

AN OMBUDSMAN FOR SURVIVORS OF SEXUAL VIOLENCE (How would it Work)

**CORNWALL PUBLIC INQUIRY
PHASE 2 RESEARCH AND POLICY PAPER**

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INTRODUCTION

This is a paper about ombudsmen¹ and what they do and how they work. The purpose of this paper is twofold. It is aimed at two audiences. The first part is for victims of sexual violence. It is also for their family and friends. It is applicable whether the survivor is a child or an adult, male or female. It is applicable whether the violence was recent or historic.

The second part is very legalistic. It is to provide Commissioner Glaude with the background and information he requires to make an informed decision about whether an ombudsman for survivors of sexual violence is an idea worthy of a recommendation in his report. In this paper we will not be advocating any individual model or even for the establishment of an ombudsman. However, it should be noted that The Men's Project is on record that we would like to see the establishment of an Ombudsman for sexual violence survivors.²

¹ The word Ombudsman is of Swedish origin and does not signify either a male or female person.

² "I also have a list of some other recommendations we are hoping to see by the end of this Commission and things for you to think of as you are hearing evidence in Part 1 and also as we go through Part 2... That you look and examine whether creating a position of an ombudsman for dealing with issues of sexual violence would be a good idea. If there had been a watchdog, then perhaps there would have been a different response by the various institutions involved. An ombudsman or an advocate may have seen a pattern very early on in the process and helped guide the various participants on how they could have improved their responses." Opening submissions The Men's Project October 3, 2006 p.64-66.

PART I: FOR SURVIVORS, THEIR FAMILY AND THEIR FRIENDS

You all know the beginning. Something awful has happened and you don't know where to turn for help. If you are a woman you might be able to go to a Sexual Assault Centre if there is one in your community. If you are a child you might end up at Children's Aid. If you are male you may eventually end up with a referral to The Men's Project (which only works if you live in Ottawa and Cornwall). Hopefully you may end up with some advice about what services may be available to you whether legal, counselling or medical. There is no one-stop shopping in Ontario to provide a survivor of sexual violence for advice on where to go and what to do. This is something that is raised over and over at every Phase II public meeting. There is obviously a need for this type of service. However that is not what this paper is about. This paper is about what happens when someone whether assisted, or on their own hits the walls of bureaucracy.

A continuous theme of survivors in Cornwall has been that they were frustrated by their dealings with the various public institutions. Whether this frustration was justified is not something for this paper. Phase I of the Inquiry will determine that. However it is the reality that survivors, their friends and families often felt frustrated when dealing with various public institutions. There has been a theme from survivors of not being believed, getting the run-around, being kept in the dark, which for some had the effect of being revictimized.

The purpose of this paper is about what happens when someone feels that they are not being treated fairly by a public institution set up to assist all residents of Ontario. The purpose of an ombudsman and how it works will be examined.

What is an Ombudsman?

An ombudsman is a neutral third party who:

- takes a complaint;
- looks into it;

- determines if it is justified;
- tries to help resolve the complaint informally;
- makes public recommendations on how to resolve the complaint if it can't be resolved informally.

An ombudsman program is free for the consumer and generally provides quick resolution. The ombudsman's neutrality is an essential component of their effectiveness. They do not represent the complainant. They do not represent the public institution. Their job is to act in the middle and to try to achieve a resolution. Only if after they have conducted a full investigation and determined that a complaint is justified, will they take on an advocacy role.

They try to resolve complaints in a cooperative fashion unlike advocates who by their very nature have an adversarial relationship.

There are three types of ombudsmen in Canada:

- legislative (like the Ombudsman of Ontario)
- executive (like the ones for hospitals, universities, big banks)
- specialty (the National Defense Ombudsman, the Office of the Correctional Investigator, as well as the recently announced Ombudsman for Victims of Crime, Veterans' Affairs Ombudsman, and Taxpayers' Ombudsman.)

They all try to do the same thing, informally resolve complaints. Some, like the Ombudsman of Ontario, have more stature and clout.

In Part II of this paper for the Commissioner, concepts like independence and confidentiality are discussed in more detail.

Confidentiality: When someone makes a complaint to any type of ombudsman they probably assume that it is fully confidential. However only an ombudsman created by a law of the Ontario Government can provide full confidentiality to a complainant. This is

an important issue to be considered. As we have seen at this Inquiry there have been many motions and legal battles of what should be public information and what communications are protected by law.

Independence: Who is the Ombudsman's master? Are they controlled by someone or some government official? Do they feel their job may be in jeopardy depending on how they deal with an issue? The more independent the Ombudsman, the more effective they will be.

Ombudsman and Credibility: Any ombudsman's credibility largely depends on his or her powers of persuasion. It will be easier for a legislative ombudsman than for an executive ombudsman to be perceived as credible by the public. A legislative ombudsman is both independent and has the power to investigate, and is less likely to be regarded as a mere exercise in public relations. An executive ombudsman runs the risk of being seen as too close to management or mere paper tigers.

Advantages and Disadvantages of the Different Types

Legislative Ombudsman (e.g. Ombudsman of Ontario)

Advantages:

- Independent
- Possess the power to investigate
- Confidentiality protected
- Benefit from an enhanced credibility on account of the above factors

Disadvantages:

- More difficult to initiate because they require legislation
- Usually function more often as a last resort as opposed to early in a given bureaucratic process

Executive Ombudsman: *(like the ones for hospitals, universities, big banks)*

Advantages:

- Easy to establish
- Can intervene earlier on in the complaints process
- Informality can be a plus

Disadvantages:

- Absence of independence
- Lack strong powers of investigation
- Cannot guarantee confidentiality

Specialty Ombudsman: *(the National Defense Ombudsman, the Office of the Correctional Investigator, as well as the recently announced Ombudsman for Victims of Crime, Veterans' Affairs Ombudsman, and Taxpayers' Ombudsman.)*

Advantages:

- Similar benefits to those of a legislative ombudsman when established by legislation
- Can focus their expertise in a specific area

Disadvantages:

- Offices may be expensive to run as have to hire support staff (which may already exist in the Ombudsman of Ontario)
- Difficulties in letting people know of their services especially in smaller communities

Ombudsmen in the Context of Sexual Violence

It is extremely important that anyone dealing with survivors of sexual violence have the proper training to minimize the possibility of re-victimizing the complainant. One theme that has been fairly consistent in evidence of survivors is their frustration in dealing with people in positions of authority. A well-trained intake person in an Ombudsman's office would be able to empathize and then assist the person in navigating various levels of

bureaucracy. They would be able to provide appropriate referrals. Often a complainant just needs reassurance that they are being treated fairly.³

Another advantage would be the ability to immediately be aware when there are multiple complaints concerning a particular institution. The Ombudsman would then be able to inform the Institution of the nature of the complaints and the Institution could take immediate steps to deal with the problem and avoid any more occurrences.⁴

How it would work:

- The survivor or their representative would call the ombudsman's office.
- They would talk with the intake worker and describe their problem with a public institution.
- The intake worker would explore various ways to resolve the complaint.
- The ombudsman's office would call the public institution to get their side of the story.
- The ombudsman's office would assist in resolving the complaint.
- The ombudsman's office would conduct an investigation if they were unable to resolve the complaint.
- The ombudsman's office would make recommendations about what should be done if the complaint was justified.

³ This is based on David Bennett's personal experience as the Alternate Discrimination and Harassment Counsel for the Law Society of Upper Canada and as an independent complaint facilitator for CCAC (Community Care Access Centres).

⁴ We take the view that no institution condones child abuse and that all public institutions would want to be aware of any problems at the earliest possible time.

Conclusion

There are many models of ombudsmen that exist in Canada. They range from very informal pilot projects to the more formal provincial ombudsman. They all provide some form of redress to those who access their services. An ombudsman for survivors of sexual violence could be created in a number of ways:

- As a standalone, specialty ombudsman for sexual violence
- As part of the mandate of a specialty ombudsman for children
- As a deputy in the office of the Ombudsman of Ontario

It is important to remember that whatever the model; it must be structured in such a way to give confidence to its users. From the users' perspective, the ideal office would be independent, would guarantee confidentiality, and would have ability to conduct investigations. It would be set up in a way that makes it easy for a survivor of sexual violence to access it. It would contain well-trained staff that would not re-victimize survivors. Finally, it must have real power or it could end up providing false hope to survivors and their families.

PART II: FOR COMMISSIONER GLAUDE

What is an Ombudsman?

“An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organization in order to resolve the problem.”⁵

An ombudsman's office will carry out three key functions: investigation of complaints of injustice and maladministration, securing redress when the complaints are justified, and creating improvements to administrative systems over the course of investigations.⁶ The ombudsman carries out both individual as well as systemic investigations.⁷ The majority of complaints brought to an ombudsman will be settled informally.

The names for ombudsmen in other jurisdiction give insight into their different functions: parliamentary commissioner in the UK, protecteur du citoyen in Quebec, médiateur in France, and ouvidora (listener) in Brazil.

