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**Thursday 10 April 2008**

**Journal  
des débats  
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**Jeudi 10 avril 2008**

**Standing committee on  
the Legislative Assembly**

Ombudsman Ontario

**Comité permanent de  
l'Assemblée législative**

Ombudsman Ontario

Chair: Bas Balkissoon  
Clerk: Tonia Grannum

Président : Bas Balkissoon  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
THE LEGISLATIVE ASSEMBLYCOMITÉ PERMANENT DE  
L'ASSEMBLÉE LÉGISLATIVE

Thursday 10 April 2008

Jeudi 10 avril 2008

*The committee met at 1608 in committee room 1, following a closed session.*

## OMBUDSMAN ONTARIO

**The Chair (Mr. Bas Balkissoon):** Mr. Marin, thank you very much for taking the opportunity to come and present to us, as the committee has invited you. If you could just introduce yourself and those accompanying you for the record.

**Mr. André Marin:** Thank you very much. I'm accompanied this afternoon by Wendy Ray, who is the deputy Ombudsman and also senior counsel at our office.

Thank you for inviting me and giving me the opportunity to talk about the relationship between my office and the Legislative Assembly. I see many new faces on this committee, and I trust this will be, as Humphrey Bogart said to Claude Rains, "the beginning of a beautiful friendship."

In fact, the relationship between our two institutions doesn't go back quite as far as Casablanca, but it does go back to the 1970s. It was the era of flower power and power to the people, and one of the lasting benefits was the flowering of Ombudsmen's offices across Canada.

In Ontario, the office of the Ombudsman was established in 1975 by the Bill Davis government. The first Ombudsman was Arthur Maloney, and he made an indelible mark, setting in place a vision that our office strives to embody every day. He believed that the Ombudsman should be a force to humanize government and to guide citizens through what he called "the increasingly complex labyrinth of government."

Let me remind you that what he said was in 1975. At that time, the Ontario government's entire budget was only \$12.5 billion, and there were only 70,000 public servants. Budgets and bureaucracy have now mushroomed to the point that, for the average person, the complex labyrinth of Mr. Maloney's era has become a massive and almost impenetrable maze today.

As the size of government has grown, so, I believe, has the need for the Ombudsman. But the principles our office stands for have actually changed very little in the 200 years since the first parliamentary Ombudsman was created in Sweden in 1809. The foundation of ombudsmanry rests on four pillars: independence, impartiality, confidentiality and a credible investigative process. When he was sworn in as the first Ombudsman, Arthur

Maloney told the Legislative Assembly of the day that he viewed every MPP as an ombudsman in his or her own right. Each of you, like me, is a conduit for citizens to access the corridors of power and a powerful voice for those who, on their own, might never be heard.

While MPPs must also do their work within the party system and be guided by a government agenda, the Ombudsman's one and only loyalty is to the public interest. The Ombudsman's primary concern is fairness; he does not advocate for the citizens against the government, for example, but investigates and delivers opinions on whether or not the government's behaviour was unjust, oppressive, unfair or just plain wrong. He recommends ways to rectify problems and make things better, which the government is free to accept—or not.

So, despite the existence of robust investigative tools, the ultimate power of the Ombudsman is only to make a recommendation and to use moral suasion to get it implemented. In theory, it might not look like this kind of intervention could produce any concrete results. The practice over the last 33 years, however, demonstrates quite the opposite: The Ombudsman's work has been a potent agent of change.

As you may know, since I became Ontario's sixth Ombudsman three years ago, I have focused on using our office's resources in ways that will help the greatest number of Ontarians with issues of great public interest. We deal with complaints in two ways. We handle more than 20,000 individual calls a year and resolve the majority of those through what I call shuttle diplomacy—a few phone calls to cut through the red tape are usually all it takes to get results, without the need for a major investigation. Then there are the systemic cases, where we might have dozens or even hundreds of complaints about a broad problem of significant public interest. These are the subject of field investigations by the special unit I created called the special Ombudsman response team, or SORT, essentially the SWAT team of the Ombudsman's office. This is the team whose investigations in the past three years have prompted the sweeping government reforms you're all aware of.

First, special-needs children in residential care were returned to their parents' custody. Another example was newborn screening, where the testing was increased from just two potentially fatal disorders to 29. The property tax system was overhauled, as were the Criminal Injuries Compensation Board, OHIP's out-of-country program

and the lottery system, to name just a few.

In all of these cases, and in every major case that SORT has undertaken, the government has accepted all of our recommendations. These are changes that affect Ontarians in just about every area of their lives, be they new parents, property owners or lottery players. It's fair to say that millions of people have been helped by the changes the government made, brought about by a few dozen or a few hundred complaints to us.

The remarkable powers of investigation enjoyed by my office are set out in the Ombudsman Act, including the power to subpoena witnesses and the requirement that government bodies must co-operate with my investigations. The act allows me to report my findings annually and through special reports as I see fit, and those reports are public. The reporting ability is key to my exercise of moral suasion.

Just so you understand the process, in an Ombudsman investigation we inform the affected ministry or agency of our intent to investigate. When our preliminary report is completed, we send it to the ministry and give them a chance to respond to our findings and recommendations. Based on their response and the issue at hand, I may or may not issue a final report. When I do, that report is tabled with the Legislature and made public.

When I release a major report, I have made it a practice to meet or contact all three political party leaders so that everyone knows what to expect and everyone is on a level playing field. I know that this has been appreciated by all leaders, and I am confident from my conversations and correspondence with all of them that they truly understand the value of the work that our independent, non-partisan office is doing for all Ontarians. I know that MPPs from all three parties also understand the value of referring constituents to our office when they run into a problem within the bureaucracy or a government agency.

This positive attitude from parliamentarians is an essential ingredient in our office's recipe for success. As I said in my last annual report and intend to reiterate in the next one in June, we have only been able to achieve the successes we have because of the co-operation of government. It has been astute enough to know when our criticisms are right, humble enough to admit when it has been wrong and generous enough in spirit to work with us in forging solutions to the problems we have identified. This is a testament to this province's commitment to our democratic tradition.

