history.



Mr. Clément Laforce with Dr. Bob Angus, Director General (DRDC Suffield) and Mr. Bill Tanner, WWII veteran.

Major Louis St-Laurent



Major Louis St-Laurent with Ms. Mary Linda Bell

Major Louis St-Laurent also received the Ombudsman's Commendation in Complaint Resolution in recognition for exceptional willingness to assist clients at the Centre for the Support of Injured and Retired Members and Their Families. He provides them with both a sympathetic ear and friendly point of contact. He repeatedly goes the extra mile for his clients, spending significant amounts of time listening to those who are in need and offering sound advice. Major St-Laurent's actions epitomize the Department of National Defence primary objective of "putting people first". He accepted his award in honour of his colleagues, who he recognized as being "every bit as deserving as I am."

Commendation for Ethics

This year, the Ombudsman received over 20 nominations for the Commendation for Ethics. These outstanding individuals, by their examples of leadership, integrity, compassion and professionalism, contribute to the well-being of the National Defence and Canadian Forces community as a whole. Given the strength of all of the candidates, it was an enormous task to select this year's six recipients, who hail from coast to coast.

Ms. Annie Côté

Ms. Annie Côté is known throughout 3 Wing Bagotville for her boundless integrity, dedication and honesty. She is not only a source of inspiration to those around her, she is also an example of courage and determination. In particular, through her motivational leadership, she has persuaded her team to adopt an innovative approach to customer service, which has enhanced the well-being of all members of the Wing's military and civilian community. Without question, Annie Côté has helped the defence community to flourish through her actions and initiatives. On receiving her award, she spoke of her pride at being a member of the defence team.



*Ms. Annie Côté with her husband
Denis Martel*

Mr. David Eisenhour



Mr. David Eisenhour thanked his colleagues, mentors and those in leadership in his acceptance speech.

For over two decades, Mr. David Eisenhour has clearly demonstrated his dedication to the promotion of ethics in the Public Service. Among his accomplishments, Mr. Eisenhour has co-authored a long term ethics plan for MARLANT that is operationally sound and easily implemented in a fair and honest manner. His dynamic promotion of openness and honesty led to it being accepted by both management and labour. He also produced a Defence Ethics Implementation Plan, which highlights the importance of recognizing and commending employees who exemplify ethical behaviour. Mr. Eisenhour leads by example and is seen as an advocate and leader in the field of ethics. In his acceptance speech, he credited his colleagues and those in leadership for their support of his endeavours.

Chief Warrant Officer Robert Goch

Throughout his 35-year career in the Regular Forces, Chief Warrant Officer Robert Goch has shown an unwavering concern for all members of the CF, which has earned him the universal respect of both civilian employees and military members. His compassion and caring for his fellow members is evident not only by his words, but also by his deeds. CWO Goch, who is currently stationed with 17 Wing Winnipeg, was the driving force behind obtaining medical pensions for three members of his branch in their time of need. He is also very active with assisting members of the CF who are showing signs of, or have been diagnosed with, operational stress injuries. He has worked tirelessly with Veterans Affairs Canada, civilian medical professionals as well as the Office of the Ombudsman to obtain and maintain dignified and supportive care for injured personnel returning from operations. CWO Goch epitomizes the values and ethos of the Canadian Forces.



*CWO Goch with Ms. Barbara Finlay,
Director General of Operations*

Mr. Pierre Lessard

During his career as a defence scientist, Mr. Pierre Lessard has made an outstanding contribution to improving not only the Department of National Defence, but also the well-being of the defence community. Possessing an exemplary sense of ethics, he takes his time to reflect before offering sound and well thought-out advice. Mr. Lessard combines a keen sense of observation with an outstanding capacity for reflection; as a result, he has the ability to take stock of a given situation and understand all of its ramifications. These exceptional qualities have earned him recognition as an excellent “sounding board”. He is a man of remarkable integrity; his proven honesty and sincerity have exerted a positive influence on those around him. By giving direction and vision to Defence Research and Development Canada (Valcartier), he has left a lasting mark on the organization.



