

*The Nova Scotia Ombudsman
(First Draft)*

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Across the country, Canadians are placing calls to their provincial ombudsmen with decreasing frequency. In recent years, Nova Scotia has been the exception to this rule. The office's development of an active communications strategy and the expansion of its mandate to include specialized youth and seniors services have contributed to the increase in contacts. The communications strategy involves making presentations to communities and government offices to provide information on the ombudsman's responsibilities and powers. The increased exposure to the ombudsman and his staff has encouraged more citizens to take advantage of the office as a resource. Perhaps paradoxically, the same communications strategy that yielded an increase in contacts between 2001 and 2004 has produced a slight decrease in 2004-05. As the ombudsman and his staff have become more present in Nova Scotia's communities via regular visits, ombudsman Dwight Bishop expects that more complaints have been dealt with "on site" during these visits, minimizing the need for citizens to actually place calls to the office. This development might make it more difficult for researchers to assess the ombudsman's impact. Annual records of calls to the office provide an empirical indication of the ombudsman's visibility and impact in the province, and of the extent to which citizens consider the office to be a valuable resource. Should the ombudsoffice staff respond effectively to citizens' concerns at community meetings, the office's accessibility and utility might increase, but these informal contacts will not be reflected in annual records of calls to the office.

Statistical comparisons between provincial ombudsman's offices indicate inter-provincial variations in the rates at which citizens use the ombudsman as a dispute resolution mechanism. However, statistics never paint a full picture and can sometimes be misleading. Researchers must dig deeper, beyond the surface, to expose statistics' true meanings. For instance, differences between ombudsmen's annual "complaints" totals might be the result of their different approaches to "complaint-counting". Some ombudsman's offices might not include in their calculations those calls that were outside their jurisdiction. The Nova Scotia office does include these "referrals" in its annual calculations. Over the past two years, the Nova Scotia office has seen an increase in calls on matters within its jurisdiction and a decrease in referrals. Mr. Bishop attributes the rise to the communications strategy, which educates citizens on the ombudsman's roles and responsibilities.

Another factor that could skew statistical comparisons is that provincial ombudsman's offices have varying mandates. For instance, many provincial

ombudsman's offices do not have a children's services section, while the Nova Scotia office makes a special effort in this area. These differences must be taken into account when comparing provincial statistics.

It is important to emphasize that statistical reports of calls to the office are an important but insufficient measure of the ombudsman's impact. The office's influence in Nova Scotia is multifaceted. While staff members do important work in responding to citizens' complaints and resolving disputes, perhaps the most significant impact is made through the consultative work that the office does with legislative committees, government departments, non-governmental agencies, and federal government entities such as the RCMP. Responding to citizens' complaints provides a role for the ombudsman at the policy "output" stage. However, through participation in policy discussions with committees and public officials, the ombudsoffice can use its experiences and expertise to influence policy *formation*. For instance, the Nova Scotia ombudsman has consulted with municipal police services as well as the RCMP about how to modify facilities so as to meet the specific needs of children.¹ These consultations affect every youth who enters the system.

This chapter has three purposes: to explore the growth and evolution of the ombudsman's role and mandate in Nova Scotia; to identify barriers and challenges that the office faces (and has faced) in achieving its goals; and to evaluate the trends and patterns that have developed in public contacts to the office. In order to achieve these objectives, I begin by providing an historical context to the Nova Scotia ombudsman's office that traces the evolution and expansion of its mandate. Second, I use statistical data to convey annual totals in citizens' calls to the ombudsman's office over the past five years. Citizens' complaints have been concentrated in departments that deal with what Bishop refers to as "personal relationships" between citizens, such as justice or community services. Finally, I draw some conclusions on how Nova Scotia's ombudsoffice contributes to government accountability and improved service delivery, both by responding to citizens' complaints and through more proactive measures. It appears that Nova Scotia's ombudsman has become a more useful and utilized resource for citizens in recent years. Therefore, this office might serve as an example for others across the country. My findings are based on interviews with the ombudsman and his staff and on the annual reports that the office has published over the past six years.

