The Nova Scotia Ombudsman

T. J. McBride

Follow this and additional works at: https://digitalcommons.schulichlaw.dal.ca/dlj

Part of the Administrative Law Commons

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License.

Recommended Citation


This Commentary is brought to you for free and open access by the Journals at Schulich Law Scholars. It has been accepted for inclusion in Dalhousie Law Journal by an authorized editor of Schulich Law Scholars. For more information, please contact hannah.steeves@dal.ca.
The Nova Scotia Ombudsman

1. Introduction

Along with the dramatic rise of the welfare state, a concept of government generally accepted by most Canadians if not enthusiastically supported, has come a realization that the opportunities for individual grievances against government have multiplied. Each year "... thousands of administrative decisions are made, many of them by minor officials, which affect the lives of every citizen. If some of these decisions are arbitrary or unjustified, there is no easy way for the ordinary citizen to gain redress". Rather belatedly, many governments have recognized that the existing machinery to protect the citizen against unfair administrative action is inadequate and that new protections are needed. One response, and an increasingly popular one, has been to establish the office of ombudsman. Essentially, the ombudsman is a special officer appointed by the legislature to receive complaints from citizens against administrative injustice and maladministration and who has power to investigate, criticize and publicize but not reverse administrative action. To date, six Canadian provinces have established the office of ombudsman. One of these is Nova Scotia.

2. A Select Committee Rejects the Idea

On the motion of the Premier, Robert S. Stanfield, and the Attorney-General, the Nova Scotia House of Assembly, on February 18, 1964, established a Select Committee of the House to investigate whether an "ombudsman" type of official might be desirable in the province. Rather surprisingly the Select Committee, despite a very wide mandate, did not hold any public hearings.

*T. J. McBride, Assistant Professor of Law, Dalhousie University.
3. The Select Committee was composed of seven MLA's, six of whom were
The Committee decided that "... the most satisfactory way to proceed with the investigation was to invite certain prominent citizens of the Province, with varying backgrounds and professional knowledge ..." to discuss the subject with the Committee. Unfortunately, the Committee maintained no official record of its proceedings. On March 13, 1964, less than four weeks after it had been established, the Report of the Committee was tabled in the House of Assembly.

While conceding that an ombudsman "... would be of some value in this province ..." the Committee unanimously recommended "... against the appointment of an ombudsman or a parliamentary commissioner type of official at the present time ...". The Committee appeared to be influenced heavily by the argument that "... the appointment of a parliamentary commissioner type of official would commence a process of erosion which would greatly affect two aspects of present-day government in Nova Scotia, the first (being) ... the degree of intimate contact between the legislator and his constituents, and secondly, the frequency of contact between the legislator and members of the Executive Council". The Select Committee considered that "... the overall benefit to the province might be greater by increasing the concern of the representative for his constituency. The growth and depth of this concern might be better served by increasing his expense allowances, than by the appointment of another official such as an ombudsman".

One suggestion made by the Committee was that "... an examination be carried out by existing authorities of the legislation and regulations of the various departments of government which

members of the Progressive Conservative Party and the other was a member of the Liberal Party. At this time the Progressive Conservative Party held 39 of the 43 seats in the Nova Scotia House of Assembly. These figures are taken from Stanley V. Anderson's monograph, *Canadian Ombudsman Proposals* (Institute of Governmental Studies, University of California, 1966) at pp. 24-25.


intimately affect the control of the rights of the individual". Finally, the Committee thought that there might be "... some merit in the suggestion made by Lord Hewart that a Committee of the House of Assembly be formed for the purpose of observing whether and in what respect each bill may have the affect of increasing the power of bureaucracy, and whether and by what contrivance that powers' use is made irresponsible. Such a committee, the Select Committee thought, could review delegated legislation as well.

3. A Second Committee Favours the Office

At the time that the 1964 Select Committee produced its Report, not one Canadian province had established the office of ombudsman. However, during the next five years, the situation dramatically changed in that four provinces enacted legislation to establish the office. In light of these developments, it is perhaps not surprising that almost five years to the day after the appointment of the 1964 Select Committee, another Select Committee of the Nova Scotia House of Assembly was appointed, this time with a mandate to "... inquire as to whether or not the appointment of an ombudsman (was) now required or desirable". This Committee adopted a far more thorough approach to its mandate than had the earlier Committee. During the 1969 legislative session, members of the Committee studies the Reports of the Ombudsmen for the Provinces of Alberta and New Brunswick and received presentations from various people. In December 1969 the Committee held public hearings.

