
A Primer on Federal Specialty Ombuds Offices

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Many studies have focused on the various Officers of Parliament even though there is little agreement about the classification of such Officers. Less has been written about Canadian Ombuds Offices which include some Officers of Parliament and others that are part of the Executive. Speciality Ombuds Offices encompass a range of variations as demonstrated by the eight chosen for consideration in this article. The heads of these offices and other senior officials were interviewed in May 2010.

At the outset there is need to clarify usage of the term “Ombudsman”. Statutes and other official references usually pertain to the position of the Ombudsman, while common usage may either be to the position or to the current incumbent who occupies that position. It is thus necessary to be cognizant of the context in which the term is used. We will often use the term “Ombuds Office” where appropriate because the staff in the Ombudsman’s office usually plays a key role in processing and deciding public complaints.

The Classical Model

To revisit an old idea, Parliament’s task is not to govern but to make certain that Government does govern in the public interest, fairly, and impartially according to law. This task includes the monitoring of administrative decision-making – a task that has become more difficult with the growth of the welfare state following World War II, as more administrative decisions of an increasingly complex and technical nature were implemented by specialists in the public bureaucracy. Not surprisingly, with this growth of the modern administrative state, there was an accompanying increase in complaints of alleged administrative wrong-doings with no efficient means for their resolution. It was in this context that Sir Guy Powles, New Zealand’s first Ombudsman, expounded for his Canadian audience in the mid-1960s how and

why the Ombudsman was the best mechanism to investigate complaints of administrative wrong-doing.¹

This notion of being an independent officer of Parliament is fundamental. We may immediately recall R. MacGregor Dawson’s pioneering work on official independence, *The Principle of Official Independence*.² In addition, there have been more recent works on the respective roles of some of the independent officers of Parliament.³ Together, these sources provide disparate examples of official independence in Canada including crown corporations, regulatory commissions and tribunals, Office of the Auditor General, Elections Canada, the judiciary, royal commissions and other commissions of enquiry, Public Service Commission, Canadian Human Rights Commission, and the Royal Canadian Mounted Police. Within the liberal-democratic context of Canada, each of these entities has acquired for unique reasons a degree of independence from electoral-partisan political direction. The need for an arms-length relationship from both the executive and Parliament is intended to guarantee impartiality in operations and decision-making, such as the need for crown corporations to operate along business-like lines or for regulatory agencies to exercise quasi-judicial decision-making powers. When it comes to the Ombudsman institution, however, it is so relatively new to Canada that it received no coverage by J. E. Hodgetts in his 1973 classic study of the physiology of the Canadian public service.⁴

Thus, we need to turn to the experience of the provinces – where Alberta and New Brunswick were the first to adopt the Ombudsman in 1967 – for guidance as to the nature of the particular arms-

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length relationship found with the Ombudsman. It is from these provincial (and one territorial) examples spanning over forty-plus years of experience that we may glean the essential attributes of the classical Ombudsman.⁵

Typically, the independence associated with the classical Ombudsman model stems initially from its mandate. This is not to suggest that the process of creating an OmbudsOffice is always free from hassle nor devoid of partisan politics. For example, four of Canada's ten provincial and territorial OmbudsOffices were enshrouded in some controversy when initially established.⁶ Rather, by being mandated by statutory law to investigate public complaints of alleged administrative wrong-doings, the classical OmbudsOffice is granted a degree of legitimacy not necessarily found with complaint resolution mechanisms established by executive discretion. By being established through open, public debate, involving all parties in the legislature, the classical OmbudsOffice usually has the appearance of being an independent institution from the get-go. At the same time, there is the annual reporting back to the all-party legislature, as well as the annual funding process once again by the legislature that serves the same purpose of ensuring transparency, accountability, and legitimacy. It is also worth noting that the mandate assigns the classical OmbudsOffice jurisdiction over the whole public service where administrative decisions impact the populace. Even though the definition of what constitutes the "whole public service" varies from one jurisdiction to another,⁷ the classical OmbudsOffice's wide and diverse scope indirectly enhances its independence by ensuring that it does not develop too close a relationship with a single clientele group.

