

Ombudsman and Legislation in Canada: An Annotation and Appraisal.

Gregory J. Levine. Carswell. 2013

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Gregory J. Levine, in the introduction to his book, *Ombudsman Legislation in Canada: An Annotation and Appraisal*, notes that the text aspires to an analysis of the ombudsman concept in Canada through the lens of the legislation that created nine provincial, one territorial, and two municipal ombudsman offices. He undertakes this task by comparing ombudsman legislation in Canada using seven broad topics. They are;

- a) establishment of the ombudsman
- b) functions of the ombudsman
- c) the art of complaint
- d) the powers of investigation
- e) administrative justice and the ombudsman
- f) reporting on complaints and,
- g) additional functions of ombudsman

Chapter 2 deals with the appointment and suspension of ombudsman, their obligations once appointed, and the allocation of resources for their offices. Mr. Levine laments the fact that Canadian ombudsman legislation does not delineate the qualifications necessary to be an ombudsman but goes on to provide, through footnotes, a good literature review of what commentators have articulated as the desirable traits of those filling this role.

In his chapter on the functions of an ombudsman Mr. Levine notes that, with some limits, Canadian ombudsman have a broad jurisdiction to investigate complaints of maladministration within the public services that they oversee. He discusses who can complain to an ombudsman office and the prerequisite that he or she be aggrieved by the actions, or lack thereof, of a public body. He also provides a chapter on the art of the complaint. In it he compares circumstances where ombudsman offices may refuse a complaint or consider one abandoned. The chapter on investigations gives readers a good comparative overview of the powers and limitations on Canadian ombudsman when conducting investigations. Mr. Levine correctly notes the moral imperative upon ombudsman to act fairly when conducting investigations.

For many readers, Mr. Levine's chapter on *Administrative Justice and the Ombudsman* will be interesting. In it he compares the various "fairness principles" utilized by ombudsman offices to assess the actions of the public service. His review of the recommendation power of Canadian ombudsman is extensive and informative. The thorny issue of resolving and reporting complaints is dealt with in detail in a chapter that

compares the legislative frameworks for reporting on investigations to the highest levels of government and legislature. Useful information is provided about attempts by parties to an ombudsman investigation utilizing and challenging reports and recommendations in tribunals and courts.

Mr. Levine's final substantive chapter covers some of the additional legislative functions conducted by ombudsman in Canada. He reviews the Ontario Ombudsman's obligation to perform open municipal meeting investigations, as well as the New Brunswick Ombudsman's policing of favoritism in the civil service. Unfortunately, he does not deal with the increasing prevalence of Canadian ombudsman undertaking public interest disclosure investigations. This obligation imposes legislative requirements for the conduct of investigations quite unlike those traditionally found in parliamentary ombudsman legislation.

The last half of Mr. Levine's book is dedicated to reproducing Canadian ombudsman legislation. It is a neat and readable reproduction which ombudsman practitioners will consult frequently.

This text will prove useful for a variety of professionals. For those who provide legal advice to ombudsman offices the table of cases gives a comprehensive collection of Canadian jurisprudence dealing with the interpretation and application of ombudsman legislation. It is the most complete listing of Canadian cases I've seen to date. With the availability of easy-to-use online legal research tools it will be effortless for practitioners to follow how this jurisprudence evolves in the future.

Readers who are interested in the history of, and academic comment about, ombudsman legislation will find the numerous footnotes helpful. Mr. Levine has done a good job in scouring academic journals, ombudsman websites, and parliamentary reports to contextualize the annotation and appraisal of ombudsman and legislation which he undertakes throughout his work. It is through these footnotes that he incorporates interpretive aids for the principles articulated in ombudsman legislation. He gives readers an opportunity to review judicial commentary on diverse topics including the scope of provincial ombudsman investigation powers as compared to those of the federal auditor general. His thorough research enlightens readers to a number of facts not gleaned from a review of legislation. For example, Alberta has an alternative complaint resolution process and policy which is not directly mandated by its legislation.

For ombudsman practitioners the text will become a well-thumbed tome. The table of contents provides an effective roadmap which will enable practitioners quick access to topics of interest. The annotations are comprehensive. For those who do not practice in a traditional parliamentary model, the text provides a robust catalog of ombudsman characteristics which can be incorporated into corporate or university ombudsman policies and procedures.

While Mr. Levine's text fulfills the need for a comprehensive annotation of Canadian parliamentary legislation, it highlights other aspects of ombudsman practice which could

use a thoughtful and thorough review. Can a similar comparison of university or corporate ombudsman principles be undertaken? What of the many conventions, unwritten policies and folklore which inform how ombudsmen complete their work? Is there value in comparing how ombudsmen and other oversight agencies like the Correctional Investigator, the Public Procurement Ombudsman, child advocates and privacy commissioners undertake their mandates? Those questions will have to be addressed at a later date. For now, Mr. Levine has met his aspirational challenge of analyzing the provincial and territorial ombudsman concept in Canada through its governing legislation.

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