

The New Brunswick  
Office of the Ombudsman

by

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The New Brunswick Office was one of the first to be set up in North America.

The New Brunswick Office started to hear complaints in October, 1967, one month after the Alberta office. In Canada, only the Nova Scotia and New Brunswick offices have jurisdiction to hear complaints against municipal government. In addition to this jurisdiction, since January 1, 1980, the New Brunswick Ombudsman may be asked to investigate the refusal to provide information under the Right to Information Act.

The mandate common to all Canadian offices is to investigate allegations of maladministration against Provincial Government Departments and agencies. The scope of these departments and agencies may vary from one jurisdiction to the other because of different political structures. Therefore, strategies which work in one jurisdiction may not work in another. On the whole, however, I would not be surprised if we use similar strategies most of the time.

Before the Ombudsman's office was set up in New Brunswick the population was about the same as it is now, 675,000. The system of government consisted of the Provincial Government with jurisdiction over highways, agriculture, mines and resources, motor vehicle licensing, sales and income taxes. It also had limited jurisdiction over health, justice, education and social welfare, having delegated some of these powers such as the building of schools and collection of property taxes to local government also known as county councils and municipalities.

The institution of the office was commensurate with the massive centralization of public services in the late 1960's under the program of "Equal Opportunity".

A subsidiary program entitled "A Program for the Citizen and Community", included the replacement of the Attorney-General's Department by the Department of Justice, the creation of the New Brunswick Human Rights Commission and the Provincial Consumer Bureau.

The government of the day saw the creation of the Ombudsman's office as a means of retaining the close inter-personal relationship between the citizen and government in the face of a growing bureaucracy, or, in the words of the Throne Speech of 1967: "A means to secure for the citizen full protection against arbitrary or unjust administrative action".

For the government, it was fortuitous that there existed a structure which would serve such an end.

Before deciding on strategies to deal with a high case load I think it is important to know what an Ombudsman office is not. It is not a referral agency nor an information service. It is not a consumer complaint office nor a federal or private complaint handling mechanism. Neither is the office a substitute for the court system nor the Ombudsman an advocate for the complainant. While this may be obvious to Ombudsmen and their staff, it is evidently not so obvious to the ordinary citizen nor to many civil servants. To my knowledge, not one Ombudsman claims that his or her office is generally well known by the public it is supposed to serve. Most annual reports at one time or another relate the difficulties encountered in trying to increase the public's awareness of the role of the Ombudsman.

Strictly speaking we should not list as complaints anything that is not in the nature of a complaint against the provincial government. I say this because a complaint, as intended by the Ombudsman Act, is one which the law authorizes us to investigate. If I followed

with out-of-jurisdiction complaints. However, with respect to in-jurisdiction complaints Dr. Flemington made several recommendations which were implemented and which indicate that he was very concerned with recurring complaints and was not satisfied with obtaining redress of the complaint at hand. His recommendations have a long-term effect in reducing the number of some complaints to the Ombudsman.

These recommendations improved the administration of the Law. One was that an effective appeal system under the Workmen's Compensation Act be adopted. Another that a more equitable system of appeal under the Social Welfare Act be adopted and an Expropriation Procedures Act. The Implementation of the recommendations no doubt decreased considerably the number of potential complaints within jurisdiction. We must always be aware that for each complaint coming to us there may be hundreds and perhaps thousands of other similar ones which will never come to our attention.

Dr. Nebenzahl, the Israeli Ombudsman, in his address to the First World Conference of Ombudsmen held in Edmonton in 1976 said:

"The most obvious way of having an indirect impact - always in the sence of achieving something beyond what concerns the individual complainant in the matter of his specific complaints - is the drawing of some general lesson from the particular instance."

An illustration here may be useful. Early in 1977, the mother of a school child complained to my office that neither the Department of Education nor the Department of Health were taking adequate measures to ensure that children with an acute communicable disease did not return to school before they were completely recovered.

The specific complaint was that students in a school were permitted to return to school within seven days of contracting a case

of the mumps, where she believed that the disease was still contractable within ten days of a child being afflicted with it.