We also see the independence of the classical model with the appointment process. As is generally the case with government in Canada, the executive has the legal responsibility to appoint the Ombudsman. But as with the appointment of other officers of Parliament (and provincial legislatures), the convention is usually for the executive's decision to be preceded by agreement of the parliamentarians. The Ombudsman normally has security of tenure by being appointed for a fixed term as specified in the enabling statute and can only be removed for cause before the expiration of that term. Structurally, the independence of the classical OmbudsOffice is also evident with the incumbent being in full charge of recruiting staff members and organizing the office to process the handling of public complaints. One source of potential difficulty, however, is that the OmbudsOffice's budget depends upon the Government's Budget, and each year the Ombudsman

must approach the executive with a budget request. The Ombudsman's annual reports (and other reports) are submitted to the Speaker of the legislature, and thereby to all elected representatives and the populace at large.

If we take a closer look at how the classical OmbudsOffice works in respect to dispute resolution, as Gregory Levine has done,⁸ its decision-making style stands in sharp contrast to that of the judiciary. Whereas the latter is adversarial in nature and relies upon the power to issue binding orders, the OmbudsOffice relies upon a combination of investigative and persuasive skills, and, ultimately if necessary, the possibility of making the case public through its reports to Parliament. Yet another characteristic is that the OmbudsOffice only considers a grievance once all existing administrative grievance-handling appeal options have been exhausted. That is, since most administrative entities in the public sector have their own internal grievance-handling mechanisms, an aggrieved individual must first follow exhaustively that route before approaching the OmbudsOffice.

There is great variation in staff resources among Canada's ten provincial and territorial OmbudsOffices that has a bearing on the institution's capacity, but most complaints are handled quickly usually within a month.⁹ This quickness of service is one of the more attractive qualities of the Ombudsman institution. Besides responding to individual complaints of alleged administrative wrong doing, with the exception of the Yukon office, Canada's provincial and territorial OmbudsOffices have the power on their own motion to initiate an investigation of a systemic problem. In fact, there seems to be a greater willingness today for these OmbudsOffices to exercise this power – to be more proactive rather than simply responding to individual complaints. In a similar fashion, OmbudsOffices frequently reach out to certain demographic groupings – youth, seniors, imprisoned inmates – that have common concerns in order to listen to them and to educate them as to the OmbudsOffice's availability. It is also not uncommon for OmbudsOfficers to meet administrators in a preventive fashion to discuss and "iron-out" recurring types of problems. Finally, we also see today the use of modern technology by OmbudsOffices as in the use of web sites¹⁰ in order to be more readily available in serving the public, as well as a maturing of the Ombudsman profession such as in the use of Special Ombudsman Response Teams (SORTs) by the Ontario OmbudsOffice¹¹ and the refinement of investigative techniques.¹²

When it comes to investigating specific complaints, the classical Ombudsman is not part of the public service and does not take direction through the executive's

chain of command. Rather, within his/her mandate, the Ombudsman has full operational independence to handle as it wishes the public's complaints; indeed, if necessary in order to investigate a complaint, the OmbudsOffice has the authority *in camera* to access the public servants and documents involved in a complaint. It is pertinent to note, however, that the OmbudsOffice is not anti-administration, although some administrators may initially be suspicious if not defensive about coming under the monitoring of an "outside" watchdog. The fact of the matter is that an OmbudsOffice often finds that a complaint is simply a matter of misunderstanding that only requires clarification, and, in many other situations, finds in favour of the administrator's original decision. It also needs to be kept in mind that an Ombudsman cannot legally reverse an administrative decision, but at most can only make recommendations or publicize the issue.

Such then is our understanding of the classical legislative Ombudsman model. It is at this juncture that we need to witness the establishment of various spin-offs of the Ombudsman idea. Often referred to as the executive Ombudsman model, these new entities lack the formal appearance of being independent. The executive OmbudsOffices in the public sector usually do not have a legislated mandate but are created on (and may be redirected at) the whim of the executive (cabinet, minister, or board of directors). As well, there may be limitations in the OmbudsOffice's scope of jurisdiction, and a lack of a reporting mechanism to an all-party body like Parliament. Some scholars like the late Donald C. Rowat have been very critical of the use of the "Ombudsman" name by these executive bodies. Others, including Michelle LeBaron's coverage of executive, organizational, and advocate OmbudsOffices,¹³ and Linda Reif's examination of new variants of OmbudsOffices,¹⁴ have been more accepting. This debate has been noted in earlier versions of this paper,¹⁵ so will not be repeated; instead, we will proceed directly to examine eight federal specialty OmbudsOffices.

Eight Federal Specialty OmbudsOffices

The federal government's resort to specialty Ombudsoffices is relatively recent, so much so that Hodgetts did not cover them in his 1973 examination of structural heretics.

