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THE ROLE AND FUNCTION OF THE ONTARIO OMBUDSMAN

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OF THE ONTARIO OMBUDSMAN

By

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ABSTRACT

The purpose of this thesis will be to examine and evaluate the office of the Ombudsman in the province of Ontario since it was created in May, 1975. We suggest that it is a unique mechanism of administrative control over bureaucracy. The significance of the Ombudsman's office is twofold. First the Ombudsman bridges the gap between government and the people by providing the citizens of Ontario with an office where they can lodge their complaints against unfair administrative decisions and through which they can get their grievances redressed.

Secondly, the Ombudsman's office promotes the general efficiency of administration whereby the Ombudsman's recommendations and admonitions correct administrative malpractices and prevent their recurrence by acting as a set of guidelines for government officials. In this manner, through the improvement of government administration and thereby preventing the recurrence of administrative injustice, the Ombudsman provides both direct and indirect protection against unfounded and unjust administrative decisions.

Hence, as the range of such democratic institutions widens, the need for an understanding of its aims and principles becomes more pressing. It is with the hope of making some contribution to the understanding of the Ombudsman's office,

office, particularly in the province of Ontario, that this thesis is being written.

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Borys Sirskyj

Table of Contents

Introduction	p. 1
Methodology	p. 4
Theoretical Perspectives and Hypothesis	p. 11
Preliminary Questions and Considerations	p. 12
Chapter 1: The Origins of the Ombudsman's Office	p. 22
Swedish Origin	p. 22
Functions of the Swedish Ombudsman	p. 24
Supervision of Courts	p. 28
Initiation of Complaints	p. 29
Canadian Initiation of the Ombudsman	p. 31
Qualifications of the Ombudsman	p. 33
Independence of the Ombudsman	p. 34
The Ombudsman and Ontario	p. 36
Chapter 2: History of the Ombudsman's Office in Ontario	p. 40
Inception of the Ombudsman in Ontario	p. 40
Legislative Debate	p. 42
Royal Commission on Civil Rights	p. 44
Adoption of the Ombudsman Elsewhere in Canada	p. 46
Adoption of the Ombudsman in Ontario	p. 47
Unanimous Support of the Ombudsman Bill	p. 51
Areas Outside the Ombudsman's Jurisdiction	p. 56

Relations Between the Ombudsman and MPP's	p. 57
Appointment of A. Maloney as Ombudsman	p. 58
Chapter 3: The Role and Function of the Ombudsman	p. 62
Functions of the Ombudsman	p. 62
Employees	p. 63
The Ombudsman and Provincial Correctional Institutions	p. 63
Right of Appeal by the Ombudsman to the Premier and Legislative Assembly	p. 64
The Ombudsman and Bureaucracy	p. 65
Independence of the Ombudsman	p. 65
General Powers of the Ombudsman	p. 66
The Ombudsman and the Courts	p. 67
Restrictions on the Ombudsman's Jurisdiction	p. 67
Discretionary Powers of the Ombudsman	p. 68
Determination of Jurisdiction	p. 69
Use of Courts to Determine Jurisdictional Questions	p. 70
Specific Powers of the Ombudsman	p. 71
The Ombudsman as a Creature of the Legislature	p. 74
The Relationship of the Ombudsman and the Legislature	p. 74
Volume of Complaints	p. 76
North Pickering Controversy	p. 78
The Appointment of the Select Committee on the Ombudsman	p. 79
Access to Information and Documents	p. 81
Attempt to Widen the Power of the Ombudsman	p. 83
Implied Powers of the Ombudsman	p. 84

Informing Citizens of Government Information on Them	p. 85
Government Secrecy	p. 87
First and Second Reports of the Ombudsman	p. 89
Criticisms of the Ombudsman in the Fourth Report	p. 90
The Select Committee Clashes With the Ombudsman	p. 92
Chapter 4: Organization & Overall Operation of the Office of the Ombudsman	p. 95
First Citizen Complaint	p. 95
Avoiding Faceless Bureaucratic Mold	p. 96
Hiring of Initial Staff	p. 97
Development of a Relationship with Legislators	p. 99
Visits to Areas Outside of Toronto	p. 100
Need for a Multi-lingual Capacity	p. 102
Establishment of a Directorate of Special Services and Others	p. 103
Handling of Non-Written Complaints	p. 105
The Directorates	p. 107
Routing of Complaints	p. 108
Case Conferences	p. 110
Reporting Complaints for Action	p. 111
(i) Legal Officer's Directorate	p. 112
(ii) The Directorate of Institutional and Special Services	p. 116
Correctional Institutions	p. 117
Workmen's Compensation	p. 118
Psychiatric Hospitals and Centres for the Developmentally Handicapped	p. 118

(iii) The Directorate of Rural, Agricultural and Municipal Services	p. 119
Rural and Agricultural Section	p. 119
Municipal Section	p. 120
Native People	p. 121
Francophones	p. 122
Rent Review Act	p. 122
(iv) The Research Directorate	p. 122
Staff Development	p. 125
Liason	p. 126
Referrals	p. 127
(v) The Directorate of Investigations	p. 127
(vi) Directorate of Interview Services	p. 128
(vii) Directorate of Communciations	p. 130
Public Speaking Programme	p. 130
Radio and Television	p. 130
Public Relations	p. 130
Archives	p. 131
Protocol	p. 131
(viii) Directorate of Administration	p. 131
Accounting	p. 131
Purchasing	p. 132
Personnel	p. 132
Systems and Records	p. 132
Public and Private Hearings	p. 133
Chapter 5: Statistics	p. 138
Number of Complaints	p. 138

Complaint Reception	p. 139
First Reporting Period - May 1, 1975 to July 10, 1976	p. 139
Informal Inquiries	p. 140
Object of Complaints	p. 142
Second Reporting Period - July 11, 1976 to March 31, 1977	p. 143
Complaints Outside Jurisdiction	p. 145
Workmen's Compensation Board	p. 147
MPP's Involvement	p. 148
The Way in Which Complaints were Received	p. 149
Complaint Closings	p. 150
Completion of Complaints	p. 151
Government and Private Organizations	p. 153
Complaint Disposition	p. 154
Complaints Outside Jurisdiction	p. 154
Settlement	p. 156
Budget	p. 158
Attacks on Budget	p. 160
Recommendations	p. 162
Sufficiency of Budget	p. 164
Case Summaries	p. 165
Summary	p. 171
Conclusion	p. 174
Appendix A	p. 193
Appendix B	p. 205
Appendix C	p. 214

Introduction

For this is not the liberty which
wee can hope that no grievance
ever should arise in the commonwealth,
that - Let no man in this world
expect; But when complaints are
freely heard, deeply consider'd, and
speedily reform's, then is the utmost
Bound of civil Liberty attain'd that
wise men looke for.

John Milton
Areopagitica

The purpose of this thesis will be to examine the process by which the office of the Ombudsman was created in the province of Ontario in May 1975, and to examine the attempts of the Ontario Legislative Assembly to regulate the powers and authority of the Ombudsman. It will also be the purpose of this thesis to argue that rather than restrict the powers and authority of the Ombudsman, the Ontario Legislature should, as a minimum, maintain the powers and authority of the Ombudsman as they are at present. An argument will also be made that the powers and authority of the office of the Ombudsman should be increased in some specific areas. It is our contention that the office of the Ombudsman is more important than the temporary incumbent.

The office of the Ombudsman in Ontario can be defined by its uniqueness in the following ways:

- 1) "Ombudsman" is a Swedish word which signifies a non-elected agent or representative of the people, whose responsibility is to protect the general and individual rights of the citizens wherever they conflict with governmental and bureaucratic activities.
- 2) The Ombudsman is a creature of the Legislature rather than of the executive. That is, the office of the Ombudsman is not a traditional department agency or board or government which reports to a specific Minister or executive head, but rather reports directly to the Legislature or to a Select Committee of the Legislature.
- 3) The scope and authority of the office of the Ombudsman

to investigate citizen complaints about the activities of the government bureaucracy and to conciliate the parties in dispute, encompasses a large part of government activity, although specific aspects of government activity may or may not be exempted from his purvue.

An ultimate objective of this thesis will be to profer specific criteria which can be used to evaluate the office of the Ombudsman. But, at this time, any attempt to create systematic and quantifiable criteria would be premature in that, for example, the office has existed for only two years, from May, 1975 to May, 1978. Commenting on this issue, the Select Committee on the Ombudsman, stated in its Third Report that:

The concept of the Ombudsman as a part of the parliamentary system of government in Ontario is barely two years old. As such, it continues to be the subject matter of much discussion, interpretation, criticism, and commendation. Additionally, because of the novelty of this concept, it is a matter of continuing evolution and development.

Because of the newness of the office and the policies adopted by the incumbent Ombudsman with respect to his functions, it has been both a source of confusion and misunderstanding. The Ombudsman has himself sought the advice and assistance of the Select Committee in matters wherein he and his staff have had no previous insight and experience.¹

In addition, because the staff of the office of the Ombudsman comprises a total of 122 individuals, the effects of individual personalities upon the activities of the

1. Third Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, November 25, 1977, p. 87.

office probably are very significant in comparison with normal bureaucratic executive structures which comprise thousands of individuals who have been slotted into a long-established and ongoing structure.

Nevertheless, it is not premature to initiate a preliminary examination of the structure, activities and role justification of the Ombudsman's office. Although there are severe limitations at this point in time on the methodological considerations which can be developed and utilized to evaluate the function of the Ombudsman, there are still some useful preliminary considerations which warrant investigation.

Among these considerations are a discussion of the uniqueness of the office of the Ombudsman as a mechanism of administrative control over bureaucracy (Ch. 1). In a discussion of this uniqueness it will be necessary to examine the history of the origins of the Ombudsman's office in a worldwide perspective (Ch. 1). Attention can then be turned to a discussion of the origins of the Ombudsman's office in Ontario (Ch. 2). This examination of the origins of the office of the Ombudsman will then lead to a discussion of the role and function of the office of the Ombudsman (Ch. 3). A preliminary study will be made of the overall organization and operations of the office (Ch. 4), while (Ch. 5) will contain statistical data on the activities of the Ombudsman's office. Finally, some tentative evaluations of the success of the office will be tendered (Ch. 6).

Methodology

The study of the science of public administration has developed a comprehensive literature on the methodology of public administration and public policy. For example, one study that sets out the major models for the study of public administration, Thomas Dye's Understanding Public Policy² examines the following models: institutional, group, elite, rational, incremental, game and systems models. His study illustrates how the various models can be used as guides for coming to grips with the decision-making processes in traditional ongoing bureaucratic institutions. Unfortunately, none of the models he discusses seem to be applicable to a study of the office of the Ombudsman. The Select Committee raised this point in its Fourth Report:

The problem has been however, that the expectations and concepts which have measured the office's performance are as individual as those articulating them. There are no generally accepted, consistent Legislative definitions and interpretations of his functions under the Ombudsman Act or the relationships that are necessary to perform those functions. The Committee believes, to the extent it is possible, the time is overdue for the Legislature to formulate these definitions and interpretations.³

This thesis then, must be restricted to more traditional methods used in the study of public administration. The methods used in this thesis are:

2. T. Dye, Understanding Public Policy, (New Jersey: Prentice Hall, Inc., 3rd edition, 1978).
3. Fourth Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, May 18, 1978, p. VI.

- 1) A comprehensive examination of the literature on the history of the Ombudsman's office, both in Ontario and abroad.⁴
 - 2) An examination of all the debates in the Ontario Legislature which relate to the office of the Ombudsman.⁵
 - 3) A reading of the first four Reports of the Select Committee on the Ombudsman.⁶
 - 4) An examination of the first two annual Reports of the Ombudsman, which have been published to date.⁷
 - 5) Extensive interviews with all the major department heads in the office of the Ombudsman.⁸
4. see Bibliography.
5. see Bibliography.
6. First Report of the Select Committee on the Ombudsman, October 15, 1976.
- Second Report of the Select Committee on the Ombudsman, March 28, 1977.
- Third Report of the Select Committee on the Ombudsman, November 25, 1977.
- Fourth Report of the Select Committee on the Ombudsman, May 18, 1978.
7. First Annual Report, 1975-1976, Toronto: The Ombudsman, Ontario, 1977.
- Second Annual Report, July 1976-March 1977, Toronto: The Ombudsman, Ontario, 1977.
8. extensive interviews were conducted with all the major department heads in the office of the Ombudsman. see Appendix 'B'- Staff Biographies.

- 6) Interview with the Ombudsman, Mr. Arthur Maloney, Q.C.⁹
- 7) An interview with Mr. Vernon Singer, MPP (Liberal., Downsview).¹⁰
- 8) An interview with Mr. Charles Huston, Supervisor of Services for the John Howard Society in Toronto.¹¹
- 9) An interview with Mrs. C. Jordan, Information Services of the Ministry of Corrections.¹²
- 10) An examination of numerous newspaper files, specifically from the Toronto Globe and Mail, Toronto Daily Star, and the Toronto Sun.¹³
9. The Ombudsman provided me with some valuable insights as to the functioning of the Ombudsman's office. Though Mr. Maloney's time was somewhat limited for extensive interviews, Ellen Adams, Director of Institutional and Special Services, aided me immensely in setting up the interviews with the various department heads, providing office memoranda for my disposal and answering the many questions which had arisen during the course of my research.
10. Mr. Vernon Singer, MPP, (Liberal, Downsview), provided all the relevant information as to why and how he was so adamant in presenting a private member's bill for the appointment of a "Parliamentary Commissioner."
11. Mr. Charles Huston, Supervisor of Services for the John Howard Society in Toronto was extremely helpful in providing answers to the following two questions; is the Ombudsman's office useful and are the annual reports accurate and a reflection of reality.
12. Mrs. Jordan of the Information Services of the Ministry of Corrections was also helpful in answering the aforementioned two questions.
13. see Bibliography.

During the last week in February of 1977, namely, from Monday, February 28, 1977, to Friday, March 4, 1977, I spent the week as an employee of the office of the Ombudsman, observing the internal workings of the Ombudsman's office. Through the assistance of Miss Ellen Adams, Director of Institutional and Special Services for the Ombudsman, I worked as a volunteer without pay complying with all the requirements of confidentiality that are imposed upon the Ombudsman and members of his staff.

Moreover, during the course of this week I was given access to files, internal memoranda and other valuable literature¹⁴ which served to broaden my knowledge of the Ombudsman's office in Ontario and abroad.

The examination of all the pertinent debates in the Ontario Legislature showed that the calibre of presentations during the debate on The Ombudsman Act was more impressive than usual, since it was obvious that some of the members had given much serious thought to the office of the Ombudsman and to their concept of what it was, what it ought to be and how it ought to function. In addition, these members made many carefully considered suggestions regarding the organization of the Ombudsman's office and also expressed the hope that in establishing the office Mr. Maloney would consider and make reference to their remarks. However, the Select Committee was to comment later, that:

14. see Bibliography.

There was never at that time, a clear statement from the Legislature to indicate what role the Ombudsman should play within the system of government in Ontario or in what context the Ombudsman was expected to perform that role. At the time the Act was introduced there was a lack of understanding of what an Ombudsman was, how an Ombudsman should function in Ontario and significantly, what the implications would be of an Ombudsman functioning in Ontario.¹⁵

In addition to this critique of the legislative debates, a systematic reading of the first four Reports of the Select Committee on the Ombudsman provided much insight into the activities of the legislature, the Select Committee itself and the operations of the office of the Ombudsman.

Just as the Reports of the Select Committee on the Ombudsman are very useful, so too were the first two annual Reports of the Ombudsman himself, as many of the methodological difficulties that one normally encounters in studying traditional departments, such as access to detailed job descriptions, preliminary research of Legislative debates concerning theoretical justifications for the existence of the department, were not encountered in this study of the office of the Ombudsman. The reason for this is that the first two annual Reports of the Ombudsman were unique in this respect, that rather than report as little information as possible, the two annual Reports were so comprehensive that they constitute a primary and rich source of material. The reports thus serve as a basic research source, something that is very rare in government reports. One should not be

15. Fourth Report of the Select Committee on the Ombudsman, tabled in the Legislature, May 18, 1978, p.V.

surprised at this since the office itself is unique in that it is dedicated to publicizing and rectifying governmental activities.

Shortly after the first Report of the Ombudsman was published and distributed, interviews were conducted with all the major Directorate heads within the office of the Ombudsman and with the Ombudsman himself. These interviews were structured to the extent that they were based upon the detailed job descriptions published in the first annual Report of the Ombudsman. These interviews were open-ended and were designed to solicit more detailed information on the duties and responsibilities of the heads of the Directorates. It was felt that behavioural studies through the use of structured interviews would be premature in that the interviews that were conducted were to be seen as familiarization probes rather than elaborate personality-administrative-structural research.

Because the Reports of the Ombudsman and the Select Committee are used as the primary source of research, rather than quantitative, structural research designs traditionally used in the study of administrative activity-public policy, one must be very careful not to accept at face value any report of any officer to his reporting body because of the possibility of bias. As a more independent aid to the evaluation of the reports, interviews were conducted with Mr. Vernon Singer, MPP, (Liberal., Downsview), an individual who more than anyone fought for the establishment of the office of

the Ombudsman in Ontario; Mr. Charles Huston, Supervisor of Services for the John Howard Society in Toronto, who is in a position to evaluate the significance of the Ombudsman's office in respect to the activity of the Ombudsman's office on the criminal justice system; and with Mrs. C. Jordan of Information Services of the Ministry of Corrections who also is in a position to evaluate the Ombudsman's office in the above-mentioned respect.

Lastly, numerous newspaper files were compiled and studied. They were extremely valuable in the sense that this was one of the few avenues through which critical perspectives of the office of the Ombudsman emanated.

Ultimately, with the passage of time a body of expert opinion will probably develop which can be tapped by future researchers in order to provide more systematic evaluation of the activities of the office of the Ombudsman. In addition, we would expect that over time systematic routinized contacts will develop between the office of the Ombudsman and other citizen's groups. These too should provide more systematic and critical evaluation of the office of the Ombudsman.

To this date no scholarly or investigative reports of a critical nature have appeared. Consequently, this thesis stands as the first attempt to examine the process by which the office of the Ombudsman was created in the province of Ontario in May, 1975, as well as explaining the organization and operation of the office, and presenting a tentative discussion of the methods by which the activity of the office may be

evaluated.

Theoretical Perspectives and Hypothesis

As was mentioned under the discussion of methodology above, it is not possible to develop a rigorous theoretical framework with respect to the office of the Ombudsman at this time. The body of literature devoted to these theoretical perspectives does not provide us with adequate guidance to theoretical formulation.

However, it is possible to offer several hypothesis with respect to the office of the Ombudsman. Intensive reading of the literature on legislative behaviour, suggests that one should expect tension and misunderstanding to arise whenever a new unique office is created by a Legislature. This tension is even more likely to occur when the new office is given broad, ill-defined powers and authority. This tension will be further compounded when the office is expected to intercede between the government and administration and individual citizens. Furthermore, this tension will be heightened if the office is directed to intrude upon activities normally assumed by individual members of the legislature on behalf of their constituents. It will be argued in this thesis that these hypothesis help to explain the rapid degeneration of the initial enthusiasm of the members of the Ontario Legislature towards the office of the Ombudsman and its replacement by a growing hostility between the Ombudsman and the legislature.

This thesis will also examine whether the scope of the authority and power of the Ombudsman should be maintained, broadened or restricted. It will be the contention of this

thesis that it would be useful to the better administration of the government of Ontario if the scope of the powers and authority of the office of the Ombudsman be somewhat broader into certain specific areas of governmental administration.

Preliminary Questions and Considerations

Why has the office of the Ombudsman been created in Ontario? Until quite recently it was assumed that the democratic process and the law, were, between them, quite adequate in mitigating the grievances of citizens against government. Today, however, there has been a shift in this opinion, and certain aspects of the parliamentary system have proven to be inadequate to fulfill this general expectation.

The nature of the Canadian parliamentary system has changed dramatically since 1867. The House of Commons has been transformed from a once relatively independent body to a body dominated by the Cabinet, which in turn is dominated by the Prime Minister.¹⁶

In the 1860's and 1870's private legislation, sponsored and proposed by the members of the House of Commons was given as much weight as government legislation. The will of the House was much more important than that of any party position stance. Furthermore, the private member was responsible to his own conscience and could within limits, speak his own mind

16. R. March, The Myth of Parliament, (Toronto: Prentice-Hall of Canada, Ltd., 1974), p. 6.

and was free to defy the party whip. It was precisely this independence of the private member which gave the House of Commons, "its collective character and made it the most important check on the executive."¹⁷ Today, however, the member is principally responsible to his party. Party discipline is the order of the day.

Otherwise, he (the elected member) cannot be elected. If he defies the party whip the party machine will destroy him. Party loyalty has become the prime political virtue required of an MP.¹⁸

Furthermore, decisions on important matters have been removed from the public forum of the House to the secrecy of the caucus rooms. "Prime Ministers know that debate on the floor of the House is a farce and that the vote on division is but a charade, since the outcome of the vote is known beforehand."¹⁹

More disquieting than this is the fact that parliamentary control has become a myth given the disappearance of a fairly large core of independent members. Compounding the problem of the dearth of the independent MP's, is the high turnover rate of freshmen MP's. For example, between 1867 and 1900 the turnover rate of freshmen MP's was never less than 45 percent. Since the depression years the turnover rate has remained rather high, averaging 40 percent. Fully 50 percent of all freshmen do not survive the next election.²⁰

17. Ibid., p. 55.

18. Ibid., p. 55.

19. Ibid., p. 55.

20. Ibid., p. 40.

The crucial point is that it is difficult to expect very much constructive parliamentary effort from freshmen members. Since the turnover rate is high, it would be a mere truism to state that few MP's survive long enough to become experts in the parliamentary process.

Moreover, where once the House as a whole checked and controlled the executive, this function is now performed by the opposition. However, the fact remains that the opposition does not have the means to give genuine scrutiny of government activities, "since so much of that activity is secreted away within the office of the Prime Minister and the government bureaucracy."²¹

Simply, the opposition is hobbled.

In summary to this point then, the following features of our parliamentary system require the creation of an office of the Ombudsman: the supremacy of the Prime Minister and Cabinet; the party system as a constraint on the MP; the hobbled opposition; the short tenure of the MP's; and the replacement of the independent notable by men whose fundamental loyalty is to a party machine and not to the conscience or wishes of their constituents, since it no longer appears that these features of our democratic process are adequate in dealing with the grievances of citizens against government.

However, along with these, the following five reasons all point toward the establishment of the office of the

21. Ibid., p. 55.

Ombudsman: the complexity of modern government, the impersonal and dehumanizing nature associated with the operation of modern government, the inadequacies of the traditional mechanisms for adjudication of problems, the need for independent and impartial assistance and the need for a deterrent to injustice. Let us deal with each of these reasons in turn.

Within the last half century we have witnessed the rise of the modern welfare state, and with it, the enjoyment of social services such as subsidized housing and unemployment insurance and higher standards of living. Similarly, we have witnessed the transformation of governments from builders of roads and sewers to the present where they,

are regarded by their people as custodians of human welfare in almost all important physical and social respects. To this end, an enormous structure of health, welfare, education, housing, social security, environmental and community services have been created - a structure that affects the lives and property of all.²²

For instance, in 1925 the Ontario Government's revenue expenditure was \$48,013,852 million. In 1950 it was \$265,705,000 million and in 1977 it was \$11,983,000 million.

In 1925 in Ontario there were 4,839 civil servants. In 1950 there were 13,685 civil servants and in 1976 the civil service had 72,000 permanent men and women and 85,000 people if all the casual and temporary help were taken into account.²³

22. A. Maloney, "The role and function of the Ombudsman in the context of Ontario's legal and political institutions," text of address delivered to the Faculty of Law, University of Windsor, Monday March 8, 1976, p. 5.

23. Canada Year Book, 1926, p. 785.
Canada Year Book, 1954, p. 1095.
Ontario Budget 1977, pp. 18-19.

In order to administer this vast complex structure, a large bureaucracy has flourished, bringing with it, "the need to grant increasing powers of discretion to the executive side of government."²⁴ This is due to the fact that in a modern welfare state, where speed and uniformity in action is expected from the authorities, there is a tendency towards centralization, which can cause undesirable neglect when considering individual cases. Simply put, thousands of administrative decisions are made yearly, many of them by minor officials. Thus, we are confronted with the possibility that the cogs of the government's administrative machine may unjustifiably quash a citizen's rights. If some of these decisions are not justified, but are unfair or wrong, there is no really simple method by which the ordinary citizen can obtain redress from the government.

Lord Shawcross of the International Commission of Jurists, in his preface to the Whyatt Report, which produced the model upon which the British Parliamentary Commissioner Act of 1967 was to be based, explained the situation in the following manner:

With the existence of a great bureaucracy there are inevitable occasions, not insignificant in number, when through error or indifference, injustice is done - or appears to be done...But too often the little man, the ordinary humble citizen, is incapable of asserting himself...the little man has become too used to being pushed around; it rarely occurs to him that there is any appeal from what 'they'

24. D.C. Rowat, The Ombudsman Plan, (Toronto: McClelland and Stewart Limited, 1973), p. 46.

have decided and... too often in fact there is not.²⁵

To say the least, this is a disquieting and unhealthy symptom of our contemporary social structure.

Hence, it is precisely from this sense of unease and from what John Stuart Mill called "the despotism of custom"²⁶ - that expedient despotism where decisions are made according to the book rather than according to conscience and merits of the case, that proposals for a new and added protection against bureaucratic bungling emanate. This new and added protection is the parliamentary officer known as the Ombudsman, a uniquely appropriate institution for dealing with citizens' grievances against unjust administrative decisions. The Ombudsman's mandate is to arrive at truth and equity and to see that they are satisfied.

Simply, the Ombudsman's office in Ontario is provided for by action of the Legislature and is headed by an independent public official who is ultimately responsible to the Legislature. He receives complaints from people against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action and issue reports. The office differs significantly from the traditional methods of handling grievances and has several important advantages over these methods.

25. Justice, (British Section of the International Commission of Jurists), "The Citizen and the Administration: The Redress of Grievances- A Report," Sir John Whyatt, Director of Research, (London: Stevens, 1961), p. xiii.

26. Notes for the Hugh C. Arrell Memorial Lecture, delivered by Arthur Maloney, Ombudsman of Ontario, on Thursday, January 29, 1976, to the School of Social Work, McMaster University, Hamilton, p. 12.

A traditional mechanism for adjusting grievances has been the court system. Presently, however, the courts are not always "as effective instruments for remedying the wrongs of modern administrative action," for they are more than often, "too cumbersome, costly and slow."²⁷ Simply, litigation is still very expensive, exacerbating and often protracted and slow. Often the courts only have the power to review a decision merely on a question of law and are unable to review the merits of the case, its fairness and reasonableness.

On the other hand, the office of the Ombudsman, gives the citizen an expert and impartial agent, without the personal cost to the complainant, without time delays, without the tension of adversary litigation, and without requirement of counsel.²⁸

All that is required of the complainant is that he/she send the Ombudsman a letter or contact his office by telephone. The rest is handled by the office.

Moreover, complaining to one's member in the legislature often does not solve the problem either. Not only are many citizens unaware of this avenue of appeal but in many instances it is unsuitable anyway. For example, the member may simply not have the time nor the personnel to deal with the constituent at any great length, and secondly, many people question the impartiality of their member as a result of the member's particular party affiliation. Furthermore, the other traditional body with power to deal with complaints, if it so wished, relating to actions of administrators, is the

27. D.C. Rowat, op. cit., p. 47.

28. A. Maloney, op. cit., p. 47.

legislature itself. Even if the MP's as individuals or the Legislature as a whole ever exercised this role of tribune there are serious limitations as to what can be accomplished. In his study of Parliamentary control, Professor Jack Kersell points out that,

there is no procedure in the Canadian House which in practice provides the back bench member of parliament with an adequate opportunity to air a constituent's bona fide grievance, without first gaining the cooperation of his party in parliament.²⁹

Also, there are no formal procedures in the Ontario legislature for settling the grievances of individuals.

Thus, all of these above-mentioned reasons point towards the necessity of the office of the Ombudsman, an office which differs dramatically from the traditional methods of handling grievances, but an office that possesses certain advantages over these other methods:

First there is the principle of impartial investigation. If a citizen makes a complaint against the conduct of a civil servant, the matter is investigated and reported upon by the Ombudsman, who is an impartial authority entirely independent of the legislature. Secondly, the impartial authority acts on behalf of parliament although he is also protecting the rights of the individual complainant. Thirdly, the investigation is conducted openly. Fourthly, the method of submitting complaints and the investigation is very informal.³⁰

There are great advantages to the principle of impartial investigation. Although the Ombudsman is an officer of the legislative assembly, he is a totally independent figure

29. J.E. Kersell, Parliamentary Supervision of Delegated Legislation, (London: 1960), p. 149.

30. D.C. Rowat, op. cit., p. 49.

free from the constraints and entanglements of any governmental administration. Thus the Ombudsman can be characterized as a complement to the already existing grievance procedures, particularly those of the legislature and the judiciary.

As an ultimate objective the Ombudsman can bring to the Legislature his observations on the mis-workings of administrative legislation. He can also focus the light of publicity on his concern as to injustices and needed change. It must of course be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds. If his scrutiny and observations are well founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good.³¹

Thus, the significance of the Ombudsman's office is twofold. First the Ombudsman bridges the gap between government and the people by providing the citizens of Ontario with an office where they can lodge their complaints against unfair administrative decisions and through which they can get their grievances redressed. Secondly, the Ombudsman's office promotes the general efficiency of administration whereby the Ombudsman's recommendations and admonitions correct administrative malpractices and prevent their recurrence by acting as a set of guideline for government officials. In this manner, through the improvement of government administration and thereby preventing the recurrence of administrative injustice, the

31. A. Maloney, "Notes" for the Hugh C. Arrell Memorial Lecture, Thursday, January 29, 1976, Hamilton, Ontario, p. II.

Ombudsman provides both direct and indirect protection against unfounded and unjust administrative decisions.

Hence, as the range of such democratic institutions widens, the need for an understanding of its aims and principles becomes more pressing. It is with the hope of making some contribution to the understanding of the Ombudsman's office, particularly in the province of Ontario, that this thesis is being written.

Chapter One

The Origins of the Ombudsman's

Office

The purpose of this chapter will be to discuss the uniqueness of the office of the Ombudsman as a mechanism of administrative control over bureaucracy. In a discussion of this uniqueness it will be necessary to examine the history of the origins of the Ombudsman's office in a worldwide perspective because of the newness of the office in Ontario. This will take into account the extensive experience of several European countries which have experimented with this office.

It is also important to compare briefly the structure and scope of authority of various offices of the Ombudsman because there are significant differences between countries. Such a comparative perspective can provide some means of evaluating the process by which the Ombudsman was introduced in Ontario, and put the discussion of the scope and authority of the office of the Ontario Ombudsman in a wider context.

Swedish Origin

Though the office of the Ombudsman assists us in confronting the problem of an expanded bureaucracy in the modern welfare state, the office was originally created in Sweden as a response to the structures of Swedish government. The post of the Justiteombudsman³² was implemented in 1809 in the new Swedish Constitution which was clearly influenced by Montesquieu's doctrine of the separation of powers, where

32. The Swedish word 'ombud' refers to a person who acts as a spokesman or representative of another person. In his supervisory position the JO is a representative of the Parliament, and thereby of the citizens.

the powers of the state were to be divided between the King and his Council, Parliament and the Courts. In order to balance the wide powers afforded the King and his Council, the Swedish Parliament was given far-reaching means of exercising control over governmental activities. One of these means entailed the appointment of an Ombudsman who would be responsible for ensuring that the laws were adhered to by the various administrative authorities and by the courts.