Nine of the ten submissions presented to the Committee at these public hearings favoured the establishing of the office of ombudsman. The lone apponent was Dr. Paul Kinsman, a former

15. This Committee was composed of ten MLA's, eight of whom were members
M.L.A., who had been a member of the 1964 Select Committee. In his brief, Dr. Kinsman stressed that, in his opinion, "the particular nature of the political system in Nova Scotia with its highbound, rigid party politics would prevent the ombudsman from fulfilling his role of an unbiased observer and that his decisions would not bear any real authority". Instead of an ombudsman, he proposed the "establishment of a joint committee, composed of members of the judiciary and the legislature. This committee, which could meet in various areas, would hear and adjudicate complaints, and then investigate the administration and legislation which originally caused the problem. The committee would report to the Legislature".  

The Nova Scotia Human Rights Commission submitted that the need for an ombudsman was clear in that many problems brought before the Commission were not within its jurisdiction. During the period October 30, 1968 to November 6, 1969, sixty complaints were received by the Commission which did not fall within its legislative framework. Of these, thirty-four cases concerned the actions of various levels of government: ten municipal, sixteen provincial, and eight federal. In practically all of these thirty-four cases the Commission had "undertaken the role of an ombudsman simply because no agency existed to do the job". However, although the Commission had been able to assist in some cases, it "had no official capacity to bring pressure to bear" to see that its recommendations were followed.

The Selective Committee's Report was tabled in the House of Assembly on February 25, 1970. The Committee recommended that the appointment of an ombudsman was now desirable but did not consider that it was within its terms of reference to "recommend what priority ought to be attached to the provision of the service". The Committee did not give a long list of recommendations. Rather, it simply recommended that "... with certain additions a Nova
Scotia Act be similar to the New Brunswick and Alberta Acts". The Committee did, however, recommend that "... serious consideration be given to empowering a Nova Scotia Ombudsman to investigate municipal complaints", although the Committee thought it advisable "... to make access to municipal files and records available to the Ombudsman only with some municipal consent thereto ...". The Committee suggested that the Act establishing the office should make it clear that the Ombudsman would have authority to receive and pass on complaints involving federal matters. Finally, the Committee considered the cost of establishing the office of ombudsman would be between $50,000 and $100,000.

4. A Change of Government

On October 13, 1970 a provincial election was held which resulted in a change of government in Nova Scotia. After fourteen years in opposition the Liberal Party, led by Gerald Regan, narrowly defeated the Progressive Conservative Party. On December 10, 1970, the Speech from the Throne contained the announcement that the new government intended to "... introduce legislation to establish the Office of Ombudsman". Four days later, on December 14, 1970, a Bill to establish the Office of Ombudsman was introduced into the Legislature by Premier Regan and given a first reading. On December 16, 1970 the Bill received a second reading. Premier Regan stated that he considered that the "... establishment of the Office of Ombudsman would have ... beneficial effects on the overall administration of government ... Citizens will know that they have an office to whom they can refer their complaints and the administrators will know that they must apply the law in a fair and equitable manner or have their decisions reviewed by the Ombudsman". However, the Premier felt

19. Ibid., at p. 27.
22. Ibid., at p. 23.
obliged to add that "... experience elsewhere has not been a wholly unqualified success ... (and that) citizens should not be led to believe that the existence of an Ombudsman will rectify all injustices ...". On December 18, 1970 'An Act to Establish the Office of Ombudsman' in Nova Scotia received the Royal Assent.

5. The Act

The Nova Scotia Ombudsman Act provides for the establishment, as an officer of the House of Assembly, of a commissioner for investigations to be called the Ombudsman. The Ombudsman is appointed by the Governor in Council and the sole restrictions placed on the person appointed are that he may not be concurrently a member of the House of Assembly or hold any office of trust or profit or engage in any occupation for reward outside the duties of his office (s.3). The Ombudsman is appointed for a five-year term and is eligible to be reappointed (s.4). On the recommendation of the House of Assembly, the Governor may remove or suspend the Ombudsman from his office, for cause or incapacity (s.5(1)).

The Ombudsman’s annual salary is set at $25,000 (s.3(4)). The Ombudsman and his staff who of necessity, will have access to government documents, take an oath of secrecy (s.3(5), s.7(2)), but an important and very necessary exception is made in section 6 of the Act, whereby the Ombudsman "... may disclose in a report made by him ... any matters which in his opinion are necessary to disclose in order to establish grounds for his conclusions and recommendations".

