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Jeudi 24 novembre 2005

**Standing committee on
the Legislative Assembly**

Ombudsman Ontario

**Comité permanent de
l'Assemblée législative**

Ombudsman Ontario

Chair: Bob Delaney
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY

Thursday 24 November 2005

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE

Jeudi 24 novembre 2005

The committee met at 1700 in committee room 1, following a closed session.

OMBUDSMAN ONTARIO

The Chair (Mr. Bob Delaney): Good afternoon, everyone. Welcome to the standing committee on the Legislative Assembly. My name is Bob Delaney, and I'm the chair of the committee.

It's our pleasure as a committee to welcome, for our first meeting with him, the Ontario Ombudsman, Mr. André Marin, and his staff. Mr. Marin, bienvenue. This is our initial opportunity to get together with you to discuss your office and some of the work that you're doing, and for us to pose some questions to you during the approximately one hour that we'll have this afternoon.

Without further ado, I'm sure that you have an opening statement for us. Please proceed.

Mr. André Marin: Thank you very much, Mr. Chair. I'm indeed honoured to make my first appearance here before the standing committee on the Legislative Assembly. To my right is Ms. Barb Finlay, who is the director of operations in our office, and to my left is Wendy Ray, who is senior counsel and who very courageously and competently assumed the position of temporary Ombudsman between Mr. Lewis and myself.

It is a pleasure for me to appear today in response to your invitation to discuss my vision for the office as well as the work we are doing. My first contact with members of this Parliament was almost a year ago, when I was interviewed for the position of Ombudsman of Ontario after a full competitive process. Two of the members of the interview panel are also members of the committee, although they are not present today.

I took office as the sixth Ombudsman of Ontario as it embarked on its 30th year of existence this April 1. I succeeded Clare Lewis, who rightfully claimed credit for providing five years of stability and continuity to the position. In his last appearance before this committee, Mr. Lewis, however, wisely recognized that having relaid the foundation of the office, it was time to bring it to a new level.

The function of the Ombudsman is described in the Ombudsman Act, in rather terse language, as recommendatory in nature. Whenever I've investigated an issue, if I conclude that a decision, recommendation, act or omission appears to be contrary to law, unreasonable,

unjust, oppressive, improperly discriminatory or just plain wrong, I can make a recommendation.

At first blush, the authority of the office over 500 government ministries, agencies, tribunals and commissions appears to be very broad, and indeed it is. We process over 23,000 complaints per year. We also exercise a much more fundamental role. The Ombudsman is Joe Q. Public's gateway to the avenue of power. He is the ordinary citizen's friend in righting wrongs outside the legislative or judicial branches of the state. In our cherished democratic society, the wealthy can always avail themselves of the courts, which are already overburdened, to fix their problems with the state in an adversarial setting. The less wealthy can become impoverished by risking this route, and the poor are left out altogether. The Ombudsman is there to fill the void by providing free, independent, impartial oversight of governmental action or inaction.

Thirty years ago, in the 1975 speech from the throne, the intention of the government to create an Ombudsman's office was captured in the following terms: "As a safeguard against the growing complexity of government and its relationship with the individual citizen, the government will establish the office of the provincial Ombudsman to ensure the protection of our citizens against arbitrary judgments and practices." The Ombudsman is therefore integral to the provincial civil rights protection apparatus even though he is outside the governmental net.

As an independent officer of the Legislature, the Ombudsman is also an indispensable tool for parliamentarians who strive for good government and administrative efficiency. In 1970, the Supreme Court of Alberta said, "As an ultimate objective, the Ombudsman can bring to the Legislature his observations on the misworking of administrative legislation. He can also focus the light of publicity on his concerns as to injustices and needed change."

To use the words of our first-ever Ombudsman, Arthur Maloney, parliamentarians are "my fellow Ombudsmen," in that we both have, as part of our responsibility, to help citizens who have complaints about governmental administration. I am vested, however, with special powers of investigation, including entering government offices, examining files, conducting hearings, subpoenaing witnesses and taking evidence under oath. Following investigation, I can recommend and report. To use, again,

the words of the late Arthur Maloney, "I exercise those powers as trustee for (parliamentarians) and for the people. As my office evolves and as the powers conferred upon me are exercised by my office we build up a know-how and an expertise which we share with our fellow Ombudsmen."

There are many ways in which the Ombudsman safeguards individual rights and enhances the democratic process in Ontario by investigating, recommending and reporting. One can investigate, recommend and report by shuttle diplomacy. This is a less threatening, less thorough, more cursory way of looking into an issue, which may be quite appropriate, even desirable, for some matters. The vast majority of our cases follow this route. For example, a citizen may feel aggrieved if denied a provincial licence he believes he is entitled to receive. A sensible undertaking may be to approach the responsible official in the provincial government to obtain an explanation. The citizen may not qualify to receive his licence, or the functionary may have overlooked facts. Either way, the investigation will be low-key and uninvolved and have as much or more chance of succeeding quickly than a more intrusive approach.

There are cases, however, where the low-key diplomatic approach will be unsuccessful, cases where the administration appears to be immovable and intransigent; where the issue is hotly contested; where the facts are in dispute; where there appears to be a strong prima facie case of systemic flaws causing great injustice; where a solution appears distant and elusive. For these cases, there is no substitute for a formal field investigation.