Mrs. Anne Pennington



*Mrs. Pennington with her friends
Majors Steve Veillette and Dave Cochran*

Mrs. Anne Pennington is a true paragon of ethics. With unsurpassed compassion and a desire to make a difference in the world, Mrs. Pennington is extremely active in many humanitarian pursuits. Mrs. Pennington leads by example in all facets of her life. At work, she is a dedicated and invaluable employee with 426 Squadron. During her years with this squadron, Mrs. Pennington has guided hundreds of staff members

and students. She is also active in the 8 Wing Trenton Employment Equity Advisory Group and has aided in the resolution of many interpersonal issues. A stalwart member of her unit, Mrs. Pennington exhibits qualities of generosity and ethics that greatly enhance life and morale within her unit. When presented her award, she expressed gratitude for all the support given to her to make things happen.

Chief Petty Officer Second Class Allan Walker

Throughout his 22-year career in the Navy, Chief Petty Officer Second Class Allan Walker has distinguished himself with his dedication to ethics. Leading by example, he has earned the respect of his superiors and subordinates. His nomination was initiated by two of his subordinates on the HMCS REGINA. CPO2 Walker brings tremendous credit to the Canadian Forces. A true leader, he always puts his subordinates first, and



CPO2 Walker reads the award citations.

thus has become a role model for those serving under him. Through his guidance and inspiration, he ensures that each individual is provided the opportunity to reach their full potential. Thus the CF will continue to reap the benefits of his leadership for years to come. Upon receiving the award, he said that he was truly humbled by the nominations and recognition but also acknowledged the importance of recognizing those who set a high standard for themselves.

Members of the DND/CF community are encouraged to submit nominations for next year's Commendation for Ethics. The deadline for nominations is October 28, 2005.

Having Your Say—Feedback

I have received your report "From tents to sheets", and I studied it with great interest. ... [A] model has been developed [here] that is very similar to the decompression that you describe in your report. Presently, we are working on a standardised procedure that will be applied with every deployment, not only when marines are involved... I would like to commend you with this achievement and I thank you for sharing this information with me.

– *Inspector General of the Armed-Forces (Netherlands)*

Annual Report

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Ombudsman – National Defence and Canadian Forces

Both me and my family have read over the final report several times and are extremely pleased with it. Not only for the fact that the report has brought some closure to this whole ordeal, but because of the care, time, and effort that has been put into my complaint and subsequently the report itself.... Frankly, I did not know what to expect of my involvement of your Office. Understandably, my recent experience with investigators, interviews, and reports had not been very gratifying, and thus I was unsure of how the Ombudsman investigation/report would work out. I am happy to say that my involvement with your Office has been nothing short of outstanding. While the process of dealing with my complaint has took approximately three years, compared to my experience with the military BOI, it has felt more like three months. Your Office is an asset to DND and to Canadian Forces members, and I am sure that every complainant that has had the privilege of dealing with your Office would express the same sentiment.

– *Complainant*

I appreciate the contributions of your office once again this year to help identify and resolve individual and systemic problems that affect the quality of life of CF members and their families. ... The Office of the Ombudsman has an important part to play as an agent of change and positive influence, and I know that we can continue to work as a team to meet our common goals. Thank you for your support and dedication, and for your continued concern for the welfare of CF members and their families.

– *Former Chief of the Defence Staff*

I fought an uphill battle for 5 years to get the recognition and compensation we did get in February... It was through people like Elsie Wayne, Senator Ross Fitzpatrick, and of course Andre Maran (*sic*) and his Executive Assistant, Susanne Belson that the Government came to our requests.

– *Veteran*

I just wanted to say thank you for your time in service to the military, for your efforts to try to 'break through' to the brass, to wade past or through all the bureaucracy that plagues this institution. There have been times when the cases you have reviewed and intervened in have echoed of experiences I've had or other personnel I know have gone through, so to read of someone such as yourself championing the cause of individual members of the CF is most encouraging.

– *Petty Officer Second Class*

In your office's report, "When a Soldier Falls," it is noted how Mrs. Wheeler and her family were treated unfairly and the anguish they went through trying to obtain some answers why MCpl Wheeler died. We can identify with this pain and our son survived. It is at critical times of pain, anguish and despair that families need to be treated respectfully and made to feel part of a process that, hopefully, will bring closure and an end to their nightmares. This did not occur! It has been four years for us and ten years for the Wheeler family, and thanks to the ombudsman's office, we are near to our personal closure and a continuation of our lives. For this, we can only express our heart felt gratitude...

– *Complainant's Father*

I had reached a roadblock with this situation and I greatly appreciate your finding another path to a solution.

