C.P.

Government of Canada
Gouvernement du Canada

REPORT OF THE COMMITTEE ON THE CONCEPT OF THE OMBUDSMAN

OTTAWA
JULY 1977

P.G. - BIBLIOTHEQUE
UNIVERSITÉ DE SHERBROOKE

Government of Canada
Gouvernement du Canada

REPORT OF THE COMMITTEE ON THE CONCEPT OF THE OMBUDSMAN

OTTAWA
JULY 1977

July 29, 1977

The Right Honourable Pierre Elliott Trudeau, P.C., Q.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa, Ontario
K1A 0A2

Dear Prime Minister:

I am pleased to send you, with this letter, the Report of the Committee on the Concept of the Ombudsman, which contains a series of recommendations favouring application of the concept at the federal level of government and suggesting the form of application that would appear to be most appropriate. I trust that the contents of the document will be helpful to you and your colleagues as a basis for further discussion of the subject.

Before concluding, I would like to express my appreciation for the diligence and dedication shown, during the past eleven months, by members of both the Committee and its small staff. For everyone concerned, it has been a very interesting assignment.

Yours sincerely,

J. D. Love
Chairman
Committee on the Concept
of the Ombudsman

CONTENTS

I

INTRODUCTION

The possibility of creating an ombudsman at the federal level of government in Canada has been raised from time to time in Parliament since the early 1960s. It was mentioned in the 1963 report of the Royal Commission on Government Organization and in the 1965 report of the Standing Committee on Privileges and Elections of the House of Commons. The matter has since been discussed periodically both by Ministers and senior officials.

In August 1976, at the direction of the Prime Minister, a group of senior officials, known as the Committee on the Concept of the Ombudsman, was established to examine the subject in a systematic manner. This document constitutes its report.

The members of the Committee were:

J. D. Love, Deputy Minister of Regional Economic Expansion (Chairman);

Sylvain Cloutier, Deputy Minister of Transport;

T. M. Eberlee, Deputy Minister of Labour;

Arthur Kroeger, Deputy Minister of Indian Affairs and Northern Development;

M. A. J. Lafontaine, Deputy Secretary (Administrative Policy) Treasury Board;

Frank Milligan, Associate Director (University Affairs), Canada Council;

Gordon S. Smith, Senior Assistant Secretary (Machinery of Government), Privy Council Office;

B. L. Strayer, Assistant Deputy Minister (Planning and Research), Department of Justice;

Roger Tassé, Deputy Solicitor General;[1]

D. S. Thorson, Deputy Minister of Justice and Deputy Attorney General.[1]

---

[1]The titles shown are those applicable prior to the recent appointments of Mr. Thorson as Constitutional Advisor to the Prime Minister and Mr. Tassé as Deputy Minister of Justice and Deputy Attorney General.

The Committee was supported by a small staff as listed in Appendix A, under the direction of Mr. R. A. Gordon, the Secretary.

The terms of reference given to the Committee were as follows:

a) to examine the concept of the ombudsman in terms of the possible need for its application at the federal level of government, bearing in mind
   i) the role of Parliament and the individual Member of Parliament,
   ii) the concept of ministerial responsibility,
   iii) existing or contemplated mechanisms for the protection of human rights and the investigation and disposition of complaints or grievances pertaining to administrative action or inaction, and
   iv) such other considerations as may appear to be relevant;
b) to define the issues involved and the factors to be considered in their resolution and to make recommendations in a form suitable for consideration by Cabinet.

The Committee began its task with an examination of the substantial and growing literature on the operations of ombudsmen in various jurisdictions throughout the world, seeking to gain an understanding of the underlying concept and the somewhat differing ways in which it has been applied. It then turned its attention to existing processes within the Government of Canada for the handling of complaints and grievances from members of the public, endeavouring to assess their strengths and weaknesses and the possibilities of improvement. For this purpose, it carried out a survey of some 10 departments and agencies. The Committee was then in a position to formulate preliminary conclusions about the need for, and the probable effects of, the application of the ombudsman concept and to move on to the next stage, which involved a detailed examination of the principal features that should characterize the office of ombudsman if one were to be introduced at the federal level of government in Canada. In the course of this examination, every effort was made to identify the relationships that might or should exist between the office of ombudsman and other institutions, including Parliament, the individual Member of Parliament, Ministers and their departments, formal appeal mechanisms, other bodies with ombudsman-like functions, and the courts.

To secure an understanding of the forces which have produced ombudsman institutions elsewhere, the effects of such institutions and the manner in which they operate, the

Chairman met with ombudsmen and other government officials from a number of overseas jurisdictions, including Denmark, Sweden, the United Kingdom, France, New Zealand and Australia. The contacts in Australia involved the officials responsible for federal legislation just then being put in place, as well as the ombudsmen and certain other officials of two of the states. Ombudsmen and officials in Alberta, Nova Scotia, Ontario and Quebec were also visited. All of these visits were most informative and the Committee would like to express its appreciation for the cooperation so freely extended by all those concerned.

II

THE CONCEPT OF THE OMBUDSMAN

Growth of the Institution

The genesis of the ombudsman concept is to be found in Sweden, where over two and a half centuries ago, in 1713, a Chancellor of Justice was appointed by the King to keep a watchful eye on his officials and thus protect citizens from injustice. In 1809, as part of a constitutional revision, a "justitieombudsman" was appointed as an officer of the legislature charged with ensuring that the laws were adhered to by the administrative authorities and by the courts. Finland, which was linked to Sweden for many years, developed similar institutions. An ombudsman was created there in 1919 when the country became a republic.

The ombudsman idea might have remained localized had it not been for the rapid expansion of government in the decades since the Great Depression. As a result of that expansion, citizens have gained access to a wide range of government services and support systems but they have also become increasingly vulnerable to the decisions of civil servants. The growth of government has therefore been accompanied by an increasing concern about the need to protect individual rights, particularly as it has become clear that the efficient and fair-minded operation of vast administrative structures is not easily achieved. Mistakes, whether caused by managerial shortcomings, inadequate information, faulty interpretation of known facts or lack of sensitivity to personal circumstances, can and do happen. And even a mistake that appears in the setting of a large-scale organization to be trivial can have serious consequences for an individual. The concept of the ombudsman, although originally invented in an era very different from our own, has come increasingly to be regarded as a potentially useful instrument to help the citizen secure fair treatment from the modern state. As a consequence, the concept has found application in many jurisdictions, especially since the end of World War II.

The first postwar civil ombudsman was established in Denmark in 1954, and Norway and New Zealand followed

with somewhat similar institutions in 1962. Ombudsmen at the national level have now been set up in a wide variety of countries including Guyana (1967), Israel (1971) and Fiji (1972). The United Kingdom (1967) and France (1973) have also adopted a form of ombudsman. Two countries which have investigated the matter very recently are the Netherlands, where at time of writing a bill was before the legislature, and Australia, which set up an ombudsman early in 1977. Since Australia has a federal constitutional framework similar in many respects to that of Canada, its decision to adopt the concept is of particular interest.

In the 1960s and 1970s, the institution also spread rapidly at the provincial or state level. There are now ombudsmen in five of the six Australian states and in four American states. Furthermore, eight of the Canadian provinces have adopted the institution, beginning with Alberta in 1967. Only Prince Edward Island and British Columbia do not have ombudsmen at present — and the government of the latter province has recently proposed legislation to create the office.

What is an Ombudsman?

Ombudsmen speak for that elusive entity, the average citizen. They do not deal with broad affairs of state or policy. Rather, they deal with a host of administrative complaints and injustices, many of which seem comparatively unimportant — except to the affected individual. Appendix B provides some illustrative cases.

Because their concern is with complaints about administrative actions or inactions, ombudsmen are typically excluded from certain areas, notably those covering actions of the head of state and the legislature and the deliberations of Ministers on policy matters. In addition, they are usually given no capacity to consider the activities of courts of law and commercial state corporations. The rest of government, however — and this embraces a vast array of departments and agencies — falls within their mandate.

Ombudsmen possess influence rather than power. They cannot alter administrative decisions. But they are well placed to cause those who have this power to review and change decisions which, after careful examination, appear to be unreasonable, oppressive or simply wrong in the circumstances. This influence, like that of auditors general, derives from their authority to investigate matters in depth and, as a last resort, to report their findings publicly to the legislature.

In carrying out their duties, most ombudsmen find it advantageous to take a conciliatory rather than an adversarial stance. They deal with hundreds of complaints each year, most of which bring them into close contact with government officials. Were an ombudsman consistently to adopt an aggressive and tendentious attitude he would almost certainly find himself frustrated by officials unwilling to expose themselves to personal attack or unpleasant publicity. Most ombudsmen, in fact, report that the great majority of government officials are anxious to rectify an identified wrong. A constructive and positive aproach on one side is usually mirrored by a similar approach on the other.

An ombudsman deals with a case by first determining whether the organization which is the subject of the complaint falls within his jurisdiction. On average, about half the complaints ombudsmen receive are outside their authority. Although an ombudsman clearly cannot investigate and pass any judgment upon such complaints, he often provides a useful service by advising the complainant where to turn with his complaint and how to pursue it.

Assuming the matter is within his jurisdiction, he then determines in a preliminary way if the complaint warrants further investigation. For example, he determines whether the complaint is frivolous, whether the complainant has taken all reasonable steps to have the problem resolved by other means, and whether there is some possibility of achieving rectification. If he concludes that the matter deserves to be pursued, he advises the competent authority of the complaint and makes preliminary inquiries. Often this simple indication of interest by the ombudsman is enough to cause a departmental review leading to a satisfactory solution without any significant involvement by the ombudsman or his staff.

In some instances, however, it may be necessary to initiate a detailed investigation. Although ombudsmen are subject to some restrictions about what they can investigate or disclose, these are generally not extensive. Indeed, if they were, it would be impossible for the institution to function effectively. The ombudsman or members of his staff may thus obtain files, call witnesses, and take such other steps as are necessary to investigate the complaint thoroughly. Except in very unusual circumstances, the investigation is carried out in private.

In a significant proportion of investigated cases, the ombudsman finds that the departmental action has been reasonable in the circumstances and that the complaint is unjustified. In such cases, the complainant is notified of the conclu-

sion reached and is normally given a careful explanation of the rationale underlying the action that gave rise to the complaint. There is reason to believe that, even in these circumstances, a good explanation, coming from an independent source, can provide a good deal of satisfaction.

If after investigation the ombudsman continues to have doubts about the administrative action in question, he makes representations to the appropriate officials, who then frequently take remedial action. Most remaining cases are resolved in this manner.

From time to time circumstances do arise in which, following contact with officials, the ombudsman considers it necessary to consult the Minister concerned. If no meeting of minds can be reached at this level, the ombudsman is empowered to draw public attention to the issue by reporting it to the legislature. This is a comparatively rare occurrence. Most ombudsmen prefer to see a satisfactory solution reached without public controversy, and both Ministers and senior officials are similarly motivated.

Since virtually all ombudsmen function in approximately the manner just described, it is not surprising to find a very considerable degree of similarity among the offices in different jurisdictions. Although there are many special features of the office as it finds expression in different constitutional settings, there are also a few key characteristics which recur, and which in effect define the essential attributes of the ombudsman concept.

a) Ombudsmen are non-partisan, impartial, and independent of the executive arm of government.
b) Their central duty is to take up specific complaints from members of the public against injustice arising from the administrative actions or omissions of government.
c) They possess the power to investigate, to comment and to criticize, and to make their findings known to the legislature and the public — but they have no power to alter or reverse decisions.

A Variation on the Ombudsman Theme

An example of the office of ombudsman which conforms well to the general description of the concept set forth above is that of New Zealand, created in 1962. The New Zealand approach has been followed in other jurisdictions notably in Australia and in the Canadian provinces.

This approach was not adopted, however, by Great Britain or France. In these countries, the two most populous in which ombudsman-like offices have been created, the legislation provides that a complaint may be lodged with "ombudsmen", called the Parliamentary Commissioner for Administration and the Médiateur, respectively, only through a member of the legislature — that is, a Member of the House of Commons in Britain and a Deputy or Senator in France. In neither country may a person lodge a complaint directly nor may the Parliamentary Commissioner or Médiateur, following investigation or disposal of a case, directly apprise the complainant of the outcome.

The principal reasons for introducing this provision were a concern for the traditional role of the parliamentarian as a complaint handler and the size of the population in each country which, it was thought, might cause the office to be overwhelmed with complaints. Parliamentarians were therefore interposed to handle the majority of cases, leaving to the Parliamentary Commissioner or Médiateur only those cases which a member chose to pass to him — it being thought that these would be cases requiring special expertise and investigatory powers.

Whatever the original expectations may have been,[2] the outcome appears to have been somewhat disappointing. In both Britain and France there has been a growing tendency for the public to complain directly to the office even though the law does not permit direct access.[3] And in Britain in particular this fundamental provision has recently been strongly criticized on the grounds that it isolates the Parliamentary Com-

---

[2]Report of the British Section of the International Commission of Jurists (Justice), The "Whyatt Report", 1961, proposed that access be through an MP on the basis that the restriction should stand for a period of five years only; thereafter direct access to the PCA to be examined and if possible adopted.