As with whom the proposal of a Justiteombudsman originated and exactly what was behind the establishment of the office of the JO, little is known from history. However, it is certain that the office was established against the wishes of the Government of that time. The office was framed,

during discussions in the parliamentary committee that- in a few hectic weeks in the spring of 1809, when the nation was at war with Russia- was drafting the new Constitution for adoption by Parliament.³³

This parliamentary committee announced only that the general and the individual rights of the people should be ultimately protected by a guardian who would be appointed by Parliament and would ensure that judges and other officials adhered to the laws. Thus, the office of the JO was to guarantee civil rights.

Though at its inception, the word Ombudsman was a Scandinavian word which signified "a representative or agent of

33. D.C. Rowat, The Ombudsman, (Toronto: University of Toronto Press, 1968), p. 24.

the people,"³⁴ the English-speaking world has come to translate the term Ombudsman as "Parliamentary Commissioner for Administration". However, with the progression of time and the further dissemination of the idea of the Ombudsman, the single word Ombudsman has been adopted for usage.

Several features of the institution of Ombudsman in Sweden makes it unique among "grievance-handling, appeal and investigatory bodies." First, the Ombudsman is an officer of the legislature and not of the executive. He is appointed by the Legislature, is free to report back at any time and submits a published annual report which delineates the important cases.³⁵

The Swedish Ombudsman is elected on behalf of Parliament by a body of 48 electors who are, themselves chosen by and from among members of both Houses (24 from each). The Ombudsman is both formally and in reality entirely independent of the Government but also of Parliament itself, for he is only dependent on the law.

Functions of the Swedish Ombudsman

The most important aspect of the Swedish Ombudsman's work is found in his annual official report. The lengthy report, which is usually 400 to 500 pages, delineates the work which the Ombudsman has done, contains an account of the investigation he has made of the 'condition of the administra-

34. D. C. Rowat, The Ombudsman Plan, (Toronto: McClelland & Stewart Ltd., 1973), p. 2.

35. Ibid., p. 3.

tion of the law of the Kingdom', and includes a summary of the most important cases upon which the JO has made a ruling during the course of the year. Moreover, in this report the JO expresses his opinion on the meaning of the existing laws and statutes and on how they are to be applied. Therefore, the report serves as a guide in the application of the law and administration, thus making it the JO's most important means of influencing the application of the laws in Sweden.³⁶

Secondly, the Ombudsman is an impartial investigator and is politically independent of the legislature. His office is provided for in the constitution and once he launches an investigation, the legislators cannot intervene. By tradition, all important political parties agree on his appointment.³⁷

The Ombudsman is both formally and in reality entirely independent of the Government and of Parliament itself, for he is made dependent only on the law. He decides which subjects shall be investigated and frames his own decision as to what action should be taken. This means that the Ombudsman acts without having received directives from Parliament. His powers, as defined in the Constitution are to supervise judges, government officials and other civil servants with respect to how they observe the laws and to prosecute those who have acted illegally or neglected their duties.

Moreover, during the course of an investigation, nobody

36. D.C. Rowat, op. cit., p. 25. (The Ombudsman)

37. D.C. Rowat, op. cit., p. 3-4. (The Ombudsman Plan)

in Parliament is allowed to influence the Ombudsman to act in a certain direction. Throughout the history of the Swedish Ombudsman's office, there has been no evidence in the annual reports to support the assumption that 'undue influences' have ever been exerted on the Ombudsman.

When selecting the Ombudsman, the political parties in Parliament will try to agree on his appointment. This is done to ensure that the JO's decisions are made without regard to political pressure and that the public may have full confidence in his political independence.

With few exceptions, the Ombudsman has been chosen from among the justices of the Swedish courts. This seems to stem from the fact that it is the JO's responsibility to make certain that the laws were adhered to by administrative authorities and by the courts. Therefore, legal training is imperative.³⁸

Thirdly, unlike the courts, the Ombudsman has no right to annul or reverse a particular decision made by an administrative authority and has no direct control over the courts. His main power is the right to investigate and get at the facts. His success, moreover, is based upon his objectivity, competence, superior knowledge, and prestige, and when these remain unresponsive, the major weapon to secure remedial action is publicity through his reports to the legislature

38. D.C. Rowat, op. cit., pp. 24-26. (The Ombudsman)

and to the press. He does however, have the power to prosecute public officials such as judges and municipal officials for illegal acts. Although this power is seldom utilized, its existence serves to increase the Ombudsman's influence.³⁹

According to the Swedish Constitution, the Ombudsman is to "supervise the observance of laws and statutes."⁴⁰ He cannot act as a judge. Rather he acts as a supervisor and inspector. In order to perform his supervisory duties, the Ombudsman is given access to all documents, even secret ones, and is entitled to be present at deliberations and decisions of all courts and other agencies where administrative officials make their rulings. He is thereby assured a complete view of all legal and administrative activity. All officials are bound to afford him lawful assistance and are obliged to provide him with all relevant information on a matter in question. All prosecuting attorneys must perform any prosecution which he may decree.

It is important to note that the JO does not have the power to change the decisions of courts or of administrative officials, for he is not an appellate judge. Though he is entitled to prosecute in court when errors have been committed solely because of carelessness, this power is seldom used. It has been found, that in a majority of cases, a public reprimand or criticism of a particular decision is all that is

39. D.C. Rowat, op. cit., p. 4. (The Ombudsman Plan)

40. Remedies against the abuse of administrative authority - Selected studies, (New York: United Nations, 1964), p. 110.

necessary.⁴¹

In Sweden, judges are not exempted from the supervision of the Ombudsman. Similarly, members of the Supreme Court and of the Supreme Administrative Court in Sweden are, in principle, supervised by the Ombudsman. The Constitution presupposes, however, that no action is to be brought against them unless a serious error has been committed; and they are to be tried in a special court appointed according to the rules of the Constitution. So far, no Ombudsman has prosecuted a member of any of the Supreme Courts.⁴²

Supervision of Courts

The question of supervision of the courts by the Ombudsman is obviously of great interest and importance to students of "Ombudsmania". The question of whether the Ombudsman should be able to investigate the activity of the courts has been answered differently in different countries.

In Sweden, this supervision by the Ombudsman does not place the courts under a 'study of obedience' to the Government or the Parliament and cannot be said to limit the fulfillment of their role as an independent body of society. Moreover, an examination of Swedish practice shows that there is a practical need for supervision of the courts. For example:

A few years ago a judge, before a trial in which he was to sit himself, was found guilty of having, induced one of the parties, with whom he had been

41. D.C. Rowat, op. cit., p. 25. (The Ombudsman Plan)

42. Ibid., p. III.

acquainted with since childhood, to lend him a sum of money. Quite recently the Ombudsman had a judge prosecuted, who was later also found guilty, for having helped a friend of his who was a lawyer to draw up petitions to courts, in cases which the judge had nothing to do. In another case, a judge who was always anxious that trials should proceed as quickly as possible was convicted for having extracted confessions from the accused by threatening to give them a graver sentence unless they confessed.⁴³

Indisputably supervision of judges cannot be dispensed with in instances such as those stated above. The fact that a judge is aware that he is being supervised serves to further a loyal and conscientious carrying out of procedural rules on his part. The point of view adhered to in Sweden on these problems is in accordance with the principle expressed in the Constitution; that a court should be "independent under the laws but not sovereign above them."⁴⁴

Fourthly, the Ombudsman possesses the power to investigate on his own initiative. He can inspect courts and administrative agencies and can take up cases based on reports in the press.⁴⁵

Initiation of Complaints

Often the Ombudsman initiates an investigation without being motivated by a complaint. These are undertaken on the basis of reports on the activities of the courts and administrative officials that appear in the press. Furthermore, many matters are taken up as the result of observations made during inspections by the Ombudsman. Checking the work of

43. Ibid., p. 112.

44. Ibid., p. 113.

45. D.C. Rowat, op. cit., p. 4. (The Ombudsman Plan)

officials while on an inspection tour is probably the most important sphere of the Ombudsman's activity. The Ombudsman personally inspects jails, mental hospitals, and guard rooms, and he visits courts, prosecutors, police authorities and government officials of all types. By doing so, the Ombudsman can check to see that the cases have been legally tried and decided upon and that prompt action has been taken. The information revealed by these nation-wide investigations is placed at the disposal of the country's administrative officials so they can judge for themselves what is the best practice in a given case.⁴⁶

Fifthly, unlike that of the courts, the Ombudsman's method of handling appeals against administrative decisions is direct, informal, speedy and cheap. To initiate an appeal, all that is required is for the complainant to write a letter. No formal court-like hearings are held and the Ombudsman's work is done almost entirely by mail. The Ombudsman requests and studies departmental documents and if not satisfied that a complaint is warranted, requests a departmental explanation. If the explanation is unsatisfactory to the Ombudsman, he will issue a reminder to the official and try to secure remedial action. This is the most common form of intervention today. The aim of such a reminder is not only to give the erring official a reprimand, but also to achieve the effect of protecting the legal security of the citizen by preventing

46. D.C. Rowat, op. cit., p. 29. (The Ombudsman)

a repetition of the occurrence by other officials. Where necessary, he will also recommend changes in laws and regulations, designed to remove injustices in their application.⁴⁷ Sixthly, an important feature of the Ombudsman system is that, because of the simple and cheap way in which complaints are handled, many minor complaints can be satisfied. Many cases involve no more than explaining to the bewildered person the reasons for the decision of which he has complained. Moreover, in many instances, the minor complaint is often justified but hardly worth the cost of a lengthy and expensive court procedure. Sometimes these cases indicate unfounded injustices, and in such cases the Ombudsman possesses the authority to investigate and discipline.⁴⁸

Until quite recently not much was known about the institution of the Ombudsman in the Nordic countries. Although the office of the Ombudsman has existed in Sweden since 1809 it was not until 1919 that Finland adopted the office. In 1953 Denmark joined the group. Then New Zealand followed in 1961, Norway in 1963 and Great Britain and Canada in 1967.⁴⁹

Canadian Initiation of the Ombudsman

In Canada, nine of the provinces,⁵⁰ with the exception

47. D.C. Rowat, op. cit., p. 4. (The Ombudsman Plan)

48. Ibid., pp. 4-5.

49. D.C. Rowat, op. cit., pp. 60, 77, 97, 123. (The Ombudsman)

50. The following provinces incorporated the Ombudsman institution in the following years:

Alberta 1967	Nova Scotia 1970
Saskatchewan 1972	British Columbia 1976
Manitoba 1970	Newfoundland 1975
Quebec 1968	Ontario 1975
New Brunswick 1967	

of Prince Edward Island, have Ombudsman. At the Federal level the office exists in the Commissioner of Official Languages⁵¹ and the specially constituted office of the Correctional Investigator.⁵² Canada still however, has no Federal Ombudsman, for the major stumbling block appears to be the Prime Minister's, P.E. Trudeau's personal opposition to the idea. Mr. Trudeau has stated that the Minister of Justice "could very well be the Ombudsman for Canada."⁵³ This statement reveals a complete misconception of the Ombudsman's office on behalf of Mr. Trudeau. Surely it is evident that an Ombudsman must be independent of the executive and certainly a Minister could not carry out the Ombudsman's function for he is the one who is ultimately responsible for directing the civil service.

Despite the fact that the Prime Minister, and probably a multitude of other people, are doubtful that the Ombudsman institution from Sweden and the other Scandanavian countries has any real relevance to the Canadian scene, there are some common denominators which cannot be overlooked. In Sweden, Denmark, Norway, Finland, New Zealand and Great Britain there are constitutional traditions of respect for the individual

51. In 1969 Parliament passed the "Official Languages Act" under which a "Commissioner of Official Languages" was appointed in April 1970. The Commissioner is a Parliamentary Officer who supervises the implementation of the "Official Languages Act" and has powers to investigate complaints relating to Languages policy laid down in the Act.
52. This office was established by the Federal Cabinet on the motion of the Solicitor General by way of Order-in-Council in June 1973. Inger Hansen, Q.C., was appointed "Correctional Investigator" by the Solicitor General in June 1973 to "investigate on her own initiative or on complaint from or on behalf of inmates" of federal penitentiaries any problems within the responsibility of the Solicitor General. She was given the powers of a Commis-

(continued)

and administrative tribunals to which appeals can be brought from the decisions of the authorities. However, these countries have found that these safeguards do not provide adequate protection for their citizens.

In all of the above-mentioned countries, the Ombudsman is an officer of Parliament to, "ensure that the executive carries out not only the letter but the spirit of the law."⁵⁴ He may on his own initiative or by written complaint investigate and recommend the appropriate redress. If he finds that laws and administrative regulations are faulty and not being enforced, he must point them out to Parliament. In Finland, Denmark and Sweden, he can order or institute actions against erring officials. However, this power has been used sparingly. In practice it has been found that the great prestige of the office and the publicity surrounding the Ombudsman's recommendations are more than sufficient to obtain the desired effect without further sanctions.

Qualifications of the Ombudsman

The qualifications for the office of Ombudsman differ. In Sweden, the Ombudsman is selected "from among jurists of higher reputation".⁵⁵ In Finland he must be a "distinguished sioner under Part II of the "Inquiries Act".

53. Canada, Debates, (2 nd Session, 28th Parliament, vol. III), p. 2322.

54. C. Sheppard, "An Ombudsman for Canada", McGill Law Journal, vol. 10, 1964, p. 322.

55. Ibid., p. 322.

jurist."⁵⁶ In Denmark he must have legal training, and in Norway he must have "the qualifications demanded for a judge of the Supreme Court."⁵⁷ This probably stems from the fact that from a legal point of view, the Ombudsman has the power to safeguard the law. Therefore he is selected from amongst a group of jurists. Hence, knowledge of the law in these countries seems to be imperative. However, there are no such restrictions in New Zealand nor in the Canadian provincial schemes, since the courts and judges do not fall under the Ombudsman's scrutiny.

Independence of the Ombudsman

The independence of the Swedish Ombudsman from Parliament is an important facet of the scheme. Therefore, he is granted a high salary and generous pension rights. On the other hand, he cannot hold any other office be it public or private.

Under the Scandanavian schemes the Ombudsman is elected for the term of Parliament. Only for grave reasons can he be removed. As a matter of record, "no Ombudsman appears to have been removed, although some have not been re-elected."⁵⁸

In all cases the Ombudsman can hire or fire his own

56. Ibid., p. 322.

57. Ibid., p. 322.

58. C. Sheppard, op. cit., p. 323.

staff. In New Zealand the Prime Minister can set the number of employees and the Minister of Finance may determine their salaries. I would tend to contend this point since it is of the utmost necessity that the Ombudsman remain a totally independent figure free from the constraints of any governmental organization. In the above-mentioned situation it would be quite possible for disagreements to arise, rather quickly. Furthermore, only New Zealand differs from the Scanadanavian principle that neither the Cabinet nor government officials may interfere with the Ombudsman's investigations. In New Zealand, the Attorney General may halt an inspection or investigation, "by certifying that it would interfere with security, foreign affairs or the prosecution of criminals."⁵⁹

In New Zealand, Norway and Denmark, the Ombudsman may interrogate witnesses under oath and subpoena witnesses and documents. Although officials do not have to give the Ombudsman intra-departmental memoranda and private evaluations, they must allow him to make on-the-spot inspections and investigations of the courts and the various administrative agencies.

Reports and recommendations are the major force behind the office, for if the Ombudsman finds that a complaint is well founded, he is entitled to make a recommendation to the authority concerned. He may suggest that administrative

59. Ibid., p. 323.

action be modified, or as in some Scandanavian countries, that damages or compensation be paid. Nowhere is he allowed to order administrative action, for he can only recommend. The influence of his office is not based on far-reaching powers. Instead, his influence is felt as Parliament's representative and through the weight of his recommendations.

The Ombudsman and Ontario

The Ombudsman Acts of Denmark and Sweden provide for Ombudsman functions which are wider in scope and more far-reaching in consequences than in Ontario, as they include civil and military conduct. Despite this, according to the Select Committee on the Ombudsman in Ontario, the activities of the incumbent Ombudsmen are such that only a fraction of the potential activities are being undertaken. For example, the Committee notes with some satisfaction and probably for the "eyes" of Mr. Maloney, that as a result of recent changes in the Swedish legislation in 1975, the four Swedish Ombudsmen have become less active in the pursuit of wrongdoings by means of public inspections. Rather their time is now taken up processing complaints from the public. The Committee offers the following explanation:

This may be explained in part by the persons in office. It also may be explained by the nature and extent of the fiscal restraints imposed upon the office, both internally and externally. However, in both countries there is a very strong sense that the Parliament has placed informal but very real constraints upon the Ombudsman's latitude. The desire to maintain the confidence of Parliament pervades every aspect of the Ombudsman functions in both countries and in the Committee's opinion is a most significant factor

in defining the concept and role of the Ombudsman.⁶⁰

In sharp contrast to Sweden and Denmark, the Select Committee reports with some approval that the Parliamentary Commissioner in the United Kingdom was created as an officer who would be:

concerned with the investigation of acts of the public service and the traditional role of a member of Parliament as a 'mini-Ombudsman' for his constituents in respect of the same acts of the public service.⁶¹

Hence it was proposed that all complaints should be channelled to the Parliamentary Commissioner only through MP's. Simply, the British Parliament had created an institution, "resting on the principle that Parliament is the protector of the individual against the Executive and the Ombudsman is the weapon in Parliament's armory for this purpose."⁶²

Thus an identity of the Ombudsman with Parliament was established which is absent in Ontario. Furthermore, the Committee emphasized, as a probable hint to Mr. Maloney that:

In Ontario we do not have the benefit of many years of experience nor fundamental principles developed over those years emanating from the Ombudsman's office. ...We do, however, have the role of the member of Parliament in the British tradition. We also have the reaction of the members, individually and collectively to the activities of the Ombudsman for almost three years. That reaction has been mixed. It has yet to cause or contribute to any concept of what the Ombudsman should be in Ontario or how he should relate to the Assembly.⁶³

60. Fourth Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, May 18, 1978, p. 8.

61. Ibid., p. 8.

62. Ibid., p. 9.

63. Ibid., p. 9.

To summarize, the office of the Ombudsman was created in Sweden as a response to the intent that this office act as a guardian of the people's rights, by preventing the abuse of powers by the authorities. Originally the role of the Ombudsman was conceived as that of a prosecutor in proceedings against judges and civil servants. However, soon enough public prosecution came to be substituted with a reminder, the manner of proceeding against faults and negligence which is now used by the JO in the majority of cases.

The existence of the Ombudsman, an individual independent of the bureaucracy, to whom anyone can turn to for redress of grievances, not only acts to sharpen the attention of the authorities when dealing with various cases but also aids in counteracting tendencies toward abuse of powers and arbitrary decisions.⁶⁴

Thus the mere existence of the office serves as a preventive effect and is similarly strengthened by the Ombudsman's power to institute public prosecution for faults and negligence of a serious nature. Though this power is seldom utilized today, for such serious faults appear to be rare, the cases which are prosecuted by the Ombudsman are given extensive coverage in the media and in the Ombudsman's annual report. This serves to bring home the message to the civil service of not overstepping their limits. Similarly, by criticizing errors and reminding administrative agencies

64. D.C. Rowat, op. cit., pp. 40-41. (The Ombudsman)

of the regulations in force, the Ombudsman prevents faulty occurrences without having to resort to public prosecution. Thus the Ombudsman makes a substantial contribution to better administrative practice and this improves the legal security of the citizens.⁶⁵

This chapter has dealt with the institution of the Ombudsman in some detail, as a remedy against the abuse of administrative authority, and an account has been given of the supervision by the Ombudsman in some Scandanavian countries.

It must be remembered that in the final analysis the need for the protection of the individual against administrative abuse by the authorities is not eliminated in any society. The need is always alive. Hence, the need for the Ombudsman is thus explained. Finally, three essential features which argue for its adoption are:

- a) The Ombudsman is an independent and non-partisan officer of the Legislature, usually provided for in the constitution, who supervises the administration;
- b) He deals with specific complaints from the public against administrative injustice and maladministration; and
- c) He has the power to investigate, criticize and publicize, but not to reverse administrative action.⁶⁶

65. Ibid., p. 41.

66. Ibid., p. xxiv.

Chapter 2

History of the Ombudsman's Office
in Ontario

In this second chapter, attention will be turned to a discussion of the origins of the Ombudsman's office in Ontario. An historical survey is needed because very little of a scholarly nature has been written about the office of the Ombudsman in general, and nothing of a scholarly nature has been written about the office of the Ombudsman in Ontario.

We shall also indicate the specific criteria and intentions of the Ontario legislators who created the office. Just as with many other legislative enactments it is important that the intention of the formulators of the legislation be clearly understood. It will be shown that the legislation was too general in describing the boundaries and parameters of the authority of the office and that this failure to do so had the potential to lead to a clash of wills between Arthur Maloney, the first incumbent of the office, the Select Committee on the Ombudsman and the Ministers of the Cabinet. In subsequent chapters we shall detail some specific examples of these difficulties.

Inception of the Ombudsman in Ontario

The first discussion about a Scandanavian-type Ombudsman institution did not arise in the Ontario Legislature until 1962. The issue of, "assisting the individual in coping with the great bureaucracy of our modern government,"⁶⁷ was raised by the Opposition Liberals and the New Democrats. Both parties felt that "deep consideration"⁶⁸ should be given

67. Ontario Debates, Dec. 5, 1962, Mr. MacDonald, (New Democratic Party., York South)

68. Ibid., Dec. 19, 1962, Mr. Thompson, (Liberal)

this question, "because of the ever-growing power of our bureaucracy."⁶⁹

On December 5, 1962, Mr. MacDonald (New Democratic Party) in his concern over the old parties, namely, the Liberals and the Conservatives, decrying the alleged lack of concern of the individual by the socialist parties, emphatically stated that:

It is the socialist parties across the world which are coping with the problem of protecting the rights of the individual in the kind of complicated society we live in today. It is the socialist parties which are taking the lead in bringing such things as, for example, the public defender to defend a person who has no access to defence before the courts. Bringing in Ombudsman.⁷⁰

On December 19, 1962, Mr. Thompson (Liberal), expounded that every government measure should always be considered from the aspect of its intrusion into the private life of the individual citizen. He continued that many people had come to him about unfair decisions on everything from welfare to workmen's compensation and that he often wondered about the many others who had not come to their elected member for some reason or another, perhaps because of their lack of knowledge. Hence, as a result of the many private citizen grievances, he asked that deep consideration be given to the setting up of some sort of grievance commission, as is done in European countries, with the aim of finally establishing our own

69. Ibid., Dec. 19, 1962, Mr. Thompson, (Liberal)

70. Ibid., Mr. MacDonald, Dec. 5, 1962, p. 100. (New Democratic Party, York South)

particular kind.⁷¹

Legislative Debate

However, it was not until 1965 that serious debate and discussion was to take place, at which time Mr. Vernon Singer (Liberal, Downsview) introduced a private member's Bill calling for the appointment of a "Parliamentary Commissioner"⁷² to "investigate administrative decisions and acts of officials of the government of Ontario and its agencies, and to define that Commissioner's power and duties."⁷³ At this time Mr. Singer was involved in assembling a group of lawyers, students, academics and interested laymen, which numbered about one hundred people with the purpose of examining the Attorney-General's (Arthur Wishart) estimates and coming up with a new series of reforms. The institution of the Ombudsman was one such proposal which was accepted and one which made it through the deliberations of this group. During these discussions a model Bill was drafted and submitted by Mr. Vernon Singer, MPP, to the Speaker of the Legislature to be placed on the Order Paper. According to Mr. Singer his draft Bill was "modelled substantially upon the provisions contained in the New Zealand Bill of 1962, which I have attempted to adopt to the mood of Ontario."⁷⁴

71. Ibid., Mr. Thompson, Dec. 19, 1962, p. 460.

72. Ibid., June 3, 1965, p. 3647, Mr. Singer, (Liberal).

73. Ibid., Mr. Singer, (Liberal), Feb. 18, 1965, p. 565.

74. Ibid., Mr. Singer, (Liberal), June 3, 1965, p. 3684.

The Bill was admitted to second reading. During the course of debate on the second reading, Mr. Singer remarked:

The citizen who feels he is aggrieved should have the opportunity to have an impartial official examine his complaint, and a great deal of concern about government and its size and its impersonality could be done away with if there was such a person or such an office available to explain to the apparently aggrieved citizen that he is not too badly aggrieved at all. On the other hand, and we see many of these instances too, if the complaint is warranted the Commissioner would make to the state or to its officials the necessary recommendation so that the situation could be remedied.⁷⁵

Spokesmen on the government side, such as Mr. A.

Carruthers (P.C., Durham), contended that such an office would not only be difficult to control but moreover that it was the members of the legislative assembly themselves who should be the ones to handle citizen's inquiries and complaints. An Ombudsman's office, would not only create an additional level of bureaucracy with which people would have to contend but it would also "impose a buffer or filter between the constituent and his member."⁷⁶

Mr. Singer replied:

The member is limited in his time, in his capacity and in the resources that he has available to him. He has no right other than to ask questions until he is blue in the face...he cannot summon anyone before him. He cannot ask civil servant 'X' to come in and say why you did this. He cannot ask for files. He cannot ask for correspondence.

75. Ibid., Mr. Singer, (Liberal), June 3, 1965, pp. 2647-48.

76. Ibid., Mr. A. Carruthers, (P.C., Durham), June 8, 1965, p. 3847.

And I do not think that an individual member... should have this power.⁷⁷

Mr. Singer concluded that,

if there was a Parliamentary Commissioner and he felt that this type of investigation was worth pursuing and he was given the powers that I outlined in my Act, he would be entitled to get those answers. He would be entitled to summon those civil servants, to put them on oath if necessary and be able to get at the facts and to bring them before the public. This is what is important about this idea and this theory that we are advancing.⁷⁸

Despite additional supporting speeches from Mr. Ken Bryden (N.D.P., Woodbine) and Mr. James Renwick, Q.C., (N.D.P., Riverdale), Mr. Singer's Bill died on the Order Paper.

Royal Commission on Civil Rights

In the next four sessions of the Legislature, Mr. Singer continued to champion the cause of the Ombudsman, but to no avail. The Bill fell on deaf ears. The government declined to take any course of action because it contended that it was awaiting the results of the investigation into the question of the Ombudsman, being carried out as one aspect of the Royal Commission Inquiry into Civil Rights, under the chairmanship of the Honourable J.C. McRuer, a supreme court justice. The Royal Commission was instituted on May 1, 1964 on the recommendation of the Premier, recognizing that the evolution, development and growth of the traditional parliamentary powers of the Legislature and of the administrative

77. Ibid., Mr. Singer, (Liberal, Downsview), June 8, 1965, p. 3842.

78. Ibid., Mr. Singer, (Liberal, Downsview), June 8, 1965, p. 3842.

authority and processes of the Government, give rise to continuing readjustment in the internal structure of society and the need to preserve and protect basic principles relating to the civil liberties, human rights, fundamental freedoms and privileges of the individual inherent in citizenship.^{78a}

The purpose of the Royal Commission was to determine how far there may be "unjustified encroachment on the personal freedoms, rights and liberties of the individual."⁷⁹ The report⁸⁰ released in September, 1969, was "lukewarm on the subject of the Ombudsman."⁸¹ The Royal Commission stated:

We are not convinced that an Ombudsman is one of the most urgent needs in the process of democratic government of the Province. But we do think, to paraphrase the language of Sir Guy Powles (New Zealand's Ombudsman), an Ombudsman would be a useful tool. We cannot put it on any higher basis than that.⁸²

It is the belief of the author of this thesis that the Toronto Daily Star's judgement about the report's "lukewarmness" is subsequently correct as there did not seem to be any noticeable demand for the creation of the Ombudsman's office by the public.

78a. Royal Commission Inquiry into Civil Rights, Report no. 1, vol. 1, 1968, p. 1.

79. Royal Commission Inquiry into Civil Rights, Report no. 1, vol. 1, 1968, p. 1.

80. Ibid., Part 4, Report no. 2, Chapter 92, Sept. 15, 1969.

81. Toronto Daily Star, Jan. 22, 1971, p. 1.

82. Royal Commission Inquiry into Civil Rights, Report no. 2, Chapter 92, pp. 1388-89.

The Royal Commission's reasoning was that the Ombudsman was not a substitute for a proper legal framework which provides adequate substantive and procedural safeguards for the rights of the individual. Hence, lacking the hoped-for endorsement from the Royal Commission Inquiry into Civil Rights, Mr. Singer's sixth bid for the creation of an Ombudsman's office, during the period of the 1970 session of the Legislature, was also unsuccessful. The seventh, eighth and ninth Bills met a similar fate.

Adoption of the Ombudsman Elsewhere in Canada

By the time that Mr. Singer had introduced his tenth consecutive "Parliamentary Commissioner" Bill in 1974, the Ombudsman plan had already been adopted by six of Canada's provinces - Alberta (1967), Saskatchewan (1972), Manitoba (1970), Quebec (1968), New Brunswick (1967), and Nova Scotia (1970).⁸³ Once again, the Bill failed to attract the support of the government.

It was not to be until a year later when the first reference to the Ombudsman occurred in Ontario's Speech from the Throne, on March 11, 1975. The Honourable Pauline McGibbon, Lieutenant Governor, announced:

As a safeguard against the growing complexity of government and its relationship with the individual citizen, the government will establish the office of the provincial Ombudsman - or Ombudsperson - to ensure the protection of our citizens against arbitrary judgement or practice.⁸⁴

83. First Annual Report 1975-1976, The Ombudsman, Jan. 10, 1977, Toronto.

84. Globe and Mail, March 12, 1975.

The customary silence in the crowded legislature was briefly interrupted by Mr. Singer's "solitary desk-thumping."⁸⁵

Why did the government finally decide to implement the office of the Ombudsman after Mr. V. Singer had attempted to do so for a period of almost ten years? Clearly it was because the office of the Ombudsman was an idea whose time had come. Simply, there was a demand for it. A precedent had been set by six of Canada's provinces in adopting the office and it would have been embarrassing for the Ontario government to say no to such a timely proposal. Moreover, it was an election year in Ontario and the proposal for an office of the Ombudsman was an election year "goody."

Adoption of the Ombudsman in Ontario

On May 22, 1975, Premier William Davis in his address to the Legislature expounded on the newly proposed office of the Ombudsman and announced the Appointment of Mr. Arthur Maloney, Q.C., as the province's first Ombudsman:

Mr. Speaker, in the Speech from the Throne on March 11, the government announced its intention to establish the office of Ombudsman for Ontario.

The concept, which has a lengthy tradition in Sweden, has come to be regarded as a basically sound and useful protection and has been adopted to fit various other systems of government, including the parliamentary system as we know it. Some examples are the United Kingdom and New Zealand, as well as other provinces in Canada.

The addition of the office of Ombudsman will add a further safeguard to the rights of the individual which will complement the well-established framework of existing laws that have already made Ontario a leader in the field of civil rights legislation. It has been and still is the policy of this government that the best

85. Ibid.,

safeguards of the rights of the individual lie in good legislation and good rules of procedure for the guidance and direction of those who make decisions in the administrative processes of government. As society and government increase in complexity, it becomes apparent that a number of complaints with regard to administrative matters are not within the ambit of the earlier legislation. Accordingly, we have concluded that if we are to achieve our goal of ensuring the rights of the individual in this area, the office of Ombudsman will be a necessary additional tool to the already extensive programme for the protection of civil rights which exists under the law of this province. Under our proposals, as in all other parliamentary systems, the Ombudsman will have supervisory power over the administration of justice. The principal role of Ontario's Ombudsman will be to investigate decisions, recommendations and acts committed or omitted in the administration of the work of the Ontario government. This he may do either in response to complaints received from an individual or organization or on his own initiative. It will be his job to recommend appropriate action to meet each situation and to inform the complainant of his recommendations. He will be required to make an annual report to the Speaker of the legislative assembly.

These principles are basic to the office of Ombudsman in most other jurisdictions and the Attorney General (Mr. Clement) will within the next two or three days, introduce detailed legislation.