Mandate and Functions

The provincial cabinet appoints the ombudsman for a five-year term, after which the appointee is eligible for renewal. Under Nova Scotia's *Ombudsman Act*, the office is authorized to receive citizens' complaints against public officials in all provincial and municipal departments, agencies, boards, and commissions. Its mandate extends to those foundations and corporations that are supported by or that direct the expenditure of public funds by the province. The ombudsman's office does not deal with complaints against cabinet ministers, elected officials, private individuals, federal government departments

¹ Nova Scotia Office of the Ombudsman. Annual Report 2001-2003, 22.

or agencies, or judges. All complaints to the ombudsman are kept confidential and are not subject to freedom of information requests.²

In addition to responding to citizens' complaints, the Nova Scotia ombudsman has the authority to launch "own motion investigations" in order to examine government service delivery even when no complaint has been received. Or, in the event that any department becomes the subject of a stream of complaints from citizens, the ombudsman is able to initiate a thorough investigation of its service delivery. Own motion investigations provide an opportunity for an ombudsperson to use discretion or to tackle a cause or issue of personal importance.

In 2004, the *Ombudsman Act* was revised to acknowledge the ombudsman's authority to investigate complaints about school boards, child welfare agencies, licensed child-care facilities, nursing homes and homes for the aged, residential care facilities for seniors, hospitals, and community colleges.³

At the time of writing, the Nova Scotia ombudsoffice is comprised of four sections: Investigation and Complaint services; Youth and Senior services; disclosure of wrongdoing; and administration. The defining feature of an ombudsoffice is its authority to receive complaints, so the first of these four sections, Investigation and Complaint services, has been a fundamental part of the Nova Scotia office since its creation in 1970. As I discuss in more detail later, the proactive communications strategies employed in recent years explain, to a large extent, the increase in citizens' complaints under this section. That said, changes *outside* the office have contributed to the increase as well. For instance, in 1995 the towns of Cape Breton County amalgamated to form the Cape Breton Regional Municipality. In 1997, Bedford, Sackville, Dartmouth, Halifax and the surrounding county followed suit. These events had a dramatic effect on the number of calls to the ombudsman's office, as many jobs and services were affected.⁴

Although every complaint is unique, the office takes the same approach to each one. The first stage is now called "intake", but was formerly referred to as the "initial screening" phase. The officer who receives the call determines whether or not the subject matter is within the ombudsman's jurisdiction. Calls outside the office's jurisdiction are called "referrals" because the officer refers the citizen to the appropriate authority to deal with the complaint. The first step in dealing with a jurisdictional complaint is to advise the caller of avenues of appeal that might be available within the department against which the complaint is made. If further service from the ombudsman is required, the matter is referred to an ombudsman representative within the office.

At the second stage, called administrative review, the representative gathers facts and researches policies and legislation relevant to the complaint. An attempt is made to reach a solution through informal dispute resolution procedures. Reviews are usually completed within four weeks. If this process is unsuccessful, the ombudsman's office moves to the final stage, the investigation process. Investigations involve comprehensive research of the situation that led to the complaint and the relevant legislation and policies. Also, the ombudsoffice conducts interviews with the complainant, public officials, and

² *Ombudsman Act 1989* (amended 2004).

<http://www.gov.ns.ca/legislature/legc/statutes/ombudsm.htm>.

³ Office of the Ombudsman. Annual report 2004-2005, 4.

⁴ Office of the Ombudsman. Annual report 1995-2000, 14.

witnesses. If it is seen to be necessary, the ombudsoffice makes recommendations aimed at improved service delivery. Although these recommendations are non-binding, they are usually followed in Nova Scotia. In 2004-2005, 42 of the ombudsman's 43 recommendations were implemented or are being considered.⁵ If the government were to reject a recommendation, the ombudsman has the option to table it with the Speaker of the House so as to raise its public profile. However, government departments in Nova Scotia tend to cooperate with the ombudsman on the vast majority of recommendations. It would not seem to be in the ombudsman's best interests to risk isolating the government by exposing its occasional noncompliance.

In 1996, the Nova Scotia office expanded its role to include a youth services section, which reviews and investigates concerns articulated by youth, parents, guardians, and youth workers regarding service delivery in youth-serving systems. The ombudsoffice monitors conditions in youth facilities and makes regular visits to youth correctional facilities, secure-care facilities, holding cells, sheriff services, and residential child care facilities. These visits are to ensure that youth are aware of the services available to them via the ombudsoffice. Pamphlets with the ombudsman's contact information are distributed in English, French, and Mi'kmaq.⁶

The office cooperates with municipal and provincial departments, as well as non-governmental organizations, to work towards the recognition of children's rights. As stated previously, by working with public and private organizations on an ongoing basis, the ombudsoffice has a chance to affect change at the policy stage, not just when complaints are brought against policy "outputs".

