

## André Marin receives Ontario Bar Association award for excellence in public sector law

Ontario Ombudsman André Marin was presented with the Ontario Bar Association (OBA) 2009 Tom Marshall Award of Excellence at the OBA Public Sector Annual Dinner in Toronto on April 27. The award honours Mr. Marin's outstanding achievements in the practice of public sector law in Ontario.

**"André's work, and the work of the excellent staff he inspires, has bettered the lives for many of our poor, our victimized, our abandoned, and our sick and our most vulnerable citizens,"** said University of Ottawa Law Professor Dave Paciocco, who paid tribute to Mr. Marin at the award ceremony. "That is why I suggest that the selection of André Marin for the Tom Marshall Award honours not only him, but the award itself."

For the past 12 years, Mr. Marin has worked as an agent of change in bringing accountability to public institutions.



Tom Marshall Q.C. and Ontario Ombudsman André Marin

"Why do I do my job the hard way?" asked Mr. Marin in his acceptance speech.

"Whether I've been overseeing the police, the military or the provincial government, one of the beliefs that's closest to my heart is that these bodies don't exist for their own ends. They exist to serve the public. The public also has great expectations of the checks and balances that exist to keep the system functioning as it should. If we don't confront the problems we encounter as overseers of the system, we become part

of the problem. Facing the problem in the eye is not enough. We must articulate viable solutions."

The award is named for Thomas C. Marshall, Q.C., who served as counsel for more than three decades with the Ontario Ministry of the Attorney General and is recognized for his work in precedent-setting cases in the Supreme Court of Canada.



### Annual Report

..coming this June!

The Ombudsman will table his annual report with the legislature in June and hold a press conference with updates on new and recent **SORT** investigations.

A special edition of *The Watchdog* will follow, with report highlights and more. Full coverage and multimedia will be available on the Ontario Ombudsman website: [www.ombudsman.on.ca](http://www.ombudsman.on.ca). Watch for updates on [Facebook](#) and [Twitter](#) too.

### LHIN Investigation: Evidence-gathering phase nearing completion - 60 more complaints and submissions made since March

The **SORT** investigation into the decision-making process at the Hamilton Niagara Haldimand Brant Local Health Integration Network (HNHB LHIN) is expected to be completed this summer.

Since the investigation was launched in March, SORT has received 60 further complaints and submissions and has conducted more than 30 interviews of residents, physicians, representatives of community groups, LHIN officials and board members, municipal politicians and health service providers.

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## LHIN investigation continued...

This is the Ombudsman's first investigation of one of the province's 14 LHINs, which are responsible for planning, funding and integrating the local health system, and disburse approximately \$20 billion annually to local health service providers. The investigation is not looking at funding issues or any decisions on the restructuring of hospitals and health services but instead focuses on the degree of public consultation and community engagement practiced by the LHIN in the course of carrying out its functions.

The Ombudsman decided to investigate the HNHB LHIN after receiving 37 complaints alleging the LHIN had failed to fulfill its mandate for "community engagement" regarding the Hamilton Health Sciences Access to Best Care Plan and the Niagara Health System Hospital Improvement Plan.

## Ombudsman now has the power to investigate Quinte Healthcare Corporation

As announced by Health and Long-Term Care Minister David Caplan, Mr. Graham Scott has been appointed as supervisor of Quinte Health Care Corporation, which includes Belleville General, North Hastings, Prince Edward County Memorial and Trenton Memorial hospitals.

While normally the Ombudsman does not have jurisdiction over hospitals in Ontario, that changes when the government takes direct control, since the Ombudsman does have jurisdiction over the Ministry of Health and Long-Term Care.

Ontario is the only province in Canada whose Ombudsman does not have a mandate to oversee hospitals. Despite this, the Ombudsman's office receives many serious complaints about hospitals every year that cannot be investigated. A total of 276 complaints about hospitals were received in fiscal 2007-2008.

The William Osler Health Centre and Huronia District Hospital also remain under provincial supervision. Complaints about these and Quinte Healthcare Corporation may be made to the Ombudsman's Office at 1-800-263-1830, or via the online complaint form available at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).

## facebook



### How do we get the Ombudsman to investigate hospitals?

The Ombudsman can investigate Local Health Integration Networks (LHINs) and hospitals under provincial supervision, but he can't investigate "hospitals" in general. Why not?

