

TAKING THE 'MAL' OUT OF ADMINISTRATION: ADMINISTRATIVE JUSTICE IN BRITISH COLUMBIA - THE OMBUDSOFFICE @ 29, GOING ON 30

by

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INTRODUCTION: DEVELOPING A BC OMBUDSOFFICE

In 1977, the legislature of British Columbia passed an Ombudsman Act. In creating an Office of Ombudsman - with its first appointment in 1979 - British Columbia was following a tradition of ensuring an institutional capacity to review matters of potential maladministration and provide its citizens with administrative justice and redress, that is both very old and - in Canada, and much of the western democratic world - one which is still relatively recent.¹

Most authorities date the actual institution of an Ombudsman to 1809, when Sweden first created an Ombudsman. Indeed, the notion of an officer "to investigate complaints from individuals who feel aggrieved by the administrative process of government" is both long-standing and worldwide.² Versions of such an office or governmental capacity can be found in the Roman Empire, in ancient China (bc), and in aboriginal and other traditional societies.

The 'modern' Ombudsman Office could be said to emerge from three eras:

The Incubation Period: 1809 - 1919

The Swedish Ombudsman model - set down in its Constitution of 1809 - included a number of features that remain central to the classic OmbudsOffice of today: i) that s/he serve as an Officer of the Legislature, appointed by and answerable to the legislature; that is, independent of the executive; ii) that it serve as an impartial investigator - with the office unaligned to political parties - government or opposition; iii) that its processes be largely informal, with no charge for following a complaint; iv) that it have the capacity to initiate investigations on its own initiative; and v) that the office be empowered to recommend action, not compel it; though in the initial Swedish model the Ombudsman *could* prosecute public officials for unlawful administration.

The first Swedish Ombudsman wanted to quit after only two years, because he felt ineffective, but the office continued and its significance in ensuring administrative justice grew. The second country to follow the Swedish model, was Finland. It established an Ombudsman Office in its 1919

Constitution. As the size of modern states and their bureaucratic scope grew, the need to ensure bureaucratic justice became more apparent. This produced a second era, with the expansion of post W.W.II bureaucratic states.

The 'Warm-Up' Period: 1955 - 1966

Denmark became the next country to add an Ombudsman, when it created such an office in 1955. Denmark was an important promoter of the idea. For example, Britain debated the idea of establishing an Ombudsman in 1957. However, it was a fourth country - Norway - which followed in 1962. Both offices - in Denmark and Norway - were modeled on the initial Swedish idea. In 1962, the first Anglo-American country copied the Ombudsman idea: as the first Commonwealth country, the New Zealand experience - with what they termed a *Parliamentary Commissioner* - showed that what had essentially been a Scandinavian innovation could work in a parliamentary/common law jurisdiction. That, more than anything else, helped 'unleash' the third modern era.

The 'Ombudsmania' Era: 1967 - Present

The first significant Canadian discussion of an Ombudsman office was at the start of the 1960's, by Political Scientist, Donald Rowat, of Carleton University.³ The first governmental consideration was in Nova Scotia - in 1964. Here, a legislative committee rejected this idea of administrative review, fearing "a process of erosion" which would affect the "intimate contact between the legislator and his (sic) constituents" and "the frequency of contact" between MLAs (Members of the Legislative Assembly) and Cabinet Ministers. The solution to these concerns, according to the Nova Scotia legislative committee report, was to increase MLAs' expense allowances, so they could be more effective.

Despite such thinking, two Canadian provinces - Alberta and New Brunswick - joined the worldwide rush to establish Ombudsman offices in 1967. In the same year, other jurisdictions such as Guyana, Hawaii, Mauritius and the United Kingdom did likewise. The UK Ombudsman became known as the 'Ombudsmouse' because the British legislation prevented the public from approaching the office directly. Echoing some of the sentiments contained in the 1964 Nova Scotia report, British parliamentarians required that all complaints go through the local MP's office first. Many British MP's looked on the kind of work the Ombudsman's office undertook as a central part of their constituency work - the bread and butter of their representative function;⁴ as a result, the initial Ombudsoffice experience in the UK was much more muted. In 1968, Quebec established Le Protecture as its Ombudsoffice. This was followed in 1969-70 by Manitoba and Nova Scotia. Saskatchewan followed in 1973, Ontario and Newfoundland in 1975. Newfoundland obviously copied the New Zealand legislation because it established an office of Parliamentary Commissioner, despite having a House of Assembly rather than a Parliament.