In recognition of Nova Scotia's growing seniors population, the ombudsoffice is currently developing a Seniors Services Initiative in the image of the youth program. The plan is for ombudsman representatives to participate in government committees dealing with seniors' issues, to develop a complaint resolution process specifically for seniors, and to visit seniors' facilities to monitor service delivery.

In 2004, the ombudsman's jurisdiction expanded to include oversight of the *Civil Service Disclosure of Wrongdoing Regulations*. If a government employee at the provincial or municipal level believes that she is being asked to commit wrongdoing, or that wrongdoing has occurred or is likely to, she may inform her supervisor, deputy minister, or the ombudsman's office. In preparation for the adoption of these regulations, a Nova Scotia ombudsman representative trained with the Public Service Integrity Office in Ottawa. Also, the ombudsman's office held consultations with the Public Service Commission and aided the Workers' Compensation Board in developing its disclosure of wrongdoing procedures.⁷

The ombudsman's role in enforcing these regulations is especially important if an employee feels uncomfortable with bringing the issue forward within her department, or if the employee believes that the issue would not be dealt with appropriately within the department. The new regulations carve out a fundamental role for the ombudsman's office in preserving and enhancing transparency and accountability in government by offering protection for public officials who wish to "blow the whistle" on inappropriate

⁵ Nova Scotia Office of the Ombudsman. Accountability report 2004-2005, 11.

⁶ Annual report 2004-05, 12.

⁷ Annual Report 2004-05, 15.

conduct. The ombudsman's office is especially suited to perform this role, given that its independence from the government is protected by its enacting statute.

Education and Communication

Through community outreach activities over the past several years, such as visits to youth facilities, government departments, and communities throughout Nova Scotia, the ombudsoffice has made itself more accessible to the public. In 2004-05, the staff made thirty presentations to seniors, government employees, police, and communities, and another thirty-nine presentations to youth facilities.⁸ Each year, the ombudsoffice's presentations reach greater numbers of citizens. Citizens are more informed about the role and responsibilities of the ombudsoffice, which means that there is a more accurate public understanding of the boundaries of the ombudsman's jurisdiction. As the communications strategy had continued, the number of "referrals" or non-jurisdictional calls to the ombudsman's office has dropped. In 2004-05, 62.47% of calls were jurisdictional, up from 52.13% in 2003-04.

Staffing and Funding

From 2000 until 2004, the Nova Scotia ombudsman's position was a part-time job. Mayann Francis was the province's ombudsman during this time, as well as its human rights commissioner. Her appointment was meant to be an interim one and lasted until Dwight Bishop's full-time appointment in January of 2004. However, her simultaneous occupancy of these roles stirred public controversy, as some argued that it could result in a conflict of interest. After all, if a citizen complained to the ombudsman's office about the human rights office, how could she respond objectively? In March of 2001, the ombudsman's office published a set of guidelines indicating that if it received a complaint about the human rights office, the staff would investigate it without involving the ombudsman herself.⁹ Now that the ombudsman's job is a full-time one, these guidelines are no longer necessary.

Nova Scotia's first ombudsman, Dr. Harry Smith, had a staff of only one secretary. Over the years, the office grew in response to the public's more frequent use of it and as a result of changes in its mandate, particularly the addition of the youth services branch. 1999 was the first year that the office's staff compliment was increased dramatically. Several positions were added at this time, including investigators, field officers, and a research assistant. By 2001, the staff had reached its current compliment of eleven people, but eight of these positions remained part-time or casual until 2004-05. As a result, the office has had a very high turnover rate.¹⁰ This made it difficult for the office to build upon the on-the-job experiences of its staff members, as it would often lose them when they were offered full-time job opportunities elsewhere.

In 2000, the office added a "children's ombudsman" position to be dedicated to youth issues. However, because there were few staff members and very few full-time

⁸ Ibid 5.

⁹ "Guidelines to minimize conflict". Annual report of the Nova Scotia ombudsman 2001-2005, 36-37.

¹⁰ Nova Scotia Office of the Ombudsman. "Annual Accountability Report for the Fiscal Year 2003-2004." November 8, 2004, 11.

positions, the first children's ombudsman also performed the role of "assistant ombudsman" and was responsible for overseeing the office's administration in addition to developing the children's services section. In 2002, one employee held concurrently the positions of Assistant Ombudsman, Children's Ombudsman, and Director of Investigations. On the positive side, multitasking allows a staff member to develop a broad understanding of the workings of the office and its component parts. However, the workload is onerous and would not allow the employee to commit herself entirely to any of the portfolios, which could compromise the office's efficiency and effectiveness in the long term.