This year in particular has been a remarkable one for our office's relationship with the government and Legislative Assembly. Four months ago, we hosted a training program for administrative investigators from Ombudsman offices across Canada and around the world. We were delighted when the Premier came to our reception. As far as he and I are aware, it was the first time a sitting Premier has ever visited the Office of the Ombudsman in its history. Not only did the Premier speak to the guests about the importance of our investigations to improving his government's work, but at the same training course we also had the then secretary of cabinet, Mr. Tony

Dean, address participants about how it feels to find yourself at the other end of the Ombudsman's telescope.

Mr. Dean's message was an important and very constructive one, and I'd like to leave you with it today. He simply reminded us of our common goal as public servants. Although you are elected MPPs, I am an independent officer of the Legislature, and bureaucrats are employees of the government. We are all public servants, and we are all here because, fundamentally, we believe that government can be a source of help for people, not a hindrance.

**1620**

More than that, all Ontario citizens expect our government to treat us fairly in our own dealings with it, and we wouldn't do what we do if we didn't believe our public service can make a positive difference. I look forward to working with all of you in the next couple of years with that in mind.

**The Chair (Mr. Bas Balkissoon):** Thank you very much. Questions, comments?

**Mr. Norm Miller:** First of all, thank you very much for coming today and reporting. You've certainly been very busy with lots of reports and have been very proactive.

I'll start out with just a specific question. You did the report A Test of Wills, I think it was called. It had to do with the case of Richard Wills and how \$1 million was paid for as an expense through legal aid. You made recommendations. As I understand, the government has put into place a protocol to deal with this situation, but in fact you were recommending legislative changes. Can you explain why legislative changes are needed versus just the protocol that the government has put in place?

**Mr. André Marin:** The problem with protocol is that it's not a legally binding document. As personnel change, as ministers, senior leaders and management change in the bureaucracy, they're not necessarily bound by it, nor are defence lawyers, nor is the judiciary. A protocol is an interesting step forward. It's not a bad thing, but it doesn't have the kind of backbone that you need to prevent another Richard Wills from working the system.

In the case of Wills that we investigated, the defence lawyer specifically disregarded, in that case, certain aspects of practice and procedure which were in place at legal aid, recognizing that it's just a difference of opinion. In my opinion, another protocol wouldn't necessarily bind a similar defence lawyer in the future, whereas legislation has the heft, authority and binding aspect to it that a protocol doesn't. That would be a definite way to nip it in the bud.

**Mr. Norm Miller:** So in a case like that, where you have made a recommendation that there be legislative changes, they've gone part way and improved things but not necessarily done what you wanted. Do you revisit the situation a year down the road and make another report? Even in something like, for example, your MPAC report, which you spent a lot of time on and made 25 recommendations and the government's acted on a few of those, at least, do you at some point in the future come

back and note what has been done and what hasn't been done?

**Mr. André Marin:** Absolutely. We monitor responses and the implementation of recommendations. The protocol implementation as a result of the Wills case, as I've said, is not a rejection of the implementation of the recommendation; it's just not necessarily the full measure. So we'll leave it at that. We'll continue to monitor it. These are cases where I hope I'm wrong, but if we're not we'll remind the government that they did not adopt proper legislation.

It's customary for us, when we complete a field investigation, to recommend to the government that every three or four months they report to us what they've done to further the issue. One of the best examples is the case of lotteries, where every three months they report to us exactly what they've done. It allows us to gauge whether or not they're just paying lip service to the recommendation or whether they're in fact implementing it. In the case of the OLG, I was very happy to see that some extremely important cultural and systemic changes have happened as a result of the report.

**Mr. Norm Miller:** You had been looking for jurisdiction over the children's aid society. As far as I understand, there are eight provinces that do have their Ombudsman have jurisdiction over the CAS. Can you explain why you want to have jurisdiction over the CAS?

**Mr. André Marin:** Yes. The CAS is part of what we refer to as the MUSH sector—municipalities, universities, school boards, hospitals, long-term care, children's aid societies—where Ontario provides no independent oversight of the kind afforded by most provinces. In the case of hospitals, we're the only Ombudsman's office with no jurisdiction over the hospital field. Quebec gave their Ombudsman jurisdiction a few years ago. The last one to join the group was Alberta.

The children's aid societies are another example, spending enormous amounts of public funds with no independent avenue of complaint for those who are not happy with the system. It's an area where we're lagging behind other provinces. And again, the government never gave us an absolute rejection of our submission. It's more a "Let's wait and see" kind of approach. So I think that eventually we'll give it, whether it's within the next year, two or 10 years, but these are areas that are absolutely wanting in oversight.

**Mr. Norm Miller:** Certainly, that's been my experience as an MPP with the children's aid society. We get quite a few cases coming into our constituency office to do with the children's aid society, and as an MPP, we're more or less powerless to do anything for them. So certainly that's something that I support.

**Mr. André Marin:** The Auditor General's mandate was expanded in a lot of these areas, such as hospitals and CASs, a few years ago, and that would have been the logical time to extend our mandate as well, but it wasn't done. The Auditor General has had audits of the CAS that were made public, showing the kinds of abuses and

lack of diligence, and he's now conducting audits of hospitals. It's an area that absolutely needs closer scrutiny.

**Mr. Norm Miller:** Thank you. I think Sylvia has—

**The Chair (Mr. Bas Balkissoon):** I have Mr. Flynn, and then I'll come back to you.

**Mr. Kevin Daniel Flynn:** Mr. Marin, thank you for the presentation. I thought it was very thorough and I enjoyed it.

In number 16, you said, "This year in particular has been a remarkable one for our office's relationship with the government and Legislative Assembly." I'm assuming you meant that in a positive sense?