The purpose of this paper is to examine the various types of ombudsman and to see how an ombudsman might work in the context for survivors of sexual violence. This research is to provide background for the Commissioner Glaude as he makes recommendations. It is not an advocacy piece. In this paper we will not be advocating any individual model or even for the establishment of an ombudsman. However it should be noted that The Men's Project is on record that we would like to see the establishment of an ombudsman for sexual violence survivors.⁸

⁵ Forum of Canadian Ombudsmen website: http://www.ombudsmanforum.ca/whatis_e.asp accessed 26 August 2007.

⁶ Roy Gregory, “Building an Ombudsman Scheme: Statutory Provisions and Operating Practices” in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999) 130.

⁷ Daniel Jacoby, “The Future of the Ombudsman” in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999).

⁸ “I also have a list of some other recommendations we are hoping to see by the end of this Commission and things for you to think of as you are hearing evidence in Part 1 and also as we go through Part 2... That you look and examine whether creating a position of an ombudsman for dealing with issues of sexual violence would be a good idea. If there had been a watchdog, then perhaps there

History

The modern ombudsman originated in Sweden in 1809.⁹ The institution spread across Scandinavia, before being adopted by various Commonwealth countries, starting with New Zealand in 1962. Most public ombudsmen in common law countries follow the New Zealand model.

Ombudsmen were established to safeguard human rights in Spain and the countries of Latin America as they began to democratize during the 1980s. A similar growth occurred in Eastern Europe following the fall of the Soviet Union. While in 1983 there were twenty-one national ombudsmen, the number had grown to eighty-seven by 1997.¹⁰ The International Ombudsman Institute had the number of ombudsmen as of 2004 listed at approximately 120.¹¹ The institution continues to proliferate. Ombudsmen now exist at the supra-national (e.g., European Union Ombudsman), national, provincial, and municipal levels. The institution is also increasingly found within the private sector.

would have been a different response by the various institutions involved. An ombudsman or an advocate may have seen a pattern very early on in the process and helped guide the various participants on how they could have improved their responses.” Opening submissions The Men’s Project, October 3, 2006, p.64-66.

⁹ Linda C. Reif, “Introduction” in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999).

¹⁰ *Ibid.*

¹¹ International Ombudsman Institute website: <http://www.theioi.com/> accessed 5 January 2008.

Different Models of Ombudsman

As an institution, the ombudsman concept continues to develop and evolve. Because of the continued proliferation of this institution in Canada (e.g. Federal Ombudsman for Victims of Crime, Veterans' Ombudsman, Taxpayers' Ombudsman), our research has focused on different ombudsmen within Canada. While there are many variations, there are three basic models for an ombudsman office: the legislative ombudsman, the executive ombudsman, and the specialty ombudsman.

Legislative

The legislative ombudsman is the most well known type of ombudsman. The Ontario Ombudsman, for instance, falls into this category, which is known as the New Zealand model, and is also referred to as a classical ombudsman. The classic legislative ombudsman is established by statute. In Ontario, the office was created by the *Ombudsman Act*, which is nearly identical to similar acts across Canada. As described by the legislation:

The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his, her or its personal capacity.¹²

In a formal sense, the ombudsman derives its power from the ability to investigate. As Marten Oosting, the Dutch ombudsman, explained:

[The] powers of investigation are an essential instrument in establishing the truth. The ombudsman must, in principle, have unlimited access to information and must be able to rely on the full cooperation of the government in conducting his inquiries. The power to conduct investigations on his own initiative is an important weapon in his arsenal.¹³

¹² *Ombudsman Act*, R.S.O. 1990, c. O.2, s. 14 [O.A].

¹³ Marten Oosting, "The Ombudsman and his Environment: A Global View" in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999) 11.

The ombudsman can requisition documents as well as requisition testimony from members of the public service.¹⁴ Obvious limitations exist: court decisions cannot be reviewed, witnesses before the ombudsman have the same privileges as in court, and those bound by statute to maintain secrecy cannot be obliged to breach such an obligation¹⁵.

The ombudsman must swear an oath of impartiality and secrecy.¹⁶ This guarantees that the ombudsman will deal with complaints confidentially. Investigations are to be private.¹⁷ The ombudsman can both respond to complaints and pursue investigations on its own initiative.¹⁸ The ombudsman must submit an annual report to the legislature.¹⁹ The ombudsman has the power to make recommendations, but not enforce them.

In practice, for the office of an ombudsman to function effectively, it must in large part rely upon moral suasion. The ombudsman can be conceived of as a method of alternative dispute resolution.²⁰ Credibility is of great importance. Ombudsmen depend on being able to cooperate with authorities in a positive and non-bureaucratic fashion in order to bring matters to a swift resolution.²¹ While an ombudsman is not a mediator, mediation falls within the role of the ombudsman.²²

Executive

The executive ombudsman is not created by statute, but rather by the organization that will be using that ombudsman. Some corporations including Coca Cola and all of the

¹⁴ *O.A.*, s. 19.

¹⁵ *O.A.*, s. 19(3).

¹⁶ *O.A.*, s. 12.

¹⁷ *O.A.*, s. 18(2).

¹⁸ *O.A.*, s. 14(2).

¹⁹ *O.A.*, s. 11.

²⁰ Roberta Jamieson, "Alternative Dispute Resolution", in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999).

²¹ Udo Kempf and Marco Mille "The Role and the Function of the Ombudsman: Personalised Parliamentary Control in Forty-Eight Different States", in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999).

²² Jacoby.

major Canadian banks have established internal ombudsmen. Many public institutions like universities and hospitals have also created ombudsmen which fall into this category. An executive ombudsman lacks the independence of the public ombudsman since they will be a part of the organization they are tasked to investigate. The executive ombudsman will rely solely on informal dispute resolution and moral suasion in order to resolve issues. Its effectiveness will depend on its ability to cooperate with executives within its organization. Generally they do not have the power to compel the production of documents. Nor can they legally protect confidentiality, or conduct an investigation.

Specialty

Specialty ombudsmen are a subset of ombudsmen typified by their mandate, which will be limited and specific. They can be either legislative or executive ombudsmen, but in either case they will focus on a specific area. Examples in Canada include the National Defense Ombudsman, the Armed Forces Ombudsman, the Office of the Correctional Investigator, as well as the recently announced Ombudsman for Victims of Crime, Veterans Ombudsman, and Taxpayers' Ombudsman. They can be created through a policy directive and can just as easily be eliminated through the stroke of a pen²³. Some are created by statute but lack many of the formal powers of a legislative ombudsman (e.g., confidentiality, issue summons, compel production of documents.)

²³ Interview with Andre Marin October 23, 2007

What Does an Ombudsman Do?

Legislative Ombudsman

Legislative ombudsmen can resolve both individual and systemic problems.

When an individual complaint is received, the office of the ombudsman must first resolve whether the complaint falls within its jurisdiction. If the complaint falls outside the office's jurisdiction, the ombudsman can refer the complainant to a relevant governmental body, but can go no further. (See Appendix F for information about the jurisdictions of the provincial ombudsmen).

Ombudsmen offices are known for their ability to resolve complaints quickly and inexpensively. They will generally proceed by first attempting to use informal methods before resorting to their formal powers. The ombudsman can, at different moments, play the role of a facilitator, a negotiator or a mediator. Since legislative ombudsmen have the power to recommend, but not the power to enforce recommendations, in order to achieve results they will have to rely upon moral suasion. For most complaints, by acting impartially and independently, the ombudsman will be able to resolve differences between individuals and the bureaucracy. When informal methods do not work, the ombudsman will usually use its powers of investigation. The ombudsman has the discretion to decide which complaints to investigate, unless a request to conduct an investigation has come directly from a minister.

Legislative ombudsmen have the power to subpoena documents and compel witnesses to testify. On account of this power, the proceedings will be protected by confidentiality. When an ombudsman's office has concluded an investigation, it can make recommendations based on its findings. Again, it cannot enforce these recommendations so the strength of the office is based on the ability to persuade.

In special cases, ombudsmen will conduct systemic investigations. These investigations can be the result of a collection of similar individual complaints, or can simply be

initiated at the ombudsman's discretion. Once the ombudsman has produced recommendations based on the findings of the investigation, the office has the ability to publicize its results to build support with the public. These investigations, which enjoy a higher profile than individual complaints, could be seen to generate a more productive government response if the ombudsman has been able to communicate the nature of the problem in the media. A good example of this is the media interest into Ontario lotteries following the publication of "A Game of Trust" by the Ontario Ombudsman in March of 2007.

An ombudsman's office will also be expected to produce an annual report for the legislature. This provides another opportunity to publicize the work of the office.

The ombudsman also provides referrals to appropriate bodies which could better assist a complainant. They can also explore what other options might be available.²⁴

University Ombudsmen

University ombudsmen are more heterogeneous than legislative ombudsmen. (See Appendix B for a list of University Ombudsmen in Canada). Their role will vary from institution to institution. As with the legislative ombudsmen, they will begin by attempting to resolve disputes in an informal matter when complaints are brought. Where they differ, however, is in respect to their powers of investigation.

