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The Principle of the Ombudsman

EVERYBODY KNOWS the meaning of "Ombudsman" — he is someone to whom any citizen may take complaints about the actions of people in the government service. The Ombudsman will listen, examine, and try to obtain redress of an injustice or amends for a grievance.

There are many descriptive titles given the Ombudsman. He may be called Citizen's Defender, Citizen's Champion, Defender of Civil Liberty, Parliamentary Commissioner for Administration, or Citizen's Guardian. Whatever his title, it is his duty to keep watch over the way in which government agencies and officials apply the law and regulations in dealing with the public.

Scores of books and hundreds of magazine and newspaper articles show the interest people take in this relatively new office. In May 1968 the American Academy of Political and Social Science devoted an issue of *The Annals* to an exhaustive examination of "The Ombudsman or Citizen's Defender: A Modern Institution." This has become a source-book and a detailed guide to persons investigating the need for such a system of citizen-protection. Much of the information in this *Letter* has been drawn from it.

The need to keep government administrators from abusing the wide powers that have been necessarily given them in recent years demanded a creative innovation. The institution of the Ombudsman went a long way toward providing what was necessary.

Social service reaches into every area of life, and the officials in charge of its many agencies come into contact with every citizen. The purpose of the Ombudsman is to hold the scales so that justice is satisfied, and justice, as St. Thomas Aquinas defined it, "is a constant and perpetual will to yield to each one his right."

Citizens will take their problems and complaints to the Ombudsman because they look upon him as representing the State's conscience. He is not a person bound by legalities, seeking to win a case, but an arbiter who seeks to dispel erroneous notions on one side or the other by setting forth the truth.

Service to individuals

A review given in *The Annals* shows that there are many different procedures in the carrying out of Ombudsman duties, but his central purpose is always to protect the individual. He is, as was said upon appointment of the Quebec provincial Ombudsman: "to receive the complaints of the public against the government administration, to make investigations and bring to the attention of the authorities the problems that he uncovers."

Many persons who have grievances would find it difficult to go through procedures required under the regulations. They may not know where to start; they may not be able to pay the legal expenses; or their emergency may be of such a nature as to demand quick action. Then, too, a request for review addressed to a government department may be referred to the officer originally involved, and that is not of the nature of a real appeal.

It has been said that if every member of parliament, every member of a legislature, every civil servant, every member of a municipal council, and every member of a school board looked upon himself as an Ombudsman there might not be an opening for a special appointee. People in administrative positions have a tendency to forget why they exist: to serve the people. They can do this effectively by telling people about their rights.

As it is, there is a gap to be plugged. The existence of an Ombudsman, independent of politics and of the bureaucracy, encourages those in authority to consider maturely before making up their minds about legal decisions and discretionary acts.

Some objections

It was found in Great Britain and in Australia that the strongest opposition to appointment of an Ombudsman came from the legislators, although it is recognized everywhere that the *sine qua non* of effective citizen guardianship is freedom from political connections. A member of parliament receiving a complaint from a constituent would be under obligation to divorce himself from consideration of the political

usefulness of the case and address himself to the merits of the grievance.

Events have not shown that the status of parliamentarians has been eroded by appointment of an Ombudsman. On the other hand it is admitted that in countries where complaints must be submitted through a member of parliament the citizens are deprived of the satisfying feeling that a special power — the Citizen's Champion — is working on their behalf.

Writing in *The Annals* about the situation in the United States, Dr. Ake Sandler, Professor of Government in California State College, said: "The average congressman (or any legislator, for that matter) has neither the time nor the inclination to do anything about a complaint other than to put in a phone call or write a letter on behalf of his complaining constituent."

To handle a complaint in the detailed way of the Ombudsman's office requires an expenditure of time, and if legislators spend time in following up complaints they are necessarily absent from the House where their legislating duty demands their presence. Their vital governing function benefits by the appointment of an Ombudsman.

