



COMMITTEE ON THE
OFFICE OF THE OMBUDSMAN AND THE
POLICE INTEGRITY COMMISSION

OVERSEAS RESEARCH TRIP
OCTOBER 1996

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COMMITTEE MEMBERSHIP

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Mr B J Gaudry MP (Chairman)
Mr J Anderson MP
Mr A R G Fraser MP
Mr J S P Kinross MP
Mr P G Lynch MP
Ms R P Meagher MP
Ms C Moore MP
Mr A P Stewart MP



Legislative Council

The Hon M Gallacher MLC
The Hon E B Nile MLC
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Committee on the Office of the Ombudsman and the Police Integrity Commission (left to right):
Bryce Gaudry MP (Chairman), James Anderson MP, Andrew Fraser MP, Jeremy Kinross MP, Paul Lynch MP,
Reba Meagher MP, Clover Moore MP, Anthony Stewart MP, The Hon Michael Gallacher MLC, The Hon Elaine
Nile MLC, and The Hon Patricia Staunton MLC

CHAIRMAN'S FOREWORD

This report provides a public record of the research trip which I undertook in October 1996 with Mr Andrew Fraser MP as representatives of the Committee on the Office of the Ombudsman and the Police Integrity Commission.

Given the new oversight responsibilities of the Joint Committee in relation to the Police Integrity Commission, and the latter's ongoing role in ensuring that institutionalised corruption has no place in the NSW Police Service, the Committee considered that it was important to compare the experiences of police services and oversight agencies in similar jurisdictions as detailed in the body of the report.

Changes to the police complaints system, the introduction of new mechanisms for the detection, investigation and prevention of serious police misconduct and corruption, and the impact of structural changes to the NSW Police Service constitute vital areas of reform which will require further evaluation and assessment.

The Committee plays a key role in this process by ensuring that the Ombudsman and both the Commissioner and Inspector of the PIC are accountable to Parliament through ongoing review and that they effectively perform their mandated functions.

On the basis of meetings with Ombudsmen from England and Canada, and discussions with participants at the VI International Conference of the International Ombudsman Institute, the delegation has highlighted several issues which it regards as particularly relevant to the operation of the Ombudsman's Office in NSW. These issues are dealt with in the opening section of the report which includes recommendations for consideration by the Joint Committee.

Finally, I would like to extend my sincere thanks to the parliamentarians, statutory officers, police officers and staff who assisted the delegation during the trip and kindly allocated time to discuss their experiences. Our particular thanks go to Ms Helen Minnican and Ms Natasha O'Connor for their organisation both prior to and during the research trip.



Bryce Gaudry MP
Chairman

BACKGROUND

Ombudsman Act 1974 - In 1990 the *Ombudsman Act 1974* was amended to provide for the establishment of a Parliamentary Joint Committee constituted under Part 4A of the Act to oversee the Office of the Ombudsman. The Committee's main functions are set out in section 31B(1) of the Act as follows:

- to monitor and review the exercise by the Ombudsman of the Ombudsman's functions;
- to draw matters relating to the exercise of the Ombudsman's functions to the attention of Parliament;
- to examine each annual and other report made by the Ombudsman, and presented to Parliament, and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to report on any change considered desirable to the functions, structures and procedures of the Office of the Ombudsman;
- to inquire into any question referred to it by both Houses of Parliament.

In 1996 the Committee's functions were extended under the *Police Integrity Commission Act 1996* to include a monitoring and review role in relation to the PIC and the PIC Inspector. The Committee's functions under this Act are:

- to monitor and review the exercise by the Commission and the Inspector of their functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament

on any matter appearing, or arising out of, any such report;

- to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector; and
- to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

The *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996* further specify that the Joint Committee is not authorised:

- to investigate matters relating to particular conduct; or
- to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, a particular matter or particular conduct; or
- to reconsider the findings, recommendations, determinations or other decisions of the Commission or the Ombudsman in relation to a particular investigation or a particular complaint.

The Committee also is not authorised to exercise any of its functions in relation to the Ombudsman's jurisdiction under the *Telecommunications (Interception) (New South Wales) Act 1987*.

Statutory Appointments - The Statutory Appointments (Parliamentary Veto) Amendment Act, assented to on 19 May 1992, amended the *Ombudsman Act 1974* by extending the Committee's powers to include the power to veto the proposed appointment of the Ombudsman and the Director of Public Prosecutions. This section was further amended by the *Police Legislation Amendment Act 1996* which provided the Committee with the same veto power in relation to proposed appointments to the positions of Commissioner for the PIC and Inspector of

the PIC.

Section 31BA of the *Ombudsman Act 1974* provides:

- “(1) The Minister is to refer a proposal to appoint a person as Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.
- (5) In this section, a reference to the Minister is;
- (a) in the context of an appointment of Ombudsman, a reference to the Minister

administering section 6A of this Act;

- (b) in the context of an appointment of Director of Public Prosecutions, a reference to the Minister administering section 4A of the Director of Public Prosecutions Act 1986; and
- (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the Police Integrity Commission Act 1996.”

Overseas Research Trip - The Committee’s decision to attend the Sixth International Ombudsman Conference came after several years in its role as the parliamentary committee overseeing the NSW Ombudsman. Consequently, members of the delegation attending the conference had considerable experience and understanding of Ombudsman issues. The conference offered the delegates an opportunity to gain further insights into the Ombudsman concept and practice, and to examine the Committee’s role and performance.



Bryce Gaudry MP and Andrew Fraser MP outside Parliament, London

Prior to attending the International Ombudsman Conference the Committee delegation visited several Ombudsman, Parliamentary Committees and police complaint agencies in the United Kingdom and Canada to discuss the following topics relating to its oversight of both the Ombudsman’s Office and the Police Integrity Commission:

- mechanisms for the detection, investigation and prevention of serious police misconduct and police corruption;
- trends and changes in police corruption;
- methods for dealing with police complaints;
- developments in the investigation of maladministration in the public sector;
- complaint handling strategies, including informal dispute resolution, and investigation techniques;
- developments in freedom of information legislation.

The itinerary for the research visit included meetings with Ombudsmen and other oversight agencies of particular relevance to the work of the NSW Parliamentary Committee. For example, the delegation was very interested to meet with the House of Commons Select Committee on the Parliamentary Commissioner for Administration which was established in 1967, the same year as the British Parliamentary Commissioner (Ombudsman).

The Select Committee's inquiry program involves hearings on special reports by the Ombudsman and the delegation was keen to learn more about the conduct of such inquiries and other aspects of the long-standing relationship between the House of Commons Select Committee and the Ombudsman.

The Ontario Standing Committee on the Ombudsman was selected as another parliamentary oversight body for inclusion in the itinerary. Although the Standing Committee was not established until 1985, ten years after the Ontario Ombudsman, it was preceded by a Select Committee with oversight responsibilities. The Standing Committee conducted a wide-ranging review of the Ontario Ombudsman in 1993 which

examined the nature of the relationship between the Ombudsman and the Committee

Other key issues examined by the Ontario Committee during the review which were discussed with the delegation included, public complaints, non-compliance with Ombudsman recommendations, management of the Ombudsman's Office and the relationship between Parliament and the Ombudsman.

With regard to police oversight agencies the delegation sought to obtain as much information as possible on the various schemes operating in jurisdictions similar to NSW. The British Police Complaints Authority, which commenced in 1985, has conducted several reviews of its operations, including most recently a review of its first ten years. The delegation also met with the RCMP Public Complaints Commission: another example of an external oversight body responsible for investigating police misconduct. The final police oversight body visited by the delegation was the Ontario Police Complaints Commissioner (OPCC). This meeting occurred at a critical point in the OPCC's operations as the Ontario Government was in the process of conducting a review of policing in the province including oversight bodies.

To balance the external oversight perspective the delegation also met with staff of the Complaints Investigation Bureau of the London Metropolitan Police Service. This provided an opportunity to question police investigators on the internal investigation process.

The Ombudsmen included in the delegation's itinerary were the UK Parliamentary Commissioner, the Ontario Ombudsman and the Canadian Information Commissioner. The latter's role as an Ombudsman concerns the area of access to government information, and the delegation considered its meeting with the Commissioner to be an important

part of its trip especially as the previous NSW Ombudsman had called for the establishment of a NSW Information Commissioner and a comprehensive review of the FOI Act.

The UK and Ontario Ombudsmen possess similar jurisdictions to the NSW Ombudsman although police complaints are dealt with in both cases by separate authorities. In 1994 the British Ombudsman acquired a review role in relation to the UK Code of Practice on Access to Government Complaints of Breaches of Information.

The focus on equity issues by the Ontario Ombudsman and recent management reforms to that Office formed an important part of discussions during the meeting with staff in Ontario and was the subject of Ombudsman's paper at the IOI Conference. Members of the delegation used the UK and Ontario Ombudsmen as useful comparisons for further assessing the role and performance of the NSW Ombudsman.

Consequently, by the time the delegation attended the VI International Ombudsman Conference it had built on the NSW Committee's experience by reviewing current Ombudsman issues and trends in similar jurisdictions.

The body of this report contains details about the conference and the agencies visited by the delegation. This is prefaced with the observations and findings arrived at by the delegation as a result of the research trip.

**RESEARCH VISIT - OBSERVATIONS
& RECOMMENDATIONS**

I The Ombudsman & Parliament

Although the complaints system in NSW does not rely upon an "MP filter" of the type which applies in relation to complaints to the British Parliamentary Commissioner, the members of the delegation saw considerable merit in the strong use of the Ombudsman made by Members of the United Kingdom Parliament.

The MP filter system seems to emphasise the traditional role of the Ombudsman as an Officer of Parliament. In the view of the House of Commons Select Committee the "work of the Parliamentary Ombudsman, acting at the behest of MPs and reporting to them the details of his investigations, has a vital role in equipping the Member for the tasks of Parliament".¹

In NSW individuals can access the Ombudsman direct or may approach a Member of Parliament to forward a complaint to the Office of the Ombudsman on their behalf. Where a Member of Parliament acts on behalf of a complainant he does not become the complainant but must be provided with reports on the progress of the complaint and other correspondence that would normally be sent to the complainant.

The NSW Committee delegation is concerned that the arrangements under s.12(5) of the *Ombudsman Act 1974* may lengthen the time taken to handle a complaint to the Office of the Ombudsman. It noted that the House of Commons Select Committee recommended in a 1993 review

of the powers, work and jurisdiction of the Ombudsman, that under the MP filter system it was "sensible for the Parliamentary Ombudsman to have direct dealing with the complainant while keeping the Member fully informed."²

Under the Select Committee's proposal the Parliamentary Ombudsman would correspond directly with the complainant, forwarding copies of correspondence to the referring MP. Such an arrangement appears to the delegation to have advantages which it is keen for the NSW Committee to discuss with the State Ombudsman. The Committee delegation also would like to obtain the Ombudsman's views on ways in which stronger relations could be developed with Members of Parliament.

Recommendation 1

The delegation recommends that the Committee on the Office of the Ombudsman and the Police Integrity Commission discuss with the Ombudsman:

- i) the current legislative provisions which outline the process by which complaints are made to the Ombudsman by Members of Parliament on behalf of individuals; and
- ii) mechanisms for strengthening the Ombudsman's relations with Members of Parliament.

**II Committee Inquiry Program -
Review of the Ombudsman's
Annual Report & other reports to
Parliament**

To date the Committee has reviewed the Ombudsman's Annual Report and Special Reports as part of its program of General Meetings with the Ombudsman. Its major inquiries have focussed on jurisdictional and management matters which were seen by the Committee to be matters of priority, for

¹ First Report of the Select Committee on the Parliamentary Commissioner for Administration, Session 1993-4 *The Powers, Work and Jurisdiction of the Ombudsman, Volume I*, HC 33-1, p.xx.

² *ibid* p.vii.

example, funding and resources and police complaints.

The delegation feels that the Committee is at a stage in the development of its relationship with the Ombudsman where it should concentrate on consolidating its monitoring and review efforts by implementing mechanisms which would focus on the Ombudsman's Annual and Special Reports.

Towards this end, the delegation proposes that the Committee commence a similar review program to that of the House of Commons Select Committee in which inquiries would be held to deal specifically with the Ombudsman's special reports to Parliament. Such a role is expressly provided for by section 31B(1)(c) of the *Ombudsman Act 1974* which states that it is one of the Committee's functions, "to examine each annual and other report made by the Ombudsman, and presented to Parliament, under this or any other Act and to report to both Houses of Parliament on any matter appearing in, or arising out of, any such report."

In preparation for the fourth General Meeting with the Ombudsman, the NSW Committee on the Office of the Ombudsman and the Police Integrity Commission forwarded a series of questions on notice to the Office one of which sought the Ombudsman's views on the procedures used by the House of Commons Select Committee to perform its functions. In her written answer the Ombudsman stated:

"Given the provisions of section 31B(1)(b), and (c) of the Ombudsman Act, it appears that this approach is clearly within the jurisdiction of the [New South Wales] Committee and may even have been contemplated by the draftsman.

Such an approach would effectively fill a current gap in the legislation in relation to accountability arising out of recommendations made by the Ombudsman."

"If the Committee was to adopt the process of review

undertaken by the UK Select Committee, it would be able, in appropriate circumstances, to require chief executives of agencies the subject of adverse comment in Special Reports and Annual Reports to attend before the Committee to explain their action or inaction in response to the matters raised in such reports. The Committee could also adopt this approach in relation to reports under section 27 arising out of default in consequent action."³

During discussions with the Chairman at the hearing, the Ombudsman reiterated her support for the Committee's adoption of this approach.

However, the delegation is concerned that the proposed permanent program of review should not be adopted in relation to section 27 reports. The Act clearly provides that the Committee is not to exercise any of its functions in relation to section 27 reports, that is, "non-compliance" reports made when the Ombudsman is dissatisfied with the action taken towards implementing the recommendations in her reports under section 26 (see section 31B(2)(c) and (d)).

It is the delegation's view that this provision is necessary to ensure that the Committee is not regarded as an appeal mechanism in relation to decisions by the Ombudsman. It notes that amendments to the *Ombudsman Act 1974* require the responsible Minister to make a statement to the House in response to a section 27 report within 12 sitting days after the report is presented to Parliament. The delegation considers that this requirement is an adequate and appropriate accountability mechanism, and does not believe that the Committee should have a role in the review of section 27 reports. Significantly, as the Ombudsman noted in the General Meeting, the legislative requirement for a ministerial response to a section 27 report does not apply to the Ombudsman's Annual and Special Reports.

³

Fourth General Meeting Report, p.30.

Recommendation 2

Annual Reports - The delegation recommends that the Committee on the Office of the Ombudsman and the Police Integrity Commission hold public hearings to review specifically the issues raised in the Ombudsman's Annual Reports and to take evidence from the Ombudsman and relevant organisations.

The delegation further recommends that the Joint Committee report on any related matters which it believes warrant drawing to the attention of Parliament and, approximately three months after making its report, take evidence from relevant organisations on the progress they have made towards implementing the Ombudsman's recommendations.

Recommendation 3

Special Reports - The delegation recommends that the Joint Committee examine each special report to Parliament by the Ombudsman and consider conducting public hearings involving evidence from the Ombudsman and relevant Chief Executive Officers for this purpose.

The delegation further recommends that approximately three months after tabling of the special report, the Committee review the progress made towards implementing the Ombudsman's recommendations.

Recommendation 4

Committee Annual Report - The delegation recommends that the Joint Committee submit an annual report to Parliament which would include details of the Ombudsman reports it had reviewed and subsequent action.

appropriate methods which an oversight committee should employ to deal with unsolicited complaints from the public about investigations by investigating authorities.

At present, the New South Wales Committee employs procedures for the handling of such complaints which were agreed to by the previous Ombudsman. Under this process if a complaint raises procedural issues or other matters within the Committee's jurisdiction, the complaint is usually referred to the Ombudsman for formal advice.

The Committee then considers what, if any, action it wishes to take. For example, it may request further advice from the Ombudsman or may draw to the Ombudsman's attention problems regarding certain investigation procedures. Recently, procedural problems raised by a complainant to the Committee were discussed with the Ombudsman during the General Meeting held on 8 November, 1996. Issues such as turnaround times and complaint handling procedures are regularly discussed with the Ombudsman in the General Meeting forum.

In exercising its review powers in this area the Committee is bound by section 31B(2) of the *Ombudsman Act* which broadly states that it is not authorised to review particular decisions. As with the Ontario Committee, the NSW parliamentary committee does not function as an appeal body in relation to decisions made by the Ombudsman. The same approach applies to the Committee's oversight of the PIC and the Inspector of the PIC.

To date the Committee has received a minimal amount of public complaints each year. In some cases complaints will be made by members of the public in response to a call for submissions in relation to a Committee inquiry. In these circumstances, procedural issues may be identified and dealt with as part of the inquiry process.

The guidelines for dealing with public

III Public complaints

The delegation's discussions with the Ontario Standing Committee raised significant questions about the most

complaints were drafted shortly after the Committee commenced operations and have not been the subject of review. Consequently, the delegation believes that the Committee should examine its current practices in relation to the way in which it deals with complaints from the public about investigation procedures and other service matters.

For instance, the Committee should consider whether there is a need for a more efficient process for the review of such complaints. One option may be for the Committee to adopt the Ontario sub-committee approach and perhaps organise with the Ombudsman for a statutory officer to attend meetings of a sub-committee in an advisory role. This officer could provide formal advice on the Ombudsman's handling of the complaint and report back to the Ombudsman on any matters which might require changes to the Office's procedures. The sub-committee also could present a formal report to the Committee on the nature of the complaints received, and the response given. This report could be incorporated into an annual report by the Committee to Parliament on its activities.

There are obvious difficulties with conducting an inquiry in which parties to a complaint might be requested to give evidence. Should the Committee initiate such a procedure it would be likely to increase the potential for misinterpretation of its role, confusing it with an appeal mechanism. Also, the resources and effort needed to conduct formal public hearings could detract from the Committee's ability to perform its primary oversight role by reducing its capacity to perform key functions. Consequently, it is not recommended that the Committee take evidence or hold hearings on public complaints.

Recommendation 5

The delegation recommends that the Joint Committee should examine its current practices in relation to the way in which it deals with complaints from the public about the procedures involved in Ombudsman investigations and other service matters

IV Implementation of the Ombudsman's recommendations

Recommendation-denied cases - The NSW Ombudsman Act 1974 prohibits the Ombudsman and PIC Committee from exercising any of its functions in relation to reports made by the Ombudsman under Section 27 of the Act. However, Ministers are required to respond to Parliament on a section 27 report within 12 sitting days of tabling.

In the delegation's view it would be valuable for the Committee to assess ways in which its monitoring and review functions could be applied to overseeing the extent to which the Ombudsman's recommendations are accepted and implemented.

One way in which the Ontario Standing Committee has in the past monitored the implementation of the Ombudsman's recommendations was through the Ombudsman's annual report. The latter contained a "recommendations-denied table" which recorded each recommendation by the Ombudsman, the recommendation of the Standing Committee and the action taken by the Government organisation. These tables were carried forward from one annual report to the next so that it was possible for the Standing Committee to determine what recommendation-denied cases had been resolved.

Adoption of a parallel reporting method by the NSW Ombudsman would provide a concise public record of the extent to which the Ombudsman's recommendations are

implemented in the public sector.

Recommendation 6

The delegation recommends that the Joint Committee hold discussions with the Ombudsman about including a "recommendations table" in her Annual Report which would indicate the action taken by government bodies towards implementing recommendations made by the Ombudsman, or in relation to relevant reviews conducted by the Joint Committee.

Recommendation 7

The delegation recommends that the Joint Committee discuss with the Ombudsman the merits of creating a document in New South Wales similar to *Info Source* which would record all public information held by public sector agencies.

V Freedom of Information

Info Source - At present the major listings of public information about government bodies in NSW may be found in the annual reports of Government Departments and the annual Summary of Affairs. Agencies are required to publish the latter in the Government Gazette in accordance with the *Freedom of Information Act 1989*. The Summary of Affairs must cite the agency's policy documents, provide advice on how to obtain the agency's most recent Statement of Affairs and contain details for accessing this information.⁴

The members of the delegation were impressed by the comprehensive nature of the *Info Source* publication provided by the Canadian Information Commissioner, and resolved to draw the directory to the attention of the Committee as a matter warranting discussion with the Ombudsman.

VI Police Oversight

There were no direct parallels between the police complaints system in New South Wales and the police oversight bodies visited by the Committee. Although there were similarities in the processes used to investigate police complaints, the delegation found the new system in New South Wales which involves both the Ombudsman and the Police Integrity Commission to be unique.

It was common for oversight bodies to conduct reviews of internal investigations of police complaints and, where necessary, conduct its own investigations. Both the British Police Complaints Authority and the RCMP Public Complaints Commission possess "own motion" investigation powers which can be exercised in the public interest. However, the major difference between these bodies and the NSW Police Integrity Commission relates to the latter's focus on corruption investigation and prevention, and the range and extent of its powers.

Some jurisdictions such as Ontario had several bodies involved in police oversight and the investigation of misconduct. In the case of Ontario, the Government had announced a review of these bodies which was in process when the Committee delegation visited the Police Complaints Commission.

The delegation obtained useful insights into the various ways in which oversight bodies give effect to their mandate, including both investigative and disciplinary functions. However, the level of interest shown in the recent developments in New South Wales

⁴ Section 14 of the *FOI Act 1989* also requires agencies to annually publish in the Government Gazette a Statement of Affairs which contains details of the agency's functions and structure, descriptions of available documents, and access procedures.

following the commencement of the *Police Integrity Commission Act 1996* and the *Police Legislation (Amendment) Act 1996* indicated to the delegation that the NSW system for investigation of police corruption was considered to be at the forefront of investigation into serious police misconduct and corruption.

CONFERENCE OBSERVATIONS & CONCLUSIONS

In attending the Conference, the delegation endeavoured to represent the Committee at as many sessions as possible. After attending the first session as a group, one representative participated in each subsequent session. On this basis the members of the delegation were able to participate in discussions relating to the major themes of the conference as outlined in the opening address by Sir John Robertson.

The delegation members found that the dynamics of each meeting were often as instructive about the current issues and trends in Ombudsmanship as the content of each paper and subsequent discussions. For example, the participation of new Ombudsmen in the workshops highlighted the emergence of the Ombudsman institution in countries with a short democratic history and the obvious need for support and assistance to Ombudsman in such jurisdictions.

The impressions of the delegates on several key issues are given below.

Commercialisation - The trends towards privatisation of public sector organisations was highlighted at the conference as a significant area of concern for Ombudsmen. In particular, Ombudsmen at the conference commented on the loss of jurisdiction caused by privatisation of public sector agencies and the need to maintain scrutiny over agencies

which operate using public money or are responsible for services that have previously been solely provided by a public sector agency within the Ombudsman's jurisdiction.

The NSW Ombudsman expressed concern over the same issue in her introduction to the Ombudsman's Annual Report for 1995-6, in which she stated:

*"It is important that where traditional public sector functions are contracted out, whoever takes over those functions should be subject to the same scrutiny in their services to the public as before."*⁵

The Ombudsman suggested that in cases where the public funds the service, or a service monopoly exists, the body concerned should remain accountable to the public and Parliament through the watchdog which previously monitored that service.⁶ June Correctional Centre was given as an example where the NSW Ombudsman had retained her oversight role despite the fact that the prison is managed by a private sector company instead of the Government.

The Ombudsman argued that:

*"Unless the public sector has entirely abandoned all responsibility for the service or function, or there is no special power being used by the government to regulate the matter, then public accountability mechanisms should continue to exist."*⁷

In view of the Ombudsman's concerns over the impact of privatisation and contracting on her jurisdiction the delegation recommends that the Committee should monitor changes to the Ombudsman's jurisdiction. In 1997 the Committee will have the opportunity to review the impact of privatisation and contracting when it conducts an inquiry into Schedule 1 of the *Ombudsman Act 1974*.

⁵ NSW Ombudsman, *Annual Report 1995-6*, p.9.

⁶ *ibid* p.10

⁷ *ibid*.

Essential Characteristics and Specialist Ombudsmen - Workshop 2, presented by Sir Brian Elwood, involved a lengthy discussion on the development of the classical Ombudsman model and common features of the other various Ombudsman models in existence.

One of the main themes of this session was the challenge to the international Ombudsman community to set standards which would protect and further develop the Ombudsman institution.

Discussion between conference delegates gave an indication of the problems experienced by some Ombudsmen operating in jurisdictions where corporate or private sector complaint bodies use the title "Ombudsman" but do not possess the features generally associated with the classical Ombudsman model.

The Committee delegation noted the general view among conference participants that the IOI needs to promote essential Ombudsman criteria and principles to ensure that the Ombudsman institution remains credible and effective.

Discussions on the issue of specialist Ombudsmen were of particular interest to the delegation in light of the NSW Ombudsman's arguments against specialisation: Ms Moss prefers empowering, refocussing or restructuring existing bodies to accommodate new oversight roles.⁸

The delegation feels that the development of Ombudsman institutions in NSW would benefit from a wider appreciation of the essential features and core business of Ombudsmen as identified by the IOI and its members.

Towards this end the delegation has made a

number of recommendations aimed at raising awareness of the issues discussed at the conference and the resolutions made by the voting membership of the IOI.

Informing the Parliament - In the session conducted by Mr Harley of the IOI, Mr Fraser stressed that it was important to convey to political decision-makers and members of the Executive, the directions which the Ombudsman Institute outlined for its members and the key resolutions arising from the conference.

The Committee delegation also considers that it is vital for these decisions to be conveyed to the Parliament as a whole in view of the Ombudsman's traditional role as an Officer of Parliament.