[3]In Britain a complaint received directly is simply rejected and the complainant advised to re-submit through an MP. Only about 14 per cent of such complaints return to the PCA through the proper channels. In France the Médiateur, with the cooperation of a group of parliamentarians, has developed a procedure to facilitate the referral of really urgent complaints received directly from the public. In 1975 the PCA received 1 068 complaints directly from the public versus a total of 928 received through MPs. The Médiateur has not reported precise figures but his office has stated that he receives about as many complaints directly from the public as are referred properly via a Deputy or Senator.

missioner to such an extent that only a small and articulate proportion of the population gains access to his services or is even aware of his existence. As evidence of this isolation, a recent report[4] has drawn attention to the fact that, per capita, other ombudsmen investigate many times more complaints than the Parliamentary Commissioner: for example, in New Zealand over 30 times, in Sweden over 64 times, and in Quebec over 85 times more. In France, although there is a somewhat higher incidence of complaints per capita, the figure is still very much less than in jurisdictions where direct access is permitted. Moreover, it has been pointed out that Members of Parliament are not effective in screening out complaints which lie outside the jurisdiction of the Parliamentary Commissioner: in 1975 and 1976, 62 per cent of all complaints referred to him by British Members were rejected for lack of jurisdiction whereas the common average for other ombudsmen is closer to 50 per cent.

On the basis of its own study of the many ombudsmen reports available, and quite independently of the criticism levelled in Britain, the Committee reached similar conclusions as to the shortcomings of the "parliamentary filter" approach. In the view of the Committee, the interposition of the MP into the process quite fundamentally changes the character of the office. Under both the British and French systems it is the parliamentarian who decides whether to forward the complaint, the complainant being left in the rather unsatisfactory situation of having little or no influence on the decision, which will vary according to the judgment of the Member receiving the complaint.

We are aware that, with the exception of France and Britain, the population of Canada is considerably larger than that of any other jurisdiction having an ombudsman.[5] But given the division of powers between the federal government and the provincial governments, eight of which now have ombudsmen to deal with provincial matters, we doubt that the quantity of complaints at the federal level would be unmanageable if direct access were permitted.

Consideration of all the factors mentioned above, particularly the extent to which the lack of direct access to

---

[4]The British Section of the International Commission of Jurists (Justice), *Our Fettered Ombudsman*, London, 1977.

[5]Currently, the next largest is Australia (14 million) which is a federal state. Thereafter come Ontario and Sweden, each having a population of 8 million.

the ombudsman has apparently isolated the office from the public it serves and reduced its effectiveness, led the Committee to conclude that the more general model which permits direct access is to be preferred.

Application To The Government Of Canada

Having considered the principal approaches to the ombudsman concept and established a preference in terms of the Canadian setting, the Committee turned to the possible application of the preferred approach to the federal government. Since the purpose of an ombudsman is to examine complaints about government administration, the Committee considered it advisable to review existing channels of complaint, and then to examine whether the office might complement or supplement such channels.

Existing Processes for Handling Complaints

Currently, there are four channels through which redress of a complaint may be sought if a person is aggrieved by an administrative act of government. He may complain directly to the organization responsible for the act in question. Alternatively, he may seek redress through a Member of Parliament. Finally, he may lodge an appeal with an appeal tribunal if one is available or he may take action in the courts if the matter is actionable. Each of these channels is discussed in the following paragraphs.

Complaining directly to the responsible organization is a channel that is always available to the citizen seeking redress. No formality surrounds it. All a complainant need do is make known the nature of his complaint to those who occasioned it, either in writing or orally. But this process suffers the weakness that it contains no element of independent review by a third party. Without benefit of a referee, the process may simply perpetuate an adversarial situation between the parties concerned.

A complainant may, of course, lodge a complaint with a superior of the official whose action or inaction gave rise to the grievance, and in that sense seek third-party intervention. But, even if this process of escalation is carried right to the top where the deputy head or the Minister can be drawn

into the matter, the essential weakness remains, for inevitably the investigation will be conducted by officials of the organization concerned. Senior officials may be somewhat blinkered by virtue of their association with the organization, or they may not personally have time to investigate the matter in depth. Their judgment may be affected by the way evidence is placed before them. In short, approaching the organization responsible for a grievance cannot guarantee an impartial review. Many people, cynical about the responsiveness of big institutions, probably do not even bother to approach the source of their complaint.

To gain a direct insight into how federal departments handle complaints, the Committee and its staff conducted a survey of 10 such organizations. Those chosen were considered broadly representative of the core group of government organizations: they ranged from institutions with big programs and daily contact with the general public to those with little contact which were principally concerned with the formulation of policy. The survey included not only discussion with officials at several levels but also review of the handling of actual complaints.

Although public servants at all levels displayed a concern for the proper and speedy handling of complaints, the survey revealed some weaknesses. Notably, there was little general policy direction designed specifically to ensure that complaints are handled systematically and fairly. There were few or no established procedures on the subject. Although senior managers were generally conscious to some degree of the numbers and types of complaints reaching their level, they did not have a comparable awareness of complaints received at subordinate levels. Evidently, the handling of complaints about unreasonable or unjust administrative behaviour was not an issue that, among all the other concerns of government, had attracted a great deal of careful attention in the departments surveyed.

It would no doubt be possible to seek improvements to the present situation by conventional administrative means — by developing new procedures and standards, by issuing these to departments and monitoring departmental performance. And, indeed, the Committee believes that steps in this direction should be taken. However, it appears to the Committee that such steps would be unlikely to remove the central arguments favouring introduction of an "outside" ombudsman. There is a limit to what can be achieved by means of manuals and procedures. And no amount of improvement of this kind

will deal with the root problem: the absence of an independent institution to help deal with complaints received and left unresolved. Errors will continue to occur and a sense of grievance will continue to be felt. It is reasonable to expect that complainants, whether right or wrong, who do not obtain satisfaction, will continue to wish for an impartial "outside" referee to whom they may turn.

As an alternative to dealing directly with the government organization concerned, or subsequent to the failure of a move in this direction, a complainant may enlist the aid of a Member of Parliament. Normally the Member proceeds by asking the relevant Minister or, in some cases, an official of the organization involved, for an explanation. He also has the right to raise questions in the House of Commons. Thus the Member of Parliament is viewed by many individuals as their problem-solver in Ottawa. Although this means of obtaining redress is often very effective, it too has limitations.

To begin with, Members of Parliament have neither the staff nor the facilities to conduct extensive investigations into a multitude of complaints. Given their many other responsibilities, they may also not always have the time to give every complaint the degree of attention that a complainant might wish. Furthermore, some Members may choose to give complaints a higher priority in their affairs than others, leading to considerable variation in the ways in which essentially similar complaints may be handled and possibly even to different results in terms of the resolution of the issues in question. Whether the Member is on the government side or not may inject an element of variability into both his motivation to press the Minister and the attitude of the latter toward the response he supplies. Finally, a Member does not have the statutory powers that may be required to investigate the details of a case. He cannot, as can an ombudsman, compel the production of documents or the attendance of witnesses, nor can he exercise the right of entry into premises. Such powers would be inconsistent with the concept of parliamentary government. However, there would be no reason why a Member could not enlist the assistance of an ombudsman in dealing with a complaint he has received. Indeed, in such circumstances the role of an ombudsman and that of a Member of Parliament would be quite complementary.

A Minister, of course, has powers of access denied to a Member of Parliament and, in principle, he can exercise these in response to a query from a Member. However, in practice, the investigation of even a minor administrative complaint can

occupy much time, and Ministers are not always able to devote enough of their own resources to such inquiries. Thus the burden of preparing the response to an inquiry by a Member tends to fall back on the official whose action or inaction gave rise to the complaint in the first place. If the Minister finds the explanation of the official adequate, there is little the Member or the complainant can do. In contrast, an ombudsman has his own resources to conduct a comprehensive "outside" investigation.

A related advantage of the ombudsman is that he sees a wide range of complaints. He is therefore in a better position than the individual Member to identify elements of commonality among different complaints, and to detect the presence of a general problem or defect giving rise to individual cases. Although he must be cautious about straying into questions of policy, depending on the nature of the issue and the relationship he enjoys with the responsible organizations, his findings may well lead to improvements in administrative practices, in existing rules and regulations, or even to changes in the provisions of statutes.

Throughout its consideration of the relationship between an ombudsman and Members of Parliament, the central concern of the Committee was whether the creation of an ombudsman would detract from the role of the Member or interfere with his or her relations with constituents. Although specific documentary evidence on the matter is very slim, a recent study of the New Zealand Ombudsman dealt with this question.[6] The author reported that the great majority of Members believed that the creation of the office had had no effect on their role or on the volume of complaints they received. The Committee was also impressed by the fact that, in general, relations between ombudsmen and the Members of legislatures in different jurisdictions appear to be harmonious. Friction arising from conflicts over role seems to be a comparatively rare occurrence and there was no evidence to suggest that it might be inherent in the nature of the functions concerned.

In the light of the many practical examples of Members and ombudsmen functioning well together, and the other considerations set forth above, the Committee concluded that the ombudsman could appropriately be viewed as an extension of the competence of the legislature and its members to investigate administrative problems. It concluded that an ombuds-

---

[6]Hill, Larry B., *The Model Ombudsman*, Princeton University Press, 1976.

man would complement rather than detract from the role of the Member of Parliament.

In addition to the two channels already discussed, the public may also turn to a number of appellate bodies, such as the Tariff Board and the Tax Review Board, and of course to the courts. Many complaints regarding administrative actions cannot be appealed to these bodies either because the complaint is outside their jurisdiction or because lodging an appeal would be too expensive and time-consuming. For many people, particularly those who are not at ease with complex institutions and the formality that often accompanies them, these bodies can be frightening. Even well-educated members of society often know little about the law and can be apprehensive about dealing with a process they do not understand. Appellate bodies are somewhat less forbidding, but the range of subjects they deal with is more limited than those which may be brought before the courts. Finally, neither courts nor appellate bodies are centrally concerned with the main preoccupation of ombudsmen, i.e. complaints about administrative actions which normally involve allegations, not of illegality, but of "unfairness". In the latter realm, the ombudsman can sometimes be very effective whereas the courts and the various appeal bodies generally cannot.

To sum up, in reviewing the various procedures and channels available for handling public complaints about administrative matters, the Committee reached a number of conclusions. Drawing a problem to the attention of the organization which gave rise to the complaint lacks the vital element of third-party review. Members of Parliament render an important service in complaint-handling but an ombudsman would complement rather than conflict with their role. Courts and appellate bodies often do not have jurisdiction, and their procedures are frequently too formal and costly to offer a reasonable method of dealing with many administrative complaints. There would therefore appear to be an important class of complaints where the intervention of an ombudsman could provide a significant public service without duplicating existing machinery.

Ministerial Responsibility

The Committee was expressly directed to assess the relationship between the concept of the ombudsman and the concept of ministerial responsibility, presumably with a view to

determining whether the former could have, or might be seen to have, unwelcome effects on the latter.

The subject is a complex and sensitive one: complex because it can be approached from many different angles; sensitive because the concept of ministerial responsibility has undergone an evolution of sorts, the nature and results of which are subject to differing interpretations and can still be the subject of sharp political controversy. It would be inappropriate for a group of senior officials to venture very far into this territory.

Fortunately, there is no need. At one time, the concept of ministerial responsibility may have been interpreted so broadly as to hold a Minister personally to account for any of the failings of any of the officials within the ambit of his statutory control and direction. In such a time, it might have been argued credibly that the introduction of an ombudsman, with his power to investigate and to report to the legislature, would have made it impossible for any Minister to function. In present circumstances this argument is not persuasive. Recent constitutional experience suggests that it is unrealistic to hold a Minister personally accountable for every aspect of administration. The size of government and the range of discretionary powers exercised by officials have made necessary some kind of departure from a rigid, 19th-century interpretation of the concept of ministerial responsibility.

The Committee found it more realistic to take the view, as others have done,[7] that a Minister is subject to various degrees of responsibility. He must certainly accept full responsibility for matters done properly under his instructions or in accordance with his policy. However, in the case of a problem not affecting an important question of policy, he is generally thought to have met his responsibility if he takes the matter in hand. Where the issue is essentially between a complainant and a particular official, the Minister can hardly be expected to have had prior knowledge of the case or to have had an opportunity to influence it personally. He cannot be acquainted with, or personally criticized for, every detail of administration in his department. However, he is expected to be responsive to individual cases and to see that individual wrongs are righted.

---

[7]See the observations of Sir David Maxwell Fyfe, British Home Secretary, during the debate on the Crichel Down affair in 1954 which gave the impetus to the eventual appointment of the Parliamentary Commissioner for Administration in Britain. *H. C. Debates* (1953-54), Vol. 530, pp. 1275-1277, 1286-1287.

