



**What to expect when the Ombudsman calls: Webinar for Municipalities
March 31, 2016**

Ashley Burse, Communications Manager:

Good morning everyone and thank you so much for joining us for the Ontario Ombudsman's first webinar. This morning we'll be talking about how we deal with complaints related to municipalities. We're going to turn to our speakers in just a moment. I just have a few small housekeeping items first.

First, as you know, we've asked you to submit questions in advance and that's because we have close to 300 people tuning in today and we wanted to try to address your issues during the presentation as well as touch on some more specific questions afterwards. After the PowerPoint has been finished, I'll be back up here to pose those questions to our speakers.

Secondly, this entire presentation will be available as an archived video for you to share with your colleagues or anyone who might be interested, and we'll be sending around that link in the coming days as well as posting it on Twitter and Facebook and sharing it in our newsletter, so make sure you follow us on those accounts or sign up for our newsletter to receive that as well as receive updates and information about our office.

Our speakers today beside me will be General Counsel Laura Pettigrew, who many of you may already know from various AMCTO events, and Director of Investigations, Sue Haslam.

First, I'm very pleased to welcome our new Ombudsman to the podium. He officially starts tomorrow, but has generously offered to be here today to introduce himself to you and say a few words. Mr. Paul Dubé's career has been in law and he established the office of the first Taxpayers' Ombudsman of Canada. We are so pleased to have him join our office and team. Without further ado, Mr. Paul Dubé.

Paul Dubé, Ombudsman of Ontario:

Thank you very much Ashley and good morning everybody. Thanks for coming out bright and early on what, in Toronto at least, is a very soggy day, a very wet day indeed.

This is the first time that the office of the Ontario Ombudsman has ever done a live webinar, and I'm happy to see that we've had such a great response, a positive response. As you know, this jurisdiction over municipalities, universities, and school boards is entirely new for us, and so I'm excited to be taking on this role at a very historic time.

I think that it's very important for this office to build relationships, and to continue building relationships, among stakeholders, especially with the new stakeholders like yourselves. So this is a very big priority for me, as I take on this role at this historic time. My intention, and the intention of the office, is to keep the lines of communication open amongst all stakeholders.

The Ombudsman Ontario team is already off to a great start. They've been doing outreach events across the province of Ontario. They've been meeting with municipalities, universities, and school boards to discuss the role and the function, and answer your questions and take suggestions on how we can work better together.

Generally, the theme of this webinar is 'What to expect when the Ombudsman comes calling'. What I like to say, and that's one of my mottos as Ombudsman, is that what you can expect are no surprises.



Our oversight involves assessing fairness and transparency and I think that as an Ombudsman it's important to walk the talk and to be fair and to be transparent in your processes and your procedures.

What I hope people will learn about me as I evolve in this role is that fairness is very important to me; fairness is part of my DNA. I like to say that I'm hardwired for fairness. That's what an Ombudsman does. We evaluate fairness to determine if services, procedures, and programs work as they should.

We're not here to name, blame, and shame; that's not what the game is about. In fact, most of our work is done behind the scenes; it's out of the public eye. Whenever possible, my priority is to find "win-win-win" situations.

I can't stress this enough; we want to hear from you, we want to interact with you, and that's how we can work with you and help you serve the citizens of Ontario better, and maybe we can even prevent problems and complaints from arising.

It's really about making things better for the people of Ontario. I know you want that, and I that's what I want, too. So without further ado, I'm going to let my new colleagues, Sue and Laura, explain more about the office, how we deal with complaints, and what to expect when we call – and I promise, we do not bite.

Thank you.

Laura Pettigrew, General Counsel:

Today, Sue and I are going to cover a number of points. We're going to talk about what the Ombudsman is, a little bit about our mandate and powers in terms of our statute, the *Ombudsman Act*, and then how we actually handle complaints at the office. Then we'll give you a little bit of information about our new jurisdiction, and so far what our experience has been since January 2016, and then there will be an opportunity for questions.

Over the past weeks, months, we have been hearing a lot from municipal stakeholders. We held roundtables around the province, in conjunction with the Canadian Public Policy Forum, to hear questions, concerns and to meet folks around the province. We have attended many conferences, done speaking engagements and outreach.

One of the things that a lot of people have indicated is a sense of trepidation, a fear of change. What's going to happen? What can we expect when the Ombudsman comes? And I think a lot of that concern is based on lack of understanding about how we operate.

In the municipal sector, a lot of people know us from our work as the default Closed Meeting Investigator since 2008. That role is very different than our role in terms of complaint resolution, in terms of our general jurisdiction. Complaints about closed meetings involve an enforcement role. They're very legalistic. They usually involve a formal investigative process. However, that's very different from the vast majority of cases that we deal with, which are dealt with informally. Through our outreach and education efforts, which have increased recently, we're trying to dispel some of the myths and misunderstandings about who we are and how we operate.



I'm going to start at the beginning. The first modern parliamentary Ombudsman was created in Sweden over 200 years ago. The word Ombudsman – and I'm not sure I'm pronouncing that right – is actually Swedish. It's a gender-neutral term and there are currently ombudsmen offices all around the world. The idea behind an Ombudsman is that the Ombudsman is a citizens' representative; someone who facilitates communication and resolution of issues between the ordinary citizen and the halls of power, the government, the bureaucracy.

We have had an Ombudsman in Ontario for over 40 years. In 1975, the first Ombudsman was appointed. Currently, every province in Canada, with the exception of Prince Edward Island, has a provincial Ombudsman of general jurisdiction.

The Ombudsman is an Officer of the Legislative Assembly, similar to the Auditor General, to the Information and Privacy Commissioner, the Environmental Commissioner. Currently, Ombudsmen under our Act serve a five-year term, which is renewable. We've had the pleasure today to meet Mr. Dubé who will take office tomorrow.