There is another point, one of great importance. When individual legislators handle complaints the administration is deprived of the enlightenment given by the accumulation of information about similar cases. What may appear to be a solitary complaint may be one of a large pattern which it would be important to recognize. A number of complaints of the same nature passing through an Ombudsman's office would ring a warning bell, calling attention to a condition that needed investigation.

Community needs

It is not only in federal and provincial affairs that there is opportunity for exercise of the Ombudsman function. As Hing Yong Cheng, a Colombo Plan Scholarship student at Carleton University and now in the Ministry of Culture and Social Affairs, Singapore, wrote in *The Annals*: "Faced with a huge and complex body of government instrumentalities, an aggrieved citizen may not even know where or to whom to complain."

In a big urban centre citizens may have the opinion that municipal government is remote from them and unapproachable. They doubt their ability to obtain satisfactory consideration of their complaints about many things: taxes, licenses, garbage collection, street repair, snow clearing, welfare assistance, zoning, fire safety, transportation, police, pollution, parking, airport noise, and a hundred other things in the planning or administration of which something goes wrong.

A great number of people in paid and voluntary positions are meeting some of the need. For some months *The Montreal Star* printed a daily column under the heading "The Target is Trouble". Through it the writer, Bruce Taylor, exemplified one purpose of

the press, to be the "Voice of the lowly and oppressed, advocate of the friendless, righter of public and private wrongs."

In the *Monthly Letter* of November 1970 it was suggested that "It might be feasible to transplant the Ombudsman idea to the community by setting up a central service providing information about where to apply for help in solving problems, coping with crises, and starting something designed to improve the community." Some community chests have service offices which will tell citizens where they should apply for this and that kind of help: but first the citizen must find out about this office.

There are, too, many community-type Ombudsmen at work in many capacities: clergymen, private social workers, certain service clubs, settlement workers, and police officers specially trained in ombudsman-type work. Some big business establishments have staff members whose job it is to receive complaints and deal with them in the interest of customers.

Government agencies

Greatest need for the Ombudsman, however, is in connection with government activities. Government as a going concern consists of thousands of officials, agencies and civil servants. Year by year, under the growing pressure of new services and policies, the work of the agencies expands, not only in volume but into new areas.

In fact, as George B. McClellan, the Alberta Ombudsman, said in an article in *The Alberta Municipal Counsellor*: "There is hardly any field of business, manual labour, or other occupation, in which the average person finds himself engaged, where he is not subject to numerous forms of government control."

Complaints are not always of some fault by a civil servant, but result from the confusion a citizen feels when caught in the complexity of the government structure necessary to supply services. As in an expanding business corporation, mechanisms of management become more elaborate, relationships between departments become a criss-crossing maze, duplication of responsibility and work becomes a menace.

When a crevasse of misunderstanding separates an individual and those in authority it causes unhappiness. To bridge this chasm is primarily the responsibility of those in public service. They must be on their guard against out-and-out violation of the rights of citizens, but in addition they need to watch for ways in which they infringe without realizing that they are doing so. They will keep in mind the principle enunciated by the Emperor Marcus Aurelius: "He often acts unjustly who does not do a certain thing; not only he who does a certain thing."

Control of agencies

One of government's most pressing problems is the supervision of administration in a time of rapidly expanding public service. No reasonable person

expects the agencies or their officers to be without fault in the performance of their duties, but the source of trouble goes deeper than mere mistakes. There can be misuse of power, or fixation on the rules in a book, or neglect of reasonable duties not expressed in the Act that established the agency.

Appointment of an Ombudsman signifies the government's desire to make sure that its administrators are not guilty of any injustice to any citizen; that they be faithful to the government's plans and purposes, and that they refrain from arbitrary acts.

The Ombudsman will go about his task by checking the history of the transaction complained about. *The Annals* suggests some questions. Did the officer have before him all the facts and did he give them balanced consideration? Were the rules applied properly or harshly? Did the officer discriminate, delay, or pass the decision-making to someone else? Was there inattention, unreasonableness or prejudice? By weighing the evidence connected with the alleged fault the Ombudsman will reach an impartial judgment as to the propriety of the complaint.

