



CANADA'S
PUBLIC POLICY

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DES POLITIQUES PUBLIQUES
DU CANADA

Extending the mandate of the Ontario Ombudsman to municipalities, universities and school boards

BACKGROUND PAPER

SEPTEMBER 2015



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The Public Policy Forum is an independent, not-for-profit organization dedicated to improving the quality of government in Canada through enhanced dialogue among the public, private and voluntary sectors. The Forum's members, drawn from business, federal, provincial and territorial governments, the voluntary sector and organized labour, share a belief that an efficient and effective public service is important in ensuring Canada's competitiveness abroad and quality of life at home.

Established in 1987, the Forum has earned a reputation as a trusted, nonpartisan facilitator, capable of bringing together a wide range of stakeholders in productive dialogue. Its research program provides a neutral base to inform collective decision making. By promoting information sharing and greater links between governments and other sectors, the Forum helps ensure public policy in our country is dynamic, coordinated and responsive to future challenges and opportunities.

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WITH THANKS TO OUR PROJECT PARTNER:



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

EXECUTIVE SUMMARY

The Public Policy Forum, in partnership with the Office of the Ontario Ombudsman, is engaging stakeholders from municipalities, universities and school boards in a series of roundtables to hear feedback and concerns about the Ombudsman’s new mandate. At these roundtables, stakeholders are invited to discuss this change of mandate, the effect it will have on the municipal, university and school board sectors, and how the complaint and investigation process will work.

The Ombudsman’s office investigates public complaints about provincial government administration and services, and recommends solutions. It was established in 1975 by the *Ombudsman Act* as an independent office of the Legislature. Every year, the Ombudsman handles thousands of individual complaints – 193,038 since 2005 – and conducts broad systemic investigations (35 in the past 10 years). The government has accepted almost all of the Ombudsman’s recommendations in the past decade, sparking such changes as a more secure provincial lottery system, improved drug funding, fairer property tax assessments and expanded screening for potentially fatal diseases in newborns.

However, the mandate established by the *Ombudsman Act* in 1975 did not extend to the broader public sector – or MUSH sector – which includes municipalities, universities, school boards, hospitals and long-term care homes, children’s aid societies and police. Successive Ontario Ombudsmen and many other officials have called for the office’s mandate to be extended to include MUSH organizations. Since 2005 alone, 142 petitions and 16 private member’s bills have called for Ontario’s Ombudsman to have jurisdiction in this sector.

On December 9, 2014, the Ontario government passed legislation that extends the jurisdiction of the Ombudsman to municipalities, universities and school boards. Under the *Public Sector and MPP Accountability and Transparency Act, 2014* (also known as “Bill 8”), the Ombudsman began accepting, investigating and resolving complaints about school boards on September 1, 2015, and will do so for municipalities and universities on January 1, 2016. The “H” part of the MUSH sector will be the responsibility of a yet-to-be-created Patient Ombudsman within the Ministry of Health and Long-Term Care. Children’s aid societies will come under the purview of the Provincial Advocate for Children and Youth. Oversight of police services in Ontario will not change.

This new legislation will enable the Ombudsman’s office to address the types of complaints that it previously had to turn away. The Ombudsman’s office has turned away 12,366 complaints about municipalities, universities and school boards in the past 10 years alone. The new legislation also aligns Ontario more closely with other Canadian provinces and territories whose ombudsmen already oversee the MUSH sector (see Appendix 1).

With school board oversight already in place, and oversight of municipalities and universities imminent, the public and stakeholders have raised questions about the impact of Bill 8. The Ombudsman’s office plans to use its established methods of complaint intake, triage, assessment, investigation and resolution, consistent with how it handles complaints about provincial bodies. As with other sectors under the Ombudsman’s purview, complaints will be resolved quickly whenever possible, escalated to investigation when necessary, and closely monitored to identify matters that might warrant large-scale systemic investigation.