The Ombudsman is appointed by an all-party select committee of the Legislative Assembly. That reinforces the independence and impartiality of the position from those that the Ombudsman oversees. Today we have jurisdiction over 500 provincial government organizations and traditionally that was the Ombudsman's jurisdiction over provincial agencies. That includes ministries, agencies, boards, commissions, corporations. Now we have added 82 school boards, 21 universities that receive direct regular funding from the province, and 444 municipalities.

The fundamental basic role of the Ombudsman under the statute is to carry out independent and impartial investigations of public sector bodies. Our services are free.

The Ombudsman and his staff operate under the *Ombudsman Act*. The staff have delegated authority under that Act and currently we investigate over a thousand bodies. We can investigate complaints from individuals, from corporations, from associations. We can also investigate complaints brought forward on behalf of constituents by members of the provincial parliament.

The Ombudsman also has a unique power. The Ombudsman can investigate issues on his own motion. Generally, that is used in a case where we see a systemic issue; maybe someone hasn't complained to us, but something arises in the media or in the Legislative Assembly that's of concern, that appears to be impacting a large group of individuals and the Ombudsman can initiate an investigation.

One of the things that a lot of people are confused about is the scope of our authority. Our Act makes it very clear that we investigate administration. The Act describes that the Ombudsman's function is to investigate any decision or recommendation made, or any act done or omission in the course of administration of a public sector body.

In the provincial context, this has meant that the Ombudsman does not investigate legislation. The Ombudsman does not investigate regulations. The Ombudsman does not investigate orders in council coming out of the Cabinet office, but what we do investigate is the administration, the application of those legislative decisions by government officials.

Bill 8 – sorry, this is out of order. This is just a slide concerning our jurisdiction in terms of closed meeting investigations, which I referred to earlier [showing the slide]. We investigate complaints that municipalities have held their meetings closed to the public improperly, under the *Municipal Act*. We currently act for about 213 of Ontario's 444 municipalities. It's a default jurisdiction. If a municipality hasn't appointed its own closed meeting investigator, then we have jurisdiction.



So Bill 8 changed the landscape in terms of our authority. Under Bill 8, as of September 1st 2015, we've had the authority to investigate complaints about school boards and, as you likely know, as of January 1st 2016 we now have authority to investigate complaints about municipalities as well as universities.

There are some exceptions to our investigative authority and they are set out in the regulations to the *Ombudsman Act*. Excluded from our authority in terms of local boards are children's aid societies, boards of management for long-term care homes, public boards of health, police services boards, and library boards. That's consistent in terms of inclusion in terms of local boards for accountability officers under the *Municipal Act*.

Our legislation also specifies that the terms of the City of Toronto administrative conduct that can be reviewed by the City of Toronto Ombudsman is not within our Ombudsman's jurisdiction. What we can do is review systemic complaints about the City of Toronto, including complaints about council members or the accountability officers such as Integrity Commissioner, Auditor General.

Our office currently has a staff of 86 employees. The budget has been increased in contemplation of the fact that we are growing our organization – we have doubled our jurisdiction. We handle close to over 20,000 complaints and inquiries a year, at this point. Just to give you a sense of the typical complaints that we get, this was last year's annual report. The number one was Hydro One; one of the reasons for that is that we were conducting a systemic investigation of Hydro One. They had changed their billing system and it resulted in all sorts of issues for their clients. We received actually a record number – 11,000 complaints – regarding that organization that year.

Typically we see a lot of complaints about bodies that are responsible for determining income and benefits for individuals, Family Responsibility Office which enforces child and parent support orders in the Ontario Disability Support program, etc. We also had a spike last year in terms of the Private Career Colleges Branch because of a closure of a private career college that resulted in hundreds of complaints coming to our office.

I'm going to just go through the steps that the legislation, the *Ombudsman Act* sets out, but I want to preface my comments by saying, in the vast majority of cases, we are not applying the strict formal investigative requirements of the *Ombudsman Act*. We emphasize resolving complaints informally, using alternative dispute resolution techniques and when we do launch a formal investigation, as Mr. Dubé indicated, it shouldn't come as a surprise. We work informally with bodies trying to get to resolution and it's only at the point where that's no longer possible and there's a significant issue, it's having impact on individuals and we feel that we have no other recourse. As a last resort, we will launch a formal investigation.

Formal investigations start with a notice to the head of the public sector body. In terms of the municipal sector, that means – with respect to a municipality – it's the official council member or a committee that is designated by by-law as the head for the purposes of receiving our notices. Similarly with local boards it's the designated individual for municipally-controlled corporations, which we also have authority over. The Act contemplates that there will be regulations indicating who the head is. We haven't seen those regulations yet.

Our Act also confers very robust investigative powers. We can require disclosure of information and documents from those that we are investigating. Staff and officials from public sector bodies, during our investigations, are required to cooperate with our request. We can also summons anyone that we feel has significant information for our investigation to come and attend and testify under oath or affirmation.

We also have the formal power of entry and there's some notice rules around that, which allows us to inspect premises. Typically, historically, the circumstances under which we've used that power have been really where we had complaints; for instance, the correctional system. I mentioned the top complaints; I didn't talk about the correctional system. We have authority over all the provincial correctional facilities in the province and we receive thousands of complaints about those organizations every year. Sometimes we get complaints about the conditions of confinement and those are the types of cases where we might do a formal inspection to see what the state is of these individuals and how they're living.

We also hear a lot, when we go out into communities, of concerns about frequent complainers; individuals who may be perceived as vexatious or frivolous by an organization, and old complaints, stale complaints that have been around a long time. People say '*Well, what are you going to do about those? They don't have any merit*'. We have broad discretion under legislation not to investigate. We consider every complaint that comes in. We look at the facts but we also have the discretion to apply a determination that we are not going to investigate.