British Columbia legislation was added in 1977, (and its first Ombudsman, Dr. Karl Friedmann, appointed in 1979) becoming the ninth Canadian province to create such an office to help ensure administrative justice. Prince Edward Island is the only province without such an institution, but with a population of fewer than 150,000, and the capacity to talk directly to the premier about subjects as local

as potholes, PEI's need for additional 'administrative redress' is more limited. Many municipalities, much larger than PEI, have now added OmbudsOffices, however.

During this same period of 'Ombudsmania', Ireland (1970), Western Australia and Nebraska (1971), France (in 1972), Alaska (1975), Austria, and Australia (a federal Ombudsman) and Zimbabwe (1983) all added OmbudsOffices. Indeed, by the early 1980's - in a period of just fifteen years - the idea of an Ombudsoffice had grown from five to over seventy jurisdictions - national and subnational - with OmbudsOffices. By the early 21st century, this institutional idea had grown to be a part of governmental life in 128 countries^s and several hundred jurisdictions - national, provincial/state/lander, and local - around the world; its more recent acceptance has been in many of the states of the former Soviet Union, where populations have worked to establish more democratic and sensitive justice and administrative regimes.

What Is An Ombudsman?

The Swedish Model, with New Zealand and subsequent adaptations set out the main characteristics of the Ombudsman/Office. Sweden actually had an earlier office - that of Chancellor of Justice - established in 1713, whose main responsibilities were to ensure that laws and regulations were complied with and that civil servants discharged their public duties properly. This office was based on appointment by the executive however, and it reported to the executive. With the legislative appointment of an Ombudsman in 1809, the initial criteria for holding the office included being "able, impartial, versed in the law, and having had experience as a judge."

Subsequently there were two major changes to the Swedish Ombudsman: (a) in 1840, the office was made strictly non-political; prior to 1840, the Ombudsman had actually attended Cabinet meetings; and (b) after 1948, the Ombudsman in Sweden no longer had the powers to prosecute in ordinary criminal cases, but did retain the power to prosecute higher level officials for offences involving dereliction of duty or abuse of authority. That is not an option for most modern OmbudsOffices.

According to American academic Larry B. Hill, the Ombudsman's *mission* is to generate and respond to complaints against governmental administration, to use its extensive powers of investigation in performing post-decision administrative audits, to form judgments that criticize or vindicate administrators, to seek solutions that conform with notions of administrative justice, and to report publically its findings and recommendations - but not to have the power to force changes to administrative decisions.

Hill (and others) have suggested a comprehensive definition of the ***structural and functional characteristics of an Ombudsman/Office:***

Classical OmbudsOffice Characteristics

1. **Legally established:** this may be in a constitution as in Sweden and Finland, or in separate legislation as in New Zealand and British Columbia.
2. **Functionally autonomous:** that is, 'an independent organization in its own right' (Hill), not a dependent component of a larger organization.

3. External to the administration.
4. Operationally independent of both the legislature and the executive: here an important distinction is made between the legislative selection of an Ombuds Officer and what Karl Friedmann has termed 'the Ombudsman's ability to operate without interference from either legislature or executive.'
5. Specialist: the job is 'full-time and exclusive'.
6. Expert: the Office and its staff are 'experienced professionals'.
7. Nonpartisan: while selection is by the legislature, the Office's operating procedures are 'rigorously non-partisan', and 'impartial, unbiased and non-discriminatory'.
8. Normatively universalistic: that is, the office operates according to 'rational-legal' principles.
9. Client-centred but not anti-administration.
10. Popularly accessible and visible.