Thus, the degree of ministerial responsibility seems to diminish — or, perhaps more precisely, the **nature** of ministerial responsibility seems to change — as one moves out of the realm of broad policy and into the domain of administrative action that occurs in a specific and limited context. Conversely, the mandate of an ombudsman starts at the opposite end of the spectrum, with matters of a particular and limited character, and should properly stop short of issues of policy. The result, as one writer has observed, is that, in their application, the two concepts dovetail remarkably well.[8]

Moreover, it must be remembered that the powers of ombudsmen are restricted to reporting. They cannot change matters themselves. Given this absence of executive authority in an ombudsman, the Committee found it difficult to identify any basic conflict between the doctrine of ministerial responsibility and the concept of the ombudsman.

Responsiveness to Complaints

In examining the application of the ombudsman concept to the government, the Committee also had some concern as to whether the creation of the office might be counterproductive by causing Ministers and officials to deal more summarily with complaints, knowing that complainants could always go to the ombudsman if dissatisfied. This concern eventually evaporated because the suggested reaction seemed to be most unlikely. Indeed, in the end, the Committee came to the view that an ombudsman would have the opposite effect — a heightening of the sense of responsibility to deal promptly and fairly with complaints.

General Conclusion

Initially the Committee was reluctant to accept the need for a separate institution to complement existing means

---

[8]The eminent British constitutional expert, Professor H. W. R. Wade, has expressed this view well: ". . . the ombudsman operates in exactly the area where the doctrine of ministerial responsibility failed to work efficiently . . . so far from weakening ministerial responsibility, therefore, the ombudsman has supplemented it and helped it to work better by being able to investigate and report so that Members of Parliament can if necessary call the minister to account." "The British Ombudsman: A Lawyer's View", *Administrative Law Review* (1972).

of handling complaints. Some of the reasons for that reluctance have already been mentioned. Others had to do with the potential dangers of creating new offices and perhaps new bureaucracies that could turn out to be nothing more than ineffective additions to the existing machinery of government.

On the other hand, the Committee could not fail to be impressed by the fact that ombudsmen function smoothly and well in several jurisdictions, including most of the Canadian provinces. These practical instances of the successful operation of the ombudsman concept were most persuasive, and tended to overcome concerns that eventually appeared to be rather theoretical. Clearly, given sound judgment and good will, the concept can be made to work and work well, providing members of the public with a good deal of assistance in matters of direct and personal importance to them.

The review by the Committee of experience elsewhere did make one point abundantly clear: the success of the office hinges above all on the wisdom and judgment of the incumbent. Carefully drafted legislation and due regard for constitutional principles and practices are clearly important. But, in the final analysis, no amount of drafting and attention to detail can substitute for the qualities of the incumbent, and it is of great importance that he or she be chosen with great care.

If a suitable incumbent is selected, the Committee is convinced that an ombudsman would do much to promote improvements in the handling of individual administrative complaints, and would do so without creating the need for complicated new structures or procedures within the public service. His mere presence would increase the awareness of Ministers and officials of the need to deal promptly and equitably with individuals who perceive that they are victims of an administrative injustice. His independent position should also provide an excellent platform from which to explain the problems and concerns of the private citizen to the bureaucracy and vice versa.

Thus, the basic conclusion is that an ombudsman would be a desirable adjunct to the existing system of complaint handling in the departments and agencies of the federal government.

- The Committee recommends that the concept of the ombudsman, as defined in New Zealand, Australia, and the Canadian provinces, be adopted by the Government of Canada.

III

JURISDICTION

In the previous chapter, the Committee concluded that in principle an ombudsman could fit well into the structure of the federal government. However, the manner in which he is to fit raises, in the judgment of the Committee, two difficult questions of a jurisdictional nature.

The first relates to the power of the ombudsman to report on certain types of matters. It was established earlier that he can report on "administrative" actions. What does this concept embrace? When is an issue a matter of administration and when is it not?

The second question relates to the type of organization that he is empowered to investigate. Ombudsmen are concerned with "government". What is "government" in this context? Which federal public sector organizations should lie within his jurisdiction and which should not?

Policy and Administration

In discussing ministerial responsibility, the Committee has already noted that the concerns of ombudsmen start at the opposite end of the spectrum from those of Ministers. Ministers are concerned, generally speaking, with broad matters of policy, while ombudsmen are concerned with particular and specific acts of an administrative nature. However, defining the difference between policy and administration is no easy matter. Many relationships in government hinge upon the distinction. Yet it continues to defy clear-cut description.

The difficulty arises from the fact that the definitions concerned can only be understood clearly in the context of particular circumstances. What is a matter of policy may depend, for example, upon such factors as the political sensitivity of the issue as well as its intrinsic importance in the general scheme of things. A single issue may thus be a policy question at one time, when it is of active political concern, and a matter of routine administration at a later time, when in political terms the issue has been resolved. Or it may be seen

as a matter of policy at one level of management in a department but as a matter of administration at a level above.

As an example of how perspective can affect definition of what constitutes a matter of policy, consider the case of a government office charged with the duty of distributing pension cheques monthly. The director of the office might regard as a matter of policy a decision to effect distribution locally in alphabetical order of recipients. But, if this decision worked a continuing hardship on those always at the tail-end of distribution, an ombudsman would likely regard it merely as a matter of administration upon which he would be entitled to comment. And, of course, in the general governmental sphere in which an ombudsman operates, so it would be, for the policy aspect would be confined to a decision to pay pensions in certain amounts, once a month, to persons in certain circumstances. How it was done would be a matter of administration.

The perspective of an ombudsman on these issues would have to be a broad one. On the one hand, he would not wish to adopt an interpretation of policy that excluded him from examining routine decisions and activities of organizations which are generally accepted as being matters of administration. On the other hand, he would obviously wish to keep an informed and intelligent eye on the general climate in which he operates — for it would be embarrassing and unfortunate for him if he were perceived to be engaging in policy debates more properly the purview of political figures or of Parliament itself. By and large, ombudsmen must avoid the broad issues of public affairs and concentrate on particular and specific problems affecting individual members of the public. The ombudsman who strays inadvertently into matters of policy risks serious damage to his personal credibility and to the reputation of his office.

The previous discussion indicates that there are substantial problems inherent in trying to provide, for legislative purposes, a clear description of the principal powers and responsibilities of an ombudsman. Matters of detail, such as his power to recruit or his channels of reporting, are comparatively easy to deal with; but defining the central thrust of his functions has posed difficulties, because concepts such as "policy" and "administration" or provisions relating to the "administrative acts of government" are subject to such varied interpretations.

Different countries have wrestled with this matter in different ways. The Norwegian act directs the Ombudsman

toward "errors committed or negligence shown". The Danish Ombudsman looks into "arbitrary or unreasonable decisions, mistakes, acts of negligence". In Israel, the Commissioner for Complaints deals with acts which are "contrary to sound administration or unduly harsh or manifestly unjust", while in France the Médiateur is concerned with whether a government body has "functioned in accordance with the public service mission that it should render".

In Britain the Parliamentary Commissioner has jurisdiction only over "maladministration" in the context of "the exercise of administrative functions of [a] department or authority". He is specifically constrained from questioning "the merits of discretionary decisions taken without maladministration". By reason of these provisions the first British Parliamentary Commissioner maintained that the act provided him with authority to examine only the **process** whereby a decision was reached and not its merits, regardless of the quality of the decision. However, in the opinion of the Select Committee of Parliament to which he reported, this degree of caution was excessive. The Committee urged the Commissioner to broaden his interpretation to include at least the merits of those decisions which were "thoroughly bad" in themselves, whatever the process by which they had been reached. The net result of these and subsequent developments is that the meaning of "maladministration" in the British legislation now seems somewhat uncertain: one expert has concluded that "nobody knows what it means" and that "it needs to be abandoned".[9]

More recently, the British Section of the International Commission of Jurists has been roundly critical of both the vagueness of the term and the narrowness of the legislation itself, indicating that it is more restrictive than that of other jurisdictions.[10] It has recommended that the Parliamentary Commissioner should be empowered to investigate any "unreasonable, unjust or oppressive action", instead of "maladministration", and to suggest changes in legislation, including statutory instruments, and in departmental practices.

The draftsmen of legislation creating many of the more recent ombudsmen, including those in Australia and the Canadian provinces, have found in the New Zealand legislation a happy example to follow. That legislation, passed in 1962 and

---

[9]Marshall, Geoffrey, "Maladministration", *Public Law*, 1973, page 32.

[10]The British Section of the International Commission of Jurists (Justice), *Our Fettered Ombudsman*, London, 1977.

re-enacted in 1975, gives the ombudsman power to investigate decisions "relating to a matter of administration" affecting a person and to comment where, in his opinion, an act or omission was "contrary to law"; "based wholly or partly on a mistake of law or fact"; "unreasonable, unjust, oppressive, or improperly discriminatory" or in accordance with a rule of law or a provision of any enactment suffering from these same defects; or "wrong".[11] These areas have been listed (not in the precise order of the act) in decreasing order of precision. They start with a core area that is reasonably easy to define and move ultimately to the general concept, "wrong".

These general powers to investigate and comment are constrained in one important area of administration, namely, those instances in which, pursuant to an act or regulation, an official has been required to exercise his own judgment on a matter. A decision of this type, known as a discretionary decision, cannot be criticized by the ombudsman simply because he considers it "wrong". Rather, he must show that a discretionary power was exercised "for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations".

The strength of the New Zealand legislation, as revealed in its practical consequences in a number of jurisdictions, is that it seems to have provided enough precision to steer the ombudsman in the right direction, while its more general provisions ("unreasonable, unjust . . . wrong") have furnished him with some latitude to exercise his own judgment. In those jurisdictions in which this legislative approach has been adopted, ombudsmen seem to have avoided the interpretational difficulties encountered in Britain, and they have felt themselves able to address not just the process involved but in certain instances the merits of administrative decisions or actions. At the same time, partly due to the guidance afforded by the legislation, and partly due also to the common sense and good judgment of incumbents of the office, ombudsmen by and large have recognized that they have no mandate to become involved in matters of policy.

In the view of the Committee, the provisions regarding power to comment in the New Zealand legislation would provide an appropriate operational framework for a federal ombudsman in Canada.

---

[11]In Quebec the final provision, based on the word "wrong," was omitted.

- An ombudsman should be empowered to comment on acts, omissions or decisions relating to matters of administration and affecting persons in their personal capacities, if, in his opinion, such acts, omissions or decisions have been contrary to law, unreasonable, unjust, improperly discriminatory, or wrong.

- An ombudsman should be empowered to comment on acts, omissions and decisions which arose from a rule of law, enactment, regulation or practice that was unreasonable or improperly discriminatory.

- An ombudsman should be empowered to question the merits of decisions made in the exercise of a discretionary power only where the power has been exercised for an improper purpose or on irrelevant grounds or because irrelevant considerations have been taken into account.

Organizational Jurisdiction

The previous section reviewed broadly the sorts of issues upon which the ombudsman is empowered to comment. It is also necessary to examine the types of organizations which should be subject to the ombudsman's scrutiny. In the following paragraphs the Committee reviews this question and endeavours to set out some guiding principles.

Experience Elsewhere

The jurisdictions of foreign ombudsmen appear to have been determined by pragmatic considerations relating to the system of government in the country in question. For example, in Sweden and Finland the jurisdiction of the Ombudsman is defined in relation to his function of supervising the observance of the laws by the courts and by public officials. On the other hand, the jurisdiction of the British Parliamentary Commissioner for Administration is confined in the main to central government departments under the day-to-day direction of Ministers. The New Zealand legislation, generally followed by Canadian provinces, adopts a broader approach, and brings within the purview of the Ombudsman all

departments and agencies which the public commonly regards as belonging to government administration. The practical consequence of this approach is to include in the jurisdiction many institutions subject to a lesser degree of direct ministerial control than those within the purview of the Parliamentary Commissioner in Britain. This was also the approach adopted in Australia. In France the Médiateur has an extremely wide jurisdiction covering the functioning of all administrative organs at the national level, local authorities, public establishments and any other body vested with a public service mission.

However, although the extent of the organizational scope of ombudsmen differs somewhat from one jurisdiction to another, there are some common features. The head of state (or equivalent) is excluded, as are the legislature and legislative committees. The proceedings of Cabinet are excluded except in Denmark and Finland. The courts too are excluded, except in Sweden and Finland. In respect to the executive branch of government, departments and ministries are included as are most central agencies. However, almost all countries exclude commercial state corporations.

The Canadian Situation

In seeking the most appropriate method of determining the jurisdiction of a federal ombudsman in Canada, the Committee finally concluded that an approach somewhat along the lines adopted by New Zealand and Australia might be well suited to Canada, given the similarities in tradition and structure and the success which the New Zealand institution has long enjoyed. Thus our point of departure in defining the jurisdiction of an ombudsman has been the principle that he should have the power to investigate and comment on the actions of those organizations which the public would view as constituting the administrative arm of the federal government. It would clearly be detrimental to the office if cases continually arose which appeared to be legitimate examples of government maladministration but were consistently rejected as being outside the authority of the ombudsman. It seemed appropriate therefore to draw the concept of the federal government quite broadly in the first instance and then to argue that, unless there were clear grounds for excluding an organization, it should be included.

