

University of Miami Law School Institutional Repository

University of Miami Law Review

5-1-1969

The Role of the Ombudsman

George B. McClellan

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

Recommended Citation

George B. McClellan, *The Role of the Ombudsman*, 23 U. Miami L. Rev. 463 (1969)

Available at: <http://repository.law.miami.edu/umlr/vol23/iss2/6>

This Leading Article is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

THE ROLE OF THE OMBUDSMAN

GEORGE B. McCLELLAN*

I. INTRODUCTION (by Martin Engels**)	463
II. THE SPEECH OF GEORGE B. McCLELLAN	464

I. INTRODUCTION

One of this era's most egregious sociological phenomena is the ever-increasing computerization, automation, and bureaucratization of daily life. It is a rare citizen who is not at least once a week asked not to bend, fold, staple, or spindle the card he has just received—a card which probably imparts some information that will seriously affect him. Occasionally, this dehumanistic trend yields to a refreshing monkey wrench which finds its way into the inexorable machinery of “modernization.” Such a characterization aptly fits the Ombudsman.

Generally speaking, an Ombudsman, from the Swedish “agent” or “representative,”¹ is an appointed governmental officer whose function is to enable the little man to cope with his large and often callous government. The “grievance man,”² as he is sometimes called, operates by listening to, investigating, and attempting to solve citizens' problems as they relate to the organs of government. He may simply discuss the complaint with the bureaucrat or officer involved, or, if he gets no satisfaction at lower levels, he may report his findings to the particular agency head or the legislature or, ultimately, to the body politic. In essence, he “investigates and criticizes what the governors do that the governed do not like.”³

The Ombudsman's sphere of activity is sharply drawn so as not to conflict with the judiciary; furthermore, he does not have the specific authority to change a mistake he uncovers. As one authority notes:

The genius of the Ombudsman idea is that the holder of the office has full authority to investigate and pass judgment, but no power to enforce.⁴

An Ombudsman compensates for his lack of direct revising authority with a political independence and objectivity which provides a persuasive tool in his negotiations or discussions with officials. When this fails,

* Ombudsman, Alberta, Canada; former Commissioner for the Royal Canadian Mounted Police.

** Member of the Editorial Board, *University of Miami Law Review*.

1. D'Alemberte, *The Ombudsman, A Grievance Man for Citizens*, 18 U. FLA. L. REV. 545 note 2 (1966).

2. *Id.* at 546.

3. Newman, *Review: Ombudsman and Human Rights: The New U.N. Treaty Proposals*, 34 U. CHI. L. REV. 951, 955 (1967).

4. Anderson, *The Scandinavian Ombudsman*, 52 AMERICAN-SCANDINAVIAN REV. 408 (1964).

"his main weapon to secure remedial action is publicity—through reports to the legislature and the press."⁵ Hence, as he "fights city hall," his efficacy relies to a large measure on the public respect and confidence he enjoys.

Originating in Sweden in 1809, the institution has spread to a number of countries. Nations as diverse as Finland and Guyana have adopted it, as has the United Nations in its Covenants on Economic, Social, and Cultural Rights, and Civil and Political Rights.⁶ It has even appeared, on a local and minor level, in the United States. In both Buffalo and Nassau Counties in New York, an office similar to that of the Ombudsman was established with results that were "sufficiently encouraging to merit serious consideration for other communities."⁷ Unfortunately, a bill introduced by Jesse Unruh of the California State House to set up a citizens' advisory committee for the study of the Ombudsman did not pass.

However, the first major and permanent endorsement of the Ombudsman concept in North America occurred with the passage of the Ombudsman Act⁸ by the Alberta, Canada General Assembly. Given the broad investigatory power characteristic of the office, the new Ombudsman, as of July 1, 1967, is charged not only with probing complaints made by citizens or discovered on his own initiative,⁹ but also with examining problems that legislative committees may submit.¹⁰ He must make an annual report to the Assembly,¹¹ but may not adversely criticize until the person affected has had an opportunity to be heard.¹²

The first to assume the post is George B. McClellan, former Commissioner for the Royal Canadian Mounted Police. He addressed the University of Miami School of Law on November 16, 1968, after completing his first year in one of the continent's newest and most challenging positions. In the manuscript of his speech that follows, he examines the evolution, functions, and problems facing the Albertan Ombudsman. In view of the upheaval now marking our impersonal cities, Mr. McClellan's remarks deserve scrutiny for the insight they provide into a fascinating and useful political innovation.