This is the area, since my appointment, where we have brought the greatest reforms in how we do business. By reallocating internal resources, we have been able to create the first ever field investigation unit, called the special Ombudsman response team, or SORT. I am pleased to see that SORT has been a very successful tool at bringing closure to difficult systemic issues that had been impossible to resolve otherwise.

I plan to conduct at least six SORT investigations a years. Since my appointment we have conducted three and are completing our fourth.

The first SORT report was titled *Between a Rock and a Hard Place*. It was the result of an investigation into complaints that parents were being forced to place their children with severe disabilities in the custody of children's aid societies to obtain necessary care. Following the publication of our report, the Ministry of Children and Youth Services adopted all our recommendations and started the lengthy process of returning special-needs children to their parents if no protection issues existed.

In the second SORT report, titled *From Hope to Despair*, we found that the Ministry of Health and Long-Term Care's refusal to fund the drug Cystagon for treatment of Batten's disease to be unreasonable and unfair. We made several recommendations, including one which called on the ministry to change its interpretation of the Ontario Drug Benefit Act to ensure that it was not

unreasonably strict and causing injustices. Again, the ministry complied and accepted all our recommendations.

In the third and most recent SORT investigation, we reported, in *The Right to be Impatient*, that the Ministry of Health and Long-Term Care had failed to properly administer newborn screening in Ontario by screening for only two diseases and not updating its screening process in 27 years. There are 130,000 births in Ontario per year. For years, our province has been guilty by omission in the death and disability of 50 babies a year by maintaining a newborn testing regime which is worse than any of those found in developed countries. As we sensed that the ministry was receptive to our conclusions and amenable to moving forward quickly, we refrained from making specific recommendations. Since then, the government has pledged to increase the screening to 27 diseases, to be completed before the end of 2006. The Premier also committed to leaving the list open to new additions.

Finally, we are currently investigating the Municipal Property Assessment Corp. for the way in which it conducts property assessments in Ontario. Specifically, we are investigating the transparency of the assessment process and how the corporation deals with cases where citizens successfully challenge the assessed value of property. We announced the case as we believed we had received a large number of complaints, 75 of them, dealing with these issues, which we believed were compelling enough. Within weeks of announcing our investigation, we received a further 2,700 similar complaints from across Ontario. I intend to report my findings and recommendations early in the new year.

The introduction of this type of field investigations in the Office of the Ombudsman is one of the first initiatives I undertook after taking over the post on April 1 of this year. Between a Rock and a Hard Place, *From Hope to Despair*, and *The Right to be Impatient* speak loudly of the unique function served by this approach in helping citizens with their problems and in demonstrating our value.

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I want to conclude my opening by thanking all of you, the parliamentarians, for the hard work you undertake every day on behalf of your constituents. In the last 8 months, I have met with dozens of MPPs, and I was struck by the concern each and every one has for the welfare of fellow citizens, a concern that is not always in evidence when you are looking in from the outside. In fulfilling your important jobs as parliamentarians, I am committed to supporting your function by reporting to you my findings and recommendations and in ensuring that we have a complementary role in achieving greater justice in society and, to use the words of the Alberta Supreme Court, in ensuring good government and administrative efficiency.

Thank you for your attention. I'd be pleased to answer your questions.

The Chair: Thank you very much. I have a list of questions: Mr. Ruprecht, followed by Mr. McMeekin.

Mr. Tony Ruprecht (Davenport): Thank you very much for your well-thought-out presentation. I was particularly interested in your comment on MPAC. You indicated that there were 75 complaints at the beginning, which then mushroomed to 270—

Mr. Marin: Some 2,700.

Mr. Ruprecht: Oh, 2,700. The reason I have interest in this is because this number seems to be very significant. I'm wondering, when you get these requests, is it for you to check out individual properties? Is it for you to check out the process by which these properties were assessed? Secondly, I'm just wondering in terms of the jurisdiction of your office. Did you give any thought at all to whether you had been appropriately informed or whether this was part of your jurisdiction, without second thought?

Mr. Marin: Thank you for the question. We looked through the caseload of complaints historically about MPAC, we analyzed the 75 that came in, we kept tabs on the others that were also flowing in, and we isolated two systemic issues. Obviously, citizens were complaining to us about their individual assessments, but there are two ways right now that citizens can challenge their assessment: One is by making a request for reconsideration by MPAC, and the second is by a formal appeal in front of the tribunal that's set up to do that job. We refrained from looking at individual issues. Rather, we isolated two systemic issues which we thought were very compelling from an Ombudsman point of view.

The first one was whether citizens who receive an appraised value of their property are sufficiently informed of the criteria used to arrive at that value. It's all good for a process to be there to allow citizens to challenge the value of their home, but if they don't have the disclosure of how the numbers are there, how are you expecting citizens to be armed with the information to challenge it? We thought that on the face of it, that was a very compelling issue that was worth study.

The second issue: When a citizen takes it upon himself or herself to challenge the value of their home, to go through the process before the court or a request for reconsideration, and through one of those means has the property value reduced—many people are complaining that MPAC fails to honour the lower amount the next year. It gives the impression to citizens that MPAC's position is, "We'll cut you some slack this year, because we'll get you next year." Essentially, the complaint is that the lowered amount is ignored for subsequent years. MPAC goes back to the higher amount, prior to the appeal or challenge, and then tacks on the new percentage for that year.