In examining what might constitute legitimate grounds for exclusion of organizations, the Committee endea-

voured to establish criteria that would determine the extent of the organizational jurisdiction of an ombudsman. This proved a complex exercise because of the varied character of public institutions at the federal level of government in Canada. The "government" includes a number of types of organizations created to suit particular needs and therefore differing in one or more basic characteristics. As a consequence, the Committee was unable to identify criteria that would establish the jurisdictional perimeter for an ombudsman without raising difficult problems of interpretation.

An example is afforded by the concept of ministerial control. The Committee considered whether organizations subject to a certain degree of control or authority should be within the jurisdiction of an ombudsman, those subject to less control being excluded on grounds that the public would tend not to identify them with the "administrative arm of the federal government". This proposal raised three problems. In the first place, it proved difficult to develop any yardstick to measure control. Control over federal institutions is exercised in many ways: through appointments to governing bodies, through operating and capital budgets, through reporting relationships, and so on. Some organizations which seemed highly controlled in some respects appeared less so in others. In short, no clear pattern could be readily established and thus the principle did not seem to help much in setting jurisdictional boundaries. Secondly, even where it could be established with some precision that an organization was not closely controlled, there could be no assurance that the public would consider it "outside" the federal government. Finally, the fact that an organization is outside the day-to-day control of a Minister would not preclude Parliament, through a parliamentary officer, from reviewing its administrative errors. In fact, it can be argued that the less the degree of direct ministerial control, the more the need for a channel whereby valid but unrectified complaints of administrative injustice can be investigated. Thus, on grounds of both practice and principle, the Committee rejected ministerial control as a suitable concept to set boundaries for the jurisdiction of an ombudsman.

The Committee also considered whether organizations should be excluded because they would be unlikely to deal with the public frequently, and would thus be unlikely to engender many complaints. However, all organizations have some contact with the public and all are susceptible to administrative error. Practically speaking, it would put the ombudsman in an uncomfortable position if he had to tell a complainant

that an issue was outside his jurisdiction because no one had thought the responsible organization would generate many complaints! The Committee therefore also rejected this as a criterion to establish jurisdictional limits.

Constitutional Considerations

It seems, however, that valid reasons for excluding some institutions exist on constitutional grounds. The ombudsman would be an officer of Parliament. As such, it is logical that his concern should focus on those institutions that are ultimately responsible to Parliament. This suggests that it would not be appropriate for the ombudsman to be concerned with the office of Governor General. Following the practice in most other countries, the Committee also considers that in view of the tradition of independence surrounding the judiciary, it would not be appropriate for the ombudsman to be concerned with the courts.

Because of the traditional relationship that exists between Parliament and Cabinet as a collective institution, the Committee determined that it would be inappropriate for the ombudsman to have jurisdiction here. It is an established practice in this country that the deliberations of Cabinet be kept confidential. There exists a related tradition of Cabinet solidarity which is incompatible with outside intrusions or investigations.

Constitutional considerations also suggest that, where the jurisdiction of the federal government itself ends, so should that of the ombudsman. It would not be suitable for a federal ombudsman to be seen to be criticizing the administration of organizations whose principal accountability is not to the Parliament of Canada. An ombudsman having responsibility for organizations only partially under federal control might, for example, find himself investigating or reporting to Parliament on an injustice having at its roots the actions of persons accountable to, or practices authorized by, another government.

The Committee therefore concluded that an ombudsman at the federal level in Canada should not have jurisdiction in respect of organizations having substantial executive participation (e.g. participation on the governing body) by persons accountable to other legislatures or to private interests. This would imply that the following organizations should be excluded from his jurisdiction:

Canadian Intergovernmental Conference Secretariat,
Columbia River Treaty Permanent Engineering Board,
International Boundary Commission,
International Joint Commission,
Roosevelt-Campobello International Park Commission,
The Seaway International Bridge Corporation.

However, advisory bodies in which participation is based on the need for expert advice or representation of some non-governmental group in society should not be excluded. Examples of such organizations are the Advisory Council on the Status of Women and the National Design Council.

This criterion also led the Committee to adopt the view that the jurisdiction should not extend to the governments of the Yukon and Northwest Territories. The administration of these governments is largely in the hands of councils, most members of which are locally elected. In the view of the Committee, any decision regarding an ombudsman for their activities should rest with these councils. The Committee suggests, however, that if the federal government appoints an ombudsman, it would be appropriate to encourage the Territories either to do so or to request the extension to territorial government organizations of the jurisdiction of the federal ombudsman.

Commercial Considerations

Organizations of a corporate nature having an essentially commercial orientation posed a particularly difficult problem for the Committee. Such organizations take their principal direction, at least in respect of their day-to-day administration, from market forces and operate in some form of competition with firms in the private sector. The market orientation of these organizations means that their behaviour is, by and large, that of private rather than public sector entities. That is, they are expected to display sound commercial practices. The relationship between such firms and the individual members of the public may be viewed as that between buyer and seller and is often of a contractual nature. Were an ombudsman to have jurisdiction in respect of governmental organizations of a commercial nature he would be faced with the difficult task of defining and applying different standards to their activities than to those of other governmental organizations in order to avoid placing them at a disadvantage vis-à-vis their competitors. Following the practice of most other coun-

tries with ombudsmen, the Committee concluded that government commercial corporations whose operations are to a significant extent in competition with those of firms in the private sector, either domestic or foreign, should not be included in the jurisdiction of an ombudsman.

In deciding whether certain corporations met the foregoing criteria the Committee drew a distinction between the general public's perception of the role of such corporations and how they relate on a day-to-day basis with individual members of the public. On the one hand, such corporations are undoubtedly perceived by the public as instruments of government in terms of their mandates to achieve national policies. On the other hand, in their dealings with individual members of the public, they are commercial customers or suppliers, and as such their administrative procedures should be judged by generally accepted commercial standards. For example, the complaint-handling procedures of Air Canada or Canadian National Railways should be judged on the basis of normal practice in the transport industry rather than in accordance with the administrative practices of government. In considering the Canadian Broadcasting Corporation, the Committee came to the view that complaints regarding its administrative acts would arise almost exclusively from its relations with suppliers and performers, matters in which the CBC is surely to be judged in relation to the practices of the broadcasting industry rather than the administrative norms of government. Of course the public may have complaints about CBC programming but these would not be considered matters relating to administration affecting a person in his personal capacity and thus generally would not be within the competence of an ombudsman.

Having in mind the foregoing, the Committee concluded that the following organizations should be excluded from the ombudsman's jurisdiction:

Air Canada,
Atomic Energy of Canada Limited,
Canadian Arsenals Limited,
Canadian Broadcasting Corporation,
Canadian Commercial Corporation,
Canadian Film Development Corporation,
Canadian National Railways,
Canadian Patents and Development Limited,
Cape Breton Development Corporation,
Crown Assets Disposal Corporation,
Defence Construction (1951) Limited,

Eldorado Aviation Limited,
Eldorado Nuclear Limited,
Export Development Corporation,
Federal Business Development Bank,
Loto Canada,
National Arts Centre Corporation,
Petrocan,
Teleglobe Canada,
Telesat Canada.

Officers and Agencies of Parliament

There exist several institutions and offices which report directly to Parliament, as would an ombudsman. Most perform functions which it would be undesirable to place under the direct control of the executive. They include the Auditor General, the Commissioner of Official Languages, the Chief Electoral Officer and the Public Service Commission. Generally speaking, these institutions and offices have jurisdiction over one another and the Committee could see no reason, either legal or constitutional, for excluding them from the jurisdiction of an ombudsman. However, in the view of the Committee, institutions under the day-to-day control of Parliament which report directly to the Speaker of the Senate and/or the Speaker of the House of Commons, such as the Library of Parliament, should not fall within the purview of an ombudsman.

The Armed Forces and the RCMP

The Committee gave careful consideration to the question of the RCMP and the Armed Forces and concluded that there were no reasons to exclude these organizations. The Committee noted that complaints regarding police actions might require special expertise on the part of an ombudsman or his office.

The Committee noted also that problems might arise regarding complaints against the RCMP acting under contract to the provinces. In eight out of 10 provinces, the RCMP provides police services to the provincial government under contractual arrangements. If a citizen complains about the actions of an RCMP officer who is working on a provincial matter, what is the jurisdiction of a federal ombudsman? And

what is the role of the provincial ombudsman, where one exists?

After careful consideration, the Committee concluded that complaints of this kind should be the responsibility of a federal ombudsman. Its principal reason for doing so was related to the fact that the manner in which the Force carries out its work, even when acting under provincial power, is by the terms of the contract prescribed federally, in accordance with standards which, for effective management of a federal force, must be uniform across the country. However, the Committee concluded that, if a federal ombudsman were created, prior consultation with provincial authorities would be necessary to establish an understanding as to the role of the institution in respect to the RCMP when acting under contract to the provinces.

Regulatory Agencies

Regulatory agencies function to a certain extent as courts and are generally insulated from the day-to-day influence of government. They also have extensive powers to make and enforce rules. Because of these factors the Committee considered whether it would be appropriate to include them within the jurisdiction of an ombudsman. However, as these agencies affect persons through administrative actions and inactions in much the same manner as departments, the Committee could see no reason to exclude them. The competence of the ombudsman to investigate complaints against their actions would not affect the quasi-judicial functions of such agencies, because an ombudsman would not be empowered to comment on the merits of their decisions but only on the process by which they were reached. Nor is there a possibility that complainants would be deflected from appealing decisions to the courts or other appellate tribunals for, as will be pointed out later, a federal ombudsman should not be empowered normally to investigate complaints about decisions subject to review by the courts or another authority.

Marketing Boards

The Committee gave careful consideration to whether marketing boards were of a commercial nature and should therefore be excluded from the jurisdiction of an ombudsman.

It concluded that price stabilization boards, such as the Agricultural Stabilization Board and the Fisheries Prices Support Board, which ordinarily make deficiency payments to producers, cannot be described as commercially-oriented in their essential relationship to the public. Supply management agencies such as the Canadian Egg Marketing Agency and the Canadian Turkey Marketing Agency develop policies and coordinate comprehensive marketing schemes which are implemented by provincial agencies. In addition certain of them intervene in the markets; however, this aspect was not considered sufficient justification for their exclusion. The Committee found it more difficult to make a judgment about the Freshwater Fish Marketing Corporation and the Canadian Saltfish Corporation. Parliament has given these organizations such a strong and pervasive control over interprovincial and international marketing that a normal buyer/seller relationship can hardly be said to exist. On balance, the Committee concluded that they also should be included within the jurisdiction of an ombudsman.

The Committee noted that the operations of all these boards are affected to varying degrees by the provisions of federal-provincial agreements and that, in some cases, provincial bodies have been given the right to nominate or to appoint board members. Nevertheless, all of the federally-constituted boards exercise their powers under federal legislative authority and report annually to Parliament. The Committee considered that provincial involvement, to the extent it exists, would not be sufficient to justify their exclusion and concluded that appropriate coordinating arrangements between a federal ombudsman and his provincial counterparts could be worked out to handle such jurisdictional problems as might arise.

Implementation

The previous sections of this chapter have established the broad principles and criteria which the Committee believes should delimit the organizational jurisdiction of an ombudsman, now and in the case of future government institutions. Appendix C is a list of organizations which, in the view of the Committee, meet the principles and criteria and which could constitute a schedule defining the organizational jurisdiction of a federal ombudsman. However, the Committee suggests that this Appendix and the lists of organizations suggested for exclusion in the preceding paragraphs be examined further

prior to the drafting of any ombudsman legislation. Consultation with all the organizations involved would be desirable, if only to reveal any complications which the Committee may have failed to uncover.

The Committee gave careful consideration to the possibility that an ombudsman might, during the first two years of operation, be overwhelmed by the sheer quantity and the complex variety of complaints against a large number of organizations. It examined the advantages and disadvantages of breaking the list of organizations into two parts, those in the first part to constitute the initial jurisdiction and the remainder to be included within a stated period. However, this option was finally rejected on the grounds that it would lead to public confusion. The Committee concluded that, provided an ombudsman was given adequate resources, it would be preferable to include within his jurisdiction from the beginning all organizations meeting the guidelines discussed above.

- The jurisdiction of an ombudsman should include all institutions of the federal government established for a public purpose, subject to the following exclusions:
  (1) institutions which it would be inappropriate to include on constitutional and related grounds, namely the Governor General and his household, Parliament itself, Cabinet and the courts;
  (2) institutions which are not principally accountable to the Parliament of Canada; and
  (3) institutions of a corporate nature which are in competition with firms in the private sector and whose relationship with the public is essentially of a commercial nature.

- The organizational jurisdiction of an ombudsman should be defined by schedule and should comprise those organizations listed in Appendix C, subject to further examination of the list prior to the drafting of any legislation.

- It should be possible to add organizations to the jurisdiction of an ombudsman at any time by order in council. It should be possible to delete them in the same manner, on the condition that an order in council for this purpose would have effect unless disapproved by Parliament within a predetermined period.