Only a few universities in Canada (e.g. University of Toronto, McGill University, University of Winnipeg) have created ombudsmen with clear terms of reference and access to confidential information.²⁵ Other universities will have student-funded ombudsmen, or ombudsmen jointly funded by the administration and the students, with limited or no access to confidential information. As a consequence, while legislative

²⁴ Interview with Andre Marin October 23, 2007

²⁵ Christine McKee and Suzanne Belson, "The Ombudsman in Canadian Universities: And justice for all", (1990) 15:2 Studies in Higher Education, 197-206.

ombudsmen can supplement their informal work with formal investigators, the typical university ombudsman can go no further if informal methods do not succeed.

Corporate Ombudsmen

Corporate ombudsmen, which have proliferated tremendously in the private sector in recent years, function more like an in-house complaint system than as a classical ombudsman. (See Appendix C for a partial list of private-sector ombudsmen in Canada.) Like many university ombudsmen, they have no power of investigation. Complaints will be brought to the ombudsman's office, which will then attempt to resolve problems through the informal techniques of facilitation and negotiation. But if no cooperation is forthcoming from corporate management, the corporate ombudsman is able to go no further, and certainly does not have the ability to attempt to secure compliance with its recommendations by going to the media.²⁶

²⁶ A corporate ombudsman would likely be dismissed if they were to go public with their recommendation

Ombudsmen and Independence

Independence is an attribute considered to be of vital importance to the office of an ombudsman. This view is confirmed both by the academic literature²⁷, as well as by professionals in the field. At the 2007 Forum of Canadian Ombudsmen, a strong emphasis was placed universally on the need to safeguard the independence of ombudsmen. Bernard Richard, Ombudsman of New Brunswick and President of the Forum of Canadian Ombudsmen, described independence as the key characteristic for the effectiveness of an ombudsman. Various requirements exist for an ombudsman to be independent. These include both objective and subjective requirements.

Objective Requirements

The most basic requirement for the independence of an ombudsman is access to funding. This funding must both be stable and sufficient. In the absence of stable funding – that is, if funding can be cut in retaliation for the ombudsman’s recommendations – the office will be hard pressed to provide the necessary frankness in its recommendations. Similarly, funding must be sufficient. A stable level of funding at an inadequate level will cripple an ombudsman’s ability to carry out its mandate. The 2005 Annual Report of the BC Ombudsman noted the severe challenges posed by budget cuts of 35% between 2000 and 2004.²⁸ Faced with these cuts, the BC Ombudsman was forced to narrow his focus and oversee a more limited jurisdiction.

Security of tenure is also an important requirement, both for the ombudsman him or herself and for the office. The longer the term, the more secure the individual ombudsman will feel in the office. Likewise, offices established by legislation will be more secure than those simply created by policy. The recently established Federal Ombudsman for Victims of Crime currently has a two-year term at which point the office will be reviewed. While this may be a valuable model for a pilot project, the

²⁷ E.g. Reif, Oosting, McKee and Belson

²⁸ British Columbia, Office of the Ombudsman, 2500 Annual Report.

precariousness of the office may also reduce its independence and potentially its effectiveness.

A lively debate exists within the ombudsman community as to whether, in order for an ombudsman to be independent, the office must operate outside normal organizational structures. Legislative ombudsmen, for instance, report directly to the legislature. Executive ombudsmen, on the other hand, will typically report to a company's CEO. The Federal Ombudsman for Victims of Crime reports to and makes recommendations to the Minister of Justice and/or Minister of Public Safety.

Subjective requirements

It is of equal, if not greater importance, that ombudsmen offices be designed not only to possess a formal independence, but also to be perceived of as independent. The degree of political support for an ombudsman's office will be a highly significant factor in its success.²⁹ The creators of an ombudsman must actually be committed to its success. Otherwise, the office runs the risk of being little more than an exercise in public relations. Arlene Brock, the Bermuda Ombudsman, noted at the 2007 Forum of Canadian Ombudsmen that no ombudsman in Latin America had ever served two terms. In Latin America, the office is known as the *defensor del pueblo* (public defender) and is characterized by being used for vigorously to promote human rights. The presumption exists that if the Latin American ombudsmen were less tenacious in their investigations into the authorities, they would enjoy greater support by their governments.

In the mind of the public, if the ombudsman is to be perceived of as independent it cannot be seen as too close to the bureaucracy or the government. As an example, the recently created Federal Ombudsman for Victims of Crime specifically put its offices in a different building than the Ministry of Justice. Being physically located beside the

²⁹ Barbara Male, "Assessing Ombudsman Performance" in International Ombudsman Institute and Linda C. Reif eds., *The International Ombudsman Yearbook* (The Hague: Kluwer Law International, 2001).

offices of the likely subject of its investigations could be seen as a sign of being too cozy. Similar steps can be taken to reinforce perceptions of an ombudsman's independence: websites that do not fit the official government template, separate email and phone systems, etc. Finally, ombudsmen will be seen as independent to the extent they are willing to challenge the organizations they are tasked to investigate. The basic problem exists that appointees may be reluctant to criticize those who originally appointed them. Nevertheless, it is expected that legislative ombudsmen will publicize their findings. By contrast, executive ombudsmen resolve problems quietly and internally.

Ombudsmen and Confidentiality

There is an assumption that information provided to an ombudsman will be kept confidential. A complainant will want this assurance. However depending on the type of ombudsman “confidential” information could be compellable in a court proceeding or subject to a Freedom of Information request.

Legislative and executive ombudsmen are sharply divided in respect to the legal confidentiality they possess. Legislative ombudsmen will enjoy statutory protections, while executive ombudsmen will not.

Legislative Ombudsmen

The legislation establishing ombudsmen across provinces is broadly similar. The provincial ombudsmen have their confidentiality protected by statute. The various protections enjoyed by the Ontario Ombudsman, as established in the Ontario *Ombudsman Act*, R.S.O. 1990, c. O.6 are listed below:

- s. 18(2): Every investigation by the Ombudsman under this Act shall be conducted in private.

- s. 19(6): Except on the trial of any person for perjury in respect of the person’s sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

- s. 24(2): The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.

s. 24(3): Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

When dealing with the federal courts, it has been suggested that the criminal law might trump the confidentiality provisions on account of federal paramountcy, but this possibility is hypothetical.³⁰

Executive Ombudsmen

Without statutory protections, executive ombudsmen must rely on the rules of privilege set out by the common law. In the leading case of *Slavutych v. Baker* (1975) 55 D.L.R. (3d) 224 (S.C.C.) the Supreme Court followed a judgment from a lower court, which cited Wigmore on Evidence, and set forth four fundamental conditions required for the establishment of privilege:

- (1) The communications must originate in a confidence that they will not be disclosed.
- (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties.
- (3) The relation must be one which in the opinion of the community ought to be sedulously fostered.
- (4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation.

Corporate ombudsmen have been found not to satisfy these four conditions by the courts in *Care Canada v. Canadian Broadcasting Corporation* [1999] O.J. No. 2409 (Ont. Sup. Ct. J. – Div. Ct) and in *Tubbessing v. Bell Canada* (1995) 22 O.R. (2d) 714 (Ont. Ct. Gen. Div.) In the former case, the ombudsman relationship was found not to satisfy the second and third conditions of Wigmore, making an analysis of the fourth

³⁰ Gregory Levine, presentation 26 May 2007, 2007 Forum of Canadian Ombudsmen

condition unnecessary. In the latter case, which dealt with a sexual harassment complaint and notes taken during interviews, it was held that the fourth condition of Wigmore was not met. The social value of confidentiality was less than the value of making information available to the courts.

Ombudsmen and Credibility

Any ombudsman's credibility largely depends on his or her powers of moral suasion. An ombudsman without the ability to convince others will be seen as largely ineffective. However, the caveat must be added that this broad informal power is greatly strengthened when an ombudsman possesses formal powers.

It will be easier for a legislative ombudsman than for an executive ombudsman to be perceived as credible by the public. Because they are both independent and possess the power of investigation, they are less likely to be regarded as a mere exercise in public relations. Since they possess neither of these two characteristics, executive ombudsmen run the risk of being seen as too close to management or mere paper tigers.

For an ombudsman's office to get results, it must be capable of working productively with the organization which it oversees. An overly adversarial relationship will result in bureaucratic or managerial non-compliance, limiting the ombudsman's effectiveness. Consequently, a debate exists within ombudsman circles as to what an ombudsman's strategy for communicating with the public should be: some, such as the current Ontario ombudsman, Andre Marin, suggest a robust communications strategy.³¹ Others, however, believe ombudsmen are more effective when they are able to work in a quieter fashion.³²

³¹ Andre Marin, "Demonstrating Your Value," in International Ombudsman Institute and Linda C. Reif eds. *The International Ombudsman Yearbook* (*The International Ombudsman Yearbook* (The Hague: Martinus Nijhoff Pub., 2003).

³² E.g Daniel Jacoby, "Comments on Relations Between Ombudsmen and the Media" in Linda C. Reif ed., *The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute* (The Hague: Kluwer Law International, 1999).