Commissioner of Official Languages

As the oldest of our eight case studies, the Office of the Commissioner of Official Languages was spawned by the considerable research effort and discourse generated by the Royal Commission on Bilingualism and Biculturalism of the late 1960s, and

was then originally mandated by the *Official Languages Act* of 1969 with the office opening the next year. On close examination, we see that except for the title the Commissioner of Official Languages position closely approximates that of the classical Ombudsman. In fact, the Commissioner is mandated legally an independent officer of Parliament, with the Commissioner reporting annually to Parliament. These arrangements allow for clear lines of accountability, impartiality in operations, and visibility to the public. As well, even though the Commissioner is limited to grievances in respect to official languages (English and French), the Commissioner's scope of jurisdiction covers the whole public sector. The legitimacy of the Commissioner's work is also no doubt enhanced by the convention of alternating between Anglophone and Francophone in appointment to the seven-year position. In addition, traditionally, somebody from outside of government and with a high public profile in respect to language policy is appointed to the position – the current incumbent (Graham Fraser) is a case in point on both criteria.

A distinguishing feature of the Office of the Commissioner of Official Languages is that it is not just mandated to handle complaints; in fact, if necessary, it may appeal to the Federal Court on a complainant's behalf. Besides the handling of complaints, the Commissioner's office is also mandated to research and educate the public in respect to language issues and to monitor service in both languages by federal institutions with the aim of making recommendations for improvement. When interviewed, Graham Fraser mentioned that he mainly does educational and promotional work, leaving the handling of complaints and compliance work to his compliance officers.

So, as an institution, the Office of the Commissioner of Official Languages is multifaceted, and, with its relatively lengthy history, it has a very credible track record. As well, of the eight case studies, it has one of the largest staffs at about 170 people with a budget of about \$20 million. We can thus describe the Official Languages Commission as a mature organization. In many ways, it is a specialty OmbudsOffice that meets the standards of the classical Ombudsman model in respect to matters of official language policy.

Privacy Commissioner

Like the Languages Commissioner, the Privacy Commissioner is an Officer of Parliament that lends the office the highest degree of independence and credibility. Moreover, the mandate of the Privacy Commissioner is statutory based, assigning the office the responsibility to investigate complaints under two laws – the *Privacy Act* and the *Personal Information*

Protection and Electronic Documents Act. Finally, many of the Privacy Commissioner's reports go directly to Parliament and are made accessible online to the public. In addition, the Privacy Commissioner and her Deputy Commissioners frequently testify before parliamentary committees of both houses of Parliament. An archival list of current Privacy Commissioner Jennifer Stoddart's parliamentary appearances is available on the office's web site. Thus, in respect to the Privacy Commissioner's links with Parliament, the relationship is perhaps the most consistent with the classical OmbudsOffice ideal.

Actually, the Privacy Commissioner has a relatively broad mandate – to resolve individual complaints, to investigate incidents that come to its attention, to audit compliance with federal privacy laws, and to engage in both research of privacy issues and outreach educational work. We thus see that the Privacy Commissioner is mandated an advocacy role “to protect and promote the privacy rights of individuals.” Yet another structural attribute that needs to be identified is the fact that privacy concerns run the gamut of government activities, so that the Privacy Commissioner's scope of responsibility covers all departments and other units of government. As well, because there are so many new challenges to privacy due mainly to technological advances, the Office of the Privacy Commissioner must keep abreast of these changes, which in turn necessitates a proactive orientation. Finally, since 2004, there has been an External Advisory Committee that is composed of people drawn from a wide range of fields, meets twice a year, and provides directional advice to the Privacy Commissioner in respect to emerging issues affecting privacy matters.

For all of these reasons, we see the Office of the Privacy Commissioner in the same category as the Office of the Commissioner of Official Languages, both being highly matured institutions. As officers of Parliament, they possess the greatest degree of official independence and are effective government-wide monitors of administration, meeting the classical Ombudsman ideal.

Military Ombudsman

The Military OmbudsOfficer, whose formal title is the “National Defence and Canadian Forces Ombudsman,” has enjoyed a noteworthy reputation since its establishment in 1998. The first incumbent, André Marin, served during the office's key formative years and did much to establish the office's record of credibility. It also became a model for other specialty OmbudsOffices in general. (Marin subsequently moved on to become Ontario's current Ombudsman; and a leading advocate of the modern Ombudsman movement in Canada.)

A moment of reflection on the formal title, as noted above, is quite revealing because the Military OmbudsOffice is not restricted to only military personnel but also is available to civilian employees of the National Defence department and others including immediate family members, cadets, and individuals on exchange with or seconded to the Canadian forces. Moreover, coverage is not restricted to individuals with a current connection, but the Military OmbudsOffice's jurisdiction also includes former military personnel, public employees, and their immediate family members.