We have a lot of experience dealing with folks that have very long-held grievances. We tend to call them querulant. They may be very committed to an issue, despite what anybody will tell them to the contrary, and we provide a neutral, independent, impartial venue to really assess those complaints and add credibility to reasonable and well-thought-out decisions and actions at the local level, when we review a matter.

You'll see at the bottom of the slide [\[showing the slide\]](#) it says offence provisions. Yes, the Act does create provincial offences if you hinder the Ombudsman, if you provide false information, if you mislead, there is the potential to be charged and convicted, and on conviction there's a fine up to \$500 and/or three months in jail.

We have never used those provisions. I've been at the office for quite some time and I'm not aware of them ever being used, but they're there to underscore the seriousness of our proceedings.

Fundamental to Ombudsman work is that we operate with confidentiality. We have a very unique situation. We get access to all sorts of confidential and sensitive information that otherwise wouldn't be available to the public. Our Act creates protections to ensure that that information isn't inappropriately released. The Ombudsman takes an oath of secrecy and impartiality before starting office, as well; staff cannot disclose information except in limited circumstances.

We have to keep information confidential. Our investigations are carried out in private and no statement or information that is given to us by witnesses can be used in proceedings in court or in tribunal proceedings, except if the person has perjured themselves under oath. The Ombudsman's process is also protected from judicial review and documents and information supplied to us are considered privileged. In addition, neither the Ombudsman nor staff can be called to testify in court or tribunal about information that has come to our attention and the work that we have done in the course of our duties. Also, information cannot be accessed in our office through the information and privacy legislation in the province.

As a result of the recent amendment in Bill 8, the legislation has also created provisions in other legislation that protect the confidentiality of our process, so if a municipality wishes, if the council wishes, to consider an ongoing Ombudsman investigation, it has to be closed a closed meeting. So there is a new exception to the closed meeting provisions in the *Municipal Act*; I believe 239(3)(b).

Consistent with our role as a last resort, we have not only the discretion not to investigate inappropriate cases, but the Act provides that we cannot investigate where there is a statutory right of review or appeal on the merits, until it's been exercised or exhausted.

The nature of our process, it's not adversarial. This isn't a tribunal or court where parties are coming together in conflict and trying to reach a resolution. We are neutral. We have a neutral fact-finding process and we issue non-binding recommendations. There is no final determination of rights or responsibilities.

And therefore our Act says that no one is entitled to a hearing; it's an investigative process. In terms of fairness to those involved, the Act requires that, prior to issuing a formal report and recommendations, the Ombudsman's office must give affected persons – and in most cases this is the organization in question – an opportunity to respond to preliminary opinions, findings, conclusions and recommendations.

We've developed a process in our office to protect what we refer to as our preliminary reports, to ensure that they can't be accessible and to protect the integrity and confidentiality of our process. What we've done is, we give out our preliminary reports for a limited time; they aren't to be marked, they aren't to be copied; they aren't to be discussed. Then the organization can provide their comments and those are reflected on our final reports, which are often made public.

In terms of the municipal sphere, those provisions have now been entrenched in our legislation so municipalities must comply with our requirements and they prevail over record-keeping requirements in laws and by-laws as well as over the *Municipal Freedom of Information and Protection of Privacy Act*.

If an organization – in terms of the preliminary report – a preliminary report may go out and it may resolve matters. We may never finalize a report. It really depends on the circumstances, the nature of the response the organization is given, but if the Ombudsman is not satisfied with the response to the preliminary report, that response will be reflected in the final report. It may be attached, but there is another opportunity to respond; there's a final report. The body has another chance to indicate that they're going to implement the Ombudsman's recommendations.

If that doesn't occur, in the public, the provincial sector what happens is we table our reports; we bring our reports to the Legislative Assembly and they become public documents. In the municipal sphere, this is going to involve sending the municipality in case of a local board, or municipally controlled corporation will also get a copy of the report and at that point in time, they can be made public.

We like to say, because we don't issue orders, we can't compel anybody to do anything. The greatest power of the Ombudsman is moral suasion, through publishing results our investigations and our recommendations, to provide momentum through publicity to encourage implementation and improvement of programs and services and various other things we can make recommendations on.

Our experience has been that most of the recommendations we make are accepted and implemented and, in cases where there has been a resolution, short of doing a full formal report, we often will provide a summary of those successful cases in our annual reports and other publications.

The Ombudsman is required to reach opinions in the way that they're set out in the Act. There's a very broad scope for reaching opinions about administrative conduct. For instance, the Ombudsman can find that it's contrary to law, unreasonable, unjust, oppressive, wrong and the Ombudsman can also determine that administration of a piece of legislation or a regulation is based on legislation or regulation that is unreasonable or wrong. The Ombudsman can make very broad recommendations in terms of improvement. He's got very broad scope to do that. That's an overview of the legislation.

Now, Sue Haslam is going to talk a little bit more about the nuts and bolts of how we go about our work.

Sue Haslam, Director of Investigations:

So let me tell you a little bit about our teams at the office and how we handle complaints. The Early Resolution team deals with individual complaints that are usually those that can be resolved very quickly. The Investigation team also deals with individual complaints. These tend to be a little more difficult, complex. The Special Ombudsman Response Team – also known as SORT – they deal with the broader, systemic investigations. You may be more familiar with that team because many of the reports and investigations that are completed by SORT are published. The Legal Services team is also involved in dealing with individual complaints, usually more complex. They also have the OMLET team, which is the Ombudsman municipal law enforcement team, and that part of the team deals with all of the closed meeting complaints. The Legal team is also involved in research and training in the office as well and, as we were gearing up for our expanded jurisdiction, they were very much involved in supporting and providing training to our teams in order to prepare for our new jurisdiction.