If he makes a finding that is unfavourable to the agency, the Ombudsman does not then become prosecutor or judge. He has not the authority to reverse, alter or annul a decision, or to take disciplinary action. He uses admonition and suggestion. He may recommend an appropriate change in the law or rule that caused the complaint to be made. His ultimate weapon is his report to Parliament in which he brings the grievance to attention and recommends that it be redressed.

There is another side to the coin. While making sure that the government agencies do not exceed their power or exercise it in an unreasonable way, the Ombudsman's findings protect the agencies against unjustified complaints. In *The Annals* chapter on the New Zealand practice it is said: "The civil service has come to regard the Ombudsman as a defense against unjustified criticism rather than as an enemy."

To win this high regard from both the complainant and the agency complained about, the Ombudsman needs to be an officer free from meddling or pressure. In Sweden, neither the cabinet nor parliament can stop an investigation that the Ombudsman believes to be necessary.

Essential to the proper carrying out of his duties is the Ombudsman's dedication to the principles of equity. In its broadest and most general signification equity denotes the spirit and the habit of fairness, justness, and right dealing which would regulate the intercourse of men with men — the rule of doing to all others as we desire them to do to us: or, as it is expressed by Justinian: "To live honestly, to harm nobody, to render to every man his due." It is therefore the synonym of natural right or justice.

Democracy and Ombudsmen

The countries that have Ombudsmen functioning as Defenders of Civil Liberties are countries dedicated

to the principle of democratic government. Alfred Bexelius, Ombudsman in Sweden, wrote in *The Annals*: "It is certainly an expression of real democracy when a society establishes a special institution with the task of ensuring that the other agencies serving the society respect the rights of the citizens."

In the Canadian ideal of society, every person is completely in charge of his own life as he can be. The individual is the central figure, but he cannot ensure his own aims in isolation. If he lived alone and tried to meet his problems by himself he would perish. The Ombudsman is a connecting link to bring all the resources of society to the aid of the individual and to protect him against wrongful acts.

Amid all the improvements in social services and welfare plans, civil rights must be preserved if democracy is to live up to its meaning.

Every society finds it necessary to frame legislation which is binding upon citizens, but it must observe basic rights. The Ombudsman helps to keep the balance between the increasing encroachment of government administration and the citizen's rights. He contributes much toward establishing citizens' confidence in government because his appointment is evidence of the government's determination to pay regard to the rights of people and to prevent the abridgment of civil rights by administrative agencies.

Justice is a goal

The Ombudsman's duty is not merely to act as a buffer between the individual and authority, but to be actively employed in promoting justice. Justice is good in itself, not merely a necessary means of preserving order in a State. As Cicero put it: "Justice is much the most glorious and splendid of all virtues, and alone entitles us to the name and appellation of good men."

The welfare of the people is the supreme purpose of the government. Grievance-handling machinery should be designed so as to provide easily accessible judicial review, flexible disposition of cases, and speedy judgment. But the Ombudsman must not be so just that he forgets to be humane, nor can he be so generous that he neglects to be just. Those who appeal to him should remember that he is not there to dispense favours but to safeguard rights.

The existence of the Ombudsman, though he is not appealed to by a citizen, gives a feeling of security. The citizen knows that should he ever believe that he has a legitimate reason to complain he has a friend at court who will see that attention is given to his complaint. He will have confidence in the government which has appointed this independent officer to ensure the rule of law and the protection of rights. He will find it less necessary to parade and demonstrate to call attention to his grievance.

Simple in operation

The Ombudsman's activity is simple, informal and rapid. He is a master in discriminating between what

is important and what is trivial; he can diagnose new situations because he has wide knowledge of similarities and differences in cases; he can look at both sides of an argument and seek some negotiable point; he puts the relevant facts together for inspection and brings the problem into sharp focus. He fulfils his duty when he advises fully on the evidence put before him, and initiates remedial action if he considers it necessary.