Service Equity and Human Rights Ombudsmen - These two subjects received considerable attention at the Conference. The role of the Human Rights Ombudsman was raised in several sessions and the Ontario Ombudsman, Ms Roberta Jamieson, dealt with the issue of service equity in her workshop paper.

Ombudsmen falling within the "classical" mode of Ombudsmanship do not concentrate on human rights cases as the core business performed by their offices. Those Ombudsmen which do specialise in the human rights area, including Ombudsmen from Latin America and Africa, clearly desired support from the IOI and other Ombudsmen, especially during the early stages of their development.

Support could take various forms including visits from other Ombudsmen, traineeships with the Institute, and provision of information. One delegate suggested that it would be useful for newly established Ombudsmen to receive some feedback on their mandate when the IOI was assessing applications for voting membership with the Institute.

⁸

NSW Ombudsman, *Annual Report 1995-96* p.9

The NSW Ombudsman has undertaken various initiatives as part of her Office's access and awareness program which would have been particularly relevant to these sessions of the conference. It was apparent to the delegation that the NSW Ombudsman, as a long-standing, established member of the international Ombudsman community, could perform a vital role providing advice at such international forums.

The IOI International Ombudsman Conference also would benefit the NSW Ombudsman with an opportunity to discuss new initiatives and experiences with other Ombudsmen possessing similar jurisdictions. Exchanges at this level may assist the NSW Ombudsman in formulating and implementing strategies, and anticipating developments relevant to the Office's programs.

NSW Ombudsman participation - Both established Ombudsmen and Ombudsmen from newly-created institutions, expressed keen interest in having the NSW Ombudsman attend the IOI's International Ombudsman Conference. The Committee delegation feels that in view of the status and international reputation of the NSW Ombudsman's Office, the length of its establishment, and its wide jurisdiction, the NSW Ombudsman would have a significant contribution to make at the IOI conference.

Implications for the Office of the NSW Ombudsman - The Committee delegation also feels that to gain full worth from the delegation's attendance at the Conference, the NSW Ombudsman should have the opportunity to discuss the implications for her Office of key issues and conference resolutions with the full Committee in a public meeting.

Such a meeting would help establish the relevance of the Conference to the operation

and jurisdiction of the Ombudsman in NSW.

On the basis of their experience at the Conference, the members of the Committee delegation determined to make the following recommendations to the Committee on the Office of the Ombudsman and the Police Integrity Commission.

Recommendation 8

The delegation recommends that upon receipt of the transcript of the Conference proceedings and the resolutions adopted by the IOI Board of Directors, the Joint Committee should distribute the material to all Members of the NSW Parliament to ensure that Parliament is fully informed of the outcome of the formal decisions made by the Institute.

Recommendation 9

The delegation recommends that the Joint Committee hold a short public meeting with the Ombudsman to discuss the implications for the Office of the resolutions passed by the International Ombudsman Institute and key issues raised in the Conference papers.

Recommendation 10

The delegation strongly recommends that the NSW Ombudsman should attend the VII International Ombudsman Institute Conference and that, in the event that funds to cover participation cannot be found within the Office's allocation for the relevant budget year, consideration should be given to supplementation for this specific purpose.

PART I

Research Visit to England and Canada

1.1 OFFICE OF THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (OMBUDSMAN)

Participant

Mr John Avery
Deputy Parliamentary Ombudsman

Members of the delegation were unable to meet with the Parliamentary Commissioner, Sir William Reid KCB, while in London as he was attending a Board Meeting of the International Ombudsman Institute. However, the opportunity for a meeting did occur later in the month at the Institute's international conference which was attended by both the Parliamentary Commissioner and his Deputy.

A. General

The Office of the Parliamentary Ombudsman was established in 1967 under the *Parliamentary Commissioner Act* to investigate complaints referred by MPs from members of the public who claim to have suffered injustice as a result of maladministration by central government departments and certain non-departmental public bodies.

Jurisdiction - The jurisdiction of the Parliamentary Ombudsman differs significantly from that of the New South Wales Ombudsman. The Parliamentary Ombudsman has no role in relation to police complaints which are investigated by a separate authority called the Police Complaints Authority. Complaints concerning local government are dealt with

by Local Government Ombudsmen who operate independently of both national and local government. Unlike the NSW Ombudsman, the Parliamentary Ombudsman may investigate the administrative actions of court and tribunal staff.

In April 1994, the Parliamentary Ombudsman acquired an external review function in relation to freedom of information and may review complaints about refusals to provide official information in accordance with the Code of Practice on Access to Government Information.

Appointment - The Parliamentary Ombudsman is appointed until retirement and is ineligible for re-appointment. Sir William Reid, the current Parliamentary Ombudsman, also holds office as the Health Service Ombudsman and is accountable in both capacities to the Select Committee on the Parliamentary Commissioner for Administration.⁹

The MP filter - Under section 5(1) of the *Parliamentary Commissioner Act 1967* complaints to the Parliamentary Ombudsman must be submitted through a Member of Parliament. This is usually, but not necessarily, the individual's constituency MP. The delegation noted arguments for and against the retention of the MP filter, and the results of a 1993 survey of MPs conducted by the Select Committee as part of an inquiry into the powers, work and jurisdiction of the Ombudsman.¹⁰

The survey indicated heavy and comprehensive use of the Ombudsman by Members of Parliament. Of the total 333

⁹ The three Health Service Commissioners for England, Scotland and Wales were established in 1973.

¹⁰ See the First Report of the Select Committee on the PCA, Session 1993-4, *The Powers, Work and Jurisdiction of the Ombudsman*, HC 33-1, pp. xv-xx for a description of the MP filter and the Committee's recommendations on this subject.

Members who responded to the Committee's Questionnaire only 16 (4.8%) had not referred complaints to the PCA. In 1994-5, 1706 cases were referred to the Parliamentary Ombudsman by Members of Parliament.¹¹

Select Committee Review of the MP Filter - According to the Select Committee, the MP filter results in speedy and effective resolution of complaints for constituents, the prevention of unnecessary work for the Ombudsman and closer contact by Members of Parliament with constituents. Therefore, the Select Committee determined that any argument against the MP filter needed to demonstrate that the disadvantages of the system outweighed its advantages. The Committee finally recommended that *"the MP filter be retained but coupled with concerted attention to the means whereby access to the Ombudsman can be strengthened and enlarged."*¹²

"Own Motion" Investigations - The investigation provisions of the *Parliamentary Commissioner Act 1967* and the *New South Wales Ombudsman Act 1974* are similar, however, unlike the New South Wales Ombudsman, the Parliamentary Ombudsman does not possess an "own motion" investigation power. The Parliamentary Ombudsman relies on the MP filter and cannot initiate investigations without a complaint from an MP.

Reporting provisions - The Parliamentary Ombudsman makes several types of reports to Parliament. Section 10(4) of the *Parliamentary Commissioner Act 1967* provides that the Parliamentary Commissioner *"shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay*

before each House of Parliament such other reports with respect to those functions as he thinks fit."

Under this section of the Act the Parliamentary Ombudsman publishes an annual report, special reports to Parliament and selected case studies.

Reports also can be made under section 10(3) of the Act, although this is rare. This section of the Act provides that:

"If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case."

B. Discussions

After the delegation was greeted by the Deputy Ombudsman it watched a video of the public hearings held by the Select Committee on the PCA for its inquiry into the Child Support Agency. The Press and Public Relations Officer gave an overview of the Office's operations and answered several questions from the delegation. Following the video presentation, the delegation discussed with the Deputy Ombudsman the work of the Parliamentary Ombudsman and his relationship with the Select Committee.

Areas of discussion included:

- the "MP filter" - advantages and disadvantages, and the direct access system which operates in relation to the Local Government and Health Service Ombudsmen
- Ombudsman reports to Parliament
- Select Committee inquiries, public hearing procedures and attendance by the Ombudsman
- Major inquiries e.g. *The Child Support Agency, The Channel Tunnel Rail Link and Blight, Maladministration and Redress.*

¹¹ Parliamentary Commissioner for Administration, *Annual Report for 1995*, p.55.

¹² *The Powers, Work and Jurisdiction of the Ombudsman*, op. cit. p.xx.

- functions and powers of the Parliamentary Ombudsman
- appointment of a new Ombudsman - the selection and appointment process, and term of office
- the relationship between the Parliamentary Ombudsman, and members of the Select Committee, and Parliament as a whole
- the "Barlow Clowes"¹³ case
- monitoring of compliance with the Ombudsman's recommendations
- Staffing and funding issues
- the role of the Parliamentary Ombudsman in relation to the non-statutory Code of Practice on Government information

1.2 POLICE COMPLAINTS AUTHORITY

Participants

Mr Moorhouse
Acting Chairman

Ms Caroline Mitchell
Member
Discipline Division

Mr Anthony Williams MBE
Member
Investigation Supervision Division

A. General

The Police Complaints Authority was established under the *Police and Criminal Evidence Act 1984* and commenced operations on 29 April, 1985.

The Authority is organised into two divisions: a supervisory division consisting of a Deputy Chairman and five members, and

a disciplinary review and adjudication division comprising a Deputy Chairman and six members.

Functions - Under the Act the three main functions of the PCA are to:

- i) supervise the investigation of the most serious complaints against police officers;
- ii) supervise investigations into non-complaint matters voluntarily referred by police forces;
- iii) review the outcome of every investigation, supervised and unsupervised and to decide whether disciplinary action should be taken against any officer.

Complaint Process - Under the existing police complaints system, complaints must be recorded by the force whose officers are the subject of complaint. Less serious complaints may be informally resolved but if a complainant is dissatisfied with the outcome they may have their complaint considered formally.

The PCA can grant a force dispensation from the need to investigate a complaint if it is: anonymous or repetitious; vexatious, oppressive or an abuse of procedures; impractical to investigate; or if more than 12 months delay exists between the incident and the complaint.

Investigations into complaints relating to death or serious injury must be supervised by the Authority (S.87(i)(a)). In this context, serious injury is defined as "a fracture, damage to an internal organ, impairment of bodily function, a deep cut or a deep laceration." The Authority does have a discretion to cease supervision when a complainant's injury is less serious than originally alleged¹⁴.

¹³ See Parliamentary Commissioner for Administration - *1st Report - Session 1989-1990: The Barlow Clowes Affair*, 19/12/89, House of Commons Parliamentary papers 1989-90.

¹⁴ *Triennial Review 1991-94 of the Police Complaints Authority*, London, May 1994 p.6

Police forces may refer other complaints to the PCA for supervision where they feel this is necessary and the Authority determines whether or not it will supervise the investigation. Referrals of such serious matters as shooting incidents, deaths in custody and corruption, do not need to be complaint based (s.88).

Supervised Cases - In supervised investigations the Authority approves the appointment of the investigating officer and imposes any requirements considered necessary for the conduct of the investigation. The PCA also agrees to the lines of inquiry and may recommend additional resources when necessary.

A PCA officer may visit the scene of the alleged misconduct, act as an observer during interviews and maintain close contact with the investigating officer. All investigation records are submitted to the Police Complaints Authority. The current agreed time limit for investigations, is 120 days.

Upon completion of the investigation the PCA must issue a formal statement indicating whether or not it is satisfied and specifying any areas for concern.¹⁵

Disciplinary function- The final report on an investigation, supervised or unsupervised, is provided to the Chief Officer of the relevant Police Force who considers whether a criminal offence may have been committed. The case may then be referred to the Crown Prosecution Service for a decision as to whether or not to prosecute. The PCA has the authority to direct that a case be submitted to the Crown Prosecutor even though the Chief Officer has declined to do so.

In all other cases not involving criminal offences, the Chief Officer must submit a

memorandum to the PCA specifying his reasons as to whether or not disciplinary charges should be laid. The PCA then reviews the case and the Police Force's recommendation.

Section 93 of the Act provides the PCA with the power to recommend a chief officer of police to prefer disciplinary charges. If after consultation, the chief officer is unwilling to prefer charges considered by the Authority to be appropriate, the Authority may direct the chief officer to prefer charges.¹⁶

B. Discussions

Following a short introduction from the Acting Chairman on the role and work of the PCA, the delegation discussed a wide range of issues relating to the oversight of police and the investigation of police misconduct, including:

General

- process for appointment as a member of the PCA
- funding arrangements and budget
- informal resolution of police complaints e.g conciliation
- powers and independence of the PCA
- team structure
- criticisms made of the PCA
- annual public surveys

Supervisory role

- process for approving the investigation officer
- establishing lines of inquiry for an investigation
- use of the PCA's reserve power
- investigation of serious matters
- dispensation cases
- investigation of referred complaints and internal complaints/management matters
- monitoring of investigations
- time limits for investigations

¹⁵

Triennial Review op cit pp. 21-22

¹⁶

Triennial Review, op. cit. pp. 21-23

Disciplinary role

- current disciplinary authorities for Chief Officers, and officers at the rank of superintendent or below
- process for review of investigation reports by "Discipline Division"
- powers to direct charges
- range of disciplinary measures available

1.3 METROPOLITAN POLICE SERVICE - COMPLAINTS INVESTIGATION BUREAU

Participants

Commander Ian Quinn
 Director
 Metropolitan Police Service

Detective Superintendent Aden Thorne

A. General

Having met with the Police Complaints Authority the delegation sought to gain the perspective of police investigators involved in investigating police misconduct. Arrangements were made for the delegation to meet with senior officers from the Complaints Investigation Bureau of the Metropolitan Police Service.

The Metropolitan Police Service, has a police strength of approximately 28,000 (not including civil staff) and falls within the portfolio responsibilities of the Home Secretary. It is structured in 5 geographical areas each commanded by an Assistant Commissioner.

Complaints Against Police - During 1995-96 the MPS received 6,566 complaint cases and completed 6,783 cases of complaint, involving 10,128 allegations of complaint.¹⁷

¹⁷ Note that one complaint case may contain several allegations of complaint.

Total Allegations of complaint completed

1995-96:	10,128
<i>Fully Investigated:</i>	
	1958 (19%)
<i>Substantiated:</i>	126 (6%)
<i>Informally resolved with complainant's agreement:</i>	3521 (35%)
<i>Withdrawn by the complainant:</i>	1600 (16%)
<i>Deemed by PCA as inappropriate for investigation:</i>	3049 (30%) ¹⁸

A full table of complaint statistics for the MPS can be found at Appendix 1.

Referrals to the PCA - During 1995-6 a total of 801 complaint cases were referred to the PCA. Thirty of these referrals were of the voluntary type which are not complaint based and are made under section 88 of the PACE Act.

The remaining 771 referrals were made under sections 87(1) and section 87(2). Of the total number of referrals 288 cases were supervised, 501 were not supervised and decisions were being awaited in 12 cases.¹⁹

Details of the strengths and workload of each area complaint unit, as provided by the CIB, indicate that the five areas have a total of 159 complaints unit staff.²⁰ As at December, 1996 the CIB Metropolitan Police had a strength of 71 officers.

Currently, the Complaints Investigation Bureau investigates 450 cases at any one time and forwards additional cases to area complaints units for investigation.

¹⁸ Statistics from *Report of the Commissioner of Police of the Metropolis 1995-96*, Metropolitan Police, August 1996.

¹⁹ *ibid*, p.73

²⁰ See appendix 1 for further information on the strength and workload of each area complaint unit as supplied by the MPS in December 1996.

B. Discussions

- staff numbers and division structures
- investigation of complaints by area bureaux
- corruption trends
- information technology and its use as a management tool
- regional crime squads
- investigation of complaints about violence and racist behaviour
- covert operations
- management and direction of the CIB, including funding.

1.4 SELECT COMMITTEE ON THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

Participant

Mr Yusef Azad

Clerk to the Committee

The delegation's visit to London occurred shortly before the resumption of Parliament and coincided with the Conservative Annual Party Conference. Consequently, it was not possible to meet with members of the Committee. However, discussions were held with the Clerk to the Committee, Mr Yusef Azad, at the House of Commons on Friday, 11 October, 1996.

A. General

Establishment - The Select Committee on the Parliamentary Commissioner for Administration is one of the two House of Commons select committees considering external matters.²¹ The Select Committee on the PCA was established in 1967, the same year as the Ombudsman, and is appointed under Standing Order No. 126 of the House of

Commons, "to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Northern Ireland Parliamentary Commissioner for Administration which are laid before the House, and matters in connection therewith."

The Committee consists of nine Members (quorum 3) and has the power:

- "(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place, and to report from time to time;
- (b) to appoint persons with technical knowledge either to supply information which is not readily available or to elucidate matters of complexity within the Committee's order of reference."

The current membership of the Select Committee is as follows:

Mr James Pawsey (Chairman)
Mr Ronnie Campbell
Mr Michael Connarty
Mr Nirj Deva
Mr Bill Etherington
Mr Andrew Hargreaves
Mr Michael Lord
Mr David Nicholson
Mr Paddy Tipping

Inquiries - The delegation was particularly interested in the inquiry process used by the Select Committee to conduct inquiries into the annual and special reports of the statutory officers under its jurisdiction. The Committee also has held inquiries into several themes or issues relevant to the work of the Ombudsmen.

Discussions with Mr Azad concerned the Select Committee's oversight of the Parliamentary Ombudsman and its inquiries into the Ombudsman's reports as explained

²¹ Committee Office House of Commons, *The Committee System of the House of Commons*, March 1995, p.12.

below:

i) *Annual and special reports*

After the Parliamentary Ombudsman presents his Annual Report, the Committee holds a public hearing at which the Ombudsman gives evidence. Further public hearings are then conducted on select issues highlighted in the Annual Report and evidence is taken from the Chief Executive Officers of relevant government organisations. The Committee subsequently reports its findings and conclusions to Parliament.

The Committee views each of the Parliamentary Ombudsman's Annual Reports as an opportunity to learn more about standards of administration in the public service and the problems faced by individuals in their contact with the Executive. According to the Committee, Special Reports by the Parliamentary Ombudsman "almost invariably contain lessons of important and general application."²²

ii) *Section 10(3) reports*

This section provides for the Ombudsman to lay a special report before the House where it appears to him that injustice caused to a person in consequence of maladministration has not been, or will not be, remedied.

This reporting provision has been used by the Parliamentary Commissioner only twice²³, on both occasions in relation to matters concerning the Department of Transport. The Select Committee made recommendations in relation to both special reports by the Ombudsman.

iii) *Thematic inquiries*

The Select Committee also conducts inquiries into subjects relevant to its oversight of areas within the Ombudsmen's jurisdiction. For example, it has held inquiries on issues such as open government and maladministration and redress.

Government Response - By convention the Government formally responds to a report by the Select Committee within 60 days of its presentation to Parliament. The Government response is then published by the Select Committee as a "Special Report".

The following two key inquiries have been selected by the delegation as an illustration of the Select Committee's work:

I. **The Child Support Agency**

During its visit to the Office of the Parliamentary Commissioner for Administration (PCA), the delegation was shown a video recording of the Select Committee's hearing on the Child Support Agency. This inquiry was undertaken by the Select Committee in response to repeated critical reports by the Ombudsman on the Child Support Agency program conducted by the Department of Social Security.²⁴

The purpose of the Committee's inquiry was "to discuss the particular issues raised by the Ombudsman, including the preparation for the Agency; the learning of lessons from the Disability Living Allowance; the responsibility of Ministers; complaints procedures and compensation".²⁵ During the inquiry, the Committee took evidence from Sir Michael Partridge, Permanent Secretary at the

²² Select Committee on the PCA, Second Report, Session 1993-4, *Report of the Parliamentary Commissioner for Administration for 1992*, HC 64, 16 March 1994, p. v.

²³ Sixth Report of the PCA, Session 1977-78, *Rochester Way, Bexley - Refusal to meet late claims for compensation*, HC 598 and Fifth Report of the PCA, Session 1994-5, *The Channel Tunnel Rail Link and Blight*, HC 193.

²⁴ The Ombudsman's reports concerned the Disability Living Allowance and the Child Support Agency (Third Report of the PCA, Session 1994-5, HC 135). p.i. The CBA is an "executive agency of the Department of Social Security set up in April 1993 under the Child Support Act 1991 to administer the assessment, collection and enforcement of child support maintenance."

²⁵ Select Committee on the Parliamentary Commissioner for Administration, Third Report Session 1994-5, HC 199, *The Child Support Agency*, 15 March, 1995, p. v.

Department of Social Security, Miss Ann Chant, Chief Executive of the Child Support Agency, and Mr Alistair Burt MP, Parliamentary Under-Secretary of State, Department of Social Security.

The part of proceedings watched on video by the delegation involved Miss Chant addressing the Select Committee and later answering questions from the Chairman and Committee Members. The Ombudsman, Sir William Reid CB, and the Deputy Ombudsman, Miss Pat Edwards, were in attendance at the hearing and played a significant role in proceedings.

Before the Committee took evidence from a witness the Ombudsman, at the Chairman's invitation, outlined the particulars of the case after which the witness was invited to respond. The Ombudsman was later invited by the Chairman on two occasions during the first hearing to respond to evidence given by the Permanent Secretary for the Department of Social Security.

During the public session in which the Select Committee took evidence from the Parliamentary Under-Secretary for the Department of Social Security, Mr Alistair Burt MP, the Ombudsman again provided an outline of the case.

Although a Select Committee cannot order the attendance of Members of either House of Parliament, Members may attend voluntarily, and the Select Committee noted that the Government "has frequently reaffirmed that ministers and civil servants will attend committees when requested and provide committees with the information necessary to their inquiries."²⁶

The attendance of Mr Alistair Burt MP, was the first occasion that a Minister had been questioned by the Select Committee on the PCA about the contents of an Ombudsman

report. The Committee discussed this aspect of the inquiry in its report:

*"The custom has always been to take evidence from the relevant Permanent Secretary or Chief Executive. The reason is clear. It is the Permanent Secretary who is responsible for the efficient administration of the Department. He or she will have made many of the important administrative decisions and will be aware of the detailed administration of the department. The Committee has never believed, however, that Ministers cannot be held to account for the administrative actions of their department. Indeed the Committee has in another recent case criticised Ministers for administrative failure. Furthermore in 1968, in the first Report this Committee ever laid before the House, it was emphasised that 'Ministers are not exempt from examination by the Commissioner or Your Committee'."*²⁷

The Select Committee concluded in its report that it was "in no doubt that maladministration in the CSA cannot be divorced from the responsibility of Ministers for the framework within which it operated."²⁸

The recommendations of the Select Committee are attached as Appendix 2 and include several proposals for the payment of compensation to individuals affected by the maladministration of the Child Support Agency. In conclusion the Committee stated:

"It has not been our intention to investigate or question the policy decisions relating to the CSA. Recent changes introduced by the Government are an implicit acknowledgement that, at least with the benefit of hindsight, not all such decisions were correct. What is evident, however, both from a mass of circumstantial evidence and from the Ombudsman's report, is that any policy deficiency was cruelly exacerbated by administrative incompetence. Despite the recent experience of the DLA, basic measures to improve the handling of correspondence and complaints, the training of staff, replying to MPs, dealing with backlogs of work, were all delayed far too long. We trust that any review arising from the experience at the CSA will take much more seriously the need to learn permanent lessons about

²⁶ *ibid.* p.14.

²⁷ *ibid.* p.xi.

²⁸ *ibid.* p.xii

how to administer any major new project.”²⁹

2. The Channel Tunnel Rail Link and Exceptional Hardship

Ombudsman’s Report - The Ombudsman’s report entitled, *The Channel Tunnel Rail Link and Blight: Investigation of complaints against the Department of Transport*³⁰ was tabled in February 1995 in accordance with section 10(3) of the *Parliamentary Commissioner Act 1967*. This was only the second report made under this provision since the establishment

*That increased uncertainty and blight in the period from June 1990. The position was not the same as that pertaining when a road scheme is introduced - the project raised exceptional difficulties and exceptional measures were called for. Persons not covered by the compensation schemes may have suffered as a result of the delay in settling the route. DOT had a responsibility to consider the position of such persons suffering exceptional or extreme hardship and to provide for redress where appropriate. They undertook no such consideration. That merits my criticism.”*³³



Committee Delegation with Mr Yusef Azad, Clerk to the Select Committee

The Department disagreed with the Ombudsman’s conclusion, arguing that: it was unreasonable to claim the project had been delayed; the CTRL was unexceptional in its funding and in the uncertainty generated; and, it was not Government policy to compensate for generalised blight.³⁴ The Ombudsman proposed that compensation should be paid in a few cases of exceptional suffering, however, the Permanent Secretary claimed that it would be difficult for a scheme for exceptional hardship to be created and properly managed.³⁵

of the Ombudsman’s Office.³¹

The report examined the implications of the proposals to establish the Channel Tunnel Rail Link (CTRL) project for persons living along the various proposed routes.³²

The Ombudsman concluded in his report that:

“The maladministration I find, in summary, is this. The effect of DOT’s policy was to put the project in limbo, keeping it alive when it could not be funded.

Committee Inquiry - The Committee’s report opens in strong support of the Ombudsman:

*“The Ombudsman has powers to recommend and persuade, but cannot force compliance with his recommendations. The Government invariably abides by the Ombudsman’s findings. There would be no point in having an Ombudsman if the Government were to show disregard for his Office, his standing as an impartial referee, and for the thoroughness of his investigation.”*³⁶

²⁹ ibid, p.xiv.

³⁰ *Fifth Report of the PCA, Session 1994-5, HC 193.*

³¹ Select Committee on the PCA, Sixth Report, Session 1994-5, *The Channel Tunnel Rail Link and Exceptional Hardship*, HC 270, 19 July, 1995, p.v.

³² PCA Annual Report for 1995, p.42

³³ ibid, p.vii, originally *Fifth Report of the PCA, Session 1994-5, HC 193.*

³⁴ ibid pp.viii-ix.