II. THE SPEECH OF GEORGE B. MCCLELLAN

A short time ago a journalist put this question to me: "Is not the necessity for an Ombudsman a clear admission of government's failure

5. Rowat, *The Spread of the Ombudsman Idea*, in *OMBUDSMAN FOR AMERICAN GOVERNMENT?* 10 (S. Anderson ed. 1968).

6. Discussed in detail in Newman, *supra* note 3.

7. Angus and Kaplan, *The Ombudsman and Local Government*, in *OMBUDSMAN FOR AMERICAN GOVERNMENT?* 119 (S. Anderson ed. 1968).

8. The Ombudsman Act of 1967, ch. 59 (Alberta, Can.).

9. *Id.* at § 11(1) and (2).

10. *Id.* at § 11(4).

11. *Id.* at § 26.

12. *Id.* at § 20(6).

to correct injustices to the citizen, and the failure of the administrators of government departments to deal properly with complaints when they are received?"

In my view it does not necessarily follow that the appointment of an Ombudsman is an admission of failure. For instance, Sweden appointed one in 1809, and he has been actively employed ever since. I do not think for one moment that Sweden would admit that every government it has had since 1809 has been a failure.

The Ombudsman in Sweden was appointed to meet situations peculiar to that country at that time, but the tremendous interest which has been generated in the office of the Ombudsman in recent years has its source in conditions peculiar to the age in which we live.

History shows that in the evolution of democratic government and a democratic society, there has been a constant search for administrative justice. Sometimes this search has its source from within the government or parliamentary institution of the country concerned. At other times, it is brought about by pressures and recommendations made to governments by outside bodies. The legal profession in most countries has been in the forefront when petitions have been presented to government urging reforms and improvements in administrative justice.

That the installation of the office of Ombudsman other than in Sweden is a phenomenon of recent years is evidenced by the fact that in 1955 only 3 countries—Sweden, Finland and Denmark—had an Ombudsman system. Two more countries, Norway and New Zealand, were added in 1962. Since that time the United Kingdom has established the office of Ombudsman, and in Canada three political parties, none of them in power federally, have put forward proposals for a Federal Ombudsman. The Glassco Commission Report in 1963 approved the idea of Ombudsman in these words:

Your commissioners have also noted the growing interest throughout other parliamentary countries in the office of parliamentary commissioner, modelled, with variations, on the long-established Swedish Ombudsman. The notable success with which this office has been adapted to the needs of the Parliament of Denmark, the recent report by a group of eminent jurists in the United Kingdom, the enactment of legislation to establish a Parliamentary Commissioner in New Zealand, and the creation of machinery for a similar purpose in the United States, all suggest that the Parliament of Canada may find here a means of bettering its defence against administrative defects in the public service.

Much discussion ensued within the Canadian Parliament and outside, including addresses by parliamentarians who were completely in favour of the establishment of an Ombudsman, and others who favoured

the idea in principle, but had reservations regarding its adaptation to Canadian conditions. One of the strongest proponents of the establishment of the Ombudsman system in Canada is Professor Donald C. Rowat, Chairman of the Department of Political Science of Carleton University in Ottawa. Professor Rowat has made intensive studies of the operation of the Ombudsman in various countries and has undoubtedly written the most authoritative Canadian works on the subject.

In 1965 the Parliamentary Standing Committee on Privileges and Elections, with one dissenting vote, agreed to report to the House of Commons as follows:

After due consideration the Committee recommends that the Government consider the establishment of an office, like that of an Ombudsman, for the purpose of investigating and reporting on administrative acts of the Government of Canada complained of by members of the public. The Committee recommends also that the *Government of Canada should take an early opportunity to urge the establishment of a similar institution by each of the provinces*, for scrutinizing in the same way administrative action under provincial jurisdiction.