IV

THE OPERATION OF THE OFFICE

To this point, the report has dealt with rather general matters. The purpose of this chapter is to comment on more detailed issues relating to the organization and modus operandi of the ombudsman. The chapter falls into three parts. The first deals with the establishment of the office, where measures are proposed to ensure its independence and a number of points are made about its organization and its relationship with provincial ombudsmen. The second part is concerned with the handling of complaints and the undertaking of investigations. The third part focuses primarily on the reporting powers of the office.

Establishing the Office

The Importance of Independence

By definition, an effective ombudsman must possess a high degree of independence. This in turn demands that he or she have particular characteristics, including a strong sense of responsibility to Parliament and the public, a strong interest in the quality of public administration, a strong ethical sense and, above all, a capacity for good judgment. Any concern about the independence of the office, or about possible abuse of that independence, will be diminished to the degree that these characteristics are present in the incumbent of the office. Selection is therefore a matter of great importance.

Independence can be secured only if it is coupled with political impartiality. For this reason, the Committee believes that, if a federal ombudsman is to be appointed, every effort should be made to involve in the selection process (and, if at all possible, to secure a consensus among) all political parties represented in Parliament.

In another sense, independence is also dependent on appropriate arrangements relating to such questions as salary and pension rights, the term of appointment and the

method of removal, and the degree to which an ombudsman is given power to control the human and financial resources allocated to his office. The Committee has concluded that such arrangements should be made.

The preservation of the independence of the ombudsman has been a major concern in each of the jurisdictions that have ombudsmen and, with minor variations, similar protections have been built into the legislation concerned. In Canada, a parallel concern has been reflected in legislation governing the offices of the Auditor General and the Commissioner of Official Languages. Following the thrust of the latter legislation, and the general pattern of ombudsman acts in other jurisdictions, the Committee has decided to put forward a number of specific recommendations on the subject.

- In matters of appointments, salary and pension, term of office, re-appointment, retirement, suspension and removal, and the degree of financial and management control over resources required for the proper functioning of the office, provisions should apply to a federal ombudsman that are similar to those applying to the Auditor General and the Commissioner of Official Languages, or to either of them where the act pertaining to the other is silent on a matter. Specifically, it is recommended:
  (a) that the procedure for appointment be that adopted for the Commissioner of Official Languages, i.e. appointment by commission under the Great Seal after approval by resolution of the Senate and House of Commons;
  (b) that the term of office be for seven years, with provision for re-appointment for one or more terms of equal or lesser length;
  (c) that salary and pension be established and maintained at an appropriate level by linking them to the salary and pension accorded another public position, preferably a senior position in the judicial hierarchy;
  (d) that the ombudsman hold office during good behaviour, removal to be effected by the Governor in Council at any time on address of the Senate and House of Commons;
  (e) that, in all matters relating to the management of resources of the office, the ombudsman be

accorded the same powers as are accorded the Auditor General;[12] and

(f) that the staff of the office should be appointed in accordance with the Public Service Employment Act and the office of the ombudsman should be declared to be a separate employer under the Public Service Staff Relations Act.

Structure of the Office

Two related structural issues would have to be tackled in creating the office of ombudsman. Its relationship with other ombudsman-like offices would have to be clarified. And the question of whether to create one or several ombudsmen would have to be resolved.

At present, Canada has a Correctional Investigator for penitentiary services and a Commissioner of Official Languages, both of whom perform ombudsman-like duties. In addition, provision has recently been made for a Privacy Commissioner who would have ombudsman-like responsibilities; and the recently published Green Paper entitled *Legislation on Public Access to Government Documents* proposes, as one alternative means of handling complaints in respect to freedom of access to government documents, an Information Commissioner with Advisory Powers. In the view of the Committee, it would be confusing to the public, and cumbersome for Parliament and its Committees, to have too many officers of this kind with separate spheres of activity.

The Committee examined the responsibilities of the two offices that are now in being and concluded that the office of the Correctional Investigator (who is currently an officer of

---

[12]Under the *Auditor General Act* these powers include the authority:

- subject to such conditions as the Public Service Commission directs, to exercise and perform by delegation the powers, duties and functions of the Public Service Commission under the *Public Service Employment Act;* and to exercise by delegation the powers, duties and functions of the Treasury Board in relation to personnel management under the *Financial Administration Act;*
- to prepare classification standards;
- to suspend employees;
- to contract for professional services;
- to prepare estimates for the office and report to Parliament on the adequacy of appropriations received; to be exempt from the requirement to divide the appropriations into allotments.

the Executive) should be integrated into that of the ombudsman. It also concluded that other ombudsman-type functions, such as those of the Privacy Commissioner and the suggested Information Commissioner with Advisory Powers, should also be integrated with those of the ombudsman.

The Commissioner of Official Languages presented a different case, in that a sizeable portion of work associated with that office involves duties other than those relating to the handling of complaints. Moreover, the office is not restricted to administrative matters as is the ombudsman. The Committee therefore concluded that its separate status should be preserved.

The Committee next turned its attention to the question of how the office of an ombudsman should be organized to take into account the needs of specialized functions (such as that of the Privacy Commissioner, the Correctional Investigator, and an Information Commissioner), the anticipated volume of complaints, and the probable requirement for a regional presence.

Two basic alternatives were examined:

(a) a multi-ombudsman approach wherein a number of essentially co-equal ombudsmen, under a common administrative "umbrella", would each exercise, in respect of a particular function or region, the full powers of an ombudsman to investigate complaints and to report to Parliament;
(b) a single-ombudsman approach wherein all powers would be exercised by one statutory ombudsman, the requirements of volume and functional and regional specialization being dealt with by means of delegation to an appropriate staff.

The first alternative provides for the direct involvement of a designated ombudsman in the handling of individual complaints — a feature considered by some observers to be essential if the institution is to avoid becoming just another depersonalized bureaucracy. A single ombudsman would almost certainly be unable to give his personal attention to each case if the number of complaints proved to be large, and it might be that the range of expertise required would be beyond the capacity of any single incumbent.

However, the first alternative has a major disadvantage. Unless a strong coordinating influence were to emerge, the arrangement would probably lead to inconsistencies and perhaps to conflicting views in reports made to Parliament. Each ombudsman could very easily develop different procedures and standards for complaint handling, which

would be difficult for Parliament to deal with and generally confusing to the public. Also, unless great care were to be exercised, the creation of a collegial model of co-equal ombudsmen, each with full powers to dispose of cases and to report thereon, would fail to provide a comprehensive overview of administrative deficiencies — a feature which could be important in calling attention to faults of administration spanning regional or functional boundaries.

The Committee concluded that the most appropriate arrangement would result from combining the strengths of the two alternatives while eliminating the weaknesses of each. The first part of its conclusion was that it would be advisable to provide for a single ombudsman as a statutory officer with full powers to investigate and to make reports on specific cases to Ministers and to Parliament. The second part of the conclusion was that, in order to deal with the requirements of whatever might be the volume of complaints, and in order to meet the expected need for specialized knowledge, at least in some fields of endeavour, provision should be made for the appointment of assistant ombudsmen.

- There should be only one federal ombudsman. However, statutory provision should be made for the appointment by the ombudsman with the approval of the Governor in Council, of one or more assistant ombudsmen responsible to the ombudsman.[13] Each assistant ombudsman should be empowered to dispose of individual cases under the general authority of the ombudsman, except when the involvement of a Minister or a report to Parliament is required, in which case the matter should become the responsibility of the ombudsman.

The Committee anticipates that each assistant ombudsman would be responsible for a particular functional area of administration, such as that encompassing social programs, or a particular category of complaints requiring special treat-

[13]It should be noted that, in the view of the Committee, the term "ombudsman" has a sufficiently universal quality to be considered for use in both of the official languages of Canada. It should also be noted that the term "assistant ombudsman" in English has a suitable counterpart in French and for this reason is to be preferred over any alternative considered by the Committee.

ment.[14] In regard to the latter, it seems likely that two categories of complaints will almost certainly require special handling and possibly special powers: those arising from the exercise of police or enforcement powers; and those coming from inmates of federal penitentiaries and parolees. Additionally, it may also be that complaints concerning privacy or freedom of access to information will occur in sufficient volume to justify specialized assistant ombudsmen. On the latter point, the Committee was unable to make any reliable assessment.

Before leaving the subject of the "structure of the office", the Committee should record its view that, if a federal ombudsman is established, he and such assistant ombudsmen as may be appointed, will require a legal capacity to delegate some of their powers to members of their staff.

- The ombudsman, or any assistant ombudsman, should be permitted to delegate his powers to staff, except the power to close any case where the findings of the office are disputed by either of the two parties concerned.

Relations with Provincial Ombudsmen

There are many matters of interest to ombudsmen in respect to which it would be desirable for a federal ombudsman to establish cooperative relationships with his provincial colleagues. A continuing interchange of ideas on objectives, methods and procedures and the provision of information to the public, to mention only a few subjects, would be mutually beneficial and would help to strengthen the tradition of effective 'ombudsmanship' in Canada. Consultation would be particularly useful in respect to complaints having to do with programs in which both federal and provincial levels of government are involved as a result of either shared or delegated decision-making.

Although it considered the matter at some length, the Committee concluded that it would not be appropriate for the federal ombudsman to enter into formal arrangements

[14]The Swedish office, which has expanded over the years, now has four ombudsmen including one designated as the Chief Ombudsman. Although their individual powers exceed those which we have proposed for assistant ombudsmen, their duties are divided along the general lines advocated.

whereby provincial ombudsmen would act on his behalf in the conduct of investigations into federal matters, if only because it would be undesirable for provincial officers to comment on federal administrative practices (or vice versa). With this one reservation, however, the Committee felt that it would be useful and desirable for a federal ombudsman to establish cooperative relations with his provincial counterparts.

Staff

The Committee found it impossible to arrive at any firm conclusions about the staff requirements of a federal ombudsman. There is no basis for an accurate forecast of the number of complaints which the office would be called upon to handle. The experience of other jurisdictions is of limited value in this respect. The per capita complaint load varies greatly according to the structure of the various governments, the effectiveness of their methods of complaint handling, the extent of the jurisdiction of the ombudsman, and the disposition of the various publics to complain. It is evident however that, because in Canada many activities of government which directly affect individuals are carried out by provincial governments, the number of complaints to be handled by a federal ombudsman can be expected to be considerably less than would be the case if Canada were a unitary state.

The modus operandi of the office can also have a significant effect on the resources required, and vice versa. In some jurisdictions the ratio of complaints to the size of the staff working for the ombudsman is very high, with the result that the ombudsman must rely heavily, in the first instance at least, on a departmental review of complaints. He must reserve his limited investigatory resources for those relatively few cases which need them most. Jurisdictions having more generous staff allotments can afford to investigate a higher proportion of cases, to initiate investigations on their own, and to carry out more extensive public information activities designed to ensure that the public is aware of the ombudsman as a means of obtaining redress.

The appropriate initial approach, we believe, is to strike a balance. Failure to provide a staff adequate for the prompt acknowledgement and referral of all complaints received and for the investigation of those requiring that type of treatment, would place the credibility of the office at risk, both with the public and the bureaucracy. To err initially in

the other direction might encourage the ombudsman to adopt a style of operation which Parliament might not wish to support in the longer run, after some experience with the institution had been obtained.

Overall, the Committee is of the view that the minimum staff resources required would, in the jargon of the trade, represent about 60 man-years.[15] It believes that, although this allocation would be adequate at the outset, the eventual requirement could be two or three times greater. The Committee therefore feels an obligation to indicate that, if it decides to support the basic concept, the government should be prepared to devote up to $5 million annually to the ombudsman function — a level of expenditure which could well be reached within the first two years of operation.

Determining Competence to Investigate

This section of the report deals with the issues that arise in connection with the handling of complaints by an ombudsman prior to the commencement of an investigation.

Eligibility of a Complainant

The process of complaint handling commences when a complainant articulates a grievance to the ombudsman. The Committee was faced at the outset, therefore, with considering who might constitute an eligible complainant. In principle, it would appear that the right of access to the ombudsman should be as widely held as possible. The ombudsman should be empowered to accept any complaint addressed to him, regardless of its source, provided the complainant has a personal interest in the matter and has been directly affected by it, and provided of course that the complaint itself falls within the ambit of the ombudsman.

Other jurisdictions have followed this approach. Legislation commonly defines all individuals and corporate bodies as legitimate complainants. In addition, most jurisdictions (e.g. five Canadian provinces, Britain, New Zealand and

[15]This estimate assumes that the ombudsman will find it necessary to open regional offices to facilitate contact with complainants and the investigation of at least certain types of complaints.

Australia) also include unincorporated groups. We see no reason to cast the list of eligible complainants less broadly.

- Eligible complainants should include individuals, corporations and unincorporated groups. However, to be eligible, the complainant must be directly affected in his or its personal capacity by the matter that is the subject of complaint.

Except for complaints about actions taken abroad (see below), the Committee is satisfied that access to an ombudsman should not be limited to Canadian citizens or even to Canadian residents. It seems clear that maladministration should be combatted whether it affects someone who has deep roots in Canadian society or someone who is a guest in our midst.

- Access to the ombudsman should be available to all persons and to all bodies of persons lawfully present in Canada or, if temporarily absent from Canada, entitled to return to Canada.

