

CANADA'S OFFICIAL DISPUTE SETTLORS

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What official dispute settlers exist in Canada and are they effective in resolving disputes arising out of citizen's grievances against government?

At the outset, it must be understood that:

1. A citizen aggrieved by government action or inaction has a right to complain, a right to be heard, and a right to have corrective action taken if the grievance is justified.
2. There must be made available to such aggrieved citizen mechanisms which are non-judicial remedies as well as judicial.

It is obvious that there is no shortage of grievances against abuses by government agencies and officials. The roll call of action or failure to act inflicted upon the governed by those who govern is long and overwhelming. Existing mechanisms for adjusting grievances in the modern state are inadequate. One of these, the courts play a major role in the correction of abuses by government but no one will dispute that litigation is expensive, creates tension,

1 The following paper was presented at the Conference of the Society of Professionals in Dispute Resolution on "Conflict Resolution in Today's Economic Climate" held in Toronto, Ontario on October 20, 1981.

is protracted, and moves very slowly. A citizen will all too frequently accept injustice because litigation is too expensive or unsatisfactory. Therefore, there must be effective non-judicial alternatives to resolve disputes.

It is interesting to note that many countries have established non-judicial machinery permitting aggrieved citizens to lodge complaints against the state. In some instances this has been done to siphon off grievances against the state bureaucracy or the state single party or to permit the executive to have a dependent, self-serving institution. But a review of them will show that the mere existence of grievance handling machinery does not mean that the citizen with a grievance has recourse to effective machinery which will evaluate complaints impartially and take corrective action.

In recent years, the Ombudsman Institution has developed which means an office established by law, headed by an independent, high level public official who is responsible to the Legislature, who receives complaints against government agencies, officials and employees, or who acts on his own motion, and has the power to investigate, recommend corrective action and issue reports.

However, the word "Ombudsman" once thought to be too foreign sounding, hence to be shunned, is now used by many

non-judicial complaint-handling systems, which do not conform with the Ombudsman characteristics just given. This is a trend which is unfortunate.

The "Ombudsman and other Complaint-handling systems survey", volume X for the period from July 1, 1980 - June 30, 1981 ² classifies world complaint-handling systems against government into four categories:

1. Legislative Ombudsmen - 70 in 26 countries National, State, Province or Territory or Local. Of these, there are 9 Canadian Provincial and 18 U.S. State or Local Government Ombudsman Offices.
2. Executive Ombudsmen - 23 in 16 countries National, State, Province or Crown Colony. The United States has 8.
3. Special types in Agriculture, Business, Consumer, Correctional Institutions, Education, Health, Media, Military, Police, Privacy and others - 106 in 11 countries - 71 of them in the United States and 7 in Canada.
4. Other Complaint-Handling Systems - 131 in 26 countries - 88 in the United States, mainly State and Local, and 1 in Canada.

²Published by the International Ombudsman Institute and the International Bar Association Ombudsman Forum

There is no doubt, given the figures just forth, that systems by which complaints can be filed against Government are extensive.

Three major points concerning the Ombudsman must be made:

1. The Ombudsman can recommend only. Therefore, the Ombudsman is persuasive or non-coercive, unlike the courts which are coercive.
2. The Ombudsman is easily accessible. Generally any aggrieved person can make a complaint which in most jurisdictions has to be in writing, but in Canada telephone inquiries may be received, and the complainant assisted in reducing the complaint to writing. In the United States, in the four states with Ombudsmen, complaints will be received generally in writing, in person or by telephone.
3. There is no cost to the complainant (other than as a taxpayer). There is no filing fee. No lawyer is needed. The Ombudsman Office pays all expenses of handling and investigating.

Perhaps the difference between the handling of disputes against Government by the courts and by the Ombudsman is best illustrated by the disposition by the Quebec Ombudsman of complaints against the police arising out of

demonstrations in Quebec as contrasted with the processing by the judicial system in Washington, D.C., in 1970-1971 of somewhat similar complaints. In Quebec, 238 persons complained to the public protector as the Ombudsman is known in that Province about the behavior of the police from October 1970 to March 1971, arising out of the enforcement by the police of the War Measures Act and the Public Order (Temporary Measures) Act 1970. Persons had been arrested, detained and later released without a charge being made, or subjected to searches or seizures, or premises had been damaged. Public Protector Louis Marceau submitted two reports, on November 10, 1970, and February 26, 1971, to the Minister of Justice. The first recommended an internal ad hoc inquiry, the redress of damages caused to property at the time of arrest or search, and provision in several cases of a personal letter from the police department which would help persons arrested and subsequently released without having been charged. The second repeated these recommendations and in addition called for the payment of indemnities and the return, to those not accused, of photographs and fingerprints taken at the time of arrests. All these recommendations were accepted and followed. About the same time, in Washington, D.C., approximately 1,200 persons assembled on May 8, 1971, on the steps of the

