

Special Investigations Unit must dispel “toothless tiger” image

Ombudsman investigation finds culture of complacency at SIU



Ombudsman Press Conference, 09/30/08

The province's Special Investigations Unit “has become so timid and fearful in its watchdog role that police oversight has hit rock bottom in Ontario,” Ombudsman André Marin said in releasing his latest report, *Oversight Unseen*. “We heard repeatedly from SIU staff

and members of the public alike that the SIU was essentially ‘toothless,’ ” Mr. Marin says in the report, released on Tuesday, Sept. 30. “It is clear that something must be done to dispel the SIU’s image as a toothless tiger and muzzled watchdog if it is to earn the respect of police officials as well as the public at large.”

Among the serious problems the Ombudsman identified within the SIU were “endemic” delays and lack of rigour in SIU investigations, a reluctance to insist on police co-operation, and an internal culture overly influenced by a preponderance of ex-police officers among its staff.

Mr. Marin noted that the SIU’s motto is “One Law,” meaning that it ensures

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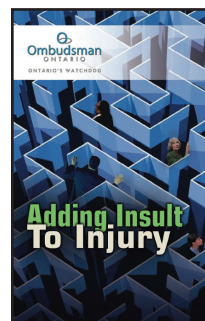
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And more!



Victims of Crime get compensation and respect they deserve...

...thanks to a new report prompted by Ombudsman André Marin’s 2006 investigation into the Criminal Injuries Compensation Board.

Former Ontario Chief Justice Roy McMurtry was appointed to review the province’s entire victims compensation system in the wake of the Ombudsman’s report *Adding Insult to Injury*, containing revelations of the “deplorable” state of the CICB. The Ombudsman’s report also noted that the CICB’s lack of resources, callous bureaucracy and shocking three-year backlog were actually hurting the victims it was supposed to be helping.

Mr. McMurtry’s review, released August 21, 2008, supports the Ombudsman’s conclusions and recommends the CICB remain an independent, properly funded adjudicative tribunal. He also suggests legislation to create an “early assistance program” that would give victims short-term financial assistance through an independent hearings process similar to that of the CICB.

“Crime victims are often the forgotten individuals of the criminal justice system and are sometimes treated with less attention, respect and sensitivity than they deserve,” Mr. McMurtry writes. His report, *Financial Assistance for Victims of Crime in Ontario*, recommends the province create an independent victims advocate.

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Long-term care investigation: 200+ complaints and counting

On July 16, 2008, the Ombudsman launched an investigation into the province’s monitoring of nursing homes and long-term care facilities. More than 200 complaints have come in since the investigation was announced, and more are welcome. The investigation was prompted by increasing public complaints about the quality of care as well as media reports indicating that a significant number of long-term care facilities were not meeting provincial standards. The Ombudsman’s investigation is looking at how the Ministry of Health and Long-Term Care monitors the facilities and the effectiveness of the standards themselves. The Special Ombudsman Response Team has been gathering evidence for its report due out in about six months. It’s not too late to make your voice heard. Complaints about long-term care and/or the province’s monitoring system can be made by phone at 1-800-263-1830, mail, fax, or by visiting us online at www.ombudsman.on.ca.

Learn More

FEATURE STORY

The Ombudsman's new "Sunshine Law" Handbook: Shining a light on open municipal meetings in Ontario



Whenever possible, make decisions in public. That's one of the "Top 10 tips for municipal officials" found within Ombudsman André Marin's hot-off-the-press, **Sunshine Law Handbook** – a guide to help municipal officials and the public navigate the province's new system for enforcing open municipal meetings.

The new regime, which took effect January 1, 2008, allows anyone to complain – and trigger an investigation – if a closed or "in-camera" meeting is held by a municipal council (the law also applies to some council committees and local boards). The Ombudsman – through his newly created Open Meeting Law Enforcement Team (OMLET) – probes those complaints in all municipalities except those that have appointed their own closed-meeting investigator.