Form of Complaint

The Committee concluded that, for the sake of accuracy, there should be a general provision, as is usually the case elsewhere, specifying that only complaints in writing should be formally accepted. The responsibility to set down the complaint should fall normally upon the complainant. However, there will be cases when for reasons of age, infirmity, or other factors, a complainant will not be able to meet this requirement, and this fact should not of itself prevent access to the ombudsman.

- Every complaint to the ombudsman should be made in writing and should, whenever possible, be set down by the complainant. If the ombudsman is satisfied that for good reason the complainant cannot adequately set down the cause of his concern, he should have discretion to assist the complainant to frame the complaint in writing or to accept a complaint set down by a third party. In all cases, however, the complainant himself should vouch for the accuracy of what is written and authorize investigation of the complaint.

Eligibility of a Complaint

The office of an ombudsman should not supplant existing methods for dealing with complaints. The Committee is therefore of the view that, in general, unless other available means of redress have been tried without avail, the ombudsman should be precluded from accepting a complaint. However, for reasons described earlier in the report, situations may arise in which these other means of redress are judged to be unsatisfactory or inappropriate. We therefore believe the ombudsman should have discretion to investigate a complaint if, because of special circumstances, he believes that insistence on recourse to the conventional channels of redress would be unreasonable.

- When the subject of complaint is a matter for the courts, or where there is a statutory right of appeal, the ombudsman should generally be precluded from investigating the complaint concerned. However, he should have discretion to investigate such a complaint if he is of the opinion, in view of the presence of special circumstances, that insistence on recourse to these other instruments of redress would be unreasonable.

- Where there is no other formal means of redress and where, in the opinion of the ombudsman, the complainant has taken all reasonable steps to obtain rectification directly from the government organization concerned, but to no avail, the ombudsman should have discretion to investigate the matter which is the subject of a complaint.

Even when other means of redress have been explored, the ombudsman should not be obligated to investigate every matter referred to him which falls within his jurisdiction. Experience in other jurisdictions has shown that not all complaints are worthy of investigation and that, in some cases, investigation would be fruitless because the complaint is such that it could not be rectified no matter how worthy it might otherwise be. A time limit on the filing of complaints would seem to make good sense.

- The ombudsman should be empowered to refuse to investigate a complaint which, in his opinion, is con-

cerned with a trivial matter, or is frivolous, vexatious or made in bad faith, or concerns a matter of which the complainant, without taking action, has had knowledge for more than one year.

- The ombudsman should have a general discretion to refuse to investigate or to cease to investigate a complaint.

Excluded Classes of Complaints

The Committee identified three classes of complaint requiring special consideration. There may be others in the same category that simply failed to surface. It would therefore be prudent prior to any action involving the preparation of legislation, to give to each organization expected to fall within the jurisdiction of an ombudsman the opportunity to suggest other classes of complaint that could require special consideration or call for special treatment.

The three classes identified by the Committee, which are dealt with in what follows, are: complaints about actions that occurred outside Canada; complaints relating to the right of an individual to enter or to remain in Canada; and complaints from Crown employees pertaining to their conditions of employment.

Except in Britain, where the relevant legislation explicitly excludes all matters which occur outside the country, other jurisdictions do not make any distinction between complaints arising from an action that occurred at home or abroad. In its recent publication, *Our Fettered Ombudsman,* to which reference has been made earlier, the British Section of the International Commission of Jurists has urged that the distinction be eliminated from the British legislation also. The Committee does not believe that such a distinction should have any place in Canadian legislation, although it recognizes that practical difficulties of investigation may prevent the ombudsman from acting effectively in some cases involving occurrences outside the country. This should be a matter for the ombudsman himself to decide. Following the precedent established by the *Canadian Human Rights Act,* access to the ombudsman in respect of matters occurring abroad would, of course, have to be limited to Canadian citizens and persons accepted for permanent residence in Canada.

The Committee noted a possible problem regarding complaints having to do with the rights of non-citizens or non-residents to be in or to enter Canada. Placing such complaints within the purview of an ombudsman could result in pressures to delay the prompt removal of individuals who, having exhausted the available appeal mechanisms, lodge complaints, however spurious, simply as a means of achieving delay. Although it has not had an opportunity to review the matter in any depth, the Committee believes that it might be necessary to make a specific exclusion of complaints having to do with the rights of individuals who are not citizens and have not been accepted for permanent residence, to enter or remain in Canada. It therefore suggests that this possibility be examined with some care.

A third class of complaint to which the Committee gave particular attention relates to the employment of Crown employees — individuals employed by the Government of Canada, whether as public servants, as employees of Crown corporations, as members of the Armed Forces, or as members of the Royal Canadian Mounted Police. A review of what other jurisdictions have done about this matter showed no clear pattern.[16] Nonetheless, having in mind the channels normally available for dealing with this type of complaint in Canada, the Committee could see no reason why Crown employees, unlike other Canadians, should be able to go beyond the processes established in the applicable system of employer-employee relations. In arriving at this position, the Committee was conscious of the fact that grievance and appeal procedures are not uniform throughout the various bodies staffed by Crown employees, as defined above. It reasoned, however, that any improvements needed in any of these procedures should be sought and found within the relevant system of employer-employee relations.

- The ombudsman shoud be precluded from investigating the employment-related complaints of persons who are employed by the Government of

[16]In the United Kingdom, France and Australia, for example, employment-related complaints are specifically excluded from the ombudsman's jurisdiction. In New Zealand they are not but, as the Ombudsman reported at the International Ombudsman Conference in 1976, he seldom takes up an employment-related complaint because other quite adequate means of redress are available. In the Canadian provinces employment-related complaints are not excluded.

Canada, whether as public servants, as employees of Crown corporations, as members of the Armed Forces, as members of the Royal Canadian Mounted Police, or in any other capacity.

Self-Initiated Investigations

In addition to reacting to complaints received, ombudsmen are normally authorized to initiate investigations on their own motion when they become aware of situations that appear to warrant scrutiny. A survey of ombudsmen reports indicates that few self-initiated investigations are launched. However, those that are conducted are often especially useful.

A recent Canadian example serves well to illustrate the point. In his annual report for 1974-1975[17] the Alberta Ombudsman cited a case which came to his notice through a newspaper account which alleged that an elderly woman had been "kidnapped" to a mental hospital. The Ombudsman decided to investigate and was able to report that the woman had not been kidnapped. The case was important because the government officials concerned could not defend their action by making public the personal medical record of the woman and, for this reason, could not effectively repudiate the public allegations of kidnapping. The investigation and report of the Ombudsman helped to calm the fears of the public and to vindicate the handling of the case by the government officials concerned, while protecting the confidential status of the medical records in question.

So far as the Committee is aware, experience in other jurisdictions offers no evidence that the power under discussion has been abused.

- The ombudsman should be empowered on his own motion to initiate an investigation of a matter within his jurisdiction when he is satisfied that there are reasonable grounds for doing so.

Directed Investigations

Another question respecting the type of complaints for which an ombudsman is responsible concerns his obliga-

---

[17]Alberta, *Report of the Ombudsman for 1974-75*, page 76.

tion to investigate a matter directed to his attention by the Ministry, or by Parliament or by a Committee of Parliament.

Previously, the Committee emphasized the importance of making an ombudsman independent of the executive. It does not believe that this independence could be maintained if the ombudsman were to be placed under any obligation to conduct or to cease an investigation at the behest of the Ministry.

- The ombudsman should be precluded from accepting direction from the Ministry either as to any matter to be investigated or as to the conduct of any investigation.

However, to accept direction from Parliament or from a Committee of Parliament to carry out an investigation is quite another matter. Much ombudsman legislation elsewhere allows such direction,[18] provided the matter to be investigated falls within the jurisdiction of the ombudsman and he is left free to decide how to proceed. To accord Parliament this limited directive power would be consistent with the position of the ombudsman as an officer of Parliament. Although instances of direction would probably be infrequent, it is possible to visualize situations in which it might be expedient and appropriate for Parliament to use the powers of investigation of an ombudsman to get to the bottom of a significant concern about the apparent adverse effect on a number of people of a particular administrative practice. On the other hand, it would obviously not be appropriate for Parliament or a Committee of Parliament to direct the ombudsman to investigate broad questions relating to policy.

- The ombudsman should be obliged to investigate any matter properly falling within his jurisdiction when so directed by Parliament or a Committee of Parliament charged with the duty of dealing with his office, but all matters relating to the conduct of the investigation are to be decided by the ombudsman himself.

---

[18]For example, the legislation in New Zealand, Australia and the Canadian provinces.

Conducting Investigations

This section deals with the powers which an ombudsman would require for the conduct of investigations and with the conditions under which they should be applied.

Notification of Officials

The investigation of a complaint requires the ombudsman to make contact with a government department or agency. At this initial stage, two requirements must be met: on the one hand, it is preferable that preliminary work not be hampered by excessive formality or rigid procedural requirements; on the other, it is important that senior officials know what is going on in their departments.

Some observers have suggested that the ombudsman should commence no investigative work until the department has conducted its own appraisal of the situation and issued a formal statement of position. In the view of the Committee, this approach is too ponderous. It invites the department to adopt a formal position prematurely — a position that, once adopted, may tend to become set.

- The ombudsman should be required to give notice, including a copy or summary of the complaint, to the appropriate deputy head or chief executive officer before he or his staff make any further contact with the government organization concerned for the purpose of investigation or inquiry.

- The ombudsman should then be empowered to proceed on the basis of having informed the deputy head or chief executive officer. But no obligation should fall upon the latter to provide the ombudsman with a statement of position until the ombudsman has completed a preliminary report and forwarded it to the deputy head or chief executive officer with a request for such a statement.

Powers of Investigation

In conducting his investigation, the ombudsman requires certain powers to secure information. This is recognized by every ombudsman act in one manner or another.

- When carrying out an investigation in keeping with the purpose of his office, the ombudsman should be granted the power:
  (a) to hear or obtain information from such persons as he thinks fit, and to make such inquiries as he thinks fit;
  (b) to compel the attendance of witnesses;
  (c) to examine witnesses under oath;
  (d) to compel the production of government documents; and
  (e) to enter government premises for the purposes of investigation and inquiry.

However, such powers must be subject to some restraint. All ombudsman legislation recognizes that there are times when special considerations must override the power of the ombudsman either to gain access to information or, less severely, to disclose what he has learned. The problem is to achieve a balance. On the one hand, the ombudsman must be permitted access to the widest possible range of information when investigating a complaint. On the other, he must be constrained so that excessive zeal on behalf of a complainant does not cause him to prejudice the interests of the state, the public at large or other parties directly involved, by disclosing matters which should remain confidential.

Where the interest of the state must necessarily be overriding — in matters which concern intergovernmental relations, national defence or security, or a confidence of the Cabinet (or its equivalent) — it is the practice in most jurisdictions to deny to the ombudsman any right of access to the documents or information concerned. Although this may effectively be done by totally precluding from investigation certain classes of matter, as in the British legislation, the New Zealand practice, which has been generally followed by the Canadian provinces, is to provide that a Minister may certify to the ombudsman that a document or information sought cannot be made available to him. In the view of the Committee, the latter practice should be followed in Canada.

- Where a Minister of the Crown certifies by affidavit to the ombudsman that a document or any information concerns a matter of intergovernmental relations, national defence or security, or a confidence of the Queen's Privy Council for Canada, the ombudsman should be absolutely precluded from access to that document or information.

In addition to the safeguarding of these specific interests of the state, there may be at times a more general public interest which must prevail over the particular interest of a complainant. The Committee concluded that, where such a situation arises, the ombudsman legislation should follow the precedent established in the *Canadian Human Rights Act*. The act declares that section 41(1) of the *Federal Court Act*[19] applies to the Commission and the Privacy Commissioner. This section provides that, where a Minister wishes to deny access to a document on grounds other than those cited in the last recommendation, he may do so by affidavit. However, the affidavit is subject to challenge before the court.

- Ministers of the Crown should be authorized to certify by affidavit that any document or information should in the public interest be withheld from the ombudsman. However, where the reason for non-disclosure is that the information or document involved concerns a matter other than intergovernmental relations, national defence or security, or a confidence of the Queen's Privy Council for Canada, the ombudsman should possess the power to challenge the certification before the Federal Court in a manner similar to that set out in the *Federal Court Act* s. 41(1).

For the further protection of the public interest, it may also be necessary from time to time to place certain restrictions on the right of an ombudsman to enter government premises. However, as this would be a more sweeping restriction than the withholding of specific documents, authority to deny access should not reside at the level of an individual Minister. Nor should it be exercised for purposes other than national defence or security.

- The right of the ombudsman to enter premises for purposes of investigation should be subject to such limitations as the Governor in Council in the interest of national defence or security may prescribe.