Capitol Building to protest against the Vietnam War. Mass arrests were made. Suit was brought in November 1971, seeking damages, expungement of arrest records, and the destruction of illegally obtained fingerprints and photographs. Time passed. Four years later, in May 1975, judgment was entered after jury trial awarding considerable money damages for false arrest, violation of constitutional rights, and malicious prosecution. In August, 1977, a Federal Appellate Court upheld the action of the Lower Court and later denied rehearing in November, 1977. The United States Supreme Court denied review in 1978, bringing to an end the litigation. The somewhat identical disputes were resolved by the Quebec Ombudsman in months and by the United States Federal Courts in seven years.

The major question to be considered in this paper is --what official dispute settlers exist in Canada and are they effective in resolving disputes arising out of citizens' grievances against government?

Canada has Legislative Ombudsmen in 9 of its 10 Provinces. The exception being Prince Edward Island. Most of the Ombudsmen do not have jurisdiction over local government. In addition, the International Ombudsman Institute Survey lists under Classifications other than Legislative Ombudsmen a number of other office: The Federal

Commissioner of Official Languages, the Federal Correctional Investigator, the Federal Office for the Reduction of Paperburden, the Federal Privacy Commissioner, the Alberta Farmer's Advocate, the Edmonton, Alberta Citizens Action Center, the New Brunswick Police Commission and the Nova Scotia Police Commission.

This paper shall approach the Canadian Provincial Ombudsmen from two aspects:

1. A view of one office--The Alberta Ombudsman--and its handling of all types of complaints against government.
2. A view of all of the nine Ombudsman Offices and their handling of one type of dispute--housing related disputes--between the citizen and the government.

The Alberta Ombudsman Office

The first Ombudsman in Canada took office in 1967 in Alberta. The present Ombudsman, Dr. Randall Ivany, an Anglican Clergyman, has been serving since 1974. During calendar year, 1980, Dr. Ivany received 783 written complaints and 1,612 oral complaints, as indicated by his 14th Annual Report. The Alberta

Ombudsman Office has a staff of 18 persons and a 1980-81 budget of \$533,740 (Canadian). 218 written complaints and 1,059 oral complaints were against organizations beyond the Ombudsman's jurisdiction (including private matters, local authorities, other governments, courts of law, Universities, and Provincial General Hospitals). Jurisdiction is determined in all Ombudsman Offices by the Legislation creating the office. 565 written and 553 oral complaints in 1980 involved agencies and branches, divisions or tribunals within individual departments--48 to be exact: (1) Advanced education and manpower, (2) Agriculture, (3) Agricultural Development Corporation, (4) Hail and Crop Insurance Corporation, (5) Public Utilities Board, (6) Attorney General, (7) Public Trustee, (8) Consumer and Corporate Affairs, (9) Securities Commission, (10) Tourism and Small Business, (11) Alberta Opportunity Company, (12) Economic Development, (13) Research Council, (14) Culture and Historical Resources, (15) Education, (16) Teachers Retirement Fund, (17) Environment, (18) Energy and Natural Resources, (19) Federal and Intergovernmental Affairs, (20) Alberta Housing Corporation, (21) Alberta Home Mortgage, (22) Hospitals and Medical Care, (23) Labour, (24) Human Rights Commission, (25) Workers

Health, Safety, and Compensation, (26) Workers Compensation Board, (27) Municipal Affairs, (28) Assessment Appeal Board, (29) Local Authorities Board, (30) Provincial Planning Board, (31) Provincial Treasurer, (32) Personnel Administration, (33) Public Service Pension Administration, (34) Recreation and Parks, (35) Utilities and Telephones, (36) Alberta Government Telephones, (37) Social Services and Community Health, (38) Alcoholism and Drug Abuse Commission, (39) Solicitor General, (40) Alberta Liquor Control Board, (41) Inmates' Complaints, (42) Transportation, (43) Government Services, (44) Disaster Services, (45) Executive Council, (46) Energy Resources Conservation Board, (47) Native Affairs, and (48) Clerk of the Legislative Assembly.