Mr. Ruprecht: In all cases?

Mr. Marin: In many cases that come to our attention. That's why we're investigating. Whether it's in all cases—we hope to bring you back an answer in the new year. So those are the two systemic issues which we thought were very compelling to look at, because they come up very frequently in complaints we get.

The second part of your question about the jurisdiction: Initially, MPAC raised some preliminary issues

about whether or not we had jurisdiction, because they considered themselves an independent corporation. But through discussions between counsel, we sorted it out, and MPAC has since agreed that we have full jurisdiction and is co-operating with us.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): I want to join my colleague in expressing my appreciation for you and your capable office support folk for coming out and sharing here. I'll say off the top that I'm a bit surprised that a third thing on MPAC wasn't the process itself. I wouldn't mind chatting with you about that at some point.

My understanding is that the first thing that happened when it went from provincial to municipal—downloading, in a sense—was that about 27% of the staff were cut. That, coupled with the computer program removing the human face, that interface—that may say something about your office too. I don't know. That's the question I want to get at.

As I listened to you, Mr. Ombudsman, I was taken by the scope. I appreciate your comments about us all being ombudsmen, by the way. I share that perspective. Personally, I'd like to take a case-to-cause approach, where, when you solve a problem, the benefits accrue to more than just the person who indicated the concern. I suspect, from the bit I know about your office and you, sir, that you're likely in that camp.

As you spoke, you talked about taking action to right a wrong. From Bobby Kennedy's funeral, a plain and simple man "who saw wrong and tried to right it; saw war and tried to stop it," where it's wrong, where it's discriminatory, or arbitrary judgments, misworking of legislation, acts in dispute—we see a bit of that around here from time to time—where solutions are elusive.

Given the depth and breadth of your obvious concern, which I share, how in heaven's name do you make decisions about where you're going to focus your energy? It seems to me that it's such a broad task that one would need to be next to the angels to achieve it. I throw that out to you. I'd appreciate a little bit of information about, of all these concerns that come in, how you and your regiment make decisions about where you're going to focus limited resources.

Mr. Marin: It's a very good question. We deal with 23,000 complaints a year, and except for the six that we intend to turn into field investigations, like the one about MPAC, the rest are done using diplomacy and communication with the ministries involved. The office is called the Ombudsman's office, and I'm probably going to be the only one from the office speaking today. I am backed up by a team of professionals who have been there for 30 years—not all of them, but there's a vast resource that's behind me. When there's an issue that comes up with a ministry and agency, whether it's the Ontario Human Rights Commission or another ministry, I turn to my staff, and they're able to produce a rich resource of information to allow me to make an educated decision.

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To answer more precisely how I make the decisions where to put our resources, we put our resources where

we believe that we're able to have the biggest impact for the citizens of Ontario, where we can pack the biggest punch, make the biggest difference. MPAC's a good example: four million property owners in Ontario. If we're able to contribute something on the two issues that I've identified, you have four million people who've benefited from that investigation. Newborn screening: 130,000 births a year. Those are the kinds of issues where we will be putting more resources.

Where we're putting less resources will be issues which are strictly individual: Someone applies for a bear licence or a driver's licence, and they don't get it, those kinds of things. We won't send in the cavalry on those cases. Those cases will be resolved informally, diplomatically, low-level, using the soft approach. We keep our resources for the cases which are more evolved, more systemic and will affect the most people.

Mr. McMeekin: I appreciate that. That's very much a case-to-cause approach, if I could characterize it that way.

Mr. Marin: Yes.

Mr. McMeekin: By way of supplemental, you talked about the SORT approach, which would give focus to the very thing you've just described. Are there areas that are falling between the cracks because of the resourcing in your office? In an ideal world, doing the job that you and your great team want to do, how many SORT investigations a year would you see? Are you limiting yourself to six? Could you be doing more?

Mr. Marin: Absolutely, we could be doing a lot more. We understand that no one who operates an office such as ours has unlimited resources. We operate with very tight resources. Just to give an example, our office was created in 1975 with an \$8.1-million budget. We operate with a \$9-million budget 30 years later. Since then, the rate of inflation has increased 270%. Since then, government has increased tenfold in expenditures, from \$8 billion to \$80 billion.

I'm not appearing before this committee this afternoon or before the Board of Internal Economy any time soon to ask for more money. We are trying to live within our means. There is a point where we may be making that request. Right now, I've set the modest objective of six SORT investigations a year, and we'll take it from there. It's obviously very tight, but that's why we're going through a process now of rationalizing and reallocating resources to systemic issues.

Mr. McMeekin: Thank you very much. I appreciate that information and that scope.

The Chair: Mr. Zimmer, followed by Ms. Jeffrey and Mr. Peterson.

Mr. David Zimmer (Willowdale): Congratulations on the appointment and congratulations on the office and the work that you're doing.