**Mr. André Marin:** Absolutely.

**Mr. Kevin Daniel Flynn:** Okay. That's good. Now, what is different? You go on in the rest of point 16 and the rest of point 17 to use an example of the Premier visiting, and a conversation and a presentation by Mr. Dean. But I'm sure there would be other things that weren't included into those two points. Has it been remarkable in that you are seeing some action on your recommendations or the relationship or—

**Mr. André Marin:** We have found that, whereas on the jurisdictional issue the government has been not very receptive to modernizing and updating oversight, on the actual response to recommendations, the government has been extremely responsive. I can think of the last budget, for example, where the reverse onus in the case of MPAC was addressed. That was a long-standing recommendation by this office.

The reforms on the lottery front: Something like half of senior management at the OLG was replaced following our report. Right now, buying a lottery ticket is a very different experience than it was before, and there are many more changes that are coming forward to strengthen the security of the lottery system as a result of our recommendations.

So it's been a very positive experience dealing with the government, but it has also been a very positive experience dealing with the opposition leaders, who have been very supportive of the office and with whom I entertain a very close rapport.

All in all, I think the system is working the way it should. From an Ombudsman perspective, I'm not looking for new powers. We have all the powers we can dream of. What I'm looking for is a new area in which to exercise them. In the MUSH sector, if you look at issues regarding long-term care, for example, every few months it explodes in the media: There's another scandal involving long-term care; hospitals are being taken over by the government. It tells me that there are issues out there that are not being proactively addressed. That's one of the reasons why our office has been supportive of expanded oversight ability over those bodies.

**Mr. Kevin Daniel Flynn:** Thank you. In a comparison of jurisdictions throughout Canada, we use the other provinces, and I think you pointed out that we're one of the few provinces that does not give you oversight powers with the children's aid societies, for example. When you make those types of comparisons, do you also

compare the outcomes, what it means to the average person in those provinces in terms of perhaps cost, in terms of results, in terms of citizens being happier in Manitoba, for example, because the Ombudsman there has powers? Do you actually do that level of analysis, or is it just an assumption that, "If I had those powers, I could do a better job than I'm doing now"?

**1630**

**Mr. André Marin:** No, we don't look at the experience in other provinces, but what we do look at is the number of complaints we have every year dealing with these sectors, and they're in the hundreds. These are complaints that come in despite the fact that we have no jurisdiction in this area.

Let me share with you a couple of examples. You'll see this appearing in our annual report shortly. But we have just under 2,000 complaints that fall under the MUSH sector every year. It's important, because every time you use a number, the retort I get is, "Well, that's 2,000, but how many people visit a hospital per year? It's a million people, so that's not a lot." There's not a lot you can read into the numbers except to say that the fact that we don't have jurisdiction—everybody knows there's no recourse. We don't advertise it and we don't pursue these complaints, and we still get 2,000. The nature of those complaints is very serious as well. It tells me that there's demand, a thirst for oversight among Ontarians in these areas. Unfortunately, we can't provide it right now.

**Mr. Kevin Daniel Flynn:** The next question is theoretical; it's not based on any experience. But in point 5 you said the foundation of your profession "rests on four pillars: independence, impartiality, confidentiality and a credible investigative process." In your daily employment, how do the people of Ontario know that they have a good Ombudsman? This is not aimed at you personally, by the way. That's why I opened saying it's theoretical. Where's the checkpoint in the system?

**Mr. André Marin:** Yes, it's a very good question. I think it's the degree to which the Ombudsman can be an agent of change in the system. That, I think, is the ultimate test of the effectiveness of an Ombudsman. It's the extent to which you can demonstrate your value as an agent of change.

**Mr. Kevin Daniel Flynn:** At each point in our own careers, I think, as politicians or as public servants, every so often we stop and just take account of what we've done. Sometimes that's done by an annual employment review. In your term, which I understand is five years, is there an annual review? Is there an audit done of the office? Do you do that to yourself? Is it a self-investigative process, or do you do that every five years and hope you've done a good job and hope there's a renewal?

**Mr. André Marin:** In the world of Ombudsmen, you want accountability, you want responsibility, but you also want to provide the office with independence. The way the Ombudsman Act of Ontario provides that is that we are audited on a yearly basis by the Auditor General. Our finances are audited that way. My recommendations are

not binding, of course, so if the government doesn't agree with the substance of my work, they can reject it. Ultimately, I'm accountable to members of the Legislative Assembly and to the public for the way I approach any given complaint and issues that may present themselves. Those are the levels of accountability.

**Mr. Kevin Daniel Flynn:** Now, is that accountability through the Speaker's office?

**Mr. André Marin:** Yes.

**Mr. Kevin Daniel Flynn:** Thank you.

**The Chair (Mr. Bas Balkissoon):** Ms. Jones.

**Ms. Sylvia Jones:** As a new member, I'm finding this very helpful, so thank you for appearing.

I wanted to go back to your report, A Test of Wills. You made reference to the fact that the Attorney General's office has been following up with you and they are putting protocols in place. Has there been any commitment or discussion about whether they will actually bring forward the changes in the legislation that you were suggesting?

**Mr. André Marin:** No. The response by the government was, "Well, let's adopt a protocol and wait and see whether that deals with the issue."

**Ms. Sylvia Jones:** If I could go back in your speaking notes, you reference about 20,000 calls a year?

**Mr. André Marin:** Yes.

**Ms. Sylvia Jones:** Of those, how many would fall under areas that you do not have the jurisdiction to investigate?

**Mr. André Marin:** About 10%.

**Ms. Sylvia Jones:** If you had a wish list for expanding your investigative powers, where would you go first?

**Mr. André Marin:** Out of the MUSH sector, I think the one that's—it's hard to choose. The CAS with children who are vulnerable and under the care of a third party versus hospitals, long-term care—it's very hard. I'm often asked that question, but I think the area that's the ripest for oversight is the area of hospitals, because we are clearly the only province in Canada that doesn't provide it. The budget that's handed over to hospitals is something like \$30 billion—a huge amount of money. In the last year, the government has taken over administration of a record number of hospitals, showing that the government obviously has an issue with the way hospitals are run. So to me, this is a very ripe area where oversight is long overdue.

**Ms. Sylvia Jones:** I noticed that you used the opportunity, once the government took over the William Osler Health Centre, to use your jurisdiction and investigate. I'm not sure how long your average investigation takes, but using the scenario of the government stepping out before your investigation is complete, what happens in that situation?