THE ROLE AND FUNCTION OF THE ONTARIO OMBUDSMAN

The Ombudsman and office

The world's first parliamentary ombudsman was established in Sweden in 1809. Ombudsman is a Swedish word meaning *citizen's representative* and is considered to be gender-neutral. The classical Swedish ombudsman model is established in jurisdictions around the world, including Canada. The hallmarks of this model are independence (from government and political parties), impartiality, a credible investigation process, and confidentiality protection for those who complain about the government.

Canadian provinces began establishing ombudsman offices in 1967. Ontario's first Ombudsman, Arthur Maloney, was sworn in on October 30, 1975. The Ombudsman is an officer of the Legislature, appointed for a five-year renewable term by the Lieutenant Governor after a vote of the Legislative Assembly. The Ombudsman is neither a politician nor a public servant, and may only be removed for cause by the Lieutenant Governor following a vote by the Assembly.

Six people have held the position of Ombudsman to date:

- Arthur Maloney, 1975–1978
- Donald Morand, 1979–1984
- Daniel Hill, 1984–1989
- Roberta Jamieson, 1989–1999
- Clare Lewis, 2000–2005
- André Marin, 2005–present

Since 2005, in addition to resolving tens of thousands of individual complaints, the Ombudsman's office has also addressed broad systemic problems by conducting large-scale investigations (about five per year). These investigations have included such issues as the use of excessive force by provincial correctional officers against inmates, billing and customer service problems at Hydro One, compensation for crime victims, support for Ontario Provincial Police officers suffering from operational stress injuries, and theft and fraud within the government-run lottery system.

The budget for the Ombudsman's office is approved by the Board of Internal Economy and audited annually by the Auditor General of Ontario. In 2014–2015, the office had a budget of \$11.36 million and employed 87 staff. More than half of the 23,153 complaints that year were resolved in two weeks or less.

The Ombudsman's mandate

The Ombudsman's mandate is to investigate the administrative conduct of provincial governmental organizations. On September 1, 2015, this mandate extended to include school boards, and will include municipalities and universities as of January 1, 2016. The Ombudsman also serves as the investigator for complaints about closed municipal meetings in all municipalities that have not appointed another investigator. (Since 2008, all municipalities are required to appoint an investigator for complaints relating to the open meeting rules, as set out in the *Municipal Act, 2001*, and *City of Toronto Act, 2006*.)

The Ombudsman is an office of last resort and cannot intervene until any statutory right of appeal or review is fully exercised or has expired, nor can it interfere with the ongoing work of a tribunal. Any internal complaint mechanism should be pursued before the Ombudsman addresses the matter.

Ombudsman investigations

The Ombudsman has broad discretion to decide whether or not to investigate a complaint, and considers many factors before launching an investigation. These factors can include the age of the complaint, if there is an alternative remedy, if the complaint is frivolous or vexatious, and/or if the complaint involves a broader public policy issue. Complaints are assessed on a case-by-case basis to determine if an investigation is warranted.

When the Ombudsman does launch an official investigation, the office sends a written notice to the organization under investigation.

The Ombudsman has robust powers of investigation, including:

- The power to require any officer, member or employee of the organization under investigation to provide information and documents;
- The ability to summons and take testimony under oath; and,
- The power to enter and inspect any premise when carrying out an investigation.

It is an offence under the *Ombudsman Act* to mislead the Ombudsman or to obstruct an investigation.

Upon completion of an investigation, the Ombudsman's findings and recommendations are drafted, and the organization under investigation is given the opportunity to read and comment on the draft report. The Ombudsman's report may then be finalized and publicly released, incorporating any response from the organization. Reports on provincial organizations must be tabled with the Speaker of the Legislature before the Ombudsman releases them publicly.

As is traditional for all classical ombudsmen, the Ontario Ombudsman does not have any power to enforce recommendations, only to report them publicly. However, the government has accepted almost all the Ombudsman's recommendations as a result of the power of *moral suasion*. If an organization does not accept the findings in the Ombudsman's public report, it will face judgment of the court of public opinion.

Protecting the privacy of complaints and investigations

Under the *Ombudsman Act*, information received by the Ombudsman's office, including the identity of the complainant, is confidential and investigations are conducted in private. The Ombudsman's office is not subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*. Complainant names may be disclosed with consent. Other information may be disclosed where it is relevant to an inquiry or investigation. The Ombudsman's office may also release information in investigative and/or annual reports.