The principal functions of the Ombudsman are defined in section 11. Where any person is aggrieved or, in the opinion of the Ombudsman may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the aggrieved person or on his own motion, may investigate the administration by a department, or one
of its officers, of any law of the province (s. 11(1) (a)). The Ombudsman is also given power, on similar grounds, to investigate the administration by a municipal unit or one of its officers, of any law of the municipal unit. In the Act "department" is defined as "a department of the Government of Nova Scotia and includes an agency". For purposes of the Ombudsman Act, "agency" means an "agency, board, commission, foundation or corporation established under an enactment which is appointed or has a majority of its members appointed by the Governor in Council, a member of the Executive Council, or the Province and is supported by or directs the expenditure of public funds of the Province" (s.2(a)).

The Act places a number of severe restrictions on the Ombudsman's jurisdiction. Section 10 states that the Act does not apply to judges, magistrates and justices or to the functions of any court of the province, or to the deliberations and proceedings of the Executive Council.

Under section 11, the Ombudsman is not permitted to investigate any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act, whether or not that right of appeal or objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired (s.11(2) (a)).

Mental hospitals must be forwarded immediately, unopened to the Ombudsman by the person in charge of the institution (s. 12(4)). Similar provisions are found in the Alberta, New Brunswick, and Manitoba Ombudsman Acts.

Under section 12(2) of the Act a committee of the House of Assembly may refer any petition to the Ombudsman for investigation and report. In these circumstances, the Ombudsman has no discretion as to whether or not he investigates if the matter referred to him is within his jurisdiction.

Currently, Nova Scotia is the only Canadian Province where the Ombudsman's jurisdiction includes municipal affairs. The term "municipal unit" is defined in the Act as meaning 'a municipality to which the Municipal Act applies, a city or a town, and includes a municipal agency'. For the purposes of the Act "municipal agency" means 'an agency, board, school board, commission, foundation, corporation, hospital or a welfare, penal or other institution established by or on behalf of or controlled by a municipal unit or two or more municipal units'. (s. 2(f)).

These definitions are far more satisfactory than the definition 'department or agency' contained in the New Brunswick Ombudsman Act 1967. See Alan D. Reid, 'The New Brunswick Ombudsman Act' (1968) 18 U.T.L.J. 361 at pp. 362-363.

This provision if interpreted widely, limits the jurisdiction of the Ombudsman
As well as the mandatory exclusions of jurisdiction, the Ombudsman may refuse to investigate or may cease to investigate a grievance on a number of grounds; for example, where an adequate remedy or right of appeal already exists, whether or not the complainant has availed himself of the remedy or the right to appeal, or where the grievance is trivial, frivolous, vexatious, or not made in good faith (s.14(1) (a), (b)). Other grounds include situations where the grievance relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before complaining or where the complainant does not have a sufficient personal interest in the subject matter of the grievance (s.14(1) (c), (d)). A final ground, and a very interesting one, is where, upon a balance of convenience between the public interest and the person aggrieved, the Ombudsman is of the opinion that the grievance should not be investigated (s.14(1) (f)).

If the Ombudsman decides not to investigate or to cease to investigate a grievance he is required to inform the complainant and any other interested person of his decision. The Ombudsman has a discretion as to whether he gives any reasons for his decision (s.14(2)). Where the Ombudsman decides to investigate a grievance he must, in the case of a grievance relating to a department, notify the Minister and the chief officer of the department. Where the grievance relates to a municipal unit, the Ombudsman must notify the chief officer of the unit (s.15). After informing these parties, the Ombudsman then arranges to hold a private investigation into the complaint. In conducting his investigation he may hear and obtain information from any person and may make any inquiries. He can, very significantly. For a useful discussion on this point see Reid, op. cit., fn. 30, at pp. 364-366. Reid’s view is that “... the Ombudsman is barred absolutely from investigating only those decisions for which review on the merits has already been provided by statute, and has a further discretion (under section 14 (1) (a) of the Nova Scotia Act) to refuse to investigate where there is, in his opinion, adequate relief by prerogative remedy or adequate relief under a right of appeal which, although provided by statute falls short of the standards of... (section 11(2) (a) of the Nova Scotia Act) in that it does not go to the merits”.

32. Where any question arises as to the Ombudsman’s jurisdiction to investigate a particular grievance, the Ombudsman may apply to the Appeal Division of the Supreme Court of Nova Scotia for a ruling. (Section 11(3)).
33. See the discussion contained in footnote 31.
34. An identical provision is contained in the New Brunswick Ombudsman Act (S.N.B. 1967, c. 18, s. 15 (1), (f.).
35. The term “chief officer” is defined in the Act as including ‘a Deputy Minister,
if he so desires, hold hearings but, with limited exceptions, no person is entitled as of right to be heard by the Ombudsman (s.16(1), (2), (3)).