– *Member of Parliament*

In the twenty plus years that I have served proudly in our Army, I did not believe that we would make such serious errors when investigating events like those that happened to MCpl Wheeler, and subsequently, to his family and his Commanding Officer. ... I unfortunately witnessed first hand some gross flaws in our administrative investigation process. I witnessed flaws, but I also witnessed cover-up, at a very senior level and that discouraged me so much... At the time I considered sending what I saw to your office, but at the time I was unsure what your office could or would do. Now I realize that I should have... I thank you and your staff for displaying the integrity and courage to publicly bring attention to the flaws in our investigation processes. I am sure your words will help in the momentum to change our Army for the better.

– *CF Member*

Your efforts on my behalf were successful. My thanks to you and to your investigators. ...In September 2003, retired Chief Justice of the Supreme Court Antonio Lamer stated: "Soldiers are not second-class citizens. They are entitled to be treated with respect, and in the case of the grievance process, in a procedurally fair manner." That did not happen in my case until the Office of the Ombudsman became involved....Thank you again for your efforts on my behalf. Because of your work over the past six years, CF members know there is an agency that thoroughly and impartially investigates complaints.

– *Complainant, Retired Army Major*

I just wanted to take a moment and thank you for all of your efforts over the past seven years on behalf of some of the serving members of the Canadian Armed Forces. My life in the military has genuinely improved since your posting to the office. Your initiatives and investigations into any wrong doings in any department have greatly admired from a distance at the lower end of the chain of command.

– *Sergeant*

I want to pass along my gratitude on behalf of the Army, Navy and Air Force, for the very good work that the Ombudsman has done and that his Office has done.

– *Lieutenant Commander*

I have been in uniform with the RCAF and CF for just over 42 years. I have seen many things come, go and come again and watched as the wheel is tried to be reinvented. I would like to thank Mr. Marin for the positive influence he has made on most of the rank and file of the CF... [The] efforts of the Ombudsman have made the CF a better place and helped a lot of people. Thanks.

– *Captain*

Thank you for your work in making our system more transparent, or maybe less opaque.

– *Major*

Appendix I

Your Successes are Our Successes

Staying Close By

Because of the medical condition of his spouse whose medication was available in only one province, a Senior Non-commissioned Member (NCM) asked that his posting be extended at his current location. In the summer of 2003, he was given a one-year extension and informed that he would be posted to a new location at year-end. Concerned about his wife's local medical support and the destabilization of a move, the NCM asked to be released in 18 months. With the prospect of a second career in the area, he elected his present location as his intended place of residence upon release. Because he was still facing the possibility of a posting out of the province for a short duration, he contacted the Ombudsman's Office for assistance.

His career manager was contacted and the NCM's concerns about leaving his sick spouse behind were discussed, making the point that the member was looking into job opportunities in the area on release. The career manager explained that because of a personnel shortage in the NCM's occupation, he often had to post personnel for short periods of time but agreed to review his decision.

The career manager recognized the exceptional circumstances and agreed to leave the member in place until his release in September 2004. This meant he could continue to provide his spouse with her medical care and plan his second career on location.



Inspector Woes

After surgery that left him permanently incapacitated, a member requested a move from a two-storey unit to a bungalow in a base Self-Help Housing Project (SHHP). Because of family stress resulting from the surgery and the move, he requested an extended period to clean and clear out of the old residence, which the housing authority agreed to. On the initial turnover date, a housing inspector showed up and

insisted that if the old residence was not cleaned to his satisfaction in the normal time period, the member would have to pay for two residences. The member felt the inspector was rude and abusive. The member asked the Office of the Ombudsman to intervene to negotiate more time to clear out.

On being contacted at the SHHP office, the inspector who had originally agreed to the extension confirmed that the deadline was still valid. A few days later, the member called to advise that nobody had showed up for the inspection and he was told that the appointment had been changed. He also indicated that the abusive inspector just left after making more rude comments and a statement to the fact that the house would never be clean enough for him. The inspector also asked the family to remove a shed from the backyard, which was still frozen to the ground, or else provide a certified cheque to have it removed.

Our investigator once again contacted the SHHP office only to find out that the manager was away on temporary duty. He then contacted the Personnel Support Program manager at headquarters to advise him of the ongoing situation and the treatment that our complainant had experienced. The Manager's reaction was immediate. He asked our investigator to contact the member and advise him to forget about the old residence and return the keys. He said he would advise the SHHP office of his decision.

The next morning, the member's spouse returned the keys and they were cleared of any responsibility regarding the old residence. After being briefed by our investigator, the manager recognized that the action and behaviour of his staff was exacerbating an already stressful situation, and he quickly intervened to correct it.