The Ombudsman is currently the investigator for about 200 of Ontario's 445 municipalities. To date, Ombudsman investigators have handled more than 60 complaints about closed meetings and completed several investigations, two of which resulted in a public report.

In those two cases, the municipalities under investigation – Fort Erie and Greater Sudbury – were found not to have violated the law, because their closed meetings fell within the narrow exceptions allowed in the *Municipal Act, 2001*. Those exceptions permit closed meetings in cases where council is discussing certain issues

involving litigation, personnel, land purchases or labour matters – or when the purpose of the meeting is purely for the "education and training" of members.

Similar laws requiring open meetings have been in place in many jurisdictions for decades, including all U.S. states, where they are known as "Sunshine Laws." But Ontario's system is still a work in progress, resulting in considerable confusion as the Ombudsman noted in his latest **Annual Report**.

That's why he tabled his report on the Sudbury investigation publicly and with the Legislature. The report, entitled, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal*, probed a closed meeting where city councillors discussed the controversy over their access to Elton John concert tickets. It's also why he created OMLET: In addition to specializing in closed-meeting investigations, the team will work to raise awareness among municipal officials and the public about interpretation of the new law. The aim (and the name) is all about "descrambling" some of

the confusion the law has met with so far, and making everyone aware of the importance of open, transparent local government.

"This guide offers tips and legal references that we hope will be useful in all municipalities, no matter who their investigator is," Mr. Marin says in the Handbook's introductory message. **"But fundamentally, municipalities can abide by the spirit of this**

legislation by remembering six words: When in doubt, open the meeting."

The matter of open meetings came to the fore in Ontario during the 1990s in response to public demand for more transparency and accountability at the municipal level. Municipal coun-

cils, committees and most local boards were required by law to make decisions in public, but when they failed to do so, the public's only recourse was to go to court. In 2006, Ontario amended the *Municipal Act, 2001*, and the *City of Toronto Act*, creating a new public complaints regime for enforcing open meeting requirements.

Although the Act clearly allows for some meetings to be closed in certain exceptional

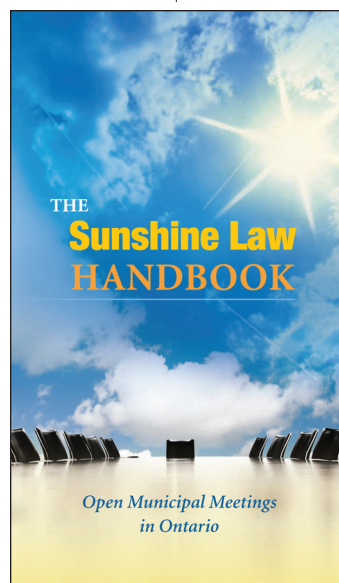
circumstances, there are many other questions about the law that are still open to interpretation.

For instance, a key question examined in the Sudbury investigation was what constitutes a "meeting." The *Municipal Act* itself simply states that a meeting is "any regular, special or other meeting of a council" – but it doesn't specify exactly when a gathering of councillors qualifies as a "meeting" subject to the open meeting requirements of the Act.

For the Sudbury report, the Ombudsman's team researched relevant case law and legislation on the issue and offered a guideline for determining when a gathering of municipal officials can be considered a "meeting" subject to the open meetings law: "Members of council or a committee must come together for the purpose of exercising the power or authority of the council or committee or for the purpose of doing the ground-work necessary to exercise that power or authority."

This guideline is also explained in the Sunshine Law Handbook – along with other issues such as what constitutes "quorum" at a meeting, whether an informal or social gathering can be considered a "meeting," and what sort of records should be kept during meetings – open or closed.

Continued on page 3...



“Sunshine Law” Handbook - Continued from page 2...



“Imagine if the Legislature closed its doors one day and kicked out all the spectators and journalists. Imagine if the House of Commons met in secret. People wouldn’t stand for it, and we shouldn’t stand for it at the municipal level, either.”