³⁵ ibid p.x.

³⁶ Select Committee on the PCA, Sixth Report, HC 270, op.cit. p.v.

Evidence during the inquiry was taken from Sir Patrick Brown, Permanent Secretary of State for Transport, and the Rt Hon Brian Mawhinney MP, then Secretary of State for Transport. The Select Committee clearly outlined the approach it took to the inquiry in its report:

*"We have not assumed automatically that the Ombudsman is right but have considered the arguments from the Ombudsman and from the Department of Transport objectively and dispassionately. We do not attempt here to rehearse the detailed history of the Channel Tunnel Rail Link (CTRL). This is helpfully summarised in the Ombudsman's own Report and in the Minutes of Evidence, to which we would refer readers desiring further detail. We address only the substantive areas of disagreement between the Ombudsman and the Department."*³⁷

The Ombudsman and Deputy Ombudsman were in attendance at the hearings conducted by the Select Committee, and on each occasion the Ombudsman provided an outline of the case after which the witness was invited to respond. During evidence from the Permanent Secretary the Ombudsman was invited by the Committee to explain a point of fact and clarify his position on several points. The same process was adopted when the Secretary of State for Transport, the Rt Hon Dr Brian Mawhinney MP was examined by the Committee.

After conducting its inquiry the Select Committee published a report in July 1995 in which it found:

"27. We recommend that the Department of Transport reconsider its response to the Ombudsman's findings, accept his conclusion that maladministration has occurred and consider arrangements to determine whether there are householders who merit compensation on the grounds of exceptional hardship. That is very much a matter for the Department's judgement, a point the Ombudsman emphasised. It would be most regrettable if the Department were to remain obdurate.

³⁷

ibid. p.vi.

*In such an event, we then recommend that as a matter of urgency a debate on this matter be held on the floor of the House on a substantive motion in Government time."*³⁸

A full copy of the conclusions and recommendations from this Committee Report are attached as Appendix 3.

Government Response - The Government's formal response to the Select Committee's report dated 1 November, 1995 was published by the Committee as a special report.³⁹ The Government continued to disagree with the Ombudsman's major findings, however, it did state that it was prepared to reconsider whether it would be possible to formulate a scheme to implement the Committee's recommendation for redress to be granted to those affected to an extreme and exceptional degree by generalised blight from the Channel Tunnel Rail Link. The Government undertook to consult the Select Committee as the proposals were being developed.⁴⁰

B. Discussions

The delegation's discussions with Mr Azad mainly concerned the relationship between the Parliamentary Ombudsman and the Select Committee and included the following subjects:

- the Parliamentary Ombudsman's attendance at Select Committee public hearings on special reports
- implementation of recommendations made by the Parliamentary Ombudsman
- Government response to reports by

³⁸ ibid p.xiii

³⁹ Select Committee on the PCA, Fifth Special Report, Session 1994-5, HC 819 2 November 1995

⁴⁰ Parliamentary Commissioner for Administration, Fourth Report, Session 1995-6, *Annual Report for 1995*, 13 March 1996, p.45.

- the Select Committee on the Parliamentary Ombudsman
- the Select Committee's "Open Government" report
- Section 10(3) Reports
- the "MP filter" (complaints to the Parliamentary Ombudsman must be made through a Member of Parliament - this requirement does not apply in NSW)
- complaint and investigation turnaround times
- the Citizen's Charter
- the inquiry program of the Select Committee
- education about the role of the Parliamentary Ombudsman
- the membership and composition of the Select Committee.

1.5 FEDERAL INFORMATION COMMISSIONER

Participants

Mr John Grace
Information Commissioner

Mr Leadbetter
Deputy Information Commissioner

Mr Paul Tetro
Director Complaint Investigations

A. General

Information Commissioner

Canada's freedom of information legislation entitled the *Access to Information Act* commenced in 1983. It provides "a right of access to information in records under the control of a government institution in accordance with the principles that government information should be available to the public, that necessary exceptions to the right of access should be limited and specific and that decisions on the disclosure of government information should be reviewed independently of government" (s.2).

The Information Commissioner is appointed by the Governor in Council, after approval

of the appointment by resolution of both Houses of Parliament, for a term of seven years and is eligible to be reappointed for a further term not exceeding seven years.

Under s.30 of the Act the Commissioner receives and investigates complaints from applicants that:

- they have been denied requested information;
- they have been asked to pay an unreasonable amount for information;
- the department's extension of more than 30 days to provide information is unreasonable;
- the material was not in the official language of choice or the time for translation was unreasonable;
- they have a problem with the *Info - Source* guide or periodic bulletins which are issued to help the public understand the Act;
- they have run into another problem using the Act.

The Commissioner can compel documents and evidence and has search and entry powers(s.36). He also has the power to initiate a complaint (s.30(3)).

Investigations must be conducted in private and in the event that the Information Commissioner finds the complaint sustained he reports his findings and recommendations to the head of the government body concerned.

Where appropriate he may request the body to provide notice, within a specified time, of any action taken to implement his recommendations or any reasons for a lack of action. In the event that the government body and the Commissioner do not agree that access should be given to a complainant the latter can appeal the matter to the Federal Court.

The Information Commissioner submits an annual report to Parliament on the activities

of his Office and in urgent cases may make a special report to Parliament (s.39)

The Act also provides for permanent review of the legislation by a parliamentary committee (s.75), however, the only review to date was conducted three years after commencement of the Act.

Privacy Commissioner - The office of *Privacy Commissioner* was created in 1983. The *Privacy Act* provides that the Governor-in-Council may appoint the Information Commissioner as the Privacy Commissioner.

At present, the offices of Information Commissioner and Privacy Commissioner are held separately although they have one line appropriation in the Parliamentary budget and share administrative services.

The current Information Commissioner, Mr John Grace, previously held office as the Privacy Commissioner.

B. Discussions

Discussions with the Information Commissioner and his staff focussed on:

1. *Legislative and Jurisdictional matters*
 - the relationship between freedom of information and privacy legislation
 - various models for freedom of information and privacy bodies
 - arrangements under the Privacy Act for the use of personal information by investigative authorities
 - legislative review of the Privacy Act
 - appeal mechanisms
 - systemic issues such as delays in the processing of applications
 - the appointment and term in office of the Commissioner
 - the powers of the Information Commissioner and implementation of the Commissioner's recommendations
 - reporting mechanisms

- proposed amendments to the Act
- Whistleblowing legislation

2. *Access to Information*
 - *Info Source - Sources of Federal Government Information 1994-5* - a central catalogue of all information on the public record by government departments including legislation, functions, case records management, structure, program records, personal information banks, standard program records, manuals, and software
 - Provision of reading room facilities to members of the public by all departments subject to FOI legislation
 - Archives information
 - the use of information technology to distribute information about the public sector e.g. on the Internet

3. *Application process*
 - statistics on requests for information including application categories and the major sources of requests
 - application costs and the administrative cost of processing applications
 - statutory time limits for the processing of applications
 - the conduct of hearings by the Information Commissioner

4. *Management issues*
 - funding arrangements for the Office of the Information Commissioner

**1.6 ROYAL CANADIAN
MOUNTED POLICE - PUBLIC
COMPLAINTS COMMISSION**

Participants

The Honourable Jean-Pierre Beaulne QC
Chairman

Pierre-Y. Delage
General Counsel

Bertran Giroux
Executive Director

Célyne M. N. Riopel
Director General Complaints

A. General

The Public Complaints Commission, which commenced operations on 30 September 1988, is an independent federal agency with an external oversight role in relation to the RCMP.

Section 45.35(1) of the *Royal Canadian Mounted Police Act* provides for any member of the public to complain about the conduct of a police officer to: the RCMP Public Complaints Commission; the RCMP; or the provincial authority responsible for receiving and investigating police complaints in their area.⁴¹

The main functions of the Commission as specified in Part VII of the RCMP Act are to:

- receive complaints from the public;
- notify the RCMP Commissioner of the complaints it receives;
- review complaints from individuals who are not satisfied with the RCMP's disposition of their

⁴¹ RCMP Public Complaints Commission, *Annual Report 1995-96*, p.iv.

complaints.⁴²

Complaints process - Complaints are forwarded to the RCMP who may informally resolve the matter with the complainant's agreement. The complaint may be subject to a formal internal investigation, the results of which are provided to the complainant who may request a review by the Commission if they are dissatisfied with the RCMP report. Decisions by the RCMP not to investigate a complaint, or to terminate an investigation, may also be reviewed by the Commission.⁴³

Reviews - Reviews involve examining the documentation provided by the RCMP and the complainant, and any additional information obtained through further investigation. The Commission aims at a ninety day completion time for reviews.

A Complaints Review Committee comprising senior staff, analysts and an investigator from the Commission make recommendations to the Chairman on each review after assessing the documentation. Recommendations broadly fall into two categories, those aimed at "curative" action to resolve the complaint, and "preventative" recommendations aimed at systemic change.⁴⁴

Investigations as part of the Review Process - Prior to preparing a report on a review of the RCMP's handling of a complaint, the Chairman of the Commission may request the RCMP Commissioner to conduct further investigations or he may direct the Public Complaints Commission to conduct its own investigation, or hearing into the complaint.

During 1995-6 the Chairman asked the RCMP to conduct four further investigations while the Public Complaints Commission

⁴² *ibid* p.v

⁴³ *ibid* p.10

⁴⁴ *ibid* pp.19, 39.

conducted further investigations into 19 complaints. Two public hearings were conducted as part of the review process during 1995-6.⁴⁵

Public interest investigation - The Chairman also may investigate, or institute a hearing to inquire into, a complaint in the public interest, regardless of whether the RCMP has investigated the complaint.

In public interest investigations under section 45.53 of the *RCMP Act* the Chairman of the Commission forwards the complaint to the RCMP advising that he will be conducting a public interest investigation. After the investigation is completed a report setting out the Chairman's findings and recommendations is prepared and sent to the Solicitor General and the Commissioner of the RCMP. The latter provides the Chairman of the Public Complaints Commission with a response to the recommendations in which the Commissioner outlines any proposed action he plans to take.

The Chairman subsequently prepares a final report which is submitted to the Solicitor General, the Commissioner of the RCMP, the complainant and the RCMP member whose conduct was subject to complaint. The Commission conducted four such investigations in 1995-96 and held one public hearing in the public interest.⁴⁶

Membership - The Commission comprises the Chairman, a member for each province and territory contracting with the RCMP for police services and not more than three other members. The Chairman is a full-time member of the Commission whereas other members may be appointed on either a full-time or part-time basis. Members of the Commission are responsible for conducting

hearings assigned to them by the Chairman.

The head office of the Commission is in Ottawa and two regional offices are located in Vancouver and Edmonton.

B. Discussions

- establishment and development of the RCMP Public Complaints Commission
- relevant legislative provisions of the RCMP Act
- role of the Chairman and the Members of the Commission
- powers and functions of the Commission e.g. "own-motion" investigations
- internal police investigations
- significant Federal Court judgements
- relationship with Parliament
- reporting requirements and the reporting of compliance with Commission's recommendations
- independence of the Public Complaints Commission
- complaint statistics and categories of complaints
- informal resolution of complaints, the conciliation process and conciliation rates
- RCMP External Review Committee
- disciplinary processes
- the conduct of hearings
- complaint statistics
- anonymous complaints
- internal police matters
- *Declaration of Service Standards* i.e. standards for the quality of service to be provided by the Commission
- appeal mechanisms
- parliamentary oversight of the RCMP Public Complaints Commission

⁴⁵ *ibid.*, p.43, 47.

⁴⁶ *ibid.*, p.44, 47.

1.7 STANDING COMMITTEE ON THE OMBUDSMAN, ONTARIO LEGISLATIVE ASSEMBLY

This parliamentary committee is a fourteen-member Committee established under Standing Orders. The Members of the delegation met with the Standing Committee on the Ombudsman from the Legislative Assembly of Ontario on Wednesday, 16 October, 1996. As this was a sitting day for the Ontario Committee discussions were conducted as an informal meeting, a full record of which is included at Appendix 4.

The meeting commenced with a brief explanation from the NSW Committee Chairman, Mr Gaudry, of the role of the Ombudsman and the parliamentary oversight committee in New South Wales. He also outlined the composition of the Committee and gave a summary of the previous inquiries it had conducted.

Mr Fraser made several opening comments concerning the functions of the Committee and his experience as former Chairman. This was followed by a short description of the structure of the Ontario Ombudsman Act and the work of the Standing Committee from the research officer, Mr Phillip Kaye. The Chairman of the Standing Committee, Mr John Parker, then opened general discussions between the Standing Committee and the delegation.

A. General

The following description of the Ontario Standing Committee on the Ombudsman is derived from Mr Kaye's briefing to the delegation.

In 1975, the year in which the Ombudsman was created, the Legislative Assembly established a select committee on guidelines for the Ombudsman. The current standing

committee approach was adopted ten years later, in 1985 when the Standing Committee on the Ombudsman was provided for by the standing orders of the Legislative Assembly.

Current functions of the Committee - The Standing Committee's terms of reference may be divided into three areas: reviewing and reporting on the Ombudsman's annual reports; reviewing and reporting on reports of recommendation-denied cases; and, the formulation of rules for the guidance of the Ombudsman.

*Recommendation-denied cases*⁴⁷ - Since the creation of the Ombudsman's Office a total of 134 recommendation-denied cases have been referred to the Committee by the Ombudsman. The Committee has reviewed 80 of these cases. In the other 54 cases the Ombudsman's recommendations were accepted prior to the Committee conducting a review.

The Committee fully or partially supported the Ombudsman in approximately 72-73% of the 80 cases reviewed. In 85% of the cases where there was Committee support for the Ombudsman, the subsequent Government response was found to be satisfactory. Significantly, the number of recommendation-denied cases has recently declined and since the 1990-91 fiscal year only five such cases have occurred, all in 1993.

Rules for the guidance of the Ombudsman - The Ombudsman Act empowers the Legislative Assembly to make rules for the guidance of the Ombudsman in the exercise of his or her functions. The Standing Committee is delegated this responsibility by the Assembly under standing orders.

In this process any rules proposed by the Committee would be presented to the Assembly for adoption. However, there have

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That is, cases where an agency has chosen not to adopt the Ombudsman's recommendations.

been no rules made by the Committee since the Assembly adopted general rules in November 1979. The existing rules set a time frame for the tabling of the Ombudsman's Annual Report, explain the term "adverse report" and clarify the procedure for the reporting of recommendation-denied cases to the Legislature by the Ombudsman.

Former functions of the Committee - Estimates Review - Between 1983 and 1989 the Ombudsman Committee and the Board of Internal Economy both reviewed the Ombudsman's estimates. The Committee's role was removed in 1989 when standing orders were changed to provide that the estimates of all ministries and offices would be referred to a Standing Committee on Estimates.

In effect, the Estimates Committee reviews a portion of the estimates it receives each year. Those not selected for review are deemed to have been approved. To date the Ombudsman's estimates have not been selected by the Estimates Committee for review.

Public complaints - Prior to 1993 the Committee reviewed complaints from members of the public concerning the service provided and procedures followed by the Ombudsman's Office. These complaints were reviewed by a sub-committee on communications from the public which examined procedural fairness issues such as delays.

This role was adopted as a means of identifying the need for new rules and to provide individuals with an avenue to voice their concerns about the fairness of the Ombudsman's own investigation. The sub-committee did not act as an appeal mechanism with respect to decisions made by the Ombudsman. Following a review in 1993 the Standing Committee recommended that it should not review

public complaints regarding the Ombudsman's handling of a particular case.

Review of the Office of the Ombudsman - The Standing Committee conducted a review of the Office of the Ombudsman in 1992-3, focussing on the relationship between the Ombudsman and Parliament. Specific matters looked at by the Committee included: its role regarding the management of the Ombudsman's Office, the making of rules for the guidance of the Ombudsman, examination of recommended-denied cases and public complaints about Ombudsman investigations.

Certain recommendations proposed expanding the committee's mandate by restoring its role in the review of the Ombudsman's budget, providing it with a role in the appointment process and giving it authorisation to monitor and review the Ombudsman's exercise of his or her functions. This proposed monitor and review power was modelled on the functions of the New South Wales Committee.

In December 1995 the Assembly referred the 1993 report to the current Standing Committee for review.

B. General Discussions

The following issues were discussed by the members of the delegation and the Ontario Standing Committee on the Ombudsman:

- methods for dealing with public complaints
- the relationship between the Ombudsman and Parliament, and the independence and accountability of the Ombudsman
- the role of parliamentary oversight committees
- contact between the Ombudsman and Members of Parliament
- the role of Members of Parliament when making a complaint to the Ombudsman on behalf of a

constituent

- access and awareness issues - facilities for complainants from regional areas
- funding and resources
- police complaints
- systemic issues
- protected disclosures
- appeal mechanisms
- implementation of Ombudsman recommendations
- Committee structures and operations

1.8 OFFICE OF THE ONTARIO OMBUDSMAN

Participants

Mr Murray Lapp
Director of Investigations and Complaint Handling

Ms Wendy Ray
Legal Counsel

At the time of the delegation's visit the Ontario Ombudsman, Ms Roberta Jamieson was absent from the Office attending an IOI Board Meeting. The Chairman of the NSW Committee later met Ms Jamieson during the VI Conference of the International Ombudsman Institute.

A. General

The Office of the Ontario Ombudsman was established in 1975 under the *Ombudsman Act*. The Ombudsman's function under the Act is "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organisation and affecting any person or body of persons in his, her or its personal capacity" (s.14(1)).

The Ombudsman is appointed for a term of 10 years, with the possibility of reappointment, and cannot hold office after reaching 65 years of age. The Office of the

Ombudsman must be audited annually by the Provincial Auditor and is required to submit an annual report to Parliament.

The Ombudsman's jurisdiction includes government organisations defined as a ministry, commission, board or other administrative unit of the Government of Ontario. Federal, municipal or private bodies are not within jurisdiction and the Ombudsman also cannot investigate complaints concerning the courts and proceedings of Cabinet.

The complaint process in Ontario, and the categories of conduct on which the Ombudsman may report, are very similar to those which exist in New South Wales. Complaints may be made by the person affected, any member of the Assembly to whom the person affected complains, or on the Ombudsman's own motion.

Reporting requirements are also similar and the Ombudsman may report to Parliament in cases where the organisation concerned has not taken the recommended action (termed "recommendation denied cases".) In New South Wales such reports are termed section 27 reports and there is a legislative requirement that the relevant Minister must respond to the report within 12 sitting days. Ombudsmen in both New South Wales and Ontario do not have the power to enforce their recommendations.

Powers - The Ombudsman's investigation powers include the power to conduct "own motion" investigations as well as investigations into complaints (s.14(2)). The Ombudsman has a discretionary power under section 17 which enables her to refuse to investigate a complaint, or to cease further investigation in certain circumstances. The Act provides the Ombudsman with the power to summon witnesses to give evidence and to call for documents and other information relevant to the matter under investigation (s.19).

Complaints to the Office must be in writing and investigations are conducted in private (s.18(2)).

Reports - In the event that the Ontario Ombudsman finds that misconduct has occurred in terms of section 21, a report is sent to the appropriate government organisation and the relevant Minister. Should the government organisation fail to take adequate or appropriate action to give effect to the Ombudsman's recommendations the Ombudsman may make a report to the Premier and Parliament.

Access and Awareness - The Ontario Ombudsman's ten district offices plan public education programs to fit the needs of the people in each area. Other education initiatives include utilising community organisations and events for public education on Ombudsman services, and conducting field trips. Various mediums are used to distribute multi-lingual information about the Ombudsman including videos and computer disks.⁴⁸

B. Discussions

- Ombudsman's jurisdiction and related issues e.g the implications of proposals to privatise government bodies
- investigation of complaints concerning correctional institutions
- powers of the Ombudsman e.g. "own motion" investigations
- the relationship between the Ombudsman and Parliament
- compliance with the Ombudsman's recommendations, that is, "recommendation-denied" cases
- the Ombudsman's Annual report and reports to Parliament
- management issues e.g. the budget

- process liaison with departments

1.9 OFFICE OF THE POLICE COMPLAINTS COMMISSIONER

Participants

The Honourable Gerald Lapkin
Commissioner

Susan Watt

Susan James
Manager, Information & Research Services

Gary Yee
Chair
Board of Inquiry

Murray Chitra
Chair
Ontario Civilian Commission on Police Services

A. General

I Police Complaints Commission

Section 99 of the *Police Services Act 1990* provides for the appointment of a Police Complaints Commissioner (PCC) for a maximum term of five years, with the possibility of reappointment. It is the Commissioner's responsibility to monitor the handling of complaints by bureaus and chiefs of police.

The Commissioner has the powers of a public inquiry commission and may enter and search premises and remove documents and other material relevant to the review. Section 100(1) of the Act enables the Commissioner to enter a police station, after informing the police chief, to examine documents and other complaint related material.

Police Complaints Process - In Ontario, public complaints about police conduct may be made orally or in writing, to the Public

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Ontario Ombudsman, *Annual Report 1994-95*, pp.17-18.

Complaints Investigation Bureau⁴⁹ of the police force concerned, an office of the Police Complaints Commissioner, or any other bureau, police station or detachment. The PCC must be notified of all complaints and in certain circumstances the Attorney General may direct the Commissioner to make a complaint about an officer's conduct (s.78) in which case the Commissioner becomes the complainant.

Inquiry Cases - The PCC is notified of all police complaints received by or forwarded to a Bureau. If the Bureau and the Commissioner agree that the matter concerns issues other than misconduct, it may be dealt with as an inquiry, rather than a police complaint. In the case of an inquiry, the bureau conducts an investigation and must notify the Commissioner and the complainant of the results within 60 days (s.81(4)). It is then open to the Commissioner to review inquiry investigations and, if necessary, direct their reclassification as a complaint.

Informal Resolution - Where the complainant and police officer agree to informally resolve a complaint this may be attempted by the person in charge of the Bureau. Copies of informal resolution records are provided to

the complainant, police officer and the PCC. The Commissioner may determine that the complaint be formally investigated where he believes that the informal resolution was not properly conducted (s.83(5)).

Investigations - Complaints are investigated by the public complaints investigation bureau of the relevant force which forwards monthly interim reports on the progress of the investigation to the PCC, the complainant and the police officer involved. A final report on the investigation is sent by the bureau to the the Commissioner, the police chief, the complainant and the police officer.

Under section 87(8) the Police Complaints Commissioner can direct the police chief to have the complaint further investigated.



L to R: B. Gaudry MP, Commissioner Lapkin, A. Fraser MP & S. James

PCC Investigation - Section 88 gives the Police Complaints Commissioner the power to conduct the investigation into the complaint instead of the bureau in certain circumstances. These circumstances include where the Commissioner believes the investigation has been subject to undue delay or that "unusual circumstances" may have affected the bureau's investigation or final report. The Commissioner may also investigate a complaint at the request of the Police Chief. Complaints concerning more than one police force are conducted by the Commissioner (s.88(3)). However, the

⁴⁹ Bureaus are created in accordance with section 76 of the *Police Services Act* which requires every chief of police to establish and maintain a public complaints investigation bureau to deal with public complaints.

Commissioner does not possess an "own motion" investigation power.

Monthly interim reports are provided to the police officer and police chief prior to the Commissioner's final report on an investigation.

Upon receiving the Commissioner's final report the police Chief may further investigate the matter or notify the PCC of what action is proposed e.g. whether disciplinary charges should be laid, a board of inquiry held, or the matter referred to Crown Attorney for prosecution.

In the case of a decision by the police chief that the officer be admonished, the Commissioner may review the decision at the request of the complainant or police officer. Where the Police Chief decides that no further action is necessary the Commissioner may conduct a review at the complainant's request (s.91). The Commissioner also may decide to conduct a review of the police chief's decision in the public interest.

Following the review, the Commissioner may decide not to take any further action or may order a hearing by a board of inquiry if this is considered to be in the public interest (s.91(6)).

II Board of Inquiry

The Ontario Board of Inquiry is a civilian quasi-judicial tribunal, independent of the police and government, established under Part VI of the Police Services Act to conduct hearings into public complaints about police conduct.

The Board of Inquiry does not receive complaints direct but conducts hearings when ordered by the Police Chief, in response to a final report on an investigation (s.90), or the Commissioner (s.91), following his review of an investigation. Hearings also take place when a police officer appeals a

penalty imposed as a result of a disciplinary hearing relating to a complaint (s.93).

Membership - The Lieutenant-Governor appoints a panel of up to sixty part-time members from the various regions in Ontario. One-third of the Board Members are from the Law Society and are recommended for appointment by the Attorney General. One-third are recommended for appointment by the Ontario Police Association but cannot be police officers. Another third are recommended for appointment by the Ontario Association of Municipalities.

Members are appointed for a maximum term of 3 years and are eligible for reappointment. The panel of members is headed by a Chairman appointed on the recommendation of the Attorney General.

The Chairman of the panel of Board members selects 3 members to conduct a public hearing into a complaint. Where possible the members are selected from the area in which the complaint originated.

The parties to a hearing are the complainant, the police officer and the PCC. In hearings arising from an appeal by a police officer the police chief also attends as a party to the hearing. The Commissioner has carriage of the matter where the hearing was ordered by himself or the Police Chief. Where a police officer has appealed the officer has carriage of the matter.

Parties to the hearings are provided with a concise statement of the misconduct allegations and prior to the hearing the police officer and complainant are given an opportunity to examine any evidence or report to be produced at the hearing.

The police officer is not required to give evidence and statements made during informal resolution attempts are inadmissible unless the consent of the person who made the statement is obtained. The Board may

direct that it should adjourn to view with the parties any site or thing relevant to the hearing.