In the Report on *An Ombudsman For BC*, ***the essential features of any Ombuds Office plan*** included many of these points, posed slightly differently: in British Columbia, an Ombudsman is:

1. **An Officer of the Legislature**, appointed by the legislature, reporting to the legislature, and removable by the legislature. [Just like the Auditor general, who conducts post audits of public accounts and accounting, the Ombudsman conducts post administrative audits. Both offices are part of the legislative process - and as officers of the legislature, assist legislatures in carrying out its oversight, review and accountability functions.]
2. **Appointed by a non-partisan procedure, and maintains a position of independence and impartiality in the conduct of the office.** When the House is not sitting, or when an office falls vacant because of no decision by a legislature, first ministers (e.g. a Premier) may fill the position on an acting basis subject to subsequent legislative approval; in Nova Scotia and Newfoundland, Conservative Premiers appointed defeated former legislative political colleagues to the position. Both remained controversial appointments and many considered them inconsistent with the basic characteristics of any Ombuds office worthy of the name. In British Columbia, Premier Bill Bennett let the term of the province's first Ombudsman, Dr. Karl Friedmann, lapse without a decision so he could appoint his own acting Ombudsman, rather than have the legislature re-appoint the incumbent. Bennett's ploy succeeded in preventing legislative consideration of the re-appointment (a one-time provision of the legislation - the initial appointment is for six years, a year longer than the maximum term of a legislature, with an option of one re-appointment: See Ombudsman Act, BC), but 'his' candidate, the subsequent acting ombudsman Peter xxx also failed to receive the required all-party legislative support. The subsequent Ombudsman, Stephen Owen served only one term - by choice. Interestingly, several other BC Legislative Officers are now limited to one term only.
3. **With the power to investigate complaints from individuals or on the Office's own initiative.** In general, most Canadian Ombuds Offices have concentrated on public complaints; the BC Office, with the latest Canadian legislation, has acted in a 'more activist fashion' initiating a number of important complaints/investigations of its own - such as a major review of youth corrections.

4. With Access to government premises and records, other than records relating to Cabinet proceedings.
5. Once the Ombudsman begins an investigation, the legislature cannot intervene.
6. Reporting (at least) Annually to the Legislature: this is a normal requirement - see annual reports of the Ombudsman. The BC Ombudsman's Office also issues periodic 'Special Reports' to the legislature - on matters considered by the office to require more immediate notification to both the public and the legislature. In BC, there have been 28 Special Reports - on subjects as diverse as from Income Assistance Complaints (#28) and Traffic Camera Fines (#44) to Self Government in the health professions (#24) and Statutory Officers of the legislature (#21).
7. With no power to enforce the office's recommendations (except in certain Scandinavian jurisdictions) though with the capacity to publicize instances of executive non-response.
8. Much of the Ombudsman's influence is based on the objectivity, competence, specialized knowledge of government and prestige of the position. Setting the salary at the level of the Chief provincial judge - currently at XXX,000 % more than the BC Premier - helps set the independence and prestige/standing of the office.

BC has now had six individuals serve as Ombudsman – three in an “Acting” capacity; it is ‘searching’ for a seventh. Here as an indicator of what is expected of candidates by the BC Legislature:

JOB APPLICATION
PROVINCE OF BRITISH COLUMBIA
OMBUDSMAN

Canadians who have earned respect and recognition in their chosen field and the community at large are invited to apply for position of Ombudsman for the Province of British Columbia.

The Ombudsman is charged with the responsibility under the Ombudsman Act to investigate the complaint of any person who believes they have suffered an injustice through the actions or decisions of Ministries, Agencies, Corporations or Officials of the Government of British Columbia. Copies of the Ombudsman Act are available on request.

The Ombudsman carries out his/her duties through the management of a 32-person professional and support staff and reports to the Legislative Assembly on the activities of the Ombudsman Office.

The demands of this position require attributes that go beyond a specific discipline or academic achievement. It is desirable that the Ombudsman possess:

- A general knowledge and appreciation of the workings of the parliamentary system.
- Knowledge of British Columbia and its people.
- Common sense, maturity, fairness, integrity and sound judgement.
- Independence, perseverance, tact patience and tolerance.
- An understanding of the distinction between natural and legal justice and the ability to assimilate legal advice.
- Ability to communicate with individuals from all walks of life as well as with various levels of Provincial Government.
- Ability to respond to administrative problems and a knowledge of sound administrative and management practice.
- A high energy level and dedication to the Ombudsman role.