**Mr. André Marin:** I'm sorry, what do you mean?

**Ms. Sylvia Jones:** They have now taken over operating it.

**Mr. André Marin:** Yes.

**Ms. Sylvia Jones:** What if they turn it back over to the hospital board next month? Would that mean your inves-

tigation would have to cease, even though it started previously?

**Mr. André Marin:** No. Once the investigation begins, we're seized of the matter and we would pursue it.

**Ms. Sylvia Jones:** How long is your average investigation?

**Mr. André Marin:** Some of them are a matter of hours, if they require a few phone calls to turn the matter around.

**Ms. Sylvia Jones:** I'm thinking more in terms of the ones where you issue reports.

**Mr. André Marin:** Field investigations?

**Ms. Sylvia Jones:** Yes.

**Mr. André Marin:** They're normally done within a month or two. Some of them are a little more complicated. Right now, we're investigating PET scans in Ontario. That has been outstanding since September, because it's a very delicate, complicated investigation where we need to ramp up our knowledge of the issues involved and make sure we're on the correct path. Those take a little longer. But normally, investigations are measured in a matter of weeks or a couple of months.

**Ms. Sylvia Jones:** Can you explain to the committee a little bit about which investigations you proceed with? I'm thinking in terms of my colleague from Haliburton–Victoria–Brock, who mentioned to me that her municipality has asked for an investigation of the Best Start program. They were the only ones who didn't get funding when everyone else across the province did: a pretty narrow focus in terms of your investigative powers, so the numbers wouldn't necessarily encourage your office to look at it, and yet very important to a small sector of the province. How do you make your judgment calls on which ones get more detailed investigation?

**Mr. André Marin:** There are two levels of assessment. First, we're not there to dictate issues of broad public policy to the government. We're there for mechanics. We're the oil in the machinery. We can't be dictating to the government how to resolve big, broad issues of public policy. So if our complaint deals with that, we won't be doing it because we're not elected representatives and it's not part of our function to do that.

If the matter falls into an issue of mechanics, such as in the case of Richard Wills—we've been talking about it—we don't dictate to the government how legal aid should be set up. But once they've set it up, we're going to be pointing out how the way they've set it up is missing the mark. That's the distinction.

Once we've identified that it's a mechanical issue and not one of broad public policy, before we launch a field investigation—first of all, I want to say at the outset that it's not perfect science. It's revolves around an issue of discretion and judgment. That discretion and judgement are exercised based on the following points: The issue generally has to be one that shuttle diplomacy has proven unable to resolve or one that would not look like it's proper to be resolved through shuttle diplomacy. Another criterion would be the seriousness of the allegation. Another would be the strength of the case; is it a strong

complaint on the face of it? Another one would be the nature of the injustice.

We weigh all these factors together. We have a discussion in our office and decide where we're going to be focusing our money. Like I said, it's not an exact science. It very much has to do with a call based on discretion. If you look at past cases we've done, the lotteries—who is Ontario hasn't played the lottery system? Okay, maybe a few people, but it's widely, widely played. We depend on the revenues of lotteries to sustain our infrastructure. Confidence in the lotteries is what inspires people to buy the tickets. The response given by the OLG at the time was to blame the people purchasing tickets and not accept responsibility. It had spent almost half a million dollars fighting an 82-year-old man over \$200,000 of winnings. When you add it all up, it's an area that demonstrated that it needed a sharp intervention, on the face of it. History demonstrated, in the end, that it did require it. So those are the kinds of things.

**1640**

In the case of Richard Wills, the very nature of defrauding a legal aid system, where if you make more than \$29,000 you're disqualified, and you have a millionaire who impoverishes himself and then has the province pick up a million-dollar defence tab, we weigh this inside our office and we decide which ones are really worth the punch or the impact, bearing in mind the finite resources we have access to.

**The Chair (Mr. Bas Balkissoon):** Mr. Levac.

**Mr. Dave Levac:** Thank you, Mr. Chairman, for the opportunity to question Mr. Marin. Merci beaucoup.

I want to start by saying thank you very much for the process that you've implemented in dealing with members when they are encouraging their citizenry to use the Ombudsman and clarifying when it's appropriate and when it's not. I have to compliment you on that, because that really has helped in making sure people understand exactly what you just went through, which is, what is your job and when can you get involved or when should you get involved? Further to that, I would also thank you for keeping in touch, to ensure that there's a flow of information back and forth as to when you might pull the trigger. That's been very valuable and helpful for my citizens.

I do want to ask you whether or not this is opinion or an assumption that you're making in your bullet number 7. I'm a little concerned if it's an assumption, so I'd like to maybe get you to clarify it.

When you say, "While MPPs must also do their work within the party system and guided by a government agenda," is there an assumption there that the MPP would not fight on behalf of the citizenry when they do refer citizens to the Ombudsman, or when they do work on their behalf? Do you see where I'm coming from?

**Mr. André Marin:** Yes, absolutely.

**Mr. Dave Levac:** I might be misreading this.

**Mr. André Marin:** Yes. I think the suggestion here is that there are constraints put on MPPs by party discipline and by the very nature of the system, which constraints

don't seize the Ombudsman's office. Certainly, there was absolutely no suggestion that as MPPs you would not be pursuing the right thing. It's simply that there are constraints by the very nature of the political system under which we operate.

**Mr. Dave Levac:** Okay, I'll consider it an assumption that I wouldn't use the Ombudsman as a tool to get those citizens the rights they deserve, because I would not do that to a constituent of mine who deserved the right of the Ombudsman in a bureaucracy where that's being done.

**Mr. André Marin:** No, I think this is meant as a broader policy agenda. It's not in terms of accessing the office. I absolutely accept what you say and we agree on that.

**Mr. Dave Levac:** That's good. It was a little concerning for me, simply because I have a lot of letters and recommendations to constituents to use your office.

