

Topic : Expanded jurisdiction: What to do when you get it

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Introduction

The Ombudsman of Ontario is an Officer of the Provincial Legislature in Canada's largest province and is independent of government and political parties. The Ombudsman ensures government accountability through effective oversight of the administration of public services.

The Office of the Ontario Ombudsman was established in 1975 and oversees public sector and broader public sector bodies in the province of Ontario, including provincial ministries, Crown corporations, tribunals, agencies, and commissions.

In Canada, every province has its own provincial Ombudsman, with the exception of Prince Edward Island.⁸⁵ The legislation and powers of provincial ombudsman vary somewhat from province to province, but all are based on the classical Swedish model.⁸⁶ There is no national ombudsman in Canada, though there are several specialized ombudsmen who oversee specific bodies and report within federal departments, such as the Taxpayer's Ombudsman and the Correctional Investigator of Canada, and a few who are officers of Parliament, such as the Privacy Commissioner.

Expansion of the Ontario Ombudsman's jurisdiction

From the time our Office was established, there have been calls to expand our jurisdiction to include the broader public sector since we have always received complaints from citizens about maladministration or a lack of fairness when dealing with bodies in that realm. Because this includes municipalities, universities, school boards, and hospitals, along with other bodies such as long-term care homes and child protection agencies, it has long been referred to by the acronym "MUSH."⁸⁷

The so-called MUSH sector receives funding from the provincial government, and understandably is the subject of many complaints – particularly in the areas of health care and education. But for decades, the Ontario Ombudsman's jurisdiction over the MUSH sector was the most limited in Canada; all other provincial ombudsmen had at least some oversight of these bodies.

Between 2005 and 2015, our Office tracked 24,065 complaints about MUSH sector organizations that we were forced to turn away. In 2013-2014, the year before legislation expanded our jurisdiction, we received a record 3,400 MUSH sector complaints.⁸⁸

In December 2014, the provincial government passed legislative changes that expanded our Office's oversight to include municipalities, universities and school boards.⁸⁹ This expansion was the result of calls

⁸⁵ The provinces of Alberta, British Columbia, Ontario, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Quebec and Saskatchewan have a provincial Ombudsman, as does Yukon Territory.

⁸⁶ Boards of education, child protection services, public hospitals, nursing homes and long-term care facilities, municipalities, police complaints review mechanisms, and universities are some of the key public service areas that fall under the jurisdiction of some, but not all, provincial ombudsmen in Canada.

⁸⁷ Efforts to bring ombudsman oversight to the MUSH sector in Ontario date back to the first Ontario Ombudsman, Arthur Maloney, who began arguing for the Office's mandate to be extended in 1975.

⁸⁸ In 2013-2014 we received 1,595 complaints about municipalities, 41 about universities, 147 about school boards, 471 about hospitals, 72 about long-term care homes, 536 about children's aid societies, and 538 about police.

⁸⁹ Bill 8, the *Public Sector and MPP Accountability and Transparency Act* was introduced in the Ontario legislature in June 2014 and passed in December 2014. The bill amends the *Ombudsman Act* to allow the Ombudsman to take complaints about municipalities, universities, and school boards. The bill creates a new Patient Ombudsman, and gives it oversight of patient and health care complaints about hospitals, long-term care homes and Community Care Access Centres. It also gives the Provincial Advocate for Children and Youth the power to investigate children's aid societies.

for the government to increase accountability in these sectors, including a decade of reports by the Ombudsman's Office about the thousands of complaints in these areas we received each year that we had been forced to turn away because they were outside our jurisdiction. The legislation included provisions for staggered implementation dates for the expansion of our authority. We began overseeing school boards on September 1, 2015, and municipalities and universities on January 1, 2016.

The new areas of jurisdiction effectively doubled the number of bodies within our oversight in a very short time. We had just nine months to prepare for oversight of 82 school boards, and 12 months to prepare for jurisdiction over 444 municipalities and 21 universities. Based on our records of the number of complaints received about these bodies in previous years, we were able to forecast the increased caseload and the additional resources required to handle it. A detailed budget proposal for an increase in funding for more staff, office space and public and stakeholder outreach was presented to and approved by the Board of Internal Economy of the Ontario Legislative Assembly.