THE OMBUDSMAN AND THE “MUS” SECTOR

Experience

Although oversight of this sector is new for the Ontario Ombudsman, the office has significant experience with issues relevant to “MUS” organizations. For example, the Ombudsman has investigated complaints about closed meetings in more than 200 municipalities since 2008. The office has conducted hundreds of investigations and issued numerous reports, recommendations and publications aimed at bolstering municipal transparency. Ombudsman staff also deal with complaints about post-secondary institutions through the office’s oversight of colleges of applied arts and science. On the rare occasions when the province has appointed temporary supervisors to deal with problems in school boards, the Ombudsman’s office has addressed these complaints as well. This does not change under the new mandate.

Scope of oversight

The Ontario Ombudsman oversees more than 500 provincial government bodies. Under Bill 8, the Ontario Ombudsman’s oversight responsibilities will grow by 548 bodies including 444 municipalities, 83 school boards and 21 universities. The Board of Internal Economy is increasing funding for the Ombudsman’s office to secure additional staff resources. This investment aims to address the anticipated increase of complainants that will result from the extended mandate.

The Ombudsman will not replace accountability officers such as university or municipal ombudsmen, municipal integrity commissioners or other such mechanisms. The Ombudsman encourages municipalities, universities and school boards to create and/or reinforce their own complaint mechanisms and accountability offices. Complaints that have not first been submitted through local complaint mechanisms will be referred back to these offices, where they exist.

The Ombudsman can review decisions of such officers to ensure appropriate policies and procedures were followed, and recommend solutions or changes. This is consistent with how the office handles complaints about provincial bodies, referring back to and reviewing the work of applicable internal mechanisms. The Ombudsman cannot overturn decisions made by government bodies, including municipalities, universities or school boards. The Ombudsman will not have the authority to investigate complaints that fall within the jurisdiction of the City of Toronto Ombudsman, and will only be able to look at matters outside the Toronto Ombudsman’s mandate, or systemic issues that also affect the City of Toronto.

“We do not replace existing complaint mechanisms; we ensure they work as they should.”

—André Marin, Ontario Ombudsman,
Annual Report, 2014-2015

Who can complain

Anyone who has a concern about a municipality, university or school board can submit a complaint. This includes residents, students, staff, parents and family members. Under the *Ombudsman Act*, the Ombudsman has discretion not to investigate a complaint from someone who is not personally involved in the matter, but this is based on the circumstances of each case.

The Ombudsman’s office began accepting complaints about school boards on September 1, 2015, and will do so for municipalities and universities on January 1, 2016. Any complaints about these areas that were made prior to these implementation dates will have to be re-submitted to be considered. All complaints submitted after the implementation dates are assessed on a case-by-case basis, including complaints about retroactive issues, to determine if they merit further investigation.

No cost

There is no charge to complain to the Ombudsman's office, nor are organizations that are the subject of complaints charged for the Ombudsman's services. This will apply to Ombudsman oversight of "MUS" sector bodies as well. The Ombudsman's Office is fully funded by the provincial government.

Potential complaint issues

- **Municipalities:** The Ombudsman will be able to investigate complaints about the administrative conduct of municipalities, including complaints about staff, council members, local boards, and municipally-controlled corporations (with some exceptions). After local complaint mechanisms have failed to resolve a matter, the Ontario Ombudsman can review issues such as conflicts of interest, customer service provided by city staff, municipally-owned utilities, garbage collection, snow removal, and other municipal services.
- **Universities:** The Ombudsman will be able to investigate complaints about the administrative conduct of universities that have not been resolved by a university ombudsman or other complaint or appeal mechanisms. The Ombudsman will accept complaints from students, faculty and other interested persons. Complaints may include concerns about student services, program requirements, student accommodations, admissions, policies, or student financial aid, among other issues. The Ombudsman must consider the principles of academic freedom within universities when investigating a complaint. The Ombudsman already has jurisdiction over Ontario's 24 colleges of applied arts and science, as well as the Ontario Student Assistance Program, and has conducted several individual and systemic investigations related to these bodies and the Ministry of Training, Colleges and Universities.
- **School boards:** The Ombudsman will be able to investigate complaints about the administrative conduct of school boards that have not been resolved by local complaint mechanisms or appeals processes. These may include concerns about special education supports, school and school board policies, customer service provided by board staff, or other matters within the authority of individual school boards.