**Mr. André Marin:** Absolutely. I encourage parliamentarians of all backgrounds, in all instances, to refer cases to us. Actually, every time an MPP writes to me concerning a constituent, that letter is brought to my attention. The question is, "Why won't you see every letter, every complaint?" Because we have 20,000. It wouldn't be workable. But every time a case is referred to me by an MPP, I will personally, take notice of that complaint.

**Mr. Dave Levac:** I would add to that as well that there are also circumstances in which we guide our constituents to you, as opposed to us doing it on their behalf. We tell our constituents, on a regular basis, "I think this one would get further, faster, if you went to the Ombudsman." So there's also that piece of the puzzle that you should be made aware of, if you didn't know that was happening from this side.

**Mr. André Marin:** We thank you for that.

**Mr. Dave Levac:** Quite frankly, it is an effective tool, just to let you know. It also shows the constituency that if they feel compelled to think that a ministry might not be listening to them, even after they've used their MPP to try to open a door, there's another channel to open and there's another opportunity for us to take care of that circumstance.

Are you aware that there are other ombudsmen in the province who have been assigned to take care of other of the MUSH—for instance, the creation of an ombudsman for long-term-care homes, a children's ombudsman, a children's advocate lawyer, those types of things—and their purpose might be that we're trying to make sure that we get the balance specific?

**Mr. André Marin:** Yes, I'm aware of those different positions. Some hospitals have set up their own ombudsman as well. They refer to them as the patient care advocate and so on. But although they may wear the title and have the position formally assigned to them, they don't enjoy the kind of investigative tools and independence and impartiality that this office enjoys.

The child advocate is an entirely different beast in the sense that the child advocate is an advocate. It is not an independent investigator who's impartial; it's someone

who's in charge of speaking out on behalf of children. My job is not to speak out on behalf of anybody; it is to investigate and impartially decide.

To come back to your point, I don't think those are bad things. It's not a bad thing to have patient care advocates, child advocates and so on, but they're not the real thing and they shouldn't be mistaken for the real thing. Sometimes when you add up all the money that's being spent on all these different offices that don't have the investigative tools, you think that for a fraction of that amount, you could actually have the Ombudsman provide the same kind of oversight we provide for the rest of the government.

**Mr. Dave Levac:** That's not bad. I can understand the position that you're taking in terms of the independence. That's the key point here.

In terms of the investigative power, in addition to that, you're suggesting that because of that component as well, it would make it easier for the Ombudsman to drill down, in your report, and find out where the flaw was?

**Mr. André Marin:** Absolutely. The typical thing when we get involved in an investigation is that we send a section 18. If you look under our act, section 18 of the act is when we're formally telling a government agency or ministry that our jurisdiction is now engaged. When we send a section 18 notice, we accompany it with what we refer to in our office as a "wish list" letter. The wish list letter tells the government body what we expect of them in terms of documents, information and interviews, and it gives them deadlines. The reason why all that works and it all happens and we get that co-operation is because we're backed up by the potent investigative tools in our act: the right to subpoena and call hearings. It's a lot easier to come in politely when you carry a big stick in your back pocket, a stick which we've never used. At least I've never used it, because there's never been a need to use it.

Whereas if you're a patient care advocate working for a hospital, in the hospital bureaucracy, and you claim to come and investigate the head of a medical department, good luck in trying to get access to anything. Good luck in publishing a report that could be embarrassing to the hospital. It's not the same level at all as the intervention that we could provide.

**Mr. Dave Levac:** I appreciate your response.

Finally, would you be adverse to coming to this committee when doing your reports?

**Mr. André Marin:** Absolutely not. I would be more than honoured to come here and share our findings with the committee.

**Mr. Dave Levac:** To you and your entire staff, thank you.

**Mr. Bob Delaney:** Mr. Marin, I'm glad to see you again. You and I go back in our relationship a few years. Welcome back.

**Mr. André Marin:** Thank you, sir.

**Mr. Shafiq Qaadri:** Like in Casablanca.



**Mr. Bob Delaney:** That's right. I'm not sure if I could call it a beautiful friendship; I haven't had a chance to know you quite that well.

I want to pick up where Mr. Levac left off. You've made a number of what I would call assertions, some of which I'm not entirely comfortable with. You talk particularly about the hospital sector, referring in general to the patient care advocate, whatever that function may be called if it exists at any particular hospital. You've suggested that they lack the impartiality that you have, the investigative tools that you have. On what basis have you made these assertions?

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**Mr. André Marin:** We were contacted once by a patient advocate for a hospital—

**Mr. Bob Delaney:** Once?

**Mr. André Marin:** Yes. We were once contacted by a patient care advocate who indicated that she was the ombudsman for a particular hospital, and when I looked at the framework under which she operated, it had none of the safeguards, none of the investigative tools and certainly none of the public reporting that our office offers—and that's one of the rare hospitals that actually had one. I'm not aware of any structured, independent oversight agency for hospitals in this province.

**Mr. Bob Delaney:** There are 155 hospitals in Ontario. Have you done a reasonable survey of any statistically significant fraction of them?

**Mr. André Marin:** No. I know that we get hundreds of complaints concerning hospitals that we can't address, and we have no other independent body to send them to.

**Mr. Bob Delaney:** You make a statement—I'm not sure whether this a typographical error in your statement to us—referring to the situation some 35 years ago. You say that at that time “there were only about 70,000 public servants.” The last estimate I read of the Ontario public service today is that it employs some 60,000 people. You make the assertion that the public service has grown dramatically since 35 years ago. I'm not quite sure where the numbers come from.

**Mr. André Marin:** The whole public service being 60,000 employees?

**Mr. Bob Delaney:** I understand that the size of the Ontario public service today is some 60,000 people.

**Mr. André Marin:** We oversee something like 400-and-something different bodies, from the OLG to MPAC to every single ministry. I can get you a number if you'd like, but I think that it's fair game that the number would be much more considerable than 60,000 today.

**Mr. Bob Delaney:** I'd just bring that to your attention.

You mentioned earlier, as well, that you are accountable to the public. In what specific way or with what specific mechanism are you accountable to the public?