Decisions by the Board are majority-based and if misconduct is clearly proven the board may impose a range of penalties such as dismissal, demotion, suspension, and forfeiture of pay. The Board formally advises the Attorney General of its decision which is appealable through the Divisional Court.

III Ontario Civilian Commission on Police Services (OCCPS)

The OCCPS is established under Part II of the Police Services Act with several functions relating to the conduct of municipal police service boards and municipal police matters.

Under section 22 of the Act the OCCPS's powers and duties include:

- i) directing municipal police service boards or municipal police forces to comply with prescribed standards of police services, and applying sanctions where necessary;
- ii) directing boards or chiefs of police to comply with the Police Service Act and regulations concerning employment equity plans, and applying sanctions where appropriate;
- iii) investigating municipal police matters;
- iv) inquiring into matters relating to crime and law enforcement under section 26 (i.e. at the direction of the Lieutenant Governor in Council);
- v) inquiring into any matter regarding police services in villages and townships and making recommendations to the Solicitor-General;
- vi) hearing and disposing of appeals by police force members regarding disciplinary proceedings (s.22).

The range of sanctions available to the Commission in cases where a board or municipal police force has failed to comply with police service standards, legislative requirements, or employment equity plans, are as follows:

- i) suspension of the police chief, the board or one or more board members for a specified time;
- ii) disbanding the police force and requiring the Ontario Provincial Police to provide the municipality's police services;
- iv) appointing an administrator to perform specific functions regarding municipal police matters for a specified time. (s.23).

Where the Commission removes a police chief it has the power to appoint a replacement.

At the request of the Solicitor General or a municipal council, or on its own motion, the OCCPS may investigate, inquire and report on:

- i) the conduct or performance of a municipal police chief, municipal police officer, auxiliary member, special constable, by-law enforcement officer or board member;
- ii) the administration of a municipal police force;
- iii) the manner in which municipal police services are provided;
- iv) municipality police needs.

The costs of investigations are paid for by the municipality.

The Commission has the power to direct that a police officer not satisfactorily performing his or her duties may be demoted, dismissed or retired, if eligible. The Commission also may suspend or remove a board member for unsatisfactory performance. Such directions by the Commission are appealable to the Divisional Court.

B. Discussions

The Office of the Police Complaints Commissioner organised a program of sessions for the day which included discussions with officers from the Board of Inquiry and the OCCPS.

The role of law enforcement bodies and oversight agencies is currently under review by the Ontario Government and a large part of the meeting was devoted to discussing the review, its implications for the police complaints system in Ontario, and the PCC's response to the review.

Other topics dealt with during the meeting included:

- structure of police services in the province of Ontario
- functions and powers of the PCC
- conduct of police investigations into complaints
- trends in oversight
- funding of the PCC
- the role of the Special Investigations Unit
- implementation of PCC recommendations
- internal police complaints
- education initiatives
- the referral of cases to the Board of Inquiry
- decrease in the number of cases referred to Boards of Inquiry
- the role of the OCCPS
- the role of municipal police service boards
- work of the IACOLE and the new Canadian association for civilian oversight of law-enforcement bodies (CACOLE).

PART 2

VI International Conference of the International Ombudsman Institute "The Ombudsman and the Strengthening of Citizen Rights. The Challenge of the XXI Century"

The International Ombudsman Institute was founded in 1978 as a world organisation of Ombudsmen. Administrative support for the Institute is provided by the University of Alberta, Edmonton Canada and funding is obtained through subscriptions or, in the case of special projects, by government and private foundations.

The Institute comprises six regions each with its own structure for regular meetings and communication between Ombudsman offices. The Institute aims to:

- promote the Ombudsman concept and its development throughout the world;
- encourage study, research and education about the Ombudsman institution;
- disseminate information between Ombudsmen; and
- organise International Ombudsman Conferences (held every four years and attended by Ombudsmen, officials, legislators, academics and other interested persons).

There are several membership categories in the Institute which is managed by a Board of Directors representing the voting membership, that is, those Ombudsman Offices recognised by the Institute.⁵⁰

The Institute's Membership By-Laws stipulate that:

"A Voting Member shall be the office of a person

whether titled Ombudsman, Parliamentary Commissioner or like designation who has been appointed or elected pursuant to an Act of a legislature and whose role includes the following characteristics:

- i) *to investigate grievances of any person or body of persons concerning any decision or recommendation made, or any act done or omitted, relating to a matter of administration, by an officer, employee or member or committee of members of any organisation over which jurisdiction exists; and*
- ii) *to investigate complaints against government or semi-government departments and agencies; and*
- iii) *a responsibility to make recommendations resulting from investigations to organisations under jurisdiction; and*
- iv) *to discharge the role and functions as an officer of the legislature or on behalf of the legislature in a role which is independent of the organizations over which jurisdiction is held ; and*
- v) *to report to the legislature either direct or through a Minister on the results of its operations or on any specific matter resulting from an investigation.*

But does not include a person or office who or which

- vi) *has jurisdiction over only one agency or one particular type of grievance except with the approval of the Board under provision 5(f)."⁵¹*

Plenary Session

In each plenary session a paper was given by a speaker and it was the presenter's role to open the session, introduce the speaker and direct the general functioning of the session, including questions from participants.

⁵⁰ *The International Ombudsman Institute - Information Booklet, University of Alberta, 1996 pp 3-8.*

⁵¹ *ibid p.11*

Workshops

The chairman opened the workshop, introduced the speaker and advised participants of the general functioning of the session. After the speaker finished his or her presentation the Chairman organised the conduct of the ensuing discussion and debate.

2.1 Program - 21 October 1996

Plenary Session 1

"The Ombudsman Around the World"

Speaker

Sir John Robertson KCMG CBE
IOI Honorary Member
New Zealand

Presenter

Professor Roy Gregory
Centre for Ombudsman Studies University
of Reading
United Kingdom

Synopsis

The paper delivered by Sir John Robertson, a former Chief Ombudsman of New Zealand, traced the development of various Ombudsman models, reflective of the constitutional, political and social characteristics of each originating country, and concluded that no "pure" model is available.

Ombudsmen institutions were identified as "complaint driven" with core business relating "to the detection of corruption, improper conduct of officials, maladministration, administrative unfairness, basic human rights and non compliance with the law." In order for Ombudsmen to maintain "relevancy" it was argued that the institution "must continue to retain, and discharge effectively its core business".

The following three major trends in the current development of the Ombudsman role were identified:

- i) the emergence in Eastern Europe, Latin America and Africa, during the last ten years, of Ombudsman institutions with human rights issues as core business;
- ii) the growing public demand for greater transparency in the operation of government and the increasing involvement of more Ombudsman in this transparency process;
- iii) the growing practice of converting departmental organisations with commercial potential into trading entities (government trading enterprises) and the difficulties created for Ombudsmen trying to retain their jurisdiction in relation to such organisations.

Summary of paper

Characteristics common to Ombudsmen - The speaker was unable to give exact details of the number of Ombudsman at present because of the lack of any central register for such positions. The IOI directory indicates that 84 countries have Ombudsman type institutions of which 215 appear eligible for IOI membership. It is estimated that a further 116 Ombudsman type appointees have jurisdiction over only one agency or one type of grievance.

The Speaker argued that too much attention has been given to the distinctions between the types of Ombudsman models developing around the world. Instead, he asserted that the focus should be on the real test of how independent the office is "to criticise executive government processes, to hold government accountable for its mistakes and achieve credibility and trust with both the government and the governed." Rather than concentrating on the perceived advantages of one model over another, Sir John argued that "all efforts should go into raising and

consolidating the essential characteristics which have made the institution successful, and setting standards of operation which are compatible with the noble concept of the Ombudsman.”

Core business and future relevancy - This section of the paper concerns the core business of Ombudsman institutions and the maintenance of relevancy. It notes that the Ombudsman “operates in a non-adversarial manner, and gains moral influence for acceptance of opinions based on the integrity of processes, the intellectual logic of reasons supporting the opinion, and well established goodwill.”

Effective performance of this task is seen as “a positive contribution to the ethics and integrity of public administration, to the improvement of processes, practices, policies, and even of legislation all of which impact on the way a government does business with its people.” However, Sir John believed that the success of Ombudsmen in performing these core functions had encouraged expansion of the role of Ombudsmen to an extent which posed risks to the continued relevance, flexibility and effectiveness of the institution.

The remainder of the paper is concerned with illustrating how relevancy is established especially in relation to the three major trends in the development of the Ombudsman institution.

The Human Rights Challenge - The paper notes that “the last ten years have been marked by the growth of the Ombudsman with a prime role in the protection of human rights and fundamental freedoms”.

In Sir John’s view, there is “no single identifying organisational model of the Ombudsman Institution” which has best met this new human rights role although the process through which an Ombudsman institution is appointed is regarded as an

important element in its success. According to Sir John:

“If the Ombudsman has been created by a constitutional provision, and has strong legislative backing and has been appointed or confirmed by a significant majority of elected members of a country’s legislature, that institution will have sufficient status to remain aloof from executive government interference.”

The paper states that the relevancy of Ombudsmen who place greater emphasis on human rights and fundamental freedoms will be determined by the public on the basis of the Ombudsman’s success in providing protection from the “major excess of the state”.

Several examples are given of ways in which human rights Ombudsmen work to resolve issues between the state and its citizens, and between social groups. The paper reiterates that once the distinctive characteristics of the Ombudsman institution are significantly changed there is a risk that the strengths of the institution may diminish.

Transparency in Government Business This section of the paper examines the impact upon Ombudsmen of the trend towards transparency of government. For instance, in Australia and New Zealand the core role of Ombudsman has been extended to include the review of decisions by officials about whether official information should be released under freedom of information legislation.

In countries without freedom of information legislation, Sir John argued that there are no obstacles preventing Ombudsmen from being proactive in promoting greater transparency. “Effective information flows and transparency in policy matters” were described as “essential ingredients of the Ombudsman role”.

A number of “important transparency objectives” were identified, for example, “information about what the government is doing, what it is thinking in terms of new

policies, what its major social policy proposals are and the state of its fiscal management". In Sir John's view "effective transparency promote[s] accountability of the political executive and officials and enhance[s] the citizens respect for the rule of law and good government".

Commercialisation - The following observation was made about the commercialisation of government entities and the role of the Ombudsman in that process:

"Ombudsmen are being challenged to justify jurisdiction over such trading entities as are retained in government ownership and they have risen to that challenge because of their considerable concern that the changes impact on constitutional accountability, on user pay principles, on transparency, on social structure, all of which are of importance to the people they serve."

Sir John urged Ombudsmen to be proactive in ensuring that with privatisation some form of protection remained for consumers who previously had access to the Ombudsman.

Failing the establishment of a consumer protection device prior to privatisation, it was recommended that the Ombudsman should take consequential steps to encourage the creation of a private consumer Ombudsman.

The current shift in focus from delivery of service to profitability, is identified in the paper as a factor in the struggle of Ombudsman to retain jurisdiction over state owned trading entities. The cost of responding to an Ombudsman investigation is often cited by oversight opponents as an additional expense for trading enterprises. Another argument put against Ombudsman oversight in this area is that Parliament intended that trading enterprises should be subject to a different structure of accountability than that which applied prior to the change.

The paper gave the following reasons for maintaining jurisdiction of Ombudsmen in relation to privatised bodies:

- (a) *while conversion to the new form is designed to remove costs from the taxpayer to users and make a profit for the government nothing has changed in relation to public ownerships and the right of the people to hold government accountable for the way they behave to the public who owns them. This is what marks them apart from any private sector equivalent.*
- (b) *there is no compelling argument that the history of private corporate behaviour towards consumers gives confidence that a public trading entity obliged to make a profit will in fact treat its consumers better unless there is some sanction available to enforce accountability.*
- (c) *the new accountability regime may be acceptable for policy issues, but it just does not provide for the way the trading enterprise conducts its operations. Ministers generally relieve themselves of any obligation to answer before the legislature for operational conduct, and persist that it is a matter for the Board and the Chief Executive. The Board being appointed by the Minister does not have to submit itself to a shareholders (or public owner meeting) as is done in the private sector and the Ombudsman therefore is the only vehicle with which constitutional accountability to the people for operational conduct can be bought before Parliament.*
- (d) *the Ombudsman's jurisdiction is a bulwark against malpractice and corruption in the use of the trading entities resources, or in its contract administration, especially when the Board does not recognise accountability to the public owners. A Minister or Parliament are not close enough to the operations to effectively control administration.*
- (e) *trading entities are prone to make arbitrary decisions to increase efficiency without regard for the fairness of their impact on consumers who are also public owners. An Ombudsman jurisdiction can protect the citizens interests particularly where the business is a monopoly covering an important public utility.*
- (f) *the avenue of complaint to an Ombudsman puts a dispute before an independent person free of charge, and may be the only remedy available to an individual faced with administrative unfairness in the operations of a*

trading enterprise."

Plenary Session 2
***"Challenges that Meet the Ombudsman
Concept in Latin America"***

Speaker

Dr Leo Valladares Lanza
Honduras

Presenter

Dr Jaime Ordóñez
Costa Rica

Synopsis

This session outlined developments in Ombudsman institutions in Latin America, which were originally modelled on the Spanish Ombudsman, that is, the Defensor del Pueblo.

The presenter discussed the challenges faced by Latin American Ombudsmen given the particular social, political and cultural contexts in which they operate. The most apparent difference between Latin American Ombudsmen and European Ombudsmen is the heavy focus by the Latin American offices on human rights issues. This feature largely derives from the relatively short democratic history of some of these countries.

The Argentinian Ombudsman, for example, was appointed in 1993 and the delegation noted the importance placed upon the IOI's decision to hold the conference in Buenos Aires.

Challenges to the Latin American Ombudsman considered during this session were:

- i) the relevancy of the Ombudsman institutions to the jurisdiction in which they operate;
- ii) unrealistically high public expectations about the ability of the Ombudsman to remedy all injustices and guarantee

- fundamental rights;
- iii) the role played by the Ombudsman in the process of modernisation of the State;
- iv) demands for economic, social and cultural rights once issues of human rights violations are settled;
- v) traditional economic and political powers seeking to undermine the Ombudsman institution through budget cuts, inappropriate appointments and damage to the Ombudsman's reputation.

The work of associations of Latin American Ombudsmen also was examined in this session, e.g. the Board of Human Rights Commissioners (Central America) and the Ibero American Ombudsman Association (Latin American, Spain and Portugal).

This session left the delegation member attending with a strong appreciation of the level of support and courage needed by Ombudsman in new democracies to perform their functions.

Workshop 1

"The Role of the Ombudsman in the Process of Transformation of State Activities"

Speaker

Dr Jorge M. Garcia Laguardia
Guatemala

Presenter

Dr Jorge Santistevan de Noriega
Peru

Synopsis

Dr Laguardia's paper provided an account of the experiences of the Human Rights Commissioner in Guatemala.

The paper examined the role of the Ombudsman institution in overseeing the organs of the State to ensure their official functions were exercised in an effective way.

The workshop highlighted the wide-ranging role of Ombudsmen in Latin American coun-

tries which concern not only individual civic or political rights but also socio-economic rights.

The Ombudsman institution, was seen as having a role in defending “collective” as well as “individual” rights. Dr Laguardia described his own experiences in this session and was followed by other conference delegates involved in the defence of human rights.

Workshop 2

“How to Harmonise General Ombudsman Activities with those Related to Specialised Ombudsman”

Speaker

Sir Brian Elwood
Chief Ombudsman
New Zealand

Chairman

Mr Eugene Biganovsky
Ombudsman - South Australia

Synopsis

This presentation dealt with the changes which have occurred in the development of the Ombudsman institution and identified ways in which features common to all Ombudsmen could be utilised to unite Ombudsmen and promote “Ombudsmanship”.

In the course of discussions, delegates related their views on the differences between Ombudsmen especially those of the “classical” model as distinct from Ombudsmen in the private sector.

Participants in the workshop examined the question of whether essential criteria should be identified and, if so, on what basis. Other matters debated by conference delegates were: protection of the “Ombudsman” title, proliferation of “Ombudsman-like” institutions, threats to the credibility of the Ombudsman institution, essential criteria for

Ombudsman, the role of Parliament in relation to the Ombudsman, and methods by which the IOI could assist in the “harmonization process” and the promotion of Ombudsman principles and criteria.

Dr Elwood presented the IOI and conference delegates with the following challenge:

- “The international ombudsman community should set standards for the use of the name “Ombudsman” and persuade each country establishing an ombudsman-like institution to do so on the basis of internationally acknowledged principles.
- The International Ombudsman Institute should agree upon a universal charter of fundamental principles for the use of the name “Ombudsman” and then publish and promote it.
- The objective behind those actions should be the protection and furtherance of the Ombudsman concept, encouraging the international harmonization of specialised and general ombudsman, around universally acknowledged principles.”

Workshop 3

“Reaching the People: Service Equity and the Ombudsman”

Speaker

Ms Roberta Jamieson
Ontario Ombudsman
Canada

Chairman

Sir William Reid KCB
Parliamentary Commissioner for
Administration & Health Services
Ombudsman
United Kingdom

Synopsis

The Ontario Ombudsman, Ms Roberta Jamieson, presented a paper for this workshop which aimed at exploring the concept of “service equity” as a means of finding ways in which Ombudsman services could be available

to all sections of the population, especially the most marginalised groups.

Ms Jamieson asked questions about the way in which such services could be provided in practical terms. For instance, necessary attitudinal changes, training options, operational changes and the adaption of the Ombudsman institution to suit the context of each country in which it develops.

2.2 Program - 22 October 1996

Workshop 4 "The Ombudsman as a Non-traditional Tool for Citizen Participation"

Speaker

Dr Hans Gammeltoft-Hansen
Denmark

Chairman

Mr Arne Fliflet
Stortingets Ombudsman for Forrattningen
Norway

Synopsis

This workshop was devoted to Ombudsman institutions which function like administrative courts. In his paper Mr Gammeltoft-Hansen identified differences between the classical Ombudsman handling of cases and "traditional court-like handling". He then examined the relevancy of those differences to citizen participation.

The special features in the Ombudsman handling of cases which were examined in the workshop were as follows:

- "No requirements as to form of complaint - the only requirement in most jurisdictions is that the complainant gives their name. Complaints may be received informally and formally lodged with the assistance of an Ombudsman officer. Individuals making inquiries to an Ombudsman office are given information and assistance which is not a process which features in the courts or administrative appeal bodies.
- No special requirements as to form of case processing - Ombudsmen differ from the courts and appeal boards as they are able to initiate their own investigations and have a discretionary power to decline to investigate a complaint which enables them to focus on significant and systemic issues. The Ombudsman has greater influence on the themes and process of an investigation than court-like bodies which oversight the administration. Limited procedural requirements and wide-ranging powers give the Ombudsman flexibility in relation to complaint-handling and investigation processes. In the Ombudsman jurisdiction greater use can be made of informal processes such as alternative dispute resolution techniques. This flexible approach provides the opportunity for complainant involvement and input.
- Own-initiative projects, including inspections of prisons, psychiatric wards etc. - Unlike the courts, Ombudsmen have own-motion investigation powers which may take various forms but essentially gives them special opportunities to investigate matters of significance to a large number of citizens instead of the individual complainant.
- General access to complain to the Ombudsman without regard to parties - Any individual may lodge a complaint with the Ombudsman, as distinct from the courts in which the plaintiff must have a legal interest in the outcome of the case. The universal right to lodge a complaint ensures that the Ombudsman is aware of all the cases he should investigate and gives citizens "a high degree of contributory influence" on the way in which their affairs are dealt with by government administration."

Mr Gammeltoft-Hansen asserted that the “general flexibility which characterises the framework and working methods of Ombudsman institutions as distinct from the courts and other quasi-judicial bodies” forms a common denominator for those mechanisms which facilitate citizen participation.

Workshop 5
“Ombudsman as Mediator”

Speaker

M. Jacques Pelletier
France

Chairman

The Hon. Jackson I. Edokpa
Chief Commissioner
Nigeria

Synopsis

The French Ombudsman, Mr Jacques Pelletier, spoke to this workshop on the Ombudsman’s role as a mediator. According to Mr Pelletier the Ombudsman is in the position of a third party, removed from conflicting interests with the exclusive function of commencing a case, recommending solutions and rendering account publicly.

The paper outlined the wide applicability of the Ombudsman’s mediation role to various spheres such as family, social civic, political and institutional mediation. The paper highlighted the distinction between the technique of mediation, based upon communication and understanding, and those techniques used in negotiation or conflict resolution. Mediation is described in a positive light as a “creative, restoring, preventive and, even, healing” mechanism.

Workshop 6
“Human Rights, Poverty and the Right for Development”

Speaker

Lic. Jorge Madrazo Cuéllar
Chairman
National Commission for Human Rights
Mexico

Chairman

Mr Andrew So
Hong Kong

Synopsis

Mr Cuéllar gave his presentation of the relationship between the problem of poverty and the way in which it may contribute to human rights violations. Poverty is identified as one of the main obstacles to achieving “respect of human dignity” and a “barrier for the effective fulfilment of the ethical and legal values that underlie Human Rights”.

The paper presented the complexity of the “right to development” which is seen as a safeguard to a “set of legal benefits” that give rise to the expression of other human rights, such as political, civil, economical, social and cultural rights. Mr Cuéllar argued that although different in essence “the right to development and the right to peace” are interrelated. He concluded his paper by urging Ombudsmen to seek “real solutions” on human rights issues.

Plenary Session 3
“Human Rights and the Importance in the Institutional Strength of The Ombudsman”

Speaker

Sr. Fernando Alvarez de Miranda
Spain

Presenter

Dr Victoria M. Velásquez de Avilés
El Salvador

Synopsis

The speaker of this session presented the following two-fold thesis to conference delegates:

“1. The figure of the Ombudsman as part of the ‘institutional framework’ which is considered vital for the efficient protection of human rights. Though different models of Ombudsman institutions may exist, the human rights dimension is the common element in international relationships among Ombudsman institutions.

2. The existence of a growing internationalization process of those human rights that stem from democratic standards in which institutional co-operation acquires a fundamental importance.”

Mr Miranda traced the development of human rights in the international community and the international recognition of fundamental freedoms by the International Conference of Humans Rights in 1993.

The second part of this paper explained the role of the *Defensor del Pueblo* (Spanish Ombudsman) and its activities towards:

- i) promoting economic, social and cultural rights, and the right to development;
- ii) the protection of the rights of members of minorities;
- iii) the protection of aboriginal groups;
- iv) the defence of democracy;
- v) improving the application and adoption of international instruments for the protection of the rights of disadvantaged or vulnerable groups;
- vi) establishing ways of co-operation among

Ombudsman institutions e.g. the Ibero American Ombudsman Federation.

Plenary Session 4

“Helping People Facilitates Fairness in Government and Justice”

Speaker

Mr Ibrahim Kajembo
Tanzania

Presenter

Lic. Rodrigo Carazo
Costa Rica

Synopsis

Mr Kajembo pointed to several obstacles to the attainment of fairness and justice by individuals including the complexity and inefficiency of bureaucracies, the unequal balance of power between public bureaucracies and individual citizens, and the lack of effective and credible organs of remedy.

The workshop participants discussed the following suggestions made by Mr Kajembo of ways by which people could be assisted to achieve fairness and justice in their dealings with the state:

- i) the creation or strengthening of effective, credible institutional mechanisms of complaint and remedy - The Ombudsman serves as one institution which performs this role inexpensively, quickly, informally and with easy access.
- ii) entrenching international human rights standards in national constitutions and legislation.
- iii) the creation of effective and credible internal complaint structures and remedies within public institutions to compliment the work of external complaint bodies.
- iv) giving encouragement to civil societies to assist people.
- v) lobbying for repeal and amendment of laws and administrative practices which violate individual rights and hinder the

attainment of justice and fairness e.g. Ombudsman Law Reform bodies, Human Rights Commissions and civil societies.

- vi) promoting human and civic rights awareness among the public, officials and educational institutions.
- vii) increasing the level of transparency in the workings of government.

Several challenges to the Ombudsman's role were outlined in Mr Kajembo's paper, for example, insufficient cooperation from established institutions of Government, funding cuts to public services and Ombudsman offices, and privatisation of public services.

2.3 Program - 23 October 1996

Workshop 7

"The International Ombudsman Institute: Facing Growth of the Concept and Requirement for Coordination"

Speaker

Mr Harley Johnson
International Ombudsman Institute
Canada

Chairman

Daniel Jacoby
Le Protecteur du Citoyen, Quebec
Canada

Synopsis

This workshop involved strong participation from delegates on the role and functions of the IOI.

The session was aimed at obtaining the views of delegates on what the IOI should offer them eg conferences, secondments, technical assistance, developmental assistance and training.

Other issues examined during this session included:

- a) whether the IOI should remain a basic information sharing secretariat;
- b) whether the IOI should develop a permanent expertise capacity;
- c) the measures which could be taken to support the IOI and its objectives.

The IOI is a body with limited staff and funding, and it was apparent to the delegation that the services sought from the IOI by delegates were comprehensive and, often quite crucial. In particular, Ombudsmen from Africa presented suggestions for IOI initiatives to increase the level of technical and developmental assistance offered to new Ombudsman. These delegates also demonstrated their need for continued support from the IOI once established.

It was suggested that the IOI should provide assistance on: available software packages suitable for use by Ombudsmen; traineeships, secondments; feedback to membership applicants on their role and functions; and support through visits. Delegates also felt that greater efforts should be made to impress upon Government the importance of the Ombudsman institution.

The Committee delegation stressed to the participants of this session that the IOI should advise Governments of the formal resolutions passed at the conference, if it was to influence political decision makers.