Protection of Information

Despite the measures discussed above, the protection of the interests of the state, the public at large, and other

[19]RSC 1970, s. 41(1).

parties who may be involved in an investigation also requires that the ombudsman and his staff be precluded from divulging information of a confidential or sensitive nature acquired in the course of their work. The New Zealand act applies this provision by requiring that the Ombudsman and his staff maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions, except that they may divulge such information as is necessary for the purposes of investigation or in order to substantiate conclusions and recommendations, provided that the information does not concern a matter which might prejudice national defence or security, intergovernmental relations, the investigation or detection of offences, or that might involve the disclosure of the deliberations of Cabinet. A similar but more extensive catalogue of matters has been included in s. 60(2) of the *Canadian Human Rights Act* in respect of the Privacy Commissioner, who is required to take every reasonable precaution to avoid revealing any of the classes of matter there listed.[20] The current green paper entitled *Legislation on Public Access to Government Documents* proposes that certain additional matters be added.

- The ombudsman and each member of his staff should be bound not to disclose any matter except insofar as is necessary for the purposes of investigation or to substantiate the findings or recommendations of the ombudsman in a particular case. In applying the exception, the ombudsman and his staff should be obligated to take every reasonable precaution to avoid revealing personal information and other sensitive matters. In this regard the legislation should be guided by s. 60(2) of the *Canadian Human Rights Act* and such additional exemptions as may be incorporated in any freedom of information legislation, if these are judged to be appropriate.

---

[20]Such matters are those that if disclosed:

- might be injurious to defence, security or intergovernmental relations;
- would disclose a confidence of the Queen's Privy Council for Canada;
- would be likely to disclose information prepared by a government investigative body relating to national security, or the detection or investigation of crime;
- would be detrimental to the control of prisoners;
- might impede the process of the courts or an inquiry established under the *Inquiries Act;* or
- might disclose government legal opinions or privileged communications.

The Committee also considered certain related matters regarding the powers of an ombudsman to acquire information in the conduct of an investigation. To protect persons who are bound by law to preserve confidentiality and from whom information is requested, the ombudsman and his staff, when requiring information relating to an investigation, should themselves comply with the applicable security regulations and take any oath of secrecy required of individuals normally having access to such information.

As already indicated, the Committee believes that an ombudsman and his staff should be under an obligation to protect information they acquire in the course of their duties, except as may be necessary to investigate a case or substantiate a recommendation. However, there remains the possibility that they might be forced to reveal confidential information in a court action or be subject to contempt of court. To avoid this, and thus to ensure their ability to obtain full and frank information from officials and the production of necessary documents, legislation creating the office of an ombudsman should declare that the ombudsman and his staff are not competent or compellable witnesses regarding any matter brought to their knowledge in the exercise of their functions.

It is also important that the ombudsman and his staff be immune from any civil or criminal proceedings which may be brought against them for activities undertaken in good faith in the course of carrying out their duties. Similar immunity should be accorded persons giving or producing evidence during an investigation.

Yet a further restraint generally applied is an obligation on the ombudsman to protect the identity of individuals involved in a case. This protection is usually provided by keeping actual names out of the relevant sections of reports and by requiring that hearings be held in private. This latter stipulation is made because the evidence presented in certain cases may be of a confidential or private nature, and because it is important to both the effectiveness and efficiency of the office that procedures be kept as informal as possible. In general the Committee endorses the concept of private investigations. However, it also believes it would be unfortunate if, in dealing with an exceptional case in which the public at large or some segment of it has had an active interest in both the process and the outcome of an investigation, the ombudsman were to be absolutely precluded from allowing public attendance.

- Hearings and investigations should be conducted in private. However, when special circumstances are present, the ombudsman should be empowered to hold hearings in public. His report in each such instance should include a statement of his reasons for holding the hearing in public.

Another issue affecting the manner in which the ombudsman conducts his investigations is the right of persons being investigated to be heard. It would clearly be inappropriate if the ombudsman failed to afford an opportunity for persons who may be adversely affected by his activities to present their case, if necessary with professional assistance. This protection should be provided by law.

- The ombudsman should be obligated to give to any person or organization who may be affected adversely by a report, an opportunity to be heard, and to be represented by counsel for that purpose, before the ombudsman completes his investigation and makes his report.

The Decisions of Ministers

In considering the handling of complaints, the Committee had to focus on one other important set of questions: whether, and to what degree, an ombudsman should be empowered to investigate a complaint pertaining to an administrative decision taken personally by a Minister. On this issue, the precedents are mixed. In New Zealand, Australia and the Canadian provinces, the legislation says in effect that, although the ombudsman can deal with a complaint of this kind to the extent it has been handled in one degree or another by officials, and can indeed investigate the basis for any recommendation made to the Minister concerned, he cannot investigate or comment upon the decision made by the Minister. In contrast, in Norway, Denmark, Finland and Britain, the administrative acts of individual Ministers are within the purview of the ombudsman — although in Britain it is likely that many such acts would be excluded by virtue of the schedule of matters placed outside the jurisdiction of the Parliamentary Commissioner.

The principal argument for exclusion of the administrative actions of Ministers is rooted in the view that a

Minister, who is directly accountable to Parliament, should not be subject to investigation by an officer of Parliament. According to this argument, it would be inappropriate for an ombudsman to have the power to summon Ministers as witnesses, to demand access to documents in their possession and, ultimately, to put before Parliament his views on their decisions. The argument has proven to be persuasive in a large number of jurisdictions in which the parliamentary form of government holds sway.

The Committee noted that, in most of these jurisdictions, there is little or no evidence that the ombudsman has been seriously thwarted because his powers of investigation do not extend to the decisions of Ministers. In practical terms, this is understandable because the ombudsman is obligated:

i) to consult with the Minister before forming a final opinion about any case involving a recommendation made to a Minister;
ii) to report to the Minister before proceeding with a contemplated report to the legislature; and
iii) in cases where a contemplated report to the legislature might reflect adversely on a Minister, to include in the report any comments on the subject which the Minister may choose to make.

Thus, the ombudsman has an obligation, in every case involving a recommendation to a Minister, whether the latter has acted in accordance with the recommendation or not, to discuss his findings with the Minister. The Minister has an opportunity to explain to the ombudsman the reasons for his stand, should he wish to do so. And, in any case where the ombudsman remains unsatisfied and indicates an intention to report to the legislature, the Minister has an opportunity to have his comments set forth in the report. This combination of provisions has apparently proven to be workable.

There is, however, another side of the coin. Federal Ministers in Canada are statutorily empowered to make many decisions of an administrative nature. In fact, a recent study of the Law Reform Commission lists nearly 700 instances in which this situation applies. Although the powers vested in Ministers are normally exercised under instruments of delegation by officials at various levels, they are sometimes exercised by the Ministers themselves, particularly with respect to some of the more significant or difficult cases. Although these circumstances may not be encountered frequently, there is no reason to suppose that the decisions taken would not, at least in some cases, give rise to complaints. And, in such cases, it

would be difficult to explain to the complainants concerned, and perhaps to the public generally, that the ombudsman had no right to seek an explanation of the basis for the decisions taken. In the view of the Committee, this represents a problem to which a solution should be found.

Although the issues involved are both complex and sensitive, and although a rationale for any one of several positions could probably be produced, the Committee finally came down in favour of a formula under which the ombudsman would not be able to apply to a Minister his powers of investigation but would be able to seek from a Minister an explanation of the basis for a decision made by the Minister. In the opinion of the Committee, such a formula would respect the view that a Minister who is directly accountable to Parliament should not be subject to investigation by an officer of Parliament, and would at the same time protect the office of ombudsman from the loss of credibility which could result from the inability of the ombudsman to seek explanation of the basis for an administrative decision made by a Minister.

- In cases involving a complaint about an administrative decision taken by a Minister, the ombudsman should be able to apply to any official involved in making a recommendation on the matter in question, but not to the Minister himself, his powers of investigation. He should also be empowered, in the course of the investigation, to seek from the Minister concerned an explanation of the basis for the decision made.

Reporting

The power to report is the ultimate sanction of the ombudsman. Although the power should not be used lightly, it must be securely protected and clearly delineated in the governing legislation.

Preliminary Steps

Upon the conclusion of an investigation (or at any stage when preliminary findings are reached), for the protection of both the ombudsman and the executive against misunderstandings or the erroneous reporting of facts, the legisla-

tion should stipulate in sequence the steps which the office of the ombudsman must follow if it appears that a justified complaint will not be rectified and the ombudsman is of the view that it may have to be drawn to the attention of Parliament.

- The obligatory reporting sequence should be as follows:
  (a) the ombudsman or any assistant ombudsman is to report his findings in the first instance to the deputy head or chief executive officer of the organization concerned;
  (b) if within a reasonable time thereafter, in the opinion of the ombudsman, the matter is not resolved, the ombudsman[21] is then to report his findings to the Minister responsible;[22]
  (c) if within a reasonable time thereafter, in the opinion of the ombudsman, the matter is still not resolved, the ombudsman may report his findings to Parliament.

Annual Report

All jurisdictions having an ombudsman require him to report annually to Parliament (or its equivalent) on the activities of his office. It is mainly through the medium of such a report that Parliament can review the overall operations of the office and be apprised of its effectiveness.

- The ombudsman should be required to submit to Parliament an annual report on the exercise of his functions.

Special Reports

Most jurisdictions have recognized that the ombudsman may require something more than an annual report to

---

[21]These are personal responsibilities which cannot be delegated; any assistant ombudsman appointed would not have the authority to deal with Ministers or to report to Parliament.

[22]Where no Minister is responsible for the administration of an organization (e.g. the Canada Council) the ombudsman would proceed directly to step (c) if the matter is not resolved to his satisfaction.

bring important, or urgent, matters to the attention of Parliament. They have therefore provided the ombudsman with authority to make special reports. There are two dimensions to such reports: they are timely; and they focus the attention of Parliament on the particular issues involved, whether they arise from important cases or from matters affecting the operation of the office of the ombudsman. The authority to issue special reports is an important instrument, without which the effectiveness of an ombudsman would be very much impaired.

- The ombudsman should be empowered to submit a special report to Parliament on any matter within his jurisdiction, at any time he thinks fit, provided that, if the matter concerns an investigation, he has followed the obligatory reporting sequence recommended earlier.

- For the protection of all concerned, the ombudsman should be required to include in any report that reflects adversely on any individual or organization a fair and accurate expression of the position of the individual or organization affected and to attach to his report or include therein any comments which the individual or organization concerned may wish to make.

Treatment of Reports by Parliament

In a number of jurisdictions, arrangements have been made for reports of the ombudsman to be referred to a special or standing committee of the legislature — and such arrangements seem generally to have been valuable. Although the Committee does not feel competent to make a recommendation on this subject, it believes that the idea should receive further consideration if a decision supporting the concept of the ombudsman is made by the government.

V

CONCLUDING OBSERVATIONS

The recommendations of the Committee on the Concept of the Ombudsman, which support application of the concept at the federal level of government in Canada and suggest the form of application that might be appropriate, have now been set forth. It is hoped that they will provide a satisfactory basis for discussion and decision-making by the government and, indirectly at least, should the government decide to proceed with proposed legislation, by the Parliament of Canada.

Although its recommendations have already been articulated, the Committee would like, before bringing its report to an end, to make a few concluding observations.

* * *

From the beginning, the Committee has been conscious of the possibility that, for some people at least, it might seem strange that a group of senior officials or, to use the vernacular, a collection of bureaucrats should examine whether there is a need for an institution whose purpose, defined in simplistic terms, is to help individual citizens deal with the failings of bureaucrats. Conscious of the possibility, the Committee has endeavoured to guard against the implications — the implications of built-in bias. Whether it has succeeded is a matter for judgment by those who read the report.

The point should perhaps be made, however, that members of the Committee have at no time sensed any conflict between the requirements of their mandate and their instincts as public servants. It is the purpose of democratic government to serve the public, and the individuals who make up the public, with all the efficiency and fairness that the circumstances of a complex world will allow. It is the function of public servants to assist government in achieving that purpose. Given this perception, the task undertaken by the Committee did not seem at any time to be unusual or inappropriate.

Something else should be said on a related subject. Where the institution has been successfully applied, the ombudsman has come to be regarded, not as an adversary of the public servant, but rather as an independent official with

particular powers who has a capacity to work with Ministers, public servants and aggrieved citizens in finding fair and just solutions to individual problems created in the administrative process. It is important that this be understood by Parliament, by members of the public and by the Ministers and public servants who would be affected by the investigation of complaints. The Committee has endorsed the concept of the ombudsman and has recommended that it be applied. It is satisfied, however, that the potential benefits of the concept could not be realized if, for one reason or another, the institution had to function in an adversarial environment.

* * *

The environment in which an ombudsman functions is obviously determined by a number of factors and is apt to change over time as the relative importance of each of these factors is enhanced or diminished. One thing seems clear, however. Much depends on the calibre of the incumbent of the office, particularly the first incumbent, whose approach is apt to have a great deal to do with the basic relationships established between the office and the other players in the process.

The Committee has already stressed the importance it attaches to the qualities possessed by the individual who holds the office. It would nonetheless like to make one or two further comments on the subject.

It seems clear that an ombudsman should be the kind of person who can relate effectively and sympathetically to the average citizen. In particular, he must be able to appreciate the difficulties of those disadvantaged members of society who may have had little opportunity to gain an understanding of the manner in which governments, or other large-scale organizations, operate. An ombudsman must be able to see problems from all points of view: as they appear to complainants and as they are seen from the bottom of an administrative hierarchy as well as from the top.