At this time, Mr. Speaker, I am pleased to inform the Legislature that at such time as the necessary legislation is enacted the government will propose for consideration of this House the appointment of one of our most distinguished citizens, Mr. Arthur Maloney, Q.C., as Ontario's first Ombudsman.⁸⁶

After the Premier described Mr. Arthur Maloney as "one of our most distinguished citizens" the Premier continued as follows:

Mr. Maloney who was born in Eganville, Ontario, is from a family renowned for its contributions to the political life of Canada and Ontario. His father was a Federal Member of Parliament, and his brother and grandfather were both members of this legislature. An eminent lawyer, Mr. Maloney himself served as a Member of the

86. Ontario Debates, Hon. William Davis, Premier, (P.C., Brampton), Thursday, May 22, 1975, pp. 2029-2030.

the Parliament of Canada for the Toronto-Parkdale Riding from 1957 to 1962.

Mr. Maloney has been elected five times as a Bencher to the Law Society of Upper Canada and is Chairman of the Society's Professional Conduct Committee. He is a former Director of the Harold King Foundation to assist former prisoners or parolees from penal institutions. He served on the advisory committee on the treatment of offenders to the Minister of Correctional Services and was a member of the Parliamentary Task Force on Policing two years ago. In recent month, Mr. Maloney undertook a review of police complaint procedures for the Metropolitan Toronto Police Commission, the report of which was published last week.

I can think of no more suitable assessment than Mr. Maloney's qualifications for the position of Provincial Ombudsman and the tribute paid him by Saint Dunstan's University in Charlottetown, which conferred on him the honorary degree of Doctor of Laws in 1961. As part of this citation it noted 'his outstanding services to the cause of justice in Canada...generous contribution of talent and time in the interest of education at all levels in our country...(and) gratuitous assistance to the poor at the tribunals of justice.'⁸⁷

The leaders of both Opposition parties not only spoke in favour of the creation of the Ombudsman's office, but similarly in favour of Mr. Maloney's nomination.

The Leader of the Opposition, Mr. Robert Nixon (Liberal, Brant) reiterated the "rather enthusiastic support on all sides for the gentleman who is going to be put forward as the Ombudsman on the recommendation of the government."⁸⁸ Mr. Stephen Lewis (N.D.P., Scarborough West), Leader of the New Democratic Party, commended the Premier on his "splendid appointment."

On May 27, 1975, the Honourable John Clement, Provincial Secretary for Justice, introduced for first reading the Bill

87. Ibid., May 22, 1975, p. 2030.

88. Ibid., May 22, 1975, p. 2032.

to create the office of the Ombudsman for the province of Ontario - Bill 86, An Act to provide for an Ombudsman to Investigate Administrative Decisions and Acts of Officials of the Government of Ontario and its Agencies, the shortened title being The Ombudsman Act, 1975. (see Appendix A)

In presenting the Ombudsman Act the Hon. John Clement who was then the Attorney General said:

With three years of experience behind me, it now appears that there are some areas in governmental administration which are not subject to the mandate of the existing legislative program. It is the view of this government that the office of Ombudsman can serve a useful purpose as a safeguard in addition to and not in place of those safeguards established under the program of civil rights legislation introduced in 1971. (In 1971, the Statutory Powers Procedure Act, the Judicial Review Procedure Act and the Civil Rights Statute Law Amendment Act were enacted. They formed a code of administrative law procedure which was designed to reinforce the rights of the individual whenever they came into contact with the many administrative processes of modern day government within the Provincial jurisdiction. Despite the fact that these laws were enacted in 1971, the Legislature was still dissatisfied with the fact that all the necessary gaps in reinforcing the rights of the individual had not been filled.) ...Accordingly, we have concluded that if we are to achieve our goal of insuring that the rights of the individual are safeguarded wherever they come into contact with the administration, the office of Ombudsman will be a necessary additional tool to the already extensive programme for the protection of civil rights which exists under the law of this province. Therefore, in bringing this bill forward, we are simply recognizing that there are still areas of administration in governmental processes which can be improved and for which there must be some vehicle for redress. The Ombudsman will provide that vehicle for the citizens of this province.⁸⁹

89. Ibid., Hon. John Clement, Attorney General, Hansard no. 57. pp. 2214-15.

On Tuesday, June 10, 1975, Mr. Clement moved second reading of Bill 86. Debate on the second reading continued until June 19, 1975.

The Member from Ottawa-East, Mr. Albert Roy, Liberal, accredited the government's acceptance of the Ombudsman concept to Verne Singer.

I think it is certainly to his credit and through his persistence that the government finally not only saw the wisdom of his legislation, but saw that it was a politically attractive measure as well. I think he deserves a lot of credit and that should be pointed out. 90

Similarly, Mr. Lawlor, (N.D.P., Lakeshore), commended Mr. Singer, "for the fight virtually amounting to a crusade,"⁹¹ that brought the Legislation before the House.

When asked just why he persisted in raising his Ombudsman bill ten times during the course of a nine year period, Mr. Singer replied that it was important enough for him to have done so, since it was imperative that citizens have a method of dealing with the faceless and nameless civil servants. In many cases, people seeking redress for their personal grievances could obtain no facts as to what happened to their particular case. The Ombudsman could be one institution which would aid in alleviating these problems.

Unanimous Support of the Ombudsman Bill

Every member who participated in the debate supported the creation of the office and the nomination tendered by the Government. The calibre of presentations during the debate was impressive since it was obvious that some of the members

90. Ibid., Mr. Roy, (Ottawa East), Tuesday, June 10, 1975, Hansard no. 71, p. 2811.

91. Ibid., Mr. Lawlor, (Lakeshore), p. 2812.

had given much serious thought to the office of the Ombudsman and to their concept of what it was, what it ought to be and how it ought to function. In addition, the members who spoke in the course of the debate made many carefully considered suggestions regarding the organization of the Ombudsman's office and also expressed the hope that in establishing the office, Mr. Maloney would consider and make reference to their remarks.

A particular concern to a number of members and one which was expressed by Mr. Singer⁹² was that the province of Ontario is pluralistic in its makeup; not only is it a component of a country that in its origin was bilingual and bicultural - but it is also made up of people of many races, colours, creeds and occupations. The Ombudsman, Mr. Singer said, should specifically endeavour to ensure that his office is staffed such that those with a linguistic facility in a language other than French or English would be able to communicate with the office in the language of his or her preference.

Mr. George Samis (N.D.P., Cornwall), added:

On behalf of Franco-Ontarians in Eastern Ridings and in my riding, I would hope that all of the services and facilities of the Ombudsman's office would be done in French as well as in English. I realize here in Toronto we have other languages as well. I would hope that within the office

92. Ibid., Mr. B. Singer, (Liberal., Downsview), June 12, 1975, pp. 2880-2881.

there would be French speaking staff to service the complaints and problems of people who can speak English but who are not very comfortable in English and would much rather do it in French since they can explain their cases and their problems much more easily in French. I would hope that we would provide them with that service in their native tongue.⁹³

Furthermore, Mr. Singer, (Liberal., Wilson Heights), and other members expressed the hope that while the statute provides that complaints be in writing, the Ombudsman would not be overly rigid about this particular requirement, but might provide assistance to those who might have difficulty in drafting a formal complaint.

While the Bill says complaints should be in writing, I think he (the Ombudsman) should have available in his office, wherever, it is, people who can write out complaints for other people who want to complain but who can't write properly. A lot of people have difficulty expressing themselves. There are a lot of people who want to complain, who might be unjustly treated, and who will need assistance in drafting a formal complaint.⁹⁴

Another item of concern was that the facilities of the Ombudsman's office should serve the less privileged groups.

Mr. Patrick Reid, (Liberal., Rainy River), explained:

We don't have to get to the lowest common denominator but surely the people who are going to be served by this Bill primarily are the poor people, the more illiterate people, the people who can't afford a high class lawyer such as the Attorney-General was or as some of my colleagues were. The people mainly affected would ordinarily not go to a lawyer because they could not afford that advice.

...They are people who wouldn't know that they should contact their provincial member of parliament to see if he could help them. They might be people who once have been rebuffed by some minor official, who would be frightened of pursuing their case, whether it was just or fair or not.⁹⁵

94. Ibid., Mr. B. Singer, (Liberal, Downsview), June 12, 1975, p. 2880.

95. Ibid., Mr. Reid, (Liberal, Rainy River), June 10, 1975, p. 2842.

Still another recurring theme during the debate was that the Ombudsman should always keep in mind that he is the Ombudsman for the entire province of Ontario. Though his office will be in Toronto, he must always bear in mind that there are millions of citizens of the province for whom Toronto is not easily nor realistically accessible. Accordingly, the Ombudsman and his staff should ensure that they make themselves available to those people who would otherwise find it extremely difficult and inconvenient to visit the Ombudsman's office.

Mr. James Renwick, (N.D.P., Riverdale), recommended that:

it is essential that the Ombudsman be prepared to travel to various parts of the province where he may be needed. It should almost be set up like a circuit so that he visits these places with some regularity. He should have an advance party which could talk to and advise people in these various parts of the province of his coming.⁹⁶

Mr. George Samis, (N.D.P., Stormont), added:

that the Ombudsman should be accessible to people in every region of the province. The hope is expressed that the Ombudsman will not become part of the Toronto bureaucracy and just another wing of the civil service. The Ombudsman should schedule periodic tours of the province and he should ensure that his staff will be able to work as well in French as in English.⁹⁷

96. Ibid., Mr. J. Renwick, (N.D.P., Riverdale), June 12, 1975, p. 2889.

97. Ibid., Mr. G. Samis, (N.D.P., Stormont), June 12, 1975, p. 2886-87.

Mr. Floyd Laughren (N.D.P., Nickel Belt), reiterated that the Ombudsman's office should be accessible. "I think that the office of Ombudsman should be a very, very public office." Furthermore, the member advocated the setting up of regional offices, with at least one being situated in Northern Ontario. There should, in addition be a mobile type of office for the areas in the very northern parts of the province.⁹⁸

Mr. Renwick added that,

With a province of this size I think it is going to be extremely difficult for people who don't live in metropolitan Toronto to understand why his office, for example, is going to be in metropolitan Toronto. He is there to facilitate the public in correcting wrongs of the administration of the province of Ontario, and there are a lot of people outside of Metro.⁹⁹

Still another suggestion which arose out of the debates was that in order to promote greater effectiveness and efficiency in the office of the Ombudsman, consideration should be given to the possibility of setting up or creating special departments which would ultimately have the responsibility for special problem areas such as Workman's Compensation and Corrections. Mr. Floyd Laughren (N.D.P., Nickel Belt), thought it would be prudent "to set up within the Ombudsman's office, specific sections of departments to oversee certain areas where there would be a steady stream of

98. Ibid., Mr. F. Laughren, (N.D.P., Nickel Belt), June 12, 1975, p. 2876.

99. Ibid., Mr. Renwick, (N.D.P., Riverdale), June 12, 1975, p. 2899.

complaints."¹⁰⁰

Moreover, in the course of resolution of problems, Mr. Bernard Newman (Liberal., Windsor-Walkerville) stressed, "that the Ombudsman should always strive to make suggestions to government agencies for the improvement of their methods of dealing with the public."¹⁰¹

Areas Outside the Ombudsman's Jurisdiction

Finally, there were a number of references in the debate to the fact that there would be a considerable number of cases which would be brought to the Ombudsman which would be totally outside his jurisdiction; cases falling outside the provincial jurisdiction, for example. The members were hopeful that complainants within this category would not have a 'deaf ear' turned to their problems, simply because their complaint was outside the Ombudsman's jurisdiction. Mr. Kenwick suggested that the office have a referral service for complaints outside the Ombudsman's jurisdiction:

I am hopeful that the Ombudsman-designate will read what's being said in the debate, but I think it's very important that he not feel constrained about questions such as, 'Who has got standing to come to me with a complaint? He should be open to hear complaints from any sector. He may have to decide ultimately that he hasn't got jurisdiction for other reasons, but not for the purposes of initiating the complaint. Indeed, as I would see it, it may

100. Ibid., Mr. F. Laughren, (N.D.P., Nickel Belt), June 12, 1975, p. 2876.

101. Ibid., Mr. B. Newman, (Liberal., Windsor-Walkerville), June 12, 1975, p. 2884.

very well be, with the multitudinous numbers of proceedings that are available in the province in various situations - whether it is to a licensing tribunal or whether it's under the Judicial Review Procedures Act or under the Statutory Powers Procedures Act, or some other method; or to the courts directly - that in a sense, the job of the Ombudsman is equally not only to investigate complaints which are within his purview, but also to assist the citizen in selecting the proper forum within which his particular complaint can be investigated, if it can be investigated at all.

In cases where he lacks jurisdiction, the Ombudsman should be quick to ensure that people who feel aggrieved are channeled into the proper agency in order that their problem might be dealt with.¹⁰²

Relations Between the Ombudsman and MPP's

One final reference which arose during the course of the debate was that the individual members of the legislative assembly should be able to bring complaints to the Ombudsman directly and similarly, that the members should work with the Ombudsman. Mr. Michael Cassidy (N.D.P., Ottawa Centre) emphasized: "There should be access for MPP's who should be allowed to have standing and should also be able to bring matters directly before the Ombudsman, rather than only indirectly in helping their constituents."¹⁰³

Additionally, Mr. Renwick felt that the Ombudsman should be able to report of the Legislature on the affairs of his office when and as he sees fit.

What I am saying is that the Ombudsman, Mr. Maloney, should not only be able to make his annual report to the assembly, but as he sees fit, make such other

102. Ibid., Mr. Renwick, (N.D.P., Riverdale), June 17, 1975, p. 3089.

103. Ibid., Mr. Cassidy, (N.D.P., Ottawa Centre), June 10, 1975, p. 2850.

reports as he wishes to make.¹⁰⁴

The debate on Second Reading concluded on June 19, 1975. Third Reading took place on June 27, 1975. Then, on July 3, 1975, Bill 86 received Royal Assent, and was proclaimed in force on July 10, 1975. (A copy of this Act is included in Appendix "A").

Appointment of A. Maloney as Ombudsman

On July 4, 1975, the members of the Legislature, by unanimous resolution requested of the Lieutenant-Governor-in-Council, the appointment of Mr. Arthur Maloney, Q.C., as Ombudsman for the Province of Ontario. At the time of Mr. Arthur Maloney's swearing-in, held in the Legislature on October 30, 1975, Her Honour Pauline McGibbon addressed the Speaker of the House:

Mr. Speaker, I am pleased to inform you, and through you the assembly, that I have approved the order passed by my executive council in accordance with the address of the assembly... It is with great pleasure that in the name of Her Majesty, I express thanks to Mr. Maloney for accepting the very onerous responsibility of his new office. This is a very historic occasion in the life of the province and its people, whose interest will be better served because of the Ombudsman's availability to all the citizens of the province.¹⁰⁵

The last word came from the Speaker of the House, the Honourable R.D. Rowe:

104. Ibid., Mr. Renwick, (N.D.P., Riverdale), June 12, 1975, p. 2911.

105. Ibid., Honourable P.M. McGibbon, Lieutenant-Governor of Ontario, October 30, 1975, p. 113.

Today we have inaugurated a new parliamentary office in Ontario. I share with all my colleagues in the House the sure knowledge that the Ombudsman will act with diligence and impartiality. The Legislature wishes him well.¹⁰⁶

With these words, the office of the Ombudsman finally came into existence in Ontario.

In summarizing, we have seen in this chapter that the road travelled in attaining the Ombudsman institution within the province of Ontario has in fact been a long and arduous one. It has been shown that not until 1965 serious debate and discussion of the Ombudsman institution took place, when Mr. Vernon Singer introduced the first of his ten unsuccessful private member's Bills calling for the appointment of a "Parliamentary Commissioner."

Finally on March 11, 1975 the first government support of the Ombudsman occurred in Ontario's Speech from the Throne and was supported by the leaders of both Opposition parties. Then, on July 3, 1975, Bill 86 received Royal Assent and was proclaimed in force on July 10, 1975.

In retrospect, although the Ombudsman Bill was given a thorough debate clause by clause insofar as the practical implications of various key sections were concerned,

there was never, at that time, a clear statement from the Legislature to indicate what role the Ombudsman should play within the system of Government in Ontario or in what context the Ombudsman was expected to perform that role...At the time

106. Ibid., Honourable R.D. Rowe, Speaker of the House, October 30, 1975, p. 118.

the Act was introduced there was a lack of understanding of what an Ombudsman was, how an Ombudsman should function in Ontario, and significantly, what the implications would be of an Ombudsman functioning in Ontario.¹⁰⁷

Hence, when Arthur Maloney was sworn into office in October, 1975, he was virtually left to his own resources to create, organize and structure the Ombudsman's office. More importantly, "he was left to his own resources to interpret the obligations imposed upon him by statute and thereafter to implement those obligations in the performance of his functions."¹⁰⁸

In contrast to the Parliamentary procedure utilized in Ontario, countries such as England and Israel, conducted a Parliamentary study which thoroughly canvassed the significant issues, namely, the necessity of an office and the most appropriate concept of an Ombudsman within the particular parliamentary system, preceded the creation of the Ombudsman's office.¹⁰⁹ This was not done in Ontario.

The Select Committee on the Ombudsman in Ontario, though, through its Chairman did write to all MPP's on December 22, 1976 requesting that they provide the Select Committee with their comments and observations on the role and operation of the office of the Ombudsman. However, the Committee received

107. Fourth Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly on May 18, 1978, p. V.

108. Ibid., pp. V-VI.

109. Ibid., p. V.

responses only from 5 Cabinet Ministers and 11 back bench members of Parliament.¹¹⁰

Subsequently, when the performance of the Ombudsman and his office was scrutinized by the press, the legislature and the Select Committee, they were criticized whenever a matter fell short of or exceeded expectations. The Ombudsman himself conceded that some of the criticism was in fact justified. According to the fourth Report of the Select Committee, though,

That is not the point. Without affording him the benefit of those definitions, interpretations, objectives and some explicit guidance, it is unfair to expect a particular standard of performance of the Ombudsman; to demand that the Ombudsman stay within the bounds of his jurisdiction; and to ask that the Ombudsman develop appropriate relationships within those segments of society touched by his function and at the same time to criticize him and his office for failure to adhere to those expectations. Unless and until the Legislature, with the assistance of this Committee begins to formulate these matters, the Ombudsman will continue to perform in a shadow of a doubt, and the public will ultimately suffer.¹¹¹

Hence, we can see that in fact the legislature was too general in describing the boundaries and parameters of the authority of the office of the Ombudsman and that this failure to do so had the potential to lead to a clash of wills between the Ombudsman, the Select Committee and the Ministers of the Cabinet. In subsequent chapters we shall detail some specific examples of these difficulties.

110. Second Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly on March 28, 1977, p. 111. The replies by party were 3 N.D.P., 2 P.C. and 6 Liberal.

111. Fourth Report, op. cit., p. VI.

Chapter 3
The Role and Function
of the
Ombudsman

The purpose of this chapter will be to examine the role and function of the Ombudsman. Particular attention will be paid to an examination of the Ombudsman's jurisdiction, the formal powers of the Ombudsman, the question of the Ombudsman's relationship with the elected members of the Legislature, the limitations of the Ombudsman's powers and the additional powers which the Ombudsman intends to seek. In doing so, it will be shown that the defects in the legislation, particularly in respect to the powers and the authority of the office of the Ombudsman have led to an increase in tension between the Ombudsman and the Legislature.

Functions of the Ombudsman

The basic function of the Ombudsman's office is set out in section 15(1) of The Ombudsman Act, as follows:

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 or its personal capacity.¹¹²

Simply, The Ombudsman Act, enacted in 1975 provided that the Ombudsman would have the power to investigate any decision or recommendation of any governmental organization of the Province of Ontario either upon receipt of complaints from affected persons or on the decision to conduct an investigation on his own initiative. Generally, complaints can be brought

112. Bill 86, An Act to provide for an Ombudsman to investigate Administrative Decisions and Acts of Officials of the Government and its Agencies, The Hon J.T. Clement, Attorney General, printed by J.C. Thatcher, Queen's Printer for Ontario, Toronto: 1975.

to the attention of the Ombudsman directly by people who feel that they have been aggrieved by the bureaucracy; they can be brought to him by the elected Members of the Legislature; lastly, the Ombudsman can conduct an investigation on his own initiative, providing the case falls within the Ombudsman's jurisdiction.

Employees

Thus, under section 8 of the Ombudsman Act¹¹³ Arthur Maloney was authorized, with the approval of the Lieutenant Governor in Council, to employ such officers and other employees as he considered necessary, and to fix their salaries and remuneration. It was understood that he was not to be a part of the civil service, which in fact was the body that he was set up to survey. He was not answerable to government - he was only answerable to the Legislature since the Ombudsman is a creature of the Legislature and reports directly to it.

The Ombudsman and Provincial Correctional Institutions

Furthermore, the Act provided that letters addressed to the Ombudsman from inmates of provincial correctional institutions and from patients of provincial psychiatric facilities must be forwarded to the Ombudsman's office unopened. It is perhaps ironic, but whereas The Ombudsman Act recognizes the privacy of mail from the above-mentioned institutions there is no corresponding statutory proviso for the privacy of mail received by inmates or patients from the Ombudsman's office. Recognizing that the spirit of the Act demands such protection, this obvious oversight was brought to the attention of the

113. Ibid., pp. 2-3.

heads of the Ministries involved, resulting in a gentleman's agreement to give effect to that spirit until the necessary amendment to the statute could be brought about.¹¹⁴

Immediately following an investigation, and after having formed an opinion that the act, omission, etc., was within section 22(1) of The Ombudsman Act, the Ombudsman can recommend appropriate remedial action,

including reconsideration of decisions, rectification of omissions, alteration of practices, reconsideration of existing law and generally anything which will lead to fair, just and responsive administration.¹¹⁵

However, as opposed to the Swedish Ombudsman, Bill 86 does not grant the Ombudsman the power to prosecute or commence disciplinary proceedings. Though the Ombudsman has no power to enforce his decisions, he can publicize instances in his annual report where action has not been taken. Thus persuasion and publicity remain his key weapons.

Right of Appeal by the Ombudsman to the Premier and Legislative Assembly

Furthermore, if the Ombudsman's recommendations are not pursued, he then may resort to reporting directly to the Premier and ultimately to the legislative assembly. Moreover, according to the Act, the Ombudsman is required to inform complainants of his recommendations to the administration or

114. An Overview of the Office of the Ombudsman, (Toronto: The Ombudsman's office, June 1976), p. 3.

115. Notes For the Hugh C. Arrell Memorial Lecture, delivered by Arthur Maloney, Q.C., Ombudsman of Ontario, Thursday, January 29, 1976, to the School of Social Work, McMaster University.

of his decision not to investigate or not to proceed further with an investigation of a particular complaint. In addition, the Ombudsman is required to report annually upon the affairs of his office to the Speaker of the Assembly, who in turn will cause the report to be presented before the Assembly.¹¹⁶ Arthur Maloney has interpreted this requirement of filing an annual report as a minimum requirement and therefore he is not precluded from filing reports in special cases as was done in the North Pickering Case.¹¹⁷

The Ombudsman and Bureaucracy

Before subsequent investigation of any matter the Ombudsman is required to inform the head of the governmental organization affected of his intention to investigate. The investigation itself is to be conducted in private so as to ensure confidentiality. Moreover, if the possibility exists that the Ombudsman's report or recommendation may adversely affect any governmental organization or person, the Ombudsman must allow the organization or person an adequate opportunity to present the opposing side of the story.

Independence of the Ombudsman

Provisions of The Ombudsman Act regarding appointment, tenure, staffing and financing insure the independence of the Ombudsman. He is appointed by the Lieutenant Governor in Council on the address of the Assembly for a term of ten

116. Ibid., Bill 86, p. 3.

117. For those interested in pursuing this complicated issue, see the extensive reports of this in the two annual reports of the Ombudsman and the four reports of the Select Committee on the Ombudsman.

years. He may employ such people as he considers necessary for the efficient operation of his office and may determine their salaries as well as terms and conditions of employment, subject to the approval of the Lieutenant Governor in Council. This is a necessary and important part of the Ombudsman's provisions since it ensures the independence of the Ombudsman. If, for instance, the Legislature was responsible for staffing, a conflict of interests could invariably arise. His proceedings and decisions are not open to challenge in any court of law, except for lack of jurisdiction, and as long as he carries out his duties and functions in good faith, no civil suit can be brought against him or any of his staff. Simply, the Ombudsman's powers may only be exercised during the course of an investigation which is within his jurisdiction, as set forth in The Ombudsman Act. He would be guilty of an improper exercise of his powers were he to utilize them to attempt to investigate an action made, for instance, in the private sphere, in the course of the administration of a federal governmental organization or likewise, at the municipal level.

General Powers of the Ombudsman

In order to insure his effectiveness, the Ombudsman has been granted broad powers to compel the giving of evidence, to enter upon any premises occupied by a governmental organization and to delegate his powers to persons holding office under him. This last point is important as a pragmatic consideration since the Ombudsman's duties and responsibilities

do not permit him to become intimately involved in the investigation of every case which reaches his office. As regards the testimony of any person given in the course of an inquiry or proceeding before the Ombudsman, his or her testimony is protected by The Ombudsman Act and consequently no prosecution under a provincial act can be brought against any person for complying with the requirement of the Ombudsman respecting the giving of testimony.

The Ombudsman and the Courts

Consistent with the traditional principle that individual rights are best protected by legislation providing procedural safeguards, The Ombudsman Act does not give the Ombudsman jurisdiction where the law has provided a right of appeal, review or some other adequate remedy on the merits of the case, until all appropriate avenues have been exhausted or until the time of appeal has expired.

As regards the question of jurisdiction granted by the Legislature to the Ombudsman, it is one which not only concerns the Ombudsman and his staff, but similarly concerns every citizen of Ontario. However, since the inception of the office, it has become more than evident that the parameters of the Ombudsman's power are virtually unknown to the general public. Therefore, I will outline in as simple terms as possible, the jurisdiction of the Ombudsman of Ontario.

Restrictions on the Ombudsman's Jurisdiction

Generally, anyone with a grievance against the provincial government can ask for a free, thorough and impartial assess-

ment by the Ombudsman. However, the Ombudsman cannot move beyond the sphere of provincial affairs, accept complaints until all other avenues of appeal have been tried, or make binding decisions.

The Ombudsman's jurisdiction, however, is narrowed by section 14 of The Ombudsman Act which states that:

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.¹¹⁸

In essence, according to section 15 (4) (b), what this means is that the powers of the Ombudsman do not apply to the courts, judges, cabinet and cabinet committees or to any legal advisor to the crown. Similarly, as was already mentioned, the Ombudsman is precluded from investigating a decision, recommendation, act or omission where there is a statutory 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 tribunal constituted by or under any Act until that right of appeal or objection or application has been exercised or the time for its exercise has expired.¹¹⁹

Discretionary Powers of the Ombudsman

Furthermore, the Act also grants certain discretionary powers to the Ombudsman in that he may refuse to investigate a matter further if it appears to him that under the law or existing administrative practice, there is an adequate remedy for the complaint, whether or not the person has availed himself of it, or that, having examined all the pertinent

118. Ibid., p. 4.

119. Ibid., p. 4.

circumstances of the case, further investigation is totally unnecessary. Also, the Ombudsman is given the discretion of either not deciding to investigate a particular case at all, or deciding not to investigate further, if the complaint relates to a matter of which the complainant has had knowledge for more than twelve months or if, in the opinion of the Ombudsman, the subject matter is trivial, frivolous or vexatious or not made in good faith, or if the complainant does not have a sufficient personal interest in the subject matter of the complaint.¹²⁰

One phrase in section 1 of The Ombudsman Act, on which the entire question of the Ombudsman's jurisdiction is hinged is the term "governmental organization" and it is defined in the Act in section 1(a) where: "governmental organization means a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."¹²¹

Determination of Jurisdiction

When a complaint is made against a particular body a determination must be made as to whether or not it is within the Ombudsman's jurisdiction to investigate the complaint. While the jurisdictional determination is relatively simple where the organization complained of is a board or commission such as the Ontario Relations Board or the Ontario Police

120. Ibid., p. 5.

121. Ibid., p. 1.

Commission, the question of whether such bodies as the Ontario Educational Communication Authority and the Alcoholism and Drug Addiction Research Foundation are governmental organizations raises complicated matters of legal research.

For example, The Law Society of Upper Canada is clearly not a ministry, commission or board of the Government of Ontario, and an analysis of The Crown Agency Act, The Law Society Act, and relevant case law shows that it is neither an administrative unit nor an agency of the Government, despite its responsibilities for administering the Ontario Legal Aid Plan.¹²²

In each particular case researched by the Research Directorate, a memorandum is retained on the subject for a Memoranda of Law Book. These memoranda enable the Ombudsman's staff to determine jurisdictional questions where a matter has been previously considered. Such a procedure is necessary, for the Legislature did not provide the Ombudsman with a list of Ontario's governmental organizations.

Use of Courts to Determine Jurisdictional Questions

From the aforementioned cases we can see for ourselves that the entire question of determining what is and what is not a Crown Agency is quite a complicated case. In drafting The Ombudsman Act 1975, the Legislature was fully aware that it would not always be possible or desirable for the Ombuds-
122. First Annual Report, 1975-1976, The Ombudsman, Toronto, Ontario, January 10, 1977.

man to determine definitively whether or not he had jurisdiction in a certain matter. Therefore, it provided the Ombudsman with an avenue of access to the courts of Ontario on questions of jurisdiction. Section 15(5) provides that:

If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.¹²³

Similarly, section 24 of the Act provides an alternative route to the courts on jurisdictional questions, stating that:

no proceeding of the Ombudsman shall be held 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.¹²⁴

Simply, the Ombudsman's proceedings and decisions are not open to challenge in any courts of law, except for lack of jurisdiction. As of yet, Ontario's first Ombudsman has not approached the Supreme Court for a declaratory order or for any other remedy since he assumed the duties of the Ombudsman. However, an application for a declaration in respect of the Health Disciplines Board is pending.

Specific Powers of the Ombudsman

Let us now examine the types of powers that have been granted to the Ombudsman. Theoretically, the Legislature has granted the Ombudsman as set forth in The Ombudsman Act 123. Ibid., Bill 86, p. 4.

124. Ibid., pp. 2-4.

express powers, powers which are explicitly provided for by the Act. However, we must also consider the powers which, although they have not been explicitly provided by the Act, are nevertheless implied. First let us deal with the Ombudsman's express powers.

Collectively, the express powers which have been given to the Ombudsman by the Legislature are the formal powers, "which the Members of Parliament, in their wisdom, thought that the Ombudsman might need to carry out his function as prescribed by the Ombudsman Act."¹²⁵

These powers include:

- (a) The power by summons to compel attendance of any complainant, any person who is an officer or employee or member of any governmental organization or any person who in the Ombudsman's opinion is able to give any information relating to any matter that is being investigated by the Ombudsman;
- (b) The power to compel the production of documents by summons or otherwise from any of the above-mentioned persons;
- (c) The power to administer an oath to and examine such persons;
- (d) The power, upon notice, to enter upon any premises occupied by any governmental organization and inspect the premises and carry out any investigation within the Ombudsman's jurisdiction;

125. Speech on "The powers of the Ombudsman and their judicious use", given by Mr. Maloney to the Canadian Regional Meeting of the International Ombudsman Conference on September 8, 1976, at Edmonton, Alberta., p. 2.

- (e) The power to hear or obtain information as the Ombudsman thinks fit, including the power to hold a hearing;
- (f) The power, at any time during or after an investigation, to consult any Minister who is concerned in the matter of the investigation;
- (g) The power to refer the matter to the appropriate authority if, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or of misconduct on the part of any officer or employee of any governmental organization.¹²⁶

From this, there would appear to be little doubt that the Ombudsman's powers make him very unique. By delineating the above "express powers" we can see for ourselves that the Ombudsman does in fact differ from the traditional methods of handling grievances but most importantly, that he possesses certain advantages over these methods. The greatest single advantage is the principle of impartial investigation. Although the Ombudsman is an officer of the Legislative Assembly, he is a totally independent figure free from the entanglements of any governmental administration.