The Ombudsman may at any time during or after an investigation consult the Minister or the chief officer of the department or municipal unit concerned in the matter of the investigation (s.16(6)). Wide powers are given to the Ombudsman to enter any premises occupied by any department or municipal unit, provided that he has first informed the chief officer of the department or unit of his intention to enter the premises (s.19).

The Ombudsman can summon and examine any officer of a department or municipal unit, any complainant, and with the approval of the Attorney-General, any other person whom the Ombudsman considers can give any information (s.17(2)). The Act provides that any person summoned before the Ombudsman may be compelled to produce any documents or papers which the person has in his possession or under his control (s.17(1)). Full disclosure must be made except where the person can show that he is bound by any statute to maintain secrecy (s.17(4)). However, despite this provision, where the Ombudsman has the complainant’s prior written consent, the Ombudsman may require such a person to supply information or answer questions or produce documents or papers relating solely to the complainant (s.17(5)).

The Act purports to restrict the application of the doctrine of crown privilege. Section 18(2) provides that the rule of law authorizing or requiring the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure would be injurious to the public interest does not apply to proceedings before the Ombudsman. "The intention of the

the head or chief executive officer of an agency, the mayor of a city or town, the warden of a municipality . . . , and the head or chief executive officer of a municipal agency'. (s. 2(b)).

36. These exceptions occur where, during an investigation, the Ombudsman is satisfied that there is prima facie evidence that either a department or one of its officers administered a law of the Province, or a municipal unit or one of its officers administered a law of the municipal unit or any law of the Province that applies to the municipal unit, in such a way as to cause a grievance. When this occurs the Ombudsman must advise the Minister and the chief officer of the department or the municipal unit, and the officer causing the grievance, and give each an opportunity to be heard. All these parties are entitled to counsel at the hearing (s. 16(4), (5)).

37. Similar provisions are contained in the Alberta (S.A. 1967, c. 59, s. 18(4)), and New Brunswick (S.N.B. 1967, c. 18, s. 18(5)) Ombudsman Acts.

38. Note, however, section 18(1) under which the Attorney-General can certify
legislature, obviously was to relieve the ombudsman from the frustrations commonly experienced by courts in bowing to statutory and prerogative privileges to withhold material evidence in legal actions; an Ombudsman cannot function if he is denied access to administrative files." 39

The Act sets out a number of grounds upon which the Ombudsman may, after carrying out an investigation, make a recommendation or a report. If the Ombudsman considers that a grievance exists, or may exist, because the administration of a law, be it of the Province or of a municipal unit, is unreasonable, unjust, oppressive, or discriminatory, or, although conforming to law, results in injustice, oppression, or discrimination, the Ombudsman is required to report his opinion, his reasons, and any recommendation to the Minister and the chief officer if the investigation involves a department, or to the chief officer of the municipal unit, if the investigation involves a municipal unit (s. 20(1)(a)). 40

In his report the Ombudsman may recommend that the matter be referred to the department or municipal unit for further consideration, that the decision be cancelled or varied, that any practice or any law on which the decision was based be reconsidered, or that any other steps should be taken (s. 20(1)(f)-(l)). The Ombudsman may also request that the particular department or municipal unit notify him within a specified time of the steps it proposes to take to give effect to his recommendations (s. 20(2)). If no action is taken upon the Ombudsman’s recommendation within the specified time, or if the department or municipal unit acts in a manner that the Ombudsman considers unsatisfactory, the Ombudsman may send a copy of his report and recommendations to the Governor in Council that the giving of any information, the answering of any question or the production of any document or paper may disclose deliberations or activities of the Executive Council or of any member of the Council relating to matters of a secret or confidential nature and would be injurious to the public interest. If a certificate is issued, the Ombudsman may not require that the information or answer be given or the document be produced. Under the Alberta, New Brunswick and Manitoba legislation, the Ombudsman is required to report ‘the giving of such a certificate’ by the Attorney General to the provincial legislature.

40. The Ombudsman is also required to report where he considers that a law is being administered under mistake of law or fact, in whole or in part, or is being administered wrongly or contrary to law (s. 20(1)(b)-(d)). A final ground is where the Ombudsman is of the opinion that a law is being administered by using a discretionary power for an improper purpose, or on irrelevant grounds or on the
(if the case involves a department) or to the council of the municipal unit (s.20(3)). After doing this the Ombudsman may make a report to the House of Assembly. The Ombudsman is required to include with his report a copy of any comments made by the department or municipal unit upon his recommendations (s.20(4)).

