

Ombudsman renews call for oversight of hospitals and long-term care facilities: Annual Report

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Did you know that not all Ontario public services fall within the jurisdiction of the Ombudsman? Hospitals and long-term care facilities account for \$18 billion in government spending and form part of the **MUSH sector** - municipalities, universities, schools, hospitals, long-term care facilities, children's aid societies, and police – which for more than 30 years have been immune to Ombudsman scrutiny in this province.

"The government mantra of openness, transparency and accountability has yet to filter down to these zones of immunity," writes Ontario Ombudsman André Marin in his **2007-2008 Annual Report** opening message, in which he argues there is a pressing need to extend oversight to hospitals and long-term care facilities.

The Ombudsman received 276 complaints about hospitals in 2007-2008, up from 237 the previous year – but is forced to turn them away.

Ontario has the "dubious distinction" of being the only province in Canada that does not allow its Ombudsman some oversight of hospitals and long-term care. In fact, with the

transfer of nine of the province's 10 psychiatric hospitals to the broader public sector over the past decade, Ombudsman oversight of health care has actually diminished, leaving these most vulnerable patients with nowhere to turn.

In May 2007, 94% of respondents to a Toronto Star online poll said Ontario hospitals should be subject to the scrutiny of an ombudsman. In that same year, three private members' bills supporting Ombudsman oversight of hospitals and long-term care facilities, as well as school boards and children's aid societies, were introduced by the New Democratic Party but died on the order paper when the Legislature was prorogued. Most recently, in June 2008, MPPs and members of the public have renewed the call for Ombudsman oversight of hospitals and long-term care facilities in the wake of revelations of outbreaks of C. difficile and the NDP have once again introduced a private's member bill for Ombudsman oversight of hospitals and long-term care.

Says Mr. Marin: "Ombudsman oversight is strong medicine that can provide a measure of relief, even if it may be a bitter pill for hospitals and long-term care operators to swallow. "Ontario can no longer afford to be dead last in Canada in this area," he writes. **"The time for change is now."**



Ontario Ombudsman André Marin, Annual Report Press Conference, June 17, 2008



Descrambling OMLET

The Ombudsman's Open Meeting Law Enforcement Team

Municipal councils make decisions every day that literally affect us where we live. For the first time in Ontario's history, we can make sure they're doing it in public, not behind closed doors.

As of January 1, 2008, we have a "sunshine law" that lets ordinary citizens complain – and trigger an investigation – about closed municipal meetings.

The Ombudsman investigates these complaints, free of charge, in all municipalities except those that have appointed their own investigators. At present, the Ombudsman is the investigator for about 200 municipalities.

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FEATURE STORY *The Anatomy of a SORT Investigation*

One-on-one with Gareth Jones, Director of the Special Ombudsman Response Team



SORT Director Gareth Jones with SORT Investigator Kwame Addo

The high-profile investigations of the **Special Ombudsman Response Team (SORT)** have affected hundreds of thousands of Ontarians, from new parents to lottery players to property owners. But the story of SORT itself – what it is and how it works – is much less well known.

To get the scoop on the inner workings of this Ombudsman SWAT team, the Watchdog recently sat down with SORT Director Gareth Jones, who explained how SORT's proven methods help investigators get to the bottom of complex systemic issues whether they're looking into one complaint or one thousand.

The key to SORT's success lies in identifying complaints that indicate a broad systemic problem of significant public interest. By investigating and recommending solutions to such problems, SORT can help fix them for good – thereby preventing future complaints.

"Once [the key issue is] diagnosed, the Ombudsman can investigate and kill two birds (or 1,000) with one stone," says Mr. Jones, who has written a book on how to conduct administrative and oversight investigations, with a focus on how SORT conducts systemic investigations, soon to be published by Canada Law Book.

The SORT concept was initiated by Ombudsman André Marin – and directed by Mr. Jones – when Mr. Marin was the Ombudsman for the Department of National Defence and Canadian Forces from 1998-2005. Since its inception at the Ontario Ombudsman in 2005, SORT has acquired a reputation for investigative excellence, particularly in its cutting edge approach to systemic investigations.