The members of the legislative assembly could have in theory conferred these extensive powers upon themselves rather than on the Ombudsman, had they so wished. But the result of each member of the Legislature having these specific

126. Ibid., Bill 86, pp. 6-7.

powers, to enter government offices, seize and appropriate files, hold hearings etc., would create an unimaginable kind of chaos. Hence, the Legislature, in its wisdom collectively decided to confer the above-mentioned powers on an Ombudsman, who as an officer of the Legislature, would be responsible directly to it, and would exercise these powers in trust for all the members of the Legislature, "the beneficiaries being the citizens of the province."¹²⁷

The Ombudsman as a Creature of the Legislature

Before proceeding with our discussion of the Ombudsman's powers, let us explore more fully the most pertinent question of the Ombudsman's relationship with the elected Members of the Legislature. First and foremost the Ombudsman was created by the Legislature. The government did not appoint him. The government submitted the nomination of Arthur Maloney to the Legislature and his appointment was made unanimously by them. The Ombudsman then, is a functionary of the Legislature's making. He is answerable and responsible to them. His annual Report is to them and his budget is approved by them. He is removable at any time for cause, for example, if he neglects to perform the functions of his office, by the Lieutenant Governor in Council on the address of the assembly.

The Relationship of the Ombudsman and the Legislature

The nature of the Ombudsman's relationship with the

127. Ibid., Speech on "The powers of the Ombudsman and their judicious use.", p. 4.

Legislature is even further manifested by reason of the fact that the Premier, at Mr. Arthur Maloney's request, granted office facilities in the Legislative Building itself, so that the Ombudsman's office would be readily accessible to all the Member's of the Legislature and to any person who might come to Toronto to visit their particular member and who wished to arrange a meeting either with the Ombudsman or with a member of his staff. However, the main offices are separate from Queen's Park, illustrating the separateness from the Legislature and the bureaucracy.

It follows therefore, that each of the elected members is an Ombudsman in his own right. They are the Ombudsman's fellow Ombudsmen. Consequently, the Ombudsman's office should be available to each of the elected representatives in assisting their own particular constituency problems. Within the first year of the Ombudsman's existence, this purpose became increasingly apparent to the elected members as they began to turn to the office for assistance in the resolution of their problems. Within the first reporting period of the Ombudsman from May 22, 1975 to July 10, 1976, 433 complaints emanated from this office and it was estimated that 134 of these complaints were sent through the elected members. With further evolvment of the office, many hours of time will be saved for the elected members as they will be able to devote more of their time to pressing matters such as service on house committes, to studying the legislation before the House and in the end to service of their own constituents.

Volume of Complaints

Since the volume of business of the elected member is invariably going to increase in magnitude, it will become increasingly important that he have the assistance of the Ombudsman to help him resolve the ever increasing number of problems which will be brought to his attention. It is the Ombudsman's personal desire to aid the elected member, since it was the intention of the government and the intention of the Opposition parties, "that the creature they brought into being, was set up to serve the people and them (the elected member) in their efforts to serve the people."¹²⁸ This is in fact what the Ombudsman is attempting to do.

Thus, it is of the utmost importance that we discard entirely the myopic view that the Ombudsman is nothing more than "the little man's muscular ally in the bullying of big government,"¹²⁹ because the success of the Ombudsman cannot solely be measured by the frequency of his criticisms of administrators. Simply, "it is not the role of the Ombudsman to achieve daily sensations by exposing arrogant administrators, bungling bureaucrats and oppressive officials."¹³⁰ Rather, the Ombudsman's recommendations or admonitions serve to correct administrative malpractices and to change laws

128. Speech delivered by Arthur Maloney, Q.C., Ombudsman, to the London Chamber of Commerce, Friday March 19, 1976, p. 6.

129. Ibid., Notes for the Hugh C. Arrell Memorial Lecture, p. 12, (see no. 4).

130. Ibid., p. 12.

and regulations, which in their application serve injustice, and secondly, prevent their recurrence. In this sense the Ombudsman's recommendations serve as a guideline for government officials. It is precisely in this that I see the unique role of the Ombudsman. By preventing the recurrence of administrative injustices, he improves the administration of the province, by providing both direct and indirect protection against unfair administrative decisions and practices. Thus, parallel with his function of providing Ontario's citizens with an office where they can lodge their particular complaints and through which they can seek redress, the Ombudsman's role has become one of promoting better public administration.

Collectively, Arthur Maloney's role and function serve to equal his mandate and that mandate is, "to arrive at the truth, to arrive at equity, and to use reason, criticism, persuasion and publicity to see that they are implemented."¹³¹

Now that the Ombudsman's relationship with the Legislature and his role and function have been established, let us again return to our discussion of the Ombudsman's formal powers. As we have established, it is not in the Ombudsman's interest to utilize his powers simply as an exercise in muscle flexing, for such a folly realistically would make it extremely difficult not only to obtain the desired facts about a particular case but could also seriously jeopardize

131. Ibid., p. 12.

any future communication and relations with the government and even the Legislature. In the end this could even seriously impair the credibility of the office itself.

According to Arthur Maloney, "the formal powers of the Ombudsman should not be lightly or impetuously exercised, and each power should be used with a definite purpose in mind."¹³² Rather he should utilize them judiciously and he must be prepared to defend his particular course of action, for he is just as likely to be criticized for not exercising certain powers which are available to him as for resorting to these powers.

North Pickering Controversy

For example, in the celebrated North Pickering case the Minister of Housing rejected the Ombudsman's report and subsequent recommendations stating that one of the reasons for rejecting the Ombudsman's findings was that the claimants in the case should have been required to give their evidence under oath pursuant to the Ombudsman's powers under The Ombudsman Act. Simply, great significance was attached to the fact the complainants were not examined under oath. However, it is clearly evident from the Act that the Ombudsman can in fact choose the most appropriate method of investigation in each case.

This particular example is important in the fact that it

132. op. cit., Speech on "The powers of the Ombudsman and their judicious use.", p. 4.

is absolutely imperative that the Ombudsman give careful consideration to the exercise and non-exercise of his formal powers, for whether he utilizes a given power or not, he must in the end be fully prepared to defend the course of action taken. Furthermore, the significance of the North Pickering Case lies not only in the fact that this was the first case to be referred to the Premier and then to the Legislature, but also it was paramount in the direct establishment of the Select Committee of the Legislature which was given jurisdiction not only to review the North Pickering Case but also to deal with all of the Ombudsman's future reports, thereby giving the Ombudsman an additional direct and effective channel of communication with the Legislature.

The Appointment of the Select Committee on the Ombudsman

On July 15, 1976 it was moved in the Legislature that a Select Committee of the House be appointed, its terms of reference being:

to review from time to time the reports of the Ombudsman as they become available, to report thereon to the Legislature, and to make such recommendations as the Committee deems appropriate; reports and recommendations of the Committee to be placed on the Order Paper for discussion after presentation.¹³³

The committee was to consist of eight Members of the Provincial Parliament.¹³⁴

133. Op. cit., First Annual Report, p. 573.

134. The Select Committee was to consist of eight members of the provincial parliament, as follows:
 Mr. James Renwick, Q.C., Chairman, (N.D.P., Riverdale),
 Mr. Larry Grossman, Vice-Chairman, (P.C., St. Andrew-St. Patrick),
 Ms. Gillian Sandeman, (N.D.P., Peterborough),
 Mr. Michael Devison, (N.D.P., Hamilton Centre),
 Mr. William Hodgson, (P.C., North York),
 Mr. Keith Norton, (P.C., Kingston & the Islands),
 Mr. Hugh O'Neil, (Liberal., Quinte),
 (continued)

The particular action taken by the Ombudsman in the North Pickering Case, namely, his submission of a copy of the report and recommendations to the Premier and thereafter to the Assembly, is often referred to as his "ultimate sanction,"¹³⁵ because in fact it focused public attention on a very important and controversial subject. Moreover, the creation of the Select Committee of the Legislature to deal with all of the Ombudsman's future reports and subsequently report thereon to the Legislature was a very practical innovation,

in that the Committee provides a ready forum to study and deal with difficult cases. This gives the Ombudsman a direct and effective channel of communication with the Legislature as a whole and will enable the Legislature to deal more effectively with all future reports than might otherwise have been the case.¹³⁶

At this point let us once again return to our discussion of the Ombudsman's powers. A frequently asked question is whether or not there are certain limitations upon the Ombudsman's powers and if so, what are they?

Mr. Richard F. Ruston, (Liberal, Essex North), Counsel to the Select Committee is John Bell of the law firm of Shibley, Righton & McCutcheon.

135. ibid., First Annual Report, p. 577.

136. ibid., p. 12.

First and foremost it must be remembered that the Ombudsman may only exercise his powers during the course of an investigation which is within his jurisdiction as is set forth in The Ombudsman Act. Therefore, he would be guilty of improperly exercising his powers if and when he was to attempt to investigate an act or omission in the private sphere or in the course of an investigation relating to the administration of a federal governmental organization. Similarly this would also hold true at the municipal level, as Section 24 of The Ombudsman Act provides that:

No proceeding of the Ombudsman shall be held 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.¹³⁷

Access to Information and Documents

Still another potential restriction upon his powers lies in the section dealing with the Ombudsman's access to information and documentation during the course of an investigation. Section 21 of the Ontario Act provides that upon certification by the Attorney General, the giving of any information or the answering of any question or the production of any document or thing which,

- (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.¹³⁸

137. Ibid., Bill 86, p. 10.

138. Ibid., p. 8.

During the Ombudsman's first year of operation there was at least one such certificate sought by a Ministry. As of yet no certificates have been issued by the Attorney General of Ontario.

Furthermore, The Ombudsman Act purports to restrict the application of the Crown prerogative to withhold documents or information in the public interest. Section 21(2) provides that:

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.¹³⁹

Generally, the Ombudsman is not capable of functioning properly if he is denied access to administrative files. True, it is necessary to prevent public disclosure and accordingly the Ombudsman is sworn to secrecy. In order to protect civil servants from the publicity of unfair allegations, investigations are conducted in private. The Ombudsman may thought disclose in any of his reports such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusion and recommendations.¹⁴⁰ Though he has no power to enforce his decisions, the Ombudsman can publicize instances in his annual reports where action has not been taken on his recommendations. Thus, publicity and persuasion remain key weapons. An important aspect of the Ombudsman's work is that he, "exonerates civil servants in

139. Ibid., p. 8.

140. Ibid., p. 3.

cases where unfair accusations have been made, and thus supports the public's trust and confidence in the civil service."¹⁴¹

Attempt to Widen the Power of the Ombudsman

A power which our Ombudsman does not presently possess but one which he intends to seek by amendment to the Act is the power and authority,

to make public a report where neither the complainant nor the governmental organization had chosen to do so as is their right, yet where I consider it to be in the public interest or in the interest of any person or authority that the contents of the report be made known.¹⁴²

What prompted the Ombudsman to seek this additional power was a case which he investigated in the summer of 1976. A youth made an allegation to the Ombudsman's office that he had been homosexually raped in one of Ontario's correctional institutions by two fellow inmates. After completing the investigation of this complaint the Ombudsman sent his report to the complainant and also the the Ministry of Correctional Services. The Ombudsman's conclusion was that the incident had never taken place, and as a result the particular institution was exonerated as well as the custodial officers and the two accused inmates. However, the Minister of Correctional Services refused to publicize the Ombudsman's findings on the ground, "that the language was too explicit and he did not

¹⁴¹. D.C. Rowat, The Ombudsman Plan, (Toronto: McClelland & Stewart Ltd., 1973), p. 101.

¹⁴². Op. Cit., see no. 13, p. 14.

wish to release to the public 'K-rated' information."¹⁴³

The Ombudsman could not release the report because of the confidentiality provision contained in the act.

The Hon. J.R. Smith, Minister of Correctional Services stated that publicizing the report would not assist in the rehabilitation of the complainant. But let us ask what about the rehabilitation of the two accused persons who were alleged to have assaulted him? Were they not also entitled to be exonerated?

The Ombudsman was thus led to seriously question the decision of the Minister in withholding the release of the report since he felt it was unfair to the penal institution, to the guards and to other Ministry officials. As such, if one of the most important functions of the Ombudsman is to enhance public confidence in the administrative arm of government, clearly then, this purpose cannot be achieved,

where a Minister of the Crown chooses not to make public a report prepared by the Ombudsman which not only finds the complaint to be unsupported but absolves and exonerates Ministerial employees and officials from any wrongdoing.¹⁴⁴

Implied Powers of the Ombudsman

In this last section let us address ourselves to some of the implied powers of the Ombudsman. One of the Ombudsman's most important powers is the implicit right to request addi-

¹⁴³. Ibid., p. 14.

¹⁴⁴. Ibid., p. 15.

tional powers or jurisdiction in his annual report to the Legislature. On July 14, 1976, Stephen Lewis, while a guest on the CBC telephone call-in show, "Radio Noon", made these comments:

One of the useful things about the Ombudsman's office in Ontario, and I suspect we will see it in his reports, is the Ombudsman's right to make recommendations to the Legislature about the expansion of his own power. And I suspect that one of the things that Arthur Maloney will do, and do early, is where he runs into incidents of frustration...he'll simply set them out for the Legislature in the report and say, 'look, I think my power should be expanded in this area so that I can handle such cases.' And if it is reasonable, I think he'll get the power.¹⁴⁵

Arthur Maloney fully intends to take advantage of the "power" which Mr. Lewis recognized and not only seeks to make reports public, (as has been mentioned earlier), but also seeks to enlarge his jurisdiction to include the authority to investigate cases at the municipal level and cases that do not fall into the definition of a "governmental organization" contained in the Ontario Act, yet in which these particular authorities are substantially funded by the public purse, such as universities, Boards of Education and public hospitals.

Informing Citizens of Government Information on Them

Still a further arena which merits discussion, deals with the power of the Ombudsman to impart to the citizen information

¹⁴⁵. Ibid., p. 16.

concerning him or her which the government has previously withheld from them. It is Arthur Maloney's opinion,

that the public right to know is a necessary aspect of any democratic government which purports to be run not only for the people but by the people. There are those who contend that government secrecy of this type which we have recently witnessed in our country, is just one more unfortunate consequence of an ever-burgeoning bureaucracy which seem to be necessary evils for any democratic government. However, it would seem that the proportions of this problem have now reached unacceptable dimensions and that such a facile rationalization is no longer defensible.¹⁴⁶

Governments at all levels seem to feel that any or all government information must remain privileged and thus unavailable to the citizens unless specially categorized for public release. For example, the Provincial Ministry of Energy was reluctant to release information concerning prior government knowledge of excessive radioactivity levels in the town of Port Hope, Ontario.

Furthermore, other matters which have been alleged of being withheld by the government from the public include the results of numerous consumer tests conducted in such matters as snowmobile safety, the relative usefulness of pharmaceutical products and mechanical flaws in automobiles. As we are aware,

these are investigations which cost the taxpayers millions of dollars, and it is put forward by many that not to make public the findings of these investigations runs contrary to the very purpose for which they are undertaken.¹⁴⁷

146. Ibid., p. 17.

147. Ibid., p. 18.

Government Secrecy

Hence, this policy of government secrecy in Canada tends to render our legislators "somewhat less progressive" than for example, their counterparts in the United States, where, since 1974, freedom of information legislation has been in force, and in Sweden, where the 150 year old policy of the Swedish government has rendered all documents available for public review and scrutiny, unless, with justification, they are specifically declared otherwise.¹⁴⁸

One might be able to discount these comments if it were not for the findings of the Task Force on Government Information Services that confirmed a well known suspicion that:

the press, the public, opposition political parties, and even government back-benchers frequently find that they have only the most inadequate means for getting information about administrative activities of the government. Without adequate knowledge of what is going on, Parliament and the public cannot hope to call the government to account; and the administration's monopoly of information ensures that many members of Parliament are unable to offer informed criticism.¹⁴⁹

However, it has only been recently that any sort of freedom of information legislation has been proposed in Canada, both at the provincial and federal levels. In Ontario, Donald MacDonald (N.D.P., York South), introduced a Private Member's Bill into the legislature proposing the right to information legislation, and at the federal level, Gerald Baldwin (P.C.,

148. Ibid., p. 18.

149. Task Force on Government Information Services, "Administrative Secrecy in Canada," in M. Kernaghans & A. Mills, eds., Public Administration in Canada, (2nd edition, Methuen Publications, Toronto, 1977), p. 428.

Peace River), has had his proposed legislation "approved in principle" in 1975 by the Federal Cabinet. As of March 1, 1978 a Bill regarding the right to information comes into effect in Ontario.

However, until the time that both pieces of legislation come into effect, The Ombudsman Act will continue to protect the public's right to know, since it makes provision for the Ombudsman, upon completion of an investigation within his jurisdiction, to inform the complainant of the result of his investigation and recommendation, where appropriate.¹⁵⁰

In this chapter we have examined the role and function of the Ombudsman. But from previous chapters we have also learned that although there was a clause by clause debate as to the practical implications of various key section of The Ombudsman Act, the Legislature failed to issue a clear statement as to indicate what role the Ombudsman should play within the system of Government in Ontario or in what context he was expected to perform that role.

Moreover, when the Ombudsman was sworn into office in October, 1975, he was left to his own resources to create, organize and structure his office. But more importantly, Mr. Maloney was left to his own resources to interpret the obligations imposed upon him by statute and thereafter to implement those obligations in the performance of his own functions. Simply, Arthur Maloney was left to sink or swim.

The first sign of tension developed during the celebrated North Pickering Case, where the Minister of Housing rejected the Ombudsman's report and subsequent recommendations.

150. Ibid., Bill 86, p. 10.

Consequently, the Ombudsman was forced to refer the case to the Premier and then to the Legislature. It was only after this incident that it was moved in the Legislature that a Select Committee on the Ombudsman be appointed. The date was July 15, 1976, almost 14 months after the Ombudsman had been in existence. One of the reasons for rejecting the Ombudsman's findings was that the claimants in the case should have been required to give their evidence under oath pursuant to the Ombudsman's powers under The Ombudsman Act. Simply, great significance was attached to the fact that the complainants were not examined under oath. However, it is clearly evident from the Act that the Ombudsman can in fact choose the most appropriate method of investigation. It is fortunate that such an incident finally brought the Legislature to its senses and was responsible for the creation of a Select Committee, which would interpret the concept of the Ombudsman in the context of our system of government.

First and Second Reports of the Ombudsman

Most of the First and Second Reports of the newly appointed Select Committee appear to be quite uncritical of the activities of the Ombudsman to date. For example, they state:

That the Ombudsman and his staff were able to accomplish all that is referenced in the Report is a testimony to the effort, dedication and enthusiasm of the Ombudsman and each and every member of his staff. In a relatively short period of time the Ombudsman has created and oversees an operation performing Ombudsman

functions unequalled in substance and volume in the world.¹⁵¹

The rosiness of the report in all aspects is apparent until page 52 of the Second Report where the Committee mentions that on March 22, 1975, the Ombudsman stalked out of a committee meeting. The Committee mentions that it regrets the conduct of the Ombudsman in walking out of the Committee's meeting even after they had requested that the Ombudsman remain. The Committee then proceeds to chastise Mr. Maloney severely. They state:

This was an ill-advised act displaying an unfortunate attitude and a misunderstanding of the role of this committee and its obligation to report to the Assembly...There must be an on-going relationship based on mutual respect and understanding between the Ombudsman and the Committee...The Committee hopes that it will not occur again.¹⁵²

The storm clouds have finally appeared.

Criticisms of the Ombudsman in the Fourth Report

Nothing untoward appears in the Third Report, but in the Fourth and last Report to date, further warnings were issued to Arthur Maloney. On page 1 of the Fourth Report it states:

All Ombudsmen perform their duties, and oversee the operation of their office, with a clear understanding that they must always in the performance of their respective functions retain the confidence of Parliament...They accept a long standing principle of Parliament that where confidence in the Ombudsman as a person has been lost, immediate dismissal or

151. Second Report of the Select Committee on the Ombudsman tabled in the Legislative Assembly, March 28, 1977, p. 5.

152. Ibid., pp. 52-53.

resignation follows.¹⁵³

Furthermore, the Committee states:

The incumbent Ombudsman in Denmark, England and Scotland...have taken a very tentative, cautious and thorough approach to the performance of their functions. They feel very strongly that respect for the office is earned by a high standard of performance above all else. In that way, they are "drafting" traditions of their respective offices for their successors.¹⁵⁴

In Denmark,

The country's first Ombudsman carried out his functions with extreme caution. He recognized the institution was new to the public, the public service and Parliament and that its acceptance and effectiveness would depend upon confidence and respect earned and not created.¹⁵⁵

We have cited the above passages from the Fourth Report and have underlined certain key words in them in order to demonstrate that the Select Committee was attempting to lay down criteria of behaviour and performance which the Legislature had failed to provide. The Committee was clearly warning Arthur Maloney that he as an individual "person" was rapidly losing the confidence of the Legislature. In citing the behaviour of the Ombudsman in Denmark, England, and Scotland, the Committee was cautioning Mr. Maloney to be more "tentative", "cautious" and "thorough" in order to regain or earn the "respect" of the Legislature. Finally, the Committee praises Denmark's Ombudsman for carrying out his function with "extreme caution".

153. Fourth Report of the Select Committee on the Ombudsman tabled in the Legislative Assembly, May 18, 1978, p. 1.

154. Ibid., p. 2.

155. Ibid., p. 7. (The underlined words are "my emphasis")

The Select Committee Clashes With the Ombudsman

If the Select Committee reflects the attitude of the Legislature as a whole, and there is no reason to believe that it does not, then Mr. Maloney is being told quite clearly that he must curtail his activities and be more responsive to the limited view that the Legislature has of the scope and activities of his office.

This clash over the interpretation of the scope of authority of the office of the Ombudsman is reflected in the second Report of the Ombudsman where Mr. Maloney recommended that his jurisdiction be expanded to cover complaints respecting local and municipal governments. The organizations included in this recommendation were the municipal police forces, private hospitals, universities, Children's Aid Societies and Boards of Education. The Ombudsman did not foresee that this increase of his jurisdiction would lead to any appreciable increase in the size of his operation.

The Select Committee was of the opinion however, that if the Ombudsman's jurisdiction was expanded in this particular area, a profound effect on the Ombudsman's office as presently constituted would result, and the Ombudsman's present workload, backlog of cases, fiscal requirements and staff size of the office all would at least increase by one third (approximately).

Accordingly,

the Committee defers any formal comments and recommendations to the Legislature on this matter until such time as studies are completed by others referable to the operation and organization of the Ombudsman's office and until the Committee has had an opportunity of studying in person, other jurisdictions, who have had, for a number of years, the experience of processing complaints in this category.¹⁵⁶

Moreover, the Ombudsman's recommendation to make public any of his reports if he feels it is in the public interest to do so, was also not favourably received. The Committee stipulated that it was not satisfied at the time that an amendment in accordance with the Ombudsman's recommendation was appropriate, and that it wished to reserve further consideration for the matter.

Thus we can see for ourselves that in fact the defects in the legislation, particularly in respect to the powers and authority of the Ombudsman have led to an increase in tension between the Ombudsman and the Legislature.

Thus far in this chapter we have examined the role and function of the Ombudsman, the question of the Ombudsman's jurisdiction, the formal powers of the Ombudsman, the question of the Ombudsman's relationship with the elected Members of the Legislature, the limitations of the Ombudsman's powers and the powers which he intends to seek. From the information which we have gleaned, there would appear to be little doubt that the Ombudsman is a rather unique machinery, which differs substantially from the traditional methods of hand-

156. Third Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, Nov. 25, 1977, pp. 14-15.

ling grievances but most importantly, possesses certain advantages over these methods. At this point, let us take a closer look at the actual functioning of the Ombudsman's office.

Chapter Four

Organization & Overall Operation

of the Office of the

Ombudsman

In this chapter a preliminary study will be made of the overall organization and operations of the office of the Ombudsman. First it will be determined whether or not the Ombudsman gave consideration and study to the contributions of the various members of the Legislative Assembly. Secondly, we will attempt to give a detailed picture of the intricate machinery of the office of the Ombudsman by following the procedure(s) used to process a complaint which passes through the Ombudsman's office. Thirdly, we will examine the Ombudsman's decentralized operation by looking individually at each of the eight Directorates, each charged with the responsibility for a specific aspect of the total Ombudsman function. And lastly, we will examine the necessity for public and private hearings.

Such a procedure is necessary if one wishes to understand and examine how the Ombudsman carries out the responsibilities with which he is charged by the Legislature. This rather detailed study of the administration of the office provides the reader with a means of judging the effectiveness of the Ombudsman in performing his duties.

First Citizen Complaint

Within weeks of the Ontario government's announcement, in the Speech from the Throne on March 11, 1975, of its intention to create the office of the Ombudsman, and even before the nomination of Mr. Arthur Maloney as the province's first Ombudsman, was submitted the first complaint from a

citizen had been received. This first complaint was to mark the beginning of an avalanche of written and verbal requests for the Ombudsman's help.

When on May 22, 1975, Mr. Arthur Maloney was appointed as the province's first Ombudsman, it was originally intended that he be officially sworn in at the beginning of September, 1975. The decision to call a provincial election, however, intervened, and his swearing in was postponed until October 30, 1975. In the period between May 22, 1975 and October 30, 1975, Arthur Maloney unofficially executed the function of the Ombudsman.

Avoiding Faceless Bureaucratic Mold

Faced with the almost instantaneous response from Ontario's citizens towards the Ombudsman concept, Arthur Maloney embarked on the immediate task of organizing the Ombudsman's office to ensure that all the complaints would be handled efficiently and expediently as possible. At the same time, Arthur Maloney,

was conscious of the need to avoid developing a structure which would appear to be as faceless as the impersonal bureaucracies my office was designed to oversee. On the other hand, it had to be strong enough to endure and to stand the test of time.¹⁵⁷

Thus, in the first year of operation, Arthur Maloney was faced with a dual responsibility -

157. First Annual Report of the Ombudsman, 1975-1976, Toronto, p. 5.

the responsibility of dealing with thousands of requests for help on the one hand and creating out of nothing and otherwise structuring the office of the Ombudsman, on the other.¹⁵⁸

Furthermore, immediately after being nominated as the province's first Ombudsman, Maloney commissioned a study of Ombudsman operations around the world so that he could build on a foundation already in existence and subsequently adapt that to the specific needs of Ontario. This blueprint would ultimately give Ontario and its people the very best Ombudsman operation anywhere in the world.

Hiring of Initial Staff

But there were many more immediate problems which had to be solved. Maloney's first concern was to handle the complaints which came before him even before the Legislation establishing the office had been passed. And so, with the assistance of a small initial staff of 29 people,¹⁵⁹ a procedure was set up for dealing with the first complaints and inquiries. This small initial staff was hired solely by Arthur Maloney, either through a recommendation or through personal contact.

At the same time, hundreds of applications had to be sifted in the quest for an Ombudsman's staff, "which would not only have a variety of work backgrounds, but which would also include a diversity of ethnic origins and language skills."¹⁶⁰

158. Ibid., p. 6.

159. From an interview with John Page, Queen's Park Office Director.

160. First Report, op. cit., pp. 6-7.

Still another immediate challenge was to arrange for interim finances and to locate suitable accomodation for the office. The office would have to be easily accessible and yet separate from the many government buildings in downtown Toronto. Hence, Arthur Maloney chose office facilities in the heart of downtown Toronto, convenient to public transportation, at 65 Queen Street West, near the corner of Queen and Bay Streets; facilities separate from the governmental organizations which are complained against.

Moreover, while all this was taking place, Arthur Maloney was winding up his law practice and giving numerous interviews and speeches to citizen groups to help publicize the new office being created by the Ontario government. Furthermore, the success of the first year was to be augmented by a series of working lunches and dinners which Arthur Maloney and senior members of his staff gave in the summer of 1975 for MPP's and senior civil servants, recognizing the importance of defining the relationship between the Ombudsman and the elected member and of working out the details of the partnership between them. During the course of these dinners, the Ombudsman had the chance to outline his modus operandi to the members as well as soliciting their opinions and advice as to the functioning of the Ombudsman's office. In the words of Arthur Maloney, "the rapport and lines of communication which were established at those meetings have

been a source of great help in resolving complaints."¹⁶¹

Development of a Relationship with Legislators

Moreover, the Ombudsman gave careful consideration and study to the contributions of the various members of the legislative assembly, while looking upon the debate as his personal mandate. Much of the advice which he was given has proven invaluable and is already being carried out. It was obvious by the high calibre of the various presentations during the course of the debate on The Ombudsman Act, especially by members such as Mr. Verne Singer (Liberal., Wilson Heights,) Mr. George Samis, (N.D.P., Cornwall), Mr. Patrick Reid, (Liberal., Rainy River), Mr. James Renwick, (N. D.P., Riverdale), etc., that the members had in fact given much serious thought as to the office of the Ombudsman and to their concept of what it is, what it ought to be and how it ought to function.

Uppermost in the minds of many Members was the question of accessibility insofar as the Ombudsman was concerned. In the previous chapter you will recall the concern which was expressed that the Ombudsman be an Ombudsman for the entire province of Ontario, keeping in mind that although the office is based in Toronto, there are many hundreds of thousands of people to whom Toronto is neither realistically nor easily accessible. Accordingly, the feeling was expressed that the Ombudsman and his staff should tour the province in order to

161. Ibid., p. 7.

make themselves available to those people who would otherwise find it extremely inconvenient to come to Toronto. This has been a very important part of the mandate given to Arthur Maloney.

Visits to Areas Outside of Toronto

As a result of this mandate from elected members such as Mr. James Renwick, (N.D.P., Riverdale), Mr. George Samis, (N.D.P., Stormont), and Mr. Floyd Laughren (N.D.P., Nickel Belt), and as a response to it, commencing in November 1975, the Ombudsman and his staff visited centres such as North Bay, Kenora, Thunder Bay, Kirkland Lake, Timmins, Kapuskasing, Cochrane, Kitchener-Waterloo, Kingston, Windsor and Sarnia.¹⁶²

In all of these centres private hearings were held. These meetings enabled many people of these communities to appear before the Ombudsman and his staff and to give their grievances just as effectively if they had gone to Toronto. In addition, whenever the Ombudsman and his staff visited a particular locale, public hearings were held where individuals and groups were encouraged to come forth to give the Ombudsman suggestions as to how the office of the Ombudsman could best function from the point of view of their particular area of the province.

Many excellent ideas, such as the establishment of regional offices, were received as a result of these exchanges.
162. Ibid., p. 101.

Moreover, in the course of these public and private hearings, a point has been made to visit the local high schools in the area with the purpose of addressing the student body about the function of the Ombudsman. And lastly, members of the staff also visit local jails and correctional centres in the area, with the purpose of interviewing the prisoners who have written the Ombudsman's office and any other prisoners who wish to be interviewed whether they have written or not.