**Mr. André Marin:** We need public confidence and credibility to do our job, and if we don't have that, we will not be able to do it effectively because the public will not have confidence in our processes and in our investigations. So we're accountable in that sense.

**Mr. Bob Delaney:** When you refer to confidence, what does confidence mean, from your perspective?

**Mr. André Marin:** The ability of members of the public to know that when they complain, they can trust that the system is operating the way it should; that complaints are investigated independently, impartially; that the Ombudsman makes calls without fear or favour, those calls being whether the matter under investigation is unfair, unjust, oppressive or just plain wrong. That is what I'm referring to.

**Mr. Bob Delaney:** Would you view results, in this case, pertaining to confidence as resolving the issue or being perceived in an adversarial relationship to the body that you investigate?

**Mr. André Marin:** Resolving issues, of course.

**Mr. Bob Delaney:** That's all I have for this round.

**Mr. Norm Miller:** Today you've started an investigation into access to positron emission tomography scans. Is that under your jurisdiction? I thought health care wasn't under your jurisdiction.

**Mr. André Marin:** What we're investigating is the Ministry of Health and Long-Term Care's funding of PET scans. Because that's a provincial ministry issue, we can investigate that. What we often cannot investigate is the implementation of those policies. So if the government says, “We're going to fund PET scans, we're going to pay for them,” we can't investigate how a particular hospital actually conducts them, which is often the irony in the work we do.

We can investigate how the Ministry of Children and Youth Services deals with CASs, but we can't investigate CASs. We can't follow the service into the hand of the person getting the service. That's a distinction. We can investigate the Ministry of Education's zero tolerance for violence in schools, but we can't investigate how schools are abiding by that policy or how they're applying it. When you think about it, you can oversee the bureaucrat in a building in Toronto, but you can't investigate how the service going right through their backyards is actually affecting Ontarians. That's the disconnect that's unfortunate.

PET scan funding is clearly a ministry issue, and because of that we can and have been investigating since September 7, 2007.

**Mr. Norm Miller:** Did you get many complaints about access to PET scans?

**Mr. André Marin:** We got 28 of them, several from physicians, and because of the nature of the complaints, we thought it was sufficiently compelling to take a closer look at that issue.

**Mr. Norm Miller:** When do you expect to have that report done?

**Mr. André Marin:** We expect to have it completed by early summer.

**Mr. Norm Miller:** Switching to another topic, in terms of the budgeting and staffing of your office, are you adequately staffed? Do you have a sufficient budget? Has it changed much in the last few years?

**Mr. André Marin:** Interestingly enough, when the

office was set up in 1975, there were 123 MPPs and 123 members of the Ombudsman's office. I've heard, at least anecdotally, that the Ombudsman at the time had wanted one staff member for every MPP. Right now, we're staffed at 89. If you look at the government numbers, the entire budget of the government was \$12 billion. Now we spend \$35 billion on health care alone.

Government has grown by leaps and bounds while the office has actually shrunk from 123 to 89, but we manage within that envelope. Would we want more money, like everybody else? Yes, but we're able to achieve what we achieve based on yearly small adjustments for salary and collective agreement obligations. We haven't received any new money for the office in many years.

**Mr. Norm Miller:** You mean it's been flatlined?

**Mr. André Marin:** Flat.

**Mr. Norm Miller:** What process do you go through to try to increase—

**Mr. André Marin:** Every year we present a business plan to the Board of Internal Economy and every year we get the opposition's support and the government opposes it.

**Mr. Norm Miller:** Why do you think the government's not supporting you on that?

**Mr. André Marin:** I don't have any further comment. But that's the process we go through.

That said, we operate within our budget. I'm reporting back to the Board of Internal Economy next week. That's why we have to be selective in the cases we proceed with. We have to exercise discretion and we have to pick the battles carefully to make sure that there's a systemic difference at the end of the day, so that we can maximize our efforts.

**Mr. Norm Miller:** What is your total budget?

**Mr. André Marin:** For last year, it was \$9.7 million. The estimates for 2008-09 will be \$10,030,000, which represents simply an increment to deal with the collective agreement obligations of the office and not any request for money this year.

**Mr. Dave Levac:** A topic that was brought up was the PET scans. I just have to ask this for clarity because I'm not an expert in the field. I do understand that this is a trial—what would you call it, a field study?—in terms of experiments in the use of PET scans. Is that a fact, and if that's the case, would that affect the application of your investigation?

**Mr. André Marin:** There are two areas we're investigating. One is the area you've mentioned, in that some people are getting access to free PET scans—those who fall under clinical trials. Some of the issues that we're looking at are, how are people selected to undergo PET scans under these clinical trials and who is eligible? Those kinds of questions.

The second question is one of process. Most Canadian provinces and the US and Europe have settled that the PET scan is a necessary diagnostic tool. In Ontario, we take the position that it requires further study. So we'll be looking at, how much more study do you require until you're able to make that decision? To what extent do you

require to reinvent the wheel—because that's a very live issue that's out there.

The third aspect, of course, is the broader picture of where this diagnostic tool fits in the Ministry of Health and the affordability of this tool. Those are the aspects and issues that we're looking at right now.

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**Mr. Dave Levac:** Within that study, then, you would use some science or experts in the field—not to employ them but to garner their expertise as to, if you're in the middle of a clinical study, your question would be not if there's more after that. You wouldn't expect them to stop a clinical trial because other provinces have already used it?

**Mr. André Marin:** No, absolutely not.

**Mr. Dave Levac:** I just want to make sure I'm clear, when it got brought up, as to whether or not—I needed to know the scope of what you were talking about in order to do that.

The second component to that sparks the next question. As you've described it, you would be investigating the overarching scope of the use of PET scans with studies of how they're applied elsewhere?

**Mr. André Marin:** Yes.

**Mr. Dave Levac:** And inside of that, the appropriateness of how the PET scan study is being conducted, the people who are used to help with that study and the individuals who are being scanned?

**Mr. André Marin:** It would be the accessibility. Some people want to be part of the trial so they can have free PET scanning. Other people are chosen for it.