At the same time, the complainant was aware that, in this particular instance, the time for taking concrete action with respect to her particular case was gone, and that her real purpose in writing to us was to determine whether school exclusion periods for communicable diseases were being properly enforced by the Departments of Health and Education.

On reviewing the matter with the Departments concerned, we found that both were armed with appropriate legislative and procedural powers to ensure that such exclusion periods were properly enforced, and, in the particular instance cited by the complainant, we were informed that an arguably-correct judgment had been exercised by the teacher concerned in readmitting the pupil afflicted with the mumps. However, our initial correspondence, which was with the Department of Health, elicited the response from the Deputy Minister of that Department that he was "informed that the observance of (the) guidelines does vary quite considerably between individual schools". Further, a random sampling of schools in the district which encompasses the provincial capital indicated that some teachers did not know of the existence of exclusion periods, and were certainly not aware of the broad powers given to them with respect to such a circumstance by the provisions of the Schools Act.

On further review with the Department of Education, the observation of the Department of Health was readily confirmed. Subsequently, as a result of discussions and correspondence between my solicitor and the Coordinator of District Services with the Department, direct

overtures were made by the Department to all District Superintendents to ensure that the school exclusion periods were enforced. A subsequent follow-up by my Office indicated that individual teachers were made aware of their duties and obligations with respect to this matter to a much greater extent than had previously been the case.

In such circumstances, the Office closed its file; in so doing, we could - quite properly - consider that, in addition to allaying the concerns of a single mother with respect to one school, our action had also assured that fundamental aspects of public policy - the maintenance of public health and the highest school attendance possible - were met.

As a first step, Mr. McAllister hired two secretaries, appointed his secretary Administrative Assistant, a post which Mrs. Magella St-Pierre still occupies. Mr. McAllister also hired Mr. Charles Ferris, a lawyer. From that time until now the New Brunswick Ombudsman office has consisted of an Ombudsman, two assistant investigators and two secretaries. All have a knowledge of both official languages.

From Mr. McAllister's actions and by reading his reports it is obvious he was concerned with the lack of knowledge on the part of the public and also with the large number of requests for information and out-of-jurisdiction complaints. I have just mentioned his actions regarding staff. With respect to requests for information I quote part of his first annual report, that of 1974,

"The records of the Office for 1974 disclose a number of requests for information. Occasion existed to become familiar with the inquiry and information centres operated by the Government of Canada, and a number of the provinces whereby a citizen may write, phone or

visit the centres, to seek general or specific information on government programs and services. The Report of the New Brunswick Task Force on Social Development pointed to the need for such services in New Brunswick; no confirmation is required by reference to particular experiences of the Office of the Ombudsman. The recommendation is made that consideration be given to the establishment of a Citizens Inquiry or Information Service on a sustained basis."

This recommendation was implemented effective January 1, 1980. The new inquiries service is modelled after that which exists in Manitoba. The three bilingual persons on staff receive approximately 1922 telephone calls per month.

In the first year that Mr. McAllister was in office the number of complaints, including out-of-jurisdiction complaints, went from 192 in 1973 to 627. Dr. Friedmann suggested in one of his papers that the inception of the T.V. program - CBC Ombudsman - had influenced this 1974 increase experienced in all provincial Ombudsman offices.

During Mr. McAllister's short term in office (Feb. 1974 to August 1975) the New Brunswick Office was transformed into a high volume, complaint handling mechanism. Because of illness Mr. McAllister was unable to embark upon a program of visits to municipalities throughout the province for private hearings.

Shortly after my appointment in June, 1976, my staff and I adopted a policy or strategy aimed at decreasing the number of out-of-jurisdiction complaints and increasing the number of in jurisdiction complaints.

We started visiting localities outside the provincial capital. We received such a good response from the public during the first visit that we decided to visit other localities. We have so far

When speaking of strategies, policies or blueprints for an Ombudsman's Office, the makeup of the individual chosen by the legislature to perform this task is very important. For students of the Ombudsman concept I suggest that the New Brunswick Office could be interesting in that regard. It has been in existence for 12 1/2 years and has had four Ombudsmen.