The Act requires the Ombudsman to make an annual report to the House of Assembly. Finally, the Ombudsman is given authority, in the public interest or in the interests of any person, department or municipal unit, to publish reports relating generally to the exercise of his functions under the Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the House of Assembly (s.24).

6. An Ombudsman is Appointed

On April 15, 1971, Dr. Harry Smith was appointed Nova Scotia's first Ombudsman. In announcing the appointment Premier Regan said that the "flawlessly bilingual" Dr. Smith, a 55 year old Professor of French at Nova Scotia Teacher's College at Truro and former President of King's College, Halifax, was "the one man who filled all the requirements and needs" to be the Province's first Ombudsman. By way of emphasising the non-political nature of the appointment, the Premier said that the appointment had "been discussed with and approved by" the leader of the Opposition, Progressive Conservative Party leader, John Buchanan, and NDP leader Jeremy Akerman. In the interests of greater co-operation among the Maritime Provinces, Premier Regan suggested that Dr.

---

41. Where the Ombudsman makes a recommendation and the department or municipal unit does not act upon it to the Ombudsman's satisfaction, the Ombudsman is required to inform 'the complainant of his recommendation and may add any comment' (s. 21(1)). In situations where this provision does not apply the Act provides that the Ombudsman 'shall in any case inform the complainant in the manner and time he deems proper of the result of the investigation' (s. 21(2)).

42. The Ombudsman is not permitted to include in any report made under the Act, any finding or comment that is adverse to any person unless the Ombudsman gives that person an opportunity to be heard (s. 20(5)).

43. *Halifax Chronicle Herald*, 16 April 1971. There had been some suggestion
Smith might also serve as Ombudsman for New Brunswick and Prince Edward Island.\textsuperscript{44}

On September 1, 1971, Dr. Smith commenced his duties. He was reported at the time as saying that he hoped ‘that one effect of his investigation of the citizen complaints during his five-year term of office would be the updating of some provincial and municipal laws’. Dr. Smith, however, warned that the provincial Ombudsman had ‘no direct authority to bring about changes in legislation’.\textsuperscript{45}

7. An Unfortunate Beginning: The Case of the Dismissed Truckdriver

Shortly after the Ombudsman’s office became fully operational, a truckdriver complained to the Ombudsman that he had been dismissed from the Department of Highways for political reasons. The Ombudsman decided to inquire into the matter. He commenced his investigation by giving the complainant’s file to the Deputy Minister of Highways and asking for comment. Sometime later the Deputy Minister wrote to the Ombudsman advising him that the truckdriver was to be reinstated, with immediate effect. Considering his investigation to be over, the Ombudsman relayed this information to the complainant. A few days later, however, the Minister of Highways announced that the driver would not be rehired, saying that an investigation by his Department showed clearly that ‘the right decision was to fire him’. Questioned about the role of the Ombudsman in the matter, the Minister commented that ‘he didn’t know whether the Ombudsman had investigated it because he hadn’t been talking to him’.\textsuperscript{46}

The apparent ‘overruling’ of the Ombudsman created a political storm in Nova Scotia. Opposition MLA’s attacked the Minister of

\textsuperscript{44} The Premier’s suggestion was enthusiastically supported by the \textit{Halifax Chronicle Herald}. See the effusive editorial in the \textit{Chronicle Herald} of 19 April 1971. ‘The idea was not taken up.’ (Rowat, Op. cit. fn. 1 at p. 101).

\textsuperscript{45} Halifax Chronicle Herald 1 September 1971. Dr. Smith stated that he had already ‘dealt with’ approximately 30 appeals from citizens. Of these cases, 60% involved problems outside the ombudsman’s jurisdiction.

\textsuperscript{46} Halifax Chronicle Herald, 27 October 1971. The Minister explained that the driver had been suspended by his local superintendent, then reinstated on full pay pending a full investigation by the Department of Highways into the firing. This investigation confirmed the superintendent’s decision that the driver was not a satisfactory employee and should be discharged. The Minister said he was merely...
Highways, claiming that he had effectively destroyed the Office of Ombudsman. NDP leader Jeremy Akerman wrote a strongly worded newspaper article in which he listed, what he considered to be, the many defects in the Ombudsman Act and apologized to Nova Scotians for having voted in favour of spending $25,000 of taxpayer's money "for what has turned out to be a piece of window dressing". The Halifax papers demanded that the government clarify the exact role or function the Ombudsman is supposed to fulfill. The Ombudsman joined the chorus by accusing the Minister of Highways of "undermining the confidence of Nova Scotians in the Office of Ombudsman". The Attorney-General reminded the Ombudsman that he had "no power to override the decisions of cabinet ministers".