**Mr. Dave Levac:** Which we would all want.

**Mr. André Marin:** Yes.

**Mr. Dave Levac:** But having said that, that's the scope of this test, as opposed to telling governments, "Yes, you have to use PET scans." It goes back to your other statement, in another answer, about differentiating between telling governments what they should and shouldn't do or fund versus the application, "and here are the parameters." That's what you're looking at?

**Mr. André Marin:** That's right. The issues of broad public policy are not issues that I, as Ombudsman, consider. I consider the mechanics: once a policy has been adopted, how it's carried through.

**Mr. Dave Levac:** Gotcha. That's good. My thanks for the clarity.

**Ms. Sylvia Jones:** Again, you'll have to forgive me because I am new to this game. I understand that part of your report last year dealt with some issues or concerns you had with children's aid societies and, for lack of a better word, their allotment of money. I'm now reading some of those individual children's aid society reports. Many of them make reference to your report and how they're dealing with it. In some cases, I'm seeing things where they have chosen not to act on the recommendations. I'm wondering what your follow-up is or can be within your office when you start to see, I guess, for lack of a better word, lack of action.

**Mr. André Marin:** We don't have jurisdiction over children's aid societies, Mr. Chair, so we have not produced a report. I'm not sure if you're referring to the Auditor General's report.

**Ms. Sylvia Jones:** Oh, that's it.

**Mr. André Marin:** Yes, I think you may be referring to that. We had a report on special-needs children, looking at the angle through the Ministry of Children and Youth Services, but not the direct CASs.

**Ms. Sylvia Jones:** Okay.

My other question relates back to William Osler. You did decide to investigate that in January, if I'm not mistaken. Not that I'm trying to presuppose what you are going to do, but have you made any decisions on whether you will be doing a separate report on the William Osler centre?

**Mr. André Marin:** At this stage, I do not anticipate producing a report based on what we have seen so far.

**Ms. Sylvia Jones:** Thank you.

**Mr. Bob Delaney:** Mr. Marin, in your discussion on your budget and your staffing, given the scope of the investigations that you do, to what degree would you employ or retain outsiders, consultants or specialists in the circumstances?

**Mr. André Marin:** It happens from time to time, but it's relatively rare. We did in the case of the OLG, for example, because the CBC had a statistician saying one thing and the OLG had another one saying something else. So we figured, heck, we might as well get our own too. We had the battle of the statisticians. Maybe we should have hired you. I think you have a background in—

**Mr. Bob Delaney:** I used to teach it at Ryerson.

**Mr. André Marin:** There you go. If you weren't an MPP, maybe we would have hired you as well.

So it happens from time to time, but generally we don't have to pay for expertise. People are quite happy, in their respective fields, to come and supply us with the necessary information. But that's one case where we did hire a statistician.

**Mr. Bob Delaney:** Do you find from time to time, and now particularly, when you're talking about positron emission tomography—it's a little esoteric even in the field of physics—that you'll run into an area where you think, "We need to broaden our expertise here or gain access in one form or another to someone who can help the office of the Ombudsman shape its thinking"?

**Mr. André Marin:** When we conduct our investigations, we acquire the necessary knowledge to be able to make a recommendation. The ultimate control to all this, the ultimate response, is from the government, because the government is full of expertise. If they think that a recommendation is not sound, they'll reject it. In the case of the OLG, we had to deal with very complicated theories of win. In the case of MPAC, we had to deal with the algorithms of property assessment. We encounter very specialized, very concentrated fields where we must ramp up our knowledge very quickly. When we need it, we go get it, and so far, when we've taken

positions based on expertise we've acquired, the government has accepted the recommendations. It tells me that we were getting it in the right cases.

**Mr. Bob Delaney:** Do you have a formal budget line or budget envelope for the task of communications or public relations or however you might term it?

**Mr. André Marin:** Yes, I do.

**Mr. Bob Delaney:** In other words, do you have full-time staff whose function that is?

**Mr. André Marin:** Yes.

**Mr. Bob Delaney:** How many would that be, roughly?

**Mr. André Marin:** Well, right now we've got two people in that position, and they are actually here. Linda Williamson is in the front row and Patricia Tomasi is right beside her. And we have a clerk who assists as well.

**Mr. Bob Delaney:** You also mentioned some of the bargaining units that you deal with in the context of your budget. What bargaining units are represented in the Office of the Ombudsman?

**Mr. André Marin:** I'll defer to the Deputy Ombudsman on that one.

**Ms. Wendy Ray:** The name of the union is COPE, Canadian Office and Professional Employees.

**Mr. Bob Delaney:** How are your relations with the bargaining unit right now?

**Ms. Wendy Ray:** We just entered into a new collective agreement on February 19. Everybody's doing their work and everybody seems to be happy with the agreement. In the end, there was an overwhelming vote for the agreement.

**Mr. Bob Delaney:** That's a good sign. Thank you.

**Mrs. Laura Albanese:** I am also new to this committee. I read here that it is part of the committee's mandate, under standing order 106, to "formulate general rules for the guidance of the Ombudsman in the exercise of his or her functions under the act." But then I also read that the committee has not formerly exercised its rule-formulating power since the late 1970s. So my question is, how could we be of help? What role would you see for this committee in assisting?

**Mr. André Marin:** I appreciate the question. I think the best thing the committee could do is to adopt a non-partisan approach.

I have been exposed, in the many years in this job and my prior job, to various parliamentary committees, and those who have been the most useful and effective are those who leave party politics at the door. I know it's not always easy in a parliamentary democracy. In my prior job, when I was the military ombudsman for Canada, I appeared frequently in front of parliamentary committee. I found them extremely useful in sharing information with the office and supporting the findings and making sure that the Department of National Defence was aware of the parliamentarians' pressures to move things along.

In the context of this job, we've had a very supportive Premier and cabinet; we've had a very supportive opposition in moving things forward. That's why as Om-

budsmen, we've been able to see the successes we have, because the system is working as it should.