As a result of touring the province in the first year, the Ombudsman's office acquired approximately 900 new files on a variety of subjects, the majority of which would have unlikely come before the Ombudsman had it not been for the fact that a response was made to the mandate that the Legislature had given Arthur Maloney. Moreover, in this way, "the public are alerted as to the existence of the office of the Ombudsman as well as to the limits of his jurisdiction and authority."¹⁶³ The members who gave this particular advice, such as Mr. James Renwick, (N.D.P., Riverdale), Mr. George Samis, (N.D.P., Stormont), and Mr. Floyd Laughren, (N.D.P., Nickel Belt), can feel confident that it was extremely sound and good. Hence, it is clearly obvious to Arthur Maloney that,

a continuing ongoing presence of the Ombudsman's office around the province is definitely a must

163. Notes for the Hugh C. Arrell Memorial Lecture, delivered by A. Maloney, Thursday, January 29, 1976, Chester New Hall, McMaster University, Hamilton, p. 17.

and this I pledge to do, so that in the future there will always be a representative of the office of the Ombudsman touring around the province to enable people to come to us if it is any more convenient for them to give us whatever requests for help that they may have.¹⁶⁴

Need for a Multi-lingual Capacity

Another concern expressed by all members of the political parties was the fact that Ontario is a province which is part of a country that in its origin was bilingual and bicultural and that the francophone presence in the province should be duly respected and recognized in the staff of the Ombudsman's office. As a result of this, one of the Ombudsman's senior members, Gilles Morin is a francophone of recognized importance in the French community. In addition, approximately six other members of the staff are perfectly bilingual in French and English. (see Appendix 'B' - Staff Biographies)

Still another mandate given to Arthur Maloney was that as a result of our society being pluralistic in makeup and the fact that our society is comprised of people of many races, colours, creeds, occupations and ages, the Ombudsman should ensure that the office be staffed with people who have a linguistic facility in some language other than French or English in order that service be provided to these people in the language of their preference. As a result of this concern, the Ombudsman's staff includes people who have a fluent linguistic ability in some fourteen different languages, such as Polish,

164. Speech delivered by A. Maloney, London Chamber of Commerce, Friday, March 19, 1976, p. 12.

Ukrainian, German, Italian, Yiddish, Russian, Chinese, to name but a few. (see Appendix 'C' - Linguistic Ability)

Establishment of a Directorate of Special Services and Others

It was also suggested during the course of the debates in the Ontario House, that special departments be created within the Ombudsman's office to deal with people who have special problems such as those relating to the Workman's Compensation Board. Bearing this in mind and also the fact that the legislature had conferred a special status on people residing in penal institutions and psychiatric facilities who are involuntarily detained there, Arthur Maloney set up a special Directorate of Institutional and Special Services under the Directorship of Ellen Adams. She had relinquished her post of Special Advisor to the Leader of the Opposition, Mr. Stephen Lewis. Ellen was made directly responsible in advising the Ombudsman in relation to Workmen's Compensation cases, cases involving senior citizens, juveniles and also cases involving those people who are involuntarily detained in over 77 penal institutions and 25 psychiatric facilities in the province.

Still another Directorate which was created in response to the suggestion that the Ombudsman's office zero in on special problem areas, was the Directorate of Rural, Agricultural and Municipal Services. This recognized the special needs of the people who reside in rural Ontario and the farmers of this province, as well as to matters relating to the municipalities of the province.

The farmers of the province hold a very special position of concern in the Ombudsman operation, since there are 52 statutes that concern farmers, plus a great myriad of boards, commissions and agencies.¹⁶⁵ In the words of Arthur Maloney,

a constitutional lawyer would have difficulty in finding his way around the labyrinth of that ministry alone and you imagine the difficulty an ordinary farmer would have. I have reason to feel in the response that was given to me after the creation of this new and special directorate that the farmer of this province is gratified to think that there is now an independent agency to which he can turn with a view to helping him find his way around a complex structure of that particular ministry and to which he can bring whatever grievances or requests for help that he may have.¹⁶⁶

This Directorate will also advise the Ombudsman with respect to matters relating to the many municipalities of the province, of which there are 832¹⁶⁷ of them, who also have a right to utilize the Ombudsman's office in their particular relations with the provincial authority.

One or two more things need to be mentioned in regard to the mandate given Arthur Maloney by the Legislature and the extent to which he is trying to fulfill it. During the course of the debate in the legislature on The Ombudsman Act, it was brought to the Ombudsman's attention that there would in fact be many cases brought to his attention that would be

165. Ibid., p. 10.

166. Ibid., p. 10.

167. First Report, op. cit., p. 68.

clearly outside of his jurisdiction. This has in fact proven to be the case. Many people have turned to the Ombudsman with problems that are clearly within the competency of the federal authorities or of municipal or local government. However, Arthur Maloney was "admonished" by the members of the legislature such as Mr. James Renwick, (N.D.P., Riverdale), that he should be careful not to send such people away empty handed or without particular knowledge of where they ought to go or how they ought to gain redress for their problems whatever the jurisdiction may be.

This mandate has been carried out. Anyone who has come to the Ombudsman with a problem that has not been within the Ombudsman's jurisdiction, has never theless been assisted in one of the following ways: either through a specific referral to an agency which would help them, or through making inquiries on the complainant's behalf, or by giving general advice, or by explaining the complainant's circumstances. Generally, "very often we have proven to be helpful, significantly speaking, outside our jurisdiction."¹⁶⁸

Handling of Non-Written Complaints

One further mandate given to the Ombudsman was that while The Ombudsman Act clearly states that complaints to the Ombudsman must be in writing, he should not be overly rigid about this particular statutory requirement. Therefore, 168. Ibid., p. 15. (London Chamber of Commerce Speech)

when people come to the office and find it difficult to put their complaint in writing, the Ombudsman's staff should interview them and aid them in the way that will enable them to have their complaint put into writing. This has proven to be a very vital and important part of the Ombudsman's operation.

Generally then, Arthur Maloney and his staff have made more than a concerted effort to fulfill the mandates of the elected members, and to discharge the duties that were imposed upon them when the statute was enacted. Bearing this in mind, let us proceed to examine in detail the organization of the Ombudsman's office and its overall operation.

Searching around for an appropriate symbol for the office of the Ombudsman and a motto which would inspire his staff, Arthur Maloney took the matter up with Ken Jarvis, Q.C., Secretary of the Law Society of Upper Canada. The symbol decided upon for the office was the gryphon, a fabulous animal, from the time of the history of the ancients. The gryphon, an offspring of the lion and eagle, came to symbolize the union of strength and vigilance and the embodiment of watchfulness, courage, perseverance and rapidity of execution.¹⁶⁹

Since then, the gryphon has become synonymous with the qualities expected of guardians of the rights of men, and it is in this aspect that Arthur Maloney selected the gryphon

169. Ibid., Notes, see no. 7, Hugh C. Arrell Memorial Lecture, p. 2.

as the Ombudsman's emblem. The gryphon is suspended over four trilliums which serve to represent the rights of social justice and cultural integrity of the English, the French, our Native People and all the other multicultural ethnic segments of the province's population.

As the search proceeded for an appropriate motto, the Ombudsman learned that in the times of the Roman Empire there was a functionary who held down the office of Auxilium. He was, as is the Ombudsman today, employed by the state and was given the duty of finding, investigating and correcting hardships or injustices caused by the operation of the state administration. Thus taking into account the characteristics desirable in an Ombudsman and ones which would also reflect the characteristics of the gryphon, Arthur Maloney decided the motto would be "Vigilans et Audax", which means vigilant and daring.¹⁷⁰

The Directorates

In structuring the office of the Ombudsman in Ontario, it was necessary to ensure that it would never become that which it was set up to combat, an impersonal bureaucracy. Therefore, it was essential that it remain small enough so as to avoid becoming a burgeoning bureaucracy but yet large enough to be able to effectively challenge any part of the bureaucracy where such challenge is required. Basically the operation is decentralized by the existence of eight direc-

170. Ibid., p. 3.

torates. These are:

- 1) Institutional and Special Services
- 2) Rural, Agricultural and Municipal Services
- 3) Investigation
- 4) Interviewing
- 5) Communications
- 6) Administration
- 7) Research (Legal)
- 8) Legal Officers

Each is empowered with the responsibility for a specific aspect of the total Ombudsman function. This further ensures that no bureaucracy will develop. Before examining each of these directorates in detail, let us gain a more total picture of the Ombudsman's intricate machinery by following the road travelled by a complaint which passes through the Ombudsman's office.

Routing of Complaints

Most complaints originate in the form of a letter to the Ombudsman. Upon the reception of a letter in the Ombudsman's office, it is read by Mr. Maloney's personal secretarial staff and then it is determined which correspondence should be brought to the immediate attention of the Ombudsman, himself. In this manner the Ombudsman is kept in touch with the day-to-day mail received by his office. On the average, 125 letters are received by the office daily.¹⁷¹

The Ombudsman's personal secretarial staff then send the letters to the Records Department where a file is opened and a preliminary summary of the nature of the complaint is prepared. If the complaint is not from an inmate in a correctional centre or psychiatric institution, or against the

171. First Annual Report, Ibid., p. 49.

the Workmen's Compensation Board, the file is then sent to the Legal Department. If, however, the particular correspondence relates to any of the above-mentioned categories, it goes to the Directorate of Institutional and Special Services.

The Legal Department analyses the complaint and makes a preliminary jurisdictional determination. A large number of complaints which are received are not within the Ombudsman's jurisdiction since they are not complaints against a Provincial governmental organization.

Notwithstanding the fact that a particular complaint is outside the Ombudsman's jurisdiction and keeping in mind the "admonishment" by members of the legislature that the Ombudsman should be careful not to send such people away empty handed or without particular knowledge of where they ought to go, the complainant is provided appropriate information, advice or referral to enable that person to rectify his or her problem. Also, in many cases, appointments with the appropriate officials are set up for the complainant, and often problems are solved merely by placing a telephone call to the appropriate authorities, who extend their co-operation even though they are aware that a review of their particular actions is outside the Ombudsman's competence.¹⁷²

When the Legal Department determines that a case is within the Ombudsman's jurisdiction, the file is forwarded to the Director of Investigations who assigns the file to an investigator. Specific investigators are assigned responsibility for particular Ministries, Boards and Commissions. This

172. Ibid., pp. 49-50.

enables them to acquire a greater familiarity with the make-up of that part of the bureaucracy. It also enables them to become familiar with the particular officials of government. The investigator then conducts a thorough examination of the matter. He/she interviews the appropriate Government officials or others who may have detailed knowledge about the case, while also examining all relevant Government files. The investigator looks into all aspects of the complaint. Investigators are careful to remain objective and impartial throughout the entire investigation, examining both the complainant's point of view and the point of view of the governmental organization concerned.

Case Conferences

After the investigation has been completed, a detailed summary of all the facts is prepared by the investigator and a submission containing a warranted recommendation is prepared for the Ombudsman. The material is then circulated to all the Directors and legal staff and subsequently a "case conference" is held.

After a full discussion of all possible alternatives in the particular case, the Ombudsman then decides what course of action to pursue. If further investigation is needed, the matter is again referred to the investigator.

Originally, when the office first began its operation, all the Directors and Legal staff, as well as the investigators concerned and the Ombudsman, were present at these case conferences. However, due to the increasing volume of

work this procedure was found to be no longer feasible in every case.

Only cases of extreme complexity and difficulty are now reserved for a major case conference. Instead, the cases are presented to the Ombudsman by the Investigator and the Director of Investigations, with members of the Legal staff in attendance.

Reporting Complaints for Action

When a course of action has been decided upon, appropriate letters or reports are sent to the Governmental organization concerned and to the complainant. If the case is decided in favour of a governmental organization, the file is then closed after all the relevant statistics have been recorded. In a case where the recommendation is in favour of the complainant, the file is kept open until a reply has been received from the particular governmental organization. If the Ombudsman's recommendation is accepted by the governmental organization, the complainant is notified of this acceptance and the file is then closed.

If the Ombudsman's recommendation is not accepted, he must then consider the further courses open to him, namely, referring the matter to the Premier and then to the legislature.

At this point it is imperative that we examine in more detail each of the Directorates which have been mentioned.

(1) Legal Officer's Directorate

Following the formal opening of a file, this Directorate bears the responsibility of dealing with, on an initial basis, all complaints not handled by the Directorate of Special and Institutional Services. This responsibility entails a preliminary determination as to the Ombudsman's jurisdiction. The complaints fall into three categories: (1) those clearly falling within the Ombudsman's jurisdiction; (2) those that are in a grey area, or those which are of questionable jurisdiction, and (3) those that are beyond the Ombudsman's jurisdiction.¹⁷³

In respect to the first category of complaints, pursuant to Section 19(1) of The Ombudsman Act, a letter of intent is sent to the head of the governmental organization involved, advising of the Ombudsman's intention to launch an investigation on behalf of the complainant. This letter of intent, apart from briefly capsulizing the complainant's contention, invites the head of the governmental organization to advise the Ombudsman, within a week, if he/she wishes to provide the Ombudsman with a statement of the governmental organization's position, and if so, the time necessary for preparing a response. Along with the dispatch of that letter, a letter is sent to the complainant acknowledging his/her complaint and advising him/her of the action that the Ombudsman's office had taken.

173. Ibid., p. 55.

Almost without exception the heads of governmental organizations have taken the opportunity of providing the Ombudsman with a statement of their position. When such reports are received, the complaint is reviewed in the light of any new information by the Legal Officer and his staff, at which time it is determined whether the matter can be resolved at that early stage or whether further investigation is in fact warranted.

If further investigation is necessary, the Legal Officer's Directorate is responsible for directing the complaint to the Director of Investigations; in each case giving some guidance to the scope and parameters of the investigation.

The procedure of inviting the heads of governmental organizations to submit statements of their position with respect to the complaints was introduced by the Ombudsman with the hope that such a procedure would significantly reduce the number of full-scale investigations. Early indications of this new procedure show that some complaints are being resolved at this stage without the necessity of any formal investigation.

The second category of complaints, namely those which are in the grey area, or those of questionable jurisdiction, are similarly acknowledged. The complainant is notified that his case is in doubt and is being accordingly researched. He/she is also advised that following the determination of that issue, he/she will receive another report. With the

dispatch of this letter, the file is sent to the Director of Research where it is determined whether or not the case is within the Ombudsman's jurisdiction.

The third category of complaints, namely the non-jurisdictional ones, are dealt with directly in the Legal Officer's Directorate. This class of complaints is of prime significance not only because a high percentage of complaints fall into this category but because of the Ombudsman's personal commitment to make the resources of the office available to those people whose complaints are clearly out of the Ombudsman's jurisdiction.

When a complaint is beyond the Ombudsman's jurisdiction, the complainant is notified. His grievance is capsulized, the Ombudsman's jurisdiction is outlined, he/she is informed why the matter is beyond the Ombudsman's jurisdiction, and finally, the complainant is referred to an agency or agencies that may help resolve the problem. As many details as possible are provided; for example, name and/or title, address, telephone number, etc., of the particular agency. The Ombudsman's assistance to complainants whose problems are outside jurisdiction has proven to be of great help in a significant number of cases.¹⁷⁴

This can be corroborated by the second report of the Select Committee of the Ombudsman where it explicitly states:

174. In the reporting period from July 11, 1976 to March 31, 1977, of the 5,076 complaints, including those which were premature, or which fell outside the Ombudsman's jurisdiction, the complainants were assisted in 4,691 or 92% of the cases. (Second Annual Report, p. 6.)

That the Ombudsman and his staff were able to accomplish all that is referenced in the Report is a testimony to the effort, dedication and enthusiasm of the Ombudsman and each and every member of his staff. In a relatively short period of time the Ombudsman has created and oversees an operation performing Ombudsman functions unequalled in substance and in volume in the world.¹⁷⁵

Moreover in an interview with Mr. Charles Huston, Supervisor of Services for the John Howard Society in Toronto, when asked if the Ombudsman's office was useful, he replied that it was and that it was serving its purpose. According to Mr. Huston, the Ombudsman's office was another resource for people who had come into contact with the law and who had suffered. For them it was a last resource to which they could turn. From this point of view the Ombudsman's office was very useful for Mr. Huston.

The Legal Officer and his staff work in close collaboration with the other lawyers on the staff. They advise the Ombudsman on the question of his jurisdiction in what might be defined as "grey" areas. He carries the responsibility as well of monitoring and signing a large volume of correspondence, including letters of notification of intent to investigate to various governmental organizations.

One further function of the Legal Officer's Directorate is that it also provides a regular consulting service to all the staff members, but especially to the interviewing and investigating staff.

On occasions, when the Ombudsman happens to be absent from the office, or when circumstances otherwise require,
175. Second Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, March 28, 1977, p. 5.

the Legal Officer acts for the Ombudsman.

(11) The Directorate of Institutional and Special Services

This Directorate was established on December 1, 1975, and deals with four Ministries: Correctional Services, Health, Community and Social Services, Education, and one Board - the Workmen's Compensation Board.

Complaints from residents and staff from the 105 institutions are looked after by this Directorate. They comprise 13 psychiatric hospitals (Ministry of Health); 19 centres for the Developmentally Handicapped (Ministry of Community and Social Services); 37 jails, 3 detention centres, 18 correctional centres and adult training centres, 11 juvenile training centres, and 2 community resource centres (Ministry of Correctional Services).¹⁷⁶ In addition, this Directorate has the responsibility for problems dealing with the very young and the very old.

Approximately one-third of all cases sent to the Ombudsman's office are forwarded directly to this Directorate. Visits are made to local jails, correctional centres, psychiatric hospitals and facilities for the mentally retarded. The Director has also met with various citizen groups.

This Directorate has received the fullest co-operation from the Ministries involved such as the Ministry of Correctional Services. One important result has been the approval
176. Ibid., First Annual Report, p. 61.

of unannounced visits to correctional institutions and psychiatric hospitals by staff of the Ombudsman. It is expected that the same permission will be given for visits to mental retardation facilities before long.¹⁷⁷

Correctional Institutions

Within the Ombudsman's first reporting period, from May 22, 1975 to July 10, 1976, all institutions under the Ministry of Correctional Services, with the exception of two community resource centres at Red Lake and Cygnet Lake, have been visited at least once by investigators. Presently, efforts are being made to visit even the far-flung institutions at least every other month.

Very few complaints from the institutions are conducted as full-fledged investigations because most of the interviews held at these institutions result in the problem being solved there and then. Files are not opened for these complaints, so that in effect, there is a discrepancy between formal complaints on which files exist, and other complaints which are simply looked after during the course of a visit. On the average a correctional investigator interviews twice as many people as complaint files that are opened.

Visits by correctional investigators have become a safety valve for many of the inmates of jails who feel that they can air their grievances with complete confidentiality and know that, provided the grievances are valid, something will be

177. Ibid., pp. 61-62

done about them.¹⁷⁸

To corroborate this, an interview was conducted with Mrs. Jordan of Information Services of the Ministry of Corrections. She was asked whether the Ombudsman's office was useful for the Ministry of Corrections. In her reply, Mrs. Jordan stated that the fact that an inmate can send a letter to the Ombudsman uncensored, makes the office extremely useful, for the inmate feels that there is a forum which he can approach. Having the Ombudsman readily accessible, diffuses potentially volatile situations at correctional centres, remedies the explosive environment and keeps the general inmate population calmer. In this sense the Ombudsman has become a safety valve for the inmates of jails.

Workmen's Compensation

Over two-thirds of the complaints received to date do not fall within the jurisdiction of the Ombudsman because the appeal process with the Workmen's Compensation Board has not been completed. In such cases a reply is sent to the worker. The reply spells out the steps that he or she must take to process the claim through the appeal system. If the worker is dissatisfied after exhausting all appeal procedures, then he/she is invited to contact the Ombudsman's office again.

Psychiatric Hospitals and Centres for the Developmentally Handicapped

Most of the complaints in this area originate from the
178. Ibid., pp. 63-64.

Oak Ridge Division of the Penetanguishene Mental Health Centre. This is one of the most difficult institutions to monitor, since both the types of patients who are sent here and the treatment which they receive are unique. In the first year of the Ombudsman's operation, investigators undertook a three day program to familiarize themselves with the unique program and also interviewed patients who had indicated that they wanted to speak to someone from the Ombudsman's office. Complaints from these centres are rather difficult to deal with and invariably require extensive investigation.

(111) The Directorate of Rural, Agricultural and Municipal Services

This Directorate was established on February 1, 1976. It handles complaints from farmers, municipal governments and native people, as well as complaints regarding the Residential Premises Rent Review Act and the particular problems of the province's Francophone population.

Rural and Agricultural Section

The Ontario farmer is subject to a unique set of problems and conflicts within the provincial government. There are 53 statutes administered by the Ministry of Agriculture and Food in addition to approximately 35 other Acts related to agriculture that are the responsibility of different Ministries. When we include the vast array of Boards, Commissions, and Agencies, the result is a labyrinth of regulations, restrictions, licences and appeal procedures that

would tax the intellectual resources of even the best-informed constitutional lawyer.¹⁷⁹

To assist the Directorate in handling complaints relating to agriculture, an Index of Ontario Statutory Appeal Procedures was prepared by the Ombudsman's office. This index outlined all the appeal procedures under Statutes that relate to agricultural concerns. The Index provides staff with quick and convenient access to information concerning Agricultural Statutes so as to determine what rights of appeal or objections are available to complainants.

Perhaps in this Directorate, more so than in the others, meetings with individual farmers and farmers' associations and provincial tours are a prerequisite for ensuring that the services of the Ombudsman are being utilized to their maximum potential.

The Director has visited farmers' associations, and attended meetings and private hearings in many areas in an effort to make the presence of the Ombudsman felt in rural and agricultural communities throughout the province.¹⁸⁰

Municipal Section

Although there is no provision in The Ombudsman Act to investigate complaints against municipalities or municipal administrative agencies, the Ombudsman's office is able to handle complaints from municipalities. As our society be-

179. Ibid., pp. 65-66.

180. Ibid., pp. 65-66.

comes more complex, and as the problems of provincial-municipal relations become more complicated, the need for an Ombudsman to intervene between the two arenas increases almost daily.

Confusion regarding different Ministry policies, priorities, rules, etc., with respect to municipalities are examples of the problems faced by the 832 municipalities across Ontario. Because the Ombudsman can be of such help to small and sometimes remote municipalities, the Director has made extensive trips to these communities in order to explain to them the potential of the Ombudsman's office in dealing with their complaints. The Director has already established fruitful contacts with municipal associations all over Ontario.¹⁸¹

Native People

Virtually all reserves in Canada are established by and, thereafter remain the responsibility of the Federal Government. Furthermore, the Indian Act is a federal enactment. This means that the Ombudsman is severely restricted in dealing with Indian complaints.

Nevertheless, in order to develop a tangible working relationship with the native community, the Director has met with various groups of native people across the province to explain the role and function of the Ombudsman's office and outline the services which can be performed for them.¹⁸²

181. Ibid., pp. 67-68.

182. Ibid., pp. 68-69.

Francophones

The real concern in this area is to extend the Ombudsman's services to those who prefer to articulate their grievances in Canada's other official language. If the occasion arises, private hearings or any Ombudsman matter are held in French, and if a problem arises that exclusively relates to the Francophone segment of our population, this Directorate handles it.¹⁸³

Rent Review Act

The Ombudsman is empowered to review the decisions of the Residential Premises Rent Review Board. As well, decisions of a Rent Review Officer can be reviewed if the time for appeal has expired and no appeal has been initiated.¹⁸⁴

(IV) The Research Directorate

The Research Directorate not only carries out research, but is involved in a variety of assignments.

Research - The research performed is divided into two types: jurisdictional research and research conducted during and after investigations.

Jurisdictional research is usually initiated upon receipt of a complaint against a body which has not formerly been the object of a complaint to the Ombudsman. If it is unclear whether the problem concerns a "governmental organization" within the meaning of The Ombudsman Act, a jurisdictional

183. Ibid., p. 69.

184. Ibid., pp. 69-70.

tional determination must be made.

Since the Legislature defined the term "governmental organization" in general terms, and did not annex to the Act a schedule of the bodies to which the Act should apply, intricate legal research must be carried out to ascertain whether a given body lies within the Ombudsman's authority.

The function of the Ombudsman as set forth in Section 15(I) of the Act 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 or its personal capacity."

"Government organization" is defined in Section I(a) of the Act to mean a "ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof."

While the jurisdictional determination is relatively simple where the organization complained of is a board or commission such as the Ontario Labour Relations Board or the Ontario Police Commission, the question of whether such bodies as the Ontario Educational Communication Authority and the Alcoholism and Drug Addiction Research Foundation are governmental agencies, raises complicated matters of legal research.

For example, The Law Society of Upper Canada is clearly not a ministry, commission or board of the Government of Ontario, and an analysis of The Crown Agency Act, The Law

Society Act and relevant case law leads one to the conclusion that it is neither an administrative unit nor an agency of the Government, despite its responsibilities for administering the Ontario Legal Aid Plan.

In each case researched by the Directorate, a memorandum is retained on the subject for a Memoranda of Law Book, copies of which are maintained in the Ombudsman's Library at the main office and another at the Queen's Park office. These collected memoranda enable the interviewing staff and legal officer's staff to determine jurisdictional questions without consulting the Research Directorate where a matter has been previously considered.

Certain matters are expressly removed from the ambit of the Act, and hence from the Ombudsman's jurisdiction. In particular, The Ombudsman Act does not apply to judges or to the functions of any court, or to deliberations and proceedings of the Cabinet or any of its Committees.

The second category of research is that conducted during and after investigations. This function involves an examination of the relevant legislation, regulations and practice where a matter complained of has been determined to be within the jurisdiction of the Ombudsman and an investigation has commenced. It is not only necessary to outline to the investigator the particular statutory and regulatory scheme that applies to a given complaint, but it is frequently necessary to determine whether the body complained of acted properly and in accordance with the powers granted to it by

the Legislature.

For instance, a complaint against the Workmen's Compensation Board for having rejected a claim on the basis that the injury did not arise out of and in the course of employment, required a careful analysis of the Workmen's Compensation Act. The judicial decisions rendered on the subject lead to the conclusion that in the particular case complained of, the Board had acted reasonably and had properly exercised its powers.¹⁸⁵

Staff Development

In order to better familiarize the Ombudsman's staff with the Ombudsman concept and its application to matters commonly complained of, the Research Directorate has organized a number of staff development sessions.

For example, the first session was held late in 1975 when the Ombudsman's staff heard Professor D.C. Rowat, a Canadian expert on the Ombudsman concept and its spread throughout the world, and the author of a number of books and articles on the subject.¹⁸⁶ His presentation was useful in drawing comparisons between The Ombudsman Act and operation in Toronto as opposed to other jurisdictions, both in Canada and elsewhere.

Similarly, in order to better equip the staff to deal sympathetically yet effectively with complainants who send

185. Ibid., pp. 70-73.

186. D.C. Rowat has published two books in Canada on the Ombudsman entitled, The Ombudsman and The Ombudsman Plan.

bizarre letters or make bizarre telephone calls to the office, or threaten either themselves or others, or who appear hostile and pose other difficulties, a program was arranged with the assistance of the Clarke Institute of Psychiatry in Toronto. Lectures were delivered to certain staff members dealing with how to identify gross psychopathology, how and when to suggest psychiatric referral, how to deal with the aggressive, impatient, suicidal or delusional complaints and related matters.¹⁸⁷

Liason

Soon after the Ombudsman's office became operational, it was evident that the advice of experts would be required to assess certain aspects of some of the complaints received. One such area in which expert assistance is necessary is in evaluating conflicting psychiatric reports. Accordingly, the Ombudsman's office has entered into an informal agreement whereby consultants will be made available to the office on request.

In addition, a similar arrangement is being made whereby medical experts will be made available to the office in cases where there is conflicting medical evidence. Such instances are likely to arise most frequently in Workmen's Compensation cases.¹⁸⁸

187. First Report, op. cit., pp. 73-76.

188. Ibid., pp. 76-77.

Referrals

In keeping with the general policy of the office, which is to provide to those complainants whose problems do not fall within our jurisdiction as comprehensive and personal a referral as possible, representatives of the Ombudsman's office have met with officials of the Law Society of Upper Canada and the College of Physicians and Surgeons in order to establish lines of communication and a means whereby complaints against members of these professional bodies may be expeditiously referred and considered.

Members of the Ombudsman's staff have also been in contact with federal officials of the Unemployment Insurance Commission and the Department of Veteran Affairs as well as with officials of the Ontario Legal Aid Plan. Contacts set up are noted and made available to all staff members who have need of such information.¹⁸⁹

(V) The Directorate of Investigations

This Directorate was established on July 28, 1975. Initially the investigative personnel were almost totally occupied in researching the experience of other Ombudsmen operations and ensuring the proper organization of this Directorate.

However, due to the increase of the number of complaints and because of the intricacies of jurisdictional considerations and in order to complement the variety and complexity

189. Ibid., p. 77.

of problems with which this Directorate was faced, the Directorate was divided into 9 areas of primary responsibility and each of the investigators has been assigned a group of ministries, boards, commissions or agencies. This enables the investigator to become familiar with the problems peculiar to each of the ministries, boards and commissions and to pass on to other investigators the expertise which is acquired in a particular area on a virtually exclusive basis for a limited period of time. After an appropriate interval the investigators are rotated so as to ensure that they remain at a maximum level of effectiveness. In addition, the staff are encouraged to acquire or improve their ability to communicate in a language other than English.¹⁹⁰

(VI) Directorate of Interview Services

The main function of this Directorate is to meet personally with complainants who come to the office with or without an appointment. The staff assist the complainant in eliciting relevant information about their particular complaint.

In creating this Directorate, it was felt that the Legislative requirement stating that all complaints to the Ombudsman be in writing should be literally construed to ensure that citizens who find it difficult to express their thoughts in writing would not be disadvantaged.

There are many advantages to a personal interview. The expertise of the interviewers enables them to zero in on particular relevant information which might not seem to be

190. Ibid., pp. 77-79.

of much importance to the complainant. It also helps to alleviate the complainant's fear of writing yet another letter which is tantamount to putting off or delaying justice even longer. The personal interview process is immediate, personal and active and allows the citizens of the province to feel that the Ombudsman is more immediate and close at hand to them than he might be viewed if he could only be approached by way of a letter.

Following the interview, which usually lasts an hour, the interviewer prepares a comprehensive report and submits it to the Legal Officer for further study and review. If during the initial interview, the interviewer will consult with the staff of the Legal Directorate and the complainant is often able to receive concrete help during the very first hour that he or she spends in contact with the office.

Special mention should be made of the Directorate's telephone service. A telephone is manned constantly by an experienced interviewer thus allowing complainants to discuss their problems without the necessity of actually coming to the Toronto office. Approximately 35 call per day are received and dealt with in this manner.

In September, 1976, this Directorate assumed responsibility for conducting private hearings throughout the province. Moreover, the office can communicate in some 14¹⁹¹ languages. (See Appendix 'C')

191. Ibid., pp. 99-106.

(VII) Directorate of Communications

The dissemination of information to the public about the Ombudsman and his staff is the major responsibility of this Directorate.

Public Speaking Program - This directorate is responsible for the arranging and scheduling of speaking engagements for the Ombudsman and his staff who address groups and organizations throughout the Province on topics relating to the Ombudsman's function.

As of December 9, 1976 a total of 258 public appearances were carried out. This heavy schedule was maintained in an effort to take the fullest advantage possible of the initial impact of the creation of the office of the Ombudsman. The Ombudsman personally addressed a total of 37,311 people and in addition 14,204 people heard speeches delivered by other members of the staff. The total audience was 51,515.¹⁹²

Radio and Television - The Directorate also arranges and coordinates all radio and television appearances by the Ombudsman and his staff. The Ombudsman's appearances on radio have involved all of the various networks of the CBC both in English and French. Radio "hotline" programmes have proven to be a most valuable aid in attracting and handling complaints from interested members of the public.

Public Relations - As more people become aware of the existence of the Ombudsman, this Directorate is pressed with an
192. Ibid., p. 82.

ever-increasing number of requests for information from the public.

Communications is also responsible for acting as a liason between the Ombudsman and the media. In this regard, press releases and statements are prepared regarding the operations of the office.

It is also responsible for internal staff communications. This includes the co-ordinating of transportation and accomodation for all members of the staff who travel to hearings or speaking engagements.

Archives - A complete record covering all the activities of the Ombudsman and his staff is maintained.

Protocol - It is involved in arranging visits to the office for Canadian and international guests.¹⁹³

(VIII) Directorate of Administration

This Directorate is responsible for providing financial and supply services:

Accounting

- 1) it co-ordinates the preparation of the office's annual operating budget and prepares the printed estimates;
- 2) it manages the office's cash by forecasting expenditures and by requisitioning the necessary cash from Treasury;
- 3) it ensures prompt payment of suppliers' invoices and staff members' claims for reimbursement of travelling expenses;

193. Ibid., pp. 81-85.

- 4) it issues travel advances to staff members;
- 5) it ensures that all staff are paid in accordance with the terms of their employment or contract and are properly covered by employee benefits by virtue of payroll deductions;
- 6) it prepares the detailed expenditure information to be printed in the Public Accounts for each fiscal year.