In terms of its official independence, the Military OmbudsOffice is not part of the management chain of command of the military or the defence department – a separation that provides for impartiality and fairness. However, the Military OmbudsOffice does report directly to the Minister of National Defence and receives directions from the same, and the Military OmbudsOffice's budget is part of the department's budget. These connections with the minister and the department have the potential to be problematic, but incumbent officeholders and staff have established a sound performance record of independence. The fact that the Military OmbudsOffice maintains its own very effective web site allows it to communicate directly with its clientele, all parliamentarians, the media, and the general public; indeed, as we see elsewhere, digital democracy has the potential to go around the legal formality of statutory law to allow public entities to be transparent and accessible to the populace.

We also find that the Military OmbudsOffice submits its annual reports and special reports to the minister, who must then legally release annual reports to the public within sixty days and special reports in twenty-eight days. As well, by those dates, these reports are also widely available on the Military OmbudsOffice's web site.

Another, most pertinent feature of the Military OmbudsOffice is the presence of an advisory committee that consists of ten voluntary members, including current military personnel from different ranks, veterans, and family dependents. As such, this Advisory Committee provides for an avenue of accountability by keeping the Military OmbudsOffice apprised of the concerns that are most pressing from the perspective of its clientele. When interviewed, Military OmbudsOfficer Pierre Daigle remarked that he engages in outreach in order to maintain contact with the concerns of his clientele and to make his office's availability better known. This outreach is conducted through a one-week visit to each military base where he meets separately the military personnel and the civilians in the Department of National Defence.

The Military OmbudsOffice may legally approximate more the executive model, but in reality has a wide support base that enhances independence of operation. Moreover, since its establishment, it has established an admirable record of independence in processing complaints and providing administrative fairness within the military community.

Veterans Ombudsman

Of the eight specialty OmbudsOffices being considered, the first Veterans OmbudsOfficer – Col. Pat B. Stogran (Retired) – has probably been in the public spotlight the most. This stemmed from the controversy related to Prime Minister Harper’s decision during the summer of 2010 not to renew Stogran’s appointment and then Stogran’s decision to publicize the matter through the mass media. But the matter had been long simmering since the early months following Stogran’s appointment. More fundamentally, it appears that the controversy was due to the government’s desire to have an OmbudsOffice in name only, and an incumbent new to the role who took his position seriously. So let us take a closer look at this office.

No doubt, the establishment of the Veterans OmbudsOffice was based upon good intentions to have a special office to address the unique problems of veterans, especially those of the Afghanistan war. As it was, Stogran was appointed as the first Veterans OmbudsOfficer in October 2007 to a three-year term. The appointment was by Order in Council following an advertised, open competition; as such, the Veterans OmbudsOfficer reports to the Minister of Veterans Affairs who also sets the Veterans Ombudsman’s budget. Formally, the Veterans OmbudsOfficer is appointed as a “special adviser” to the Minister of Veterans Affairs, and does not go through the deputy minister of the Veterans Affairs department but is separate from that administrative chain of command. The Minister of Veterans Affairs must table in Parliament within sixty days of receipt the Veterans OmbudsOffice’s annual report. Of special interest to note, the Veterans OmbudsOfficer has a specific mandate to handle individual complaints in respect to benefits and services received by veterans and their dependents, and to consider emerging and systemic issues. For added amplification, there is a “Veterans Bill of Rights” that offers a set of guidelines that in effect elaborates the OmbudsOffice’s mandate.

We thus see that the Veterans OmbudsOffice was mainly set up similar to the executive Ombudsman model, but did have contact with Parliament and a quasi-autonomous mandate that could not be ignored. At the same time, we must be cognizant of the new electronic age whereby annual and other reports are made available to the public through web sites and thereby

help to set the public agenda. Stogran also utilized his office’s web site to invite and allow veterans to voice their complaints publically online, thereby challenging the government to respond. It is also relevant to observe that, when interviewed, Stogran held that it was necessary for the Veterans OmbudsOfficer to be a military person who is able to “connect” with the veterans, and to be a catalyst and educator in order to serve the veterans. This is also where we see that Stogran took his task seriously regardless of personal costs, by reaching out to find those veterans who have “fallen through the cracks” – such as the homeless – and are not receiving the benefits or services that they need. His proactive approach was based upon moral commitment – the kind of commitment that he once had as an officer for his troops on the battlefield, only during his tenure as Veterans OmbudsOfficer it was a commitment to veterans.