Advantages and Disadvantages of the Different Types

Legislative Ombudsman

Advantages:

- Independent
- Possess the power to investigate
- Confidentiality protected
- Benefit from an enhanced credibility on account of the above factors

Disadvantages:

- More difficult to initiate because they require legislation
- Usually function more often as a last resort as opposed to early in a given bureaucratic process

Executive Ombudsman

Advantages:

- Easy to establish
- Can intervene earlier on in the complaints process
- Informality can be a plus

Disadvantages:

- Absence of independence
- Lack strong powers of investigation
- Cannot guarantee confidentiality

Specialty Ombudsman

Advantages:

- Similar benefits to those of a legislative ombudsman when established by legislation

- Can focus their expertise in a specific area

Disadvantages:

- Offices may lose benefits of scale
- Difficulties in reaching small and dispersed constituencies

Standalone Ombudsman Compared to a Unit within the Ontario Ombudsman's Office

Some ombudsmen deal with specialized areas (Victims of Crime, National Defense, Official Language Commissioner, Conflict of Interest and Ethics Commissioner). Others like the provincial ombudsman have much wider jurisdictions. Each has its advantages and disadvantages. It is also important to remember that when we use the term ombudsman we are referring to an office and not just the individual. The office will include investigators, support staff, intake workers, conciliators, legal staff and the main spokesperson; the Ombudsman. In Ontario the ombudsman has a staff of 94.

An ombudsman for survivors of sexual violence could be created as a standalone, specialty ombudsman, or be made part of the office of the Ontario Ombudsman. Each approach has its merits.

Special sensitivity and training will be required for staff interacting with survivors of sexual violence. Survivors may present poorly, by having turned to drugs or alcohol to deal with their stress³³, or by expressing their frustrations through outbursts of anger.

A standalone office focusing on survivors might have a natural awareness of the special challenges in dealing with survivors that the Ontario ombudsman's office might not. In the first case, everyone would be expected to be an expert, whereas in the second case only the specific unit dealing with survivors would have expertise in the area. But in either scenario, the staff dealing with the issue would require specific training and access to counselling services.

One disadvantage of a standalone specialty ombudsman would be high start-up costs. To give an example, the recently created Federal Ombudsman for Victims of Crime has a staff of eight: the ombudsman, two compliance officers (investigators), a researcher, a director, an administrative assistant, an executive assistant, and a communications

³³ Dr. Wolfe, 13 February 2007 testimony to Inquiry.

officer.³⁴ Creating a specialty office within the general Ontario Ombudsman's office would have the advantage of reducing overlap in budgeting and staffing. Instead of the creation of a duplicate administrative staff, administrative support could be shared.

Education about the institution of the ombudsman is critical for its success.³⁵ Special efforts will be needed to communicate with the dispersed community of survivors. A public ignorant about the services provided by an ombudsman cannot be expected to use those services. The need for successful communication is stressed across jurisdictions.³⁶ The current Ontario Ombudsman, Andre Marin, is a leader in recognizing the relationship between publicizing the institution and its success. Before his appointment to his current job, he wrote:

A well-organized, competent communications support unit is one of the most important functions in an ombudsman's office. The unit will ensure that the message is not only well packaged, but delivered at a time and place to maximize the intended result.³⁷

The ability of an ombudsman to communicate his or her role and findings will be of crucial importance. A standalone office would have the advantage of focusing only on communicating with survivors, but the disadvantage of perhaps limited resources and institutional obscurity. A unit within the office of the Ontario Ombudsman would produce a less targeted message but have the broader resources and expertise of the Ontario Ombudsman at its disposal.

In an interview, Andre Marin expressed an opinion that another possibility would be the creation of a Deputy Ombudsman for first time survivors of sexual violence. A Parliamentary and Health Service Ombudsman already exists in the United Kingdom, tasked with complaints concerning the public health system there.

³⁴ Meeting with Steve Sullivan, Federal Ombudsman for Victims of Crime, 25 May 2007.

³⁵ Male.

³⁶ E.g. Marin, Ontario 2005-2006 Report

³⁷ Interview with Andre Marin October 23 ,2007

Access Point for the Ombudsman

Legislative ombudsmen are typically engaged as a measure of last resort, when other appeals and options have been exhausted. Individual ombudsman offices are permitted to use discretion in determining what is meant by all measures having been exhausted. In contrast, on account of their more informal structure, executive ombudsmen have more flexibility in choosing when specifically to intervene.

In the specific context of any office established for survivors of sexual violence, it seems evident that the survivors should be able to receive aid from the government as soon as possible. The concern exists that survivors might be deterred from receiving adequate assistance or even feels victimized for a second time if their encounters with the bureaucracy are overly taxing. Front-line assistance, such as access to counselling and legal assistance could co-exist with and complement the more traditional ombudsman's office. Similarly the ombudsman would be able to provide referrals to the appropriate counseling and other support services.³⁸

³⁸ This could include the Criminal Injuries Compensation Board to access funds for various support.

Ombudsmen in the Context of Sexual Violence

It is extremely important that any one dealing with survivors of sexual violence have the proper training to minimize the possibility of re-victimizing the complainant. One of the themes that has been fairly consistent in evidence of survivors is their frustration in dealing with people in positions of authority. Survivors often feel that they are not believed or are getting the “runaround”³⁹. A well trained intake person in an ombudsman’s office would be able to empathize and then assist the person in navigating various levels of bureaucracy. They would be able to provide appropriate referrals. Often a complainant just needs reassurance that they are being treated fairly.⁴⁰

Another advantage would be the ability to immediately be aware when there are multiple complaints concerning a particular institution. The ombudsman would then be able to inform the Institution of the nature of the complaints and the Institution could take immediate steps⁴¹ to deal with the problem and avoid any more occurrences.⁴² If the Institution failed to take appropriate action the ombudsman would be able to initiate a systemic investigation.

³⁹ This is not a comment stating whether this is in fact what happened; just that is often the perceived experience of survivors of sexual violence.

⁴⁰ This is based on David Bennett’s personal experience as the Alternate Discrimination and Harassment Counsel for the Law Society of Upper Canada and as an independent Complaint facilitator for CCAC (Community Care Access Centres).

⁴¹ Including notifying the CAS in accordance with section 72 of The Child and Family Services Act.

⁴² We take the view that no Institution condones child abuse and that all public institutions would want to be aware of any problems at the earliest possible time.

The Children's Advocate

Children's ombudsmen or advocates function as specialty ombudsmen focusing upon the interaction between children and the state. Two key factors distinguish the position of advocate from that of ombudsman. Firstly, the advocate is typically a party to a dispute, taking the side of the child. The role is adversarial while an ombudsman is neutral⁴³. Secondly, the advocate lacks the powers of investigation that characterizes an ombudsman. However, within their specific domain, children's advocates can be granted powers equivalent to those of a legislative ombudsman. Children's advocates can focus on both individual and systemic complaints.

In Canada, a Deputy Ombudsman for Children and Youth was established in 1987 in British Columbia, but this office was merged into the general ombudsman's office in 1990.⁴⁴ In 2006, BC created a representative for children and youth with investigative powers under the *Representative for Children and Youth Act*. In Saskatchewan, a child advocate was created by the *Ombudsman and Children's Advocate Act*. A specialized youth and child mandate exists within the office of the Nova Scotia Ombudsman.⁴⁵ As of 2006, Quebec's protecteur du citoyen enjoys some jurisdiction over the administration of child protection services.⁴⁶ The Manitoba ombudsman carried out a thorough report (*Strengthening the Commitment*) of the province's child welfare system in 2006.

The report of the independent expert for the United Nations study on violence against children made several recommendations that could be satisfied by the creation of children's ombudsmen. They include the recommendation that "effective and independent complaints, investigation and enforcement mechanisms" be established for children dealing with justice and care institutions.⁴⁷ In 1999, the Children's Ombudsman

⁴³ This is a very important distinction as a neutral party is likely to receive more cooperation as they are perceived to be on everyone's side, whereas an advocate may be viewed with more suspicion as they are only on the complainant's side.

⁴⁴ Peter Newell, "The Place of Child Rights in a Human Rights and Ombudsman System" in Kamal Hossain et. al. eds. (The Hague: Kluwer Law International, 2000).

⁴⁵ Nova Scotia website: http://www.gov.ns.ca/ombu/Child_Ombud/default.asp accessed on 26 August 2007.

⁴⁶ Office of the Ontario Ombudsman. Online:< <http://www.ombudsman.on.ca/UploadFiles/File/PDF/OOJurisdiction-Canada-Oct%2012%202006.pdf>>

⁴⁷ United Nations/General Assembly. Report of the independent expert for the United Nations study on violence against children.

was evaluated in neighbouring Michigan, with striking findings:

The office of Children's Ombudsman has catalyzed improvements in [child protection services], foster care, and adoption systems for children and has provided a quality improvement mechanism for our state child welfare system. This has allowed identification of areas needing systems improvement through changes in practice, policy, legislation, and public awareness...a Children's Ombudsman can improve the child welfare system on the state level based on complaint investigation.⁴⁸

A children's ombudsman is an institution able to focus on both primary and secondary prevention. However, given its specific focus on children, it would be less relevant as a mechanism for treatment. While such an ombudsman appears to play a valuable role, it would not appear to be the most appropriate mechanism for adult survivors of sexual violence.