Purchasing

This section arranges for the acquisition of furniture, equipment and all office supplies. It is responsible for maintaining an adequate inventory of frequently used supplies.

Personnel

This section is responsible for the documentation of new employees, for the preparation of contracts for contract employees, and for hiring employees to work as replacement for an occasional day.

Systems and Records

This section provides systems development, records management and library services as follows;

The Systems Development function formulates and implements both manual and computer systems designed to retrieve, assemble and communicate, through reports, information which describes the complaint handling activities of the office.

The Records Management function provides a comprehensive range of records services, with the overall objective of ensuring that the office has all the filed information required to carry out its functions.

The Library services function provides the range of library materials required in order that the office carry out its duties.¹⁹⁴

Public and Private Hearings

During the course of the first year of existence of the Ombudsman's office, members of his staff travelled extensively throughout the province and as of December 9, 1976 a total of 46 municipalities were visited in which private and public hearings were held.¹⁹⁵ The inherent philosophy behind this was that although the Ombudsman's office is based in Toronto, there are millions of people for whom Toronto is not readily nor easily accessible. In addition, the accessibility of the Ombudsman to all people of the province was a major concern to the Members of the Legislature who took part in the debates on The Ombudsman Act, as was mentioned previously. Hence the Ombudsman undertook positive steps to bring his office to the far reaches of the province.

In response to the mandate given to the Ombudsman by the Legislature, the Ombudsman and/or his staff visited the following centres on the dates indicated:

North Bay	November 3-4, 1975
Kenora	January 7, 1976
Thunder Bay	January 8-9
Kitchener-Waterloo	January 26-27
Kirkland Lake	February 25
Timmins	February 26
Kapuskasing	February 27
Cochrane	February 28
Kingston	March 4
Windsor	March 8
Sarnia	March 9
London	March 17-18
Durham(Oshawa)	April 13
Toronto(East End)	May 26

194. Ibid., pp. 85-87

195. Ibid., p. 99.

Toronto (Blessed Sacrament)	May 27
Brantford	June 3
Renfrew	June 9
Pembroke	June 10
Eganville	June 11
Stratford	June 17
Sault Ste. Marie	June 23
Wawa	June 24
Sudbury	June 25

In addition, within the first year of operation, senior staff members held hearings in Ottawa, L'Orignal and Picton. 803 interviews were conducted at these hearings.

During the fall sessions of 1976 an additional 1,159 interviews were conducted, for an overall total of 1,900, and over 600 files were opened as a result of these interviews.¹⁹⁶

During the Ombudsman's second reporting period, namely from July 11, 1976-March 31, 1977, 33 private hearings were held throughout Ontario.

These hearings have now become a very integral part of the Ombudsman function and considering that 20% of all new complaints coming to the Ombudsman's office emanate from this source, it is clearly obvious that such hearings are of great necessity.

The hearings not only ensure that those citizens living outside the large urban areas have access to the Ombudsman, but also, through the excellent media coverage given to the Ombudsman's hearings, help to inform thousands of people of the existence of the office.

196. Ibid., p. 102.

During the second reporting period of the Ombudsman, hearings were held in the following centres:

Coderich	September 22, 1976
Listowell	September 23, 1976
Orillia	September 29, 1976
Midland	September 30, 1976
Barrie	October 1, 1976
Parry Sound	October 19, 1976
Hamilton(Mohawk College)	October 22, 1976
Cambridge	October 28, 1976
Dryden	November 3, 1976
Sioux Lookout	November 4, 1976
Red Lake(Balmertown)	November 5, 1976
Nipigon	November 16, 1976
Marathon	November 17, 1976
Geraldton	November 18, 1976
Peterborough	November 26, 1976
Trenton	November 26, 1976
Englehart	December 7, 1976
New Liskeard	December 8, 1976
Mattawa	December 9, 1976
Toronto(Etobicoke)	January 13, 1977
Smith Falls	January 18, 1977
Brockville	January 19, 1977
Cornwall	January 20, 1977
Atikokan	February 15, 1977
Frot Francis	February 16, 1977
Rainy River	February 17, 1977
Manitoulin Island	March 1, 1977
Espanola	March 2, 1977
Elliot Lake	March 3, 1977
Chatam	March 9, 1977
Tobermory	March 22, 1977
Owen Sound	March 23, 1977
Collingwood	March 24, 1977 197

During the course of private hearings, with hours set for such interviews from 10:00 a.m. until 8:00 p.m. the residents of the particular centre and district are invited to come and meet the Ombudsman and his staff in a private confidential setting. Thus they are able to present their grievances directly to the Ombudsman's staff while being able

197. Ibid., p. 102.

to remain in their own community.

The purpose of public hearings was to assist the Ombudsman in carrying out his commitment to draw up a blueprint for the office which would hopefully give Ontario the best operation anywhere in the world. During the course of these public hearings, local citizens come forward and give their ideas about how the office should function best from the viewpoint of their particular part of the province. These many and useful suggestions will be dealt with in the blueprint which is scheduled to come out in 1978.

During the course of these hearings a number of other activities are undertaken by the Ombudsman's staff. For instance, speaking engagements are arranged in the vicinity in order to propagate the office. Moreover, members of the staff visit the local jails to interview inmates who have either written to the office or upon hearing about the presence of an Ombudsman's representative, request personal interviews. Members of the staff also visit any psychiatric institutions in the vicinity.

Thus, these hearings were undertaken and designed with three considerations in mind. First, it was imperative that the people living outside of Ontario's largest urban area become aware of the existence and purpose of the Ombudsman's office. Secondly, citizen involvement was needed in deciding how best to structure the Ombudsman's operation. And thirdly, the Ombudsman's office desired to have an intimate knowledge of the individual and often unique problems encountered by

the people living in Ontario's rural areas as well as in its small and medium-sized urban centres.¹⁹⁸

As a result of these tours around the province, it is apparant that the on-going presence of the Ombudsman is definitely necessary. Through the use of these two types of hearings, the Ombudsman will remain easily accessible to all the citizens of Ontario regardless of the area in which they live.¹⁹⁹

Now that we have sufficiently familiarized ourselves with the overall operation and organization of the Ombudsman's office, let us proceed to examine the statistics which are relevant to our study, and which will ultimately give us a greater insight as to the workload of the Ombudsman's office, and the basis for some tentative evaluations of the work of the Ombudsman's office.

198. Notes for the Hugh C. Arrell Memorial Lecture, delivered by A. Maloney, Thursday, January 29, 1976, Chester New Hall, McMaster University, Hamilton, pp. 16-17.

199. Ibid., pp. 100-106.

Chapter Five

Statistics

The purpose of this statistical section will be to give the reader an insight into the overall activities of the office of the Ombudsman. For example, an examination of the statistics reported by the Ombudsman in his Reports can help the reader to determine how many complaints have come to the Ombudsman's attention during the two reporting periods, how many complaints were directed against particular governmental organizations and finally, how many files were successfully closed. By examining these statistics the reader should be able to determine the extent to which the Ombudsman is fulfilling his function of aiding the citizens of Ontario.

It is important that statistical evidence on the work of the office be presented in order to provide some means of judging the scope of the activity of the office, and to establish benchmarks for future evaluation of the office. Again it is important to remember that the statistical data covers only the first two years of the work of the Ombudsman and does not provide sufficient evidence for time-series analysis.*

Number of Complaints

Since the Ombudsman is charged with examining and rectifying complaints by the public, one should know how many citizen complaints are registered, how many are satisfactorily resolved, how many are not resolved and the extent to which the authority of the Ombudsman restricts or enhances the

*Special cautions about taking the data at face-value have already been outlined in the Introduction, pp. 8-9.

successful determination of the complaints.

Complaint Reception

Within the first reporting period of the Ombudsman, from May 1, 1975 to July 10, 1976, statistics bear out that the office has not only managed to survive its first months of existence, but has also dealt with some 10,587 citizen inquiries and complaints as of July 10, 1976, and a total of 14,027 as of October 31, 1976.²⁰⁰

First Reporting Period - May 1, 1975 to July 10, 1976

Let us examine Table 1 which brings to light some of the statistical data contained in the Ombudsman's first Annual Report.

TABLE 1

Highlights

May 22, 1975 - July 10, 1976
(bracketed figures to October 31, 1976)

-5,318 (7,176) complaint files files opened	Of the closed complaints
-3,714 (5,330) complaint files closed	-2,057 (3,022) involved Ontario Gov't Ministries or Agencies
-5269 (6,851) informal inquiries received and dealt with	-1,004 (1,357) involved private agencies, firms or individuals
Of 3,714 complaint files closed	-477 (640 involved municip- alities and local police forces
-2,140 (2,915) were outside jurisdiction	
-449 (667) were premature	-354 (475) involved federal gov't dep'ts and agencies
-954 (1,450) were within juris- diction	some complaints involved more than one organization or agency
-86% of all complaints received assistance	

It was somewhat of a surprise to the author of this thesis to see the rather large number of complaints which were handled by the office in its first 22 month of existence. The 7,176 complaint files that were opened within the first reporting period suggest that the creation of the office of the Ombudsman was tapping a real constituency which felt some need to complain about some aspect of governmental activity.

Informal Inquiries

In addition to the above-mentioned complaint files a further 6,851 informal inquiries were received and dealt with by the Ombudsman. The table also illustrates that there is considerable confusion on the part of citizens about the scope of the Ombudsman's activities in that an overwhelming majority of the complaint files (2,915 of 3,714) closed, were outside the jurisdiction of the office of the Ombudsman, with only 1,450 being within his jurisdiction.

Of this very large number of complaints brought forward to the Ombudsman's office which were beyond his jurisdiction, most were "complaints against municipalities, universities, and many other bodies financed either in whole or in substantial part by the provincial Government."²⁰² It is because of the significant number of complaints (20%) outside of his jurisdiction that Mr. Maloney has asked that
(continued)

200. First Annual Report of the Ombudsman, 1975-1976, Toronto, p. 2.

201. Ibid., p. 3.

202. Ibid., p. 3.

the legislature give the Ombudsman jurisdiction to deal with such cases.²⁰³ In addition, a number of complaints involved grievances by one citizen against another or against a private corporation (1,357), as well as complaints against judges, lawyers (not given) and the Federal Government's departments and agencies (475).²⁰⁴

Though clearly 20% of all cases were outside the Ombudsman's jurisdiction and therefore could not be dealt with directly, the Ombudsman's staff made every effort to ensure that no one would be turned away without a fair and impartial review of his/her case. This procedure is carried out strictly in accordance with the wishes of the Legislature that the Ombudsman's office not turn a deaf ear to those people whose problems are not within the Ombudsman's jurisdiction.

Examining the statistics a little more closely we see that about 58% of the complaints dealt with and closed as of July 10, 1976, fell outside the Ombudsman's jurisdiction (2,140). Another 449 files were brought to the office prematurely and would have fallen within the Ombudsman's jurisdiction had all existing avenues of appeal been exhausted.²⁰⁵

Another 356 complaints dealt with court decisions and individual judges; 988 related to citizens and their dealings

203. Ibid., pp. 3-4.

204. Ibid., p. 4.

205. Ibid., p. 15.

with private firms or other individuals, 363 complaints dealt with actions taken or not taken by the Federal Government and 29 pertained to the other provinces.²⁰⁶

Of this total group of complaints, which includes premature complaints, the Ombudsman's office assisted 92% of the cases either through a specific referral to an agency which would help them or through making inquiries on the complainant's behalf, or by giving general advice, or by explaining the complainant's circumstances. The remaining cases, approximately 8%, were not dealt with either because the grievance was abandoned or withdrawn by the complainant.²⁰⁷

Object of Complaints

It is interesting to note that the total number of complaints relating to the province's justice system was 1,653 and accounts for almost 66% of the total complaints closed as of October 31, 1976. Thus it is clearly apparent that complaints in the area of the administration of justice form a very substantial bulk of the work of the office of the Ombudsman.²⁰⁸

Furthermore, of the 854 complaints against government agencies as of October 31, 1976, the Workmen's Compensation Board accounted for 349 or 60% of the total. It is understandable that these two areas should prove to be the source of most complaints from Ontario's citizens against govern-

206. Ibid., pp. 15-16.

207. Ibid., p. 16.

208. Ibid., pp. 16-17.

ment organizations²⁰⁹ because they are two areas of governmental activity which either involve substantial numbers of citizens, as is the case of the administration of justice, or, as in the case of the Workman's Compensation Board, serious impairment of individual citizen's productive capacity. Both of them have high emotional content.

Preceding the first annual Report, the Ombudsman decided that due to the ever-increasing volume of cases, both the Members of the Legislature and the public would be better served if he reported to the Legislature on a semi-annual basis. Hence the cut-off date for the Ombudsman's second report was March 31, 1977 beginning in July, 1976.

Second Reporting Period - July 11, 1976 - March 31, 1977

From July 11, 1976 to March 31, 1977, the office of the Ombudsman received 4,989 new complaints and also dealt with approximately 7,000 (10,000 per annum) informal citizen inquiries which did not necessitate the opening of a formal complaint file.

The figures indicate that the Ombudsman's office receives an average of slightly more than 1300 complaints/ inquiries per month, and that of that number, an average of 554 result in the opening of a formal complaint file.²¹⁰

These figures exemplify the rapid increase in the number of problems brought to the office as compared to the 209. Ibid., p. 17.

210. Second Annual Report of the Ombudsman, July 1976-March 1977, Toronto, p. 3.

14 month period dealt with in the first Annual Report. In this earlier period, the office opened an average of 379 complaint files each month. The latest figure of 554 per month represents an increase of 46%. These statistics indicate that more and more people are coming to regard the Ombudsman's office as a place where they can bring their individual grievances which they cannot resolve on their own.²¹¹

A further examination of Table 2 will shed some light on some of the statistical data contained in the Ombudsman's second Annual Report.

TABLE 2

Highlights

July 11/76 - March 31/77

-4,989 complaint files opened	I	Of the closed complaints
-4,463 complaint files closed	I	-2,671 involved Ontario
5,076 (separate complaints)	I	Gov't agencies or
	I	Ministries
-7,000 informal inquiries	I	
received & dealt with	I	-1,140 involved private
	I	agencies, firms or
	I	individuals
Of 5,076 complaints dealt with	I	-527 involved munici-
	I	palities or local police
-3,230 were outside juris-	I	forces
diction	I	
-1,827 were within juris-	I	-388 involved federal gov't
diction	I	departments or agencies
-768 were premature	I	
	I	
-92% of all complaints received	I	some complaints involved
assistance	I	more than one organization
	I	or agency
	I	
		-----212

211. Ibid., pp. 3-4.212. Ibid., pp. 5.

Of the 5,076 complaints dealt with, 1,827 or 36% were within the jurisdiction under the terms of The Ombudsman Act, 1975. This represents an increase of over 26% from the time of the last report, but it still indicates that the majority of complaints which are brought forward to the Ombudsman for resolution, are still outside his legislative mandate.²¹³

Complaints Outside Jurisdiction

The large number of outside jurisdiction complaints once again involved citizen problems with municipalities, universities and many other bodies financed in whole or in substantial part by the provincial government. The office dealt with 583 such complaints, including 527 involving municipal governments and other local authorities and 14 involving Universities.²¹⁴

As was mentioned in the First Report, the Ombudsman felt that the Legislature should give him jurisdiction to deal with such cases as the Ombudsman's staff already spends considerable amounts of time informally investigating complaints against such provincially-funded bodies. Moreover, the additional staff and budget which would be required would not be excessive and it would allow the Ombudsman to deal more effectively with these types of problems.

Of the 5,076 complaints, including those which were

213. Ibid., p. 5.

214. Ibid., p. 6.

premature, or which fell outside of the Ombudsman's jurisdiction, the complainants were assisted in 4,691 or 92% of the cases either through a specific referral to an agency which would help them (2,663), or through making inquiries on the complainant's behalf and reporting to them (1,379), or by giving general advice (273), or by explaining the complainant's circumstances (249).²¹⁵

The remaining 267 or 5% of such cases were not dealt with either because the grievance was abandoned or withdrawn by the complainant. In 37 of the cases, the office refused to investigate the complainant's contention in accordance with Section 18 of The Ombudsman Act.²¹⁶

Of the 786 closed complaint files involving premature complaints the Ombudsman is precluded from investigating such cases until all existing avenues of appeal have been tried. The number of such complaints simply points to the fact that there are hundreds of people who, having been affected by a particular decision and seeking redress, do not know how to pursue an existing right of appeal.

Of the 2,671 cases involving the various Ontario Government Ministries, 1136 concerned the Province's judicial system. More than 1000 of these complaints were directed against the Ministry of Correctional Services. As was mentioned in the first Annual Report (where such complaints

215. Ibid., p. 7.

216. Ibid., p. 7.

comprised almost 70% of the total number of complaints against the Government of Ontario) the Ombudsman once again found it disturbing that such a large percentage of the complaints dealt with the judicial system.²¹⁷

Workmen's Compensation Board

Similarly, of the 676 closed complaints against Ontario Government Agencies, 489 were directed against the Workmen's Compensation Board. However, this significant number of cases must be seen in the light of the new and ever-increasing claims dealt with by the Workmen's Compensation Board every year. In 1976, for example, the Workmen's Compensation Board received 434,000 claims and the fact that the Ombudsman's office dealt with only 0.1% of the Board's new annual caseload may reflect very favourably upon the Board.²¹⁸ However, the statistical rate of success must be accepted very cautiously in view of the recent near riot at Queen's Park (Ontario) on May 29, 1978.²¹⁹

The increase in cases against the Workmen's Compensation Board was probably due to the fact that the Ombudsman's Directorate of Institutional and Special Services, which deals with these particular complaints, was not fully operational until early 1976. As a result, when the Directorate finally became fully operational, there was a substantial

217. Ibid., pp. 9-10.

218. Ibid., p. 10.

219. see Globe and Mail and Toronto Star for May 30-31, 1978.

number of cases awaiting investigation. Only 232 of them had been completed by the time of the First Annual Report.²²⁰

It should also be mentioned that one of the methods whereby the Ombudsman's office has been able to handle the increased number of Workmen's Compensation Board cases, has been to utilize the services of law students on a part-time basis as required. In this manner, the Office is able to investigate the growing number of such cases without the necessity of adding additional people to the full-time staff.²²¹

MPP's Involvement

Furthermore, without the support of the MPP's, many of whom referred cases to the Ombudsman's office for resolution, the task of the Ombudsman would have undoubtedly been much more difficult. The involvement of the MPP's is also evident by the activity of the Ombudsman's Queen's Park Office which was established to ensure that both MPP's and their constituents would have access to the Ombudsman. The Director of the Queen's Park office not only interviews complainants and assists them with their particular problems, but he also meets with MPP's with respect to complaints. He acts as a liason between the members of the Legislative Assembly and the downtown office.²²²

To summarize, from May 1 1975 to July 10, 1976, 5,318 complaints were received. In addition approximately 5,000

220. Ibid., p. 11.

221. Ibid., p. 11.

222. Ibid., pp. 19-20.

telephone inquiries and 269 interviews where follow-up action beyond the initial contact was not required, were recorded.

In the second reporting period, from July 11, 1976 to March 31, 1977, 4,989 complaint files were opened. This figure does not include approximately 7,000 (10,000 per annum) telephone inquiries received by the office for which files were not opened.

In comparison with the 14 month period covered by the first annual Report, the average number of complaints received per month increased from 379 to 554. Based on this average, the office now receives 6,600 complaints per annum. Therefore, on an annual basis, the office receives over 16,000 citizen inquiries and complaints.

The Way in Which Complaints Were Received

It would appear that there is nothing special about the way in which complaints were received as 80% were received by mail, 10% by office interview and 10% by hearing interview, in the First Report.

In the second Report, there were no significant changes except that the number of complaints received by mail dropped to 70% while 10% were received through an office interview and 20% were received through hearing interviews. The number of hearing interviews increased to 20% whereas the office interviews remained at 10%.

In addition, the number of complaints received from each region was approximately in proportion to the population of each region of the Province of Ontario.²²³

223. see pp. 130-142 of the First Annual Report and pp. 119-130 of the Second Annual Report.

In the first Report, it is interesting to note that the region farthest from Toronto, described as "Ontario North" had the second highest complaint to population ratio, and by the time of the second Report, "Ontario North" had the highest complaint-to-population ratio and was the source of more complaints (669) than any other region, even though the region has the least accessibility to Toronto. Private hearings in these areas were likely the most important contributing factor to the increased number of complaints.

As noted in the first Report, there were a relatively high number of complaints originating from constituencies where a correctional facility is located.

The population-to-complaint ratio remained roughly one to one irrespective of the rural or urban character of the constituency. Naturally, the percentage of complaints from urban areas is high because a majority of the Ontario population (approx. 80%) resides in urban areas.

Complaint Closings

In 11 of 14 months of the first reporting period, the number of complaint openings exceeded the number of complaint closings (May, 1975, to February, 1976). Thereafter, complaint openings and closings were about even except for the month of June/76, when a large number of complaints were received at hearings. The overall result was a backlog of complaints which averaged 1,550 for the four months preceding the end of the reporting period.

During the period from July 11/76 to March 31/77, 4,463 complaint files were closed. The number of complaint files closed on a monthly basis averaged 495 or 94% higher than during the period covered by the first Report. In these files, there were 613 instances involving more than one discernable complaint. These multiple-complaint situations explain why the disposition statistics and the line summaries exceed the number of closed files. In addition, 421 files closed involved new complaints from citizens whose complaints were included in the first Report.

For all months covered by the second Report, the number of complaint file openings exceeded the number of complaint file closings. As a result, the number of complaint files in progress as of March 31/77 was 2,551 or 38% higher than at the beginning of the reporting period. The growth in the backlog has continued to develop notwithstanding the significantly higher monthly rate of complaint file closings as compared with the previous reporting period.

Completion of Complaints

In the first Report, of the 3,714 complaints it took 63 calendar days between the opening and closing of a complaint. The majority were closed within 90 days. For instance, of the complaints opened in Nov./75 14 were closed during April/76. As of July 10/76, a total of 207 complaints opened in November/75 had been closed.

In the second Report, of the 4463 files closed, it took on the average 75 calendar days between the opening and closing of a file. The average duration in closing for complaints that were within the Ombudsman's jurisdiction was 104 days. The average duration to closing for complaints that were outside the Ombudsman's jurisdiction was 57 days.

The majority of complaints, 75%, were closed within 90 days. A significant percentage, 46% of all closed complaints were completed within one month. Only 41% were completed within one month during the period covered by the first Report. However, in comparison with the first Report, the average duration to closing has been increased from 63 to 75 days. This increase was caused by the larger number of complaints which required between 9 months to one year and more than one year to complete. The first Report showed 43 files requiring more than 9 months to close. In the second Report there were 309 complaints which required more than 9 months to complete.

The first Report explained that the number of duration days required to complete a complaint depended on three factors; the complexity of the complaint, the co-operation of parties contacted during the investigation, and other work expended by the staff. The first 2 factors are beyond the Ombudsman's control. The latter factor is largely dependent on the availability of staff. In many instances where a lengthy investigation occurs because of the impact of these factors, the duration of the investigation could not have been foreseen. (Of the 542 files opened in Nov./76,

60 were closed in Jan/77.)

Government and Private Organizations

The organizations were grouped into 6 major categories: 1) Government of Ontario, 2) Courts, 3) Federal Government, 4) private, 5) municipalities/local authorities, 6) other provinces, 7) international and 8) no organization specified.

In the first Report, a high percentage of complaints were directed at a relatively few organizations. With respect to Government agencies, the 7 organizations involved with 50 or more complaints accounted for 1,533 or 33% of the 2,057 complaints. The Ministry of Correctional services alone was involved with 769 or 37% of such complaints.

In the second Report, the percentage of complaints in each major category did not differ significantly from the pattern described in the first Report. Ministries, agencies, boards and commissions of the government of Ontario were involved with 2,671 or 52% of the 5,076 closed complaints. Complaints involving private business, associations, groups and individuals accounted for 22% of the closed complaints. In addition, Municipalities/local authorities accounted for 10% of the complaints and the Federal Government accounted for 8% of complaints.

The Ministry of Correctional Services accounted for 38% of complaints and the Workmen's Compensation Board accounted for 18%. The 10 organizations with 50 or more complaints accounted for 2,556 or 84% of such complaints.

Complaint Disposition

The disposition of all closed complaints was reviewed on the basis of three independent determinations which, as set out below, are roughly in the sequence that would be followed when working through a complaint: 1) jurisdiction, 2) final action and 3) settlement.

Complaints Outside Jurisdiction

The Ombudsman Act/75 excludes from jurisdiction complaints where one or a combination of the following conditions exist:

- 1) The complaint does not pertain to decisions of a "governmental organization" of the province of Ontario.
- 2) The complainant is not affected in his or its personal capacity.
- 3) The complaint pertains to deliberations and proceedings of the Executive Council of the Government of Ontario.
- 4) The complaint pertains to a decision of a person acting as a legal advisor or counsel to the Crown in any proceedings.
- 5) The complaint pertains to decisions involving judges or the functions of any court.
- 6) The complaint is premature because it pertains to matters where a right of appeal on the merits has not expired or been exercised.
- 7) The complaint pertains to matters within the jurisdiction of the Federal Government, municipal governments, or

other provincial governments.

8) The complaint pertains solely to private matters.

In the first Report, the most common reason for an "outside jurisdiction" determination was the private nature of the complaint. This reason surfaced in 988 or 38% of all such complaints. Matters within the jurisdiction of other governments (federal, municipal, other provinces) was a factor in 729 or 28% of all "outside jurisdiction" complaints. Complaints involving judges and courts accounted for 356 or 14% while complaints sent prematurely formed the basis for an "outside jurisdiction" determination in 449 or 17% of all such complaints.

In the second Report, complaints of a private nature were again the most common "outside jurisdiction" complaint. There were 846 "outside jurisdiction" complaints involving other levels of government. Approximately 50% of these complaints involved municipal and local authorities. Premature complaints involving situations where a right of appeal had not expired or been exercised comprised 23% of all "outside jurisdiction" complaints. The Workmen's Compensation Board continued to be the major source of premature complaints.

The office provided assistance in 2,968 or 97% of all "outside jurisdiction" complaints. This assistance arose in the course of explaining or clarifying a complainant's situation, providing advice, or by directing the complainant

by means of a referral. In 78% of all "outside jurisdiction" complaints the assistance was provided by means of a referral. There were 543 complaints where the staff felt that it was necessary to make inquiries in order to refer the complainant to the most appropriate organization or agency. (In the first Report assistance was provided in 2369 or 92% of all outside jurisdiction complaints.)

2) Final Action

The nature of the final action varied from complaint to complaint. In order to express the possibilities, nine action categories were defined: 1) listen, 2) explain, 3) advise, 4) refer, 5) inquire/refer, 6) inquire, 7) informal recommendation, 8) formal recommendation, 9) refuse to investigate or further investigate.

Settlement

The first question on the settlement status of a complaint is, did the complaint reach the point where the issue was resolved? A review of the 3,714 closed complaints, in the first Report, shows that 787 complaints or 21% were resolved. However, if complaints of a private nature and complaints directed at government agencies other than "governmental organizations" within jurisdiction are not included, the percentage of resolved complaints rises from 21% to 34%. Other factors which frequently intercede to prevent a complaint from being resolved include withdrawal and abandonment of a complaint, relevant circumstances changing in the

course of an investigation and jurisdictional considerations other than the above, for example, a premature complaint.

In the second Report, the 1,381 resolved complaints comprise 27% of the 5,076 closed complaints. This figure represents a 6% increase over the comparable figure in the first Report. From July 11, 1976 to March 31, 1977, the Ombudsman's office assisted in the resolution of 1,021 complaints or 74% of resolved complaints. The Ombudsman's office assisted in the resolution of 75% of the complaints involving "governmental organizations" within the meaning of The Ombudsman Act/75.

A second question to be focused on the settlement result is, did the settlement favour the complainant or the Governmental organization. The first Report, a review of 696 resolved complaints, shows that 213 or 31% were settled in favour of the complainant; 286 or 41% were settled in favour of the "Governmental organization" and 197 or 28% were independently resolved. Thus, in 59% of resolved complaints, the complainant received all or part of the benefits requested. No one agency or ministry had a disproportionately high ratio of either "favour complainant" or "favour government" settlements.

In the second Report, there were 767 complaints or 55% of the resolved complaints which were settled in favour of the complainant. There were 610 complaints or 45% of the resolved complaints which were settled in favour of the

organization complained against. In addition there were 4 complaints where a formal recommendation was denied.

Basically, the sequence of events leading to a resolved complaint, which may be settled in favour of the complainant or in favour of the Governmental Organization, varies from complaint to complaint.²²⁴

Budget-

Under section 10 of The Ombudsman Act, the salary of the Ombudsman and the expenses required for the operation of his office were made payable until March 31, 1976 out of the Consolidated Revenue Fund. From July 10, 1975 to March 31, 1976, the Ombudsman's office spent \$1,297,044 of which \$425,000 was attributed solely to the cost of opening the new office. The operating costs for that period therefore, were \$872,044.

In March 1976, the Board of Internal Economy recommended that the sum to be assigned to the Ombudsman in the printed estimates be \$2.3 million.

The Select Committee on Justice approved these estimates of the Ombudsman in the amount of \$2.3 million on June 21, 1976, it being understood that such additional sums as might be required would be obtained by applying to the Board of Internal Economy.

On November 23, 1976 the Board of Internal Economy approved the supplementary estimates for the office of the

224. First Annual Report, Ibid., pp. 110-129, and Second Annual Report, Ibid., pp. 105-117.

Ombudsman in the amount of \$509,000, bringing the total approved budget for the year ending March 31, 1977 to \$2,809,000 million. A rough breakdown of this amount includes:

salaries & wages	\$1,710,000	
employee benefits	150,000	
transportation & communication	276,000	
services	522,000	
supplies/equipment	150,000	
total	<u>\$2,809,000</u>	225

On March 1, 1977, the office of the Ombudsman submitted its estimates for 1977-78 to the Board of Internal Economy which amounted to \$3,909,000. This amount was subdivided by Standard Account Classification as follows:

Salaries and wages	\$2,483,000
Employee benefits	272,000
Transportation and Communications	256,000
Services	747,000
Supplies and equipment	151,000
	<hr/>
Total	<u>\$3,909,000</u>

At its meeting on March 8, 1977 the Board approved Estimates of \$3,560,000 which was subdivided by Standard Account Classification as follows:

225. First Annual Report, Ibid., pp. 29-30.

Salaries and Wages	\$2,342,000 (down \$141,000)
Employee Benefits	248,000 (down 24,000)
Transportation & Communications	233,000 (down 23,000)
Services	600,000 (down 147,000)
Supplies and equipment	137,000 (down 14,000)
Total	\$3,560,000 (down \$349,000) 226

The office will have an opportunity to present its Supplementary Estimates in late 1977.

Attacks on Budget

In December 1977 Arthur Maloney was strongly attacked by members of all three parties in the legislature for what they called his gold-plated spending and his political ploys to get more money for his office. In the 1976-1977 fiscal year the Ombudsman's office spent \$2,809,000. The 1977-1978 budget was set last spring at \$3,560,000. Mr. Maloney has asked for supplementary estimates of \$1,100,000 for this fiscal year and been cut back to \$633,000.

On Thursday, December 1, 1977, he told the Globe and Mail:

We've been emasculated by this. We'll almost have to close up shop, except to carry on the office and do work around Toronto. First to get the axe would be operations in Northern Ontario, one area that was screaming to us for assistance.

In the December 4, 1977 edition of the Sunday Sun, an article appeared under the title, "Is Ombudsman's Job really necessary?" It asked people to express their thought as to whether or not the Ombudsman's office was in fact worth 226. Second Annual Report, Ibid., pp. 31-32.

\$4.1 million that the Ontario legislature gave it in 1977.