We are an impartial body – an impartial, fact-gathering, investigative body. When we indicate that a complaint is resolved, we mean that it's resolved to the point that we – as the oversight agency – are satisfied. Sometimes, this doesn't necessarily mean that those contact us are satisfied.

We are not advocates so we don't advocate or represent people who complain to us, complainants. We also do not advocate or represent for the government.

The Ombudsman only becomes an advocate once an investigation has been completed and recommendations have been issued. At that point, the Ombudsman then advocates for the recommendations to be accepted and implemented in the interest of the public.

The Early Resolution team received complaints through telephone, email, through our website, as well as individuals that attend our office. We have also set up a dedicated phone line for municipal calls.

The vast majority of complaints that we receive are handled by the Early Resolution team. That team is composed of approximately 30 staff plus three managers and a director. The Early Resolution staff use alternative conflict resolution strategies to try to resolve complaints. The focus always is to resolve complaints, keeping an eye for any potential systemic problems that we may need to take a closer look at.

The first thing that the Early Resolution team does is contact the complainant to get full details about the circumstances and to gather any other information and documentation. They also conduct research and contact the organization for additional information. All of our intake calls are audio recorded and saved to our case management system. And this assists us to ensure that we have accurate and complete information.

As mentioned earlier, we have the discretion not to investigate, in certain circumstances, for example, if the complaint is vexatious or frivolous and not made in good faith, if our initial review doesn't reveal a problem, if there appears to be another remedy that is available and suitable, if there has been a significant passage of time which makes it very difficult for us to conduct a thorough review or an effective review.

As mentioned, we are an avenue of last resort so many cases are resolved by referring individuals to already existing internal complaint processes or appeal mechanisms. Some complaints are closed without us requiring to contact an organization. Sometimes we do have to make inquiries and gather additional information in order to be satisfied that we are ready to close a complaint.

We keep track of all complaints that come to our office and complaint trends. This helps us to assess whether there is a potential systemic issue requiring a full investigation. We also keep an eye on potential problem issues. Staff will send internal alert emails when they receive complaints that are compelling and potentially serious. We then can triage these complaints early in the process so that we can determine who should be assigned the complaint and we can immediately take steps to work on them.

We also have a couple of really helpful in-house tools that allow staff to share information internally. The first one is the personal Ombudsman web resource, which you can see in front of you [showing the slide], and we also have a Wiki, and this is based on software similar to Wikipedia and this allows staff to share information and research that we obtained in the course of our reviews.

More than half of our complaints are resolved within one week and about three quarters are resolved in less than a month.

For the investigations team, we have approximately 16 generalist Investigators. They carry a caseload and on the more complex files, we may partner them with another Investigator or an Early Resolution Officer. Investigators, like Early Resolution Officers, continue to conduct further research. They make inquiries, they obtain documents, they may interview witnesses over the phone or by Skype or in person. Like Early Resolution Officers, Investigators focus on resolving issues by various means. We have a really good track record of doing so. Most cases are resolved informally without an investigation.

As mentioned before, even though the individual complaints are – we look to resolve them. We also keep an eye for potential systemic or broader complaints that we may be able to find solutions for. We focus on looking at the root causes of the problem and our focus is on improving processes, policy and practices going forward.

If an investigator is unable to resolve a complaint there's a few steps that we take. First, we try to escalate the complaint up the hierarchy of an organization so we bring it to the attention of senior officials and we try to resolve the complaint by doing so. The other option we have is to raise one of the complaints, raise individual complaints, at our quarterly meetings. We have quarterly meetings with senior government officials, with those organizations with the highest number of complaints. At these meetings, we talk about individual cases and we also share complaint trends because this helps the organization to identify some hot spots or areas where there are some concerns or issues so that they can be proactive in their approach to deal with them.

If the complaint remains unresolved after we've attempted to resolve it informally through escalating it or at the quarterly meeting, then we may need to launch a formal investigation.

But I have to tell you that only a very small fraction of cases do go to the formal investigation stage. As Laura and Mr. Dubé advised you earlier, there will be no surprises. You will have information about our intention to investigate well before you receive our notice to investigate. Before we begin any investigation, we do a lot of planning. We prepare a very detailed investigation plan, which sets out our strategy and timelines. In accordance with the *Ombudsman Act*, we are required to notify the head of the organization of our intention to investigate.

In the case of a municipality, this would be a designated member of council or a committee. The notice that we send you is in the form of a letter and it sets out generally the issue that we intend to investigate. We also typically send out a letter that we call a 'wish list letter' and in that letter we set out all of the documents we would like you to send us, as well as a timeline. We also ask for any information relevant to the investigation that is not listed.

Officers and employees and members of the public sector are required to comply with our request for information and, as Laura mentioned earlier, we can also summons anyone to give evidence, but this is usually reserved for situations where there are credibility issues or co-operation issues or other exceptional circumstances; it is not something that we regularly do, it's very rare that we do it, but it does happen when we need to.

In preparation for our expanded jurisdiction with municipalities, we set up a dedicated municipal team. This municipal team is composed of Early Resolution Officers, Investigators, Legal Counsel, and Senior Management. We thought it would be important to set up a dedicated team to develop a specialty in the area of municipal complaints. Leading up to our jurisdiction, the dedicated team received training, and training is ongoing in municipal matters. We also, as mentioned earlier, have a dedicated municipal phone line that has also been set up.

Municipal complaints are flagged to this dedicated team so when calls come in or letters come in, an email is sent around to the municipal team to indicate the nature of the complaint. This allows us to triage those complaints and determine whether they should go to the Early Resolution team or the Investigations team. It also allows us the opportunity to consult on the complaints and this is very helpful, particularly because this is such a new area of jurisdiction for us – and we are still learning.