The controversy continued unabated for many weeks. Early in December, 1971, the Leader of the Opposition demanded that the Premier make a policy statement regarding "the powers and office of Nova Scotia's Ombudsman" or "vacate the office instead of making it a sham". The Government, however, did not abolish the office, nor did Dr. Smith resign. Public statements made by the Ombudsman some months after the controversy subsided indicated that he felt very chastened by the experience.

acting on the Department's recommendation and claimed his decision was in no way 'an attempt to overrule or undermine the office of ombudsman'. (Halifax Chronicle Herald, 28 October 1971).

48. '$25,000 a year expensive to find out you're wrong' Halifax Chronicle Herald, 17 November 1971.
50. Halifax Mail Star, 20 November 1971. The Ombudsman said that the Minister's action, in overruling the Deputy Minister, made the Ombudsman appear "... as part of a political plot, a rubber stamp, window dressing. I am none of these things and do not intend to be," said Dr. Smith. The Minister, in reply, issued a public statement in which he stated that he was a 'supporter of the office of ombudsman' but said that there appeared to be 'some misunderstanding of the relationship between the ombudsman's office and a minister of the crown' . . . Halifax Mail Star, 23 November 1971.
51. Halifax Chronicle Herald, 22 November 1971. Unfortunately the Attorney-General's statement had no relevance to the particular dispute as the only decision overruled had been that of the Deputy Minister of Highways. See the editorial in the Halifax Chronicle Herald, 29 November 1971.
52. Halifax Mail Star, 2 December 1971.
53. During February 1972 Dr. Smith was reported as saying that 'he felt like quitting early in his stint as Nova Scotia's first Ombudsman' but now he felt that
the Minister, or the complainant from strong criticism. "Ill-timing, over anxiousness and enthusiasm at the start (shared by the complainant, the Ombudsman and a Minister of the Crown) added to the presence in Nova Scotia of deep-sealed political awareness and prejudice, caused the work and value of the Ombudsman to be subjected to early criticism and public scrutiny." The Ombudsman reiterated his view that the Minister acted precipitously and without restraint, and thus caused the office of Ombudsman to be thrown into an early stage of jeopardy.

8. The Ombudsman’s First Report

Dr. Smith’s first report, covering the period 1 September — 31 December, 1971 was tabled in the Nova Scotia House of Assembly on February 25, 1972. During his first four months in office the Ombudsman received 227 complaints. Of these complaints, 66 were found to be outside the Ombudsman’s jurisdiction, information was given on 46 and 55 were found by the Ombudsman not to be justified. Of the remainder, 16 were rectified (3 of these only partially), 4 were referred to the appropriate department, a further 40 were withdrawn and 36 were still under investigation at the end of the year.

‘he had come to terms with his new job and the provincial government’. Halifax Chronicle Herald, 15 February 1972.

54. The complainant’s role in the controversy is very interesting. While the Ombudsman was conducting his investigation the complainant wrote to the Ombudsman claimed that he too was politically involved. After the Minister’s decision was announced the complainant was reported as saying that ‘he felt let down by the Ombudsman and that, in his view, the whole thing makes the office of ombudsman to be nothing more than a political dummy’. (Halifax Chronicle Herald, 27 October 1971). A few days later, the complainant reiterated his claim that the firing was political, as he was well known as a Progressive Conservative Party supporter. He said that he had in fact been told during April, 1971, by the President of the local Liberal Party association that he would be fired (Halifax Chronicle Herald 30 October 1971). When the Ombudsman’s First Report was published the complainant attacked Dr. Smith claiming that “he should admit his handling of my case has been lousy. In fact, it has done me more harm than good”. (Halifax Chronicle Herald, 28 February 1972).


59. Of these 36 complaints, 10 were rectified, information was given on 14, 8
The distribution of complaints is interesting. Complaints against cities, municipalities, towns and other provinces totalled thirty-nine. These complaints involved such matters as the tax assessment on cottages, school bus service, the location of a town dump near a dwelling house, payment of sidewalk charges, alleged irregularities in a municipal election, taxpayer's rights to attend municipal meetings, and the position of street lights in a town. Of the complaints involving provincial departments, twenty-eight were made against the Department of Highways, sixty two against the Workmen's Compensation Board, fifteen against the Department of Public Welfare and fourteen against the Department of Education. Not surprisingly, the Ombudsman received a large number of complaints against Federal Departments and Agencies. Unfortunately these complaints were outside the Ombudsman's jurisdiction, as were the fourteen complaints involving private businesses. The Ombudsman does not indicate in his report how he dealt with these complaints but it would appear that he was at least able to give these complainants information as to how and from whom they should seek redress.