Workshop 8
“Towards a Better Standard of Living: The Ombudsman Task Within”

Speaker

Mr Yueh-chin Hwang
Taipei de China

Chairman

Mr Justice Abdul Shakurul Salam
Pakistan

Synopsis

The functions and work of the Control Yuan of Taiwan formed the subject of this session. The synopsis for this paper provided the following brief outline of the oversight and human rights work undertaken by the Control Yuan:

“a) **Disciplinary work** Disciplinary actions taken after an offence has been committed include corrective measures, when the concerned case involves a state of affairs and impeachment, or censure, when the violation involves a public functionary.

b) **Cautionary work:** The Control Yuan prepares reports examining and responding to matters of violation of law or dereliction of duty that have not yet become serious; and on new official duties that are not yet regulated by law.

c) **Assistance work:** Work in this area includes the holding of an annual general meeting to offer specific suggestions on official policies, laws and decrees and to review and discuss various cases.”



Committee Delegation with African Ombudsmen at the IOI Conference

Workshop 9
“The Ombudsman Specialised in Judicial Matters”

Speaker

Mr Claes Eklundh
Chief Parliamentary Ombudsman
Sweden

Chairman

Dr Alvaro Gil Robles y Gil Delgado
Spain

Synopsis

Sweden has four Parliamentary Ombudsmen each with specific areas of responsibility. The Parliamentary Ombudsmen’s jurisdiction covers civilian and military central government authorities, including the courts, and it was on this area that Mr Eklundh spoke. In this respect the Swedish Ombudsman’s jurisdiction differs from that of most Ombudsmen who do not oversight the courts.

The Swedish Ombudsman’s role has developed this distinctive feature largely because of the dual nature of the courts and administrative agencies in Sweden, which often share similar characteristics.

The Parliamentary Ombudsman in Sweden has responsibility for prosecuting judges and other officials. To perform this task the responsible ombudsman must be an expert in judicial matters and must in no way impinge upon the independence of the courts when exercising his functions. The principle observed by the Ombudsmen is that “the courts are independent under the law but that they are not entitled to put themselves above the law.”

In performing this supervisory role the Ombudsman does not investigate the way in which the court has assessed evidence or interpreted the law, providing the interpretation is acceptable. However, it can take action if a judgement or decision contravenes the law. Other than this the

Ombudsman’s role concerns procedural matters such as delays in the making of judgements, biased judicial behaviour, or unsatisfactory judgements. Court inspections are regularly conducted by the Ombudsmen who examine judgements and cases pending as part of the inspection.

Oversight by the Ombudsmen has a number of advantages. The Ombudsman is easily accessible, able to review minor matters not dealt with by appeal courts and capable of conducting investigations in cases which do not appear serious enough to lead to disciplinary proceedings or a prosecution.

Mr Eklundh concluded that the Swedish Ombudsmen have made a substantial contribution to the interpretation of procedural law and the development of a code of ethics for the courts.

Regional Meetings & IOI Board of Directors’ Meeting

These sessions involved discussions between regional groups of Ombudsmen and the Board of Directors. Consequently, the Committee delegation did not attend either of these sessions.

2.4 Program - 24 October 1996

Plenary Session 5

*“At the Threshold of the XXI Century:
Identity Crisis or Evolution?”*

Speaker

Dr Jorge Luis Maiorano
Defensor del Pueblo la Republica
Argentina

Presenter

Dr Marten Oosting
National Ombudsman
The Netherlands

This session was not attended by the delegation as it was scheduled to return to Sydney earlier that morning.

Synopsis

A copy of the synopsis provided for Dr Maiorano’s closing address is provided at Appendix 5.

APPENDIX I

METROPOLITAN POLICE SERVICE LONDON - COMPLAINT STATISTICS

**Metropolitan Police Service (London)
Strengths and Workload of ACUs**

ACU Strength (18.4.96)	1 Area	2 Area	3 Area	4 Area	5 Area
Superintendent	1	1	1	1	1
Chief Inspector	6	8	8	10	5
Sergeant	11	16	15	20	16
Other	6	6	8	9	10
Total	24	31	32	40	32
Workload 1995/96					
Complaints recorded	1,648	2,082	2,201	2,067	1,902
Complaints completed	1,719	2,021	2,091	2,133	1,934
Cases recorded per 100 officers	24	21	20	22	24
Cases recorded per ACU officer	61	63	54	41	62
Police Strength on Area (18.4.96)					
Total strength	4,666	6,220	6,505	5,930	5,003
Strength per ACU officer	259	249	271	191	227

PART 3 – COMPLAINTS AGAINST POLICE

Complaints against police 1995/96

COMPLAINTS RECEIVED AND COMPLETED				
Type of complaint	Number of cases of complaints received *		Total number of complaints completed ‡	
	1994/95	1995/96	1994/95	1995/96
Serious non-sexual assault	68	56	93	63
Sexual assault	9	16	16	20
Other assault	2,249	2,167	2,542	2,823
Oppressive conduct/harassment	680	684	943	972
Unlawful/unnecessary arrest/detention	384	334	567	653
Racially discriminatory behaviour	135	121	287	302
Irregularity re evidence/perjury	81	102	242	246
Corrupt practice	42	19	55	35
Mishandling of property	188	204	316	345
Breach of Code A (Stop & search)	227	245	285	355
Breach of Code B (Search and seizure)	184	162	240	271
Breach of Code C (Detention, questioning etc.)	112	88	356	386
Breach of Code D (Identification procedures)	2	3	6	8
Breach of Code E (Tape recording)	1	1	3	4
Multiple/unspecific breaches	21	13	38	34
Failures in duty	585	637	918	1,048
Other irregularity in procedure	91	66	132	116
Incivility	1,430	1,236	2,218	2,176
Traffic irregularity	68	49	88	63
Other	175	61	313	208
Unclassified (No main allegation recorded)	235	302	0	0
Total	6,967	6,566	9,658	10,128

* Counted by the main allegation known at the time of receipt.

‡ Includes all matters of complaint, not only the main allegation.

Source: *Report of the Commissioner of Police of the Metropolis 1995/96*, Metropolitan Police, London, p.72.

APPENDIX 2

HOUSE OF COMMONS SELECT COMMITTEE - CSA REPORT RECOMMENDATIONS

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. We welcome this emphasis on quality. We are disturbed that it should take nearly two years and an Ombudsman's report for this fundamental discipline to be established. [Para. 14]

2. We recommend that the Government review its policy on the setting of targets in the light of the failures of the CSA. Targets should place efficient service to the public before savings to the Treasury. [Para. 15]

3. "Maladministration leading to injustice is likely to arise when a new administrative task is not tested first by a pilot project; when new staff, perhaps inadequately trained, form a substantial fraction of the workforce; where procedures and technology supporting them are untried; and where quality of service is subordinated to sheer throughput. If the misfortunes described in the following reports are to be avoided, great care should be applied by public servants and those who instruct them whenever a policy decision is taken to devise a fresh administrative task which affects large numbers of the public."¹ [Para. 16]

4. The Child Support Unit, as it was then called, did operate as a 'shadow agency' in 1992-93, collecting liable relative maintenance. It was in that year that all preparations for the CSA should have been carefully scrutinised in the light of the failures in the introduction of DLA. [Para. 20]

5. We criticise the DSS for complacency in the training of staff. The Ombudsman's report on the DLA explicitly criticised the training and preparation of the DLA staff for the complexity and demands of a new DSS project. In the case of the CSA the formula for Maintenance Assessments was exceedingly complicated. Despite these facts, the CSA gave their staff only six weeks initial training. This was not enough and the CSA should have known that. [Para. 23]

6. We criticise the Department for not ensuring that such measures to deal with complaints and backlogs were introduced sooner. There was far too restricted a view within the DSS of what could be learned from DLA. The evidence we received suggests it amounted merely to a concern to phase in future large-scale projects to avoid the problems of volume experienced by the DLA. The more general administrative lessons remained ignored. [Para. 24]

7. We consider that Ministers were too easily satisfied with the assurances given by officials. As was stated above, attention should have been given to the failure of the DLA system to respond speedily and effectively to the unexpected surge in workload. Ministers should have reacted more quickly to the situation as problems became apparent. They should have sought assurances that, were pressures to arise from other sources, lessons had been learned in relation to backlog, volume of complaints, dealing with correspondence, training of staff. We expect the questioning of agency officials by Ministers to be searching and robust and for Ministers to be briefed accordingly. We are in no doubt that maladministration in the CSA cannot be divorced from the responsibility of Ministers for the framework within which it operated. [Para. 27]

8. We criticise the CSA most strongly for the omission of any reference to the Ombudsman in its complaints literature. [Para. 29]

9. We recommend that financial compensation be paid to those falsely identified as absent parents through the maladministration of the CSA. [Para. 33]

10. We recommend that the DSS consider discretionary payments for worry and distress caused by the maladministration of the CSA, removing the insistence that there be medical certification of harm or proven malice from officials. [Para. 34]

¹ Third Report of the PCA, Session 1994-95, HC 135, p. iii

11. It has not been our intention to investigate or question the policy decisions relating to the CSA. Recent changes introduced by the Government are an implicit acknowledgment that, at least with the benefit of hindsight, not all such decisions were correct. What is evident, however, both from a mass of circumstantial evidence and from the Ombudsman's report, is that any policy deficiency was cruelly exacerbated by administrative incompetence. Despite the recent experience of the DLA, basic measures to improve the handling of correspondence and complaints, the training of staff, replying to MPs, dealing with backlogs of work, were all delayed far too long. We trust that any review arising from the experience at the CSA will take much more seriously the need to learn permanent lessons about how to administer any major new project. [Para. 35]

APPENDIX 3

HOUSE OF COMMONS SELECT COMMITTEE - CHANNEL TUNNEL AND RAIL LINK BLIGHT REPORT - RECOMMENDATIONS

the danger of then blighting "very large areas"³⁹. The Secretary of State stressed that any such assistance "inevitably increases the blight on every other property in that particular area"⁴⁰.

17. Mr Reid has emphasised that he was arguing only for compensation in a few cases of exceptional suffering. Sir Patrick found "it difficult to contemplate the creation of a scheme only for exceptional hardship which could be properly managed"⁴¹. It was impossible to establish criteria "which would single out a small number of extreme or exceptional cases and which would be equitable and command general public acceptance. Health problems, inability to afford the existing mortgage, the need to care for infirm relatives, divorce, a job outside commuting distance, overcrowding due to an expanding family can all potentially make compelling hardship cases. There is no public consensus that any of these categories is more deserving than the rest"⁴².

CONCLUSIONS OF THE COMMITTEE

18. The Department argued that there was a clear Government policy not to compensate in cases of generalised blight. It had been recently and actively considered by Ministers. We are in no doubt that both civil servants and Ministers were clear on the policy towards compensation for generalised blight. This does not, however, address the Ombudsman's criticism, enlarged upon in his letter to the Clerk of the Committee of 15 June 1995:

"...they did not produce for my information any submission to Ministers which comprehensively considered whether steps needed to be taken to mitigate the severest effects of generalised blight caused by prolonging the uncertainty about the options for the line of the railway. For his part the Secretary of State has presented the Committee with references to Ministerial statements; to general submissions; and to individual cases presented by Members on the problem of generalised blight. He has claimed that those are indications that the severest effects were considered, but I do not believe that he has adduced any material which can controvert my finding...I have been shown no material to suggest that the Department then sought to ask themselves whether the prolongation of blight in the particular circumstances of this project called for different treatment of the householders affected by it; whether it was desirable to provide a remedy for a small number of such cases; and whether it was possible to distinguish those who might qualify for a remedy"⁴³.

19. We agree with the Ombudsman's assessment of the evidence. The Department failed to provide any material to contradict this finding when invited to do so by the Committee. At no point was direct and comprehensive consideration given to the question of whether it was either desirable or possible to offer ex gratia compensation to those exceptionally afflicted by the generalised blight of the CTRL project.

20. The Ombudsman has specifically and repeatedly disclaimed any intention to question the policy not to compensate for generalised blight, "it was put to me in the course of our discussion that I was criticising government policy...I am well aware of the boundaries of my jurisdiction. I comment on the effects of policy and a failure to consider the possible need for action to address those effects. That is not the same thing at all"⁴⁴. We would also disclaim any attempt to question government policy. Our purpose is rather to establish how any policy should be administered. At the heart of this debate is a definition of

³⁹ Q. 7

⁴⁰ Letter from the Secretary of State for Transport, the Rt Hon Brian Mawhinney MP, to the Chairman of the Committee 6 June 1995, Appendix 10

⁴¹ Q. 3

⁴² Fifth Report of the PCA, Session 1994-95, 'The Channel Tunnel Rail Link and Blight', HC 193, Appendix 4 para. 29

⁴³ Letter from the Parliamentary Commissioner for Administration to the Clerk of the Committee 15 June 1995, Appendix 12

⁴⁴ Q. 1

maladministration found in the Parliamentary Ombudsman's Annual Report for 1993 - "failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment"⁴⁵. That definition was subsequently repeated and endorsed by Mr Anthony Nelson MP, as Economic Secretary to the Treasury, when he gave evidence to the Committee on 2 November 1994⁴⁶. The definition, which we fully support, implies an expectation that when an individual citizen is faced with extraordinary hardship as a result of strict application of law or policy, the Executive must be prepared to look again and consider whether help can be given. That the Department did not do. It never considered the possibility of distinguishing cases of extreme hardship from the mass of those affected adversely by blight. It is not the same thing at all merely to respond to particular cases and complaints along the lines of the general policy agreed by Government.

21. If the debate ultimately resolves into a question of how properly to administer any policy, any conclusion must be of general effect. The Ombudsman has stressed that his conclusions should not "necessarily be seen as reading across to the handling of other infrastructure projects"⁴⁷. He argued this on the basis of the exceptional nature of the CTRL project. Putting aside the question of how exceptional CTRL might be, the Department submitted that it is difficult to justify the refusal of such ex gratia compensation to those similarly affected to an extreme degree by the generalised blight from other projects. The Ombudsman is arguing, however, only for compensation in the most extreme of cases. Even if this principle is accepted and applied also to other projects, we remain of the view that cases of maladministration leading to exceptional hardship would be very few in number and capable of being met by ex gratia payments.

22. We consider the Department's argument against the exceptional nature of the project to rely too heavily on the benefit of hindsight and to ignore the extent, however misplaced, of public anxiety. This is particularly true with regard to the period when consideration continued of possible alternative routes while there seemed no possibility of funding being made available which would meet the Government's clear requirement of a largely privately funded project. The exceptional nature of the project, in particular the uncertainty as to funding, deprives the Department of any excuse for not having considered the possibility of ex gratia redress for extreme hardship. It should have caused the Department to reconsider the adequacy of its compensation policy. Indeed, Sir Patrick admitted as much when asked what he had learned from the Ombudsman's Report, "it is clear to me that from time to time it is appropriate for the Department to consider with Ministers whether, where there are serious effects of a policy on individuals, Ministers might reconsider whether they wish to maintain the policy in explicit terms"⁴⁸. The Ombudsman asked, "How could responsible administration not have recognised that a decision which meant keeping those fears alive for a period of uncertain duration, at a time when a resolution of the funding problem was imponderable, should have been followed by at least consideration of whether interim action was called for to address those effects, certainly in exceptional cases"⁴⁹. It was at that point that the Department should have considered whether any ex gratia payments might be due to those placed in impossible positions by the continuing uncertainty.

23. The Department is quite properly concerned that there should be no repetition of the snowballing blight already experienced in certain areas in connection with CTRL. Would, however, action on the lines recommended by the Ombudsman have such a result? The Ombudsman responded to the Government's argument by asking "Why should helping a very small number of people on the basis of my report increase the hardship of others? The purpose of and limitations on any exceptional hardship arrangement should be apparent to the public. I recognise that compensating some but not others will lead to grievances, but that

⁴⁵ Third Report from the Select Committee on the PCA, Session 1993-94, 'Report of the Parliamentary Commissioner for Administration for 1993', HC 345, para. 10

⁴⁶ First Report from the Select Committee on the PCA, Session 1994-95, 'Maladministration and Redress', HC 112, Q. 328

⁴⁷ Q. 79

⁴⁸ Q. 68

⁴⁹ Q. 1

is to some extent the result of any such discretionary provision"⁵⁰. The hardship purchase scheme introduced by BR in the South Darent area and elsewhere was more extensive than anything envisaged by the Ombudsman. The Department have also referred to the hardship scheme operated by Union Railways who "generally allow for potentially valid hardship claims over a period of a few years from 50% of the total property within a hardship purchase zone"⁵¹. Again, the Union Railways scheme was much wider in its effect than the Ombudsman's proposal. The likelihood of snowballing blight is in our view dependent on the extensiveness of hardship relief. The Ombudsman argues for relief in the exceptionally rare instance. We do not believe that a "very small number" of such ex gratia payments would result in snowballing blight. The Department's fears result from their conviction that it is impossible to limit redress to a few cases of exceptional suffering. Redress must, in the Department's opinion, either be directed to a broader definition of hardship or completely withheld.

24. The Department contended that "Providing compensation which is based purely on subjective judgments about the personal suffering of individuals raises serious administrative and financial problems"⁵². It claimed that it is invidious and impossible to distinguish exceptional suffering caused by blight from suffering which lacks that additional element of "extreme personal distress"⁵³. We do not accept this. In the Committee's Report on 'Maladministration and Redress' we argued that all departments should be prepared to compensate for worry and distress in exceptional circumstances. The Government in its response stated "that financial compensation in respect of worry or distress can be justified only in very exceptional cases"⁵⁴. The Department of Transport thus takes a stance at variance with clear Government policy, which admits the possibility and propriety of distinguishing the 'very exceptional case' in certain circumstances. Such judgments, while always reasoned, would not comprise a further compensation 'scheme'. Any payment would be made on an ex gratia basis. No doubt on occasion the judgment will be difficult. But administrative ease should not be the only criterion in such matters.

25. Not only has the Government recently stated that its policy is to distinguish exceptional cases, it is also its current practice. The Ombudsman gave the examples of discretionary schemes where hardship has to be assessed operated by the Department of Social Security (DSS) and the Department of Transport. The DSS and the Inland Revenue are prepared on occasion to make ex gratia payments to those who fall outside agreed compensation schemes⁵⁵. The Department has argued that ex gratia compensation could not be limited to a small number of cases. We noted, however, that even in the case of the wider hardship schemes operated by Union Railways and by the Highways Agency many who originally express an interest do not pursue the matter when they discover the stringency with which criteria have to be met. Moreover, the number of such cases Sir Patrick cited as having received redress was relatively small⁵⁶. It would be for the Department to decide how to exercise its discretion. We are not persuaded that such discretion, by no means unusual in public administration, cannot be applied prudently and intelligently.

⁵⁰ Letter from the Parliamentary Commissioner for Administration to the Clerk of the Committee 13 June 1995, Appendix 11

⁵¹ Fifth Report of the PCA, Session 1994-95, 'The Channel Tunnel Rail Link and Blight', HC 193, Appendix 4 para. 28

⁵² Letter from the Secretary of State for Transport, the Rt Hon Sir George Young Bt MP, to the Chairman of the Committee 10 July 1995, Appendix 14

⁵³ Q. 2

⁵⁴ Second Special Report from the Select Committee on the PCA, Session 1994-95, 'Government Response to the Committee's Report on Maladministration and Redress', HC 316, para. 15

⁵⁵ Letter from the Parliamentary Commissioner for Administration to the Clerk of the Committee 13 June 1995, Appendix 11

⁵⁶ Letter from Sir Patrick Brown KCB, Permanent Secretary, Department of Transport, to the Chairman of the Committee 7 March 1995, Appendix A

Summary of Conclusions and Recommendations**26. We conclude -**

- (i) That the Department of Transport should have considered whether any ex gratia payments were due when the Channel Tunnel Rail Link project entered the period of uncertainty caused by problems of funding between June 1990 and April 1994**
- (ii) That it is desirable to grant redress to those affected to an extreme and exceptional degree by generalised blight, in line with the principle that maladministration includes a "failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment"**
- (iii) That it should be possible to distinguish a small number of cases of exceptional hardship**

27. We recommend that the Department of Transport reconsider its response to the Ombudsman's findings, accept his conclusion that maladministration has occurred and consider arrangements to determine whether there are householders who merit compensation on the grounds of exceptional hardship. That is very much a matter for the Department's judgement, a point the Ombudsman emphasised⁵⁷. It would be most regrettable if the Department were to remain obdurate. In such an event, we then recommend that as a matter of urgency a debate on this matter be held on the floor of the House on a substantive motion in Government time.

APPENDIX 4

TRANSCRIPT OF MEETING WITH ONTARIO STANDING COMMITTEE ON THE OMBUDSMAN 16 OCTOBER 1996



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**Legislative Assembly
of Ontario**

First Session, 36th Parliament

**Assemblée législative
de l'Ontario**

Première session, 36^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 16 October 1996

**Journal
des débats
(Hansard)**

Mercredi 16 octobre 1996

**Standing committee on
the Ombudsman**

**Comité permanent
de l'ombudsman**

Visit by
New South Wales
parliamentary delegation

Visite par
une délégation parlementaire
du Nouvelle-Galles du Sud

Chair: John L. Parker
Clerk: Lisa Freedman

Président : John L. Parker
Greffière : Lisa Freedman

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Mr Bryce Gaudry	
Ms Helen Minnican	

STANDING COMMITTEE ON THE OMBUDSMAN

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*Mr Jean-Marc Lalonde (Prescott and Russell / Prescott et Russell L)

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Ms Lillian Ross (Hamilton West / - Ouest PC)

*Mr R. Gary Stewart (Peterborough PC)

Mr Len Wood (Cochrane North / -Nord ND)

**In attendance / présents*

Also taking part / Autres participants et participantes:

Mr Gilles Morin (Carleton East / -Est L)

Clerk / Greffier: Mr Todd Decker

Staff / Personnel: Mr Philip Kaye, research officer, Legislative Research Service

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE OMBUDSMAN

Wednesday 16 October 1996

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT
DE L'OMBUDSMAN

Mercredi 16 octobre 1996

*The committee met at 1016 in room 151.*VISIT BY NEW SOUTH WALES
PARLIAMENTARY DELEGATION

The Chair (Mr John Parker): We're very pleased this morning to introduce two guests from New South Wales. I suppose three guests; I should include the project officer as one of our guests. We are being visited this morning by Mr Andrew Fraser and Mr Bryce Gaudry, who are members of the Legislative Assembly of New South Wales. They are also members of the Ombudsman committee of that assembly. They are joined by Helen Minnican, who is the project officer associated with that committee.

Mrs Margaret Marland (Mississauga South): Mr Chair, I hosted a parliamentary delegation from New South Wales in August. You had about five committee members travelling from your Parliament. The Clerk's department organized their visit to the assembly, and we spent the whole day together. It was most interesting.

Mr Bryce Gaudry: We had the pleasure earlier this week to visit your national Parliament. We've come here from the UK, where we also visited the Parliament there, and of course the traditions both in a parliamentary sense and in a social sense between our countries make our visit very pleasurable and very interesting as well.

The Chair: Of course, it's just getting better with each step. That's good to hear.

The subcommittee met to discuss this morning's visit and we thought that what we would do is keep it informal but invite our guests to perhaps share a few comments or remarks with us to lead off. Then, to give them some perspective on how things are done around here, we'll invite Philip Kaye to give some comments reflecting our experience with the Ombudsman and the whole Ombudsman regime here in Ontario and then open it up for a general discussion. Bryce or Andrew, I'm happy to turn it over to you now.

Mr Gaudry: Really, I suppose in an opening way, the Office of the Ombudsman in New South Wales sits in a context of a whole range of public authorities dedicated to lessening corrupt behaviour and maladministration, and I imagine that the same would apply in Canada. There's an increasing emphasis in government towards good government in the public sector. We have both the Ombudsman overseeing maladministration and the ICAC, as we call it, the Independent Commission Against Corruption, which has a role of investigating and rooting out corruption in the public sector and also putting in place systemic change across the public sector. We also have the Auditor General, whose role of course is to audit

the accounts of government and investigate obviously serious and substantial waste of public moneys in public authorities.

Our committee has been given a new brief. You may be aware that in New South Wales at the moment we are having a royal commission into our police service and into corruption in particular within the police service. That royal commission will wind up its powers in January and its role in investigation and in cultural change within the police service will be overtaken by the Police Integrity Commission, which was put in place by an act of Parliament this year. This committee then will have the oversight role both of the Ombudsman and the Police Integrity Commission.

In the context of the work done by the Ombudsman in New South Wales, about 70% of the Ombudsman's work actually is dedicated towards complaints against the police, and I'll be interested to hear the role your committee plays.

We have a role of overseeing the work of the Ombudsman, monitoring and reviewing the exercise by the Ombudsman of the Ombudsman's functions. We can then draw matters relating to that to the attention of the Parliament. We can report on any changes that we consider necessary to the function, structure or procedures of the Office of the Ombudsman. We can also inquire into any question referred to us by both houses of Parliament.

In relation to that, our committee has just concluded a report to the Parliament on the operations of the Protected Disclosures Act. That's a further act in New South Wales to aid public officials in eliminating corruption. It's more commonly referred to as the whistleblowers' act, and you might have an act similar to that within your jurisdiction. It is an act that is put there to give public officials protection when they blow the whistle on corruption, maladministration or serious waste of public moneys they have noted within their department.

The act had a proviso in it that it would be reviewed, and the Parliament tasked our committee to undertake that review. The Ombudsman plays an important role in being an investigative authority under that act, as do the ICAC and the Auditor General. We've just completed that review and have made recommendations to the Parliament as to how the act may be improved. It has only been in effect for one year, but we noted that the act, while it was in principle working, did not seem to be providing adequate protection to those people who did blow the whistle. Many of them have complained that they have been subject to serious reprisals.