We also share information with the dedicated team regarding the number of complaints we've received, so statistics, as well as any trends that we are seeing in the types of complaints coming in about municipalities. We hold really helpful weekly meetings with the municipal dedicated staff as well, and this gives staff the opportunity to talk about cases and to share information.

Here's one example of a case that we were able to resolve very quickly with just a couple of calls with the municipality. A man had contacted our office with concerns about his sidewalk. He said that he had been trying to resolve this problem for a number of years and he had been calling the municipality about clearing the snow. Despite his efforts to raise this concern with the municipality, he complained that no action had been taken. He noted that other sidewalks close to his neighbourhood were being cleaned. However, his sidewalk area was not. The day that he contacted our office there had been quite a heavy snowfall as he had told us about the four to five feet of snow that was on the sidewalk, making it very difficult for his children to walk to school and also making it very difficult for his mother who was a senior citizen to visit and that she was not visiting because of this problem.

Our staff immediately called the municipality and we inquired about the situation. We were told that, for a period of time, the sidewalk was in disrepair and there were equipment issues that had been affecting the municipality's ability to clear the snow. The municipality acknowledged that the sidewalk had been fixed some time ago and they also agreed that it was time that they should start clearing the snow from the sidewalk. The municipality agreed to meet with the complainant and to explain that they would, going forward, clear the sidewalk snow. So that was a very quick resolution that we were able to facilitate through contact with the municipality.

In this next example that I'd like to provide you, we have received various complaints about the conduct of council members for a particular municipality. While reviewing the complaints we determined that the municipality had a code of conduct, but there were no clear mechanisms for making a complaint. In response to our initial inquiries, the municipality created a new page on its website. This page included a copy of the code of conduct, which had not been posted previously and it also included information about how to make a complaint.

The municipality also took a further step and created a new form to use for this type of complaint. The complaint process that they put in place initially called for the clerk to investigate and respond to alleged breaches of the code of conduct. When we called the municipality to discuss that process, we drew attention to the fact that it was a little unusual for the clerk to perform the code of conduct investigations. The process was soon amended to provide that such complaints would be referred to council and that council would arrange for an appropriate investigation in the alleged breach of the code.

Now I'll turn it over to Laura so she can tell you a little bit more about our Special Ombudsman Response Team.

Laura Pettigrew, General Counsel:

The Special Ombudsman Response Team is responsible for the investigations and reports, which tend to end up on the front page of the newspaper. There is a Director and about six or seven Investigators that work for the team but that team can also call on resources from all over the office, lawyers, Investigators, Early Resolution Officers, when necessary.

The SORT team carries out serious, high-profile, systemic investigations that affect a large number of people and that have significant impact on Ontarians.

I know I am asked quite frequently 'What is a systemic issue? What's the difference between an individual and a systemic issue?' Well, individual issues – an individual coming forward with a complaint can raise an issue that's unique to them, that's not going to affect anybody else. But quite often even individual complaints raise issues about a system. There's a practice, there's a policy, there's a rule, something that not only affects the individual coming forward, but affects others, so we consider that a systemic issue. Even when we're conducting early resolution of a complaint, at the early resolution level or at the investigative level, we are looking for systemic issues and looking for improvements to systems.

In terms of the Special Ombudsman Response Team, cases come to the team when we've monitored trends and patterns of complaints and we see there's an issue that's endemic; it's not going away. Looking at individual cases isn't going to solve the problem. We monitor what's happening in the media, in the Legislative Assembly, we're looking for issues, root causes of problems, so that we can be most effective in terms of complaint resolution.

The investigations carried out by the Special Ombudsman Response Team are by and large formal. There are formal notices of investigations; quite often they're publicized to ensure that we have witnesses coming forward. There are significant public interest and quite often those investigations result in public reports and recommendations.

Since 2005, the Special Ombudsman Response Team carried out 35 large-scale systemic investigations and they've been very successful. We have had many, many of our recommendations implemented as a result of our SORT investigations. They've served as a catalyst for significant change in government policies, programs, and even in legislation.

Our investigation into the Ontario Lottery and Gaming Corporation brought about significant changes to ensure protection against fraud in terms of the provincially-run lotteries.

Our investigation into the newborn screening program in Ontario resulted in significant changes and enhancements to that program which has resulted in literally saving lives of children in this province.

We have also assisted individuals with better access to cancer drugs, and we've shed light on a very disturbing trend in the correctional system of the code of silence, where inmates were abused and things were covered up.

Our most recent report, last year, related to Hydro One's billing practice and the timeliness and effectiveness of its response to customer complaints. We made a number of recommendations, which were implemented. If anybody follows Hydro One, they may realize it is no longer within the Ombudsman's jurisdiction or the jurisdiction of any of the legislative officers, as a result of legislation that came in to reflect the fact that the government was partially privatizing that particular body.

We have two ongoing systemic investigations that SORT is looking at. One has to do with the services and programs available to adults with developmental disabilities who are in crisis or urgent situations, and the second is looking at the Ministry of Community Safety and Correctional Services and the direction that it provides to police about de-escalating conflict situations.

I'm just going to briefly tell you about our Open Meeting Law Enforcement Team. In the municipal world, as I said at the beginning, this is where most of you will be familiar with us. We have received about a thousand complaints since 2008 about municipal closed meetings and we've done a lot of outreach and education work in this particular area. We have issued a Sunshine Law Handbook and it's been provided to all clerks, all councillors in all municipalities of the province and, in December, we issued our fourth OMLET report about our work in this particular area.

As I said, OMLET cases, open meeting cases, are very technical. We're looking to see if the exceptions have been properly applied in the *Municipal Act*, allowing municipalities to close meetings. We're looking to see if the procedure bylaws have been properly applied; they're very technical and they are formal. In most cases, we are going to investigate formally and issue reports.

We've been trying to get information out to the councillors, to municipal staff and to the public about our work, as I said, in terms of the Sunshine Law Handbook, information on our website, and that will continue.