The predominant theme of the Ombudsman's First Report was a call for confidence in his office. Dr. Smith did not consider that he had been in office long enough to be able to make formal recommendations for changes in the ombudsman's powers or functions. He did, however, consider that, "an assistant to the Ombudsman would be required before too long". Dr. Smith's sole suggestion was that "serious consideration should be given to

were found not justified, 1 was outside the Ombudsman's jurisdiction and 3 were withdrawn. Second Report of the Ombudsman, January 1, 1972 to December 31, 1972 (Queen's Printer, Halifax, Nova Scotia, 1973) at p. 62.

60. The Ombudsman devotes 2 pages of his report to justifying his role in the case involving the 'politically abrasive truckdriver'. He also discusses a case involving a signwriter (also an active supporter of the Progressive Conservative Party) who was fired from the Department of Highways for drawing a cartoon 'poking fun' at the state of road signs in his county. (Halifax Mail Star, 23 November 1971). The signwriter complained to the Ombudsman who recommended that he be reinstated. (Halifax Chronicle Herald, 11 February 1972). The Minister of Highways, however, refused to follow the Ombudsman's recommendation (Halifax Chronicle Herald, 15 March 1972). The signwriter's reaction was to announce that he 'was toying with the idea of offering himself as a Tory candidate in the next election'. (Halifax Mail Star, 22 March 1972).

the possibility of moving the office of Ombudsman to the "hub" of the Province, Truro". This was because most complaints came from outside the Halifax-Dartmouth area.62


The Second Report of the Ombudsman tabled in the Nova Scotia House of Assembly during March 1972, reveals a settling down of the Office of Ombudsman in Nova Scotia.63 The Ombudsman considered that it was fair to say that the year 1972 had gone well "as the public had shown an "increasing awareness" of his office and the functions of the Ombudsman had become better known by the provincial and municipal jurisdictions".64

During 1972 the Ombudsman received 297 complaints65 of which 26 were still under investigation at the end of the year.66 In his Report the Ombudsman classified his handling of the remaining 271 complaints in the following way: rectified (42); not justified (74); information given (110); withdrawn (4); dismissed (24); referred (12); and information received (5). Unfortunately, as with his First Report, Dr. Smith, apart from the giving of a few examples


62. Op. cit., fn. 57, at p. 4. Some dissatisfaction with the Ombudsman's Report was apparent within the Nova Scotia legislature. One Progressive-Conservative MLA, who claimed that many MLA's had been frustrated in dealing effectively with the Report, urged "that a committee of the legislature be established to deal with the annual report of the Ombudsman." Premier Regan said that "some variation of the suggestion might have considerable merit" but had 'reservations about the Ombudsman appearing before a committee of the house because the man must not become involved in politics". (Halifax Mail Star, 16 May 1972). The Ombudsman, however, did not consider the idea of a 'committee of the House to support him in his work' to be feasible or desirable because 'the Ombudsman would almost certainly become associated with things political, with politicians and political powers'. (Second Report of the Ombudsman, January 1, 1972 to December 31, 1972 (Queen's Printer, Halifax, Nova Scotia, 1973) at pp. 8-9.)


65. This figure does not include the 36 complaints still under investigation at the end of 1971.

66. Of these 26 complaints, 5 were rectified, information was given on 2, 9 were found to be not justified, 3 were withdrawn, 3 were dismissed, a recommendation was given on one complaint and the remaining 3 were referred to appropriate agencies. Third Report of the Ombudsman January 1, 1973 to December 31, 1973. (Queen's Printer, Halifax, Nova Scotia, 1974) at p. 79.
of complaints, does not discuss his manner of classification thereby making it difficult to review the success or otherwise of his efforts.

Certain aspects of Dr. Smith's approach to the office can, however, be gleaned from his reports. First, there is Dr. Smith's evolving view on the difficult problem of jurisdiction. During 1972, Dr. Smith attempted to provide as much informal assistance as he could when confronted with complaints outside his jurisdiction. The Ombudsman advised complainants of their rights of appeal or referred them to the appropriate persons. This approach is to be contrasted with the Ombudsman's approach during his first few months in office, whereby he simply 'turned down' most cases if they were outside his jurisdiction. A second aspect is Dr. Smith's interpretation of the powers of the office. He quickly recognized that in many disputes between citizens and civil servants, the complaints arose out of personality clashes, misunderstandings, or mutual confusion. In such instances Dr. Smith chose to play the role of intermediary rather than inquisitor.