– Ontario Ombudsman
André Marin in a speech at the *Information and Privacy Commissioner’s “Right to Know” luncheon, October 31, 2007.*

In the Ombudsman’s report on the Fort Erie case – *Enlightening Closed Council Sessions* – he recommended that even though council did not violate the law when it held a closed “education and training” session, in future it should provide as much information as possible about the subject of such meetings in advance, to allay public suspicion and further transparency.

“When you raise the blinds in a dark room, the sunshine benefits everyone.”

– Ontario Ombudsman
Fort Erie Report

Another recent investigation found the City of Oshawa did not violate the law when it closed two meetings in January to discuss hiring a public relations consultant for a matter involving the city’s waterfront, because the meetings involved discussion of a land issue (an exception within the Act to the open meeting requirements). The municipality publicized the result of this

investigation on its website, and thanked the Ombudsman for a “thorough and comprehensive” review.

The pocket-size Sunshine Law Handbook includes the text of relevant legislation on open meetings for handy reference, tips for the public on how to complain about a closed meeting, and a host of “frequently asked questions” about how the law works. It also answers basic questions about how the Ombudsman and OMLET conduct investigations and what the consequences are for municipalities that wrongly close their doors. (Answer: If a municipality is found to have violated the law, the Ombudsman would issue a report and recommendations. The municipality is not obligated to accept those recommendations, but as the Handbook points out, “Since the Ombudsman’s report is made public, municipal officials will likely have to explain the reasons for their

decisions publicly.”) Copies of the Handbook will be sent to officials in every municipality in the province, and are publicly available through the Ombudsman’s Office. It will also be posted [here](#) on the “Municipal Matters” section of our website and will be updated periodically as new issues emerge.

To learn more, **visit our website** to find out who the investigator is in your municipality. Send us your feedback at info@ombudsman.on.ca and tell us your views on enhancing municipal transparency.



Ontario Ombudsman Acting Director of Operations, Sue Haslam, at the Federation of Northern Ontario Municipalities, May 2008

Victims of Crime, continued from page 1...



Special Ombudsman Response Team briefing victims of crime on the CICB report, Adding Insult to Injury, February 2007

Mr. McMurtry also called for a streamlined, “one-form” compensation application process and a stronger effort to inform victims of the services and the compensation available to them. In addition, he recommended the system be reviewed every four years to assess how it is meeting the needs of crime victims. Although the province welcomed the former Chief Justice’s advice, Attorney General Chris Bentley indicated it does not plan to create a victims advocate office. However, he did pledge to bolster the CICB as both Mr. McMurtry and the Ombudsman recommended, and noted that improvements to the CICB since the Ombudsman’s report have meant that 40% more victims per year are being helped. With the completion of the McMurtry review, all of the Ombudsman’s recommendations are on their way to being fully implemented. Maureen Armstrong was appointed as the new Chair of the CICB on August 21, 2008.

Ombudsman SIU investigation, *continued from page 1...*

police are held to the same legal and investigative standard as everyone else, but it has failed to live up to it. "I have concluded, based on the Office of the Ombudsman's most intensive systemic investigation in recent history, that these claims are just empty rhetoric and puffery by an organization that has lost its way."

The report makes 45 recommendations, including that the SIU aggressively pursue reasons for police non-co-operation, and use "whatever means are available" to diversify its workforce. The Ombudsman also recommends that the SIU director's reports be made completely public and calls on the province to amend legislation to, among other things, make it an offence

for police forces not to co-operate with the SIU.

The investigation, the largest conducted to date by Mr. Marin's Special Ombudsman Response Team (SORT), was launched in June 2007 and involved more than 100 interviews and the review of thousands of documents.

The SIU, a civilian agency that investigates – and is empowered to lay charges – whenever police are involved in an incident causing serious injury or death, is unique in Canada. It was established in 1990 to dispel concerns about "police investigating police."

The SIU and the provincial government co-operated fully with the investigation and made positive commitments to implement the Ombudsman's recommendations. Mr. Marin said he will be watching closely to see that those commitments are followed up with action.