My question has a bit of a philosophical nature. Our government is premised or organized around the idea of an executive and the Legislature and the judiciary. As we know, there is this concept of judicial deference, both to the executive and to the Legislature. One of the struggles

over the years—indeed, over the centuries—has been the correct balance between the judiciary and the executive and the Legislature and to what degree the judiciary should defer to the executive and the Legislature. By analogy, some people have argued that there is something you could describe as Ombudsman deference to the Legislature and the executive. It particularly plays out in those areas where the executive and/or the Legislature take a policy decision or legislative decision, and typically it involves a spending component or a decision to provide a level of service or not provide a level of service. In not getting a level of service, some citizens are included and some citizens are left out. In effect, it's an exercise, in many ways, in triage: limited resources and how you distribute them.

I am interested in your thoughts on the proper balance in those areas where it may be a question of the right level of deference to be shown, a sort of triage decision. I think you have the sense of my question.

Mr. Marin: Absolutely, and I welcome the opportunity of answering it.

I indeed believe very strongly that it is up to the Legislature to define broad public policy matters. I'll give you an example: the MPAC issue. We receive a lot of complaints that you shouldn't be using fair market value to assess property, that there shouldn't be a corporation there. Those kinds of complaints really go to the essence of the property valuation in Ontario. That's why we're not going to do it. That's your job. You may want to give it to me, though, but I see that as your job. It's a job of parliamentarians to define broad public policy issues. My job, once you've made that decision, is to determine whether it's being administered in a way which is fair, just, non-oppressive, etc., to use the terminology in the act. So I couldn't agree more with what you're saying, and I'm certainly very deferential of that.

The act, though, is very broad and it does allow for intervention at all different levels. But as an officer of the Legislature, when I investigate a matter, I go to the field, collect the information and report back to provide you, as parliamentarian, the resources and the information you require to make an informed decision.

The first case we did is interesting, because this represents the first case regarding special-needs children. These children were being given to the children's aid society because the government had decided years ago to stop entering into special-needs agreements with these families. That was an issue which was one of policy of the government, but policy on a smaller scale. That's why we intervened. The government accepted our recommendation.

On broad public policy issues, such as the formula used for property taxation, that review is within the realm of Parliament and not of the Ombudsman.

Mr. Zimmer: Just to carry on the question, in some areas—in health care spending, as you know, with the developments of science and new treatments and so forth and so on, and drug treatments and so on—again, governments are faced with the problem of limited resources but

a whole world out there of treatment regimes that can be provided. Decisions necessarily have to be made about which treatment regimes to fund, which treatment regimes not to fund. In your view, how does the Ombudsman's office structure its relationship vis-à-vis the Legislature and the executive in sorting out who makes those decisions or when you feel the Legislature has crossed the line or whether the Legislature might think that's—to use your expression—a broad policy matter and courts and Ombudspersons ought to defer to that, or when it is not in that realm?

Mr. Marin: A good illustration is the second case we did dealing with a boy who suffered from Batten's disease. We produced a report called *From Hope to Despair*. The Ministry of Health and Long-Term Care's position at the time this boy was asking for his medication to be funded was, "Well, that's a federal matter. We won't intervene." Then the whole argument became, "It's untested medicine. It's opening up that door." This was accepted virtually unchallenged, and he turned to our office.

When we conducted an investigation into this, we found it had nothing to do with the federal government. The boy who needed this medication had the medication. The federal government approved the medication. He had it; he had it for his own use. So we're not talking about the mass-marketing of medicine, etc. He had it for his own use, first of all. The sole issue is one of funding, and the funding is provincial.

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There was a smokescreen advanced by the ministry which was impenetrable, but our investigation demonstrated that it had nothing to do with the federal government. The issue of cost is not a real issue either, because the Ministry of Health was prepared to pay \$20,000 a year to fund medication that wasn't helping, but was not prepared to help him out at \$15,000 for medication that his doctors were saying was miraculous. That's where an Ombudsman can help.

We agree philosophically that broad public policy issues ought to be the responsibility of the Legislature. However, sometimes only an investigation can determine if it's really that big, broad, public policy issue or a narrow issue. This investigation demonstrated that it was really a very narrow issue and not the bigger public policy issue.

Mr. Zimmer: Thank you very much, and good luck.

Mrs. Linda Jeffrey (Brampton Centre): Thank you for being here today. We appreciate your appearance.

As the former chair of Leg. Assembly, I had Mr. Lewis come before us on a couple of occasions. My question, when we were getting the pre-briefing, wasn't covered, and you mentioned it earlier. It was about the financial viability of the Ombudsman's office. I know that Mr. Lewis did a number of reorganizations and changes within the Ombudsman's office to try to maximize the amount of investigative work that he was able to do, but he didn't get the additional funds that he requested in the past.

I understand you want to live within your means, but in order to do effective representation as an Ombudsman, I understand you've made some changes. Could you elaborate for us what kind of changes you've made, and why you made them, to live within your means up to this point? It sounds like six investigations are—you're half-way through that list now, and you likely have lots more requests for your intervention than you can meet.

Mr. Marin: Absolutely. My philosophy is, if I turn to this Legislature and say I want more money, the obvious questions will be: What have you done to maximize efficiencies; what have you done to find savings internally? We're at that stage now. We may be knocking on your door in the future. We're not prepared to do that right now, because we are in the process of maximizing those efficiencies and minimizing our expenses.