One area where I think the system is failing is in providing oversight to the MUSH sector. If party politics prevail, it's the kind of issue where this committee is losing out on an opportunity to give it an objective assessment. I think that's an area where a non-partisan approach to the matter would resolve the issue pretty quickly, because it's pretty black and white as far as I'm concerned.

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**Mrs. Laura Albanese:** I understand that a non-partisan approach is very important. Beyond that, if you had a wish list, what would that be?

**Mr. André Marin:** As I answered in a prior question, I think it would be very useful for the committee to be well briefed on the cases in which we've pursued a field investigation. I think the committee will be able to see our office as more useful if it has more knowledge about how our office functions and the kinds of things we recommend, and I think that will have a multiplying effect in other areas. So I'd be more than pleased, whenever I table the report, to come and present it before the committee.

**Mr. Shafiq Qaadri:** Are there guidelines to the Ombudsman's office and to the various officials involved with regard to their own media outreach? When, for example, does the legitimate raising of your report and the concerns and the recommendations and, as you say, alerting both government and the members of the public as to your particular findings kind of cross into something else? For example, there are other members of the Legislative Assembly, whether it's clerks of the committees, clerks in Parliament, the Integrity Commissioner, and others whom I don't often see, if ever, in the media. Are there specific guidelines for that?

**Mr. André Marin:** In the world of ombudsmanry, the very essence of being an ombudsman—and this dates back to 1809—is the ability to shine a public spotlight on an issue. It's part and parcel of the work we do. It's an absolutely essential element, because moral suasion is all the office has at the end of the day.

The only guidelines would be your level of comfort with the issue, your respect of the oath of secrecy, your respect of process, the opportunity for government and complainants to be heard before you take positions on issues. They need to maintain impartiality and independence.

Those are all the things that, as Ombudsman, I have to work with, but the ability to reach out and shine that public spotlight on an issue is an absolute essential to the effectiveness of the office.

**Mr. Norm Miller:** I'm just looking at your annual report and a little graph showing the various areas that you don't have jurisdiction over, including municipalities. But in the past year, you have gotten jurisdiction over some municipalities, have you not? I believe the municipalities could either appoint their own ombudsman

or you could have oversight over some aspects of a municipality.

**Mr. André Marin:** The only aspect of a municipality which we can oversee is whether or not they have held an open meeting as prescribed by law, assuming they haven't ousted my jurisdiction to do so. In other words, by default, the Ombudsman's office is the investigator of complaints that a municipal council had an in camera meeting when they should have had a public one. But each municipality can opt out of that regime and appoint their own beholden investigator, if they want.

In Ontario, right now, we are the investigator for 200 of the 445 municipalities when it comes to complaints about open meetings only.

**Mr. Norm Miller:** So it's only whether the meeting was held in camera or not.

**Mr. André Marin:** Just that.

**Mr. Norm Miller:** When you take on a new responsibility like that, do you get any budget to go along with it?

**Mr. André Marin:** We had no additional budget increase to deal with this area.

**Mr. Norm Miller:** So there's no cost to the municipality, whereas I assume that if they've appointed their own, which about roughly half have, they would then have some sort of costs to cover?

**Mr. André Marin:** Absolutely—a \$1,200 retainer in some cases. The city of Ottawa hired their investigator—a \$25,000-a-year retainer, for just one city.

We've had no additional funds to deal with this whole new area of jurisdiction, and it's one that I've had to absorb out of our budget.

**Mr. Norm Miller:** What do you think the motivation is for a municipality wanting to have to pay out some of their tax dollars to set up their own sort of oversight?

**Mr. André Marin:** I think many municipalities have been very resentful of this new obligation of transparency passed by Queen's Park. They've not embraced it at all. It's been the motivation why they've opted out, because it's a lot easier to hire someone with no degree of independence, who is on a short-term contract, to put up a shingle saying, "You shall investigate complaints of open meetings."

I hate to generalize. Some of them have been leaders in the field. For example, the mayor of Sarnia has been outspokenly in favour and he thinks the legislation should have gone further. But the majority of them have not embraced openness at all.

**Mr. Norm Miller:** I see on your chart also that boards of education are an area you don't have oversight over in the province of Ontario. Once again, next to health care, it's the next biggest item in the Ontario budget.

**Mr. André Marin:** That's correct.

**Mr. Norm Miller:** I see that other provinces, once again, do. The Ombudsman does have oversight over education. From my perspective, I would think it would make sense that you do have jurisdiction over education. The public good would be served if you were overlooking it.

**Mr. André Marin:** Yes, thank you. I also agree with that.

**Mr. Norm Miller:** I've just about done questions. Thank you very much for coming today and thanks for the job you're doing.

**The Chair (Mr. Bas Balkissoon):** Ms. Jones. We have one more.

**Ms. Sylvia Jones:** Yes, I just have one further. If I can reinforce what Mr. Miller said, it must be very challenging to follow the money when you have to stop at the door of all of these MUSH agencies. I wish you well in that quest.

I have a specific question related back to your MPP complaints. I dealt with a family who had to deal with the death of their son while he was getting social services. To make it short, when someone passes away while they're on social services, there is a set amount of money given for funeral expenses. The challenge that we ran into is that that amount must be pre-approved, and in the case of this family, the son died on a Friday, after 5, so they did not have the opportunity to get that pre-approval. Would

that be an example of something that I could bring to you and say, "I see a problem with the existing system." Could you take it further, using, as you say, your moral suasion?

**Mr. André Marin:** Yes. Obviously, we'd have to investigate it and agree that it's worth going to the next phase of making a recommendation, but, absolutely, we would love to get that.

**Ms. Sylvia Jones:** This has been very helpful. I appreciate your time.

**Mr. André Marin:** Pleasure.

**The Chair (Mr. Bas Balkissoon):** Mr. Marin, thank you very much for coming here and sharing your thoughts with us. We really appreciate it and we look forward to seeing you again.

**Mr. André Marin:** Thank you, Mr. Chair, and thank you to all committee members for their warm reception.

**The Chair (Mr. Bas Balkissoon):** I guess that's the end of our agenda. The committee is adjourned.

*The committee adjourned at 1716.*





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