Stogran’s proactive approach was often described as being praise worthy, but it was always questionable as to how long it could be sustained. Given the extremely short tenure of three years and the open public confrontations with the government over the latter’s level of care provided to veterans of the Afghanistan war, the decision not to rehire Stogran did not come unexpectedly. Yet, from another perspective, the rehiring controversy may be viewed as being simply growing pains as the Veterans OmbudsOffice seeks to establish itself as a new player in the veterans’ policy community. After all, the government has often responded favourably albeit belatedly to many of Stogran’s recommendations to improve veterans’ benefits. In any case, we are now at a state where we will have to wait to see what leadership style Stogran’s replacement (Guy Parent¹⁶) brings to the office.

Canada Post Ombudsman

The Canada Post OmbudsOffice was clearly established as an executive dispute-resolution body that started operations on October 1, 1997. Its origins are indirectly traced to the Canada Post Mandate Review by George Radwanski of 1996. The word “indirectly” is used because the Review’s report dealt almost exclusively with financial and corporate management aspects of Canada Post. Indeed, with absolutely no reflective consideration of the Ombudsman concept, the Review simply suggests “out of the blue” in one paragraph that a “Postal Ombudsman” would “ensure that all actions and behaviours of Canada Post as a monopoly corporation are fair to the public.”¹⁷ The Review did, however, describe briefly the structural features for its proposed OmbudsOffice which is worth quoting at length:

This Ombudsman should be appointed by the Minister or Order-in-Council for a fixed term

of at least five years to ensure continuity. He or she should be entirely independent of Canada Post and have the authority and resources to investigate all complaints about the corporation, reporting the findings both to the Minister and to the public. It should be made a condition of employment for senior management of the corporation that they provide the Ombudsman with full cooperation and access to information.¹⁸

But what was established? It must first be remembered that Canada Post and its subsidiaries (such as Purolator Courier Ltd.) are formally within the portfolio of the Minister of Transport, Infrastructure, and Communities. But, as a crown corporation with responsibility for postal service, Canada Post has been granted considerable managerial autonomy. This autonomy includes allowing Canada Post's Board of Directors to recruit and appoint the Canada Post Ombudsman, with no involvement by the Minister; neither is there involvement by Parliament in the selection process. On a point of clarification, it should be noted that in 1997, following the Radwanski report, the minister responsible for Canada Post directed the latter to create the position of Canada Post Ombudsman. It is also appropriate to observe at this juncture that the Canada Post OmbudsOffice does not appear to be a major component of Canada Post's operations as the corporation's main web page lists only marketing matters in respect to mail service to its customers, with no option alerting people as to the availability of the OmbudsOffice to handle complaints.

Second, the Canada Post Ombudsman is appointed for a three-year term, and reports directly to Canada Post's Board of Directors, and not to the Minister and Parliament. It is also quite clear from the job description used to hire the Canada Post OmbudsOfficer that the task is to assist "with the resolution of customer service complaints"¹⁹ in order to improve managerially Canada Post's efficiency. Finally, the Canada Post Ombudsman is limited by not having the authority to examine complaints in respect to Canada Post's "subsidiaries" and a few other items including staff relations. As can be seen by way of contrast, there are some major structural departures from what Radwanski originally had in mind.

Besides the formal structure, an observer is made directly aware on arrival at the Canada Post OmbudsOffice premises of its closeness to the Canada Post Corporation by the fact that they share the same buildings on what is called the "Canada Post Head Office Campus." Nevertheless, the current Canada Post OmbudsOfficer, Nicole C. Goodfellow, noted when interviewed that she had been recruited through an open, advertised competition. She believed that her

previous thirty-year experience working for Canada Post and her bilingual fluency were key reasons for being hired. As for the absence of contact with and involvement by Parliament, Goodfellow regarded this as an asset because her office was not burdened by a political agenda.

During the interview with Goodfellow and her Director of Operations (Beth Lambert), it was quite apparent that they aim to develop a co-operative working relationship with Canada Post by specializing in the resolve of customer complaints; in doing so, they help to make Canada Post a more efficient managerial corporation in the delivery of mail. For an office that does not have a high public profile (such as advertisements as to its availability at postal outlets), the Canada Post OmbudsOffice does receive a few thousand individual complaints each year (approximately 3700 investigated complaints reported in its 2009 annual report). It is very quick in responding to questions and complaints within its mandate, and, according to both interviewees, Canada Post listens to all of the office's recommendations. (Because of privacy reasons as is the case of all OmbudsOffices, it is not possible to follow the path of individual complaints from point of intake to final disposition.)