How have we done that? Several ways: One, we are collapsing levels within our office to merge different functions. For example, right now if you call our office, you have an intake that answers the phone, and then it goes to another level, so we have a whole unit just answering the phone. If you call our office after the end of January, you will get an intake where people are able to assist you and conduct preliminary inquiries right there and then. So we've merged the intake to allow for an intake which is more meaningful, as opposed to just clerical, taking a message and passing it on the line.

The second thing is that we are moving our offices from 125 Queen's Park to another location. Essentially, this was inevitable, because our building belongs to the University of Toronto and they informed us that they wanted the building back. That is a saving that is being forced upon us, but nonetheless, our lease saving will amount to about \$50,000 a year.

The third thing is that we had 15 persons within our office taking solely correctional complaints. I had a really hard look at the kinds of cases that were coming in, and they were not the broad, systemic kind of cases within corrections that I would have expected. The cases were much more individual and minor in nature: a prisoner losing his glasses, a prisoner complaining of brown lettuce, a prisoner complaining that the linens were a day late, a prisoner complaining about the smoking policy in the prison. These were the kinds of cases that were occupying 15 people in our office.

I do want to get involved in correctional cases. I want to get involved in systemic, big cases. We were finding that correctional services were very happy to see us involved in the small stuff because we were taking a lot of pressure off them, but I think they should be looking after finding the glasses, getting more green lettuce and this kind of thing. The Ombudsman, in my view, should be involved in big-picture, serious issues. We've basically reallocated those personnel to the rest of the office to be able to find the bodies that are necessary to conduct SORT investigations like MPAC and the newborn testing. We've been able to streamline our investigations in that respect.

Finally, the other big change we've made is that we had what I like to call Toronto offices in the regions.

They were not regional offices; they were Toronto offices in the regions. We had five offices in this province where we were leasing space in malls and in buildings, and people were working in those areas behind locked doors doing cases from Toronto. It gave the illusion that somehow we were receptive to walk-ins, but we were not; we were bundling cases and sending them to malls in different areas across the province. The one exception was in Sault Ste. Marie, where we had two employees taking walk-ins. Out of our 23,000 cases a year, this office was registering five walk-ins a month. So we've discontinued all those leases, and that has saved us between \$200,000 and \$250,000.

Those are savings we were able to find internally. It's a big challenge for us; it's like scraping every nickel and every dime. But we're managing for now, and I'm not in a position to come here, at least before the end of January, and ask you for more funds to conduct field investigations, because we're still cleaning up shop.

Mrs. Jeffrey: Can I ask one more question, a short one?

The Chair: Sure.

Mrs. Jeffrey: Mr. Lewis worked very hard near the end of his mandate to try and make the Ombudsman's office more available to Joe Public, as you call them. He squeezed money out to find a way. Do you have an intention as to how you will make the Ombudsman's office more available? You've talked about how you've made changes in the office. Do you have a sense that you need to publicize who the Ombudsman is and how to get hold of him, to make it more accessible to the average person?

Mr. Marin: Absolutely. I think it's a very valid point. We've done unprecedented outreach since April 1. As well, we've set up a special 1-800 line for SORT investigations so that when people hear the Ombudsman's doing MPAC as a field investigation, for example, there's a specific number that people can phone. Our office is more accessible than ever to the citizens of Ontario, and we're doing very aggressive marketing and outreach.

The Chair: Mr. Peterson, followed by Mr. Hardeman.

Mr. Tim Peterson (Mississauga South): I have this romantic view of the Ombudsman. It's probably a little bit like Roy McMurtry, who founded it, and that was that you are the saviour from the tyranny of the majority and the tyranny of the bureaucracy. It seems to me that there's a substantial role for us as government to have an outlet like that.

When I served on the finance committee and we toured across the province, we ran into a lot of people who gave up on the welfare system because the bureaucracy to access it was so unfriendly. They just went into poverty; they went on to the streets; they lived in communes below the poverty line. I thought that we had failed as a government when we allowed the tyranny of the bureaucracy to let that happen.

I then have been confronted with a group of people, especially on the MPAC side, who are really ticked off

with the phenomenal inflation of their waterfront properties in Muskoka and are seeking advocacy on that. I laughed at them and said, "If you really expect me to represent people who are multi-millionaires as not being properly served"—but if it is a systematic thing, then they should be served.

I support you, especially as you go forth. If you've had to cut your office back in 30 years by two thirds—that's what you're saying the inflation has been—what mandates are you giving up on? I appreciate your analysis of efficiencies of \$50,000 and \$20,000 and whatnot, that you're doing that right, and I'm sure you're hard-working, efficient people doing that. But that's a pittance, in my opinion, compared to the social benefit you can help us with as better governors if we allow you to connect the dots, with systems where there's a systematic failure of the bureaucracy or a tyranny of the majority.

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Mr. Marin: Mr. Chair, I set about to do six SORT investigations a year, which is very, very modest. Basically, you'd see it like a pile of 23,000 complaints, and I kind of pick six. We don't pick them randomly; we pick them very carefully to meet the criteria I've talked about. An office better resourced would be able to do 12 and 18 and 24 of those. These are the cases that are really, really having significant dividends for the citizens.