Just in the "Neck" of Time

A CF member with nearly three decades of service had a neck injury and was slowly progressing up a waiting list for neck surgery. In the spring of 2004, he heard he was being posted to another province. When he inquired about the effect his move would have on his surgery, he was told that he would start at the bottom of the list at the new location. Concerned about his surgery delay, the member addressed the matter with his chain of command, but was informed that the posting would not be cancelled.

In June 2004, the member submitted a voluntary release request for about six months in the future, assuming that by then he would have had his surgery and would have recuperated before his voluntary release was finalized and processed. He was informed that his voluntary release request had been approved, but that his release date would be in two months time. The member was surprised and disappointed at the treatment he was receiving.

The Ombudsman's Office considered this situation as having compelling circumstances. After the Ombudsman investigator reviewed the documentation and discussed the situation with the member, she began working with others at the Base. This case is a good illustration of people working together towards a common good. The Base Case Manager and the Base Surgeon worked together with the member's Career Manager and staff to have the member remain in the area until after his surgery and period of rehabilitation.

In August 2004, the member was informed that his release had been cancelled and that new posting instructions would be issued in March 2005. Unfortunately, he received the instructions earlier than expected, and thus decided to voluntarily release.

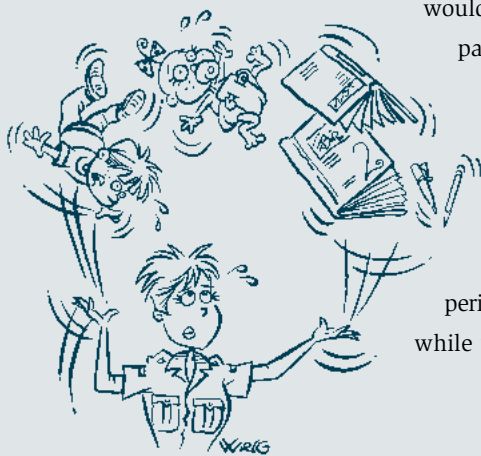
Juggling Career and Children

A female member who had just returned from a six-month peacekeeping mission was scheduled to attend a five-week career course away from her home unit. The course was to start a week before her spouse's deployment on a six-month tour of duty outside the country. The couple had two young children who would have been without their parents for a month, and the short notice for the member's course attendance did not allow the couple enough time to develop an adequate family care plan. Although the member's chain of command told her that she did not have to attend this course, she was later scheduled to attend the next available course starting halfway through her spouse's deployment. She sought assistance from Ombudsman's Office to delay her career training until her spouse returned from his mission.

The career manager explained that the managing authority for the course had just changed, and that the short notice was due to unfamiliarity with the course loading process. He also indicated that the chain of command did not have the authority to take personnel off the course and that because this was a career course, she had to attend the next available one. The Director of Military Careers was contacted and

advised that under these circumstances, the children would have spent only three weeks with both parents at home during an 18-month period.

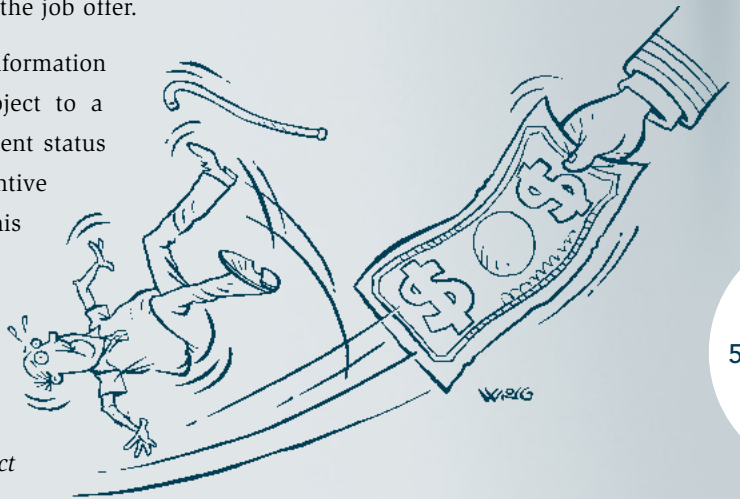
The Director agreed to delay the member's career course until after her spouse's return. As a result, the member was able to have some valuable time with her spouse before his departure. It also provided a period of relative stability for the children while their father was deployed overseas.