Correctional Investigator

According to Part III of the *Corrections and Conditional Release Act (CCRA)*, the Office of the Correctional Investigator serves as an OmbudsOffice for federal offenders by investigating their individual complaints and by making recommendations to the Correctional Service on systemic matters. Having been originally established in 1973 under the *Inquiries Act* in response to the recommendations of an inquiry into a 1971 riot at Kingston Penitentiary, the Correctional Investigator received a more clearly defined parliamentary mandate with the passage of the CCRA in 1992. The Correctional Investigator thus approximates the classical Ombudsman model by being statutorily based. Indeed, explicit references to the Ombudsman ideal are found in several of the online items of this Office's web site; as well, the current incumbent (Howard Sapers) notes in his online biography having published articles on the Ombudsman idea, human rights in corrections, and the prevention of crime. Nevertheless, a frequently repeated point of criticism made over the years by incumbent Correctional Investigators has been the fact that annual (and special) reports must be directed to the Minister of Public Safety, who then tables them in Parliament. Regardless of the formality of this paper trail, the fact of the matter is that these reports are now more readily available on the Internet to the general public.

Yet another matter needs to be stressed namely that, during the relatively long history (over thirty-five years) of the Correctional Investigator, there have been some high profile issues in respect to the human rights of correctional inmates. These incidents have sometimes led to inquiries and recommendations that, in turn, have strengthened the independence and mandate of the Office of the Correctional Investigator. The role of the Correctional Investigator in respect to the criminal justice system has also been strengthened since 1982 with the inclusion of legal rights in the *Charter of Rights and Freedoms*. We notice here something that we have also seen with a couple of other specialty OmbudsOffice: those engaged in an area where there is firmly established record of human rights tend to approximate the classical Ombudsman ideal.

There is also a degree of committed professionalism that characterizes the current incumbent's (Howard Sapers) work that is evident in the thoroughness of its annual reports. This is especially evident in how the Correctional Investigator tallies the extent to which Corrections Services Canada has responded to his previous recommendations. As well, Howard Sapers came across as perhaps the most cerebral of those interviewed for this project – not only knowledgeable of the particulars of his organization, but fully cognizant of and committed to the Ombudsman concept.

Taxpayers' Ombudsman

The last two OmbudsOffices to be considered – the Taxpayers' OmbudsOffice and the Procurement OmbudsOffice – have much similarity as they were created at the same time, in large part as populist responses by the Conservative government of Stephen Harper to the Sponsorship scandal and the resulting *Accountability Act* to improve accountability in government. Actually, these two offices are also very similar in structure to the Veterans OmbudsOffice that was created at the same time. Some of the interviewees, including Chris Bozik, Director of Operations for the Taxpayers' OmbudsOffice, used the same analogy – “cut by the same cookie cutter” – in regard to these three offices.

Paul Dubé was appointed by Order-in-Council on February 21, 2008 as the first Taxpayers' OmbudsOfficer, for a three year term. (This is an example of the cookie cutter analogy – the short three-year appointment was the same for the original appointees to these three offices.) Actually, the Taxpayers' OmbudsOffice has one of the narrowest mandates of the eight OmbudsOffices being considered. It serves as a special adviser to the Minister of National Revenue and reports directly to the same, by monitoring the service provided by the

Canadian Revenue Agency (CRA). That is, taxpayers who are not satisfied with the service provided by the CRA may lodge a complaint with the Taxpayers' OmbudsOffice (provided that they have already used the CRA's internal complaint-handling mechanisms). For added clarity as to what types of complaints that will be reviewed by the Taxpayers' OmbudsOffice, there is a *Taxpayer Bill of Rights*.

The fact that the staff of the Taxpayers' OmbudsOffice are from the CRA brings into question the former's independence and credibility. There is, however, as Chris Bozik mentioned when interviewed, an eight-person advisory committee who meet quarterly by way of teleconferencing as a sounding board in respect to CRA's performance. Given the position of the Taxpayers' OmbudsOffice, both annual and other reports are submitted directly to the Minister who then tables them in Parliament.

As is the case with the other two “cookie cutter” OmbudsOffices, it is still much too early to assess the performance of the Taxpayers' OmbudsOffice. It exhibits traits of the executive model, but will this be sufficient in a field that receives numerous complaints?