It is very different. It's an enforcement function and, as Sue described, the way we work in most cases is when we get a general complaint about a municipality, is likely not going to result in a formal investigation and report.

To date, the kinds of issues that people have been complaining to us about shouldn't come as a surprise to anybody: service complaints, we get complaints about the activities of council committees, local boards, conduct, conflicts of interest complaints, infrastructure, lots of services – snow removal, garbage – programs like Ontario Works, housing, municipal hydro companies – while Hydro One is no longer within our jurisdiction, we do have authority over municipally controlled hydro companies – lots of people are not happy about taxes and fees.

I'm sure, out in the municipalities, you know the issues that you're hearing about. We're likely hearing about the same things, often from the same individuals.

These statistics [showing the slide] were current as of March 29th so, so far, since January 1st, we've received 920 complaints about municipalities. More than 600 – sorry, about 600 – were closed as of March 24th, so we're probably over that, at this point in time. So you see, many of them were closed very quickly.

Some of the things stakeholders are saying about our office

When the Bill 8 was coming through, what we heard a lot in the news was municipalities are a little confused about what our role would be, and thinking well you know, municipalities, other than Toronto – Toronto must appoint an ombudsman and an integrity commissioner, and a lobbyist registrar and an auditor general – but with respect to other municipalities, it's discretionary. Some who had those officers are saying 'we don't have to appoint our own accountability officer anymore, the Ombudsman can be our integrity commissioner, the Ombudsman can be our auditor general'. That's really not what's intended. Others said that 'having an ombudsman would be redundant when we have local accountability officers', and that's not the case.

We work differently. We like to underscore we are a last resort to individuals. When it comes to an organization that has an accountability officer, say an integrity commissioner, our Act says that we cannot get involved in a complaint until such time as that particular commissioner has refused to investigate the matter, has finished their investigation or the time limit for bringing a complaint to that officer has expired.

When people come to us and complain, the first thing we do is try to find a local complaint resolution mechanism that we can refer them back to. We find that it is best for municipalities, for other bodies, to create their own process for resolving complaints tailored to their own needs and reflecting the context in which they work. Having those local complaint processes and accountability officers reflects good governance, good democratic principles.

Our office isn't intended to duplicate or replace those officers. When you've got an accountability officer in place, we're not going to go out and redo the work of that officer. We're going to see what they've done. We're going to look at the scope of their authority, we're going to look at the practices and policies and the terms of reference for that office, we're going to make sure that everything was done the way it was intended to be done, and we may make recommendations for system improvements. We're looking at gaps. We are looking at the bigger system, in those cases.

We conducted a survey of all municipalities, school boards, and universities to find out what kind of complaint resolution mechanisms they have, what kind of schemes they have to resolve complaints at the local level. We sent them out to everyone. To date, in the municipal sector, we've received information from about half. We got about 218 survey responses from the municipal sector.

What was very interesting to us – because, we sort of canvassed the climate before Bill 8 and we knew that there were some integrity commissioners, a handful of auditors general, only one Ombudsman, that was the mandatory Ombudsman established under the *City of Toronto Act*, and not very many lobbyist registrars either, but when we got our survey results, things had changed a bit.

We now saw 63 integrity commissioners were reported to us, there may be more – as I said, we've only had results from 218 municipalities – 11 municipal ombudsman, that's 10 more than existed prior to Bill 8 – 11 local auditors general, and 2 lobbyist registrars.

We also get questions like 'what happens now with the closed meeting investigators?' As I said at the beginning, municipalities can appoint their own closed meeting investigator; that hasn't changed. The statute doesn't create us as an appeal for those closed meeting investigators. If you've got your own closed meeting investigator, we will refer folks to that closed meeting investigator to have their concerns dealt with, and we won't review the work of that investigator.

There may be some instances where we will look at the terms the municipality and any terms of reference or direction that they provide to their closed meeting investigators, if we see any gaps or concerns in terms of that process.

Somebody said the other day, when they saw this slide [showing the slide with image of bunny with one ear up], 'You should have two ears open so that you're listening from both ears', but we're just really concentrating hard and that's why we have the one ear down and one ear up. We're really going out there and listening to what people have to say. We want to develop a co-operative dialogue, a constructive dialogue, with folks out there in terms of our new jurisdiction. We're all in learning mode at this point in time. I know, because I spent a lot of time out in municipalities.

There were some concerns expressed about the tone of some of our communications in the past, particularly around the closed meeting issues, in terms of Twitter, in terms of some of the things that came out, some of our systemic reports too, that had come out. We're listening and we're learning and we recognize that we've got to build relationships in that – because it's to everyone's benefit, we're all here to improve governance, but we're all in the same boat, we're doing things in the public interest, and we've got to learn to work co-operatively together. A lot of the suggestions that we've already heard have been taken into account.

Just before we get into the questions, I'm going to go back to the systemic investigations again because something that I've heard a lot as well is, people say 'well why do you come out with those big, glossy reports with pictures and bring so much public attention to those issues when you say you're about dealing with things informally and using alternative dispute mechanisms?' You know what? In most cases, that's what we're about. We only investigate as a last resort and we really want to resolve things as co-operatively, as quickly, as we can, but sometimes there are those intractable issues of great significance that the only way that we're going to be able to act as a catalyst for change is to bring public attention to the matter. The case that I always use to demonstrate that is the newborn screening case.

We looked at this issue in 2005 and it came to our attention because we were investigating a question of compensation, reimbursement of drug expenses for a young man who had a rare metabolic disorder. He was denied expenses, was bankrupting the family, and we looked into the whole metabolic disease program at the Ministry of Health and Long-Term Care. We were able to resolve the issue for that particular individual, however we discovered that a committee of genetic specialists involved with metabolic disorders that were giving advice to the Ministry of Health and Long-Term Care, had basically walked away and stopped working with the government out of concerns for what was happening with the newborn screening program.