Pondering Pension Relief

Following his career in the CF, a member joined the Public Service where he worked for a number years before he retired under an early retirement incentive program. He then worked by contract for a non-governmental agency and on completion, he became aware of a vacant position with DND/CF. He made inquiries into the possible effects that accepting a new position in the Public Service would have on his pension. A specialist assured him that accepting the position would have no negative effect on his pension and he accepted the job offer.

Months later, he received a pension information package indicating he would be subject to a pension penalty because his employment status contravened the Early Retirement Incentive Program agreement. Alleging that this was contrary to the advice that he had been given, he requested a review and asked that his entitlement to an unreduced, indexed pension be confirmed. He was told that no provision in the *Public Service Superannuation Act*



could be used to reinstate the pension reduction waiver he had received when he retired from the Public Service. The employee was concerned about the financial ramifications to himself and his family indicating that he would have made different decisions had he been given correct information at the time.

The Ombudsman found that Director Civilian Compensation Services had forwarded the case to the Office of the DND/CF Legal Advisor, Claims and Civil Litigation, in July 2003 to determine if the Department had a legal responsibility to the employee because an administrative error caused him a significant pension loss. Inquiries, discussions and auditors' reports resulted in the member receiving a proposed resolution from Claims and Civil Litigation in May 2004 that would compensate him financially for the reduction of his Public Service pension.

From Check Back to Back Cheque

A civilian employee was on disability leave for a lengthy period of time. After receiving medical approval to return to work, he was directed by base authorities to remain at home pending the outcome of an ongoing administrative investigation. As he had not been paid for nearly a year during his forced absence from the workplace, he applied for employment insurance (EI) benefits. To substantiate his claim, he sought written confirmation from the human resources section that he had been directed not to return to work. He did not receive the confirmation and his claim for employment benefits was denied. The employee called the Ombudsman's Office for assistance.

The investigator contacted various base officials, including human resources, compensation and the base commander. He learned that the ongoing administrative investigation was completed shortly after the investigator contacted base officials, and termination proceedings were begun immediately. The union was also called to determine what options were available to the employee. The member decided to challenge the termination through the grievance process.

Officials confirmed that the member had not been paid for nearly a year because of an administrative error. This was quickly rectified as were other matters relating to periods of leave that were in dispute. He received a cheque for the full amount of his back pay just before Christmas and was grateful for the unexpected present.

Keeping the Current in Data Streams

A military member was promoted and posted in 1996 with the possibility of a career medical review and release hanging over his head; however, he didn't know that, nor was he told about it. Shortly after he was posted, CF authorities decided to release him as a result of a medical process that began before his posting. He had just purchased a new house, moved his family, and got the kids started in their new school. The member contended that he suffered substantial financial damages as a result of that posting and the subsequent posting to return him to his original place of residence. Because he was unable to get any satisfactory answers from the CF before his release, he contacted the Ombudsman.



The Ombudsman sought and received ministerial permission to investigate the case. The investigator interviewed the member's former chain of command and medical staff, and reviewed all of the pertinent documentation. A detailed examination of the facts revealed what really happened, and a summary of the Ombudsman's observations was sent to the Assistant

Deputy Minister (Human Resources-Military) to see whether the matter could be resolved. The review brought to light four issues that contributed to the problems the member encountered: the delay in medical staff completing documentation following a medical examination; the lack of contact between the member's chain of command and the medical staff; the fact that the member's

medical status did not raise any alarm bells with the chain of command prior to his posting; and the career manager's decision to post him even though he apparently knew that there was a possibility that he would be released as a result of his medical status.

The response was quick and indicated that the CF would be issuing a practical guide for commanding officers and their supporting medical staffs on what information can and should be transmitted from health care professionals to responsible commanding officers. The guide, which would also address the need for expediency in the passage of such information, should be published by mid-2005. The Assistant Deputy Minister (ADM) also offered that the CF would update the Career Management Information System database by April 2004, to ensure that changes to medical categories are transmitted to career managers in a timely manner. As a result, the System is now updated weekly with respect to current medical categories.