When the first Ombudsman, Arthur Maloney, set up his office, I understand that he looked at Parliament and saw there were 125 MPPs. So he turned to the government and said, "I want 125 employees," and that's what he got. I have 85 of them, when the government has grown tenfold 30 years later. Of course, the luxuries at the time, for the kinds of things that he used to do, like hearings, for example—he did hearings, he did all types of things that really are beyond the reach of the office right now because we just don't have the resources. When you ask me what kinds of things we could do, my answer would be: a lot more of the kind of field investigations, a lot more thorough work than we're doing now. I think right now the \$9 million we expend a year for the kind of results that we're able to produce is fantastic. But if the resources were greater, I think the results we would be able to produce would be a lot greater as well.

Mr. Peterson: I take that at face value. I'm sure that's the case. With \$9 million, if you can only do six, could you give us a list of the next 12 or next six that you would substantially like to investigate and allow us to help you monetize that? We have a heck of a time finding budgets for anything other than health and education. I guess where people do get money out of us is where they say, "If you give us this, we can deliver this," not say, "If you give us this, take it on faith; I'll deliver more."

Mr. Marin: I'd be happy to do that.

Mr. Peterson: I hope you don't find that insulting or—

Mr. Marin: Not at all. I'd be happy to do that. It crossed our mind—I'll tell you about one of the deliberations we had in our office when we received all these MPAC complaints. We were having requests to do a

town hall in Ottawa, go do a town hall in Toronto, go do a town hall in Sudbury, go speak to this bear pit. We were having so many of these that it occurred to us that this may be an adequate case to have a public hearing, as Arthur Maloney had, but we just can't afford a public hearing. We can't afford the set-up, the calling of the witnesses, this kind of thing. That's the first example that comes to head. Why should citizens be left organizing this in this area, organizing this—I've been sending observers as much as I can to these various sessions, but it allows for a real opportunity for citizens to vent, express themselves to someone who can really make a difference, which is the Ombudsman of Ontario. But I accept your invitation, and we will produce for you a list of things we would do if we were better resourced.

Mr. Peterson: In my own riding, I tell my staff there's no complaint we won't help people with. I turn my staff into social welfare workers for people of any nature. Maybe there's a coordination that is not being done here properly between the MPP's office, the Ombudsman and the outreach of all the various ministries. If you walk into these ministries, they'll think they're doing a good job. I don't know; maybe there's a better coordination here for government to be more responsive as a totality that you could look at and advise us back on. You must have the resources, because I don't. I throw it to you, because I wouldn't know how to do it. With the complaints you get, maybe there's a better way of the whole system being coordinated through the ministries, the MPP's office and your office.

The Chair: Thank you. Mr. Hardeman.

Mr. Ernie Hardeman (Oxford): Thank you very much for being here this afternoon. I want to say that in that number of years you mentioned, the MPPs have gone from 125 to 103 too, so maybe there is some justice in the world.

There are a couple of issues that I wanted to touch on. One was the issue of—and I want to say, first of all, I agree with the investigation you're doing on MPAC to make sure that we deal with the process they use to actually create the evaluations so that my public understands it. And the other issue: You win one once, and you have to start the fight for the next one the next day, because it will be two years down the road and they're already doing the next assessment.

I guess my question really becomes the jurisdiction. I spent many years as a municipal politician. I also spent a couple of years over at MPAC and some years with the Who Does What panel that created MPAC. When it was originally created, it was created as a body of the provincial government. It was called OPAC. It was then changed, because the provincial government, shall we say, walked away from it, or decided that that was going to be a municipal responsibility, run by municipalities, funded by municipalities, for municipal purposes.

Again, I look at the act. It says that because it's an organization of the government, you feel that you can do that, but it seems to me that if we're going to use that logic, so is a municipality. In fact, there is as much

control of a municipality by the provincial government through the Municipal Act as there is through the regulations to MPAC. So I'm wondering if we really do have the authority to do what you're doing. Again, I want to point out, I agree with you doing it.

Mr. Marin: I think there are two levels of analysis. One is the investigation of the provincial corporations set up to assess properties, but then the assessments provided to the municipality that applies the mill rate and how they do their end of things. So we would not have jurisdiction over that part, but we would have jurisdiction over how MPAC conducts the assessment of property in Ontario. That is not an issue at all at this stage. We've had discussions with MPAC officials on that. They had some concerns at the beginning, but they've accepted that we have full jurisdiction to look at the issues we're currently looking at.

Mr. Hardeman: What you're really doing then is investigating the appropriateness of the regulation, rather than how MPAC is being run. The chief executive officer of MPAC is not being paid by the provincial government, he's being paid by municipal governments, so there's no direct connection there. I understand the regulation.

The other part that I just wanted to quickly touch on, and I do have a real concern about, is you talked about dealing with the issues that affect the greatest number of people, to have the greatest impact for the resources that we're putting in. It's a laudable goal, but the problem is that my people believe that the Ombudsman's office isn't there to serve government or to serve the general population, but it's their only hope of getting their particular concern looked after, because they don't believe that government is treating them fairly.

So I really get concerned when we hear that we don't want to look at individual prisoners' concerns but we want to look at the systemic problems within prisons. It needs to be done, but I think the Minister of Correctional Services should look at appointing someone to look into that. I think the Ontario Ombudsman should be there to look after one person, and that should be just as important as looking after 1,000 people. The end result for me and for my constituents—it's not important whether the solution you come up with or negotiate with the minister affects other people. I want to make sure that my Ombudsman represents my interests.