2006. at 30.

⁴⁸ RS Bearup and VJ Palusci, "Improving child welfare through a children's ombudsman," (1999) 23:5 Child Abuse Negl., 449-457.

Conclusion

There are many models of ombudsmen that exist in Canada. They range from very informal pilot projects to the more formal provincial ombudsman. They all provide some form of redress to those who access their services. An ombudsman for survivors of sexual violence could be created in a number of ways:

- As a standalone, specialty ombudsman for sexual violence
- As part of the mandate of a specialty ombudsman for children
- As a deputy in the office of the Ontario Ombudsman

It is important to remember that whatever the model it must be structured in such a way to give confidence to its users. From the users' perspective, the ideal office would be independent, would guarantee confidentiality, and would have ability to conduct investigations. It would be set up in a way that makes it easy for a survivor of sexual violence to access. It would contain well-trained staff that would not re-victimize survivors. Finally, it could end up providing false hope if it did not have teeth.

APPENDIX A. About the Authors

David Bennett has an extensive background in developing new and innovative programs to meet the needs of disadvantaged people in Canadian society. He was legal counsel for the Inuit of Nunavut's land claim. As one of the lead negotiators for this land claims negotiation he was instrumental in drafting and negotiating new systems concerning wildlife management, eligibility and enrolment, employment, resource sharing, water rights, and the first draft agreement to divide the Northwest Territories in two, to create Nunavut. He was a Professor for nine years at the University of Ottawa Faculty Of Law with responsibility for directing the bilingual legal aid clinical program. Under his direction, the clinic developed new initiatives to deliver legal services to people living with HIV/AIDS, the aboriginal community, and women who were living in abusive relationships. For the past nine years he has had a Dispute Resolution Practice where he has gained expertise in alternative ways of advocating and resolving complicated issues. In this role he has had experience with various advocates and Ombudsman including the Office of The Correctional Investigator. Since June 2005, Mr. Bennett has been the Alternate Discrimination and Harassment Counsel for the Law Society of Upper Canada. This has given him personal experience acting in an Ombudsman type roll, as one of his functions is to informally resolve complaints. He is also an Independent Complaint Facilitator for the Community Care Access Centres. He was recently selected to mediate disputes for Canada's Olympic and National Sports Teams.

David Lizoain is a law student at The University of Toronto. Mr. Lizoain has an undergraduate degree from Harvard University and a Masters degree from the London School of Economics.

APPENDIX B. List of University Ombudsmen

- Algonquin College (www.algonquincollege.com/ombudsperson/)
- Athabasca University (www.athabascau.ca/studserv/ombuds.html)
- Bishop's University (www.ubishops.ca/ombudsman.htm)
- Brock University (www.busu.net/en/content/ombuds/index/)
- Carleton University (www.carleton.ca/ombuds/)
- Camosun College (www.camosun.bc.ca/ombuds/)
- Concordia University (www.concordia.ca/ombuds)
- Dalhousie University (www.ombudsperson.dal.ca)
- Dawson College (www.dawsoncollege.qc.ca/stsv/ombud/index.php)
- Fanshawe College (www.fanshawec.ca/ombuds/)
- École des Hautes Études Commerciales (HEC) (www.hec.ca/ombudsman/)
- Lakehead University (www.bolt.lakeheadu.ca/~ombuds/)
- Université Laval (www.ulaval.ca/ombudsman/)
- University of Manitoba (www.umanitoba.ca/staff/ombudsman/)
- McGill University (www.mcgill.ca/ombudsperson/)
- McMaster University (www.mcmaster.ca/ombuds/)
- Université de Montréal (www.ombuds.umontreal.ca)
- University of New Brunswick
(www.unbf.ca/student-services/departments/student_advocate.html)
- Polytechnique Montréal (www.polymtl.ca/ombudsman/)
- Université du Québec à Montréal (www.uqam.ca/ombudsman)
- Ryerson University (www.ryerson.ca/ombuds)
- Seneca College (www.senecac.on.ca/home/ombuds/)
- Université de Sherbrooke (www.usherbrooke.ca/pdee/)
- University of Toronto (www.utoronto.ca/ombudsperson/)
- University of Victoria (www.uvss.uvic.ca/ombudsperson)
- University of Waterloo (www.student-services.uwaterloo.ca/ombudsperson/)
- University of Western Ontario (www.uwo.ca/ombuds/)

- Wilfrid Laurier University (www.wlu.ca/~wwwombud/)
- University of Windsor (www.uwindsor.ca/hrights)
- York University (www.yorku.ca/ombuds/)

APPENDIX C. Examples of Corporate Ombudsmen

- Amex Bank of Canada Compliance Officer and Ombudsman
- BMO Financial Group Ombudsman
- Canadian Tire Financial Services Limited Chief Compliance Officer / Ombudsman
- Canadian Western Bank Ombudsman
- Capital One Bank Ombudsman
- CBC Ombudsman
- CIBC Ombudsman
- Citibank Canada Ombudsman
- Citizens Bank of Canada Ombudsman
- Coca-Cola Enterprises Inc. Ombudsman
- Dundee Wealth Bank Ombudsman
- ING Bank of Canada Ombudsman
- ICICI Bank Canada Office of the Ombudsman
- J.P. Morgan Chase Complaint Ombudsman
- Laurentian Bank of Canada Ombudsman
- Manulife Bank Ombudsman
- MBNA Bank Canada Ombudsman
- Office of the National Bank Ombudsman
- Ombudsman for Banking Services and Investment (www.obsi.ca)
- Pacific & Western Bank of Canada Ombudsman
- President's Choice Financial Services Ombudsman
- Radio-Canada Ombudsman
- RBC Financial Group Ombudsman
- Scotiabank (The Bank of Nova Scotia) Ombudsman
- TD Bank Financial Group Office of the Ombudsman
- The Bank of East Asia (Canada) Ombudsman
- The Toronto Star Public Editor
- Ubiquity Bank of Canada Ombudsman

APPENDIX D. List of Specialty Ombudsmen

- Armed Forces Ombudsman (www.ombudsman.forces.gc.ca/)
- CBC (www.cbc.ca/ombudsman/)
- Commission for Public Complaints Against the RCMP (www.cpc-cpp.gc.ca/DefaultSite/Home/index_e.aspx?ArticleID=1)
- Fair Practices Commission (Workplace Safety and Insurance Board of Ontario) (www.fairpractices.on.ca/)
- Fair Practices Office of the Saskatchewan Workers' Compensation Board (www.wcsask.com/book_workers/page_worker_fpo.page;jsessionid=FmnZXyKs6n1rnPVyhcJ1K7phBhImFsgGGQkvjT9y5TLy2PWBp2dH!730884372?_nfpb=true&_pageLabel=page_search)
- Federal Ombudsman for Victims of Crime (www.victimsfirst.gc.ca/index.html)
- Office of the Commissioner of Official Languages (www.ocol-clo.gc.ca/)
- Office of the Correctional Investigator (www.oci-bec.gc.ca/)
- Office of the Métis Settlements Ombudsman (Alberta) (www.metisombudsman.ab.ca/)
- Office of Correctional Investigator (www.oci-bec.gc.ca/)
- Passport Canada (www.ppt.gc.ca/ombudsman/index.aspx?lang=e)
- Saskatchewan Children's Advocate (www.saskcao.ca/)
- Taxpayers' Ombudsman (www.cra-arc.gc.ca/agency/ombudsman/menu-e.html)
- Veterans Ombudsman (www.vac-acc.gc.ca/clients/sub.cfm?source=ombudsman)

APPENDIX E. Note on the Federal Ombudsmen for Victims of Crime

The community of survivors of sexual violence shares a number of characteristics with the community of victims of crime, and every survivor of sexual violence is a victim of crime. Most importantly, these groups share a need to avoid a re-victimization when they come into contact with government. Part of the office's mandate is to publicize the *Canadian Statement of Basic Principles of Justice for Victims of Crime*, which is here reproduced (www.justice.gc.ca/en/ps/voc/csbp.html):

In recognition of the United Nations Declaration of Basic Principles of Justice for Victims of Crime, Federal and Provincial Ministers Responsible for Criminal Justice agree that the following principles should guide Canadian society in promoting access to justice, fair treatment and provision of assistance for victims of crime.

1. Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
2. Victims should receive, through formal and informal procedures, prompt and fair redress for the harm which they have suffered.
3. Information regarding remedies and the mechanisms to obtain them should be made available to victims.
4. Information should be made available to victims about their participation in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.
5. Where appropriate, the view and concerns of victims should be ascertained and assistance provided throughout the criminal process.
6. Where the personal interests of the victim are affected, the views or concerns of the victim should be brought to the attention of the court, where appropriate and consistent with criminal law and procedure.
7. Measures should be taken when necessary to ensure the safety of victims and their families and to protect them from intimidation and retaliation.
8. Enhanced training should be made available to sensitize criminal justice personnel to the needs and concerns of victims and guidelines developed, where appropriate, for this purpose.
9. Victims should be informed of the availability of health and social services and other relevant assistance so that they might continue to receive the necessary medical, psychological and social assistance through existing programs and services.