The 1980 report gives a number of case comments. A few have been selected which show the resolution of disputes by the Alberta Ombudsman:

1. Department of Energy and Natural Resources.
80-2600-10 (Justified--Rectified).

The complainant had been charged in 1977 with a violation under *The Wildlife Act* and his moose and rifle were confiscated. The charges were dismissed and about 10 months later in 1978, the complainant

was advised he could get his moose carcass and rifle. The moose carcass had freezer burn and was inedible and the rifle had deteriorated in value. The complainant presented a claim for \$841 for the cost of the meat he had lost and \$100 for the deterioration of his rifle. Considerable correspondence ensued and by December, 1979, the complainant gave up and complained to the Ombudsman. The Ombudsman investigated and a meeting was held between the complainant and the department. A compromise was reached and in July, 1980, the complainant received \$1,100.

2. Workers' Compensation Board. 79-3501-65
(Justified--Rectified).

The British Columbia Ombudsman requested the Alberta Ombudsman to investigate a complaint from a British Columbia resident against the Alberta Workman's Compensation Board. There was a dispute as to when the complainant was certified to return to work involving about three months. The Ombudsman investigated. The case was reviewed by the Workman's Compensation Board and the complainant was awarded the three months' additional benefits.

3. Department of Social Services and Community Health.

79-4400-267 (Justified--Rectified)

A psychologist from British Columbia attended as a crown witness a hearing in Alberta dealing with custody of a child. Traveling expenses were not paid as promised. She complained to the Alberta Ombudsman who investigated. The Department of Social Services and Community Health then paid promptly.

4. Department of Social Services and Community Health.
80-4400-218 (Justified--Rectified)

The complainant lost her birth certificate and applied for a new copy, enclosing the fee. The Department of Social Services and Community Health subsequently denied receiving the money. She replied with a photocopy of the cancelled check. Thereupon the department wanted her to appear before a Notary Public and complete additional forms, which she refused because of costs.

Meanwhile, a man in Alberta wrote to the department for his birth certificate believing he had been adopted and received his own birth certificate as well as birth certificates for the complainant and another women and information giving their addresses. Because of birth dates, he

concluded the complainant was his Mother and the other woman his sister and contacted them. The complainant wrote to the Ombudsman denying any relationship to the man or the other woman who also had contacted her. The Ombudsman investigated and the department apologized, sent her her birth certificate and advised the man there was no relationship.

5. Department of the Solicitor General. 80-4603-143
(Justified--Rectified)

A wife of an inmate of a Provincial Correctional Institution complained that the inmate was denied possession of his wedding ring. The inmate had a large finger and the ring was consequently large, but the prison personnel considered the ring to be dangerous. The Ombudsman investigated. The ring was returned.

6. Department of Transportation. 8-4800-8
(Justified--Rectified)

An elderly lady complained that the Department of Transportation was widening the Provincial Secondary Road in front of her farm property without constructing or reinstating her entrance to her farm. The Ombudsman investigated. He showed the

lady was being treated differently than others in the area and the department agreed to construct an approach.

All of these are in the Alberta Ombudsman Annual Report. It should be noted that all Ombudsman issue Annual written reports.

The purpose of this section on Alberta was to illustrate how one Canadian Legislative Ombudsman Office functioned with respect to the settlement of disputes arising out of complaints by citizens against government agencies.

Handling of Housing Disputes by the Canadian Provincial Ombudsmen

It is recognized that housing related disputes is a major category of disputes. In 1979, a survey was made to determine the extent to which Ombudsmen Offices throughout the world were involved in handling complaints and inquiries concerning housing disputes between individuals as tenants or owners on the one hand and public agencies on the other. These arise out of public housing or code compliance and enforcement such

as zoning or building code and would include evictions, habitability, utility shut off, housing discrimination, illegal landlord entry, security deposits, rent increases, repairs to property, etc. Replies were received from 8 of the 9 Canadian Provincial Ombudsmen.

In Alberta, in 1978, 38 out of 2,779 complaints dealt with housing involving the Alberta Housing Corporation and the Alberta Home Mortgage Corporation. However, there are many other complaints that have connection with housing. Some complaints have involved damages caused to property by government programs such as damage caused to trees by a highway spraying program or the necessary expropriation connected with highway construction.