Our office, as Mr. Peterson mentioned, gets a lot of calls, and their only hope, after we've gone through all the channels—we've investigated with the minister's office and done this and done that—is to contact you. I don't want the situation where we say, "Yes, but you're just one person. You're not important enough to be looked after. I'm sorry, because we've got some of these big cases. We've decided to change from six to 12, so we haven't got time to look after yours." I'd just point out that I think that's a real concern if that's where we're going.

Mr. Marin: That's not where we're going. I'm very sensitive to what you've said, and I agree with what you've said. Perhaps I can bring you clarification. What

I'm saying is that there are various ways to respond to complaints. We respond to every single complaint that comes to our office, but that doesn't mean we'll be producing 30-page reports after a field investigation. So we won't be hanging up the phone on anybody. We will investigate thoroughly each and every complaint that comes to our office, but not every one of them will result in a field investigation. Why? Because we don't have the resources. Right now, if we achieve six per year—the number six is small, but it's ambitious to be able to do six with the current resources that we have.

I'm very sensitive to the point you've made. Complainants will not be turned away because we're conducting systemic investigations, but not every investigation will be done the same way.

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Mr. Hardeman: Lastly, if I could—just one more comment, Mr. Chair?

The Chair: I was just going to say, with regard to the point you brought up on MPAC, would it be helpful now, in the context of your question, if our legislative research officer reviewed some of the material that he shared with us earlier, and then come back to that?

Mr. Hardeman: I would appreciate that, Mr. Chair, to make sure. I just want to be comfortable with it. I have to defend this to my municipal colleagues; I'm also critic for municipal affairs and housing. Obviously, people want to know how this works, so I think that would be helpful.

The Chair: The legislative research officer, Philip Kaye.

Mr. Philip Kaye: One of the questions I wanted to ask had to do with the new procedures established by the Ombudsman's office in April of this year. These procedures deal with the Ombudsman's powers to make public comments regarding investigations, to issue reports and to use personal information. They've been made under the authority of subsection 15(3) of the Ombudsman Act.

My question has to do with the authority of the Ombudsman under that provision of the Ombudsman Act to determine his or her procedures. I notice that two of the issues falling under the new procedures—the Ombudsman's powers to comment publicly on investigations and to make reports to the House—were the subject of recommendations of the former standing committee on the Ombudsman.

In 1993 and 1997, for instance, the Ombudsman committee recommended that the Ombudsman Act be amended to empower the Ombudsman to “comment publicly in order to make known the existence of an investigation or the outcome of a particular case.” As well, in 1997 the committee proposed that the public comments be made “by means of a special report to the assembly....”

In regard to the Ombudsman's reporting powers, the Ombudsman committee, again both in 1993 and 1997, recommended that the Ombudsman Act be amended to authorize the Ombudsman to make special reports on the

performance of his or her duties. Just in regard to the reporting power, a government bill was introduced in 1989 by then Attorney General Ian Scott which would permit the Ombudsman to “make a report to the assembly respecting a matter relating to the performance of the Ombudsman's duties.”

In a nutshell, my question is, to what extent, in determining your procedures under subsection 15(3), do you consider whether or not a matter requires an amendment to the Ombudsman Act, as opposed to a procedure that can be determined by the Ombudsman's office?

Ms. Wendy Ray: Actually, as long as it's not in contradiction with the legislation, the Ombudsman can make rules under section 15. Of course, it's always nice to have things in legislation, and it gives it another piece of authority that supports it. But as long as it's not in contradiction, the Ombudsman can make any rules under subsection 15(3). Regarding the two sections you're talking about in terms of public comment, that's exactly what happened in this particular case.

Mr. Kaye: I notice that in November 1996, Ombudsman Jamieson commented to the Ombudsman committee about the recommendation that had been made proposing an amendment to the Ombudsman Act dealing with the public comment power. In her submission to the committee, she responded that the Ombudsman's power to comment publicly were extremely restricted, at least according to what is expressly granted. She went on to say it would be helpful in this regard if the Ombudsman's powers of public comment were extended to include the authority to make reports to the Legislature and comment publicly on matters of public importance. The implication in her comments as I read them were that an amendment to the Ombudsman Act would be required.

Ms. Ray: At the time, if you actually look at it in terms of the context, she also asked, for example, to be able to do public education, which is something that's not prohibited by the legislation and we continue to do today. The fact of the matter is, as long as it's not prohibited by the legislation, we can make rules. In this case, it's to have public comment. If you look at the procedures, they're actually pretty specific on when the Ombudsman will do it and under what circumstances.

The Chair: One final point. Mr. Hardeman still has the floor; Mr. McMeekin wants to get in one question. Let's see if we can fit it in before 6.

Mr. Hardeman: I just had one general comment, and it relates to the same thing about the individuals, making sure that we keep an Ombudsman for the citizens as opposed to for good government policy. I just want to be assured that as the reports come in—and up to three or four that you mentioned were broader than the individual issue. I have a concern that we are getting very close to that line of deciding that we don't like government policy. In those cases, the minister agreed, but to me, an Ombudsman is there to make sure that all our citizens are being dealt with fairly and not leaving it to those who complain to the Ombudsman to get the rule changed so they get looked after.