"We have developed a SORT template that encourages everyone at the office to think in terms of possible systemic

issues. The template sets out a number of considerations, including the number of complaints received, whether other mechanisms are dealing with the issues and whether an investigation would be a judicious use of resources," says Mr. Jones. "One complaint can point to hundreds, even thousands of similar ones." **SORT's 2005-2006 investigation of the Municipal Property Assessment Corporation (MPAC) reviewed over 3,700 complaints.**

The team is comprised of seven full-time investigator staff, with support as needed from investigators in the general investigations area. SORT investigators are assisted by counsel and communications staff, as well as having their own dedicated administrative and clerical support.

Each investigation is assigned a lead investigator and the number of investigators on the team varies depending on the complexity of the investigation. At certain points in the lottery investigation, there were as many as 12 investigators at one time, while other stages called for just one or two.

Since 2005, SORT has completed over 20 systemic investigations. Some investigations are completed in a matter of days; others can take months.

A single complaint can also trigger a SORT probe. When Suzanne Aucoin complained to the Ombudsman in January 2007 about the government's refusal to reimburse her for chemotherapy in the U.S., SORT investigated the Ontario Health Insurance Program (OHIP)'s out-of-country funding program. The government ultimately agreed to overhaul the program and reimburse Ms. Aucoin \$76,000.

Occasionally, a SORT investigation can be launched before a single complaint is filed. The Ombudsman launched his investigation of the lot-

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DID YOU KNOW...

SORT's largest investigation so far is focused on the province's Special Investigations Unit (SIU). It has involved more than 120 interviews and tens of thousands of pages of documentation.

FEATURE STORY

The Anatomy of a SORT Investigation continued...

tery system in the fall of 2006 on his “own motion” because he was concerned that reports of ticket retailers winning a suspicious number of jackpots could jeopardize public trust in the government-run lottery system. Hundreds of complaints came in after the investigation was under way.

Once an issue is identified, however, SORT must first determine whether enough evidence exists to launch a full-scale investigation:

- Is this a matter that can’t be resolved through other means?
- Will it require in-depth field investigation?
- Is the investigation a judicious use of resources?
- Will it likely result in significant recommendations?

Once the Ombudsman has approved a SORT investigation, the team is assembled, a lead investigator is assigned and an investigation plan is established, including a list of evidence (documents, e-mails, etc.) to be gathered from the organization under investigation, and a list of potential witnesses.

SORT’s interviewing and evidence-gathering techniques have borrowed heavily from the world of criminal investigations. In most instances, the investigation is front-end loaded with sufficient investigators assigned to conduct the evidence-gathering portion of the investigation as quickly as possible. Interviews are generally done in person, tape-recorded and transcribed. The approach is based largely on Mr. Jones’ own experience in criminal investigations as a police officer and as an investigator for the province’s Special Investigations Unit during his nine years in police oversight.

“It seems to be a natural evolution,” says Mr. Jones. “The criminal investigation has honed certain techniques that can be usefully adopted in administrative and oversight investigation, particularly ones with a systemic component.”

After all the interviews are done and all relevant evidence is gathered, SORT begins to put the pieces of the puzzle together. This involves a complex analysis of legal, social and public policy issues, sometimes requiring the assistance of outside experts. For instance, in the recent investigation into oxygen saturation monitors for children (*Life and Breath*), SORT consulted with medical professionals, and in the lottery investigation (*A Game of Trust*), a statistician was brought in to analyse the frequency of “insider” lottery wins.

Mr Jones is in constant contact with the Ombudsman as the investigation progresses. The Ombudsman reviews the evidence and drafts a preliminary report and recommendations. That report is sent to the organization being investigated for a response, before the Ombudsman finalizes his report. Occasionally, if the government agrees to immediately resolve the issue – as happened with Ms. Aucoin, the oxygen saturation case and the 2007 investigation into mental health services for military children, the Ombudsman may decide not to publish a report. But most SORT reports are published, tabled with the Legislature, released to the media and public – and posted to the Ombudsman’s website.