(As we shall see later, the Provinces in fact have taken the initiative away from the Federal Government.)

In the speech from the Throne at the opening of Parliament in April, 1965, the Governor-General read from the report as follows:

My Government will appoint a Royal Commission to study the status, form and procedures of adjudicative and regulatory bodies and to investigate the desirability of instituting a parliamentary commissioner or Ombudsman for Canada.

Thus far no government bill has been placed before the House of Commons recommending the establishment of a position or positions similar to that of the Ombudsman, and no report has yet been made public regarding the proposed study which was announced in 1965.

However, a number of provincial governments of Canada have undertaken intensive study of proposals to establish the position of Ombudsman in their own jurisdiction. Among these provinces are Quebec, Saskatchewan, Manitoba, British Columbia, Alberta, New Brunswick and Nova Scotia.

The views and conclusions reached in the various provinces have varied from approval to a negative attitude, and I do not feel that I should here outline the positions taken in each of the provinces in which the subject has been considered. Suffice it to say that Alberta, New Brunswick and Manitoba have been the most active in their considerations of the desirability of such a position.

As we now know, to Alberta goes the laurel for having established the first office of Ombudsman in any federal, provincial or state legisla-

ture on the North American continent, and your speaker assumed office as Ombudsman for the Province of Alberta on September 1, 1967. Not long thereafter, New Brunswick became the second province to pass legislation establishing the office of Ombudsman, and New Brunswick's first Ombudsman, Dr. W. T. Ross Flemington, was appointed in October of the same year. I have no doubt that other provinces in Canada will follow suit in the near future, and I think that it is a healthy sign of public interest in the rights of the individual in this country that, apart from New Zealand, no country outside of the Scandinavian countries has paid as much attention to the Ombudsman as has Canada.

To complete the list of countries which have adopted the system of Ombudsman in one form or another, there are, as mentioned before, Sweden, Finland and Denmark, followed in 1962 by Norway and New Zealand and later by the United Kingdom, Guyana, Mauritius, and the Canadian provinces of Alberta and New Brunswick. The plan has also been adopted in Hawaii, but I do not yet have full details as to just how it operates in that State. West Germany has a military Ombudsman, and there are officials performing something of the functions of Ombudsman on a county and municipal level in the United States.

There has now developed a very great interest in proposals for an Ombudsman or Ombudsmen at federal and state levels in the United States. Albertans may, in my view, take justifiable pride in the fact that their province was the first major legislative body on the North American continent to found the office of Ombudsman, a position which is now becoming more accepted as a necessity in our modern life by those countries which adhere to a belief in the rights of the individual citizen.

As stated earlier, I believe that the rapidly expanding interest in the establishment of the position of Ombudsman, and the inescapable conclusion that the position is to become part of our democratic form of government in an increasing number of countries, provinces and states, has been brought about by the expanding functions of government and the impingement of government administration upon the personal life of the individual citizen.

It is significant, in my view, that the office of Ombudsman was first created and developed in those countries which have made the most progress towards what we call the welfare state—first the Scandinavian countries, then New Zealand, then Britain, and now Canada.

What is there about the so-called welfare state which seems to call for a position of Ombudsman, or Commissioner of the Legislature, or Commissioner of Parliament, or by whatever other name he is known?

I suggest that, broadly speaking, the history of the welfare state has been marked by the gradual but accelerating progress of the government in assuming more and more responsibility for providing those measures of security, health, welfare, old age care, child care and welfare for the poor, for which the head of the family, or the local community, was at one

time responsible. Additionally, governments have deemed it necessary to legislate for controls of business practices, labor relations, supply of credit and money, housing, control of traffic and licensing of vehicles of all descriptions, control of air transportation, fuel and other forms of energy, the marketing of agricultural products, and education at all levels, to a point where there is hardly any field of business, manual labor, or other occupation, in which the average person finds himself engaged where he is not subject to numerous forms of government control. In short, what man provided for himself and for his family not too many years ago is now provided by government in one form or another, and the trend appears to be to accelerate public welfare programs and to increase governmental supervision of the operation of industry and our general economy. The citizen is no longer required to provide only for the welfare of his own family; he is obliged by taxation to provide for the welfare of others less fortunate than himself.