You looked at the one with the medical. I could bring you a dozen cases that would fit that same thing with different medicine that didn't get to the Ombudsman and that are still covered by that same problem of not being on the list. We need to be very careful that we don't get into the policy area, even though it may not be good policy. People do have a right to have their politicians be wrong. They keep telling me they have that right because they tell me I'm wrong on a regular basis.

I just caution that we need to be very careful. We want to get close to the line to make sure we do the best we can for the people we jointly represent, but at the same time, I want to make sure that I keep my job, and that way, you can keep yours, too.

Mr. Marin: I want to reassure the member that I fully agree with what he said. Today I was addressing our staff and investigators, and I said to them that for individual complaints, a low-key response is the heart and soul of any Ombudsman's office. We should in no way interpret our not doing more systemic work as diminishing the value of individual complaints.

The Chair: Just before we go to Mr. McMeekin, the legislative research officer had one final point that he had wanted to clarify.

Mr. Kaye: The other issue where I thought clarification might be helpful had to do with the Ombudsman's powers to hold public hearings. There's no doubt that under the Ombudsman Act, the office has the power to conduct hearings, and I refer in particular to subsection 18(3) and subsection 19(2) of the act. Plus, there is an example of very extensive hearings held by the office, starting in 1976, where the hearings extended over 387 days.

My question focuses on subsection 18(2) of the Ombudsman Act, which says, "Every investigation by the Ombudsman under this act shall be conducted in private." There is a publication entitled the Annotated Ombudsman Act, which is co-edited by Michael Zacks, former director of legal services for the Ontario Ombudsman's office. It says it takes "the broad and liberal approach to interpretation of the Ombudsman Acts approved by the courts." In this publication, the Annotated Ombudsman Act, they write that a private investigation "is one not done in public. That is, the Ombudsman may not hold an open, public hearing at which the public may attend." There seems to be differing interpretations of the scope of the hearing power where clarification, I think, might be helpful.

Mr. Marin: I think, Mr. Kaye, that Ombudsman legislation ought to be interpreted in a broad and generous fashion. I also believe that it is comparable to when you look at a constitutional document and you look at it as a living document—the living tree analogy, for example. It is not set in time; it evolves.

If we ordered a hearing today and said it was private, as opposed to public, no doubt we would at that time be faced with applications under the charter to make it open and so on. The charter didn't exist in 1975.

I can't answer your question right now. I guess we'll cross that bridge when we get there. Certainly from the passages you've read and from the context you've told me, I agree with the statements you've read. I'd have to take closer consideration of those passages and the arguments. We've had preliminary discussions about that and we haven't arrived at a definite answer because we don't envisage any public hearing at this stage.

The Chair: The last word will belong to Mr. McMeekin.

Mr. McMeekin: Mr. Marin, another issue that came up—let me go straight to it—was around the city of Toronto. There was a reference made to some comments about your office, that given some of the things happening, that the city of Toronto might be the ideal kind of place to watch as the Ombudsman's function. I think we're public on this, with the City of Toronto Act, that in the spirit of the so-called mature community around the Integrity Commissioner and ethics—a city of Toronto Ombudsman, I think was the proposal.

Let me just express another concern that I have. We were told that you had written to the Premier about this. I appreciate that. There obviously will be some sort of political discussion at some point on the wisdom of that. I'm from the city of Hamilton, the amalgamated city of Hamilton, the new and improved city of Hamilton. There are, from time to time, concerns in the city, as I suspect there are in Toronto, and perhaps in Ottawa, London, Sudbury and Windsor. I'd be a little worried on two fronts around the issue of Toronto. One is that perhaps you're taking on too much time. Bigger isn't always better. We've found that in Hamilton, in some instances. Secondly, if you were to move into that role, might you be consumed with Toronto issues at the expense of issues from my beloved city and other big cities with the same sorts of issues?

Mr. Marin: The short answer is that we never said we'd do the oversight of the city of Toronto for free. If ever we would ask, we'd have to cost it out and it would be a separate issue. It would certainly not be at the expenses of the resources used to provide oversight to the province of Ontario.

On the whole issue of jurisdiction, I'd be quite happy to come back on another occasion and just talk about that. I realize we're a little short on time. The honourable member's question is an important one. The Ombudsman Act of Ontario has not changed in 30 years except for reducing the tenure of the Ombudsman from 10 to five years. Every single province provides for greater oversight in areas such as municipality. The province of Manitoba oversees the city of Winnipeg. In British Columbia, the Ombudsman has jurisdiction over all municipalities, and New Brunswick and Nova Scotia as well. Whereas Ontario has stagnated, a natural area is to look at municipalities.

Mr. McMeekin: Just so I'm clear, it's an option you're presenting to get on the table at this point.

Mr. Marin: Yes.

Mr. McMeekin: I recognize that there are a couple of different philosophical approaches here: consolidating resources, economies of scale, economies of experience and all those sorts of thing. The other side of that that we have to look at as well is a bit corny, that small is beautiful and intimate and what have you. I just register that concern.

The Chair: Although this has been a very engaging discussion, we must bring it to a close. Thank you very

much, Mr. Marin, and to your staff, for having come in to spend some time with us. I foresee that we'll probably invite you back.

Mr. Marin: Thank you very much, Mr. Chair. It's been a pleasure.

The Chair: The committee is adjourned.

The committee adjourned at 1806.

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