We began expanding immediately and hiring new staff. Our priorities included building internal capacity, establishing productive relationships with stakeholders, and educating the public.

Building internal resources

My appointment as Canada's first Taxpayers' Ombudsman in 2008 involved setting up a new office, essentially an Ombudsman startup organization. My experience in getting a new jurisdiction off the ground, building relationships, affecting change while building, and raising awareness among stakeholders comes in handy as we navigate our new jurisdictions in Ontario. Despite 40 years of experience at the provincial level, we were essentially a start-up in the three new areas of our jurisdiction. As such, our approach paralleled that of a startup culture, in which staff worked quickly to adapt existing complaint handling, tracking methods and infrastructure to our new areas of jurisdiction.

It was a priority for us to lay the groundwork properly; to try to get to know our new jurisdiction before our mandate expanded. Our Office began extensive internal training and knowledge sharing to build expertise in each new area. These preparations included researching the new areas of jurisdiction, gathering information from stakeholders, creating staff reference resources, and establishing specialized teams for each of the three new areas of jurisdiction.

For internal use, we created several staff reference resources, including an in-house online tool for staff to share information, which continuously update with case examples, tips and links. We created designated "flag teams" for each area of our new jurisdiction, to help employees build expertise on particular topics. These teams also allow us to more efficiently triage and resolve complaints. Internal communication and knowledge sharing are vital to keeping everyone in the loop and to ensure that staff are well equipped and prepared for working in new areas of oversight.

Engaging stakeholders

It was also a priority for us to inform, educate and engage new stakeholders to prepare officials in 547 organizations for Ombudsman oversight where it had not existed before. It is important not only to educate stakeholders about what to expect when they interact with you and reduce the apprehension of new oversight as much as possible, but also to listen to their concerns and questions to demonstrate from the start that you are an ear, as well as a voice for them.

We consulted with stakeholders from across the province in the three new areas of jurisdiction through the use of a neutral and impartial convener, a non-governmental organization called

Canada's Public Policy Forum.⁹⁰ In partnership with the Forum, we held six roundtable meetings in the fall of 2015 across the province. The Forum also conducted one-on-one telephone interviews and accepted written submissions from stakeholders involved with municipalities, universities and school boards. These consultations culminated in a one-day conference in February 2016 to bring different parties together, and a final report encapsulating all of the recommendations derived from the consultations.⁹¹ This consultation with the assistance of a neutral third party allowed us to have productive conversations with diverse stakeholders throughout Ontario and respond to concerns and questions about our new oversight.

Our Office also convened a full-day conference for university ombudsmen and similar officials from all over the province in November 2015, to explain our new oversight role and approach to complaint resolution, and to listen to their concerns, advice and recommendations.

We conducted our own outreach with stakeholders as well, and sought opportunities to speak to and meet with them. My senior team and I gave presentations at numerous conferences and meetings in all three sectors, and we sent staff to set up information booths and distribute information at a wide variety of stakeholder gatherings. We conducted an email survey of all municipalities, universities and school boards to gather information about their existing complaint mechanisms and to identify the best people within the organization to contact with questions. The survey also helped us learn about these organizations' policies and gather other important information. All the data from the survey became part of a shared database for staff to reference.

It was important to reach and engage as many stakeholders as possible in the period leading up to our expanded mandate, and during our crucial first few months of accepting complaints in these areas. We focused our energy on a targeted outreach and engagement campaign to reach many stakeholders at the same time. Speaking at stakeholder conferences enabled us to inform key officials about how our office would deal with them, and setting up information booths at these events was an excellent way to distribute information and answer questions.

We incorporated the feedback we received from stakeholders into the information products we created, and tailored our presentations to these groups to respond to their concerns. One very effective tool we created was a webinar for municipal and school board officials; they were able to attend in person or participate online during the live presentation, but it also remains on our website for anyone to access the information anytime.