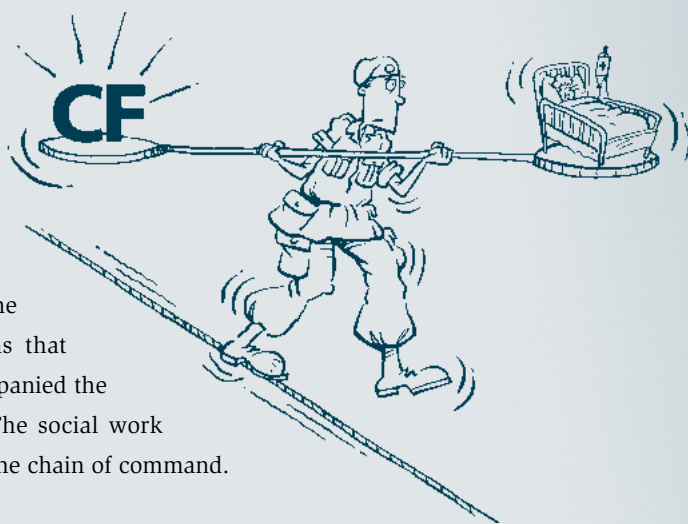
Lastly, the ADM recommended mediation between the complainant and the CF as a means to resolve this case. The mediation had to be postponed several times, due to the non-availability of the interested parties. It eventually took place in January 2005 and a settlement was reached. The member was finally able to put this matter behind him.

Serving Forces and Family

A member requested release to move back to his parents' hometown because his mother had recently been diagnosed with advanced cancer. Since no other family member was available, he wanted to move home to provide his mother with emotional support and to get her to and from medical appointments.

When he enrolled, this member had received a recruitment allowance. In return, he had agreed to obligatory service for 36 months during which time, he would not be granted a voluntary release from the Regular Force, "unless, in the opinion of the Chief of the Defence Staff, there are special and unforeseen circumstances (...)." He and his family believed that such circumstances were indeed present; the member was even prepared to return the recruitment allowance.

Information from the member's career manager, the base social work staff, the member's chain of command, and the member's family was reviewed. It became clear that one reason for denial of the release was that insufficient substantiation had accompanied the member's original release request. The social work staff submitted a follow-up report to the chain of command.



Thanks to the collaboration of the investigator, the social work officer, the career manager, and the chain of command, the member was given an attached posting to a CF base close to his parents. Arrangements for his move were made quickly, and he and his family were satisfied with the results.

Putting the Past to Rest

The daughter of a veteran who had served in Suffield wrote the Office of the Ombudsman. Her father had passed away from cancer in 1993. The only compensation he ever received was a small pension from Veterans Affairs.

Her father had been constantly ill and spent much of the time in and out of hospitals. Her mother worked to support the family and the children cared for the father. He had never talk about his experience at Suffield because it was classified.

The daughter applied for compensation from the Chemical Warfare Agent Testing Program for her mother.

A couple of months later she contacted the Ombudsman's Office to say that her mother had been diagnosed with liver and pancreatic cancer and did not have long to live. She wondered if anything could be done to expedite the review of her father's file. The officer who administers the program was contacted. He immediately requested the necessary files from Library and Archives Canada and arranged for a review of the case. Inside two weeks, the veteran's widow was advised that compensation had been approved and that she would shortly receive a cheque for \$24,000 and a certificate honouring her late husband's contribution to the chemical agent testing.

Shortly after the cheque arrived, the veteran's widow died. Her daughter wrote, "I think [my mother] was finally able to get closure on that part of [my father's] life and hers and it has been largely due to you and all the others who have been so kind to us regarding this matter. You will never know the impact on all of our lives now that we can put this to rest. My mom will be at peace, and the rest of us hopefully will be able to let go of some of our anger. We can put the past in the past now."