That's just one of the roles the committee undertakes. Ms Minnican has provided you with a brief on our role.

You'll notice that there has been a series of inquiries undertaken by the committee. It's interesting to note that the Ombudsman Act was passed in 1974, but the actual committee structure was not set up until 1990. Since that time there has been a series of inquiries undertaken by the committee into the role of the Ombudsman and the functions undertaken, and the adequacy of either those functions or the funding of the Ombudsman's office.

Very briefly, you'll see that in 1992 the role of the Ombudsman in investigating complaints against police was undertaken. That led, in its recommendations, to some very substantial changes to the Police Act and a new Police Services Act being brought in, which has led to many more complaints in the police service being conciliated and more serious cases being oversights much more closely by the Ombudsman. There was also an inquiry into funds and resources of the Ombudsman and the adequacy of those funds and resources to the office carrying out its function.

I was not on the committee at the time. I think Mr Fraser was chairing that committee. It may be more pertinent for him to make some comments on that, but probably in terms of a general worldwide trend to small government, it didn't lead to increased funds going to the Ombudsman. It led more to changes perhaps within the management systems within the Ombudsman's office.

There's also access and awareness, and I can recall reading in your recommendations that you have also been quite concerned about issues of access to the Ombudsman and awareness of the role and function of the Ombudsman in the community. The committee made quite a number of recommendations there, and they have led to some recent improvement in funding to the Ombudsman and the tasking of specific offices, particularly towards access to members of the aboriginal community in New South Wales.

We also have a six-monthly general meeting with the Ombudsman. The committee will also extend that in its relationships with the new Police Integrity Commissioner, who is a different person. That gives an opportunity for us to place before the Ombudsman a series of prepared questions which the Ombudsman replies to in a formal sense and then speaks to at the committee hearing. That is obviously followed by the same thing I'm sure occurs here, a series of questions without notice from the committee which may plumb both those issues and a whole range of other issues. Sitting at this end of the table, I feel the same sense of insecurity that I'm sure any public official does appearing before a committee.

I might just leave my introductory statements there. Mr Fraser may have a different focus or view.

Mr Andrew Fraser: Not really a different focus or view. I was a prior chairman of the committee. One of my major interests in the role of the Ombudsman is access and awareness. Canada being somewhat similar to Australia, vast differences and outlying areas are of great concern to me.

We are intending on November 8, when we get back, to actually take our committee to the country, to my electorate — the best part of New South Wales, but I'm somewhat parochial. We're going to ask her to come up there. We're going to have a general meeting with her

and try and focus the role of the Ombudsman back into the country New South Wales, the original New South Wales.

I believe one of the major problems in New South Wales is that the Office of the Ombudsman is in Sydney and a lot of country people tend not to realize the role and the accessibility of the Ombudsman. It is a pity and it's something that I personally would like to see expanded. We had our access and awareness program. It always comes back to one thing, I suppose, which is money. I believe all governments find it very hard to adequately resource all areas of government, and a lot of the time it's a matter of making funds available in order to get those services out to the community.

It is very hard for the Ombudsman to set up offices in regional areas, so it's a matter of the local member of Parliament and local government departments advising the people they're dealing with of their rights with regard to the Ombudsman.

The other thing, just briefly, that Bryce didn't touch on is that our committee also has the power of veto on the appointment of both the Police Integrity Commissioner and the Ombudsman. That power is such that when the government makes an appointment we have the opportunity to veto that appointment, but I suppose it's much the same as what we have here today. The government normally has the numbers on the committee and while it's not necessarily a rubber stamp, it is normally the way the government goes.

It is an important power I believe the committee should have because oftentimes committee can come up with information the government may or may not have, and it's an opportunity for the committee itself, in camera, to probably get to know the future Ombudsman or future Police Integrity Commissioner and ensure that you've got a working relationship going on.

The committee itself is an oversight committee. A lot of time the recommendations that are put forward, especially with regard to funding, are not taken up by the government, but it does have an important function in recommending changes to the act, changes to the way the Ombudsman operates and an opportunity to discuss fairly openly with the Ombudsman at our regular meetings where we believe as a committee the emphasis of the Ombudsman's activities should be placed.

1030

Mr Gaudry: Just in terms of the committee structure itself, the committee is bipartisan. There are six members of the government party and five are non-government. Those five non-government are two independents, a Liberal Party member, a National Party member — yes, there are 11. You'll notice that it's Legislative Assembly and Legislative Council, the Legislative Assembly being the lower House and the council the upper House in New South Wales. So both Houses are represented, but of course the Legislative Assembly has the actual balance in terms of the numbers.

The method of appointment: In terms of the government members, they are nominated from within the caucus and the other parties obviously ensure who will be representing them within their internal structure and then

that comes before the House and the appointment is then made formally within the Legislative Assembly itself.

We work in principle in a totally bipartisan fashion and, as Andrew said, perhaps in the veto situation it would be most unusual for a veto to be put into effect. In fact, I don't think in any of the jurisdictions where that applies it has been put into effect, but it's certainly an important function to have. It also gives an opportunity with the new appointees when they first appear before the committee for them to realize that we do have oversight powers and that they do have a responsibility to the committee and through the committee to the Parliament, rather than having any direct responsibility to executive government. I'll just leave my comments there.

Mr Fraser: One other thing: I don't know whether it was made clear that the committee itself has the power to instigate inquiries into areas of operation that it sees fit, such as access and awareness. It doesn't necessarily have to be a direction of the Parliament for the committee to undertake an inquiry into the operation of any area of the Ombudsman or the Police Integrity Commissioner. So the committee can, normally at the discretion of the chairman in discussion with the committee, instigate investigations into certain areas and come up with a report that recommends changes or other — it could be legislative or operational changes within the role of the Ombudsman and it's up to them and possibly up to the Parliament, more probably up to the Ombudsman, how they alter or change their mode of operation. The committee in that sense does have wide-ranging powers to look at any area of operation with regard to the Ombudsman.

The Chair: Thank you very much. Helen, did they get it just about right?

Ms Helen Minnican: Just about, yes.

Mr Gaudry: She will burnish the edges somewhat.

The Chair: We have invited Philip Kaye to share a few remarks with you as to our structure and our experience in this province with the institution of the Ombudsman and this committee.

Mr Philip Kaye: As the Chair has said, I've been asked to give some brief comments on the structure of the Ombudsman Act of Ontario and the role of this committee.

An Office of the Ombudsman was established in this province in 1975 with the passage of the Ombudsman Act. The appointment of an Ombudsman had been promised in the speech from the throne in 1975 "as a safeguard against a growing complexity of government and its relationship with the individual citizen." It was further stated in the speech from the throne that such an office would "ensure the protection of our citizens against arbitrary judgement or practices."

The Ombudsman's independence from government is reflected in his or her appointment under the Ombudsman Act as an officer of the Legislature. The appointment is made by the Lieutenant Governor in Council on the address of the assembly for a term of 10 years. Further terms are possible, although in general the Ombudsman must retire upon reaching the age of 65. There is also a provision whereby the Ombudsman is removable at any time for cause.

With respect to the office itself, it must be audited annually by the Provincial Auditor and must submit annual reports to the assembly.

The general mandate of the Ombudsman is defined in the Ombudsman Act as follows: "to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his, her or its personal capacity."

Complaints then must concern a governmental organization defined as a "ministry, commission, board or other administrative unit of the government of Ontario, and includes any agency thereof." This definition means that the Ombudsman does not have jurisdiction over federal, municipal or private bodies. In addition, such bodies as children's aid societies, public hospitals and school boards are not seen as being subject to a sufficient degree of governmental control to be considered governmental organizations.

Another limitation holds that the Ombudsman may not investigate a complaint where there exists some further avenue of appeal or right to apply for a hearing on the merits of the case. This limitation is reflected in the Ombudsman statement that the Ombudsman is a place of last resort after all other avenues of appeal have been exhausted.

Other limitations prohibit the Ombudsman from investigating complaints respecting the courts and the proceedings of cabinet.

The Ombudsman's powers, however, may be exercised despite any provision in any act that the decision, recommendation, act or omission in question is final or cannot be appealed.

The Ombudsman may investigate complaints launched in one of three ways: First of all, by the person affected; secondly, by any member of the assembly to whom a complaint is made by the person affected; and thirdly, on the Ombudsman's own motion. Systemic problems have been examined by ombudsmen either in the context of a particular complaint or on the Ombudsman's own motion.

The Ombudsman may decide not to investigate a complaint or to discontinue an investigation under a range of circumstances. Where an investigation is conducted and it appears that the Ombudsman may make a report — which in practice is known as a tentative report — that "may adversely affect any governmental organization," the Ombudsman must give the organization an opportunity to make representations respecting that report.

After completing an investigation, the Ombudsman must decide whether the conduct in question falls in one of the following categories, and the categories are very similar to the categories in New South Wales's Ombudsman Act. They are:

"(a) appears to have been contrary to law;

"(b) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision...or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;

"(c) was based wholly or partly on a mistake of law or fact; or

"(d) was wrong."

The Ombudsman must also decide whether "a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations." Furthermore, the Ombudsman must decide whether reasons should have been given for a decision made in the exercise of a discretionary power.

Where any of these circumstances exist, the Ombudsman must report his or her opinion, with any recommendations, to the governmental organization concerned. If the Ombudsman feels that the governmental organization has not responded adequately and appropriately to the report within a reasonable time, the Ombudsman may provide reports on the matter to the Premier and subsequently to the assembly. These cases brought to the assembly's attention are known as recommendation-denied cases. It seems that a similar process is followed by the Ombudsman of New South Wales who, if not satisfied that sufficient steps have been taken in due time in consequence of a report, may report to Parliament on the matter. The New South Wales legislation, however, continues that within the next 12 sitting days, the responsible minister must make a statement to Parliament in response to the report.

1040

The Ombudsman Act does not give the Ombudsman the power to enforce his or her recommendations. In this regard, the current Ombudsman, Roberta Jamieson, has said that the Ombudsman relies upon respect for her office to obtain the implementation of her recommendations by governmental organizations. Political pressure is also generated by reporting these recommendation-denied cases to the Premier and to the assembly.

Investigations by the Ombudsman must be conducted in private. In addition, the Ombudsman's oath of office and secrecy prohibits the disclosure of any information received as Ombudsman except as is necessary to establish grounds for his or her recommendations in a report.

With respect to a legislative Ombudsman committee, in Ontario the first legislative committee dealing with the Ombudsman was established in 1975, the year the Ombudsman's office was established, as a select committee on guidelines for the Ombudsman. Ombudsman committees quickly became a permanent part of the Ombudsman process, and 10 years later, in 1985, the select committee approach was changed to that of a standing committee.

Unlike the Ombudsman committee of New South Wales, Ontario's standing committee on the Ombudsman is not created by statute. There is no reference at all to the committee in the Ombudsman Act. Instead, the committee is established by the standing orders of the Legislative Assembly.

The committee's terms of reference under the standing orders can be broken down into three areas: Firstly, reviewing and reporting on the Ombudsman's annual reports; secondly, reviewing and reporting on reports by the Ombudsman of recommendation-denied cases.

Since the creation of the Ombudsman's office, the Ombudsman has referred 134 recommendation-denied cases to the committee. In 54 of the cases, the Ombudsman's recommendations were accepted prior to a review of the committee. The committee has consequently

reviewed 80 cases. The committee has fully or partially supported the Ombudsman in approximately 72% or 73% of these 80 cases. Looking at the cases where there was some committee support, in 85% of them the government's subsequent response was, in the committee's view, satisfactory.

The number of recommendation-denied cases has declined substantially in recent years. Since the 1990-91 fiscal year, there have only been five such cases, all in 1993.

A third aspect of the committee's mandate involves the formulation of rules for the guidance of the Ombudsman. The Ombudsman Act empowers the assembly to make general rules for the guidance of the Ombudsman in the exercise of his or her functions. In the standing orders, the assembly has delegated to this committee the responsibility for formulating these rules. Rules proposed by the committee are presented to the assembly for adoption. General rules were adopted by the assembly in November 1979. Since that date, no further rules have been made.

Among other matters, the rules set a time frame for the tabling of the Ombudsman's annual report, explain the term "adverse report" and clarify the procedure for the reporting of recommendation-denied cases by the Ombudsman to the Legislature.

There are two functions which the committee has performed but no longer does which I'd like to outline briefly. The first one involves the review of estimates. Between 1983 and 1989 the Ombudsman's estimates were reviewed by the Ombudsman committee as well as by the Legislature's Board of Internal Economy.

In 1989 the estimates role of the Ombudsman committee was eliminated when the standing orders were changed to state that the estimates of all ministries and offices were deemed to be referred to a new standing committee on estimates. The estimates committee, however, is not authorized to examine all the estimates referred to it. It must consider at least six but not more than 12 ministries and offices. The estimates not selected are deemed to be passed by the committee. The Ombudsman's estimates have never been selected for review by the estimates committee. Accordingly, since 1989 the Ombudsman's estimates have been reviewed by the Board of Internal Economy only.

Another function previously performed by the committee involved the handling of complaints received from members of the public with respect to the service provided and procedures followed by the Ombudsman's office. These complaints were reviewed by the committee's subcommittee on communications from the public. In the cases it reviewed, the committee refused to act as a court of appeal from Ombudsman decisions. Accordingly it would not review complaints about the correctness or reasonableness of the Ombudsman's decisions. Instead, the focus was on the procedural fairness of the Ombudsman's investigation. For instance, was there excessive delay in processing a complaint?

The committee assumed a role regarding these complaints for two reasons: First it would be of assistance in identifying the need to make new rules, and second, it was considered important that individuals have some

means of voicing their concerns about the fairness of the Ombudsman's own investigation.

The current Ombudsman takes a different position from those of previous ombudsmen who would participate in these reviews. It is her understanding that her oath of secrecy under the Ombudsman Act prohibits her from discussing the handling of particular complaints with the committee.

Recognizing the importance of a cooperative approach with the Ombudsman's office in addressing these complaints, the Ombudsman committee in 1993 formally recommended that the committee no longer review complaints from the public with a view to making recommendations with respect to the Ombudsman's handling of a particular case.

From my reading of the New South Wales legislation, it seems to me that recommendation-denied cases are one area where your Ombudsman committee differs from ours and that those cases do not go to your committee, also that your committee has never had any responsibility when it comes to reviewing complaints from the public regarding the service provided by the Ombudsman's office.

Mr Gaudry: Just commenting on that, that's correct. We do look at process, though. If there is delay, if we consider that there's a long period of perhaps procedural problems associated with a complaint we may take that up with the Ombudsman but not the individual complaint itself.

Mr Fraser: That's done on more of a general meeting basis rather than on an individual case. To me, from what you're saying, you are almost the Ombudsman's Ombudsman, this committee, where we don't have that role. We get a lot of complaints to the committee where the Ombudsman has denied a case or they don't like the decision the Ombudsman has made, but we just refuse to handle those because it really —

Mr Gaudry: It's outside the brief.

Mr Fraser: It is outside our brief, but to me it would be very time-consuming. Just on that, do you actually take evidence on those cases, when you review them, on the recommendation denied or do you just review the case as the Ombudsman presents it to you? How does the committee review that?

Mr Kaye: As I mentioned, no recommendation-denied cases have come to the committee in the past few years, so I don't have any personal experience in terms of the procedure followed by the committee. Witnesses are heard. But I don't believe that the person who has made the complaint to the Ombudsman appears before the committee; it's simply hearing from the governmental organization concerned and from the Ombudsman's office.

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Mr Fraser: Are those cases held in camera or are they public hearings?

Mr Kaye: The name of the person who has complained is kept confidential, but I believe the meetings are conducted in public.

Mr Gaudry: Just returning to the issue of a complaint coming in about the handling of a matter by the Ombudsman, not the matter itself but the process: How is that

addressed by the committee, the timeliness of response, the mechanism by which an Ombudsman's office had dealt with a member of the public, whether or not there are proper procedures within the Office of the Ombudsman to do certain functions, which are issues that we might take up?

Mr Kaye: That was a function the committee hasn't performed in recent years, so again I cannot speak from personal experience, but I believe, as with the recommendation-denied cases, that there would be witnesses from the Ombudsman's office who would appear before the subcommittee. Those meetings would be in private.

The Chair: I'm just wondering if you can take a minute and wrap up your comments. There are just a few more comments here, then we'll open it up to general discussion.

Mr Kaye: The last thing I wanted to mention about the mandate of the committee was that in 1992-93 the committee conducted a comprehensive review of the Office of the Ombudsman. The review focused on the relationship between the Ombudsman and the Legislature which included, among other things, the committee's role regarding the management of the Ombudsman's office, the making of rules for the guidance of the Ombudsman, the examination of recommendation-denied cases and the handling of complaints from the public concerning investigations by the Ombudsman.

Some of the recommendations in the committee's report would have expanded the committee's mandate. For instance, they would have restored the review of estimates by the committee, given the committee a role in the appointment of the Ombudsman and authorized the committee to monitor and review the Ombudsman's exercise of his or her functions, a function explicitly within the terms of reference of the Ombudsman committee of New South Wales. In December last year the House referred this report from 1993 to the current committee for review.

The Chair: Philip, thank you very much. The challenge that falls on me as Chairman now is to encourage a two-way dialogue, which I think we would all like, but that's not the tradition of the process here, you appreciate. We'll do our best with that. I'll try to stick generally to the typical rotation but I don't intend to be bound by that. Let me just see if there are any questions or comments from the government side.

Mr Tom Froese (St Catharines-Brock): Thanks for coming all this way. I was just talking to my colleague Gary Stewart to find out if you guys were coming off your winter or going into your spring.

Mr Gaudry: It's spring. In my home town it's 33 degrees today.

Mr Froese: From the coldness in the room here you appreciate that we're going into our winter. We must have the air-conditioning still working or something.

With respect to the brochure we got, the blue form here, and primarily the roles and functions, the first statement says that the Ombudsman Act of 1974 was amended in 1990. Was that to provide for the establishment of the joint committee or did the role and functions of the Ombudsman that you state here, to review and monitor the Ombudsman's office and so on and so forth,

change? Was there a minor change, or what actually happened in 1990?

Mr Gaudry: The committee was created in 1990. Prior to 1990 there was not an oversight committee, so the joint committee was created at that stage.

Ms Minnican: It's a particular part of the Ombudsman Act now, and there were a couple of other minor amendments that came through at the same time but nothing that substantially affected the Ombudsman's jurisdiction.

Mr Froese: So there was really no committee in government or anything to do anything like that. You might have touched on it in your comments before, but why was there a need, what was the reason, other than complaints about the police, for establishing — from what you've stated and what we've got here, you really have a lot of power and control of the Ombudsman. You can virtually do and recommend anything you want, as I understand it. My view is that we don't have that here with our committee with respect to the Ombudsman. For what reason was the committee established?

Mr Fraser: I think the main reason was to ensure that the Ombudsman was doing the job that was intended in the first place, that the committee could oversight the act itself and make recommendations. There are often recommendations put forward that the Parliament or the government at the time won't accept. A lot of those, as I said before, had to do with money. For more access and more awareness in the region of New South Wales you need money, and quite often premiers and treasurers, especially treasury, are not very receptive to the idea of spending more money.

The whole idea of the committee itself, as far as I was concerned, was that it was created just to oversight the role of the Ombudsman, to oversight the legislation and to make sure the legislation stayed up to date with the needs of the community with regard to the role of the Ombudsman. So it was just an oversight area and it also gives, I believe, that special link between the Ombudsman, the community and the Parliament so that the Parliament is not too distant and the Parliament is not just acting on recommendations by the Ombudsman to the ministry, because you could have a lopsided recommendation. In this way it's a filtering process, I suppose.

Mr Gaudry: Ms Minnican has some historic comments.

Ms Minnican: One of the major catalysts for the amendments was a report by the then Ombudsman Mr Landa, in which he advocated the establishment of the committee. The model he used was largely the New Zealand officers of Parliament committee, and certain of his recommendations weren't picked up by Parliament in the bill. He specifically wanted us to look at his estimates and to recommend funding and also to recommend the appointment of the Ombudsman. Those are the two major functions that weren't adopted by Parliament. Everything else was fairly much implemented.

Mr Gaudry: There always appears to me to be somewhat of a dilemma in being a committee oversighting the Ombudsman in that the Ombudsman often appears to the committee seeking a friend, I would think, whereas the committee has the oversight role, so there's somewhat of a collision between those two areas of interest. Once

again it's that link between Parliament and the Ombudsman which is important, rather than the Ombudsman having just executive government having a view of what the Ombudsman ought to be doing.

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Mr Gilles E. Morin (Carleton East): I have a series of questions. I think perhaps it will stir more discussion. You meet every six months with the Ombudsman?

Mr Gaudry: Yes. There's nothing in the act or in any standing orders that determines that meeting. It's a meeting that the committee has generated and it's an accepted meeting, both in terms of the ICAC and the Ombudsman's committee, as a mechanism for fleshing out concerns the committee has and obviously giving the Ombudsman the opportunity also to put on record concerns that the Ombudsman has.

Mr Morin: Does the Ombudsman make any effort to meet each member of Parliament on a personal basis; for instance, to explain the role and function of the Ombudsman? When you have a new Parliament elected, does the Ombudsman make any effort to more or less explain what is the role and function of the Ombudsman, or how does the MPP or the member of Parliament obtain the information about what is the role and function of the Ombudsman?

Mr Fraser: I think it's a duty of the MP to know what the Ombudsman does. The system in Britain, we noticed, was one whereby referrals to the Ombudsman can only be made through an MP. In Australia, I believe as an MP, we are like Ombudsmen. You get to a stage with a lot of cases where you can't resolve it successfully as an MP. You may consider there is some maladministration or something that needs to be referred and adjudicated. Quite often I'll recommend one of my constituents to take a particular issue to the Ombudsman. So it's a matter of knowing as part of your duty as an MP what the functions are.

We get on very well with our Ombudsman. Bryce, I'm not sure, were you on the committee when we appointed this current Ombudsman?

Mr Gaudry: No.

Mr Fraser: She is very accessible. There are no problems. I think any committee member who phoned her wouldn't have a problem with actually just ringing her up and saying: "I want to come down and have a look. I want to talk to you about certain matters." The committee itself, when we have our general meetings, gives her questions on notice.

Bryce and I, during this trip, have been sitting down and making notes for questions we would like a response to. When we have that general meeting she then responds to the questions we've given on notice and that then creates discussion. There may be something out of an answer she has given that may lead to more questioning in that particular area, and at the end of it she may come up with a recommendation, or we may, for a change, either in her operation or it's a discussion — it's fairly open — or it's a legislative change.

Mr Gaudry: Just picking up on that, talking about the Ombudsman in Great Britain, Sir William Reid appeared from discussions that we had with his officers to be very much in constant contact with the MPs, visiting the

Parliament House on a weekly basis and obviously much more in personal contact. That isn't the case. There are information packages on the operation of the office. All members in their electorate offices would have information to assist the public in linking to the Ombudsman, and as Andrew has said certainly committee members and, I'm sure, any member of Parliament who wishes to have direct access to speak to the Ombudsman would have no difficulties at all, but it isn't that more proactive model that obviously the British Ombudsman follows.

Mr Morin: What is interesting in England of course with the parliamentary commissioner system is that the member of Parliament is more directly involved, and when the case becomes too complicated or he doesn't have the resource it takes to pursue the case, then it passes on to the parliamentary commissioner. I found that with that system it cuts the bureaucracy.

One of the problems we have here in Ontario, like many other offices across the world, I think, is that once the bureaucracy gets involved, it takes an eternity to solve a problem, to solve a case. How many members are there in the office in Australia, in New South Wales, how many members in the Ombudsman's office?

Mr Gaudry: There are 72 members. I've got some statistics here which may be useful to the committee. Since 1974, the Ombudsman's office has dealt with 95,000 formal complaints and about 100,000 informal. In 1994-95, which is the last report, the Ombudsman dealt with 7,636 formal written complaints, and as I said before, 5,000 of those were complaints relating to the police and 2,580 in other areas of jurisdiction. There's been an annual increase in complaints of 7% to 10%. Those complaints obviously are written complaints that can be assisted in being provided as written complaints, of course, but they're not necessarily complaints that come via a member of Parliament. In fact, as Andrew said, the member of Parliament often would find that they become the complainant by that process and it can lead to a very complicated system rather than a direct complaint.

Mr Fraser: One of the things in that regard, as far as I'm concerned, is that under our system, if someone came to my electorate and said they had a problem with a government department and I then referred it on their behalf to the Ombudsman, I become the complainant. I like the British system from what I've seen of it, but I don't like the idea in Australia where you are assisting a constituent and you actually own the complaint. I would like to be able to refer cases on some people's behalf. Sometimes I do, but it creates an extra workload for myself. The cases I refer are normally in a situation whereby the person complaining has very poor literacy skills or may be absolutely frightened of any area of bureaucracy, so you tender it on their behalf. But it does create a problem. It means the member — I personally, I know, avoid that as much as I can purely because of the fact you then own the complaint.

If we had a system whereby you could automatically refer it, and we noticed in Britain in our discussions there that while the MP puts the complaint in, the Ombudsman or the parliamentary commissioner is now communicating directly with the complainant and copying it back to the

member of Parliament, so the workload is eased a little bit from the member. That appears to me to be quite good. That way you're informed of the complaint, you're kept informed of how it's progressing as to whether there is a positive or negative result out of it, and on that basis you can then probably take action via the ministerial offices as a member to ensure, or try to, that whatever the complaint is, it doesn't happen again.