But he must not permit sympathy to sway him, for he should not be an advocate for either party in a case. He must possess the objectivity to decide without bias whether complainants have been treated reasonably in their dealings with government, according both parties the right blend of understanding and firmness, balancing private versus public interest and assessing with great care whether a particular issue impinges in a significant way on a question of policy. To determine where this balance lies will sometimes require a fine degree of judgment. Some administrative practices may, in a

general public context, seem entirely fair and reasonable. Yet their application to a particular individual may result in an apparent injustice, perhaps because of the peculiar or special circumstances of that individual. An ombudsman confronted with such a case must ask himself whether, in the light of the rationale behind the general practice, it is reasonable to conclude that the individual has been wronged. What may seem manifestly unjust from the perspective of an individual may seem less clearly so from the perspective of the public at large.

A complaint arising from a procedure, practice or law that is faulty from an administrative point of view can also make a heavy demand on the judgment of the ombudsman, because he must then decide how far his authority to comment extends. There is no doubt of his authority to report on the individual case. But to address the more general issue, the practice itself, may involve a risk of transgression into an area of policy and political controversy. Ombudsmen have to judge how far they can appropriately go in criticizing a general practice without undermining the credibility of their office. This responsibility is a heavy one, but it must be left with the ombudsman. To relieve him of it would tend to emasculate the office and make it subject to complicated legislative provisions, the interpretation of which would be difficult and contentious.

For these reasons, and others cited earlier in the report, the Committee has come to believe strongly that judgment is the key element in the qualities required in an ombudsman. It is the excellence of his judgment which is most likely to attract the confidence of citizens, politicians and public servants, build the reputation of his office and determine the environment in which it must function.

Earlier in the report, the Committee stated that arguments favouring an ombudsman would not be effectively removed by steps taken to improve existing procedures for the handling of individual complaints. The point was made that, whatever might be done along these lines, there would continue to be a felt need for an independent third party with a capacity to help individuals deal with unfairness, real or imagined. Administrative reform was not seen as a substitute for an ombudsman.

At the end of these concluding remarks, the Committee, while reinforcing this view, would also like to make it clear that no one should regard a decision to introduce a federal ombudsman as an excuse to reduce the ongoing effort to improve the administrative structure and the administrative procedures of the federal government. Indeed, the Committee

believes that the arrival on the scene of an ombudsman, if one is appointed, should be taken generally as a signal that this effort — particularly as it relates to the sensitivity of the administration to the needs of the individual — should be strengthened and intensified.

APPENDIX A

COMMITTEE STAFF

Secretary of the Committee	R. A. Gordon (September 1976-July 1977)
Secretariat Officers	K. C. Kennedy (October 1976-July 1977)
	A. C. Kennedy (November 1976-July 1977)
	T. M. Denton (October 1976-April 1977)
	P. T. Larocque (October 1976-March 1977)
	G. P. Wallace (October 1976-January 1977)
	T. Plumptre (part-time April 1977-July 1977)
Secretarial Staff	P. Monette
	B. Caron

APPENDIX B

SUMMARIES OF CASES ILLUSTRATIVE OF THE WORK OF OMBUDSMEN

The cases appearing in this appendix have been taken from the many hundreds which ombudsmen, over the years, have included in their annual reports as illustrative of their work.

* * *

In many instances the ombudsman finds that a complaint is not justified.

In one such example, a complainant contended unfairness in the denial of his application for an entrance from a public highway to his property at a particular location. However, the ombudsman found that the decision was fully in accordance with a long-standing, well-tested and uniformly administered policy concerned with the safety of access to and from public highways. In concluding that the complainant had been dealt with in a fair and just manner, he reported that the complainant had been very rigid in his attitude in rejecting a safer alternative suggested by the government.

* * *

But sometimes the root of the complaint is rigidity on the part of officials.

For example, in one jurisdiction a departmental ruling was made that all unauthorized buildings must be cleared from sea, river or lakefront reserves. An elderly couple whose dwelling was about to be torn down as a result of the ruling complained to the ombudsman. Upon looking into the case the ombudsman commented that the policy was "clearly soundly based", but he questioned its inflexible application in the case at hand. The couple had unknowingly purchased the dwelling from a life-tenant who did not have authority to sell it. They had maintained it well and would have difficulty finding alternative accommodation. Also, the dwelling did not interfere with public access to the beach and it was not situated in a particularly attractive beach area. Although the ombudsman recognized that policy, as a general rule, must be applied uniformly, he recommended that the elderly couple be treated as an exception and that, subject to certain conditions, they be

permitted to continue to live in the dwelling for their lifetime. The department recommended to the Minister that such an exception be made, and he agreed.

In another jurisdiction, while investigating the complaint of a customer (which proved false) in an establishment licensed to sell alcoholic beverages, the police noted that the necessary permits to operate the establishment, which were displayed in accordance with the law, had just expired. They therefore returned shortly thereafter and seized the liquor from the premises despite the protest of the owner who produced official receipts to show that he had paid for renewed permits. The owner subsequently sought redress from the department which, however, refused to indemnify him for the loss suffered. He then complained to the ombudsman contending that as he had applied for, and indeed paid for, the renewal of his permits before their expiry date, and had exhibited the proof of these actions to the police, his goods should not have been seized. Investigation by the ombudsman upheld this contention. The authorities confirmed that the permits had been renewed before their expiry; in fact, they had been mailed eight days prior to their termination date but had failed to arrive. The ombudsman found that, in the circumstances, the police had acted hastily and should at least have postponed seizure pending verification of the authenticity of the receipts. The department agreed to indemnify the owner for the loss occasioned by the police action.

* * *

Sometimes an ombudsman finds that he must use his statutory powers in a rather unusual way.

One such case concerned an elderly widow who complained about her pension. Because the complainant was planning to be abroad on her 65th birthday, she visited the responsible department to find out how to apply for a pension. She told the ombudsman that the officer who dealt with her inquiry had assured her that she need not make application until after she returned to the country. However, on doing so, she was advised that her pension would not be made retroactive to the date of her birthday because she had applied too late. The department admitted that, if she had in fact visited the office as she contended, the officer should either have had her fill out an application or have made a note of her inquiry; but being without such evidence it refused to pay her the benefit for the month in question. The ombudsman asked the department whether it would reconsider its decision if the

complainant gave her evidence regarding the visit under oath pursuant to a section in the act. At first the department refused on the grounds that the pension legislation did not give it authority to grant the benefit from an earlier date. But when the ombudsman, admitting that the department was legally correct, suggested that an *ex gratia* payment could be made, the department agreed. A sworn statement was then taken by the ombudsman and sent to the department and the widow received the payment.

* * *

Sometimes the complainant is the main hurdle to be overcome.

In one such case, the complainant was an elderly recluse who in her early and middle years had operated a successful dressmaking etablishment from which she had derived a satisfactory income. However, a prolonged illness had forced her to bring her small business to an end and had left her penniless and evidently somewhat deranged. As a consequence, as soon as she felt physically capable of resuming work, she had again begun to represent herself as the proprietress of a successful dressmaking establishment. However, this was far from the truth. She had no money and in effect no business except for the occasional garment she was asked to make by old friends out of charity. She therefore had paid no taxes. Her mental state was such that she kept no proper accounts. Failing the receipt of taxes and because of the way she had represented herself each year since her self-proclaimed return to business, the tax authorities had asked that she submit for their inspection the accounts of her business. She had, of course, failed to comply with these requests because she kept no accounts. Eventually, as the law allowed, the tax authorities themselves made arbitrary assessments and demanded either returns which would enable the assessments to be reviewed, or payment. When this action also produced no results a summons was issued for a sizeable amount, and when the complainant failed to take action to defend the case she was ordered to pay. At this point the distraught woman turned to the ombudsman. His investigation revealed the truth — the woman was quite penniless. However, because she remained convinced that her business was successful and on the verge of expansion, she would not accept a social security grant. Moreover, she insisted that she would continue to represent herself to the tax authorities as the proprietress of a dressmaking business. The ombudsman was able to convince the

authorities to cancel the estimated assessment and debt that had been instituted. He also endeavoured to convince the complainant that in subsequent years she must comply with the law if she continued to represent herself as a business woman — but on this latter point, as he reported, he was dubious of success.

* * *

Ombudsmen also display a special concern regarding injustices experienced by prison inmates.

In one case an inmate was brought before a court on a charge of offering to commit violence toward a prison officer. The judge dismissed the charge. Nevertheless, upon returning to the prison the inmate was charged in "warden's court" on the basis of the same incident and was convicted and sentenced to a 15-day loss of statutory remission. The ombudsman supported the objection of the inmate on the grounds that no person should be brought before one court and tried on the same set of evidence for which another court had already acquitted him. The department agreed with the conclusion. As the prisoner had already served the 15-day loss of remission, the department agreed to compensate the complainant, and a special order in council was passed confirming the settlement.

* * *

An ombudsman sometimes can serve a useful role as mediator.

One case involved a complicated and lengthy dispute regarding the sale of agricultural land by a government department. Following the sale of the land to one party, the unsuccessful bidder alleged that certain irregularities invalidated the sale. Counter allegations ensued and legal opinions were sought in an effort to resolve some of these issues. However, the opinions were not unanimous and the officers of the department involved could not decide on the best way to resolve the dispute. Although the ombudsman conducted an investigation, he did not feel able to resolve the issue himself. However, he suggested to the department and the two parties that an *ad hoc* committee of departmental officials be formed to hear the evidence of both parties. The ombudsman also suggested that his legal advisor attend as an observer and as a means of assisting the committee to communicate informally with the two disputants. This suggestion was agreed to and, at the end of the hearing, and without the committee having to hand down a decision, the two applicants agreed to compromise by dividing the land between them on terms which were satisfactory to the department.

APPENDIX C

SUGGESTED SCHEDULE OF ORGANIZATIONS TO BE INCLUDED IN OMBUDSMAN'S JURISDICTION

Department of Agriculture
Department of Communications
Department of Consumer and Corporate Affairs
Department of Employment and Immigration
Department of Energy, Mines and Resources
Department of the Environment
Department of External Affairs
Department of Finance
Department of Indian and Northern Affairs
Department of Industry, Trade and Commerce
Department of Insurance
Department of Justice
Department of Labour
Department of National Defence
Department of National Health and Welfare
Department of National Revenue
Post Office Department
Department of Public Works
Department of Regional Economic Expansion
Department of the Secretary of State
Department of the Solicitor General
Department of Supply and Services
Department of Transport
Department of Veterans Affairs

* * *

Ministry of State for Science and Technology
Ministry of State for Urban Affairs

* * *

Advisory Council on the Status of Women
Agricultural Products Board
Agricultural Stabilization Board
Anti-dumping Tribunal
Anti-Inflation Appeal Tribunal
Anti-Inflation Board

Atlantic Pilotage Authority
Atomic Energy Control Board
Auditor General
Bank of Canada
Bilingual Districts Advisory Board
Blue Water Bridge Authority
Canada Council
Canada Employment and Immigration Commission
Canada Labour Relations Board
Canadian Armed Forces
Canadian Dairy Commission
Canadian Egg Marketing Agency
Canadian Government Specifications Board
Canadian Grain Commission
Canadian Indian Rights Commission
Canadian International Development Agency
Canadian Livestock Feed Board
Canadian Penitentiary Service
Canadian Pension Commission
Canadian Radio-television and Telecommunications Commission
Canadian Saltfish Corporation
Canadian Transport Commission
Canadian Turkey Marketing Agency
Canadian Wheat Board
Central Mortgage and Housing Corporation
Commissioner of Official Languages
Copyright Appeal Board
Economic Council of Canada
Energy Supplies Allocation Board
Farm Credit Corporation
Federal-Provincial Relations Office
Fisheries Prices Support Board
Fisheries Research Board of Canada
Foreign Investment Review Agency
Freshwater Fish Marketing Corporation
Great Lakes Pilotage Authority
Historic Sites and Monuments Board of Canada
Immigration Appeal Board
Laurentian Pilotage Authority
Law Reform Commission of Canada
Medical Research Council
Merchant Seamen Compensation Board
Metric Commission
National Battlefields Commission

National Capital Commission
National Council of Welfare
National Design Council
National Energy Board
National Farm Products Marketing Council
National Film Board
National Harbours Board
National Library of Canada
National Museums of Canada
National Parole Board
National Research Council of Canada
Northern Canada Power Commission
Northwest Territories Water Board
Office of the Administrator under the Anti-Inflation Act
Pacific Pilotage Authority
Patent Appeal Board of Canada
Pension Appeals Board
Pension Review Board
Prime Minister's Office
Privy Council Office
Public Archives
Public Service Commission
Public Service Staff Relations Board
Regional Development Incentives Board
Royal Canadian Mint
Royal Canadian Mounted Police
Science Council of Canada
Statistics Canada
Tariff Board
Tax Review Board
Textile and Clothing Board
The St. Lawrence Seaway Authority
Treasury Board Secretariat
War Veterans Allowance Board Canada
Yukon Territory Water Board