During the 2004-2005 fiscal year, the ombudsoffice was able to convert several casual and part-time positions into stable and/or full time ones. This has meant an end to the "multitasking" discussed above. Currently, the office has eleven staff members including the ombudsman, the office manager, and executive director. The Investigations and Complaints branch consists of a manager, two ombudsman representatives, and an administrative assistant. The Youth and Senior Services section consists of a supervisor and two ombudsman representatives, and there is one ombudsman representative assigned to handle complaints under the *Civil Service Disclosure of Wrongdoings* regulations.¹¹

All staff members have received training in the following areas: ethics, administrative justice, investigation techniques, Aboriginal perceptions, diversity, and employment equity. Job descriptions for investigators were revised to reflect the different approaches to be taken when dealing with specific populations, such as youth and seniors. Also, the office has implemented a new standardized investigation protocol to allow staff to monitor the time frames in which complaints are dealt with to ensure efficiency.

The gradual addition and stabilization of staff positions over the past several years has allowed the office to attract very competent and qualified employees. Several of the permanent staff members in the office have formal training in law and policy, human rights issues, and conflict resolution, and therefore have acquired skills that are vital to investigating disputes, analyzing policies and legislation, and writing reports. After joining the ombudsoffice, staff members participate in conflict resolution training. Also, in 2001, staff members worked with a consultant to improve their writing techniques in order to make their reports more widely accessible.

The office has a tradition of employing and training students from the "diversity program" on an annual basis. The office has also employed interns from the Nova Scotia Community College, Dalhousie Law School, and recently, a graduate student from Holland who wrote a thesis on the ombudsoffice's impact.

Since 2000, the annual budget of the ombudsman's office has been approximately \$800,000. In 2004-2005, it was increased to \$915,000. In virtually every year for which fiscal reports are available, the office has under spent its budget due to over-estimations in projected expenses. Approximately 70% of each annual budget is devoted to staff salaries and benefits.¹²

¹¹ Office of the Ombudsman: Organizational Chart. March 2005.

<http://www.gov.ns.ca/ombu/Organizationalchart.htm>.

¹² Nova Scotia Office of the Ombudsman. Accountability reports, 2001-05.

The Nova Scotia Ombudsman: Statistics

As mentioned previously, the overall number of complaints to the ombudsman's office in Nova Scotia increased each year between 2000 and 2004. The increase in calls occurred under the traditional "investigation" section, as calls under the children's section declined during this time. Also, the number of jurisdictional calls has gone up each year, while the number of referrals has declined. Below are charts to indicate the activity within the ombudsman's office over the past five years. Statistics on the number of referrals are given when they are available.

I. Total number of complaints per year, including referrals.

2004-05	1788 complaints
2003-04	1901 complaints
2002-03	1417 complaints
2001-02	1163 complaints

II. 2004-05: Breakdown of calls

Investigation and Complaints Services	1439
Youth Services	328
Senior Services	16
Wrongdoing	5

**673 of 1788 calls were referrals.

III. 2003-04: Breakdown of calls

Investigation Section	1642
Children's Section	259 (16 referrals)

IV. 2002-03: Breakdown of calls

Investigation and Assessments	1417 (572 referrals)
Children's Section	613

V. 2001-02: Breakdown of calls

Investigation and Assessments	1163 (424 referrals)
Children's Section	819

The charts reveal that until 2004-05, calls to the ombudsman's office under the traditional "investigations" section increased each year. The slight decrease in 2004-05 can be explained by the fact that the ombudsman has been more visible and available in Nova Scotia's communities, which has reduced the need for citizens to actually call the ombudsoffice for information. That said, the ombudsman and his staff could deal only

with relatively straightforward matters during community visits. If a citizen wished to launch an official complaint, he would have to contact the office to start the process.

While calls under the “investigations” section rose from 2001-2004, calls under the children’s section were in decline, with a slight increase in 2004-05. The decline can be explained by the ombudsman’s more frequent visits to youth facilities. During these meetings, youth could bring forward their concerns in person. As mentioned previously though, filing an official complaint would require a formal call to the office.