SORT’s job doesn’t end with the publication of a report. It will keep tabs on all agencies it investigates – and their ministries – until all of the Ombudsman’s recommendations have been implemented, reporting on any progress in the Ombudsman’s Annual Report. And although it’s never happened yet, SORT will re-launch an investigation if it finds a recurrence of the original problem.

Ongoing SORT Investigations

PET PEEVES

ACCESSIBILITY AND FAIRNESS

Access to Positron Emission Tomography (PET) scans – or the lack thereof – has been controversial in Ontario over the past year. After receiving a complaint from a physician in September 2007, the Ombudsman informed the Ministry of Health and Long-Term Care of his intention to investigate the province’s PET program. To date, the Ombudsman has received more than 30 complaints from physicians and patients concerned about access to PET scans.

The Ombudsman’s investigation is focused on two issues:

Whether the process the province is using to evaluate the technology is reasonable and whether the access patients now have via clinical trials is fair. The investigation is expected to be completed in late summer 2008.

SIU

INVESTIGATING THE INVESTIGATORS

The Special Investigations Unit (SIU) is the independent civilian agency responsible for investigating incidents where police are involved in a serious injury or death. The Ombudsman announced in June 2007 that SORT would investigate about the SIU’s independence and objectivity, the thoroughness of its investigations and the information it provides to involved parties. The investigation is SORT’s largest to date and the report is expected to be published in late summer 2008.

COMPLETED SORT INVESTIGATIONS

Life and Breath

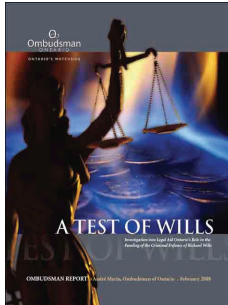
Funding oxygen saturation monitors

Following the Ombudsman's intervention, the Ministry of Health and Long-Term Care agreed to add oxygen saturation monitors to the Assistive Devices Program (ADP)'s list of approved devices for children under 18 with life-threatening respiratory conditions. Funding for oxygen saturation monitors came into effect on November 1, 2007, and to date, 47 monitors have been provided to eligible children.

A Test of Wills

Ombudsman calls for new law to avert legal aid "fiascos"

The Ombudsman described the Richard Wills murder case as "a perfect storm of mischief, mismanagement and perhaps even madness" that resulted in obscene costs to the taxpayer of over \$1 million.



Mr. Wills, a former Toronto police officer and millionaire who divested himself of his wealth prior to turning himself in for the murder of his girlfriend, managed to get the Ontario government to pay for the string of lawyers who defended him at his marathon trial.

The Ombudsman made several recommendations to Legal Aid Ontario to ensure such a fiasco never happens again, all of which it accepted. He also recommended the government "follow the money" wasted in the Wills case by going after his assets in court, which it has done. Finally, he recommended new legislation be drafted to

ensure there is a clear procedure for all similar cases in future, and to deter legal aid applicants from hiving off their assets.

Building Clarity

Ombudsman calls for clarity on new home warranty program

The Tarion Warranty Corporation is not a government agency or Crown corporation, and as such, does not fall under the Ombudsman's jurisdiction. However, since receiving more than 100 complaints from frustrated homeowners, the Ombudsman announced in February 2008 that SORT would investigate how the Ministry of Government and Consumer Services represents its relationship with Tarion to the public. The Ombudsman concluded the Ministry had failed to provide clear and consistent information to the public regarding its relationship with Tarion, and recommended it remedy this by providing more information on its website and other communications with the public. The Ministry agreed to this recommendation.

OMLET to investigate closed meetings

Continued from cover...