If you will note the countries which first moved towards a welfare state status, you will find that almost in succession the Ombudsman appeared in those countries in the order in which they adopted welfare procedures. Such a situation, I believe, does much to answer the question which was put to me by the newspaper man, and to which I referred earlier. To repeat:

Is not the necessity for an Ombudsman a clear admission of government failure to correct injustices to the citizen, and the failure of the administrators of government departments to deal properly with complaints when they are received?

I am satisfied that the establishment of an Ombudsman or the Ombudsman system does not by any means necessarily mean a failure of government. In my view it means that a new development of the system of government, and the increasing responsibilities assumed by governments for things which used to be the prerogative of the individual citizen, has brought about the necessity for an Ombudsman.

Why should this be? Man is not infallible. He is quite capable of passing and often enough does pass defective legislation. Stemming from that legislation, and without the remedial benefit of open debate in a legislative body, cabinets may approve regulations under the legislation and these too may be faulty. Finally, public servants are no more infallible than persons in any other walk of life and may well misinterpret the intent of even good legislation, or good regulations in the application of such legislation. Thus, discrimination, injustice, and error in the interpretation of fact or law may occur with sometimes serious effects on the citizen who is at the receiving end.

It would seem logical that, as the operations of government increasingly affect the private lives of citizens, there should be an equal increase

in the care that is taken to make sure that such interventions into the lives of the citizens of the state are carried out with caution and with a watchful eye for discrimination or injustice.

At this stage, however, another factor enters the problem. Population is on the increase at an alarming rate. Government has to deal with more people every year, and time to sit back and thoroughly consider decisions has become less and less available even to the most conscientious public servants. As population increases, as legislation increases, and as the departments of government increase in size, departmental heads inevitably find it necessary to delegate more decision-making authority to their subordinates, who in turn, as their own burden increases, must delegate more authority to lower levels. Therefore, decisions affecting the welfare of many citizens come to be made at a comparatively junior level.

At this point it should be made very clear that the senior officials of government departments, even with the best of intentions—and believe me the great majority of them are conscientious, devoted public servants—cannot possibly personally supervise, or even know, all of the activities being carried out by their subordinates. Government officials make mistakes. The overwhelming majority of such mistakes are of judgment or understanding and do not stem from malice. Nonetheless, the effect upon the citizen is an injustice, and in this age it may affect his liberty, his property, his health or even the means to provide for his family.

What, then, is his recourse? He can complain to the department, and I am not singling out any particular government in this portion of my remarks. He may be annoyed and write a fairly strong letter. Indeed, his language may well be profane, as in the case in numerous complaints which cross my desk. His complaint reaches the desk of the public servant who made the original decision and he, being a normal human being, gets his dander up. He digs his heels in, takes a firm position, and reiterates his former decision. Thus we have an impasse. If the complainant then attempts to go higher to the Deputy Minister, Minister or his Member of Parliament or his Member of the Legislative Assembly, the complaint may well be sent down the line for an explanation and the explanation which comes back, comes from the same public servant who made the original decision; so you are right back where you started.

There may be other avenues of appeal open to the citizen and mistakes are possible, even at these levels. The courts are available to him for redress, but let us not forget that litigation is an expensive business.

On this point, Lord Devlin, in an article in *The Economist* in 1964, said:

I believe it to be generally recognized that in many of his dealings with the executive the citizen cannot get justice by process of law. *The common law has now, I think, no longer the strength to provide any satisfactory solution to the problem of keeping*

the executive, with all the powers which under modern conditions are needed for the efficient conduct of the realm, under proper control.

In this statement, the eminent Lord Devlin, has put the problem in a nutshell, and I could find no more fitting summation to my views on the requirement for an Ombudsman.

There is much more that can be said on the need, desirability or causes which have brought about this office, but I should like now to get on to the point of what it is that the Ombudsman in the Province of Alberta can do, and what it is that he cannot do.