The Ombudsman is appointed to a six year term and may be reappointed. The compensation package reflects the senior nature and responsibility of the position.

Replies will be treated in confidence. Resumes and inquiries should be forwarded to:
Joanne Q. Public, M.L.A.:
Chair of the Special Committee to Choose an Ombudsman,
Room 204,
Parliament Buildings,
Victoria, B.C. V8V 1X4

POWERS AND JURISDICTION OF THE BRITISH COLUMBIA OMBUDSMAN

In the BC Legislation, the key sections on jurisdiction are sec. 10, sec. 15 and sec 22.

Section 10 sets out *Powers and Duties* - on "matters of administration" these are extensive, including review of "a decision or recommendation made; an act done or omitted; or a procedure used". (See BC Ombudsman Act). On challenges to these powers, see *BC Contributions to ... OmbudsOffices*, below.

Sec. 15 includes *The Power to Obtain Information*, including the authority of the office to access to virtually all records - including those listed as confidential; if not provided, these may be subpoenaed with persons summoned and placed under oath (subject to a five year perjury sentence) - In BC one person has been so charged; in a three week trial, he was acquitted. Sec.15 (1) includes provisions protecting individuals from retribution - for example, denying work to a contractor who may have complained to the ombudsman.

Sec.22 provides for the procedure after an investigation and ombudsman finding: where a matter was 'contrary to law', 'unjust, oppressive or improperly discriminatory', 'based in whole/part on a mistake in law or irrelevant grounds', was 'related to the application of arbitrary, unreasonable or unfair procedures' or was 'otherwise wrong'. In such circumstances, the Ombudsman can recommend that various 'steps be taken'

THE PROCESSES OF AN OMBUDSOFFICE

One of the central features of any OmbudsOffice is that it be accessible and visible. In BC this initially – and against the wishes of the government of the day - meant offices in both Vancouver and Victoria, both ground-level and wheelchair accessible, with toll-free-lines, and sight and hearing assisted provisions, and via e-mail and fax, for example via government agents' offices. In a more recent era of cutbacks in BC (post 2001), it has meant 'Mobile Offices'.

The staff complement in BC in 2001 was at 50, with an annual budget of \$4,765m; between 2002-2005 the office – as virtually all Legislative Officers – received a cut of 35% - so that by 2005 there were only 31 FTEs and a budget of \$3,097m – a level expected to remain static through 2007. Most employees have Master's degrees in public administration/political science, and social work and law, with several with clerical and policing backgrounds. The intake function seeks to prevent 'buck passing', preferring to locate other avenues for resolution even when the provincial Ombudsman has no jurisdiction; as there is no federal OmbudsOffice in Canada - though a few Ombuds-like offices such as the Official Languages and Corrections Commissioners - a good deal of intake work tends to involve federal matters. Indeed, of the approximately 20,000 complaints annually, 4500 are 'non-jurisdictional'.

If a matter/complaint is within the jurisdiction (and not considered frivolous or vexatious), the organization complained about is notified. Given that one of the prime motives of OmbudsOffices is to ensure “better administration”, one of the first tasks is to determine the facts and then seek some resolution - often through changing administrative attitudes and bargaining for an acceptable - and just - resolution. In many instances, the administrative act is found to be fair and just; in the instances where it is not, recommendations for change are provided - to the authority, and where there is no acceptable response, to the legislature. Here it is important to remember that the ombudsman can only “make recommendations”, not order changed administrative action. At times, changing attitudes might involve the power of publicizing the facts and findings.

The Ombudsman may investigate actions made by government prior to the creation of the BC Act. The most notable case involved a 1954 Workers Compensation Board decision denying spousal compensation for an individual drowned in the Strait of Georgia. The denial involved a woman (Mrs. Splett) who had to raise her three daughters on her own, without assistance. Feeling a continuing ‘little injustice’, the new BC Ombudsman’s office took up her case, found the company her husband had worked for no longer operating - though some of its former Director’s still alive, found evidence (through advertisements in the Gulf Island newspapers) that he had indeed been working at the time of his accident - a point rejected in the 1954 WCB ruling - and recommended that the pension be paid - with thirty years compounded interest. Mrs. Flett was compensated; her most important sense was that through Ombudsoffice action an injustice had been redressed.