Procurement Ombudsman

For the layperson, the Procurement OmbudsOffice has perhaps the most narrow and technically specific responsibility: mainly the handling of complaints in respect to the awarding of government contracts for goods under \$25,000 and services under \$100,000. (For items of higher value, there are other grievance-handling mechanisms.) This responsibility for handling complaints in respect to procurement is government-wide in coverage, and the Procurement OmbudsOffice may even review proactively the procurement practices of departments to ensure that fairness and transparency practices are in place. We thus begin to see why the Procurement OmbudsOffice is perhaps the most difficult specialty OmbudsOffice to classify.

At first glance, the Procurement OmbudsOffice appears to fit the executive model as it reports directly to the minister of Public Works; however, its reporting does not go through the deputy minister. Indeed, this seems to be the new arrangement with the specialty OmbudsOffices created since 2006-7. That is, with the Procurement, Taxpayers, and Veterans offices, the deputy minister and the OmbudsOfficer are separated in reporting to the minister. The attempt was to create a monitoring body (OmbudsOffice) to shadow the administrative department's delivery of government programmes by handling complaints in regard to that administration and, thereby, establish greater

accountability and trust in government. It should be recalled that the Procurement OmbudsOffice arrived on the scene following the Sponsorship scandal that led to investigations and recommendations for reform.

This last point allows us to see other structural features that are closer to the legislative model. The Sponsorship-based discourse on reform led to amendments to the *Public Works and Government Services Act* including the establishment of the Procurement OmbudsOffice. So, even if the office is not of the same status as an independent officer of Parliament, it does enjoy a parliamentary mandate that provides for a high degree of independence. Given its short existence so far, it is impossible to project how effective the Procurement OmbudsOffice will be in the long run. Certainly, a lot will depend on the personality of the Procurement OmbudsOfficer and the orientation of staff members.

Shahid Minto was originally first appointed as “Procurement Ombudsman Designate” in September 2007, and then, once regulations had been prepared, was officially appointed as “Procurement Ombudsman” by Order in Council in April 2008. He brought to the office many years of experience after first joining the Office of the Auditor General in 1977, and more recently since September 2005 being with the Public Works and Government Services department. He thus had extensive experience monitoring procurement practices, with a high commitment to ethics, transparency, and fairness. Perhaps more importantly, it was his orientation that stood out when interviewed: non-confrontational, working both quietly and quickly behind the scenes to resolve disputes. When interviewed, he mentioned that out of about 600 contacts from contractors last year, only six to eight led to formal investigations. In fact, when there was a complaint, the Procurement OmbudsOffice normally contacted the liaison officer (usually at the assistant deputy minister level) in the appropriate department by telephone, and the matter was immediately settled. The efficiency in resolving disputes can probably be attributed to the technicality of the subject matter and the professionally-defined consensus as to what constitutes fair and proper procurement procedure. In this context, Minto’s orientation as a problem-solver has been most appropriate.

Conclusions

The foregoing discussion has revealed a new breed of structural heretics in the Canadian administrative state. Even though the federal government has not established a classical OmbudsOffice for all matters for the whole public service, it has created a number of specialty OmbudsOffices. There is great variety, as we have seen from just eight examples. At one extreme,

there are the Office of the Language Commissioner and the Office of the Privacy Commissioner; given their status as independent officers of Parliament who deal with statutorily defined rights, these two offices are classical OmbudsOffices in all but title. The prestige of these two offices is also enhanced by being assigned other tasks besides the Ombudsman task of handling complaints – other tasks are research, promotion, and advocacy within their respective spheres. Meanwhile, the Office of the Correctional Investigator and the Military OmbudsOffice, through diligent effort, are very close approximations of the classical model. At the other extreme, however, there is the executive model found with the Canada Post OmbudsOffice that serves Canada Post’s Board of Directors to improve the managerial efficiency of the crown corporation in serving its customers. Between the two extremes are the three newest OmbudsOffices – Veterans, Taxpayers, and Procurement – that appear to be closer to the executive model but have yet to congeal in solid form.

This relatively new structural species comes with the hidden purpose of putting “service” back into the civil service. The specialty OmbudsOffices are designed to provide complaint-handling mechanisms to the public in the modern administrative state. Will these structures be effective in restoring accountability in government? Within the realm of “rights”, the classical model is the more appropriate sub-species; but in respect to improving managerial accountability with customers, we find the adoption of the executive model is now the current fad. Still, confusion and uncertainty can arise as it did with the Veterans Ombudsman in the summer of 2010 when the line between enforcing veterans rights and improving managerial service to veterans as a clientele group overlapped.