The first Ombudsman, W. T. Ross Flemington, was the only one who was not a lawyer by training. Early in his tenure, he was mildly rebuked for not vacating jurisdiction in cases where there was an existing right of appeal. Dr. Flemington subsequently received a legal opinion concerning his jurisdiction - the full text of it is published in his Third Report - by which he attempted to clarify among other things, the types of statutory review which would oust his jurisdiction. Notwithstanding such advice, it might probably be fair to say that his four-year stay in office was characterized by what he referred to as "My lawlessness, or lack of law", - a tendency to carry out the spirit rather than the letter of the law.

This was less the case with his successor, Charles E. Leger, who was Ombudsman from 1971 to 1973. In the first of his two reports, Mr. Leger detailed his interpretation of the Ombudsman's role in terms of the Ombudsman Act. Noticeably absent from this report is any reference to Section 21 and its potential effect on the Ombudsman's jurisdiction.

The third Ombudsman, G. A. McAllister, continued the more formal legal approach of his immediate predecessor, but tempered this with recommendations for a broader jurisdiction, which would provide the office with greater flexibility. Specifically, Mr. McAllister



recommended an extension of the Ombudsman's jurisdiction to municipalities and to grievances for which there was an effective appeal, after the appeal had been exercised or the time for appeal had lapsed.

These reforms, together with a handful of others - most notably the broadening of the definition of the term "department or agency" - were pursued by the Office through to legislation in the intervening period between Mr. McAllister's decease and my appointment. The period, lasting from August 75 to June 76, could be characterized as "lawless" in the sense that the assistants in the office lacked any legal authority to continue the work of the office. However, as with the first Ombudsman, the office deemed it necessary to continue the function in the absence of such authority, in the interest of the spirit of the legislation, and did in fact do so with a reasonable measure of success.

At present, the office attempts to strike a balance between a legalistic and a pragmatic approach. The experience of the past two years indicates that this interpretation is a highly defensible one - both legally or technically and from a service-delivery point of view.

While the strategies I have mentioned may be of a general nature they no doubt bear more fruit in the long run. In the same way, an Ombudsman who exercises discretion in his approach vis-a-vis the bureaucracy may be accused of not rocking the boat enough but the long term effect may be an Ombudsman office which has obtained and maintains its credibility without which it cannot function properly.

Of a more particular nature are the strategies used on a daily basis to try to resolve a justified complaint as quickly as possible, especially so when the matter is considered urgent.

If a citizen's power supply has been disconnected during cold weather or a mother and her children have been evicted by the provincial Housing Corporation, we dispense very quickly with the nicety of the law which requires that "petitions to the Ombudsman must be in writing". In such cases we also dispense with the requirement that the department head or administrative head be notified before an investigation is started if we know of a contact in the department or agency who is able to quickly rectify the situation.

The use of a regulatory agency to arrive at a solution is also another strategy which must not be overlooked. For instances, where someone's power supply has been disconnected in error and damage occurred as a result, a jurisdictional problem arises. N.B. Power has a \$5000 deductible clause in its insurance policy but does not have its own adjusters to adjust these claims. Instead it hires the services of a private adjustment firm. The N.B. Power customer may feel that this firm is not treating him or her justly so he or she complains to the Ombudsman thinking his or her complaint is against N.B. Power. N.B. Power simply says: "we hire adjusters to settle these claims." This is a policy of N.B. Power and not a matter of administration. In a recent case I contacted the Superintendent of Insurance which licenses insurance adjusters, pointing out to him that the adjusters seemed less than fair in ignoring part of the claim. A telephone call by the Superintendent of Adjusters resulted in a revision upwards of the original offer and a settlement of the complaint. The complaint had been referred to us by a Member of the Legislative Assembly and therefore the Ombudsman's office has two more satisfied parties.

Most departments and agencies employ experts which we use to our advantage when attempting to resolve a grievance.

The Department of Transportation denied liability when faced with the allegation that a water well had been polluted with highway salt. A Hydrogeologist with the Department of the Environment confirmed the complainant's allegations.

It is necessary to have a strategy regarding delay by departments and agencies in answering our letters and completing investigations. I encountered this difficulty shortly after my appointment. I took the opportunity to go and meet the Deputy Minister involved, as a matter of courtesy. We discussed ways of improving the exchange of correspondence and arrived at a mutual understanding. This also speeded up the investigations by that department.