How complaints are handled

- **Referral:** After receiving a complaint about a provincial body, municipality, university or school board, staff of the Ontario Ombudsman will determine whether the complainant has attempted to resolve their complaint using relevant internal or local complaint mechanisms or rights of appeal. If they have not, the complainant may be provided with referral information in order to assist them in addressing their concern directly with the organization involved. Ombudsman staff may in some cases make inquiries with the organization in order to facilitate a referral of a complaint.
- **Resolution:** Staff of the Ontario Ombudsman may contact the organization to advise of the substance of the complaint, and may request relevant information. Ombudsman staff will attempt to resolve the issue if possible.
- **Investigation:** If a formal investigation is necessary, the Ombudsman's office will give written notice to the organization and may also request interviews with relevant parties and/or documentation and other information.
- **Recommendations and reporting:** Upon completing an investigation, the Ombudsman can prepare and share a report with the organization under investigation. The organization will have an opportunity to review the report and provide comments. The Ombudsman will determine whether or not to release the report publicly, incorporating any comments from the organization.

The Ombudsman’s recommendations are not binding, although historically most have been accepted and implemented. Updates on major investigations and a selection of individual cases are published in the Ombudsman’s annual reports. Major investigations routinely result in stand-alone published reports, which are also posted on the Ombudsman’s website.

- **Follow-up:** Ombudsman staff follow up on investigations to ensure recommendations that have been accepted are implemented. Their progress is reported in the Ombudsman’s annual reports and online. The Ombudsman can reopen an investigation or launch a follow-up, if warranted.

CLOSING REMARKS

Bringing broader public sector bodies like municipalities, universities and school boards under the same Ombudsman scrutiny as provincial government organizations is an idea that has been discussed for 40 years in Ontario. The first Ombudsman, Arthur Maloney, stressed in 1976 that citizens with complaints in these areas should have recourse to his office because “these bodies have important decision-making powers and take actions which affect the lives of all of us.”

When the government introduced this change as part of the broad package of accountability measures contained in Bill 8, it described its objective as follows:

“The legislation we are proposing would extend the mandate of the Ombudsman – one of the bedrocks of accountable government...We want Ontarians to trust that their public institutions are acting responsibly, and so we’re proposing to extend the Ombudsman’s oversight to municipalities, school boards, and publicly funded universities.” (John Milloy, then Minister of Government Services, April 2014)

APPENDIX

Comparison of provincial and territorial ombudsman mandates in MUSH sector*

	Municipalities	Universities	School boards	Public hospitals	Long-term care centres	Child protection services	Police complaints review mechanism
British Columbia	Yes	Yes	Yes	Yes	Yes	Yes	No
Alberta	No	No	No	Yes	Yes	Yes	Yes
Saskatchewan	No	No	No	Yes	Yes	Yes	Yes
Manitoba	Yes	No	No	Yes	Yes	Yes	Yes
Ontario	Yes**	Yes**	Yes***	No	No	No	No
Quebec	No	No	No	Yes	Yes	Yes	Yes
New Brunswick	Yes	No	Yes	Yes	Yes	Yes	Yes
Nova Scotia	Yes	No	Yes	Yes	Yes	Yes	Yes
Newfoundland and Labrador	No	Yes	Yes	Yes	Yes	Yes	Yes
Yukon	Yes	No	Yes	Yes	Yes	Yes	No

*Prince Edward Island, Northwest Territories and Nunavut do not have parliamentary ombudsmen.

**As of January 1, 2016

***As of September 1, 2015

Resources

All material in this report was provided by the Ombudsman's office and is available on www.ombudsman.on.ca





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