



## PERSONAL VIEWPOINT by Douglas Fisher

# The mandarins always have the last word

One opinion I have about Ottawa after a score of years in it is that no one ever really beats the senior mandarins. Even when they lose, they seem to win; that is, they have the last words.

My tale today about eternal, papal Ottawa began back in 1958 when I was an MP and a guest attendant at a NATO meeting in Paris. In one coffee table discussion of a clutch of legislators from NATO countries, one Republican congressman harped on big government and his fear of Washington. The responses, given the presence of some socialists, were not unusual. But the best idea I heard came from a Dane. "In Scandinavia," he said, "we have one idea about bureaucracy that is very useful. We call it an ombudsman, a special, neutral office. He has the right to take the grievances of citizens against what they feel is an unfair or discriminating administration or official and investigate it and publicly expose his findings."

I filed the idea and later at home looked for some "literature" on it. There was very little in the library guides, at least in English, and a few popular pieces in American and British periodicals. On the academic front I found a Canadian political scientist at Carleton University, Donald Rowat, was studying the Scandinavian concept. He was already sure that it would be useful in Canada.

I was most attracted to the ombudsman concept and subsequent visits with ombudsmen in Helsinki and Stockholm increased my enthusiasm. As an MP of a populous but scattered electorate, most of them very plain people, I was concerned about the parliamentary bane of "case-load." Case-load is the individual grievances with government departments and agencies which flow to MPs. A substantial fraction were never satisfactorily handled. Often I felt it was because I was stonewalled as intervenor by a self-protecting bureaucracy, incapable, because of its magisterial nature, of admitting error or inadequacy. Time and again I'd think: Here's a case where I wish a benevolent neutral could go in, get all the details, and come out to tell me and my constituent whether fair has been fair.

So, liking the idea, I did what an opposition MP could do: I put it on the order paper in the form of a resolution that "This House urges the government to consider the creation of an office of ombudsman . . ."

Unfortunately, my resolution went in the parliamentary draw several times and wound up too far down the list to win a debating priority. Although I drew this blank in the House I talked it up in a few committees, interesting several Tory backbenchers, including Art Smith (Calgary South, 1957 - 1963).

Smith felt that the way to get a debate was through a private member's public bill. He worked on a draft and tried to get it on the House order paper. There was the difficulty that an MP cannot introduce a bill which directly entails the spending of money. His entry repeatedly

bemused the Speaker. Of course, even the bit of discussion about how one advances a good idea drew a bit more attention than the idea itself. When Smith dropped out of politics, Bob Thompson, the Social Credit leader, took up his bill, and using his pivotal role in a minority Parliament, got "the subject matter" of the bill — the ombudsman concept — sent to a House committee for study and report. Meanwhile, Albertans had cottoned to the idea.

In Ottawa, after long hearings and much favorable interest by MPs and Minister of Justice Guy Favreau, the idea was put in cold storage. Why? As I have determined it, the senior bureaucracy believed the conception was out of place and unnecessary in a British parliamentary system.

First, it would intrude upon the sphere of the MP as the key intervenor for a citizen. Second, it would obtrude a "second-guesser" into the sacred domain of "ministerial responsibility." Ottawa mandarins are ever vigilant about any encroachment of ministerial responsibility.

### Who needed this?

Alongside these objections of those inside and at the top stood their other, more positive view: their own pride and assurance at the efficiency and efficacy of federal administration. Who needed this? There were also the objections of the lawyer-enthusiasts among the politicians, men like John Turner. The ombudsman concept seemed so foreign and outside the legal traditions. It was merely another new-fangled way to get an administrative tribunal without the true rigors of the law and the judiciary.

Alberta created the office of provincial ombudsman in 1967 as it became clear that federal, Liberal Ottawa had looked at the thing and found it wanting and out of character with the Canadian bureaucracy and its modes of behavior. Meanwhile, in other parts of the free world, the idea in whole or in part had made advances — New Zealand, Britain, France, and Australia. More and more provinces in Canada looked to Alberta or New Zealand examples and found the office worked, satisfied complainants, did not rob elected members of their role, even showed ministers and deputy ministers some patterns of avoidable administrative behavior. Zealots like Rowat kept pushing the idea and the proof of its operational soundness as examples multiplied.

Ottawa? With Trudeauism, the apotheosis of the bureaucrat was on. SXs proliferated as the growth industries of the '70s such as bilingualism and Indianism expanded. In such an exciting, coruscating, benevolent Ottawa there was obviously less need than ever for an ombudsman. This was true even though a funny thing or two happened. On the way to putting into place bilingual policies on the one hand and legal wire-tapping on the other hand, it had been necessary to create, first a language commissioner, then a privacy commissioner, and each in a

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stilted way within his field functioned very much like an ombudsman.

Long months after the euphoria of the '74 election masterpiece had faded among the Liberal ministers and the Liberal mandarins, it began to penetrate that Ottawa as "Ottawa" had a problem. Fewer and fewer outside the place revered it or thought them efficient or even moderately competent at much of anything. What week was complete without someone's horror story of administrative error or malfeasance? This massive, rising dissatisfaction had become too charged even for the usual lightning rods, the elected politicians.

Among the thoughts this dour situation brought to the mandarin was the now-hoary one of the ombudsman. In the fall of '76 the prime minister had a committee of 10 senior men put on to "the concept of the ombudsman," including such current favorites with Trudeau as Don Thorson (his constitutional advisor) and Sylvan Cloutier (the prize-winning bureaucrat of 1977). The committee was headed by a deputy minister, distinguished as an old friend of Sen. Keith Davey.

In a mere 10 months the committee was back with a

most favorable report. The report was held back for several months before release by Justice Minister Ron Basford just as the Christmas break came. It is a splendid report — clear, cogent and thorough. The committee found evidence there was not a clear pattern of standards or performance. It looked at the sacred "ministerial responsibility" and found (wonder of wonders) that "given . . . the absence of executive authority in an ombudsman, the committee found it difficult to identify any basic conflict between the doctrine . . . and the concept."

The committee found that an ombudsman "complements" and does not "conflict" with MPs. Moreover, the committee found that "for many people, particularly those who are not at ease with complex institutions and the formalities which often accompany them, these bodies can be frightening." "These bodies" refers to courts, or appellate bodies such as the Tariff Board and the Tax Review Board.

The report is worth reading "straight" as a lucid explanation of why this investigative and reporting device is made necessary by the nature of bureaucracy itself. Of course, I read it from a crooked perspective. "When they finally give in to something, they don't concede, they appropriate." □