At the time, we had about 203,000 newborns born in Ontario every year and those in hospital have a little pinprick on their heel for blood and it was tested for two rare genetic disorders. The benefit of that is, with these particular disorders, if someone knows they have a child who has that disorder, they can take preventative steps. There may be some medications, there may be some diet, and treatment options that they can use to help mitigate the problems associated with those disabilities. The geneticists had been going to the government, saying 'that's lovely, but we're actually now behind the times'. The recommended slate of tests for newborns was then 29 – not two – and the technology to be used to do the testing – tandem mass spectrometry – allowed for one single blood test to be scanned simultaneously for all sorts of disorders, but the government was not funding that testing. We were using antiquated testing methods and, in fact, the reagent that was used for one of the tests was no longer being manufactured and the government's stockpile of that drug was disappearing.

All this was going on without very much information going out into the public. There were people who were starting to say they were going to bring it out in the light; for instance, the Coroner was starting to test children who died under the age of two for genetic disorders and was finding a significant number were dying of undiagnosed metabolic disorders that other provinces, other countries, in some cases third-world countries, were testing for. So there was a lot of concern there, but we didn't know about it.

When we found this out, we launched a second investigation into the newborn screening program. What we did is, we shined light on the issue as a lesson learned. How could this happen? How could a significant issue – geneticists were telling the government that 25 children were dying each year in Ontario because of the failure for the government to enhance its newborn screening program and 25 were becoming irretrievably brain damaged. You've got this very significant issue; how could it have fallen through the cracks? How come there wasn't the momentum in government for change?

What we found is that it was really a leadership vacuum. People were working in silos; it was a very unique program that wasn't a good fit with a lot of the branches in the Ministry and, without that leadership, without that will, it fell through the cracks and people suffered significantly, as a result. We brought out a report that really highlighted the systemic flaws in that system as a learning example and we helped create momentum to improve the newborn screening system. The government knew it had to do something. It couldn't wait forever. As I said, the reagent was disappearing for one of the tests, but it was looking at modest improvements to the screening. As a result though of us bring this to light, of creating that public pressure, because we got out there, and the newspapers started telling the story that had been going on in the background, but people weren't aware of, and because of that, we helped spur on significant change that help save lives. There is now a state-of-the-art testing facility at the Central Eastern Hospital for Sick Children, in Ottawa and we are testing for 29 genetic disorders at birth.

That's the reason. Sometimes the Ombudsman has to go out in public and has to tell the story and has to get attention for very significant issues in order to inspire systemic change.

One of the things I will also mention; we're making this pitch, we are in expansion mode. We're looking for Early Resolution Officers, Investigators. Please check our Career section, if you have any interest or refer people who may be interested in this area. We're also looking for individuals who have expertise, experience in the new areas of jurisdiction that we have.

We give you some information on how to follow us, as Ashley mentioned, on Facebook, on Twitter, our YouTube, sign up for our Watchdog newsletter.

We're going to take some questions now. I think we received some by email. Because of the large number of questions that we received, we may not be able to respond to every single one. Some of them may have been actually answered in the course of our presentation. Ashley, our Communications Manager, is going to facilitate our Q&A session today.

Ashley Bursey, Communications Manager:

Thank you very much, Laura and Sue, and I realize I neglected to introduce myself to you all earlier. I am the Communications Manager for the office. We've received quite a few questions. I'm just going to go through them fairly quickly, although we are doing very well for time.

The first one, *"How does your office work with MPPs and Constituency Assistants and what can municipal staff expect from you when dealing with them?"*

Sue Haslam, Director of Investigations:

In terms of MPP offices, they have a little bit of a different role compared to our office. They're more representative, more advocating for those who contact them. The Ombudsman's office, as we've described today, we're not advocates. We conduct reviews and we're looking for information and evidence to support our work and the decisions that are made. What I can tell you is this: when we call your office, we really do rely on your co-operation in resolving complaints and we have a very good track record so far. We've been able to resolve a number of complaints through co-operation with many municipalities by working with them.

I also want to let you know as well that we will keep you informed along the way as we conduct any review and, as mentioned by the Ombudsman, Mr. Dubé, there will be no surprises. We will keep you informed along the way and we will let you know the outcome of our review, as well. Thank you.

Ashley Burse, Communications Manager:

Thanks, Sue. Second question. We had a question about services that share funding with the province and the municipality and where council has made a decision on the level of benefit funding on a discretionary item, for example such as Ontario Works. Can the Ombudsman look at items like this?

Laura Pettigrew, General Counsel:

When I talked about administrative conduct at the beginning, I differentiated between legislative decisions and the administration of those decisions. If we got a complaint about the level of funding, for example a benefit, a discretionary benefit under Ontario Works, we would see what the decision was, what the requirements were, how that decision was implemented in the particular facts situation and there may be no issue, we may not find an issue, but there may be circumstances possibly where we might find that the decision itself is causing hardship unnecessarily, it may be unreasonable, where we might make some recommendations for change. Ultimately, it's up to the municipality to decide whether or not to implement that.

There are circumstances, there are limited resources that municipalities have, and there are just some cases where they have to make hard decisions and we recognize that. The same happens in terms of the provincial sector. We look at what circumstances came to bear, what are the facts, and make an assessment as to whether or not there is anything that we can do to help. In a lot of cases, it will simply be that they went through the process; they're entitled to go through that process, they're entitled to reach that decision, and as long as they communicated that to the individual appropriately, that may be the end of it. Again, it really depends – as a lawyer we get used to saying this – it really depends on the individual facts of the case, and we look at each case on an individual basis.

Ashley Burse, Communications Manager:

Thanks, Laura. You did touch on this quickly, but what can and can't you investigate about the City of Toronto?