10. Victims should report the crime and cooperate with the law enforcement authorities.

Steve Sullivan, the newly appointed ombudsman, has noted that his office will face challenges in publicizing its existence to a group of users that is so disparately spread amongst the population. Any office for survivors of sexual violence will face a similar challenge.

However, with respect to survivors of sexual assault, the office of the federal ombudsman for victims of crime is only of limited utility since its mandate only touches on areas of federal concern. While the office for victims of crime might operate in the same spirit as an office dedicated to survivors of sexual violence, it lacks the necessary jurisdiction. The institutions that comprise the subject of the Cornwall inquiry do not fall within its mandate.

APPENDIX F. Jurisdiction of Ombudsmen in Canada

With respect to the importance of the jurisdiction of an ombudsman, Prof. Roy Gregory, an expert on the institution, explained, “clearly, the more extensive the ombudsman’s jurisdiction the better the chances of bringing into effect the benefits which the office is intended to secure.”⁴⁹ The jurisdiction of the ombudsmen offices vary from province to province.

The current ombudsman of Ontario, Andre Marin, has vigorously campaigned for a modernization of his mandate. As part of the campaign, his office produced the following document:

“HOW DOES ONTARIO MEASURE UP?”

The Ombudsman’s authority, as established by the *Ombudsman Act*, to oversee the delivery of public services has not been modernized in over 30 years. Ontario has fallen behind in oversight of non-governmental organizations providing critical public services. The Ombudsman of Ontario’s authority with respect to this sector is the most limited in Canada. The Ombudsman’s Office has no jurisdiction in the areas set out in the chart, while other Canadian Ombudsmen have jurisdiction in many key areas.”

⁴⁹ Gregory 141.

Jurisdiction	Boards of Education	Child Protection Services	Public Hospitals	Nursing Homes and Long-Term Care	Municipalities	Police Complaints Review Mechanism	Universities
Ontario	No	No	No	No	No	No	No
British Columbia	Yes	Yes	Yes	No	Yes	No	Yes
Alberta	No	Yes	Yes	Yes	No	Yes	No
Saskatchewan	No	Yes	Yes	No	No	Yes	No
Manitoba	No	Yes	Yes	No	Yes	Yes	No
Quebec	No	Yes	Yes	Yes	No	Yes	No
New Brunswick	Yes	Yes	Yes	No	Yes	Yes	No
Newfoundland and Labrador	Yes	No	Yes	Yes	No	Yes	Yes
Nova Scotia	Yes	Yes	Yes	Yes	Yes	Yes	No
Yukon	Yes	Yes	Yes	Yes	By reference	No	No

Source: Ontario Ombudsman's Office. Current as of October 2006

Marin has noted that about 80 percent of provincial tax dollars are spent outside zones covered by the ombudsman's mandate.⁵⁰ In his latest report he cited two instances where the government chose not to expand his remit. He has critiqued the 2006 *Independent Police Review Act* as a "shadow of what it should be."⁵¹ Furthermore, he wrote:

The *Child and Family Services Statute Law Amendment Act, 2006*, did not contain the simple amendment [he] proposed that would have given access to this Office to those dealing with non-government service providers that make decisions about the protection of children, the welfare of families and the rights of parents.⁵²

The continued restrictive jurisdiction of the Ombudsman in Ontario stands in sharp contrast to the situation in other provinces. Since 2005, the ombudsman offices in Alberta⁵³, British Columbia⁵⁴, and Quebec have all seen their jurisdictions expand.

⁵⁰ Annual Report of the Ombudsman of Ontario for 2005-2006.

⁵¹ *Ibid.* 14.

⁵² *Ibid.* 2005-2006

⁵³ 2006 Alberta annual report.

⁵⁴ 2005 BC annual report.

APPENDIX G. Cost of an Ombudsman

Ombudsmen are universally considered an inexpensive method of resolving complaints. It is nevertheless difficult to quantify the value of an ombudsman. As Justice Louis LeBel has noted, “le rôle d’ombudsman consiste à tenter, en quelque sorte, de passer du général au spécifique.”⁵⁵ The ombudsman tackles both individual grievances as well as systemic issues, so the comparison is akin to one between apples and oranges. However, the data does exist in Canada to affirm the proposition that ombudsmen are relatively cheap compared to other institutions.

Ombudsmen offices can first be evaluated according to the metric of cost per citizen, as well as citizens per complaint:

Jurisdiction	Population	Budget Year	Budget	Cost per Citizen
British Columbia	4,338,106	2005-2006	\$3,388,000	\$0.78
Alberta	3,435,511	2005-2006	\$2,237,000	\$0.65
Saskatchewan	1,180,004	2005-2006	\$1,666,000	\$1.41
Manitoba	987,939	2005-2006	\$2,476,900	\$2.51
Ontario	12,726,336	2005-2006	\$10,553,000	\$0.83
Quebec	7,676,097	2005-2006	\$8,100,593	\$1.06
New Brunswick ⁵⁶	748,582	2005-2006	\$697,600	\$0.93
Nova Scotia	933,793	2005-2006	\$1,152,000	\$1.23
Newfoundland	508,548	2005-2006	\$499,900	\$0.98
Yukon	31,032	2005-2006	\$431,000	\$13.89

As can be seen, within the provinces, the cost of an ombudsman ranges from \$0.65 per citizen to \$2.51 per citizen. This indicates that overall the costs of establishing such an institution are fairly minor. In Ontario, the ombudsman costs an economical \$0.83. This however, may also be indicative of the limited mandate of the ombudsman in Ontario as opposed to in other provinces.

⁵⁵ Louis LeBel “Démocratie et protection de la diversité culturelle” in International Ombudsman Institute and Linda C. Reif eds. *The International Ombudsman Yearbook* (*The International Ombudsman Yearbook* (The Hague: Martinus Nijhoff Pub., 2003).

⁵⁶ Also handles requests under the *Right to Information Act*.

Ombudsman offices can also be evaluated according to how many complaints they deal with, given the size of their budget, as well as how many complaints they receive relative to the size of their populations.

Jurisdiction	Year	Complaints	\$ per complaint	Citizens per complaint
British Columbia	2005	7662	\$442.18	566
Alberta	2005-2006	5107	\$438.03	673
Saskatchewan	2006	3728	\$446.89	317
Manitoba	2005	N/A	N/A	N/A
Ontario	2005-2006	23922	\$441.14	532
Quebec	2005-2006	18132	\$446.76	423
New Brunswick	2005-2006	2825	\$246.94	265
Nova Scotia	2005-2006	1698	\$678.45	550
Newfoundland	2005	386	\$1,295.08	1317
Yukon	2005	106	\$4,066.04	293
Correctional Investigator	2005-2006	7591	\$418.52	
National Defense	2005-2006	1439	\$3,697.71	

The provincial data indicates that it costs (dividing the budget by the number of complaints received) approximately \$450 per complaint received by the office of an ombudsman.

Furthermore, it shows that the rate varies at which complaints are received by ombudsmen offices relative to the size of their provinces. One complaint is received for approximately every 265 citizens in New Brunswick, while this skyrockets to one per 1317 in Newfoundland. This statistic is fairly problematic since it can conflate different causes such as an ombudsman's office skilled at communicating with a government rife with maladministration. Marten Oosting, the Dutch Ombudsman, has asked, "is it not precisely the task of each ombudsman to try to put himself out of a job?"⁵⁷ but this is little more than a cliché. As an ombudsman succeeds in systemic investigations, the number of complaints it receives should go down. On the other hand, an effective ombudsman's office should be expected to receive more attention from the public, and thus complaints should go up. These competing trends indicate that any conclusions

⁵⁷ Oosting 13.

reached from studying the number of complaints received by an ombudsman's office in isolation should be done so only with caution.

Nevertheless, in combination, the numbers suggest that across Canada, public ombudsman offices are both inexpensive and used quite frequently.

APPENDIX H. Ombudsman Act of Ontario

The legislation creating provincial ombudsmen is very similar across provinces. The Ombudsman Act of Ontario is here included for reference purposes.

Ombudsman Act

R.S.O. 1990, CHAPTER O.6

Notice of Currency:* All amendments have been incorporated into this document.

A proclamation has been issued naming January 1, 2008 as the day on which the amendments made by 2006, c. 32, Sched. C, s. 40 come into force.

*This notice is usually current to within two business days of accessing this document. For more current amendment information, see the [Table of Public Statutes – Legislative History Overview](#).

Amended by: 1996, c. 6, ss. 4, 5; 1999, c. 5, s. 4; 2004, c. 3, Sched. A, s. 94; 2004, c. 17, s. 32; 2005, c. 29, s. 5; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 19, Sched. D, s. 15; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 32, Sched. C, s. 40; 2006, c. 35, Sched. C, ss. 94, 134 (4).