The complaints reaching an Ombudsman cover a bewildering variety of subjects, running the gamut of human error from mere pin-pricking annoyances to complaints of wrongful infringement of liberty. They are all important to the person making them because they affect his life.

While taking every complaint seriously and giving it the needed attention, the Ombudsman has, of course, to tell some complainants that he cannot deal with their grievances. The test is: have the civil rights of the person complaining been interfered with by an agency or an official?

There are people who enjoy making a fuss, and they are annoyed when other people remain undisturbed. The Ombudsman may decide not to proceed with a case if he believes the complaint to be frivolous, not made in good faith, or designed to attack a person rather than to criticize an action. On occasion an Ombudsman has found it necessary to advise complainants to cease groundless attacks on departments or officials.

What sort of man?

Who can fill that sort of office? He must be a person with wide knowledge, high prestige, personal merit, great energy, and abundant courage. He must be able to stand against criticism, concerned more about discharging a job of social worth than with personal popularity.

Professor Sandler wrote in *The Annals*: "He should be so carefully selected that there never could be a question of his honesty, integrity, ability or motive. This is indeed to ask for perfection, or pretty close to it. But it should be aimed for. In all the 160 years that Sweden has had its Ombudsman, the *man* has never been doubted."

The character of the man having been taken account of, it remains to lay down the ground rules for his guidance. The Ombudsman is not appointed because of people's lack of confidence in the public service. He will not exercise general supervision or management over the administrative process, but will deal with individual grievances of citizens who complain that they have been hurt or annoyed by the occasional mistakes made by government departments. These are matters which, while of no great public moment and quite unlikely to make headlines, are of very real importance to the individuals concerned.

The Ombudsman is someone who will listen. Just to be able to tell one's troubles to a person of consequence

is a relief. But the Ombudsman is in position to do something about these troubles. He can reach the ears of the individual or organization by whom the wrong was inflicted.

Using the Ombudsman

Anybody who feels that he has been unfairly dealt with by a government agency or official may carry his complaint to the Ombudsman. The citizen who believes that he has been given the run-around by the Circumlocution Office (satirized in Dickens' *Little Dorrit*) will find — at least in Denmark — a sign on the Ombudsman's office: *The door is open.*

There is nothing belittling to one in seeking advice, or in asking help from the Ombudsman. People who are big in spirit are willing to ask for, accept, and consider advice. Test your case by asking: "Can the Ombudsman explain my difficulty, solve my problem, enlighten me on this point, or show me the way to get redress for my injury?" The answer you receive from the Ombudsman will be the honest and impartial advice of a clever, honourable and independent man, well versed in the matters he handles.

Keep in mind that the Ombudsman is not a clairvoyant, able to read your mind. He is an intelligent man. It is your duty, and it is necessary to the successful pleading of your case, to give him all the facts and reasons.

Need for the Ombudsman

Many countries and several Canadian provinces have found it logical that as operations of government increasingly affect the lives of citizens, there should be an equal increase in the care taken to make sure that such intervention is carried out with caution.

Dr. Donald C. Rowat of Carleton University, named by Mr. Cheng as the leading Canadian expert on the subject, is author of *The Ombudsman: Citizen's Defender* (University of Toronto Press, 1965). He gave testimony before the 1964 parliamentary committee which recommended appointment of an Ombudsman for the federal government and one for each of the provinces.

It was Socrates, the man who professed not to be wise but to seek wisdom, who said: "Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially." That is an excellent description of the ideal Ombudsman, and an argument for his need.

The Ombudsman is not to be confused with the writer of advice columns in the newspapers. He is a responsible person — responsible to the person he serves, responsible to his parliament, responsible to the agencies with which he deals, and responsible in a really personal way to himself for the decisions he makes and the actions he takes.