Since the law came into effect in January, the Ombudsman's office has had about 60 complaints about closed meetings and conducted and reported on two full-scale investigations, in the Town of Fort Erie and the City of Greater Sudbury. Both investigations found the municipalities did NOT violate the "sunshine law," but they came close enough that the Ombudsman warned they should alter their practices in future so as not to raise public suspicions.

The Ombudsman and his senior staff have also visited numerous councils and met with municipal officials to spread the word about this new era in local government transparency.

"This is an exciting time for all who care about official openness," Ombudsman André Marin says in his 2007-2008 Annual Report message. "Since my office has been given an integral role in the development of this new law, I am determined to do what I can to ensure it is successful."

That's why he has created OMLET – the Open Meeting Law Enforcement Team. This dedicated group of investigators and other staff, modeled after the Special Ombudsman Response Team (SORT) that handles major systemic investigations, will specialize in closed meeting investigations and also work to help "descramble" public and official confusion about the new law.

OMLET's first task will be to publish a handy reference guide for anyone interested in the open meeting requirements of the *Municipal Act* and the new complaints/investigation process. The guide will be available this summer – watch our website for updates.

CHECK OUT OUR UPDATED WEB SITE



CASE SUMMARIES

Arresting Development



A 60-year-old man called the Ombudsman's Office from the Toronto Jail, insisting he had been arrested by mistake. He said he had been ill and missed his court date for driving with a suspended licence, for which he was convicted in absentia and given a \$6,000 fine. But he had since filed all the necessary paperwork with the court clerk for a new court date.

Instead, three weeks later, two police officers came to his home and took him to jail, where he faced a sentence of 30 days plus two months probation. He had no lawyer present and was told he could not get legal aid to deal with a driving offence.

The man had already been in jail for six days when he called the Ombudsman's Office. When our repeated requests to get him access to legal counsel failed, we asked the provincial prosecutor on his case to review the file. The Crown discovered there was indeed a mistake - the court clerk

had never told the man that his conviction in absentia included a 30-day jail term in addition to the fine, much less that he risked being arrested if he didn't make bail arrangements immediately.

Once this error was discovered, the necessary papers were drawn up and the man was granted bail the next day, pending his new court date. As soon as he was free, he called the Ombudsman's Office to thank staff for their help.

Mr. G complained that the Ontario Labour Relations Board had posted its decision in his case on its website for all to see - without informing him. Ombudsman staff discovered that he was not alone - applicants and respondents before the Board were not generally notified that the decisions in their cases were accessible by the public through its website and other sources. The Board agreed to amend its forms - more than 80 of them - to let people know that Board hearings are open to the public, unless otherwise decided by the panel, and that its decisions, which may include the names and personal information of those appearing, are available from a variety of sources, including the website.

In the Public Eye



HOW TO COMPLAIN

The Ombudsman's Office oversees and investigates about 500 different provincial ministries, agencies, tribunals, and Crown corporations.

**File a complaint online or
download a complaint form.**

Phone the complaints line: 1-800-263-1830

Fax: 416-586-3485

TTY (teletypewriter): 1-866-411-4211

Email: info@ombudsman.on.ca

Write: Ombudsman Ontario

Bell Trinity Square

483 Bay St.

10th Floor, South Tower

Toronto, ON M5G 2C9

* Please note that an appointment is recommended for in-person (walk-in) complaints.
Office hours are from Monday to Friday,
9 a.m. to 4:30 p.m.

IN MEMORIAM



BARBARA THEOBALDS, 1964-2008

On March 15, 2008, the Ombudsman delivered the eulogy at the memorial service for Barbara Theobalds, his longtime Media Relations Advisor, who passed away after a battle with breast cancer. The Ombudsman spoke of his admiration for Ms. Theobald's work ethic and creativity and her devotion to her family, friends and community. Prior to working with Mr. Marin at the Ontario Ombudsman, Ontario Special Investigations Unit, and the Canadian Forces Ombudsman Office, "Barbara T" also worked with the Canadian Red Cross and the Jamaica High Commission in Ottawa. She is greatly missed.