Definitions

1. In this Act,

“governmental organization” means a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof; (“organisation gouvernementale”)

“minister” means a member of the Executive Council. (“ministre”) R.S.O. 1990, c. O.6, s. 1.

Ombudsman

2. There shall be appointed, as an officer of the Legislature, an Ombudsman to exercise the powers and perform the duties prescribed by this Act. R.S.O. 1990, c. O.6, s. 2.

Appointment

3. The Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. O.6, s. 3.

Term of office and removal

4. (1) The Ombudsman shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. O.6, s. 4 (1); 1999, c. 5, s. 4 (1); 2005, c. 29, s. 5 (1).

Note: The term of office of the person who holds the office of Ombudsman on October 28, 1999 is determined in accordance with this Act as it read immediately before October 28, 1999. See: 1999, c. 5, s. 4 (2).

(2) Repealed: 2005, c. 29, s. 5 (2).

Nature of employment

5. (1) The Ombudsman shall devote himself or herself exclusively to the duties of the Ombudsman's office and shall not hold any other office under the Crown or engage in any other employment. R.S.O. 1990, c. O.6, s. 5 (1).

Non-application

(2) The *Public Service Act* does not apply to the Ombudsman. 1996, c. 6, s. 4.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 94 (1) and the following substituted:

Not a public servant

(2) The Ombudsman is not a public servant within the meaning of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 94 (1).

See: 2006, c. 35, Sched. C, ss. 94 (1), 137 (1).

Salary

6. (1) The Ombudsman shall be paid a salary to be fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. O.6, s. 6 (1).

Idem

(2) The salary of the Ombudsman shall not be reduced except on address of the Assembly. R.S.O. 1990, c. O.6, s. 6 (2).

Expenses

(3) The Ombudsman is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of the Ombudsman's functions under this Act. R.S.O. 1990, c. O.6, s. 6 (3).

Pension

(4) The Ombudsman is a member of the Public Service Pension Plan. 1996, c. 6, s. 5.

Temporary Ombudsman

7. In the event of the death or resignation of the Ombudsman while the Legislature is not in session or if the Ombudsman is unable or neglects to perform the functions of his or her office, the Lieutenant Governor in Council may appoint a temporary Ombudsman, to hold office for a term of not more than six months, who shall, while in such office, have the powers and duties and perform the functions of the Ombudsman and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix. R.S.O. 1990, c. O.6, s. 7.

Employees

8. (1) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such employees as the Ombudsman considers necessary for the efficient operation of his or her office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. O.6, s. 8 (1).

Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,

(a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;

(b) plans for group life insurance, medical-surgical insurance or long-term income protection; and

(c) the granting of leave of absence,

apply to the permanent and full-time employees of the Ombudsman and where such benefits are provided for in regulations made under the *Public Service Act*, the Ombudsman, or any person authorized in writing by him or her, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations. R.S.O. 1990, c. O.6, s. 8 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 94 (2) and the following substituted:

Benefits

(2) The benefits determined under Part III of the *Public Service of Ontario Act, 2006* with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the permanent and full-time employees of the Ombudsman:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits.

2. Plans for group life insurance, medical-surgical insurance or long-term income protection.

3. The granting of leaves of absence. 2006, c. 35, Sched. C, s. 94 (2).

Same

(2.1) For the purposes of subsection (2), if a benefit applicable to an employee of the Ombudsman is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Ombudsman or any person authorized in writing by the Ombudsman. 2006, c. 35, Sched. C, s. 94 (2).

See: 2006, c. 35, Sched. C, ss. 94 (2), 137 (1).

Employees' pension benefits

(3) The Ombudsman shall be deemed to have been designated by the Lieutenant Governor in Council under the *Public Service Pension Act* as an organization whose permanent and full-time probationary staff are required to be members of the Public Service Pension Plan. R.S.O. 1990, c. O.6, s. 8 (3).

Premises and supplies

9. The Ombudsman may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his or her office. R.S.O. 1990, c. O.6, s. 9.

Audit

10. The accounts and financial transactions of the office of the Ombudsman shall be audited annually by the Auditor General. R.S.O. 1990, c. O.6, s. 10; 2004, c. 17, s. 32.

Annual report

11. The Ombudsman shall report annually upon the affairs of the Ombudsman's office to the Speaker of the Assembly who shall cause the report to be

laid before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. O.6, s. 11.

Oath of office and secrecy

12. (1) Before commencing the duties of his or her office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he or she will faithfully and impartially exercise the functions of his or her office and that he or she will not, except in accordance with subsection (2), disclose any information received by him or her as Ombudsman. R.S.O. 1990, c. O.6, s. 12 (1).

Disclosure

(2) The Ombudsman may disclose in any report made by him or her under this Act such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. R.S.O. 1990, c. O.6, s. 12 (2).

Application of Act

13. This Act does not apply,

- (a) to judges or to the functions of any court; or
- (b) to deliberations and proceedings of the Executive Council or any committee thereof. R.S.O. 1990, c. O.6, s. 13.

Function of Ombudsman

14. (1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his, her or its personal capacity. R.S.O. 1990, c. O.6, s. 14 (1).

Investigation on complaint

(2) The Ombudsman may make any such investigation on a complaint made to him or her by any person affected or by any member of the Assembly to whom a

complaint is made by any person affected, or of the Ombudsman's own motion. R.S.O. 1990, c. O.6, s. 14 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 14 is amended by the Statutes of Ontario, 2006, chapter 32, Schedule C, section 40 by adding the following subsections:

Application

(2.1) Subsections (2.2) to (2.6) apply if a municipality has not appointed an investigator referred to in subsection 239.2 (1) of the *Municipal Act, 2001* or if the City of Toronto has not appointed an investigator referred to in subsection 190.2 (1) of the *City of Toronto Act, 2006*, as the case may be. 2006, c. 32, Sched. C, s. 40.

Investigation

(2.2) The Ombudsman may investigate, on a complaint made to him or her by any person,

(a) whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public; or

(b) whether the City of Toronto or a local board of the City has complied with section 190 of the *City of Toronto Act, 2006* or a procedure by-law under subsection 189 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public. 2006, c. 32, Sched. C, s. 40.

Non-application

(2.3) Subsections 14 (4) and 18 (4) and (5), sections 20 and 21 and subsections 22 (1) and 25 (3) and (4) do not apply to an investigation under subsection (2.2). 2006, c. 32, Sched. C, s. 40.

Interpretation

(2.4) For the purposes of an investigation under subsection (2.2),

(a) the references in subsections 18 (1) and 25 (2) to “head of the governmental organization” shall be deemed to be a reference to “municipality or local board”;

(b) the references in subsections 18 (3) and (6), 19 (1) and (2) and 25 (1) to “governmental organization” shall be deemed to be references to “municipality or local board”;

(c) the reference in subsection 19 (3) to the *Public Service Act* shall be deemed to be a reference to the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be; and

Note: On the later of the day the Statutes of Ontario, 2006, chapter 35, Schedule C, section 134 comes into force and the day the Statutes of Ontario, 2006, chapter 32, Schedule C, section 40 comes into force, clause (c) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 134 (4) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 134 (4), 137 (1).

(d) the reference in subsection 19 (3.1) to the *Freedom of Information and Protection of Privacy Act* shall be deemed to be a reference to the *Municipal Freedom of Information and Protection of Privacy Act, 2006*, c. 32, Sched. C, s. 40.

Ombudsman’s report and recommendations

(2.5) If, after making an investigation under subsection (2.2), the Ombudsman is of opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 of the *Municipal Act, 2001* or to a procedure by-law under subsection 238 (2) of that Act or contrary to section 190 of the *City of Toronto Act, 2006* or to a procedure by-law under subsection 189 (2) of that Act, as the case may be, the Ombudsman shall report his or her opinion, and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2006, c. 32, Sched. C, s. 40.

Publication of reports

(2.6) The municipality or local board shall ensure that reports received under subsection (2.5) by the municipality or local board, as the case may be, are made available to the public. 2006, c. 32, Sched. C, s. 40.

See: 2006, c. 32, Sched. C, ss. 40, 71 (3).

Powers paramount

(3) The powers conferred on the Ombudsman by this Act may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question. R.S.O. 1990, c. O.6, s. 14 (3).

Decisions not reviewable

(4) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission,

(a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired;

(b) of any person acting as legal adviser to the Crown or acting as counsel to the Crown in relation to any proceedings. R.S.O. 1990, c. O.6, s. 14 (4).

Application to Divisional Court to determine jurisdiction

(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, the Ombudsman may, if he or she thinks fit, apply to the Divisional Court for a declaratory order determining the question. R.S.O. 1990, c. O.6, s. 14 (5).

Guidance rules

15. (1) The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his or her functions under this Act. R.S.O. 1990, c. O.6, s. 15 (1).

Idem

(2) All rules made under this section shall be deemed to be regulations within the meaning of the *Regulations Act*. R.S.O. 1990, c. O.6, s. 15 (2).

Note: Effective October 19, 2007 or on an earlier day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2006, chapter 21, Schedule F, subsection 136 (1) by striking out “the *Regulations Act*” and substituting “Part III (Regulations) of the *Legislation Act, 2006*”. See: 2006, c. 21, Sched. F, ss. 136 (1), 143 (1).