A discussion started recently on the:

### << Ontario Ombudsman Facebook Page >>

by a member of the public explores why the Ombudsman is barred from investigating hospitals and what can be done about it. Here's an excerpt:

**QUESTION FROM FACEBOOK "FAN":** Why won't the Ontario government grant the Ombudsman jurisdiction and oversight over Ontario hospitals? And what does this mean for Ontarians? How was this decision made? What is the Ombudsman's office doing now to try to turn this one around? How can we as the public get involved in this, to ensure that negligent practises in our hospitals are properly investigated? How many more people need to be hurt before something is done?

**ANSWER FROM ONTARIO OMBUDSMAN:** Ever since the Ombudsman's office was created in 1975, Ontario's Ombudsmen have advocated for hospitals to fall under their scrutiny, but to date, Ontario remains the ONLY province in Canada whose ombudsman has no jurisdiction over them (same goes for long-term care facilities). Ombudsman André Marin has addressed the issue in numerous public statements and in his past two annual reports - and will talk about it again in the next one, coming in June.

The reason is essentially historical: The Ombudsman Act gives the office jurisdiction over "governmental organizations." But hospitals were deemed not to fall under that definition because they have their own elected boards. The situation is similar for Children's Aid Societies and the rest of the MUSH sector, all of which the Ombudsman is barred from investigating.

With hospitals spending more than \$17B in public money every year and literally dealing with life-and-death matters that affect all Ontarians, this issue clearly isn't going away. The office continues to receive hundreds of complaints about hospitals which it is powerless to deal with - although it has helped a great many Ontarians with health-related problems (the Ombudsman does oversee the Ministry of Health).

You can join the discussion – or start a new one - by visiting us on Facebook.

### Other ongoing Facebook discussions:

Should lottery "insiders" be allowed to play?  
Should Ontario's Ombudsman be able to investigate children's aid societies?

## THE SUNSHINE LAW: Closed-meeting investigations update

### Ontario Ombudsman censures Oshawa for “pirating” report

Ontario Ombudsman André Marin tabled a SORT report with the Ontario legislature on April 27, signalling to municipalities that they must respect the law when they engage the services of his office. In his report, *Pirating Our Property*, the Ombudsman found the city of Oshawa’s failure to co-operate with his office to be contrary to law. The Ombudsman’s Open Meeting Law Enforcement Team (OMLET) recently investigated a complaint that an Oshawa council committee improperly met behind closed doors last May in an “education and training” session with representatives of a recycling company that had been the subject of odour complaints. The private discussions involved the firm’s compost facility and potential future development. The Ombudsman concluded the meeting went beyond what is permitted in a closed “education and training” session and was therefore illegal. He issued a final report to the city in March. At that point, he learned Oshawa had disregarded his confidential document handling instructions, breaking its own promises and the law. The Mayor and city solicitor refused to return copies of the Ombudsman’s confidential preliminary report. Instead, Mr. Marin said, they sought to play a game of legal “chicken,” daring his office to engage in pointless and expensive litigation.

**Read the full SORT Report [HERE](#). Read the full OMLET City of Oshawa Report [HERE](#).**

### Town of Ajax and City of Clarence-Rockland choose Ombudsman as closed-meeting investigator

Two municipalities – the city of Clarence-Rockland and the town of Ajax – recently opted not to renew their contracts with closed meeting investigators and use the services of the Ombudsman instead. A year-long review of the Ombudsman’s approach by the Town of Ajax showed the recommendations were made in “good faith” and were “applicable to the municipal framework.” The Town of Ajax will commence using the Ombudsman’s services as of August 31, 2009. In the case of Clarence-Rockland, council voted in March to use the free services of the Ombudsman after a probe by an investigator they hired independently cost \$3,000.

### Township of Baldwin

The Ombudsman recommended several changes to Baldwin Township’s practices and its procedure bylaw after an investigation by OMLET found it contravened the open-meeting requirements of the Municipal Act in July 2008. The township co-operated fully and has accepted all six recommendations.

**Read the full report [HERE](#).**

#### Note:

*The Municipal Act – aka. the “Sunshine Law” – allows you to complain about municipal council or committee meetings that are closed to the public. The Ombudsman investigates those complaints in about 190 municipalities. For more info on Sunshine Law investigations, or to obtain a copy of our guide, The Sunshine Law Handbook, visit: [www.ombudsman.on.ca](http://www.ombudsman.on.ca).*

## Lottery investigation has ripple effects south of the border

The [Ombudsman's 2007 investigation](#) into the Ontario Lottery and Gaming Corporation (OLG) is garnering the attention of U.S. media and government authorities.

A report released April 21 by the Iowa Ombudsman ([click here to download](#)) found insider retailer fraud and theft in the Iowa lottery system. In his report, *Taking Changes on Integrity: An Investigation into the Iowa Lottery*, Ombudsman Bill Angrick frequently references the work of the Ontario Ombudsman, crediting the office with helping to spark the Iowa investigation.