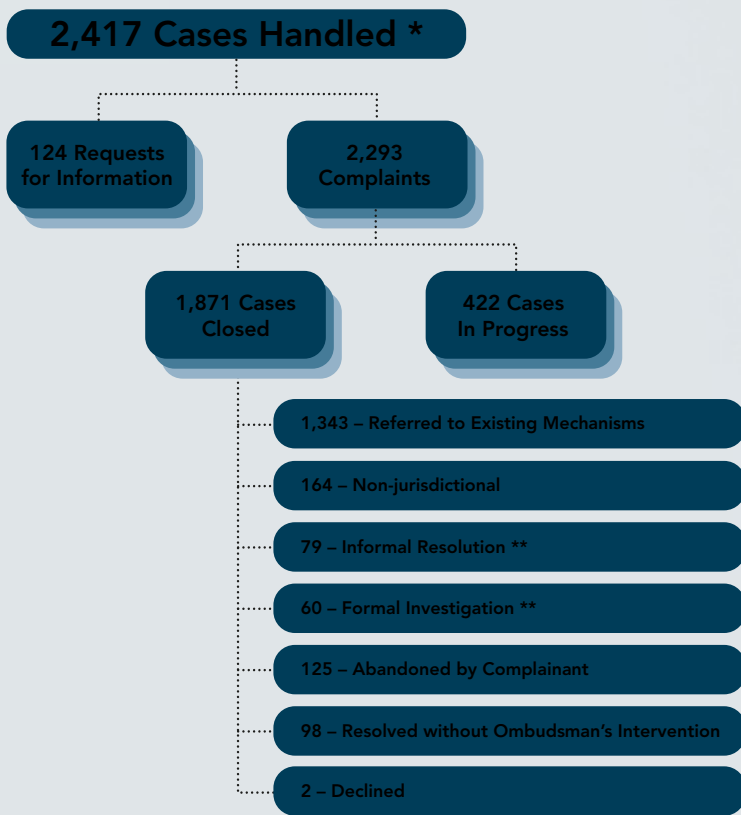


Mrs. Rose Jethon proudly displays the compensation cheque she received

Appendix II Common Complaints and Trends

Table 1

Disposition of Cases



* Included cases received or re-opened in 2004–2005 and cases carried over from previous years

** Combined, these categories consist of 80 fully or partially substantiated cases and 59 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.

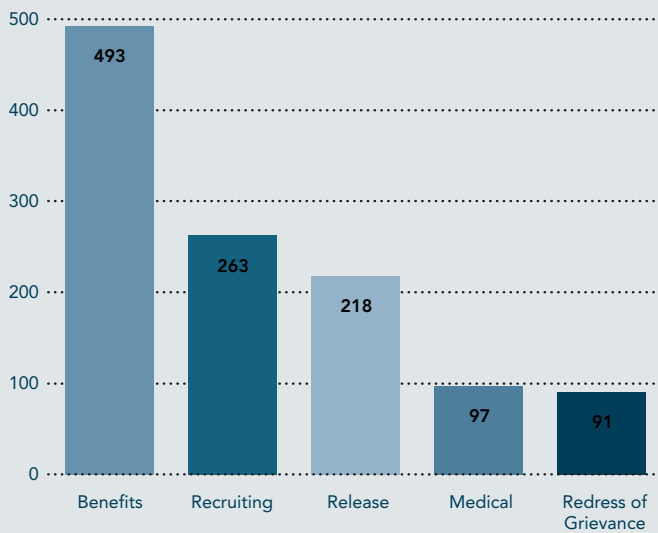
Resolved without Ombudsman's intervention: Individuals have been successful in resolving their problem through existing internal mechanisms, before any intervention by the Ombudsman's Office.

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.

The following tables categorize the complaints received this fiscal year by type as well as the complainant's employment category, location and method of contact.

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 493 complaints about benefits. Examples include:

- 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
- Forced repayment of monies by members after a promise was made or due to an administrative error.

2. Recruiting

The Office received 263 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.

3. Release

The Office received 218 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.

4. Medical

The Office received 97 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.

5. Redress of Grievance

The Office received 91 complaints regarding Redress of Grievances. Examples:

- Systemic delays through all levels of the grievance system;
- Refused submissions; and
- Lost/misplaced submissions.

Table 3

Types of Complaints

Benefits	493
Recruiting	263
Release	218
Medical	97
Redress of Grievance	91
Posting	85
Harassment	77
Contracts	44
Post Traumatic Stress Disorder	35
Promotions	31
Married Quarters	31
Training	30
Military Justice	24
Awards / Medals	23
Disciplinary Action	22
Personnel Evaluation Report	21
Abuse of Power	19
Civilian Grievance	18
Taxation	18
Deployment Issues	14
Discrimination	13
Leave	12
Access to Info/Privacy	10
Obligatory Service	6
Wrongful Death	6
Demotions	4
Board of Inquiry	4
Assault to the Complainant	3
Safety	3
Security Clearances	3
Conflict of Interest	2
Dismissal (Civilian)	1
*Other	72
Total	1,793