10. And a Third . . . .

In the Third Report of the Ombudsman, a consolidation of the trends contained in the Second Report is apparent.\textsuperscript{67} The Ombudsman considered that the "most noteworthy happening or development during (1973) was to witness the increasing human awareness of government toward some of the problems of the people"\textsuperscript{68} Dr. Smith "found that by being persistent in his overtures towards Ministers of the Crown, and steadfast in the presentation of his point of view, certain Ministers (were) brought to a deeper appreciation of his recommendations, giving rise to more agreement than disagreements".\textsuperscript{69} An important factor, in explaining this encouraging trend, was the greatly improved communication between the Ombudsman's office and the various government departments. One such department was the Department of Highways. During 1973,\textsuperscript{67, 68, 69}

\textsuperscript{67.} Third Report of the Ombudsman January 1, 1973 to December 31, 1973 (Queen's Printer, Halifax, Nova Scotia, 1974). During 1973, the Ombudsman received 335 complaints. Of these 45 were rectified, 60 were found to be not justified, information was given on 100, 8 were withdrawn, 23 were dismissed and 50 were referred to the appropriate agency. In only 5 complaints did the Ombudsman consider that he had no jurisdiction. Forty-eight complaints were still under investigation at the end of 1973.

\textsuperscript{68.} Third Report of the Ombudsman, at p. 3.

\textsuperscript{69.} Idem.
this department displayed "an appreciable and growing awareness that some people may have justifiable complaints" which need to be rectified by the Department.

As to be expected, a number of complaints involving the agencies of the Federal Government, were received by the Ombudsman. Although outside his jurisdiction, Dr. Smith continued his policy of referring complainants to the appropriate agency or of giving complainants information as to their rights and obligations. The Ombudsman found the officials in the Federal Government agencies 'to be very co-operative' and as a result he was able to actually rectify some of the complaints.

Complaints involving cities, municipalities and towns rose from 47 during 1972 to 60 during 1973. Dr. Smith has found complaints involving local bodies to constitute 'a difficult part of his work'. Some local bodies when faced with an inquiry by the Ombudsman have been much less flexible than many of the provincial departments, in that they 'are not yet as willing as departments to admit that they have made an error.' However, Dr. Smith is confident that this situation will change in the near future.

11. Conclusion

After an inauspicious beginning, the office of Ombudsman appears to be well established in Nova Scotia. Dr. Smith feels that his office "has come an appreciable way towards establishing itself and gaining the confidence and respect of the people of the Province of Nova Scotia". A reflection of the increased acceptance of the office is the dramatic increase in the number of complaints received during the first 6 months of 1974. Up to 30 June 1974, 517

71. Idem.
72. During 1973, the Ombudsman received 28 complaints involving federal departments and agencies.
75. Idem.
76. Dr. Smith remains acutely aware of the repercussions on the credibility of his office that the 'truckdriver' and 'sign painter' cases produced. Complainants with problems which have any 'political overtones' are now 'encouraged' to see their M.L.A. rather than use the offices of the Ombudsman. (Interview with Dr. Smith, 22 July 1974).
complaints had been received.\textsuperscript{78} One effect of this increase in the number of complaints has been to place a severe strain on the resources of the Ombudsman's office. Dr. Smith has encountered considerable difficulty in convincing the Nova Scotia Government of the need for more staff and as a result he has had to 'resort to using the media as a means of putting pressure on the Government'.\textsuperscript{79} His primary concern is that the level of efficiency of his office may be lowered, something which he considers will lead to a rapid disillusionment with the office.\textsuperscript{80} In light of the unfortunate effects of the exposure of the limitations of the Ombudsman concept at the beginning of Dr. Smith's term, it is hoped that the government will accede to his request. This is essential if the office of ombudsman is to continue to enjoy the strong 'mutual trust and confidence' which has been developed, 'not only between the Ombudsman and the Ministers, Deputy Ministers and Department heads, but also between the Ombudsman and the people of the Province'.\textsuperscript{81}

\textsuperscript{78} Interview with Dr. Smith, 22 July 1974.
\textsuperscript{79} Dr. Smith has received Provincial Treasury Board approval to hire a further investigator. Advertisements inviting applications for the position appeared in Nova Scotia newspapers during June, 1974.
\textsuperscript{80} Interview with Dr. Smith, 22 July 1974.
\textsuperscript{81} Third Report of the Ombudsman, at p. 4.