"This investigation was borne from my review of Canadian ombudsman investigations of the provincial lotteries in Ontario and British Columbia," writes Mr. Angrick in the report. "The most significant change was triggered by the Ontario Ombudsman."

In California as well, after being "inspired" by the Ontario Ombudsman's investigation, officials there set up 800 retailer "stings" that caught 18% of them in the act of cheating resulting in 36 arrests. California Lottery security chief Bill Hertoghe spoke with [SORT](#) director Gareth Jones about these developments, telling him "some lottery agencies have had their heads in the sand," but the Ontario Ombudsman and staff "deserve full credit for bringing this issue out into the open."

Closer to home, in addition to the B.C. investigation, questions about "insider wins" have also been raised about the Atlantic and Western Canada lottery corporations.

"Clearly, the public has become very attuned to the problems with government-run lotteries since our investigation," said Mr. Marin in a speech to law students at the University of Windsor on March 31, "and the fact that they are there to serve the public, not just to make money."



## Ombudsman tells budding lawyers to think outside the box



Ontario Ombudsman André Marin  
at University of Western, Ontario

Law students at two southwestern Ontario universities received an education in the Ombudsman's powers and processes when Ombudsman André Marin visited them in March.

At the University of Western Ontario in London, Mr. Marin spoke to a gathering of students from across the Faculty of Law, organized by the university's Community Legal Services clinic on March 11. In a

presentation entitled, "Lawyering Outside the Box," the Ombudsman explained his unique role in the context of government and the justice system, and detailed the results his office has been able to achieve for millions of Ontarians through the powers of the [Ombudsman Act](#) and "moral suasion."

**"It's the best job in the world,"** the Ombudsman said of his work, encouraging students to consider non-traditional legal careers.

On March 31, Mr. Marin spoke to more than 120 law students in the University of Windsor's "Access to Justice" course, on the topic of "Accountability in the Administrative State." Students and faculty were keenly interested in his office's recent investigations involving lotteries, newborn screening, special-needs children and the SIU.

"That's a pretty broad topic, but it's bang-on for me," he said.

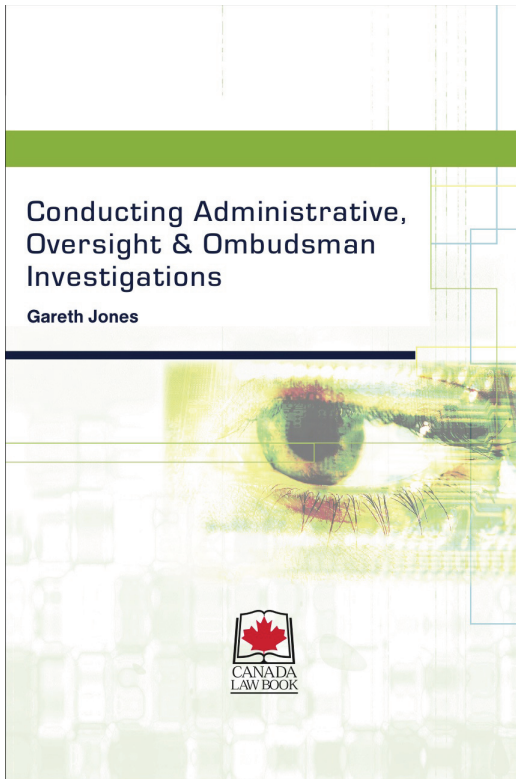
**"Accountability is my office's bread and**

**butter. And you'd be surprised how exciting it can be to investigate administrative agencies in this province."**

Both of Mr. Marin's speeches are posted at: [www.ombudsman.on.ca/en/media/speeches.aspx](http://www.ombudsman.on.ca/en/media/speeches.aspx).



Ontario Ombudsman André Marin  
at University of Windsor, Ontario



## Every chapter tells a story: Excerpt from Conducting Administrative, Oversight and Ombudsman Investigations

Gareth Jones, Director of the **Special Ombudsman Response Team (SORT)**, has written a book on investigations, published by Canada Law Book.

The book forms the basis for the “**Sharpening Your Teeth**” courses given by the Ombudsman’s Office and has a chapter devoted to systemic investigations. It has a detailed chapter on police oversight investigations, using the Robert Dziekanski taser-ing case as a case study.

*“This book is the real thing: a precise, well-documented guide that will give investigations both gusto and credibility ... Gareth deftly guides readers through complex scenarios, suggesting strategies and approaches based on his experiences. I cannot think of a more convincing and compelling way to present them than how it is expertly done here.” - André Marin, Ombudsman of Ontario*

The book, which is 460 pages long, has had extraordinary reviews from ombudsmen and other oversight agencies from across the world. See them, and the full table of contents, on the publisher’s website at: [www.canadalawbook.com](http://www.canadalawbook.com).