* 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

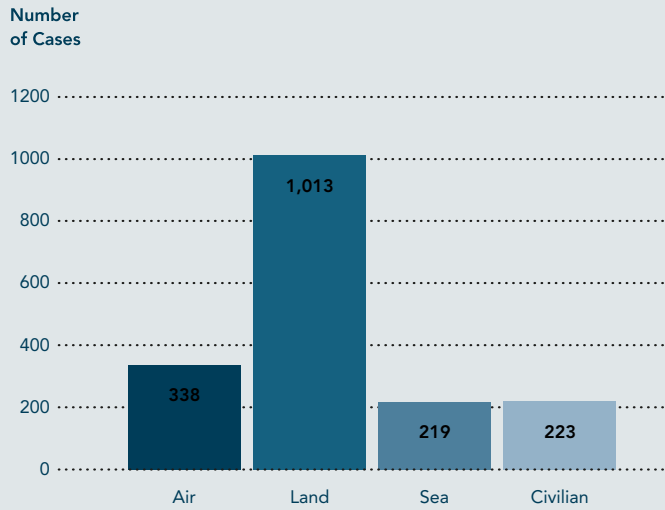
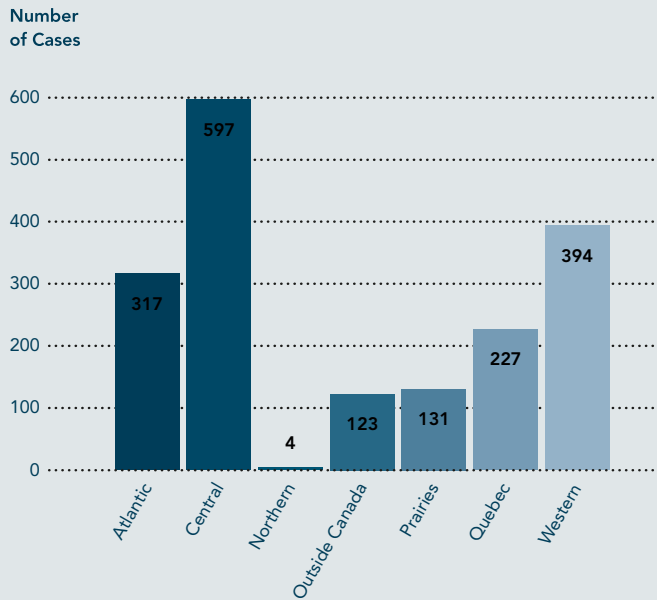


Table 5
Complaints by Region



LEGEND: **Quebec**
Central: Ontario
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

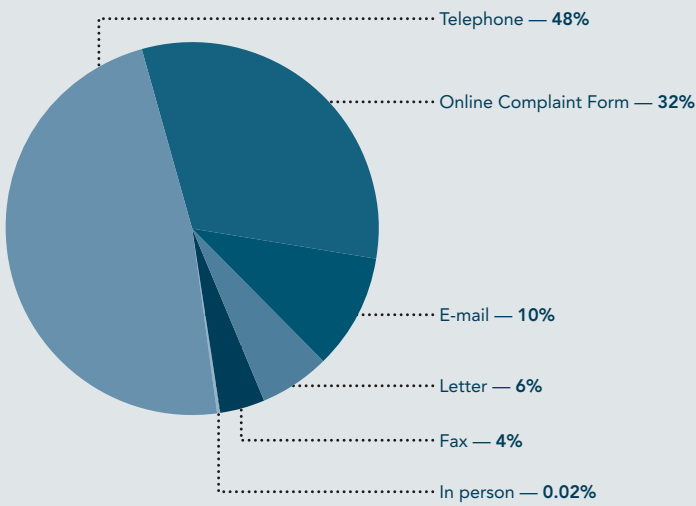
Table 6

Complaints by Category

Regular Force	911
Former Military	314
Reserve Force	235
Family Member	101
Applicant Regular Force	88
Civilian Employee	38
Applicant Reserve Force	19
Former DND Employee	10
Anonymous	10
Non Public Fund Employee	10
Cadet	3
Other	54
Total	1,793

Table 7

Method of Contact



Appendix III Financial Report: Summary of Expenditures

During fiscal year 2004–2005, 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 \$5.2 million. The largest category of expenditures was salaries at \$2.78 million, which accounts for 54 percent of our total expenditures.

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

Summary of Expenditures

	(\$000)
Salaries	2,784
Professional and special services	664
Office rent	799
Office building improvements	67
Transportation	378
Acquisition of computers and other equipment	60
Telecommunications	124
Communications and public outreach	112
Materials and supplies	62
Training and professional dues	83
Mail and Courier services	9
Miscellaneous	16
Total	\$5,159