In Manitoba, the Ombudsman was involved in housing disputes in two areas during 1978:

1. The Rentalsman as a Provincial Government employee seeking to administer *The Landlord and Tenant Act* is quite vulnerable to criticism by the dissatisfied party. He is subject to the jurisdiction of the Ombudsman who received 13 complaints in 1978 involving the Rentalsman. In case 78-120-10, the complainant was dissatisfied with the decision of the Rentalsman and complained to the Ombudsman. The

opinion of the Ombudsman was opposite to that of the Rentalsman's and neither would back down. The Ombudsman referred the matter to the Consumer Affairs Minister and as a result arbitration was invoked under the Landlord and Tenant Act. The arbitrator, the Chairman of the Manitoba Securities Commission, decided in favour of the tenant who had been supported by the Ombudsman. The case involved \$100.17 and of this the Ombudsman said, "This may appear to be heavy going over \$100.17, but, regardless of the dollars involved, the Ombudsman must be tenacious when he believes there has been an injustice."

2. The other sources of complaints are against the Manitoba Housing and Renewal Corporation (and the Local Housing Authorities) providing public housing for families and senior citizens. The nature of the complaints are: Notices to vacate, unsatisfactory maintenance, applicants not getting fair turn on waiting lists, conduct of neighbouring tenant, etc.

The New Brunswick Ombudsman reported 80 housing related complaints during 1978 and 30-50 outside of his jurisdiction. The complaints were against Municipal Corporations, the Departments of Health, Transportation,

Environment, Municipal Affairs, and the New Brunswick Housing Corporation, and related to Landlord-Tenant, Planning, Zoning, and Highway access control.

The Newfoundland Ombudsman reported complaints in 1978 involving the scarcity of available units against the Newfoundland and Labrador Housing Corporation.

The Nova Scotia Ombudsman reported in 1978 housing related matters as follows: 51 complaints, 11 non-jurisdictional complaints, and 62 inquiries. These out of a total of 809 complaints and 300 inquiries. The matters included: (a) inability to obtain public housing, (b) rent rebates, (c) increases in rent, (d) utility shutoff, and (e) landlord entry.

Justice Morand, Ontario Ombudsman, reported during fiscal year 1978-1979, there were a total of 308 complaints involving housing matters related to public authorities, of which 174 were within his jurisdiction. Total jurisdictional complaints were 2,888 and non-jurisdictional complaints and inquiries were 2,588. Seventeen complaints dealt with excessive rent increases or unfair hearing decisions. Ten complaints were made by landlords against The Appeal Board decisions concerning inadequate rent increases.

Saskatchewan reported complaints and inquiries in 1978 concerning housing against the Saskatchewan Housing Corporation (30), local housing authorities, the Rentalsman (7), and The Rent Appeal Commission (2).

The British Columbia Ombudsman had taken office in 1979 and was not in a position to give any information at that time. His first full year report was for the year 1980. It shows complaints against the Consumer and Corporate Affairs Ministry (which includes the Rentalsman), the British Columbia Housing Corporation, the Housing Management Commission, and the Rent Review Commission.

The conclusion is obvious. It is clear that the Provincial Ombudsmen in Canada are resolving housing disputes between landlords or tenants and Government agencies. Where rentalsmen or rent appeal boards are found in Provinces, the Ombudsman has jurisdiction to receive complaints against the rentalsman and rent appeal boards and thus may enter into the handling of complaints which arise out of private housing related disputes.

The concerns of the Ombudsman with housing related issues is not limited to Canada. It is a worldwide aspect of the Ombudsman as evidenced by replies received

in 1979 from the following Ombudsmen (33): Alaska, Detroit, Guam, Hawaii, Iowa, Jamestown (New York), Lexington-Fayette County (Kentucky), New York City, Puerto Rico, Austria, Northern Territory (Australia), Australia, Finland, France, Great Britain, Guyana, Israel, Haifa (Israel), Maharashtra (India), New Zealand, New South Wales (Australia), Norway, Northern Ireland, Papua New Guinea, Portugal, Queensland (Australia), South Australia, (Australia), Sweden, Tanzania, Victoria (Australia), Western Australia (Australia), Canton of Zurich (Switzerland), Zambia. Negative replies were received from Nebraska, Denmark, Fiji, and Uttar Pradesh (India).

The main thrust of this paper was to explore the Canadian Provincial Ombudsman Institution as an alternative to the courts in the settlement of disputes arising out of complaints by citizens against government.

Two specific areas were explored--the Alberta Ombudsman's Office handling of complaints by citizens against Alberta Government and the handling by the Canadian Provincial Ombudsman Offices of Housing related disputes. The success of the Ombudsman Institution as a viable alternative to the resolution of disputes is

illustrated both by the Canadian experiences and also by the rapid spread of the Ombudsman throughout the world.