The following is an excerpt from the introductory chapter of Gareth’s book:

“**T**he book is liberally larded with the details of investigations in which I have been directly involved. In spite of my editor’s untiring efforts, I use the words “I” and “we” far too frequently, for which I kind of apologize. But bear with me. The examples are not just war stories for war stories’ sake. They are there for a purpose, to give context to the points made, using real-life examples, with real people.

As discussed in the chapters on report writing and the media, Ombudsman Ontario deliberately gives all its investigations a human face when it reports on them publicly. It makes its points, exerts moral suasion, encourages buy-in from those it needs to convince, in large part by telling stories. I have shamelessly plagiarized that approach in the book. For instance, the principles of excellent investigation are examined through the prism of a case of a soldier who was killed in a training incident. Nearly a dozen investigations — criminal, disciplinary, privacy,

workplace grievance, administrative tribunal, administrative fairness, to name but a few — followed in the wake of his death.

Many were botched, most often through no fault of those who were tasked with conducting them. It took over a decade to unearth the truth and tackle the underlying systemic issues that case exposed, a decade of untold heartache for a widow, her daughters and two senior army officers who were unfairly blamed for the death. Flawed investigations ended up costing the taxpayer millions of dollars. Had the principles been applied from the outset, the outcome would have been very different.

The book is intended for anyone working in any field of investigation. Some of what is discussed may not be directly relevant to a particular investigative bailiwick. No book could possibly cover all the peculiarities of all the different types of investigations. That said, I suspect that a lot of what is covered will strike a chord with investigators from all fields.

The subject matter may also prove useful to those not directly involved in investigations but who have an interest in how investigations work, or rather how they should work.

So the next time that a politician, a police officer, a watchdog, a CEO, a government official, or whomever, promises that ‘there will be a thorough and fair investigation’ into whatever the issue du jour is, then the reader will have a benchmark against which to measure whether that commitment was indeed kept.

Finally, investigations can be fun, even when the underlying facts are horrific. It is exciting and fulfilling, joyful even, to plan and execute an investigation, to drill down to wherever the truth lies and to make a difference.”

Excerpt reproduced with the permission of Canada Law Book.



This year marks 200 years since Sweden first created the position of parliamentary ombudsman in 1809. "Ombudsman" is Swedish for "citizen's representative" and the word, considered gender-neutral, is

## 200th anniversary of the first ombudsman

*"As Canadians, we can only marvel at such a long tradition. After all, Sweden had an ombudsman long before we even had a country, much less our own ombudsmen."  
 – Evolution of the Ombudsman [1809-2009]: A Rich History, A Promising Future by Ontario Ombudsman André Marin - Read the full speech at: [www.ombudsman.on.ca](http://www.ombudsman.on.ca)*

now used by administrative watchdogs around the world. Ontario Ombudsman André Marin paid tribute to the first ombudsman, Lars Mannerheim, in a speech at an international ombudsman conference in Montreal in April. The conference was jointly hosted by the Association of Canadian College and University Ombudspersons (ACCUO), Forum of Canadian Ombudsman (FCO), and the International Ombudsman Association (IOI). Celebrations for the 200th anniversary of the ombudsman continue in Sweden at the IOI World Conference June 9-12. Mr. Marin and former U.N. Secretary-General Kofi Annan will be the keynote speakers. [For more info, visit: www.ioi2009.com](http://www.ioi2009.com).

The office of the Ontario Ombudsman wants to hear from the public – and where better to do that than in the fast-moving social media world? In case you haven't noticed, the Ombudsman is now on Facebook and Twitter – and within a couple of months of signing on, we now have more than 250 fans on our Facebook page and more than 550 following @ont\_ombudsman on Twitter. This has led to many discussions, questions, comments and conversations.

Have we heard from you yet?



What you said about us on Facebook and Twitter:

"Ontarians with gov problems should follow @Ont\_Ombudsman - they're helpers!"

"Very cool...the Ombudsman's office has the potential to end up having one of those FB profiles where the discussion topics are quite a bit more interesting than most other government groups/pages."

"Bravo to André Marin and his team for investigating Special Needs Agreements. There is a systemic challenge that needs to be solved once and for all!"

## 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 form. Phone: 1-800-263-1830, Fax: 416-586-3485 / TTY (teletypewriter): 1-866-411-4211, Email: [info@ombudsman.on.ca](mailto: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.