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Speaker's Notes (CAROA Conference, April 2008)

THE FUNCTION OF THE OMBUDSMAN IN THE DELIVERY OF A TRANSPARENT HUMAN RIGHTS AND SOCIAL JUSTICE SYSTEM

The Human Rights Commission resolves, through mediation or public hearings, applications filed under the Ontario *Human Rights Code* which was enacted in 1962.

The core goal of the Human Rights Commission is to provide early, direct and informed access to mediation and to achieve a fair, just and expeditious resolution on its merits.

Mediation

Mediators are assigned to perform mediation duties within tight time frames. The mediator is expected to contact the parties through schedulers to promote early mediation. The mediator will generally be expected to conduct the mediation in a rights and interest-based, evaluative, mode, and to ensure that the parties can tell their stories before a resolution is sought. The mediator is expected to evaluate and assess the strength of the parties' claims and offer suggestions for resolution, in keeping with the merits of the case and the importance of the human rights principles raised.

Mediators are required to prepare mediation reports, in accordance with the Commission's Guidelines. If there is a resolution the mediator prepares the Minutes of Settlement and forwards the instruments of settlement and settlement documents to the parties following the resolution. If there is no resolution, the mediator prepares the file for investigation.

Model of Mediation

The Commission is unique in that it is one of a small number of organizations that practice a rights and interest based model. This ensures that individual remedies as well as systemic remedies can be addressed during the mediation process.

Remedies

Remedies at mediation are either comparable or superior to the outcome at a hearing. For example it is possible to obtain significant public interest remedies satisfying systemic interests for large groups of persons protected by the *Code*.

The settlements between the parties are binding. There are two types of settlements at the Commission; administrative and jurisdictional. In administrative settlements all the components of settlement are manifested at the time of the settlement. In jurisdictional settlements a futuristic component of the settlement is yet to be fulfilled.

The Ombudsman

If a complainant is unhappy with the nature of the service that they have received at the Commission either in mediation or investigation, the complainant may contact the office of the Ombudsman, Ontario.

Ombudsman Ontario (watch dog, oversight)

Ombudsman: from Swedish, a Germanic language in the same family as English, and *man* in Swedish corresponds to our word *man*. *Ombud* means "commissioner, agent," coming from Old Norse *umbodh*, "charge, commission, administration by a delegacy," *umbodh* being made up of *um*, "regarding," and *bodh*, "command." In Old Norse an *umbodhsmadr* was a "trustworthy manager, commissary." In Swedish an *ombudsman* was a deputy who looked after the interests and legal affairs of a group such as a trade union or business. In 1809 the office of *riksdagens justitieombudsman* was created to act as an agent of justice, that is, to see after the interests of justice in affairs between the government and its citizens. This office of ombudsman and the word *ombudsman* have been adopted elsewhere, as in individual states in the United States. The term has also been expanded in sense to include people who perform the same function for business corporations or newspapers.

THE OFFICE OF OMBUDSMAN was established by the Ontario legislature in 1975 following passage of the *Ombudsman Act* (the Act). The Ombudsman is impartial and independent of the

government of the day. This is important as it provides checks and balances for the administration of human rights and social justice.

Function of Ombudsman

Section 14 of the Act states that the function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a governmental organization and affecting any person or body of persons in his, her or its personal capacity. R.S.O. 1990, c. O.6,

In other words, this means that the Ombudsman is an impartial third party who investigates complaints about administrative (non political) decisions and procedures of the Government of Ontario and its organizations (ministries, boards, commissions, administrative tribunals). He also conducts systemic investigations on important issues about government services, which can affect large numbers of people.

When the Ombudsman finds a problem with services of Ontario governmental organizations, he reports and makes recommendations to correct it. He can also make recommendations to change government policies and practices to prevent similar problems from occurring in the future and to improve the system for others.

Many cases brought to the Ombudsman are resolved informally through contact with government organizations.

Powers of the Ombudsman

- To investigate
- To enter premises
- To summon before him or her and examine on oath,

The Ombudsman may refuse to investigate a complaint if in the course of the investigation of any complaint within his or her jurisdiction, it appears to the Ombudsman that :

1. under the law or existing administrative practice there is an adequate remedy for the complainant

2. having regard to all the circumstances of the case, any further investigation is unnecessary
3. that the complaint is filed more than 12 month after the incident
4. the subject-matter of the complaint is trivial, frivolous or vexatious, or is not made in good faith
5. the complainant has not a sufficient personal interest in the subject-matter of the complaint.

Application of the Act

The Act does not apply to private companies or individuals, doctors, lawyers, decisions of judges or courts, hospitals and long term care facilities, children's aid societies, universities, school boards and municipalities, decisions of the Ontario Cabinet or decisions made by the federal government.

Who can complain?

A complaint can be made in writing by the person who is personally affected by action / decision of a governmental organization, a member of the provincial government on behalf of his/her constituent, a guardian or a person with power of attorney. A complainant doesn't need a lawyer to represent him/her in proceedings with the Ombudsman.

The Ombudsman is generally an office of last resort. This means that the individual making the complaint should first try to resolve the problem by using the complaint and appeal procedures offered by the government body s/he is dealing with. Complaints made to the Ombudsman are confidential.

Reporting

The Ombudsman reports annually upon the affairs of his/her office to the Speaker of the Assembly.

If after investigation, the Ombudsman finds that the action/decision complained of appears to have been contrary to law, was

unreasonable, unjust, was based wholly or partly on a mistake of law or fact; the Ombudsman makes recommendations as s/he or s/he thinks fit and may request the governmental organization to notify him or her of the steps to take to implement his or her recommendations.

The relationship between the Commission and the Ombudsman

The Ombudsman has jurisdiction over all government agencies, boards and Commissions, including the Ontario Human Rights Commission. The Commission welcomes the relationship between itself and the office of the Ombudsman.

If a resident of the province of Ontario has any complaint against the Commission they can bring their concerns to the Ombudsman. The Commission has set up a special function for the filing of complaints against the organization. The protocol between the Commission and the Ombudsman facilitates individuals making complaints against the Commission by the Commission designating a Freedom of Information and Ombudsman officer from the Commission to investigate the complaints and report to the Ombudsman. This procedure creates order and transparency for all parties involved. The service provided by the Ombudsman, allows the Commission to carry on its functions while complaints are being addressed. This builds the Commission's credibility in the eyes of the public and ensures that the functions of government agencies are not tainted or abused.

It is imperative that the relationship between these two government agencies exists in order that the citizens of the province of Ontario will have access and confidence in the systems that deliver human rights and social justice.