Procedures

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his or her procedures. R.S.O. 1990, c. O.6, s. 15 (3).

Mode of complaint

16. (1) Every complaint to the Ombudsman shall be made in writing. R.S.O. 1990, c. O.6, s. 16 (1).

To be forwarded

(2) Despite any provision of any Act, if a letter addressed to the Ombudsman is written by an inmate of a provincial correctional institution, a person held in a youth custody facility under the *Youth Criminal Justice Act* (Canada) or a patient in a provincial psychiatric facility, the letter shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, youth custody facility or other facility. 2006, c. 19, Sched. D, s. 15.

Ombudsman may refuse to investigate complaint

17. (1) If, in the course of the investigation of any complaint within his or her jurisdiction, it appears to the Ombudsman,

(a) that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not the complainant has availed himself, herself or itself of it; or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

the Ombudsman may in his or her discretion refuse to investigate the matter further.

R.S.O. 1990, c. O.6, s. 17 (1).

Idem

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his or her discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman, or, if in his or her opinion,

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the complainant has not a sufficient personal interest in the subject-matter of the complaint. R.S.O. 1990, c. O.6, s. 17 (2).

Complainant to be informed

(3) In any case where the Ombudsman decides not to investigate or further investigate a complaint, the Ombudsman shall inform the complainant in writing of that decision, and may if he or she thinks fit state the reasons therefor. R.S.O. 1990, c. O.6, s. 17 (3).

Proceedings of Ombudsman

18. (1) Before investigating any matter, the Ombudsman shall inform the head of the governmental organization affected of his or her intention to make the investigation. R.S.O. 1990, c. O.6, s. 18 (1).

Investigation to be in private

(2) Every investigation by the Ombudsman under this Act shall be conducted in private. R.S.O. 1990, c. O.6, s. 18 (2).

Where hearing necessary

(3) The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, if at any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect any governmental organization or person, the Ombudsman shall give to that organization or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel. R.S.O. 1990, c. O.6, s. 18 (3).

May consult minister

(4) The Ombudsman may in his or her discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation. R.S.O. 1990, c. O.6, s. 18 (4).

Must consult minister

(5) On the request of any minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a minister, the Ombudsman shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 21 (1) or (2). R.S.O. 1990, c. O.6, s. 18 (5).

Breach of duty or misconduct

(6) If, during or after an investigation, the Ombudsman is of opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any governmental organization, the Ombudsman may refer the matter to the appropriate authority. R.S.O. 1990, c. O.6, s. 18 (6).

Evidence

19. (1) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person. R.S.O. 1990, c. O.6, s. 19 (1).

Examination under oath

(2) The Ombudsman may summon before him or her and examine on oath,

(a) any complainant;

(b) any person who is an officer or employee or member of any governmental organization and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1); or

(c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath. R.S.O. 1990, c. O.6, s. 19 (2).

Secrecy

(3) Subject to subsection (4), no person who is bound by the provisions of any Act, other than the *Public Service Act*, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure. R.S.O. 1990, c. O.6, s. 19 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by the Statutes of Ontario, 2006, chapter 35, Schedule C, subsection 94 (3) by striking out “the *Public Service Act*” and substituting “the *Public Service of Ontario Act, 2006*”. See: 2006, c. 35, Sched. C, ss. 94 (3), 137 (1).

Providing personal information despite privacy Acts

(3.1) A person who is subject to the *Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2). 2004, c. 3, Sched. A, s. 94.

Idem

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement. R.S.O. 1990, c. O.6, s. 19 (4).

Privileges

(5) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court. R.S.O. 1990, c. O.6, s. 19 (5).

Protection

(6) Except on the trial of any person for perjury in respect of the person’s sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person. R.S.O. 1990, c. O.6, s. 19 (6).

Right to object to answer

(7) A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. O.6, s. 19 (7).

Prosecution

(8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section. R.S.O. 1990, c. O.6, s. 19 (8).

Fees

(9) Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly. R.S.O. 1990, c. O.6, s. 19 (9); 2006, c. 19, Sched. C, s. 1 (1).

Disclosure of certain matters not to be required

20. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or thing,

- (a) might interfere with or impede investigation or detection of offences;
- (b) might involve the disclosure of the deliberations of the Executive Council; or
- (c) might involve the disclosure of proceedings of the Executive Council or of any committee of the Executive Council, relating to matters of a secret or confidential nature, and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or thing to be produced. R.S.O. 1990, c. O.6, s. 20 (1).

Idem

(2) Subject to subsection (1), the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman. R.S.O. 1990, c. O.6, s. 20 (2).

Procedure after investigation

21. (1) This section applies in every case where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation,

- (a) appears to have been contrary to law;
- (b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was wrong. R.S.O. 1990, c. O.6, s. 21 (1).

Idem

(2) This section also applies in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision. R.S.O. 1990, c. O.6, s. 21 (2).

Ombudsman's report and recommendations

- (3) If in any case to which this section applies the Ombudsman is of opinion,
- (a) that the matter should be referred to the appropriate authority for further consideration;

- (b) that the omission should be rectified;
- (c) that the decision or recommendation should be cancelled or varied;
- (d) that any practice on which the decision, recommendation, act or omission was based should be altered;
- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered;
- (f) that reasons should have been given for the decision or recommendation; or
- (g) that any other steps should be taken,

the Ombudsman shall report his or her opinion, and the reasons therefor, to the appropriate governmental organization, and may make such recommendations as he or she thinks fit and the Ombudsman may request the governmental organization to notify him or her, within a specified time, of the steps, if any, that it proposes to take to give effect to his or her recommendations and the Ombudsman shall also send a copy of his or her report and recommendations to the minister concerned. R.S.O. 1990, c. O.6, s. 21 (3).

Where no appropriate action taken

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his or her discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he or she thinks fit. R.S.O. 1990, c. O.6, s. 21 (4).

Idem

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the governmental organization affected. R.S.O. 1990, c. O.6, s. 21 (5).

Complainant to be informed of result of investigation

22. (1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection 21 (3), and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his or her recommendation, and may make such comments on the matter as he or she thinks fit. R.S.O. 1990, c. O.6, s. 22 (1).

Idem

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he or she thinks proper, of the result of the investigation. R.S.O. 1990, c. O.6, s. 22 (2).

Proceedings not to be questioned or to be subject to review

23. No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court. R.S.O. 1990, c. O.6, s. 23.

Proceedings privileged

24. (1) No proceedings lie against the Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her functions under this Act, unless it is shown that he or she acted in bad faith. R.S.O. 1990, c. O.6, s. 24 (1).

Idem

(2) The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act. R.S.O. 1990, c. O.6, s. 24 (2).

Idem

(3) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court. R.S.O. 1990, c. O.6, s. 24 (3).

Power of entry of premises

25. (1) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any governmental organization and inspect the premises and carry out therein any investigation within his or her jurisdiction. R.S.O. 1990, c. O.6, s. 25 (1).

Notice of entry

(2) Before entering any premises under subsection (1), the Ombudsman shall notify the head of the governmental organization occupying the premises of his or her purpose. R.S.O. 1990, c. O.6, s. 25 (2).

Notice to desist

(3) The Attorney General may by notice to the Ombudsman exclude the application of subsection (1) to any specified premises or class of premises if he or she is satisfied that the exercise of the powers mentioned in subsection (1) might be prejudicial to the public interest. R.S.O. 1990, c. O.6, s. 25 (3).

Order of judge

(4) Where a notice is given under subsection (3) and in the opinion of the Ombudsman it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a judge of the Superior Court of Justice for an order setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he or she may make the order. R.S.O. 1990, c. O.6, s. 25 (4); 2006, c. 19, Sched. C, s. 1 (1).

Delegation of powers

26. (1) The Ombudsman may in writing delegate to any person holding any office under him or her any of the Ombudsman's powers under this Act except the

power of delegation under this section and the power to make a report under this Act. R.S.O. 1990, c. O.6, s. 26 (1).

Delegation is revocable

(2) Every delegation under this section is revocable at will and no such delegation prevents the exercise by the Ombudsman of any power so delegated. R.S.O. 1990, c. O.6, s. 26 (2).

Restrictions and conditions

(3) Every such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit. R.S.O. 1990, c. O.6, s. 26 (3).

Continuing effect of delegation

(4) In the event that the Ombudsman by whom any such delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman. R.S.O. 1990, c. O.6, s. 26 (4).

Evidence of obligation

(5) Any person purporting to exercise any power of the Ombudsman by virtue of a delegation under this section shall, when required so to do, produce evidence of his or her authority to exercise the power. R.S.O. 1990, c. O.6, s. 26 (5).

Offences and penalties

27. Every person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the performance of his or her functions under this Act; or

(b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his or her functions under this Act,

is guilty of an offence and liable on conviction to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both. R.S.O. 1990, c. O.6, s. 27.

Rights under Act do not affect other rights, etc.

28. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure. R.S.O. 1990, c. O.6, s. 28.

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