Notes

1. Sir Guy Powles, “Aspects of the Search for Administrative Justice with Particular Reference to the New Zealand Ombudsman,” *Canadian Public Administration*, Vol. 9, No. 2 (June 1966): pp. 133-57.
2. Robert MacGregor Dawson, *The Principle of Official Independence* (London: P.S. King & Son Ltd., 1922).
3. Paul G. Thomas, “The Past, Present and Future of Officers of Parliament,” *Canadian Public Administration*, Vol. 46, No. 3 (Fall 2003): pp. 287-314; and Jack A. Stilborn, “The Officers of Parliament: More Watchdogs, More Teeth, Better Governance?” In *How Ottawa Spends, 2010-2011: Recession, Realignment, and the New Deficit Era*, edited by G. Bruce Doern and Christopher Stoney (Montreal & Kingston: McGill-Queen’s University Press, 2010): pp. 243-60.
4. J.E. Hodgetts, *The Canadian Public Service: A Physiology of Government, 1867 – 1970* (Toronto: University of Toronto Press, 1973). See especially chapter 7 on so-

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- called “structural heretics” where there is no mention of Ombudsman offices except for one sentence (p. 148) on the Commissioner of Official Languages.
- 5 For detailed coverage of the provincial and territorial classical Ombuds Offices, see the case studies in Stewart Hyson, ed., *Provincial and Territorial Ombudsman Offices in Canada* (Toronto: University of Toronto Press, 2009).
 - 6 Stewart Hyson, “Ombudsman Research Project: The Provincial and Territorial Ombuds Offices in Canada,” In *Provincial and Territorial Ombudsman Offices in Canada*, edited by Stewart Hyson (Toronto: University of Toronto Press, 2009): p. 19.
 - 7 *Ibid.*, pp. 17 - 24.
 - 8 Gregory Levine, *The Law of Government Ethics: Federal, Ontario and British Columbia* (Aurora, Ontario: Canada Law Book, 2007): p. 59.
 - 9 See the case studies in Hyson, *Provincial and Territorial Ombudsman Offices in Canada*, 2009.
 - 10 Stewart Hyson, “The ombudsman and e-government in Canada,” *Canadian Public Administration*, Vol. 53, No. 22 (June 2010): pp. 183-200.
 - 11 Stewart Hyson, “Adapting the Ombudsman Idea to the 21st Century: Fighting Puffery, E-Government, and Forensic Investigations,” Paper presented at the Annual Meeting of the Canadian Political Science Association, University of British Columbia, Vancouver, June 6, 2008.
 - 12 Gareth Jones, *Conducting Administrative, Oversight & Ombudsman Investigations* (Aurora, Ontario: Canada Law Book, 2009).
 - 13 Michelle LeBaron, “Watchdogs and Wise Ones in Winter Lands: The Practice Spectrum of Canadian Ombudsman,” Liz Hoffman Ombudsperson Research Award Paper for 2008, Forum of Canadian Ombudsman. http://www.ombudsmanforum.ca/hoffman/2009_paper_e.pdf (Accessed 11 May 2009).
 - 14 Linda C. Reif, *The Ombudsman, Good Governance and the International Human Rights System*, International Studies in Human Rights, Vol. 79 (Leiden, The Netherlands: Martinus Nijhoff Publishers, 2004); and Linda Reif, Mary Marshall, and Charles Ferris, eds., *The Ombudsman: Diversity and Development* (Edmonton, Alberta: International Ombudsman Institute, 1993).
 - 15 See the author’s following conference papers: “Specialty Ombudsman Offices: The New Breed of Structural Heretics,” Paper presented at the Annual Conference of the Canadian Political Science Association, Carleton University, Ottawa, May 27, 2009; and “A Hodgepodge of Structural Heretics: Canada’s Specialty Ombuds Offices,” Paper presented at the Annual Meeting of the Atlantic Provinces Political Studies Association, Dalhousie University, Halifax, N.S., October 1-3, 2010.
 - 16 Mr. Parent’s appointment took effect in early November 2010 and thus he was not interviewed for this paper. It is interesting to note, however, that he was appointed for a five year term which is more reasonable than the three year appointment that Stogran had.
 - 17 Canada, Canada Post Mandate Review (George Radwanski, chair), *The Future of Canada Post Corporation* (Ottawa: Minister of Public Works and Government Services, 1996): pp. 117-8.
 - 18 *Ibid.*, p. 118.
 - 19 The current Ombuds Officer, Nicole Goodfellow, graciously provided me via e-mail on May 27, 2010 a copy of the job advertisement through which she successfully applied for the position.
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