Mr Morin: In Ontario we have offices of ombudsmen in other locations across the province. You're dealing with an area of 412,000 square miles. It's big, huge. Do you have the same system in Australia where you have offices in different parts of —

Mr Fraser: No. What we do have, which is interesting — in my electorate we're 600 or 700 kilometres from Sydney, where the Ombudsman's located, but we have a lot of neighbourhood centres which are run in conjunction with local government, but they also tend to provide information to people who may have problems accessing that information.

You would find in just about every one of those neighbourhood centres that there are brochures from the Ombudsman. All government departments really are required to provide that information and MPs' offices do provide that information. The information is very easily accessible. They also have a toll-free telephone number back to the Ombudsman in Sydney. If someone wishes to make a complaint or wishes to know how to go about making a complaint outside the local member of Parliament, they can do it.

As part of our access and awareness report, previously with the Ombudsman we suggested that verbal complaints should be handled. Especially in Sydney the awareness and access is one of multiculturalism where people don't understand. They are not fully conversant in the English language and we're looking at ways the Ombudsman will accept those complaints by way of telephone and then send an officer out to enable them to formalize their complaint. The access is there and it is getting better, but as I said, it's one of my interests, being a non-metropolitan member, to ensure that access is improved the whole time.

Mr Gaudry: Just in terms of the access issue as well, the Ombudsman was making more visits to regional New South Wales, but once again in terms of funds and resources there's been a constriction of those visits. In fact, as Andrew said, we're generating one to Coffs Harbour both as a mechanism of increasing the community's awareness of our role, as well as giving the Ombudsman a further opportunity to have contact with people in that regional centre.

Just in terms of resources, and I don't know how it equates with the resources here, the budget for the Ombudsman in 1994-95 was \$4.4 million and that's to cover the staff of 72 and the total operation of the office, so it's obviously a big task with a limited budget.

Mr Morin: We started the budget in 1975 with \$1.5 million; it's now \$7.5 million. So you have hearings occasionally across the nation to listen to complaints or grievances from citizens, or you don't do that?

Mr Gaudry: We don't. This visit to Coffs Harbour is an opportunity for us to give the public a better under-

standing of our role, but one of the things we don't wish to do, I would think, as a committee is to become an appeal body in the mind of the public and we'd have to be careful that did not occur.

1110

Mr Fraser: We're going to have to be careful when we have this meeting that we emphasize that we are there on the basis of a legislative committee rather than the Ombudsman. The Ombudsman does get into regional New South Wales. I recently had the Ombudsman up into my electorate, within the last six months. We have deputy ombudsmen with specialized interests. Oftentimes they will go into a particular area because of the type of complaint. We have a deputy Ombudsman, a local government one, a deputy Ombudsman, police. What else do we have?

Ms Minnican: There's a deputy Ombudsman and then two assistant ombudsmen. The office is split up into two areas, the police area, and then the general area which covers corrective services, prisons, local government and other departments. So you've got an assistant for each of those areas.

Mr Morin: I'm sorry to take so much time. I'm keenly interested. I notice that you have 99 members of the assembly and the idea when we first created the Ombudsman was to have the same number of employees as we had members of Parliament. At that time we had 125 members of Parliament, so therefore we had 125 staff. That was criticized of course because of the cost. I don't know how many members there are today, how many staff there are. Maybe it's 130. That was the idea Mr Maloney had at that time, "Let's have the same amount." One of the main criticisms was the question of budget. I don't know if it's the same with you, but I'd like to hear your comments on that.

Mr Gaudry: As was said earlier, the funds and resources inquiry that the parliamentary committee undertook was to look at that issue. We're in a situation in Australia, in New South Wales, and probably at every local government level of doing more with less and the same applies to any government department or authority.

I'm sure that right from the inception it wasn't set up with the idea of giving one staff member for every member of Parliament; rather to tie it to the level of activity the Ombudsman's office undertakes and to look at perhaps better use of technology in terms of the operations of the office. I certainly know that since that funds and resources inquiry the management systems within the office were restructured and there's also more use of electronic recordkeeping and transfer of information. It really is more looking at those aspects in terms of resourcing.

Mr Rosario Marchese (Fort York): I was interested in the figure of 70% of all cases dealing with complaints against the police and wondered about the evolution of that. Why is it focused almost entirely on that? Secondly, why aren't you getting an excessive number of complaints coming forth from the various ministries to which the government is attached?

Mr Fraser: The ministers would have you believe that their departments are that good no one would need to complain. There's been somewhat of a revolution in New

South Wales and Australia the last number of years, starting with the Fitzgerald inquiry into police in Queensland, where people are more aware of their rights and the actions of police, and then the royal commission in New South Wales. Prior to the royal commission, as part of the awareness that was going on, there were a lot of complaints generated by people back to the Ombudsman with regard to the police, be they corrupt behaviour or just the way people perceived the services they were receiving from the police in certain areas.

I think what will happen now, because of the Police Integrity Commissioner which has come out of the royal commission into police corruption, is that those numbers will reduce because a lot of the areas of corrupt conduct will be handled by the Police Integrity Commission. That imbalance will disappear, but my attitude is that the large number of police complaints came out of the fact that there was an awareness within the media, and therefore the public, that there were corrupt or unlawful practices or just incorrect practices by police.

Mr Gaudry: Just on that as well, we have several bodies operating in terms of oversight: the ICAC, which is looking specifically at corruption. So issues of corruption within all of the public authorities go to that area, the maladministration to the Ombudsman, and of course the serious and substantial waste, those aspects would go to the Auditor General.

There's also the issue under the new Police Integrity Commission that there will be a range of corruption and serious issues dealt with apart from the Ombudsman's office, but they will still cover the ordinary bread-and-butter, if I can put it that way, complaints against police, and there are a substantial number of those. In fact, if you break that 70% up into class and kind, a lot of the complaints are about the day-to-day contact between the public and the police service.

But in terms of why the Ombudsman is concentrating so much on the police, just looking at our history, in 1978 the Police Regulation (Allegations of Misconduct) Act gave the Ombudsman a very limited role regarding internal investigations of complaints. Then in 1984 the Ombudsman was given power to reinvestigate complaints against police — that broadened — and in 1993 a further broadening of the power of the Ombudsman. So it's gradually developed more and more into a police complaints handling body.

I think as Andrew said and perhaps as I said at the beginning, people might think we've got an obsession in New South Wales concerning corruption, and in particular corruption within the police service, but it's a genesis that's probably occurred in a lot of areas.

Mr Marchese: You mentioned you have a problem of access in terms of some of the people outside of the cities having knowledge of what the Ombudsman does or its powers or how you are able to reach that person for a complaint. Obviously that's a challenge for you in terms of how you reach them and letting them know of their rights to be able to deal with a particular problem. How are you dealing with that?

Mr Fraser: The Ombudsman, as I said, came to Coffs Harbour not long ago, or representatives of the Ombudsman's office came, and I was extremely impressed with

the way she handled it, because there was advance media notification right across my electorate that the Ombudsman was coming. It meant that the media area which we cover, which is fairly large — it's pretty well the whole from Taree to the border, which is two thirds of the north coast, and my understanding on the result of that was that a lot of complaints came, or a lot of people from out of my electorate but in the southern district, from Nambucca and Kempsey, which is only a matter of 60 miles or 100 kilometres for them to come, came up and saw the Ombudsman.

So she has been very proactive in that particular sense, which is good, and I think in a lot of small communities, once the Ombudsman has been there and has been seen to be doing something, the opportunity for other people then to access it becomes greater because of word of mouth.

Mr Gaudry: Following upon the committee's last report, the Ombudsman did develop an access and awareness plan, which she is pursuing. As well as that, if a complainant goes to the police, they are tasked to advise them of the role of the Ombudsman in the investigation of police complaints as well. If we take that and if we also take the role of the ICAC and the fact that both of those bodies have got a proactive education and awareness program, more and more people are aware of those avenues in terms of dealing with complaints.

As well as that I guess the issue is that there is a systemic impact in terms of an awareness of probity in government, if I can put it that way, and people are perhaps quick to say, "I'll report that to the Ombudsman," or "The ICAC will hear about this." So that's perhaps part of the whole process of awareness that's grown.

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Mr Marchese: Right. The last one is an interesting point in terms of how we deal with individual complaints versus systemic. In a way, they're very much interrelated. As you do that work across the whole of the state, it becomes in itself a systemic way of dealing with problems. I find that interesting.

Mr Gaudry: In terms of our recent protected disclosures review, we've made very strong recommendations that, firstly, a body be centralized within the office of the Ombudsman to give the public a first point of call and advice, and secondly that within the senior executive service of government departments, a part of their contract be that they set up proper systems within their departments to support protected disclosures. So it's a development of an understanding of a code of conduct both in terms of behaviour and also protection of those people who are making disclosures. Gradually the public sector is being educated, I suppose, about the role of all of the investigative authorities.

Mr Fraser: I think the one that had the major impact in New South Wales was the ICAC, the Independent Commission Against Corruption, which was set up in 1989. It took on itself a lot of corrupt conduct within, or reported corrupt conduct within, government and within government departments.

It became very public, and it's basically got to a stage now where it becomes a threat. People will say, "I'll take

that to ICAC," or "That is ICACable." Because of that process, people are aware of maladministration or corruption within government departments, and when the statement is made, normally someone will say, "The Ombudsman's there," or "You should take it here." Often I'll find myself saying it. People will say, "Look, I want this fellow reported to ICAC," and I'll say, "Well, you can do it, but I think the sensible way to go would be along this path." A lot of the time it is the Ombudsman where it should go. So that process really gave the public awareness that they do have a right of appeal to a statutory authority of some sort.

Mr R. Gary Stewart (Peterborough): Welcome and g'day to you.

Mr Fraser: G'day, mate.

Mr Stewart: We keep saying "eh," so you can take that back there.

Mr Gaudry: You must be from Queensland.

Mr Stewart: I spent a little time down there. It was most enjoyable.

Going back to how your committee does not have any function as an appeal body, if you are not pleased with a decision that has been made by the Ombudsman, where does it go from there?

Mr Fraser: We tend not even to involve ourselves. Our ambit is not one of individual appeals, and it's one that I would really dread, if we ever came into that area. We do have some people who are somewhat zealous in their particular causes and have gone to the Ombudsman and the Ombudsman said no, and then we get reams of letters from them saying, "This is wrong." You end up reading the correspondence purely out of the fact that it may be amusing. It may be something that you look at and you find it's almost vexatious in its application. We just write back and say, "Sorry, we do not have the authority or the power to take that on."

To a large extent, I wouldn't like that power within the committee because I think you'd find yourself — one of the things I wrote down here when you mentioned you have that recommendation-denied service here is, how long does it take? I can see the committee sitting forever on some of these cases where people just would refuse to accept that recommendation denied.

What happens? What did you say, 73% of cases you support? Who becomes the appeal body after that as far as you're concerned? I think it's very brave of you to have that particular facility within the committee.

Mr Gaudry: Let's just say, though, we're looking at process and the procedures of the office. We've had several complaints to us in terms of delay. In that situation, we would write to the Ombudsman covering the letter that we may have received from the constituent, expressing our concern and seeking a report from the Ombudsman either in writing or in terms of taking up the general issue at their general meeting, and therefore impacting on the office of the Ombudsman in that way to sharpen up procedures, to deal in a more timely fashion with complaints. That's certainly something that will be arising at the next general meeting with the Ombudsman, but we would not be seeking appeal or direct intervention in the individual case.

Mr Stewart: The Ombudsman then is the final decision-maker for this.

Mr Gaudry: Yes.

Mr Stewart: So there is no recourse after that?

Mr Gaudry: No.

Mr Stewart: That's it. It's final.

Ms Minnican: The only judicial appeal that can be exercised in relation to the Ombudsman's functions is an appeal to the courts regarding the exercise of the jurisdiction. We've had a couple of cases in relation to police matters where the police commissioner took legal action, saying, "We think the Ombudsman is acting outside jurisdiction." None of those has ever been upheld. That's the only kind of action you can take.

Mr Gaudry: Local government councils have at times taken the Ombudsman before the court, and as Helen has stated, to date the Ombudsman has a strikeout rate of 100%.

Mr Stewart: Do you feel that because your committee was the commissioners regarding police corruption and it was because you had about 5,000 complaints etc, your committee will become a committee that will form other commissions to look at other things within the country? I am interested. The one big one you've had is the police corruption, and I assume that was because of complaints, but what does your committee do after that? You've done that. Where do you go from there?

Mr Gaudry: I don't think there is any chance that the committee will forfeit a role, because the issue of dealing with the Police Integrity Commission will be certainly ongoing, but just in terms of the way that royal commission was set up, it did not come in any way from the Ombudsman's committee.

During the last term of the Parliament, we had a finely balanced Parliament. The balance of power was held by three independents, and those independents entered into a compact of reform with the then Liberal-National state government. There were many reforms made within the parliamentary process, but also one of those independents, Mr John Hatton, had had a 20-year campaign concerning corruption within the police force.

It was within that context that he obtained the support of the opposition to set up a royal commission into the police service, and that royal commission has now sat for about 18 months. Following upon its interim report, the Parliament enacted the Police Integrity Commission Act to set up a permanent body to take over from the royal commission, which of course has been a very incisive investigation into corruption, but obviously it's not going to be a permanent royal commission from the terms of cost, of course, and so this body has been set up following that.

Our committee then has been given the oversight role, the same as we have with the Ombudsman. Once again, because these bodies are independent of executive government and have enormous power in terms of compulsion, in terms of the capacity to wiretap, to issue warrants and to seek entry and to take all records, there has to be some line of responsibility and accountability, and the parliamentary committee performs that function.

So we will have an oversight role, and I think quite an important one.

Mr Stewart: Long-term.

Mr Gaudry: In the long term.

Mr Fraser: You see, in both cases the Ombudsman's role is an evolving role and will continue to be so, and more specifically and especially the Police Integrity Commission. It'll give this committee the opportunity to watch its actions, to look at whether there is a need for legislative change with regard to the way they operate in both the Ombudsman and the Police Integrity Commission. That role is always there and the committee will be the watchdog in that regard to probably ensure that both those areas are matching public expectations.

1130

Mr Gaudry: I wonder if I might ask a question at the moment. It intrigues me, as Andrew has said, about the recommendation-denied reports. You said that a great degree — 72% — were supported and that there are some areas where government obviously does not accept the view of the Ombudsman. Does the committee have any role in that or does it then get into an area which is obviously political and perhaps a difficult issue for the committee?

The Chair: I'll just begin with the response that you appreciate that the members of this committee have not been involved with that process — it hasn't occurred for a while — but the institutional memory of this committee resides in Mr Kaye. I'll invite him to respond.

Mr Kaye: I should qualify as well that my involvement with the committee is limited to one year. One of the concerns of the previous Ombudsman committee was the role of the Ombudsman once a recommendation-denied case had been presented to the assembly and referred to the committee, and the committee had conducted hearings where the committee would hear from representatives of the Ombudsman's office and from the governmental organization concerned. Let's say you have a situation where the committee has come up with a recommendation in support of the Ombudsman. What happens at that stage?

Previous ombudsmen used to include in their annual reports what were known as recommendation-denied tables, which in one column would list the recommendation of the Ombudsman and in the next column the recommendation of the Ombudsman committee and in the third column what action the governmental organization had taken in response to the recommendations of the Ombudsman and the committee. Those tables would appear in each annual report and a case would be carried forward from one report to another until it had been resolved. That was one way in which the committee was able to monitor what was happening to its recommendations.

The current Ombudsman feels that once she has submitted a recommendation-denied case to the assembly it's for the assembly and the committee to then continue with it and that it is not her responsibility to include these recommendation-denied tables in the annual report. So they are no longer included and, as I said, as well there just haven't been any recommendation-denied cases referred to this committee in the last few years.

Mr Fraser: Do you feel that the reason there are no recommendation-denied cases is that the committee has

the power to oversee those and therefore the Ombudsman would be less inclined to deny, or not?

Mr Kaye: You're asking why there have been fewer recommendation-denied cases? I should say that the Ombudsman had said that her ability to bring a recommendation-denied case before this committee is very valued because of the publicity generated and the political pressure that can be generated on the governmental organization to implement her recommendations.

As to why there have been fewer recommendation-denied cases in the last few years, that was a question the previous committee faced when it conducted an overall review of the Ombudsman's office and really wasn't able to reach a definitive answer. It made a recommendation that where the Ombudsman has made a formal recommendation to a governmental organization, information about that recommendation should be included in the annual report of the Ombudsman along with any corrective action the governmental organization has taken in response, so that the committee can have a better sense as to what kind of recommendations, how many formal recommendations have been made and what the response of the governmental organization has been, to better understand why cases in the last few years have not reached the recommendation-denied stage.

It is a question which the previous committee felt it could speculate on but could not reach any definitive answers on. So in the report there was this recommendation pertaining to what the Ombudsman should include additionally in the annual report. It was modelled on the requirement in Quebec regarding their Ombudsman and what goes into his or her annual report.

Mr Pat Hoy (Essex-Kent): I have a question regarding the budget of the Ombudsman. You stated that it was about \$4.5 million in the past budgetary findings. Are there any controls on the budget of the Ombudsman? How will you deal with the budget next year, for example? Is it a stated amount allocated? Is it open-ended?

Mr Fraser: All government departments, whether the Ombudsman or the Department of Conservation and Land Management, will apply to Treasury via their ministries for budget allocations. At the end of the day Treasury allocates budgets, and all statutory offices argue their budgets back through the process of ministry and Treasury. It's probably one of history and one of where the office will go in the next 12 months or whatever. I think it's historical in Australian politics, whether in New South Wales or any other state, or federally, that no government department ever sees a reduction in budgets unless it's forced on them. You'll find that they'll fight to keep their budgets, no matter what. But the Ombudsman's area does increase as more awareness becomes available, but it's up to the Ombudsman to argue that case back through the relevant ministry and the Treasury in order that an allocation is made.

Mr Gaudry: The Ombudsman actually comes under the Premier in New South Wales, so the Premier obviously has a strong view in terms of the present direction against corruption. The funds and resources inquiry by the committee is obviously put into the Parliament, some very strong and persuasive arguments in terms of improv-

ing funding for access and awareness. Therefore, there has been an improvement. The process by which that decision was made, though, would have been once again, as Andrew said, through the budgetary process within departments. We have, you'd say, coming from the side an influence, I'm sure, in terms of funding for the Ombudsman's office, but we certainly don't determine it.

Mr Fraser: Also, Treasury officials are the greatest enemy of any minister or department. They would monitor any increases as to performance criteria and increased result from the Ombudsman. If the Ombudsman wasn't demonstrating that the budget was needed, there'd be a fair amount of pressure by the Premier's department to reduce the budget, but I don't think it would be something that would happen.

Mr W. Leo Jordan (Lanark-Renfrew): Welcome to our committee this morning. I appreciate your taking time to be with us. My son and his wife just spent a year a short time ago in Sydney on a teacher exchange and enjoyed it very much.

The point that comes to mind that has been partly explained here just previously is that you had gone for 15 years without a committee, I understand.

Mr Gaudry: From 1974 to 1990, yes.

Mr Jordan: We are pretty much in the reverse. We have had a committee for about that period of time and we're at the point where we wonder, for what purpose? This committee is starting to look like another form of bureaucracy around the Ombudsman, because we don't really have any great teeth, if you will, to direct or assess decisions made by the Ombudsman. As you say, the Ombudsman is appointed by the Premier and, as far as I'm concerned, seems to be answerable to the Premier. This committee has very little input as to the amount to budget for that or the decisions made by the Ombudsman. In fact, as was pointed out, the previous committee, which I was on, was seriously considering the need to continue this committee. I would just ask you for your comments.

1140

Mr Fraser: Yes, that can happen. You can get to a stage with any committee, especially a committee of the Parliament, where your role is no longer being fulfilled. But at the same time, if a committee is there, even if it only meets semiregularly, the fact that it is there to oversight the process, and possibly the legislative process, as far as we're concerned, is something that gives the opportunity for appeal from the Ombudsman.

Our last Ombudsman, Mr Landa, was very interested in areas of freedom of information and things such as that, and he would put reports out that the committee would consider. He would come to the committee in the general meetings and he would tell us what he would like the government to do and we'd ignore it — not necessarily. The opportunity in our committee is one of evolution. You can do that. With your committee, possibly the committee might need further powers; I don't know.

Mr Gaudry: You said that the Ombudsman was answerable to the Premier. There's a fairly robust situation in New South Wales at times between those investigative authorities and the government in power. If we take the ICAC, for instance, the ICAC was set up by the

former Liberal-National government. Many of its first actions were actually directed against ministers within that government. In fact, eventually the Premier appeared before the ICAC and subsequently resigned.

The Auditor General at the moment has a very robust relationship with government and often makes comments which ruffle the feathers of ministers and the Treasurer. The Ombudsman also can take a very strong role, although it appears much more a cooperative role. The committee forms a linkage between the Ombudsman and government or, particularly, between departments so that we have a role there as well.

You're saying obviously that perhaps you're in a mature stage of the relationship.

Mr Jordan: It would appear to be. I'm not talking about myself.

I was wondering too — and perhaps, Mr Chairman, you could give me an explanation — whether the fact that this committee was not part of the act in the beginning — I don't think the act refers to a standing committee. I think that was something that was created by the Legislative Assembly afterwards, after the appointment of the Ombudsman and the act. So in the beginning the Premier appointed the Ombudsman, whoever it was. It was Mr Maloney, was it not, the first one? From there the Legislative Assembly decided that perhaps there was a need for a standing committee to assess. It would seem the need in Australia seemed to be a problem with the police.

Mr Gaudry: No, no.

Mr Jordan: Seventy per cent of your requests came from that area.

Mr Gaudry: Yes, but the issue really is more that there is a — “mediation” is the wrong word — place of review between executive government and the authority itself, and both an oversight and recommendation role which I think has been very valuable. As Andrew has said, the role of the Ombudsman and the role of ICAC is to a degree an organic thing. It isn't set in concrete. We perform quite an important function there.

Mr Jordan: I think as Mr Morin has pointed out, we've gone from \$1.5 million to \$7.5 million in expenditures.

Mr Morin: Let me just add to what Mr Jordan is saying. If my memory doesn't fail me, I recall quite well that it was at the instigation of Mr Maloney that the select committee on the Ombudsman be formed. Here's the reason: The Ombudsman answers to the Legislature; the Ombudsman is an extension of the Legislature. The Ombudsman was not to come in the House and give his report to the Parliament; he came and met with the committee, who in turn would pass on the information to the Parliament, which makes sense.

You made the suggestion to have the Ombudsman answer to the Premier. The Ombudsman has to be totally apolitical. The Ombudsman cannot be a tool of the government in power. The Ombudsman is a tool of the Legislature, and that's the purpose of it all, to make sure there is a voice, there is someone listening to the little guy who cannot fend for himself; also to prevent high costs. Just think of the system before. If you had a

grievance against the government, you had to go to court, and many people couldn't afford to do it. Now we have an Ombudsman who can do that. That means that anyone can go to the Ombudsman. If he feels aggrieved by the administration of the government, he can go there.

When you think of the system, it's an excellent system, but to change it — I think your implication, the fact that you're there listening to what the Ombudsman has to say, is extremely important. Can you imagine if the Ombudsman was on his own? Can you imagine, if an agency was on its own, the damage that could be done, the decisions that could be made, the money that could be spent? We're there to make sure that the —

Mr Jordan: Are we, though? How effective is the committee?

Mr Morin: I don't want to start a debate —

Mr Gaudry: Sounds good to me.

Mr Morin: — but I think it is very effective. But at the same time, I think the responsibility of the members of Parliament is to understand how the Ombudsman operates and really create a team. This sometimes, and I've seen this, at the beginning —

Mr Jordan: If I might interrupt there, that is what's happening now. In my constituency office, I'm working as a team with the Ombudsman.

The Chair: I would suggest that we pursue this angle on our own time later.

Mr Jordan: I just was interested in the fact that they went 15 years without the committee. We went with it and now we're at a plateau where some of our committee members are not interested in attending because they see no purpose.

Mr Fraser: Possibly we went the other way and we saw the need, and just the fact that the committee is there sends a very strong message in all directions.

Mr Jordan: It's very expensive.

Mr Gaudry: The committee is expensive?

Mr Jordan: In our own case, as pointed out, we went from \$1.5 million to \$7.5 million.

Mr Gaudry: Yes, but that's the office, not the committee.

Mr Jordan: I know, but I mean —

Mr Gaudry: I think the committee system is a very economical system in terms of providing an oversight to the authority and monitoring its actions. Basically, with the committee structure in our Parliament, we have a dedicated project officer and an assistant, but the assistant also assists other committees, and the services of the clerk are shared also, the parliamentary officers. Then of course for the members of the committee, it's part of the normal parliamentary workload. So it is a very inexpensive system of providing, as you've said very well, that mediation in a way between the Legislative Assembly and the council, in our case, and the Ombudsman, who are, after all, responsible to Parliament, not the executive government.

The Chair: I'm going to have to comment that our Legislature just made the operations of this committee a little more efficient by eliminating per diems.

We have 10 minutes left and I have Mr Lalonde and Mr Froese. I want to get them both on.

1150

Mr Jean-Marc Lalonde (Prescott and Russell): Mr Kaye just explained a little while ago the steps that have to be followed before a case is handled by the Ombudsman. I believe in Australia you must have workers' compensation cases also.

Mr Gaudry: Yes.

Mr Lalonde: How does it work over there? After the application is submitted to WCB, as we call it, instead of going to the Workers' Compensation Board if the application is denied, can the people go directly to the Ombudsman or is there an appeal process that has to be followed?

Mr Fraser: It's pretty well a direct legal process.

Mr Lalonde: It's pretty well direct?

Mr Fraser: A direct legal process on the basis of, if compensation is denied to any worker or withdrawn, there is a process through the industrial courts where that person would appeal. So it wouldn't go to the Ombudsman; it would go through a legal process of its own.