Very quickly let me say that I assumed office on the first of September, 1967, and if ever a man started from scratch, I did. There was no precedent in North America. No one had ever tried the job before on the continent, at least at a provincial or state government level, and I had to find staff and quarters as well as learn the provincial Act and its interpretation; the Ombudsman, above all, cannot afford to make too many mistakes. I had to gather together, and endeavour to absorb while I worked, in what little spare time was left to me, everything that I could find that had been written on the function of the Ombudsman by men who had given it years of study.

My first report was tabled in the Legislature, Province of Alberta, on March 14, this year, and dealt with the final four months of 1967. Such a report will be an annual submission based on the calendar year. While the report has not been in circulation very long, I am gratified that its reception so far appears to be favourable.

Now, what is my jurisdiction; that is, what am I authorized by law to do on behalf of the citizen?

My jurisdiction is contained for the most part in section 11 of The Ombudsman Act. There are four subsections to this section, but as several of them are qualifying sections, I shall read you only subsections (1) and (2) which are the foundation of my jurisdiction:

- (1) It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.
- (2) The Ombudsman may make an investigation, either on a complaint made to him by any person or of his own motion, and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission as mentioned in subsection (1).

Matters, functions and subjects not included in that section are normally beyond the powers of my jurisdiction. You will note, for instance, that this gives me no authority to intervene in the jurisdiction or actions of courts of law, or matters which are before courts of law. In another section I am specifically forbidden to investigate any decision, recommendation, action or omission of any person acting as a solicitor for the Crown, or acting as counsel for the Crown in relation to any proceedings. Thus, I am not an appeal court from the decisions of any court, nor may I question decisions made by a solicitor for the Crown as to the manner in which he shall proceed on either criminal or civil matters.

I have no jurisdiction to deal with matters which fall within city, county, municipality, town or village jurisdiction, unless such decisions are subject to an appeal to a provincial appeal board, or are subject to some form of veto or control by a provincial government department.

Insofar as criminal prosecutions are concerned, I have had, and do have from time to time, prisoners or persons awaiting trial appeal to me for assistance in getting counsel where they lack the funds to obtain counsel for themselves. This is not normally my function, but I have and do undertake to put their cases before the committee responsible for criminal legal aid. As my report shows, legal advice has been provided.

I have been asked by an accused who is in gaol awaiting trial to obtain certain information for him which he feels may assist him in his trial or his appeal, and which he is prevented from getting due to his own confinement. I have, usually with the ready assistance of the Attorney General's Department, been able to obtain and supply such information to the accused, but my jurisdiction stops there. The procedure and the results of his trial and appeal are not my business. I have no jurisdiction to intervene in domestic disputes—thank God—though many of them are brought to my attention. I receive many complaints of sharp business practices from persons who feel that they have either been defrauded or been the victims of deception. These are not within my jurisdiction and should normally be referred to a solicitor. I have found, however, on several occasions, that the company which has allegedly committed the offense is provincially licensed or bonded, and I have referred the matter to the provincial licensing department with the result that on several occasions an adjustment, satisfactory to the complainant, has been made.

I receive a number of complaints dealing with matters which are within federal jurisdiction: old age pensioners who have some problem in connection with their pension check will write to me; mothers who are entitled to the family allowance and who have recently come to the province to find that their allowance check has not caught up with them will get in touch with me. Such federal matters are outside my jurisdiction, but I do feel a moral obligation that, if not stated, is inferred in the position I hold, to place such people in touch with the proper federal, civic government or provincial government department, or indeed

on occasion with the general manager of mortgage or insurance companies, who are in a position to investigate and perhaps rectify the complaint.

I must also be very careful not to practice law. It would be most improper of me to endeavour to give people legal advice on personal or business matters; the best I can do in such cases is to suggest they seek advice from a solicitor.