Of course, the need to communicate with stakeholders and build relationships does not end once the new jurisdiction is in effect. I became Ontario's seventh Ombudsman on April 1, 2016, a few months after all three new areas of jurisdiction took effect (under the stewardship of the Deputy Ombudsman, who was then Acting Ombudsman). From Day 1 I have made it a point to attend outreach events across the province in person to meet stakeholders, hear their concerns, and answer their many questions. We developed key messages that I reiterate in speeches and interviews, demystifying the office, and emphasizing the importance of collaborating with our new stakeholders to ensure the best possible outcome for all involved toward our shared goal of improving public services. Our senior staff are available to meet personally with officials who have questions or concerns about our jurisdiction, including meetings to discuss and resolve specific cases.

⁹⁰ Canada's Public Policy Forum is an independent, non-governmental organization dedicated to improving the quality of government in Canada through dialogue among leaders from all sectors of Canadian society. <http://www.pforum.ca/>

⁹¹ Canada's Public Policy Forum, "The expanding mandate of the Ontario Ombudsman," final report, June 2016. <http://www.pforum.ca/publications/expanding-mandate-ontario-ombudsman-final-report>

Educating the public

It is always important for us as ombudsmen to demonstrate our value, and this is especially true for new areas of jurisdiction. The consistent aim of our outreach and education efforts with our new stakeholders and the public has been to demonstrate the value of independent oversight in areas where the ombudsman concept may have been unfamiliar. At the same time, we have also been cognizant of the need to manage public expectations.

We were fortunate to be able to draw upon two of our most valuable resources: Our Office's strong track record and reputation as an agent of positive change with regard to provincial government bodies, and our high public profile.

For 40 years, our Office has proven itself as an effective agent of positive change by working constructively with provincial government bodies, including ministries whose work touches on our new areas of jurisdiction (e.g., municipal affairs and education). Our work in resolving hundreds of thousands of individual complaints, as well as our investigations into systemic issues and our recommendations for corrective action, have enhanced governance and increased fairness to the benefit of millions of Ontarians over the years. Our success in publicizing our work and demonstrating our value has been a key component in earning the trust of all stakeholders.

The government's decision to expand our mandate served, in and of itself, as a strong vote of confidence in the value of our work. Senior provincial officials – such as the head of the Ontario Public Service – also spoke positively about the constructive relationships our Office has established with them.

The expansion of our mandate was also widely publicized in the news media. Of course, this also presented challenges, with high public expectations that our new jurisdiction would result in dramatic reforms (indeed, many stakeholders were fearful of the same thing). In our messaging, it was important to be clear about our role, explain my approach as Ombudsman, and manage public expectations about what we can and cannot do.

For example, with new stakeholders who may have misconceptions about what an ombudsman does, it is important to emphasise that we are impartial and that we do not advocate for complainants. We learned early on that many stakeholders in our new jurisdiction were apprehensive that they might be subject to “naming, blaming, and shaming” by the Ombudsman every time a complaint is made, so our work on educating and informing stakeholders continues.

Our Office uses a variety of communication tools to reach the public, including news releases, reports and brochures, our website and social media. We increased our online and social media presence, building sections of our website specific to our new oversight, including new “frequently asked questions.” In our messaging, we described how our office has handled provincial cases for the past 40 years, and explained how that would translate to municipalities, universities and school boards.

We also increased our social media posts about the new jurisdiction, and shared stories of relevant provincial cases that demonstrated how we bring about constructive change. We shared web resources, brochures and videos of speeches and presentations, enabling the public to see and hear the information we were sharing with municipal, university and school board officials. In particular, we emphasized the Ombudsman's traditional role as an office of last resort and our work in resolving cases through collaboration wherever possible, WITHOUT need for formal investigation.

We publish weekly statistics on the number of complaints we were receiving in each of our three new areas of oversight, and include anonymized summaries of resolved cases in our monthly e-newsletters, as well as in speeches and other communications. In less than a year, the total number of complaints in our new areas of jurisdiction reached more than 2,000 – but the vast majority of those were quickly resolved, and only a couple resulted in formal investigations. We continue to emphasize this in our communications, along with examples of informal resolutions and constructive collaborations that have improved services in these areas.