BC’S CONTRIBUTIONS TO THE OMBUDSOFFICE IDEA

1. Annual Reports:

Virtually all OmbudsOffices issue annual reports. The BC contribution here has been to put these out in ‘plain English’ and for most years in a form that is readily accessible. The initial Ombudsman included cartoons by a local political cartoonist, and a format that invited use of the report. Subsequent BC Ombudsman Office practice was to put the report out in newspaper format. Approximately 10,000 copies were produced annually. The current office makes much more use of electronic forms.

2. Initiate own investigations:

Many OmbudsOffice legislative acts allow for the Ombudsman to undertake their own investigations; few - particularly in North America - do. From the first Ombudsman in BC, this provision of the Act has been utilized. So when the Ombudsman would read about self abuse in Youth Corrections in the press, he did not need to wait for an official complaint. Over several years/reports, Youth Correction administrative practices were changed because of Ombuds-action. Similarly, with complaints reported in the media about Sheriff practices and the beating of prisoners in transit, Ombudsman action. In Sweden, approximately 25% of such action is Ombudsman initiated; in BC, one of the more active in this regard, it is less than 1%. Yet taking such action ensures a more complete bureaucratic audit.

3. Supreme Court of Canada case:

The powers of the Ombudsman were challenged by the BC Government in a court case *BCDC v. Friedmann*: when a New Westminster (King Neptune) restaurant owner requested assistance from the Ombudsman in his dealings with the BC Development Corporation. The Owner had understood his Fraser River restaurant would be part of a Fraser River beautification program jointly sponsored by the City of New Westminster and BCDC. When he found out that he was not included and his 35 year old business employing 75 people was at risk he requested information from BCDC. He was refused. When the Ombudsman asked on his behalf, the Ombudsman was refused access to BCDC documents, the BCDC refused saying the office had no jurisdiction as it was of a 'purely commercial nature', not 'administrative. The Ombudsman's response was that approximately 40% of governmental business was 'commercial' - on matters from Highways to ICBC. The BC Court of Appeal - in a 2-1 decision agreed with the Ombudsman and ordered BCDC to open up its documents to the Office. BCDC appealed to the Supreme Court of Canada.

The BC Government sought other provincial intervenors without success; Karl Friedmann had three other OmbudsOffices seek leave - successfully - to intervene. Central to the case was "what are 'matters of administration' ?" The SCC, in a unanimous decision determined in favour of BC's Ombudsman - that the ombudsman could investigate virtually 'anything that governments do' - except cabinet deliberations/decisions and legislative acts. Most importantly, the BC challenge to its own Ombudsman Act set a key precedent for Ombuds-powers, clarifying the issue across most Commonwealth and common law settings.

4. Code of Administrative Justice:

Perhaps the most significant BC contribution to the Ombudsman/Office idea globally was the initiative of Dr. Karl Friedmann, the first incumbent. His **Code of Administrative Justice** - originally contained in his 1982 Annual Report, and revised subsequently, provides a clear basis for understanding - by administrators as well as the public - how the OmbudsOffice works. More importantly, it sets out the principles on which such an office should function. If the Ombudsman is to act as 'a conscience of the state', Friedmann felt it essential that all understood on what basis he found particular bureaucratic actions fair and just or arbitrary and contrary to law. And if changes in attitudes and administrative behaviour was one clear way to reduce future complaints, it was essential that administrators also found the Ombudsman fair and just. This 'more systemic approach' was designed to ensure a broad review of practices and administrative changes where these were found wanting. But if the Ombudsman required rationality (vs arbitrary action) in bureaucratic decision-making, then a rational scrutiny test should also be provided for any actions taken by the Ombudsman. This meant setting up a rational dialogue with administrators and the public. It would also ensure a better accountability to the Legislature, to which the Ombudsman reported. What did it mean when s/he said something was oppressive (like providing only conditions for a birth certificate which not everyone could meet)? What were "irrelevant grounds" or "unfair

procedures”? The basic elements of this Code - and how it and affects the operations of the OmbudsOffice - are included here:

CODE OF ADMINISTRATIVE JUSTICE

As Ombudsman I believe that:

- Every person is entitled to fair, just and reasonable treatment from provincial officials.
- Officials entrusted with power must respect the rights and personal dignity of individuals they deal with.
- Public servants draw their authority from law and act under law. Official requests to individuals must be authorized by law.
- Officials should make decisions without unreasonable delay and take into account only relevant considerations. When a decision involves two or more officials, they should coordinate their activities to minimize inconvenience and cost to the public.
- Administrative fairness requires that people affected by government action be adequately notified and informed of relevant facts and law. Officials must give affected individuals an opportunity to be heard.
- When affected by official action a person is entitled to a clear statement of reasons and information about appeal rights.
- All communications, requests and notices should be in plain language.
- All citizens are equal before the law and individuals cannot expect preferential treatment from officials though often personal circumstances can, by law, be taken into account in official decisions.
- Citizens are entitled to assert their rights, although with the same courtesy they expect for themselves from officials.

If you feel unfairly treated, the Ombudsman may be able to help.

THE OMBUDSMAN HAS TWO MAIN OBJECTIVES:

To investigate and resolve complaints against provincial government authorities; and

To identify the causes of complaints and to recommend general improvements.

WHAT CAN THE OMBUDSMAN INVESTIGATE?

The Ombudsman has broad powers to investigate decisions, procedures and practices of

All ministries of the provincial government;

Boards, Commissions and Crown Corporations; and

Any other person or body appointed by or responsible to the provincial government.

IF YOU ARE NOT SURE WHETHER THE OMBUDSMAN CAN INVESTIGATE YOUR COMPLAINT, CALL THE OMBUDSMAN'S OFFICE AND ASK.

If the Ombudsman cannot help you, he or his staff will refer you to someone who can.

HOW DO YOU COMPLAIN TO THE OMBUDSMAN?

You may complain to the Ombudsman by letter, phone or personal visit at the Victoria or Vancouver office of the Ombudsman (for phone numbers and addresses see back page).

If you are an inmate or patient in a provincial institution, the law states that your letters to and from the Ombudsman must not be opened by the authorities.

THE OMBUDSMAN WILL CONSIDER ANY COMPLAINT

If there are better ways to deal with your problem, the Ombudsman may suggest that you:

- Complain directly to the authority concerned;
- Use existing appeal procedure;
- Contact your M.L.A.; or
- Take legal action.

If you are unsure about what other sources of help are available, the Ombudsman's staff will inform you.

HOW DOES THE OMBUDSMAN RESOLVE COMPLAINTS?

Authorities often correct errors and omissions that are brought to their attention.

The Ombudsman has a staff of professional investigators who assemble all relevant facts, consider appropriate laws and regulations and prepare a report for the Ombudsman's consideration.

The Ombudsman may then recommend that the authority change a decision, procedure, regulation or practice.

It is up to the authority to make the recommended change.

If an authority refuses to follow a recommendation, the Ombudsman may refer the matter to the Cabinet and the Legislative Assembly for action.

If the Ombudsman concludes that you were treated fairly and correctly, he will explain the reasons for his opinion to you.

THE POLITICAL ENVIRONMENT OF THE OMBUDSOFFICE

Karl Friedmann, in an early paper on the office suggested that there were four "publics" with which the Ombudsman had to deal:

1. The ***complainants***: those who present their concerns for administrative wrongs seeking justice and redress. In BC these now number 20,000 annually. Most studies suggest that there is a high level of confidence in OmbudsOffice action by complainants, even where the OmbudsOffice finds insufficient grounds for changed administrative action. Simply having an independent authority who is trusted take individual concerns of maladministration seriously and investigating them, represents a sufficient degree of justice for many complainants.
2. ***OmbudsOffice - Public Relations***: it is essential for any new OmbudsOffice to ensure awareness by the public. In the Canadian case, a CBC Television

show - *The Ombudsman* - was successful enough in popularizing the idea that at least one provincial Ombudsman (from Nova Scotia) found a disgruntled complainant threatening to go to "his boss at the CBC." All OmbudsOfficers recognize the need to avoid becoming 'too bureaucratized' themselves. Indications from various forms (eg polls) suggest that in the 1970's when the offices were relatively new in Canada, most Canadians lacked awareness of OmbudsOffices, though those who knew about them were largely positive. By the 1990's, a higher level of awareness and general trust of the OmbudsOffices existed, the exceptions being (as in Newfoundland and Nova Scotia) where political and other executive interference had tarnished the reputation of the Office.

3. **OmbudsOffice - Bureaucratic Relations:** most studies found some anxiety amongst public servants, at times bordering on resistance to the innovation. In general, however, particularly as OmbudsOffices worked with the bureaucracy to ensure administrative fairness and justice, and as many of the actions taken by civil servants were found to be fair - or if wrong correctable, this initial skepticism changed to acceptance, even enthusiasm. The most successful OmbudsOffices, such as in British Columbia, sought broader systemic solutions to prevent ongoing complaints about bureaucratic action. One conclusion is that for the most part, the bureaucratic "public" has largely developed a useful, positive working relationship with the OmbudsOffice. Part of the dialogue between the Ombudsman and BC civil servants to assist in ensuring positive OmbudsOffice - Bureaucratic relations was posed as a series of questions and answers published as *Running Things Is Sometimes Hard.* (See Appendix A)
4. **OmbudsOffice - Political Relations:** this "public" is important because the OmbudsOffice serves as an Officer of the Legislature, seeking to assist the legislature in its executive oversight function; most Offices operate under legislative enactment which can be easily amended. Not all Ombuds - Political relations have been positive, however. The examples of ex-politicians - in Nova Scotia and Newfoundland - being chosen by Premiers of the same political party, certainly tainted the operations and general public trust in independence of offices in those provinces. In Ontario, issues of size and costs presented politicians with concerns which they expressed. In the UK and elsewhere, issues about roles traditionally left to MPs/MLAs remained of concern. In general, however, the OmbudsOffices were more likely to fall afoul in such relations because of a relative lack of tradition and understanding. Those which were most successful were able to maintain good relations with each of their publics.

CONCLUSIONS

As S.P. Huntington has argued, new institutions need to "become institutionalized: to succeed. Huntington has argued that it is possible to measure the "degree" of such institutionalization by examining both internal and external/environmental criteria:

a) the internal criteria are structural: complexity and coherence; the external criteria are environmental and represent the capacity of a new institution to defend itself;

b) the environmental criteria are defensive: autonomy and adaptability.

In Canada, now with between twenty and thirty years of experience, it is possible to conclude that the idea of OmbudsOfficers has become well known, has developed a high degree of public trust, has developed a working relationship with public bureaucracies and is largely perceived by politicians as an integral part of its own holding the executive to account. In short, it has become “institutionalized”.

What Remains?

While many jurisdictions have embraced the idea of fostering administrative justice through the creation of OmbudsOffices, there remains *no federal OmbudsOffice* in Canada.⁶ In the 1970's, Pierre Trudeau suggested that Canadians did not need a federal Ombudsman because they had the Liberal Party. While not all found that an adequate response, there are a variety of forms of redress that exist or have been created in the federal administration:

1. The **Courts** - particularly in federal administrative law matters, the Federal Court of Canada, created in 1970 - is intended to oversee some aspects of administrative review. The judicial process is increasingly not accessible to most citizens, however, and over 90% of administrative action is discretionary and largely beyond the ongoing review of the courts. Such a costly and cumbersome review process can make important statements which impact on administrative - public relations, but not on an ongoing basis, and not for “little injustices”.
2. **Informal appeal procedures**: via contact with the Minister or local MP/MLA. In some instances, with activist politicians this can be quite effective; often it is not, and with constituency traditions which vary, it is at best an incomplete component of a system of administrative justice.⁷ Similarly with letters to the appropriate Minister, action may or may not ensue. A 1964 study - by Henry Llambrias found that most MPs felt that they handled complaints in an inadequate manner. While additional funding to support such work by parliamentarians followed, the experience and orientation of individual representatives continues to affect complaint resolution effectiveness.
3. **Federal Ombuds-like Offices**: In 1969, a parliamentary Ombuds-like Office - that of ***Official Languages Commissioner*** - to oversee complaints and implementation of the Official Languages Act was established. The Commissioner, first appointed in 1970, has also proven a relatively effective overseer of this specific area of federal policy. In 1973, an Office of ***Corrections Commissioner*** was established. It reported to the executive branch/Cabinet (to the Solicitor General) and had authority to investigate on its own initiative or via complaint, on behalf of inmates of federal penitentiaries. Despite being an ‘*executive-based*’ Ombuds-like office, the Corrections Commissioner has largely operated with independence and effectiveness. This was followed by the establishment of the office of **Canadian Human Rights Commissioner** in 1976, to investigate human

rights abuses, under the Canadian Human Rights Act. Since then, although somewhat different agencies, separate **Privacy Commissioner** and **Freedom of Information Commissioner/Offices** have been added. Both were created in 1983, and have proven outspoken advocates for their respective responsibilities. In the 1980's, with the creation of CSIS, a separate **Security Intelligence Review Committee** - made up of five Privy Councillors - was added to provide administrative oversight of our spy agency.

Despite that federal experience, there has been little real governmental or parliamentary push for a more general federal OmbudsOffice in Canada. Given the extensive scope of discretionary executive action, much of it carried out by the public bureaucracy, and most of it beyond any regular review by the courts or other formal and informal oversight, and given the now extensive experience provincially with OmbudsOffices, this is little short of surprising.

As the BC legislation (Canada's most recent) and the *Running Things Is Sometimes Hard* dialogue between Ombudsman and Public Servant demonstrates, administrative justice has been enhanced by the development of OmbudsOffices.

This chapter examines the development of **OmbudsOffices**; from the first Ombudsman, created in Sweden in 1809, such offices have operated to deal with issues of **maladministration**. The institutionalization of OmbudsOffices can be seen as emerging over three eras:

- **The Incubation Period: 1809 - 1919:**
- **The 'Warm-Up' Period: 1955 - 1966**
- **The 'Ombudsmania' Era: 1967 - Present**

This assessment of OmbudsOffices also includes a listing of their basic characteristics, including:

- legally established
- functionally autonomous
- external to the administration/executive
- operationally independent
- specialist
- expert
- non-partisan
- accessible

The first Ombudsman in British Columbia developed of a **code of administrative justice** which has served as a model for such offices internationally. That, and an examination of both the operations of the OmbudsOffice and the **BC Ombudsman Act** on which it is based in British Columbia forms the basis for the latter portion of the Chapter. Finally, students are presented with a job application for the position and a BC brochure (**Running Things Is Sometimes**

Hard) developed to assist public servants understand and work with the OmbudsOffice.

¹ D. Rowat, "Recent Developments in Ombudsmanship", *Canadian Public Administration*, vol.10, 1967, pp.35-46.

² P.Bain, W.Black and J. Weber, *An Ombudsman For British Columbia Report*, NP, 1977.

³ Donald Rowat's *The Ombudsman*, remains one of the best introductions to the development of the institution. See D. Rowat, ed., *The Ombudsman: Citizen's Defender*, 2nd edition, (Toronto: University of Toronto, 1968).

⁴ See, for example, Frances Morrell, *From The Electors of Bristol*, (London: Rountree, 1977) – an assessment of one MP's (Tony Benn's) mailbag for one complete year.

⁵ See *Ombudsman Worldwide Offices*, @International Ombudsman Institute - www.law.ualberta.ca/centres/ioi/worldwide.html.

⁶ See Donald Rowat, "An Ombudsman Scheme for Canada", *Canadian Journal of Economics and Political Science*, vol.28, 1962, pp.543-556, for an early Canadian proposal for consideration of an OmbudsOffice.

⁷ E.g. See, *From The Electors Of Bristol* by Frances Morrell, 1976, Rountree: UK.