"I strongly believe that with the improvements I have recommended, the SIU can be the 'bulwark of democracy,' to borrow the words of former justice George Adams, that Ontarians deserve, and that the rest of the country should emulate," he said.

Learn More:

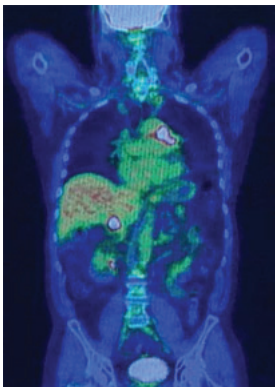
Report: Oversight Unseen



***Press Release
Ombudsman Remarks
Backgrounder
Fact Sheet***



Investigations Update: PET Peeves



The Ombudsman's SORT investigation into accessibility and fairness of the province's Positron Emission Tomography (PET) scan program is nearly complete and the report will be issued shortly. A complaint from a physician sparked the investigation which began in September 2007 and since then, the office has received more than 30 complaints. The Ombudsman's investigation focused on two issues:

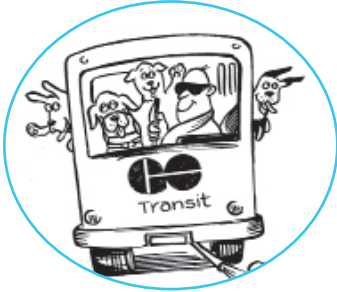
- 1) Whether the process the province was using to evaluate the technology was reasonable; and
- 2) Whether the access patients have via clinical trials is fair.



From left to right: Mr. Kenea Sona, Mr. Tsehaynigus Bayu, Mrs. Adanech Dilnesaw, and Mr. Alem Birhanu, from the Ethiopian Institution of the Ombudsman, August 2008. The Ombudsman regularly hosts delegations from around the world in which visitors come to learn about the office's investigative techniques and best practices.

CASE SUMMARIES

GO-ing to the Dogs



A visually impaired man who relies on a guide dog was denied access to a GO Transit bus on two occasions because the bus driver was allergic to dogs. Despite his complaints to GO, the man and his guide dog were again denied access by the same allergic driver.

GO advised the man that it would

make special arrangements for him if he notified them in advance of his travel plans. The man argued that this was unfair to him and other guide dog users, who should be able to board any bus at any time. The Ombudsman's Office contacted GO and pointed out that their stated policy indicated that their services are fully accessible to persons with companion/guide dogs. GO officials said "operational decisions" had been made in the man's case, but they would not amend their website to tell the public that sometimes people in such situations might have to make alternative arrangements. After more discussions, GO implemented an internal initiative to ensure that all persons with companion animals would enjoy the same access to GO buses as anyone else, without prior notice.

Fast-Acting Relief



A man who suffers from a rare and debilitating disorder that causes more than 50 severe headaches a day was doing well on a combination of drugs prescribed by his neurologist – one of which required special approval by the Ministry of Health and Long-Term Care for coverage.

The man had been taking the drug for three years, but this past summer, when it came time to renew its approval, the Ministry asked for more information on its effectiveness from the man's doctor. Unfortunately, the doctor was away on vacation, the approval for reimbursement expired and, since the man could not afford the drug himself, his headaches returned. The Ombudsman's Office contacted the Ministry on the man's behalf and within a day, it agreed coverage for the drug would be grandfathered on compassionate grounds for another 3-5 years. The man was so happy with this result, he referred to the Ombudsman staffer who had handled his complaint as a "miracle worker."

SHARPENING your TEETH

St. Andrews Club & Conference Centre
Toronto, Ontario

ADVANCED INVESTIGATIVE TRAINING FOR ADMINISTRATIVE WATCHDOGS

The first training course of its kind was back for a second sold-out edition: For three days in September, some 60 investigators and representatives of oversight agencies from across Canada and around the world gathered in Toronto to learn how Ontario's Special Ombudsman Response Team (SORT) conducts systemic investigations. Read more about Sharpening Your Teeth in the next edition of The Watchdog.



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.**

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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.