To build trust and credibility with stakeholders, it is important to highlight what is working well in public sector bodies and give credit where it is due as much as it is to draw attention to problems.

Many of the outreach events we have attended have been excellent opportunities to meet and engage with members of the public, such as parents of school-age children, university students, and municipal ratepayers. Another technique we used was to contact various niche media to reach potential complainants, such as parent group newsletters, university publications and community newspapers.

Finally, on the rare occasions where we have launched formal investigations, we have relied on another longstanding asset of our Office: Our robust complaint handling and tracking system. In all areas within our mandate, we monitor complaint themes and recurring issues. In evaluating whether or not to investigate issues in the new areas of jurisdiction, we considered the relevance of the issue at hand and the potential of our intervention to make a difference.

The future

As the second year of our new mandate begins, our Office has resolved more than 4,000 cases in our new areas of jurisdiction, launched a handful of investigations and released our first annual report incorporating this work. Our team continues to expand to handle the steady influx of complaints about municipalities, universities and school boards.

Our outreach efforts are ongoing and we continue to attend stakeholder and public events, focusing on answering questions, informing about our role, and explaining how we can help. Our objective is to reach every municipality, university and school board in the province directly, to ensure they are aware of how we work and the value we provide. We are also continuously learning from our new stakeholders about the issues they deal with and the impact of our oversight on them, as well as gathering input and feedback about how we can work collaboratively and productively together to improve public services in Ontario. We plan to create more stakeholder resources based on this feedback; for example, publications that municipalities, universities and school boards can use as guides to our process and recommended best practices in their respective areas.

The more cases we resolve, the more stories we will be able to share about the value we provide. Eventually, this will include constructive results of formal investigations as we complete them. This is an exciting time for our Office, and for several of my colleagues in Canada, who have seen similar changes to their mandates as their respective governments respond to demands for greater transparency and accountability. I look forward to sharing the next chapters of this story with you in the years to come.

Expanded jurisdiction: Tips and lessons learned

- 1. Do your homework:** Learn everything you can about the new jurisdiction well in advance, including all applicable legislation, the structure of the bodies you will oversee and their existing policies and procedures.
- 2. Reach out:** Engage with stakeholders, including the public, as widely as possible before, during and after the implementation of the new jurisdiction. Meet stakeholders in person to establish relationships wherever possible.
- 3. Listen:** Bodies that may not be familiar with how ombudsman oversight works can be understandably apprehensive about the prospect of being investigated and the additional workload this may place on them. Take the time to hear and respond to their concerns, feedback and advice – consider enlisting a neutral third party to ensure frank discussion.
- 4. Educate and inform:** Explain the role of an ombudsman as an agent of constructive change, and how you can achieve this through resolution of complaints, investigations, recommendations and moral suasion. Use case examples wherever possible.

- 5. Be ready and nimble:** Think of the new jurisdiction as a startup – employees should be trained and ready to respond to complaints as soon as the new mandate comes into effect, with no backlog. Allocate resources as needed to ensure the influx can be handled. When launching an investigation, plan carefully to ensure it can be executed quickly.
- 6. Build on existing infrastructure and expertise:** Ensure your complaint handling and investigation procedures are clear and consistent across all areas of jurisdiction.
- 7. Learn from colleagues:** Consult other ombudsmen with similar jurisdiction – they may be able to offer educational materials or complaint handling strategies you can adapt, as well as advice; their stories can also be used to explain to your new stakeholders how similar oversight works elsewhere.
- 8. Manage expectations:** Ensure stakeholders, including the public, understand what an ombudsman can and cannot do – e.g., our Office cannot overturn the decision of a school board or municipal council, but we may be able to review whether the process followed was fair, and recommend improvements.
- 9. Use media and technology:** Communications technology can be an effective force multiplier for your outreach efforts – videos of speeches can be shared widely; webinars can be watched and rewatched as needed anytime; social media and e-newsletters can keep stakeholders up to date at virtually no cost; email surveys can collect valuable data.
- 10. Demonstrate your value:** Share the results of your work and your case statistics, including examples of informal resolutions and constructive collaboration as well as investigations.