One question which will arise in your minds, of course, is the question of police. As the Attorney General of Alberta is the chief legal officer of the province and has the overriding responsibility for the maintenance of law and order, and as all police forces are subject to the direction of the crown prosecutors in the legal acts they perform, and crown prosecutors are appointed by the Attorney General's Department, it therefore follows that where there are allegations that police officers have been overzealous, or have acted illegally, or may have committed offences themselves, I have jurisdiction to investigate and report to the Deputy Attorney General or to the Attorney General.

Regardless of what functions I may carry out as a matter of public service, it must be clearly understood that my jurisdiction generally extends only to provincial government departments, provincial government public servants and agencies of the provincial government.

Who and when may a person complain to the Ombudsman? Any person may complain to the Ombudsman about maladministration, injustice, or discrimination within the jurisdiction. He need not be a resident of the province if his complaint is against an agency or official of the provincial Government of Alberta. I think the distance record of my complaints is held by a complainant who asked me to upset a decision of the highest court of the Province of Newfoundland. In the United Kingdom the citizen may only complain through his Member of Parliament, and the Ombudsman must reply through the Member of Parliament. Alberta has adopted the system existing in New Zealand, in which the citizen may appeal directly to the Ombudsman. Perhaps I should not even say citizen; any person, citizen or otherwise, may appeal.

Probably the greatest misunderstanding of the function of the Ombudsman of Alberta is that if you have a complaint, you may go to him immediately and make your first complaint to him. This is not so, and I suspect that this is going to be the most difficult message to get across to the general public. It should be clearly understood that the Ombudsman is not a substitute for the normal channels of complaint, review, or appeal which existed before the appointment of the Ombudsman. He is an additional channel of appeal superimposed on the previous structure for the purpose of dealing with complaints when all the usual and normal channels have failed.

Section 12 of the Act makes this quite clear when it states that the Ombudsman

is not authorized to investigate any decision, recommendation, act or omission in respect to which there is a right of appeal or objection, or a right to apply for a review on the merits of the case, *to any court or to any tribunal* constituted by or under any Act, until after that right of appeal or objection or application has been exercised in the particular case, or until after the time prescribed for the exercise of the right has expired.

Thus you will see that if you have a complaint against a government department you should first make your complaint to that department and, of course, you may go as high as you like, up to and including the Minister. The next step is to ascertain, provided your complaint has not been dealt with to your satisfaction, whether there exists an appeal board or a review board in the provincial government structure for your particular appeal; if so, you should use it. You should ascertain if this is a matter which you may take to the courts, and if so you should seek the advice of a solicitor. Only when all else has failed should the matter then be brought to the attention of the Ombudsman.

The problem which arises, the most difficult in these latter provisions, is the one which provides for appeals to courts of law. These are expensive, and the greatest number of persons who complain to me are in either modest, poor, or sometimes desperate circumstances. Litigation is completely beyond their means, and some of them fall between two stools—they are not sufficiently impoverished to be eligible for assistance under the Needy Litigants Act, nor have they sufficient funds to retain counsel, particularly in a matter which may go to appeal. I confess quite frankly that in these cases I will study the complaint and try to take whatever steps I can to have the complaint rectified, if it is just, without having to advise the complainant that his only recourse to justice is civil litigation, which would, in effect, close the door to justice in his face.

I have mentioned that anyone may make a complaint to the Ombudsman. I should also mention that the Ombudsman is empowered by the Act to initiate investigations on his own motion. This very useful section can be utilized where some issue has arisen in the press or has become a matter of public concern, yet no one has made a direct complaint to the Ombudsman. I just recently exercised my authority under this section by undertaking to investigate allegations in a recent press story of mistreatment and brutality towards patient in a provincial mental hospital.

I have covered the functions, the jurisdiction and the areas in which the Ombudsman may probe, and those which are closed to him. I should, however, mention the powers that he has to investigate and the steps that he may take as a result of his investigation. Without going into too much detail, let me just say that after due notice is given to the deputy minister of the department or administration head of an agency, the Ombudsman may commence his investigation. He may at any time consult any Minister who is concerned. He may hear or obtain information

from such persons as he thinks fit, and he may make such enquiries as he thinks fit. He may hold a hearing, but it is not required; similarly, no person has a right to be heard by the Ombudsman. He may require any person who is able to give information relating to a matter being investigated by him to furnish the information and to provide any document, paper, etc., which relates to the matter being investigated, and such person does not necessarily have to be an officer or employee of a department. He may summon officers, employees or members of departments or agencies. He may summon complainants or he may, under certain conditions, summons *any other person* who, in his opinion, is able to give information. I should make it clear that every person called upon to give testimony to the Ombudsman has the same protection he would have as a witness in any court.