Mr Gaudry: In fact, we have a schedule appended to the Ombudsman Act of excluded jurisdictions. It would be an excluded jurisdiction.

Mr Lalonde: In our case here it has to go through the appeal process, and just lately I was really surprised and satisfied with a position the Ombudsman has taken. Within a week after taking the case to the Ombudsman, they found out that the last appeal had not been gone through. They have an appeal to the last or the third step, and immediately the response came within a week that the appeal process has to be followed before they take over or handle the case. So in this case I was really pleased with the position the Ombudsman has taken, the time they have taken, within a week.

Mr Gaudry: You've got a different brief, your Ombudsman, than ours.

Mr Lalonde: There are quite a few cases of WCB that are going through the Ombudsman in the province.

Mr Gaudry: In our state at the moment, the issue of what we call work cover, workers' compensation issues, is quite — they're on the agenda certainly of most members of Parliament.

Interjection.

Mr Lalonde: Which in other words could be very costly for the person applying to get the compensation who has been denied the compensation.

Mr Fraser: A lot of the areas of conflict within workers' compensation in New South Wales are areas of common law, which is negligence rather than the compensation itself. The compensation structure in New South Wales is fairly good, but there are areas — I have a fellow at the moment who has a major injury, and his award only allows him 26 weeks' compensation. He's employed by his own company; he's paid in hundreds of thousands of dollars over the years. He's somewhat upset. But once again, it's outside of that jurisdiction of the Ombudsman. It goes back to industrial awards that are negotiated via employers and unions to a large extent.

Mr Froese: Comments were made before about, what does our committee really do? If our committee had the power and jurisdiction that you've got, especially as documented in your roles and functions, I don't think our

committee would have a problem with it. I think we're really struggling with — I hate the terminology of "cases denied" or whatever it was. Why don't you just tell if they're solved or not solved, what the problem is? But I think one of the reasons the committee dealt with it, to my understanding, and I could be wrong, was because this committee doesn't have a role. If we had the role to monitor, review and exercise and to draw matters to the attention of the Legislative Assembly or change the functions or the structure as you have, I think this committee could live well within those realms.

When I found out that we were dealing with specific cases, I totally agree with the way your system is. Why are we getting involved? The Ombudsman is the final one. Documentation states that if the case isn't being dealt with or is delayed, then you get involved as well. It's to get an answer, whatever that answer is.

Mr Gaudry: It's more to insist that there be procedures in place to deal in a timely manner with any complaint, rather than that individual complaint. The individual complaint to us highlights the difficulty in a procedural sense that must be within the Office of the Ombudsman or it highlights the inadequacy of perhaps some of the offices operating within the Ombudsman's area. Therefore we would be questioning about the processes and the procedures, not the individual case.

Mr Froese: I guess the comments I made were more of a statement than anything else, but do you feel that a particular Ombudsman, a particular individual and personality, has a lot to do with the level of cooperation and taking the jurisdiction or the act and pushing it one way or the other, that it depends largely on the personality of the individual, and how they interpret the act determines if the Ombudsman is effective or not effective?

Mr Gaudry: I don't have the range of experience to state that, but I do know, having been on the ICAC committee of the Parliament prior to coming to this committee, that certainly the esprit de corps of the whole office has a lot to do with the Ombudsman or the ICAC commissioner in charge, and obviously they also have their areas of interest as well. So I think it does have a lot of impact. But as Andrew has said, certainly our present commissioner is very, very keen to be proactive and get the office out into the community as much as possible.

Mr Fraser: Our present Ombudsman was — what was she? Commissioner for ethnic affairs —

Ms Minnican: No, human rights and then equal opportunity.

Mr Fraser: — prior to coming to the job, so she has an absolute interest in ensuring access and ensuring awareness of the position because of her previous position, which has brought with it basically a breath of fresh air.

Ms Minnican: And children's magistrate.

Mr Fraser: Oh, yes, and she was a children's magistrate prior to that.

Mr Gaudry: So that indicates an area of interest.

If I might, I note here in the information supplied there's certainly a massive number of recommendations in terms of the change, perhaps, in the role of the committee. Have they been acted on? Have any of those been acted on?

The Chair: I'm going to invite Philip to respond to that question.

Mr Kaye: Are you referring to the recommendations in the 1993 report?

Mr Gaudry: Yes, the 1993 report.

Mr Kaye: That report was tabled but never debated in the House. As I mentioned, in December of last year the House referred the report to this committee for further review and that's where things stand.

Mr Gaudry: But does the committee see that as an area of current activity, or is it something that, as Mr Jordan said, perhaps you're not moving ahead on at the moment?

The Chair: This committee has been examining that report, examining those recommendations, and is in the process of forming a view as to what further steps might be merited.

Mr Froese: That's putting it very diplomatically.

The Chair: It's about 12 o'clock. For that reason only, I suggest it's about time we adjourn. Before doing that, though, I want to extend the gratitude of this committee to Mr Gaudry, Mr Fraser and Ms Minnican for joining us today and sharing with us your thoughts, perspectives and experiences with your service on the Ombudsman committee of New South Wales.

I understand that you'll be joining us this afternoon to catch part of our question period, which should make you

feel quite at home. I've always thought it's quite similar to Australian rules football. I'll be interested in your perspective on that.

Mr Gaudry: We have a peculiar name for the Legislative Assembly in New South Wales. It's referred to nationally as the Bear Pit. Really, in width, it's not too much wider than the chamber that we're in at the moment, so you are actually less than two sword lengths from your opposition. There's often a robust exchange.

The Chair: I'm not sure we would survive if we didn't have a little bit more room to work with.

Mr Fraser: It's a very robust chamber. Actually, it's quite funny because a lot of school children come into our chamber and I've often heard the comment, "If we acted like that at school, we'd be disciplined."

Mr Froese: So you have the same problem over there as we have here.

Mr Fraser: I suppose there's a little bit of poetic licence from MPs when they've been locked up in chambers especially. It's a bit like boarding school. You've got to let off steam somehow, so it's a matter of as long as it's done within certain rules and regulations and the Speaker doesn't ask you to retire for a day or two.

The Chair: With those very encouraging remarks, we adjourn the meeting for today.

The committee adjourned at 1200.

APPENDIX 5

IOI CONFERENCE: CLOSING ADDRESS - SYNOPSIS

Jorge Luis Maiorano

Argentina

**AT THE THRESHOLD OF THE XXI CENTURY :
IDENTITY CRISIS OR EVOLUTION ?**

**AU SEUIL DU XXI SIECLE :
CRISE D'IDENTITÉ OU ÉVOLUTION ?**

**EN LOS UMBRALES DEL SIGLO XXI :
¿CRISIS DE IDENTIDAD O EVOLUCION ?**

**AN DER SCHWELLE DES XXI. JAHRHUNDERTS :
IDENTITÄTSKRISE ODER ENTWICKLUNG ?**





AT THE THRESHOLD OF THE XXI CENTURY: IDENTITY CRISIS OR EVOLUTION?

By Dr. Jorge Luis Maiorano
Defensor del Pueblo de la Nación

The figure of the Ombudsman was initially conceived as a parliamentary delegate, but it was given functional independence from those who appointed him. The institution was formally born in Sweden, during a time of political liberalism. This was the first millstone in the long process of evolution of the institution. A much evolved form was later introduced in Denmark, being this the second visible millstone in the evolution of this formula, due to the fact that the country's political system was different from the Swedish one and the figure was conceived as a non traditional means of supervision of the Administration with an intense interventionist role. It was the time of the "welfare state". From this moment onwards, the institution began to grow considerably throughout the world.

The end of Second World War marked the beginning of the process of internationalisation of human rights and implementation of schemes, such as the Ombudsman, Human Rights Commissioners, or the like, being this the third millstone in the historical process of development of the Ombudsman model. From the establishment of the "*Provedor de Justicia*" in Portugal and the "*Defensor del Pueblo*" in Spain, the institution have incorporated new objectives beyond the original mission that identified the institution during the first stages. The implementation of the model in new born democracies in Latin American countries, Western Europe, Africa and the growing institutionalisation in several Asian countries are a clear indication of the international process that has been taking place for the last ten years and serve to reaffirm the compromise of the institution in the field of human rights and the consolidation of the democratic system.

The fact that the formula has been implemented in countries with parliamentary or presidential schemes, in federal states and autonomous regions, as well as at provincial and municipal level, is a clear evidence of its universal nature. And, precisely, due to this universal nature, one of the fundamental functions of the institution, beyond legal or formal factors, is the defence of the rights and fundamental freedoms of all persons.

The formula has been gradually incorporated in legal systems different from the one where the model was initially conceived and this process has been subject to several modifications as regards appointment, jurisdiction and sphere of action. In my opinion, these new versions may be accepted, provided that

such modifications do not alter the profile of the institution in its capacity as a public non jurisdictional organ of administrative control, autonomous and independent, and on condition that the new models comply with the principles of the rule of law and avoid interference with the identity of the institution.

If we want to find an answer to the question if present Ombudsmen are direct descendants of the original formula or just distant relatives, in my opinion, we are the favourite sons. Time and distance have not taken us away from the Ombudsman concept: reality has faced substantial changes but, in the light of such changes, the institution has not remained autistic. On the contrary, it has shown its capacity to adapt itself to new needs of society. Even though the name "*Defensor del Pueblo*" (*Defender of the People*) may indicate a deeper compromise with society, we cannot hide our line of descent.

At the threshold of the XXI century, humanity in itself is the biggest threat the institution will have to face. The proliferation of nuclear weapons has given rise to an evenly dark perspective: the constant risk of ethnic conflicts, violence and political instability among and within several countries. It is here where the Ombudsman scheme has a fundamental role due to the fact that it has the capacity of creating the necessary antigen so as to avoid social conflicts and, at the same time, encourage the establishment of new forms of mediation and conciliation of interests.

The Ombudsman in its present form, provided that it has been modelled after the original version, has not lost its identity. This institution will not be buried in the cemetery of guaranteeing institutions. It is a healthy and strong institution. It is capable enough to face the XXI century and all potential challenges, with the freshness of an institution that was born during the past century, has grown during the second half of this century, and has become fully developed along with its evolution.

APPENDIX 6

TABLE OF ORGANISATIONS VISITED IN ENGLAND AND CANADA

NSW AND OVERSEAS OMBUDSMEN

<i>Ombudsman</i>	<i>Appointment and Term</i>	<i>Jurisdiction</i>	<i>Budget and Staffing</i>	<i>Reports and Inquiries</i>	<i>Parliamentary Committee</i>
<p>NSW Ombudsman (est. 1974)</p>	<ul style="list-style-type: none"> ● Position advertised & selection panel interviews. Recommended by Premier. Committee may veto proposed appointment. Governor appoints. ● 7 yrs. max ● Eligible for re-appointment 	<ul style="list-style-type: none"> ● Police Complaints ● Public Authorities & Local Government, & Corrective Services ● External Review of FOI ● Telecommunications Interception ● Protected disclosures by public officials ● Witness protection appeals ● Matters referred by the Local Govt. Pecuniary Interest Tribunal 	<p>1995-6 Budget: \$4.58 million Staff: 81 (including 51 investigation staff).</p>	<p>1995-6: 7709 written complaints received.¹</p> <p>Informal oral complaints: 14,222</p> <p>Adverse findings: 8 Local Govt.; 3 Public authorities & Depts.; 2 Prisons; 4 FOI. Police: 5336 complaints received, total of 856 Police complaints investigated, 495 sustained.</p>	<ul style="list-style-type: none"> ● Yes. Joint Committee on the Office of the Ombudsman. ● Est. 1990 by statute.
<p>British Parliamentary Ombudsman (or Parliamentary Commissioner for Administration) (est. 1967)</p>	<ul style="list-style-type: none"> ● Appointed by the Sovereign on the advice of the Prime Minister after consultation with the Opposition Leader and Select Committee Chairman ● Until retirement ● Ineligible for re-appointment 	<ul style="list-style-type: none"> ● Govt. Depts., executive agencies, public sector bodies. ● Polices Code of Practice on Government Information. ● Police complaints not incl. (separate authority). 	<p>1996: Total Staff 236.18 at 1/9/96</p>	<ul style="list-style-type: none"> ● Annual report; several casebooks per year; special investigation reports (4 during 1993) <p>1996: as at 1/9/96 1859 complaints received; 471 cases under investigation, 259 final reports issued 1995-6 Annual Report - 2357 caseload -245 full investigations - 153 (62%) justified, 9 (4%) not justified, 83 (34%) partly justified.</p>	<ul style="list-style-type: none"> ● Yes. House of Commons Select Committee on the Parliamentary Commissioner for Administration. ● Est. 1967 under Standing Orders.

Comparison of Complaint Statistics

The major difficulties encountered when trying to compare the complaint loads of Ombudsman in different jurisdictions are that:

- i) "complaint categories" often differ between each Ombudsman's Office (i.e. some offices may record several allegations contained within one complaint whereas another office will only record the umbrella complaint in its complaint statistics); and,
- ii) the functions of each Ombudsman also may vary, e.g., some are responsible for police complaints whereas in other jurisdictions these may be handled by a separate authority.

As a result, the Committee has found on previous occasions that drawing such comparisons is of limited use.

NSW AND OVERSEAS OMBUDSMEN

<i>Ombudsman</i>	<i>Appointment and Term</i>	<i>Jurisdiction</i>	<i>Budget and Staffing</i>	<i>Reports and Inquiries</i>	<i>Parliamentary Committee</i>
<p>Ontario Ombudsman (est. 1978)</p>	<p>Prior 1993: Ombudsman appointed by Lieutenant Governor in Council on address of Assembly.</p> <ul style="list-style-type: none"> ● Term of 10 yrs. ● Eligible for re-appointment. <p>1993: Standing Committee recommended that the Ombudsman be appointed by Lieutenant Governor in Council on the address of the Assembly and after a unanimous recommendation of the Standing Committee.</p> <p>Standing Committee also recommended term of 6 yrs</p> <p>Current status: new Committee examining 1993 Committee review</p>	<p>Jurisdiction re Ontario Govt. Depts. divided into the following areas:</p> <ul style="list-style-type: none"> ● Provincial ● Private ● Municipal ● Federal ● Courts ● Other <p>(Police not incl. - separate authority)</p>	<p>1995-6 Budget: \$8.9m</p> <p>Pre-1993 Budget: Like other officers of Parlt. the Ombudsman submits the estimates for the office to the Legislative Assembly's Board of Internal Economy for review & approval and subsequent referral to the Estimates Committee. (Bd. of Internal Economy comprises the Speaker, 3 members of the Executive Council, & 1 member of each party caucus).</p> <p>1993: Committee recommends the Ombudsman's estimates should be referred to it and that its proceedings for review of these estimates should be held in public.</p> <p>Current status: Proposals under examination</p>	<p>1995-6: 28,900 inquiries and complaints, 1,376 complaints resolved by Ombudsman; 1,734 investigations discontinued; 794 no action possible, 24,996 resolution facilitated/referral given/inquiry made.</p>	<ul style="list-style-type: none"> ● Yes. Ontario Legislative Assembly Standing Committee on the Ombudsman. ● Est. in 1976 under Standing Orders.

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<p>Information Commissioner (Canada) (est.1983)</p>	<ul style="list-style-type: none"> ● Appointed by Governor in Council on approval of Senate and House of Commons. ● Term: 7 years, eligible for reappointment 	<ul style="list-style-type: none"> ● Investigates complaints that applicants have been denied rights under the Access to Information Act. ● Audits departmental practices and procedures ● Government departments, Ministries of State and other Government. 	<p>1995-6 Budget: \$6.19 million Staff: 15</p>	<p>1995-6: Received 1,712 complaints; Completed 1,530 complaints; 980 resolved; 319 unsubstantiated; 225 discontinued.</p>	<ul style="list-style-type: none"> ● A review of the Act was conducted by the Standing Committee on Justice and Solicitor General in 1985 and 1986 (in accordance with s.75). The Information Commissioner recommended that a parliamentary committee be mandated to study and propose amendments to the Access to Information Act (Annual Report 1993-4) ● Reports of the Commissioner to Parliament are referred to the Standing Committee

PARLIAMENTARY OMBUDSMAN COMMITTEES

<i>Committee</i>	<i>Terms of Reference/Functions</i>	<i>Membership</i>	<i>Inquiries and Reports</i>
<p>NSW Committee on the Office of the Ombudsman and the Police Integrity Commission</p> <p>(est. 1990)</p>	<ul style="list-style-type: none"> ● monitor and review the exercise by the PIC Inspector and the Ombudsman of their functions and report to Parliament ● examine each annual and other reports of the Ombudsman, PIC and PIC Inspector. ● examine trends and changes in police corruption, practices and methods relating to police corruption. ● report to Parliament on any desirable changes to functions, structures and procedures of the Ombudsman, PIC and PIC Inspector. ● inquire into references from Parliament. <p>(31B & 31B(A) of the Ombudsman Act 1974).</p>	<ul style="list-style-type: none"> ● 11 members - 6 Govt. members (incl. Chairman); 3 members from the Opposition parties; 1 Independent & 1 minor party member. 	<ul style="list-style-type: none"> ● Police Complaints ● Funds & Resources ● Access & Awareness ● Review of the Protected Disclosures Act 1994 ● 4 General Meetings ● May report on any Ombudsman report to Parliament except for a s.27 report (i.e. one relating to a failure by an agency to adopt Ombudsman recommendations) and matters relating to the Ombudsman's jurisdiction under the telecommunications interception legislation.
<p>House of Commons Select Committee on the Parliamentary Commissioner for Administration</p> <p>(est. 1967)</p>	<p>Under Standing Orders: Examines the reports (& related matters) of the:</p> <ul style="list-style-type: none"> - Parliamentary Commissioner (Mr K Reid CB) - Health Service Commissioner for England Scotland and Wales (Mr K Reid CB) - Northern Ireland Parliamentary Commissioner (Mrs J McIvor) 	<p>9 Members: 5 Government (incl. Chairman); 4 Opposition.</p>	<p>Regular inquiries & reports on PCA's Annual Report. Inquiries & reports on PCA's special investigations e.g. the Child Support Agency, Channel Tunnel Rail Link.</p> <p>Thematic inquiries: looking at more systemic administrative issues & problem areas, e.g. "Maladministration & Redress" Dec. 1994, "Open Government."</p>

PARLIAMENTARY OMBUDSMAN COMMITTEES

<i>Committee</i>	<i>Terms of Reference/Functions</i>	<i>Membership</i>	<i>Inquiries and Reports</i>
<p>Ontario Legislative Assembly Standing Committee on the Ombudsman</p>	<p>S.O. 104(h):</p> <ul style="list-style-type: none"> ● review & consider reports of the Ombudsman ● formulate general rules for the guidance of the Ombudsman in exercising his/her functions ● report to the Legislature & make recommendations as Committee deems appropriate <p>1993 proposals: review & consider any Ombudsman report or recommendation to Part; monitor & review Ombudsman's exercise of his/her functions (report & recommend legislative amdts.); review Ombudsman's estimates & present to Assembly; review & consider audits of Ombudsman's Office by Public Accts. Committee; develop & intro. to the L.A. any amdts. to the Ombudsman Act; make general rules to guide Ombudsman in exercise of functions; place with L.A. nominations for consideration for appt. as Ombudsman; discuss annual Ombudsplan with Ombudsman; serve as a "legislative link & sounding board" for the Ombudsman.</p> <p>Proposals under review.</p>	<p>14 Members</p>	<p>1996: full review of the Office of the Ombudsman; reported April 1993 and referred to Parliament to new Committee for review. Under consideration.</p> <p>Prior to this review the Committee also reviewed particular complaints about decisions by the Ombudsman.</p>

POLICE OVERSIGHT BODIES (Britain & Canada)

<i>Authority</i>	<i>Functions</i>	<i>Budget and Staffing</i>	<i>Reports and Inquiries</i>
<p>Police Complaints Authority (Britain) (est.1984)</p>	<p><i>Police and Criminal Evidence Act 1984</i></p> <ul style="list-style-type: none"> ● Chairman appointed by Her Majesty the Queen; PCA Members appointed by Home Secretary. ● Considers complaints against officers up to Chief Superintendent in the English and Welsh police forces, and British Transport, Ministry of Defence, Port of Liverpool, Port of Tilbury, Royal Parks and UKAEA Police. ● Mandatory referral: allegations of serious injury or death; assault occasioning actual bodily harm; any serious arrestable offence; an offence under s.1 of the Prevention of Corruption Act 1906. ● Voluntary referral of matters from Police (s.88) 	<p>1995-6 Budget: \$3.891 million Staff: 59 (as at 31.3.96)</p>	<p>1995-6: 2761 cases referred to PCA; 1,142 cases accepted for supervision 9,816 cases containing 18,607 specific complaints.</p> <p>Discipline Review: 5,656 dispensations granted; 4,154 cases fully investigated resulting in 253 formal disciplinary charges; 860 other disciplinary charges (e.g. admonishment). Criminal charges brought against 16 officers.</p>
<p>RCMP Public Complaints Commission (Canada) (commenced Sept 1988)</p>	<p><i>Royal Canadian Mounted Police Act - Part VII</i></p> <ul style="list-style-type: none"> ● receive complaints from the public ● notify RCMP Commissioner of complaints received ● review complaints from complainants dissatisfied with RCMP investigation ● investigate complaints in the public interest ● initiate complaints when reasonable grounds exist ● report on complaint reviews ● conduct public hearings into complaints 	<p>1996-7 Budget Estimates: Can \$3.531 million</p> <p>Staff: 31</p>	<p>1995-6: Complaints received: 1018 direct to Commission, 2592 to RCMP. Complaints referred for review: 308 Reports: 165 satisfied with RCMP disposition; 39 dissatisfied.</p>
<p>Ontario Police Complaints Commissioner</p>	<p><i>Police Services Act</i></p> <ul style="list-style-type: none"> ● monitor, investigate and review public complaints re the conduct of municipal, regional and provincial police in Ontario. ● make recommendations re practices and procedures of Ontario police services. 		<p>1995: 3923 complaints opened; 3462 complaints closed; PCC investigations 29; PCC reviews of Police decisions on complaints 482; 166 informal resolutions; 148 Disciplinary action; 893 withdrawn; 433 not dealt with; No further Action 1446.</p> <p>1995: 4 recommendations made.</p>

APPENDIX 7

FULL IOI CONFERENCE PROGRAM

VI I.O.I. - SCHEDULE

DATE	TIME	PLACE	ACTIVITY
Sunday October 20	10:00 to 15:00	Inter-Continental Hotel General Secretariat	Registration and kit delivery
	16:45	Colon Opera House	Opening Ceremony
	18:00	Colon Opera House	Ballet "E. Onegin"
	20:00 to 22:00	Colon Opera House	Welcome Cocktail

INTER-CONTINENTAL HOTEL			
DATE	TIME	ROOM	ACTIVITY
Monday October 21	09:00 to 10:30	A-B	Plenary Session 01 "The Ombudsman around the World." (English - French - Spanish - German)
	11:00 to 12:45	A-B	Plenary Session 02 "Challenges that Meet the Ombudsman Concept in Latin America." (English - French - Spanish - German)
	14:00 to 18:00	A	Workshop 01 "The Role of the Ombudsman in the Process of Transformation of State Activities." (English - French - Spanish - German)
		C	Workshop 02 "How to Harmonise General Ombudsman Activities with those Related to Specialised Ombudsman." (English - Spanish)
		B	Workshop 03 "Reaching the People: Service Equity and the Ombudsman." (English - Spanish - German)

INTER-CONTINENTAL HOTEL			
DATE	TIME	ROOM	ACTIVITY
Tuesday October 22	09:00 to 13:00	C	Workshop 04 "The Ombudsman as a Non-traditional Tool for Citizen Participation." (English - Spanish)
		B	Workshop 05 "Ombudsman as Mediator." (English - French - Spanish - German)
		A	Workshop 06 "Human Rights, Poverty and the Right for Development." (English - Spanish - German)
	14:30 to 16:00	A-B	Plenary Session 03 "Human Rights and the Importance in the Institutional Strength of the Ombudsman." (English - French - Spanish - German)
	16:30 to 18:00	A-B	Plenary Session 04 "Helping People Facilitates Fairness in Government and Justice." (English - French - Spanish - German)

INTER-CONTINENTAL HOTEL			
DATE	TIME	ROOM	ACTIVITY
Wednesday October 23	09:00 to 13:00	A	Workshop 07 "The International Ombudsman Institute: Facing Growth of the Concept and Requirement for Coordination." (English - French - Spanish - German)
		B	Workshop 09 "The Ombudsman Specialised in Judicial Matters." (English - Spanish - German)
		C	Workshop 08 "Towards a Better Standard of Living: The Ombudsman Task Within." (English - Spanish)
	14:30 to 17:30	A	Regional Meeting EUROPE (English - French - Spanish - German)
		B	Regional Meeting LATIN AMERICA (No translation)
		C	Regional Meeting AFRICA (English - French)
		D	Regional Meeting AUSTRALASIA & PACIFIC (No translation)
		E	Regional Meeting ASIA (No translation)
		F	Regional Meeting NORTH AMERICA (No translation)
	17:45 to 19:00	A	I.O.I. - Board of Directors' Meeting (New Board & Previous Board) (English - French - Spanish - German)

INTER-CONTINENTAL HOTEL			
DATE	TIME	ROOM	ACTIVITY
Thursday October 24	10:00 to 12:00	A-B	Plenary Session 5 "At the Threshold of the XXI Century: Identity Crisis or Evolution?" (English - French - Spanish - German)
	14:00 to 17:15	A	Voting Members' Session (English - French - Spanish - German)
	17:30 to 18:00	A	Closing Ceremony