Following are some of the replies:

I don't blame the legislature for the cut in Maloney's budget. I haven't yet heard where the Ombudsman has done any work except to encourage Pickering holdbacks. His staff must be well paid if he's asking for that kind of budget. When he shows some results with his present budget it might be interesting.

If Arthur Maloney was such a perfect choice for Ombudsman, why did he have to take a couple of trips abroad to get an insight as to how an Ombudsman's job works? Much time of his huge staff is taken up with frivolous beefs for which a deterrent is required. I must be one of many who feels Bill Davis should let this monster go.

I was under the impression federal, provincial and municipal representatives were elected to (amongst other duties) watch over their constituents' rights. So let's abolish the whole Ombudsman's office and save all that money.

In addition another article appeared in the Tuesday, December 13, 1977 edition of the Toronto Sun by Claire Hoy.

It read:

Is there no stopping this man, this egocentric wastrel named Arthur Maloney? Apparently there isn't, unless his crown accidentally slips down and chokes him in his sleep. For not only does our wildspending Ombudsman not apologize for his scandalous squandering of public funds, but - can you believe the gall - he wants even more. With a skyrocketing budget of \$4.2 million, Maloney has shamelessly set out to build the biggest and most expensive kindom in the entire world of Ombudsman. If we could point to dramatic results for our money, then, perhaps, it might not be so bad. But, to date, the one major project undertaken by Maloney - North Pickering - was badly botched. Meanwhile, the vast majority of complaints he's handled have either been remarkably petty or have involved time and money wasted on investigations outside his jurisdiction.

The above are but a small sample of some of the articles which have appeared in the press, misinformed articles at that. This is not to say that all articles which have appeared in the press are of such similar calibre. It must be mentioned that since the inception of the Ombudsman's office, the endeavours to assist the citizens of Ontario has been immensely aided by the encouragement (and sometimes constructive criticism) given the Office of the Ombudsman by the hundreds of men and women in the press. Their assistance in publicizing news of the Ombudsman's arrival along with his staff during the private hearings throughout the province is especially important in that it ensures that every citizen, and not just those in the large urban areas, knows about his access to the Ombudsman's office.

Recommendations

The contents of the above articles show a clear misconception about the Ombudsman's office, not solely through sheer ignorance but probably to a great extent due to the lack of published material on the relatively new office of the Ombudsman. Hence my first concrete recommendation for the Ombudsman's office.

To prevent this unjust and unfair politicization of the Ombudsman's office, it is imperative that a detailed brochure or pamphlet be prepared outlining the role and function of the Ombudsman's office, for dissemination to the general

public. People cannot hope to secure this kind of detailed knowledge unless something concrete is produced. Moreover, the press cannot be held responsible for this type of detailed knowledge. Hence a piece of work which would answer all the basic questions about the overall operation of the office is imperative.

This brochure would enlighten people as well as prevent unjust politization of the office. People would realize exactly how much work the Ombudsman's office does. It would show them just why the elected member is incapable of watching over constituent's rights. It would show them that the vast majority of cases handled by the office were not remarkably petty and that time is not wasted on investigations of cases which are outside the Ombudsman's jurisdiction. Simply, the misinformed would become the informed and a decrease of unjust opinion about the Ombudsman's office would prevail.

One disturbing point during the discussion of the Ombudsman's budget were some of the comments made by the elected members. For example, Gordon Walker (P.C., London South) commented to Arthur Maloney: "You're not a country cousin. You've become a country squire."²²⁷ Patrick Reid (Liberal, Rainy River), was similarly blunt: "Your whole organization has grown like Topsy. You've become guilt-edged, gold-plated, and the time has come to take a long, hard look at 227. Globe and Mail, Thursday, Dec. 1, 1977, p. 7.

just what you really require."²²⁸

Sufficiency of Budget

These comments are disquieting to say the least. The budget which Arthur Maloney submitted, was in his mind, the minimum requirement for the office of the Ombudsman to carry out the mandate which was given and the way he thought it should be done. When one considers the context in which the particular amount was requested, it does not seem unreasonable. The province of Ontario has a population of some 8 1/4 million people, with a huge land mass. The civil service is comprised of some 72,000 permanent men and women, 85,000 if all the temporary and casual help is taken into consideration. We have a province with almost 400 municipalities. The Ombudsman's office is empowered to review the acts and decisions of some 28 ministries and 65 boards, agencies and commissions. Moreover,

if you consider, for example, the Attorney General's Department that pays the people who try us and prosecute us in a great many cases, the annual budget there is 95 million dollars. Correctional Services which keeps us in jail when we break the law, if we are in a provincial institution -116 million. The Solicitor General who polices us in part around the province - 116 million, not to mention the huge budget of the Ministry of Education and the Ministry of Social Services. So it gives you some idea of the total context in which we are called upon to function and it seems to me that 3 1/4 million is really about a bare minimum to do the job that I think ought to be done for this province.²²⁹

228. Ibid., p. 7.

229. Ibid., p. 22. See London Chamber of Commerce Speech.

Later in the year, Mr. Maloney asked for supplementary estimates of \$1,100,000 million for this fiscal year which would bring the total budget to \$4,660,000. The amount was cut back by \$633,000. If Arthur Maloney's request had been granted his spending in this year would have been 66% higher than in the fiscal year of 1976-77. As it turned out, he was held to an increase of 49%.²³⁰

Case Summaries

Let us examine in capsulized form some of the complaints received by the Ombudsman's office for settlement. This will give us a clearer insight as to the type of cases which appear before the Ombudsman. It must be kept in mind though, that these particular cases, will not reveal to the fullest the wide variety of complaints brought to the Ombudsman's office, but they will indicate the crucial role that the Ombudsman does and can play in resolving citizen-government conflicts.

Among these cases there are situations such as:

--The resolution of a complaint by the parents of a 17-year old youth who was unjustly convicted of contempt of court by a Provincial Court Judge. Through the efforts of the Ombudsman and with the co-operation of the Ministry of the Attorney-General the parents were reimbursed by that Ministry for the legal expenses they incurred when they successfully fought the conviction in the Court of Appeal. (Included 230. Globe and Mail, December 1, 1977.

under the heading, "Ministry of the Attorney-General")

--The release from jail of a 17-year old girl who was remanded into custody for three weeks by a Provincial Court Judge to await sentencing after her plea of guilty to possession of hashish. When the Ombudsman was informed of the case, he advised the girl's lawyer to launch an appeal and thereby obtain her release on bail. The Provincial Court Judge, in a letter to the Ombudsman, criticized the Ombudsman's intervention, but the Ombudsman defended his action and brought to His Honour's attention other criminal cases where bail was successfully obtained for clients remanded into custody to await sentence "for an unusually long period of time". The trial judge subsequently imposed a fine of \$1,000. Her co-accused, who had a criminal record and who was found guilty of possession of hashish for the purpose of trafficking, was given a suspended sentence and placed on probation. (Included under the heading, "Ministry of the Attorney-General")

--The rejection of the Ombudsman's recommendation that boats purchased for use as homes be exempt from provincial sales tax. The Treasurer of Ontario said that he and his officials could not see the logic in the Ombudsman's recommendation, which came as a result of a boat purchaser being charged the tax as though the boat was to be used for plea-

sure purposes only, when, instead, he intended to use it as his principal residence. (Included under the heading, "Ministry of Revenue")

--The problem of a cottage-owner who was told to relocate his cottage or have it removed by government authorities. After owning the cottage for eight years, the owner had discovered from the local Registry Office that the building was on Crown land. He was repeatedly refused permission to buy or lease the land from the government. When the Ombudsman intervened, the government agreed to survey the property, and that survey revealed that the cottage was not on Crown land. The owner was spared the cost and inconvenience of relocation. (Included under the heading, "Ministry of Natural Resources")

--The reinstatement of a Liquor Control Board of Ontario worker to his former position. The worker had been absent from work for medical reasons and the Board terminated his employment, in the Ombudsman's view, without just cause. The board eventually agreed with the Ombudsman's recommendation that the worker be reinstated at an appropriate salary and with his previous seniority rights intact. (Included under the heading, "Ministry of Consumer and Commercial Relations")

--The return to a group home of a youth who had been unjustly accused of stealing \$75 and transferred to a juvenile training school. Through the intervention of the Ombudsman, the youth was returned to the group home and he was subsequently exonerated of the \$75 theft. (Included under the heading, "Ministry of Correctional Services.")

--The payment of an \$8,000 grant to a doctor who had agreed to practice family medicine in a Northern Ontario community, which the government had designated as a medically underserved area. The doctor was promised the grant in 1973, but after he began his practice in 1974, the Ministry of Health refused to pay him the \$8,000. Shortly after the Ombudsman formally notified the Ministry of his intention to investigate the matter, the grant was paid. (Included under the heading, "Ministry of Health.")

--The resolution of a lease dispute between a cottage owner and the government regarding property leased by the owner in a provincial park. Other lessees in the same park had been granted options to renew their leases, but the complainant had not. He had made extensive and costly improvements to the cottage and contended that he, too, should be allowed an option to renew his lease. Until the Ombudsman intervened, however, the government said there could be no renewal. After the Ombudsman's intervention, the complainant was al-

lowed to renew his lease. (Included under the heading, "Ministry of Natural Resources.")

--The release of a man who had been unjustly returned to the Mental Health Centre at Penetang. In 1957, he was found guilty of wounding and sentenced to 14 years imprisonment, but his appeal to the Court of Appeal resulted in a new trial. The Ombudsman, in his former role as a defence counsel, acted for the 19-year old youth at the Court of Appeal hearing, and an associate of the Ombudsman was counsel at the new trial in 1958. At that trial, the youth was found guilty of the charge by reason of insanity and an order was made to detain him at Penetang. Immediately after the verdict, the youth threatened the life of his counsel. (He was dissatisfied at the time with what was, he now admits, the best possible trial result for him and was in a highly emotional state.) He remained at Penetang for 14 years and was released on a day care programme through Toronto's Queen Street Mental Health Centre in 1972. The man was operating successfully under this programme until 1975 when he was abruptly arrested and returned to Penetang. The Ombudsman's investigation revealed that the police, relying on information from an unknown informant, had interviewed the man's psychiatric supervisor and learned of threats against both the Ombudsman and his former associate. The police considered this information serious enough to warrant the man's arrest,

but the psychiatrist involved subsequently told the Ombudsman that he did not feel the man intended to carry out the threats. There was obviously a misunderstanding during the conversation between the psychiatrist and the senior police official. Through the Ombudsman's intervention, the man was eventually released from Penetang and returned to the day care programme in which he had been previously involved. (Included under the heading, "Ministry of Health.")

--The vindication of correctional officers and inmates at the Burtch Correctional Centre in Brantford who had been unjustly named in connection with an alleged sexual attack on another inmate. The 19-year old complainant said he had been raped by two inmates while other prisoners watched, and he also contended that the attacks continued despite warnings that correctional officers were nearby. The inmate subsequently informed Burtch officials of the alleged attack and was placed in the infirmary. Four days later he escaped and was at large for 25 days. During that time, his allegation became public knowledge after he contacted a member of the news media. The Ombudsman's investigation into the inmate's allegation included a review of the man's court hearing on the charge of being unlawfully at large. At the trial, his counsel suggested that the inmate fled Burtch because he feared reprisals from other prisoners for having reported the alleged assault, but the court, after hearing the evidence from the alleged assailants and corrections

officials, concluded that the inmate had lied about the sexual assault, possibly with the hope of obtaining his instant release from custody. The Ombudsman came to the same conclusion at the end of his investigation and a report was prepared and delivered to the Minister of Correctional Services. Despite the fact that the allegation of assault against other inmates and suggestions of neglect by some correctional officers had been publicly published and broadcast, the Minister refused to make the report public. He said the language used in the report was too explicit and he also expressed concern about the effect of publicity on the complainant's rehabilitation. The Ombudsman replied that he found the Minister's reason for not making the report public "unconvincing", and also said he would press for an amendment to The Ombudsman Act to allow the Ombudsman, in his discretion, to make public any of his reports if he feels it is in the public interest to do so.²³¹

Summary

This statistical section tabulated the activities of the office of the Ombudsman in such a manner that the reader can easily determine how many new complaints came to the Ombudsman's attention during the two reporting periods, how many were directed against particular governmental organizations and how many complaint files were closed.

231. First Annual Report, Ibid., pp. 21-27.

It was found that in the second reporting period, the office of the Ombudsman had received some 4,989 new complaints and had also dealt with approximately 7,000 informal citizen inquiries which did not necessitate the opening of a formal complaint file. When converted into monthly totals, the figures indicated that the Ombudsman's office received an average of slightly more than 1,300 complaint/inquiries per month, and of that number an average of some 554 resulted in the opening of a formal complaint file.

These figures indicated a significant increase in the number of problems brought to the Ombudsman's office compared to the first 14-month reporting period. At that time the Ombudsman's office had opened on the average 379 complaint files each month. The latest figure of 554 per month represented an increase of 46% over the initial reporting period.

Based on these figures, the Ombudsman anticipated that his office would open approximately 6,600 new complaint files each year and would also deal with an additional 10,000 informal inquiries for a total of 16,000 citizen contacts. However, based on the surge in demand made upon the office of the Ombudsman during the second report's nine-month period, there very well could be even more citizen complaints and inquiries brought to the Ombudsman's office than has been predicted.

Several final points must be made on the statistical evidence presented in this chapter. First of all, as has been noted, all the statistical data comes directly from

the annual Reports of the Ombudsman to the Legislature. Consequently, we have the situation where the statistical evidence is produced by the person who is trying to justify his activities. Therefore, one must be aware of the potential bias of the author(s) of the statistics. It is to be hoped that sometime in the future an independent audit of the statistics will be made. However, the statistics as presented in both annual Reports seem to be accurate. The Select Committee on the Ombudsman corroborated the statistics in its second and third Reports where they stated:

That the Ombudsman and his staff were able to accomplish all that is referenced in the Report is a testimony to the effort, dedication and enthusiasm of the Ombudsman and each and every member of his staff.²³²

232. Second Report of the Select Committee on the Ombudsman, p. 5, tabled in the Legislative Assembly, March 28, 1977. Third Report of the Select Committee on the Ombudsman, p. IV, tabled in the Legislative Assembly, November 25, 1977.

Conclusion

An attempt has been made in earlier chapters to indicate that within the last half century we have witnessed the rise of the modern welfare state, and with it, the enjoyment of many social services. Similarly, we have witnessed the transformation of governments from minor institutions to the present where they are large, highly centralized entities.

It has also been shown that in order to administer this vast complex structure, a large bureaucracy has flourished, bringing with it, "the need to grant increasing powers of discretion to the executive side of government."²³³ This, it was argued was due to the fact that in a modern welfare state, where speed and uniformity of action is expected from the authorities, there is a push towards ever-increasing centralization of bureaucratic functions. It is this drive towards increasing bureaucratization, specialization and centralization, which can cause undesirable neglect when individual cases are considered. Simply put, thousands of administrative decisions are made yearly by government officials and their minions. Thus, we are confronted with numerous cases where the cogs of the government's administrative machine unjustifiably lead to an infringement of citizen's rights. Where these administrative decisions are not justified and are unfair or wrong,

233. D.C. Rowat, The Ombudsman Plan, (Toronto:McClelland & Stewart Ltd., 1973), p. 46.

there is really no simple method by which the ordinary citizen can obtain redress from the government. As Sir John Whyatt put it,

With the existence of a great bureaucracy there are inevitable occasions, not insignificant in number, when through error or indifference, injustice is done- or appears to be done...But too often the little man, the ordinary humble citizen, is incapable of asserting himself...the little man has become too used to being pushed around; it rarely occurs to him that there is any appeal from what they have decided and...too often in fact there is not.²³⁴

To say the least, this is a disquieting and unhealthy symptom of our contemporary political system.

Hence it is precisely from this sense of unease and from what John Stuart Mill called "the despotism of custom",²³⁵ that expedient despotism where decisions are made according to the book rather than according to conscience and merits of the case, that proposals for a new and added protection against bureaucratic offences emanate. One new form of protection is provided by the parliamentary officer known as the Ombudsman, a unique institution for dealing with citizens' grievances against unjust administrative decisions. His mandate is to arrive at truth and equity and to see that they are satisfied.

We have seen that although the office of the Ontario Ombudsman attempts to confront the problem of an expanded

234. Justice, (British Section of the International Commission of Jurists), "The Citizen & Administration: The Redress of Grievances - A Report," Sir John Whyatt, Director of Research, (London: Stevens, 1961), p. xiii.

235. see Notes on the Hugh C. Arrell Memorial Lecture, p. 12.

bureaucracy in the modern welfare state, the office was originally created in Sweden in 1809 to act as a guardian of the people's rights, by preventing the abuse of powers by the authorities. We have indicated that the essential features of the original Ombudsman system in Sweden which argued for its adoption were:

that the Ombudsman be an independent and non-partisan officer of the Legislature, usually provided for in the constitution, who supervises the administration; He deals with specific complaints from the public against administrative injustice and maladministration; and He has the power to investigate, criticise, and publicise, but not to reverse administrative action.²³⁶

We have discussed how the Ombudsman's office in Ontario was provided for by action of the Legislature, and why the office is headed by an independent public official who is ultimately responsible to the Legislature. He receives complaints from people against government agencies, officials and employees, acts on his own initiative, and has the power to investigate, recommend corrective action and issue reports. The offices differences from the traditional methods of handling grievances and important advantages over these methods have also been noted.

Some attention was also paid to the traditional mechanisms for adjusting grievances, namely the court system, as the courts are not always, "as effective instruments for remedying the wrongs of modern administrative action, for

236. D.C. Rowat, The Ombudsman, (Toronto: University of Toronto Press, 1968), p. xxiv.

they are more than often too cumbersome, costly and slow."²³⁷ Moreover, litigation is still very expensive, exacerbating and often protracted and slow.

On the other hand, the office of the Ombudsman, gives the citizen an expert and impartial agent, without personal cost to the complainant, without time delays, without the tension of adversary litigation, and without requirement of counsel.²³⁸

All that is required of the complainant is that he/she send the Ombudsman a letter or contact his office by telephone. The rest is handled by the office.

Moreover, complaints to one's member in the legislature often has not solved the problem either. Not only are many citizens probably unaware of this avenue of appeal to their MPP, perhaps because of their lack of knowledge as Mr. Thompson (Liberal) speculated, but in many instances it is unsuitable. For example, the member may simply not have the time nor the personnel to deal with the constituent at any great length, and secondly, many people question the impartiality of their member because of the member's particular party affiliation.

Furthermore, the other traditional body with power to deal with complaints relating to actions of administrators is the legislature itself. However, it also is seriously limited in what it can accomplish, for there are no formal procedures in the Ontario legislature for settling the

237. The Ombudsman Plan, op. cit., p. 47.

238. Ibid., p. 47.

grievances of individuals.

In short the following five reasons all pointed toward the necessity of establishing the office of the Ombudsman; the complexity of modern government, the impersonal and dehumanizing nature associated with the operation of modern government, the inadequacies of the traditional mechanisms for adjudication of problems, the need for impartial assistance and the need for a deterrent to injustice.

Though the office differs dramatically from the traditional methods of handling grievances, it possesses certain advantages over these other methods:

First there is the principle of impartial investigation. If a citizen makes a complaint against the conduct of a civil servant, the matter is investigated and reported upon by the Ombudsman, who is an impartial authority, entirely independent of the legislature. Secondly, the impartial authority acts on behalf of parliament although he is also protecting the rights of the individual complainant. Thirdly, the investigation is conducted openly. Fourthly, the method of submitting complaints and the investigation is very informal.²³⁹

Furthermore, we have seen that the road travelled in attaining the Ombudsman institution within the Province of Ontario has in fact been a long and arduous one. It was not until 1965 that serious debate and discussion of the Ombudsman institution was to take place, at which time Mr. Vernon Singer, MPP, (Liberal., Downsview), introduced a private member's Bill calling for the appointment of a

239. Ibid., p. 49.

"Parliamentary Commissioner". However, ten consecutive introductions of the "Parliamentary Commissioner" Bill failed to attract the support of the government, despite Mr. Singer's concerted effort throughout the period of nine years.

It was not until March 11, 1975, when the first reference to the Ombudsman was to occur in Ontario's Speech from the Throne, when The Honourable Pauline McGibbon, Lieutenant Governor, announced:

As a safeguard against the growing complexity of government and its relationship with the individual citizen, the government will establish the office of the provincial Ombudsman - or Ombudsperson - to ensure the protection of our citizens against arbitrary judgement or practice.²⁴⁰

The leaders of both Opposition parties not only spoke in favour of the creation of the Ombudsman's office, but similarly in favour of the Ombudsman - designate's nomination - Arthur Maloney, Q.C.

During the course of the debate on the Ombudsman Bill, the elected members who spoke made many carefully considered suggestions regarding the organization of the Ombudsman's office and also expressed the hope that in establishing the office, Mr. Maloney would consider and make reference to their remarks. Finally, on July 3, 1975, Bill 86 received Royal Assent and was proclaimed in force on July 10, 1975.

240. Globe and Mail, March 12, 1975.

Simply, The Ombudsman Act, enacted in 1975 provided that the Ombudsman would have the power to investigate any decision or recommendation of any governmental organization of the province of Ontario either upon receipt of complaints from affected persons or on the decision to conduct an investigation on his own initiative. Generally, complaints are brought to the attention of the Ombudsman directly by people who feel that they have been aggrieved by the bureaucracy; they can be brought to him by the elected members of the legislature; lastly, the Ombudsman can conduct an investigation on his own initiative, providing the case falls within the Ombudsman's jurisdiction.

Collectively, the express powers which have been given to the Ombudsman by the legislature are the formal powers, "which the Members of Parliament, in their wisdom, thought that the Ombudsman might need to carry out his function as prescribed by the Ombudsman Act."²⁴¹

These powers include:

- (a) The power by summons to compel attendance of any complainant, any person who is an officer or employee or member of any governmental organization or any person who in the Ombudsman's opinion is able to give any information relating to any matter that is being investigated by the Ombudsman;

²⁴¹. Speech on "The powers of the Ombudsman and their judicious use", given by Mr. Maloney to the Canadian Regional Meeting of the International Ombudsmen Conference on Sept. 8, 1976, at Edmonton, Alta, p. 2.

- (b) The power to compel the production of documents by summons or otherwise from any of the above-mentioned persons;
- (c) The power to administer an oath to and examine such persons;
- (d) The power, upon notice, to enter upon any premises occupied by any governmental organization and inspect the premises and carry out any investigation within the Ombudsman's jurisdiction;
- (e) The power to hear or obtain information as the Ombudsman thinks fit, including the power to hold a hearing;
- (f) The power, at any time during or after an investigation, to consult any Minister who is concerned in the matter of the investigation;
- (g) The power to refer the matter to the appropriate authority if, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or of misconduct on the part of any officer or employee of any governmental organization.²⁴²

The members of the legislative assembly could have in theory conferred these extensive powers upon themselves rather than on the Ombudsman, had they so wished. But the result of each member of the legislature having these specific powers, to enter government offices, seize and appropriate files, hold hearings, etc., would create an un-
242. Bill 86, pp. 6-7.

imaginable kind of chaos. Hence, the Legislature, in its wisdom collectively decided to confer the above-mentioned powers on an Ombudsman, who as an officer of the legislature would be responsible directly to it, and would exercise these powers in trust for all the members of the legislature, "the beneficiaries being the citizens of the province."²⁴³

Of great significance is the fact that, first and foremost the Ombudsman was created by the Legislature. The government did not appoint him. The government submitted the nomination of Arthur Maloney to the legislature and his appointment was made unanimously by them. The Ombudsman then, is a functionary of the legislature's making. He is supposed to be answerable, responsible and responsive to it. His annual report is to them and his budget is approved by them. Also he is removable at any time for cause, for example, if he neglects to perform the functions of his office, by the Lieutenant Governor in Council on the address of the assembly.

It could be argued that each of the elected members is an Ombudsman in his own right, that they are the Ombudsman's fellow Ombudsmen, as the Ombudsman's office is available to each of the elected representatives in assisting their own particular constituency problems. Within the first year of the Ombudsman's existence, this purpose became increasingly apparent to the elected members as they began to turn to the

243. Ibid., see no. 8, p. 4.

office for assistance in the resolution of their problems. Within the first reporting period of the Ombudsman, from May 22, 1975 to July 10, 1976, 433 complaints emanated from the Ombudsman's office at Queen's Park, and it was estimated that 134 of these complaints were sent through the elected members. With further evolution of the Ombudsman's office, many hours of legislators' time will be saved, as they will be able to devote more of their time to pressing matters such as service on house committees, to studying legislation before the House and in the end to service of their own constituents. It is the Ombudsman's personal desire to aid the elected member, since it was the intention of the government and the intention of the Opposition parties, "that the creature they brought into being, was set up to serve the people and them (the elected member) in their efforts to serve the people."²⁴⁴ This is in fact what the Ombudsman is attempting to do.

Thus, it is of the utmost importance that we discard entirely the myopic view that the Ombudsman is nothing more than, "the little man's muscular ally in the bullying of big government."²⁴⁵ Simply, it is not the role of the Ombudsman to achieve "daily sensations by exposing arrogant administrators, bugling bureaucrats and oppressive officials."²⁴⁶

Rather, the Ombudsman's recommendations or admonitions serve

²⁴⁴. Speech delivered by Arthur Maloney, to the London Chamber of Commerce, Friday March 19, 1976, p. 6.

²⁴⁵. see Notes on the Hugh C. Arrell Memorial Lecture, p. 12.

²⁴⁶. Ibid., p. 12.

to correct administrative malpractices and to change laws and regulations, which in their application serve injustice, and, secondly, prevent their recurrence. In this sense the Ombudsman's recommendations serve as a guideline for government officials. It is precisely in this that I see the unique role of the Ombudsman. By preventing the recurrence of administrative injustices, he improves the administration of the province, by providing both direct and indirect protection against unfair administrative decisions and practices. Thus, parallel with his function of providing Ontario's citizens with an office where they can lodge their particular complaints and through which they can seek redress, the Ombudsman's role has become one of promoting better public administration.

Within weeks of the Ontario government's announcement of its intention to create the office of the Ombudsman, the first complaint was received. This first complaint was to mark the beginning of an avalanche of written and verbal requests for the Ombudsman's help.

Faced with the almost instantaneous response from Ontario's citizens towards the Ombudsman concept, Arthur Maloney embarked on the immediate task of organizing the Ombudsman's office to ensure that all the complaints would be handled as efficiently and expediently as possible. At the same time, Arthur Maloney,

was conscious of the need to avoid developing a structure which would appear to be as faceless as the impersonal bureaucracies my office was designed to oversee. On the other hand, it had to be strong enough to endure and to stand the test of time.²⁴⁷

In structuring the office of the Ombudsman in Ontario, it was necessary to ensure that it would never become that which it was set up to combat, an impersonal bureaucracy. Therefore, it was essential that it remain small enough so as to avoid becoming a burgeoning bureaucracy but yet large enough to be able to effectively challenge any part of the bureaucracy where such challenge was required. Hence, the Ombudsman's operation was decentralized by the existence of eight directorates, each empowered with the responsibility for a specific aspect of the total Ombudsman function. Today there are some 122 people in the Ombudsman operation. In the words of Arthur Maloney,

I don't think you determine a bureaucracy by the size of your staff or the numbers of your staff, you have a bureaucracy when you lose that kind of intimacy that gives the Ombudsman a kind of intimate contact with the people he is called upon to serve. We've accomplished that by decentralizing and setting up the departments it was recommended to us in the debate that we do. When we decentralize...then we retain our intimacy in these vital areas.²⁴⁸

Moreover, in the structuring of the Ombudsman's office, Arthur Maloney gave careful consideration and study to the contributions of the various members of the legislative

247. First Annual Report, p. 5.

248. Speech delivered by A. Maloney to the London Chamber of Commerce, Friday, March 19, 1976, p. 24.

assembly, while looking upon the debate as his personal mandate. Much of the advice which he was given has proven invaluable and is either in the process of being carried out or has been already done so. It was obvious by the high calibre of the various presentations during the course of the debate on The Ombudsman Act, especially by such members as Mr. Verne Singer (Liberal, Wilson Heights), Mr. George Samis (N.D.P., Cornwall), Mr. Patrick Reid (Liberal., Rainy River), Mr. James Renwick (N.D.P., Riverdale), that the members had in fact given much serious thought as to the office of the Ombudsman and to their concept of what it is, what it ought to be and how it ought to function.

Uppermost in the minds of many members was the question of accessibility as far as the Ombudsman was concerned. The feeling was expressed that the Ombudsman and his staff should tour the province in order to make themselves available to those people who would otherwise find it extremely inconvenient to come to Toronto. As a result of this mandate and as a response to it, commencing in November 1975, the Ombudsman and his staff have visited numerous centres.

Another concern was the fact that the Francophone presence should be duly respected and recognized in the staff of the Ombudsman's office. As a result of this, one of the Ombudsman's senior members, Gilles Morin is a Francophone of recognized importance in the French community. In

addition, approximately six other members of the staff are perfectly bilingual in French and English.

Still another mandate given was that the Ombudsman should ensure that his office be staffed with people who have a linguistic facility other than English or French. As a result of this concern, the Ombudsman's staff includes people who have a fluent linguistic ability in some fourteen languages.

It was also suggested during the course of the debates that special departments be created within the Ombudsman's office to deal with people who have special problems such as those relating to the Workmen's Compensation Board. As a result of this, special Directorates were set up.

So from the above we can see that in fact the Ombudsman, Mr. Arthur Maloney has accomplished what was recommended to him in the debate, especially decentralizing his operation and setting up special departments. Though some scholars have argued that a functional division or decentralization of the institution would cause it to lose its attractive personal touch, which they consider a key to its success; the Ombudsman operation in Ontario has proven otherwise.

Our distinct Ombudsman operation is especially suited to the particular circumstances of the province of Ontario and Arthur Maloney has already added a new dimension to the Ombudsmanship. No one who has had the privilege of studying at first hand the scope and imaginative drive of Arthur Maloney's work can fail to be deeply impressed.

The office of the Ombudsman in Ontario has not only managed to survive its first two years of existence but has also dealt with some 22,576 citizen inquiries and complaints as of July 10, 1976.

Despite these advances in structuring an Ombudsman's office "second to none", many critics and skeptics have zeroed in on the Ombudsman. These criticisms were outlined at length in Chapter 5, and the necessity of an information brochure was outlined.

As far as additional recommendations are concerned, both annual reports of the Ombudsman have indicated that the majority of complaints which are brought forward to the Ombudsman for resolution are still outside the legislative mandate governing his office. The large number of complaints outside his jurisdiction involved citizen problems with municipalities, universities and many other bodies financed in whole or in substantial part by the provincial government. The Legislature should seriously consider allowing the Ombudsman to deal with such cases, due to the fact that already the Ombudsman's staff spends considerable amounts of time informally investigating complaints against such provincially-funded bodies. Moreover, according to Arthur Maloney, the additional staff and budget which would be required would not be excessive and it would allow the Ombudsman to deal more effectively with these types of problems.

Nevertheless, and in accordance with the views expressed

by MPP's during the debate on The Ombudsman Act, the office is still making every effort to assist those who bring problems to the office, notwithstanding the Ombudsman's lack of jurisdiction to deal with such complaints.

Furthermore, due to the fact that there still are quite a number of premature complaints coming before the Ombudsman, simply points to the fact that there are many people who do not know how to pursue an existing right of appeal.

Therefore, it is recommended that legislation be introduced requiring any governmental organizations that make appealable decisions to explicitly inform citizens of their appeal rights so as to enable them to bring their problems to a speedy resolution.

Moreover, based on information gleaned from dealing with more than 20,000 complaint files opened by the office since its inception two years ago, the Ombudsman feels that it is important for all government organizations which deal directly with the public to ensure that when they communicate a decision which is adverse to a citizen, they do so in clear and concise language, setting out in detail the reasons for the negative comments.