The Ombudsman may also have access to departmental files, although there are certain exceptions involving the deliberations of the Executive Council.

There are certain penalties, including prosecution and fine or imprisonment in default of fine, for obstructing or hindering the Ombudsman.

Unless he acts in bad faith, the Ombudsman is free from proceedings against him or any of his staff for anything he may do, report or say in the course of his proper functions. He cannot be called upon to give evidence in a court of law regarding anything coming to his knowledge in the exercise of his functions, and for the purposes of The Defamation Act he is protected from action against him for any of his reports, or inaccurate report thereof in a newspaper or broadcast.

Thus, you will note that he has wide powers of investigation and is amply protected for his actions, if they are in good faith.

Now, what may he do upon conclusion of an investigation? If he finds the case is not justified, of course, he advises the complainant. If, on the other hand, he finds the complaint is justified, he may bring the matter to the attention of the administrative head of the branch or deputy minister of the department, discuss it with him, go over the evidence with him, and endeavour to satisfy the official that remedial action is required. So far, I have followed this procedure quite informally and with very satisfactory results.

However, should the Ombudsman's submission not be accepted at that level, he may then make a formal submission to the minister of the department concerned, including in it his recommendations. I would anticipate that if the Minister disagreed, there would most likely be a very thorough discussion between the Ombudsman and the Minister concerned. The matter may be rectified at this point, or the Minister may decline to accept the recommendations of the Ombudsman.

The next step provided for is to place the Ombudsman's recommendations before the Executive Council. Here again, I would be avail-

able for discussion. I would be quite prepared to re-open any phase of the investigation if it were felt that there was some reason to do so, but, if the Ombudsman is still convinced that his complainant's cause is just, and the Executive Council should fail to accept his recommendation, he may then place the matter before the legislature.

At this stage the recommendations become a matter for debate and decision by the legislature, and *the Ombudsman's report is now a public document, accessible to all news media*. The legislature may, of course, accept or reject the Ombudsman's recommendation.

Therefore, while the Ombudsman has wide powers of investigation, his powers of enforcement, in this Province as in New Zealand, are limited to recommendations up to the highest level. He has no power to instruct that remedial action be taken, and this is as it should be. Under our system of democratic government, Parliament, or in the case of Alberta, the legislature, must be supreme.

It will be seen by this procedure that the Ombudsman is a referee to some extent. He should not be looked on as being opposed to government as a matter of course, and if government or officials of government have been improperly criticized, he should say so. He must be and is free of direction by the executive, and he is responsible solely to the legislature.

I emphasize the word "referee," due to the mistaken belief that the Ombudsman starts from a position where he is completely on the side of the little man and opposed to the government. He must be impartial, but there has now been added to the arsenal of weapons for the protection of the citizen an official free from government direction, responsible only to the legislature, who, once convinced of the justice of the complaint he has received from citizen, is in the position to take that complaint, with his own recommendations for redress, as far as it has to be taken—even unto the floor of the Legislature of the Province. There the people's representatives, as a body, may study it, discuss it, and make a decision.

In closing may I just put before you a set of precepts which were originally intended for public servants, but which are equally applicable to the Ombudsman. They are:

Be courteous and tactful, as well as honest and diligent. All your doings are publicly known and must therefore be beyond complaint or criticism. *Be absolutely impartial*. Always give a reason for refusing a plea; complainants like a kindly hearing even more than a successful plea.

Preserve dignity, but avoid inspiring fear. Be an artist in words that you may be strong, for the tongue is a sword.

These were good precepts when they were first enunciated, and they have stood the test of time. They were, in fact translated from a parchment, thousands of years old, for use by the Egyptian Civil Service.