Experience has borne out in a number of cases the complaint brought forward was resolved by the simple expedient of making enquiries with the governmental organization concerned, then fully explaining to the complainant the exact reason why the particular decision was made. Once the complainant understands the reasons for the decision, he no

longer feels unjustly dealt with.

In retrospect, although the Ombudsman Bill was given a thorough debate clause by clause, the Legislature never did issue a clear statement as to what role the Ombudsman should play within the system of Government in Ontario, or in what context the Ombudsman was expected to perform his role. We saw that this was due, at the time, to a lack of understanding of what an Ombudsman was, how he should function in Ontario and lastly, what the implications would be of an Ombudsman functioning in Ontario.

Hence, Mr. Maloney, after being sworn in as the province's first Ombudsman, was left virtually to his own resources to create and organize the Ombudsman's office. More importantly, he was left to his own resources to interpret the obligations imposed upon him by statute and also to implement them.

Because the legislature was too general in describing the boundaries and parameters of the authority of the office of the Ombudsman, this ultimately resulted in an increase in tension between the Ombudsman, Ministers of the Cabinet and the Select Committee. Since no generally accepted, consistent Legislative definitions and interpretations of the Ombudsman's functions under The Ombudsman Act or the relationships that are necessary to perform these functions existed, the Select Committee was forced to conclude that the time was overdue for the Legislature to formulate the necessary definitions and interpretations.

The Select Committee commented on this issue:

Unless and until the Legislature, with the assistance of this Committee begins to formulate these matters, the Ombudsman will continue to perform in a shadow of doubt, and the public will ultimately suffer... The sooner these goals are set upon, the sooner the ultimate beneficiary (the people of the Province of Ontario) which the Ombudsman has pledged himself to serve, will benefit.²⁴⁹

In conclusion, the Ombudsman should be regarded as a complement to the already existing procedures for democratically controlling government, especially to the executive and legislative branches of government.

Regardless of how competent an Ombudsman may be, no matter how well accepted he may be by the public, he cannot supplant the political processes that in the end control the administration of public affairs.²⁵⁰

Secondly, it is of the utmost importance that we discard entirely the myopic view that the Ombudsman is nothing more than "the little man's muscular ally in the bullying of big government,"²⁵¹ because his success cannot be measured by the frequency of his criticisms of administrators. Rather, the Ombudsman's recommendations serve to correct administrative malpractices, which in their application serve injustice, and secondly, prevent their recurrence.

And lastly, and perhaps of the greatest importance, the Ombudsman must be a man of compassion, "for many of those who seek his assistance are often more perplexed by life

249. Fourth Report of the Select Committee on the Ombudsman, tabled in the Legislative Assembly, May 18, 1977, pp. vi-viii.

250. Text of address delivered by Arthur Maloney, to the Faculty of Law, University of Windsor, Monday March 8, 1976, p. 29.

251. see Notes on the Hugh C. Arrell Memorial Lecture, p. 12.

than victimized by officialdom."²⁵²

Thus, the significance of the Ombudsman's office is twofold. First the Ombudsman helps to bridge the gap between government and the people by providing the citizens of Ontario with an office where they can lodge their complaints against unfair administrative decisions and through which they can have their grievances redressed. Secondly, the Ombudsman's office promotes the general efficiency of administration whereby the Ombudsman's recommendations correct administrative malpractices and prevent their recurrence by acting as a set of guidelines for government officials. In this manner, through the improvement of government administration and thereby preventing the recurrence of administrative injustice, the Ombudsman provides both direct and indirect protection against unfounded and unjust administrative decisions.

252. see Notes on the Hugh C. Arrell Memorial Lecture, p. 12.

Appendix A

BILL 86

1975

**An Act to provide for an Ombudsman to
investigate Administrative Decisions and Acts
of Officials of the Government of Ontario and
its Agencies**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

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

(b) "minister" means a member of the Executive Council.

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.

Ombudsman

3. The Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Appoint-
ment

4.—(1) Subject to this Act, the Ombudsman shall hold office for a term of ten years, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

Tenure of
office and
removal

(2) The Ombudsman may be reappointed for a further term or terms but shall retire upon attaining the age of sixty-five years.

Reappoint-
ment
and
retirement

5.—(1) The Ombudsman shall devote himself exclusively to the duties of his office and shall not hold any other office under the Crown or engage in any other employment.

Nature of
employment

(2) *The Public Service Act* and *The Public Service Superannuation Act* do not apply to the Ombudsman.

Idem
R.S.O. 1970,
cc. 386, 387

Salary **6.**—(1) The Ombudsman shall be paid a salary to be fixed by the Lieutenant Governor in Council.

Idem (2) The salary of the Ombudsman shall not be reduced except on address of the Assembly.

Expenses (3) The Ombudsman is entitled to be paid reasonable travelling and living expenses while absent from his ordinary place of residence in the exercise of his functions under this Act.

Pension
1973, c. 152 (4) Part II of *The Legislative Assembly Retirement Allowances Act, 1973*, except sections 15 and 16, subsection 5 of section 18 and clause *a* of subsection 2 of section 19, applies, *mutatis mutandis*, to the Ombudsman in the same manner as if he were a member of the Legislative Assembly and for the purpose,

(a) "average annual remuneration" means the average annual salary of the Ombudsman during any five years of his service, which years need not be consecutive, during which his salary was highest; and

(b) "remuneration" means the salary of the Ombudsman.

Temporary
Ombudsman **7.** In the event of the death or resignation of the Ombudsman while the Legislature is not in session or if he is unable or neglects to perform the functions of his 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.

Staff **8.**—(1) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such officers and other employees as the Ombudsman considers necessary for the efficient operation of his office and may determine their salary and remuneration and terms and conditions of employment.

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, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations. R.S.O. 1970, c. 386

(3) *The Public Service Superannuation Act* applies to the permanent and full-time probationary staff of the Ombudsman as though the Ombudsman were a commission designated by the Lieutenant Governor in Council under section 27 of that Act. Employees' superannuation benefits R.S.O. 1970, c. 387

9. The Ombudsman may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his office. Premises and supplies

10. The salary of the Ombudsman and the expenses required for the operation of his office are payable, until the 31st day of March, 1976, out of the Consolidated Revenue Fund and thereafter out of moneys appropriated therefor by the Legislature. Salary and expenses

11. The accounts and financial transactions of the office of the Ombudsman shall be audited annually by the Provincial Auditor. Audit

12. The Ombudsman shall report annually upon the affairs of his 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 ensuing session. Annual report

13.—(1) Before commencing the duties of his office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he will faithfully and impartially exercise the functions of his office and that he will not, except in accordance with subsection 2, disclose any information received by him as Ombudsman. Oath of office and secrecy

(2) The Ombudsman may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations. Disclosure

Application
of Act

14. 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.

Function of
Ombudsman

15.—(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 or its personal capacity.

Investiga-
tion on
complaint

(2) The Ombudsman may make any such investigation on a complaint made to him by any person affected or by any member of the Assembly to whom a complaint is made by any person affected, or of his own motion.

Powers
paramount

(3) The powers conferred on the Ombudsman by this Act may be exercised notwithstanding 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.

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.

Application
to S.C.O. to
determine
jurisdiction

(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.

Guidance
rules

16.—(1) The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act.

(2) All rules made under this section shall be deemed to be regulations within the meaning of *The Regulations Act*. Idem
R.S.O. 1970,
c. 410

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his procedures. Procedures

17.—(1) Every complaint to the Ombudsman shall be made in writing. Mode of
complaint

(2) Notwithstanding any provision in any Act, where any letter written by an inmate of any provincial correctional institution or training school or a patient in a provincial psychiatric facility is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school or facility. To be
forwarded

18.—(1) If, in the course of the investigation of any complaint within his jurisdiction, it appears to the Ombudsman, Ombudsman
may
refuse to
investigate
complaint

- (a) that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not he has availed himself of it; or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his 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 opinion, Idem

- (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.

(3) In any case where the Ombudsman decides not to investigate or further investigate a complaint he shall inform the complainant in writing of that decision, and may if he thinks fit state his reasons therefor. Complainant
to be
informed

Proceedings
of
Ombudsman

19.—(1) Before investigating any matter, the Ombudsman shall inform the head of the governmental organization affected of his intention to make the investigation.

Investigation to be in private

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

Where hearing necessary

(3) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he 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 his making any report or recommendation that may adversely affect any governmental organization or person, he shall give to that organization or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel.

May consult minister

(4) The Ombudsman may in his discretion, at any time during or after any investigation, consult any minister who is concerned in the matter of the investigation.

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 1 or 2 of section 22.

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, he may refer the matter to the appropriate authority.

Evidence

20.—(1) The Ombudsman may from time to time require any officer, employee or member of any governmental organization who in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him 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.

Examination under oath

(2) The Ombudsman may summon before him 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.

(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.

(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.

(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.

(6) Except on the trial of any person for perjury in respect of his 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.

(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 his right to object to answer any question under section 5 of the *Canada Evidence Act*.

(8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his compliance with any requirement of the Ombudsman under this section.

Fees

(9) Where any person is required by the Ombudsman to attend before him for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he were a witness in the Supreme Court, and the provisions of any Act, regulation or rule in that behalf apply accordingly.

Disclosure of certain matters not to be required

21.—(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.

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.

Procedure after investigation

22.—(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.

(2) This section also applies in any case where the Ombudsman^{Idem} 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.

(3) If in any case to which this section applies the Ombudsman^{Ombudsman's report and recommendations} 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 opinion, and his reasons therefor, to the appropriate governmental organization, and may make such recommendations as he thinks fit and he may request the governmental organization to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations and the Ombudsman shall also send a copy of his report and recommendations to the minister concerned.

(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 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 thinks fit.^{Where no appropriate action taken}

(5) The Ombudsman shall attach to every report sent or^{Idem} made under subsection 4 a copy of any comments made by or on behalf of the governmental organization affected.

Complainant to be informed of result of investigation 23.—(1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection 3 of section 22, 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 recommendation, and may make such comments on the matter as he thinks fit.

Idem (2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

Proceedings not to be questioned or to be subject to review 24. 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.

Proceedings privileged 25.—(1) No proceedings lie against the Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith.

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 knowledge in the exercise of his functions under this Act.

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.

Power of entry of premises 26.—(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 jurisdiction.

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 purpose.

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 is satisfied that the exercise of the powers mentioned in subsection 1 might be prejudicial to the public interest.

(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 High Court 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 may make the order. ^{Order of judge}

27.—(1) The Ombudsman may in writing delegate to any person holding any office under him any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act. ^{Delegation of powers}

(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. ^{Delegation is revocable}

(3) Every such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit. ^{Restrictions and conditions}

(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. ^{Continuing effect of delegation}

(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 authority to exercise the power. ^{Evidence of obligation}

28. Every person who,

- ^{Offences and penalties}
- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the performance of his 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 functions under this Act,

is guilty of an offence and liable on summary conviction to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both.

Rights under Act do not affect other rights, etc.

29. 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.

Commencement

30. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

31. This Act may be cited as *The Ombudsman Act, 1975*.

Appendix B

First Annual Report of the Ombudsman

pp. 88-98

Chapter Four

Staff Biographies

The effectiveness of the Ombudsman's function is, to a great degree, a reflection of the quality of the staff who are engaged to carry out that function. The Office of the Ontario Ombudsman is staffed by a group of impressive people who assist the Ombudsman in carrying out his mandate. Citizens who have met them either in Toronto or throughout the Province have never failed to express their impression that the Ombudsman's Office is staffed by people of the highest calibre. The following provides an outline of the backgrounds of our senior staff.

Special Assistant and Legal Officer - Mr. Keith Hoilett

Keith Hoilett was born in Jamaica in 1933. He came to Canada in 1955, and entered Trinity College, University of Toronto. He graduated in 1960 with an Honours B.A. in Political Science and Economics. He graduated from the University of Toronto, Faculty of Law, in 1964 and was called to the Bar in 1966. He then became a member of the York County Crown Attorney's staff in the Ministry of the Attorney General and served there until he was asked to join the Office of the Ombudsman. In his years of service in the Crown Attorney's Office, Mr. Hoilett was consistently complimented for his "fairness and courtesy".

Director of Special Services - Ms. Ellen Adams

Ellen Adams was born in Germany in 1925 and emigrated to Great Britain while still a teenager. In Britain she joined the Auxiliary Territorial Service, served during both war and peace and moved to Canada in 1948.

From 1949 to 1954, Ms. Adams acted as National Secretary of the Co-operative Commonwealth Federation Youth Organization. Later, she became secretary to former N.D.P. leader, Donald C. MacDonald. She later became Special Assistant to the current leader, Stephen Lewis, who said after she had announced her departure: - "Ellen Adams is absolutely indispensable. Losing her is like losing a part of oneself."

Ms. Adams is well experienced in dealing with grievances against public bodies such as the Workmen's Compensation Board, for she took complaints before boards and commissions for years on behalf of people who took their problems to the N.D.P.

Director of Rural, Agricultural and Municipal Services -
Mr. Gilles Morin

Gilles Morin was born in the small village of Dolbeau, Quebec in 1931, and was raised in Rouyn in Northwestern Quebec. He is a fluently bilingual francophone. From the early 1960's, Mr. Morin represented various investment houses selling bonds and debentures on behalf of smaller municipalities across North and Northwestern Ontario.

Mr. Morin entered the Canadian Army in 1951 as an

officer cadet, then Second Lieutenant with the Royal 22nd Regiment, (the "Van Doo's"). After serving in Korea, he returned to Canada and went into service with the late Governors-General Vincent Massey and George Vanier as an aide-de-camp.

Director of Investigations - Mr. Brian Goodman

Brian Goodman was born in 1947 in Toronto, and attended Forest Hill Collegiate. He attended the University of Toronto and received his Bachelor of Arts degree with Honours in Sociology, in 1969. He then entered Osgoode Hall Law School at York University and received his Bachelor of Laws in 1972. Before joining our staff, he practiced law in Toronto with the firm of Robins and Robins. Mr. Goodman is one of four Canadian lawyers on the Ombudsman Committee of the International Bar Association. He speaks French, German and Yiddish.

Director of Communications - Mr. Ken Cavanagh

Ken Cavanagh was born in Scarborough, Ontario in 1932. After leaving Scarborough Collegiate Institute in 1949, he joined Canadian Press as a copy boy, and in 1952, advanced to become Features Editor and Overnight Editor for its radio subsidiary, Broadcast News.

In 1953, he joined radio station CJAT in Trail, B.C. as News Editor and continued on-air work.

He joined CBC-Vancouver radio and television newsrooms in 1954, and took part in the 1954 Commonwealth Games

broadcasts. He returned to Toronto in 1954 to be an editor of the CBC National News, Radio, and moved to television.

In 1960, as CFTO-TV was going on the air in Toronto, Mr. Cavanagh joined its staff, then resigned in 1961 to freelance in Canada and Europe.

In 1966 he became the first host of CTV's public affairs program, "W5". In 1968, he was made News Director of CFTO-TV, eventually returned to the CBC as the host of "Telescope", co-host of the Montreal current events program "Highlights", and anchorman of CBC-TV's evening news program "Weekday".

Mr. Cavanagh moved to Toronto's CITY-TV in 1974 as host of the evening program "The City Show", a position he held until he joined our staff in 1975.

Director of Research - Mrs. Kathryn Cooper

Kathy Cooper was born in Saskatoon, Saskatchewan, in 1949, and came to Toronto in 1968. She completed her Bachelor of Arts degree in Sociology and English at the University of Toronto, received her LL.B. from Osgoode Hall Law School in 1972 and in 1974 was called to the Bar of Ontario. She articulated with the Toronto law firm of Goodman and Goodman.

After having been called to the Bar in 1974, Mrs. Cooper travelled extensively in Europe, North Africa, the U.S.S.R. and Israel. While in Israel, she completed six of study at kebbutz Na'an, taking an intensive Hebrew language course.

Director of Administration - Mr. Allan Mills

Allan Mills was born in Ottawa in 1937 where he completed Grade XIII at Fisher Park High School. He received his B.A. in Economics from the University of Toronto in 1960.

Mr. Mills joined the Confederation Life as a policy underwriter in the Group Insurance Division. He later became an investment analyst, then acted as an accountant in the Comptroller's Division.

In 1970, Mr. Mills became a Certified General Accountant. From 1970 to 1971, he was the Assistant Plan Auditor at O.H.S.I.P.

In 1972, Mr. Mills joined the Ministry of Health as a Financial Consultant/Executive Assistant to the Director of the Finance and Accounting Branch and in 1973, he joined the Financial Controls Branch. In 1974, he became a Financial Consultant for Public Hospitals in the Financial Controls Branch and remained there until May, 1976, when he joined our staff.

Director of Interview Services - Mr. Gary Speranzini

Gary Speranzini was born in 1945 in Hamilton. He received his education at Bishop Ryan High School and at Cathedral Boys' High School, then entered McMaster University in Hamilton from which he graduated with a degree in Psychology in 1967.

Mr. Speranzini came to us from Family Services of

Hamilton-Wentworth. The main services provided are personal counselling and therapy. In addition, there are developmental programs which include various life skills such as parenthood, home management, nutrition and consumerism. Other services provided are a day-care service, a nursery school, and a credit counselling program for the over-indebted. A youth residence housing 16 teenagers where priority is given to those whose family situation have severely broken down fulfills another beneficial community function by this agency.

Director of Queen's Park Office - Mr. Milan Then

Mr. Milan Then was born in Czechoslovakia in 1946 and came to Canada in 1950. He attended De La Salle College "Oaklands", graduated in 1964, and completed his Bachelor of Arts majoring in Psychology in 1968 at the University of Toronto. At that time, he was employed as a research assistant in the Department of Psychology. In 1971, he completed his Master of Arts degree at St. Michael's College, University of Toronto, majoring in Theology.

Mr. Then was employed for one year as a Lecturer at the Ontario Hospital in Aurora and has also taught with the Metropolitan Separate School Board in Toronto.

From 1973 to the time that he joined our staff, Mr. Then was a probation and parole officer for the Ministry of Correctional Services.

Mr. Then's language facilities are of special importance.

He is completely fluent in English, French, Czechoslovakian and Slovak, and he is developing skills in Croatian, Slovenian, Ukrainian and Polish.

Deputy Legal Officer - Tom O'Connor

Tom O'Connor, Q.C., was born in Toronto in 1911, was educated at De LaSalle College and then St. Michael's College, University of Toronto, and received his B.A. in 1932. He then entered Osgoode Hall Law School and articulated in the Law Department of Canadian Pacific Railways. Mr. O'Connor graduated in 1935 and engaged in private practice in Toronto until 1940.

After joining the Canadian Army he served in England, France, Belgium, Holland and Germany. In 1945, he retired with the rank of Lieutenant Colonel.

Mr. O'Connor was the Senior Solicitor for the Ontario Securities Commission from 1946 to 1949. As a partner in the law firm of Carrick, O'Connor and Coutts in Toronto, he specialized in mining and securities law. He was appointed a Queen's Counsel in 1955.

Executive Assistant to the Office of the Ombudsman -

Mr. Glenn Hainey

Glenn Hainey was born in Montreal in 1951 and came to Toronto in 1964. He was a student of Upper Canada College and then attended the University of Western Ontario in London where he studied Political Science and Economics. He then entered the Faculty of Law and graduated in 1974. Before

being called to the Bar in 1976, Mr. Hainey was an articling student for Mr. Arthur Maloney, J.C., prior to Mr. Maloney's appointment as Ombudsman. Mr. Hainey was the staff member responsible for assembling and organizing the material contained in this First Annual Report.

Investigators & Interviewers

As mentioned in Chapter One of the Report, the Ombudsman and his senior staff examined hundreds of employment applications and interviewed dozens of people to ensure that the citizens of Ontario would be served by the most competent, efficient and impartial staff possible.

This effort was most important in choosing those who would, in effect, man the front line in the Ombudsman's Office - the men and women who interview complainants and investigate complaints.

The Directorate of Investigations and the Directorate of Interview Services are both composed of people with a wide variety of educational and occupational backgrounds.

Our investigators and interviewers are highly skilled in investigative and research techniques through their training and work as senior police, armed forces and intelligence officers, insurance loss agents, prison and probation workers and researchers.

In addition, their ability to deal effectively both with complainants, government officials and private organizations, is enhanced by their experience in public relations,

journalism, sales and teaching.

Since many of our complaints come from inmates in jails and correctional institutions and involuntary patients in mental health facilities, we have also ensured that our staff includes people who have worked with offenders at every level - from probation and group home situations through penitentiary inmate classification and counselling - as well as with the mentally ill in settings ranging from out-patients departments to close confinement situations for the dangerously ill. Of course, both Directorates are staffed with people who are familiar with a number of languages as well as English, including French, Spanish, Portuguese, German, Dutch, Italian, Russian and Ukrainian.

Educationally, our investigative and interview staff members hold graduate and undergraduate degrees in disciplines such as criminology, sociology, science, engineering, political science, psychology, philosophy, journalism, urban planning, and anthropology. In addition, many have specialized training which is of particular assistance to the Office of the Ombudsman and their academic achievements include not only Canadian and International fellowships but also several teaching appointments as well.

Appendix C

First Annual Report of the Ombudsman

pp. 583-584.

LANGUAGES SPOKEN IN THE OFFICE OF THE OMBUDSMAN

WRITTEN

SPOKEN

NAME	LANGUAGE	WRITTEN				SPOKEN		
		Excellent	Good	Some	None	Fluent	Good	Limited
AMS, Ellen	German	X				X		
YER, Corinne	Dutch Spanish French German Portuguese	X X X X		X		X X X X		X
TTON, Niki	Ukrainian			X			X	
OPER, Kathy	Hebrew			X				X
SSETTE, David	French			X			X	
RKSEN, Ingrid	German French Spanish	X X	X			X X		X
BINSKY, Sharon	Hebrew Yiddish		X	X			X X	
DFREY, Tim .	French Spanish Italian		X X X			X	X	X
ODMAN, Brian	French German Yiddish		X X		X		X X	X
REENAWAY, Anne Marie	French	X				X		
OLIAD, Vera	Ukrainian	X				X		
EGER, Barbara	German French Spanish	X X			X	X X		X

LANGUAGES SPOKEN IN THE OFFICE OF THE OMBUDSMAN

WRITTEN

SPOKEN

NAME	LANGUAGE	WRITTEN				SPOKEN		
		Excellent	Good	Some	None	Fluent	Good	Lim.
JONES, Janis	French Spanish	X		X		X		X
KOLGA, Renate	Russian Ukrainian	X X				X X		
LANGELIER, Pierre	French	X				X		
MILLS, Allan	German			X			X	
MARCEROLLO, Bob	Italian French			X X		X	X	
MARZO, Frank	Italian	X				X		
MC LEOD, Maret	Estonian German Russian French	X	X X X			X	X X X	
MOORE, Barbara	Dutch	X				X		
MORIN, Gilles	French	X				X		
MURRAY, Dolly	French Chinese		X		X		X	X
MUSIL, Alena	Czech Polish	X			X	X		X
REYES, Cecile	Philipino Spanish	X		X		X		X
REYNOLDS, Brian	German French		X X				X X	
THEN, Milan	Czech Slovak French		X X	X		X X	X	
TRIANTAFILOPOULOS, Effie	Greek	X				X		
WAI, Suzie	Chinese French		X		X	X	X	

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Chronological index of summary of the Debates

March 11 - Throne Speech, Lieutenant-Governor, Hansard No. 1, page 4.

May 22 - Premier Davis, Hansard No. 52, pp. 2029-30.

- May 22 - Robert Nixon, Hansard No. 52, p. 2032.
- May 22 - Premier Davis, Hansard No. 52, p.2032.
- May 22 - Stephen Lewis, Hansard No. 52, p. 2032.
- May 22 - Mr. Singer, Hansard No. 52, p. 2032.
- May 27 - John Clement, Hansard No. 57, pp. 2214-5.
- June 10 - Mr. Clement, Hansard No. 71, p. 2811.
(Afternoon Session)
- June 10 - Mr. Roy, Hansard No. 71, p. 2811.
- June 10 - Mr. Roy, Hansard No. 71, p. 2812.
- June 10 - Mr. Lawlor, Hansard No. 71, p. 2812.
- June 10 - Mr. Lawlor, Hansard No. 71, p. 2813.
- June 10 - Mr. Lawlor, Hansard No. 71, pp. 2814-5.
- June 10 - Mr. Bullbrook, Hansard No. 71, pp. 2815-2818.
- June 10 - Mr. Cassidy, Hansard No. 71, p. 2817.
- June 10 - Mr. Renwick, Hansard No. 71, pp. 2818-24.

Afternoon Session

- June 10 - Mr. Lawlor, Hansard 71, pp. 2812-15
- June 10 - Mr. Bullbrook, Hansard 71, pp. 2815-18.
- June 10 - Mr. Renwick, Hansard 71, pp. 2818-24.

Evening Session

- June 10 - Mr. Renwick, Hansard 72, pp. 2829-37.
- June 10 - Mr. Parrott, Hansard 72, p. 2837.
- June 10 - Mr. Reid, Hansard 72, pp. 2840-44.
- June 10 - Mrs. Campbell, Hansard 72, pp. 2845-46.
- June 10 - Mr. Cassidy, Hansard 72, pp. 2847-53.

Afternoon Session

- June 12 - Mr. Laughren, Hansard 73, pp. 2876-77.

- June 12 - Mr. Singer, Hansard 73, pp. 2880-81.
- June 12 - Mr. Foulds, Hansard 73, pp. 2881-82.
- June 12 - Mr. Newman, Hansard 73, p. 2884.
- June 12 - Mr. Burr, Hansard 73, p. 2885.
- June 12 - Mr. Deacon, Hansard 73, p. 2886.
- June 12 - Mr. Kennedy, Hansard 73, p. 2886.
- June 12 - Mr. Samis, Hansard 73, pp. 2886-87.
- June 12 - Mr. Clement, Hansard 73, pp. 2882-93.
(Bill 86, Sec. 1-3)
- June 12 - Mr. Renwick, Hansard 73, p. 2893.
(Bill 86, Sec. 1-3)
- June 12 - Mr. Lawlor, Hansard 73, pp. 2896-97.
(Bill 86, Sec. 4, Tenure of Office & Removal)
- June 12 - Mr. Clement, Hansard 73, pp. 2896-97.
(Bill 86, Sec. 4)
- June 12 - Mr. Ruston, Hansard 73, pp. 2896-97.
(Bill 86, Sec. 4)
- June 12 - Mr. Renwick, Hansard 73, pp. 2896-97.
(Bill 86, Sec. 4)
- June 12 - Mr. Clement, Hansard 73, p. 2897.
(Bill 86, Sec. 5)
- June 12 - Mr. Renwick, Hansard 73, p. 2897.
(Bill 86, Sec. 5)
- June 12 - Mr. Clement, Hansard 73, pp. 2898-99.
(Bill 86, Sec. Staff)
- June 12 - Mr. Ruston, Hansard 73, pp. 2898-99.
(Bill 86, Sec. 8, Staff)
- June 12 - Mr. Renwick, Hansard 73, pp. 2899-2901.
(Bill 86, Sec. 9-10, Powers & Salary)
- June 12 - Mr. Briethaupt, Hansard 73, pp. 2899-2901.
(Bill 86, Sec. 9-10, Powers & Salary)
- June 12 - Mr. Reid, Hansard 73, pp. 2899-2901.
(Bill 86, Sec. 9-10, Powers & Salary)

- June 12 - Mr. Clement, Hansard 73, pp. 2899-2901.
(Bill 86, Sec. 9-10, Powers & Salary)
- June 12 - Mr. Reid, Hansard 73, pp. 2901-02.
(Bill 86, Sec. 12, Annual Report)
- June 12 - Mr. Clement, Hansard 73, pp. 2901-02.
(Bill 86, Sec. 12, Annual Report)

Evening Session

- June 12 - Mr. Reid, Hansard 74, pp. 2909-22.
(Bill 86, Sec. 12)
- June 12 - Mr. Clement, Hansard 74, pp. 2909-22.
(Bill 86, Sec. 12)
- June 12 - Mr. Lawlor, Hansard 74, pp. 2909-22.
(Bill 86, Sec. 12)
- June 12 - Mr. Renwick, Hansard 74, pp. 2909-22.
(Bill 86, Sec. 12)
- June 12 - Mr. Renwick, Hansard 74, pp. 2923-26.
(Bill 86, Sec. 13)

Afternoon Session

- June 17 - Mr. Clement, Hansard 78, pp. 3077-80.
(Bill 86, Sec. 13)
- June 17 - Mr. Renwick, Hansard 78, pp. 3081-84.
(Bill 86, Sec. 14, Application of Act)
- June 17 - Mr. Clement, Hansard 78, pp. 3081-84.
(Bill 86, Sec. 14)
- June 17 - Mr. Parrott, Hansard 78, pp. 3081-84.
(Bill 86, Sec. 14)
- June 17 - Mr. Renwick, Hansard 78, pp. 3086-97.
(Bill 86, Sec. 15, Function of Ombudsman)
- June 17 - Mr. Clement, Hansard 78, pp. 3086-97.
(Bill 86, Sec. 15)

Evening Session

- June 17 - Mr. Renwick, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)
- June 17 - Mr. Clement, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)

- June 17 - Mr. Roy, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)
- June 17 - Mr. Germa, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)
- June 17 - Mrs. Campbell, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)
- June 17 - Mr. Reid, Hansard 79, pp. 3097-3116.
(Bill 86, Sec. 15)

Afternoon Session

- June 19 - Mr. Renwick, Hansard 80, pp. 3140-50.
(Bill 86, Sec. 15)
- June 19 - Mr. Clement, Hansard 80, pp. 3140-50.
(Bill 86, Sec. 15)
- June 19 - Mr. Renwick, Hansard 80, pp. 3151-53.
(Bill 86, Sec. 16, Guidance Rules)
- June 19 - Mr. Clement, Hansard 80, pp. 3151-53.
(Bill 86, Sec. 16)
- June 19 - Mr. Renwick, Hansard 80, pp. 3154-55.
(Bill 86, Sec. 17, Mode of Complaint)
- June 19 - Mr. Clement, Hansard 80, pp. 3154-55.
(Bill 86, Sec. 17, Mode of Complaint)
- June 19 - Mr. Stokes, Hansard 80, pp. 3155-56.
(Bill 86, Sec. 18)
- June 19 - Mr. Germa, Hansard 80, pp. 3155-56.
(Bill 86, Sec. 18)
- June 19 - Mr. Clement, Hansard 80, pp. 3155-56.
(Bill 86, Sec. 18)
- June 19 - Mr. Renwick, Hansard 80, pp. 3150.
(Bill 86, Sec. 19, Proceedings)
- June 19 - Mr. Clement, Hansard 80, pp. 3150.
(Bill 86, Sec. 19)
- June 19 - Mr. Renwick, Hansard 80, pp. 3157-58.
(Bill 86, Sec. 20, Evidence)

- June 19 - Mr. Clement, Hansard 80, pp. 3157-58.
(Bill 86, Sec. 20)
- June 19 - Mr. Clement, Hansard 80, pp. 3163-66.
(Bill 86, Sec. 20)
- June 19 - Mr. Renwick, Hansard 81, pp. 3166-70.
(Bill 86, Sec. 22, After Investigation)
- June 19 - Mr. Clement, Hansard 81, pp. 3166-70.
(Bill 86, Sec. 22)
- June 19 - Mr. Renwick, Hansard 81, pp. 3170-80.
(Bill 86, Sec. 26, Power of Entry)
- June 19 - Mr. Sargent, Hansard 81, pp. 3170-80.
(Bill 86, Sec. 26)
- June 19 - Mr. Clement, Hansard 81, pp. 3170-80.
(Bill 86, Sec. 26)
- June 19 - Mr. Renwick, Hansard 81, pp. 3181-82.
(Bill 86, Sec. 28, Penalties)
- June 19 - Mr. Clement, Hansard 81, pp. 3181-82.
(Bill 86, Sec. 28)
- June 19 - Mr. Renwick, Hansard 81, pp. 3182-83.
(Bill 86, Sec. 29, Other Rights)