Laura Pettigrew, General Counsel:

Anything that is within the jurisdiction of the City of Toronto Ombudsman, we do not look at. That being said, the Act specifically says we still have authority to do systemic investigations, I think it actually says own-motion investigations, but in most cases those are systemic. People can complain to us about the conduct of council, it's not within the jurisdiction of the City of Toronto Ombudsman; there may be other organizations, municipal organizations, reporting to the city or connected to the city that do not fall within the City of Toronto Ombudsman's authority. There may be, for instance, an integrity commissioner or other accountability officer at the municipality, there may be circumstances where we could get a complaint about that office, and again, we would look to see what was done. We are not there to redo the integrity commissioner's investigation and come up with our own report. We are there to see what is the context under which the integrity commissioner worked, what was the issue they worked with, what did they say were their reasons.

We have jurisdiction over many, many tribunals in the province and similarly, we would look to see, did they comply with their legislative mandate, their policies, their procedures, administrative fairness principles, did they provide reasons, intelligible and clear reasons, to explain their decisions. Those are the kinds of things we look at when looking at an accountability officer.

Ashley Burse, Communications Manager:

Thanks. Next question: *"Do you accept complaints from whistleblowers and, if so, how do you protect them?"*

Sue Haslam, Director of Investigations:

We regularly are contacted by whistleblowers and yes indeed, we do accept complaints from whistleblowers. They're often valuable, a very valuable source of leads for further information. In terms of protection, we explain to them that, under the *Ombudsman Act*, our reviews are conducted in private, we have strict confidentiality provisions, and we do not provide the names of our complainants without consent.

We take steps also to educate whistleblowers in terms of how to contact our office so that they can keep their identity private and we also take internal steps within the office to protect the identity of whistleblowers.

Ashley Burse, Communications Manager:

Thanks, Sue. *"My municipality hasn't appointed a local ombudsman or integrity commissioner. Can the Ombudsman force council to put these local accountability officers in place?"*

Laura Pettigrew, General Counsel:

The short answer is no. The longer answer is we really encourage municipalities to have, at the very least, a complaint resolution process in place themselves. We also encourage some form of integrity commissioner; it can be a contract, it can be shared with other municipalities, a number of municipalities are going out and sharing somebody who can look independently into what's happened in terms of complaints about council conduct.

As Sue was mentioning, the one case that we got; you get complaints about councillors, it's very difficult for the clerk or administrative staff to be investigating those; it's also very difficult for council as a whole to look into those. There's an advantage to having or retaining somebody to address those particular complaints.

We're really not intended to be the frontline complaint resolution vehicle for complaints about council members. You may find that if we do get a complaint about a council member and you don't, at the municipality, have any internal mechanisms, one of the first things we're going to do is recommend that you do adopt some form of resolution process.

We understand that not all municipalities are created equal; they come in different sizes, they have different resources, different contexts, so that's all taken into consideration, but there are a lot of good precedents out there now. If you look at AMCTO, for instance, you can see where folks have created codes of conduct and have created integrity commissioners.

That's another issue as well; it wasn't raised, but at this time, not all municipalities have codes of conduct with respect to council conduct. That's something that we recommend – I know that the AMCTO recommends it – and that you have a viable enforcement method for those codes of conduct.

The Ministry of Municipal Affairs and Housing is also looking reviewing a municipal legislation. I know that is one of the issues it's considering and one of the things that has been floated, is having mandatory codes of conduct.

Ashley Burse, Communications Manager:

Thanks. A question about local authority services, LAS: "*The municipality I work for appointed LAS for closed meetings. Can people now complain to you about LAS' decisions?*"

Laura Pettigrew, General Counsel:

As I mentioned, the Act does not provide that we have authority over agents, closed meetings investigators that have been directly appointed by the municipality. There was one version of the Bill 8, as it was passing through the House, where there was actually a provision which sort of looked like we would have ultimate say in terms of closed meeting complaint investigations. That was removed during the Standing Committee review, clause-by-clause review of the Bill, but there may be situations where we might get involved in terms of the municipal side. For instance, if there's a closed meeting investigator out there that issues one-line decisions; that's an extreme case, but 'yes, you have violated' or 'no, you have not violated the rules' we might talk – if people raised a concern about it – we might talk to the municipality and suggest that they may want to give some directions to their closed meeting investigator to ensure that there are clear, transparent, intelligible reasons explaining the analysis as to how they got to that particular conclusion.

Ashley Burse, Communications Manager:

Thanks. *“Once you finish investigating a complaint, does the municipality get a copy of the report and do you publish the name of the complainant?”*

Sue Haslam, Director of Investigations:

Firstly, we have not launched any formal investigations of any municipalities. In the event that we do launch an investigation, as mentioned earlier, you would be notified, there would be no surprises.

On the completion of the investigation, and in the event that the Ombudsman makes recommendations, we are required to provide a municipality with the opportunity to respond and to know the information before the Ombudsman makes a final report, and that final report, of course, would be provided to you. There would be lots of built-in opportunities for input, we want to receive information in your position, so you would ultimately get the final report, but you would be involved along the way.

In terms of publishing the name of the complainant, we’re not required to do so and we would only do so on consent of the complainant.

Laura Pettigrew, General Counsel:

If I could just add a little to that...

Ashley Burse, Communications Manager:

Absolutely.

Laura Pettigrew, General Counsel:

I think in the municipal sector, you’re familiar with closed meeting complaints. In a closed meeting complaint situation, in most cases, we’re not disclosing the name of the complainant because it’s not really relevant to the issue. Holding an improper closed meeting affects all citizens equally.

In terms of individual complaints that come to our office, as Sue said, we get the consent of the individual to contact the organizations and in some cases it’s the only – it’s necessary. It will be self-evident that that’s the individual who is raising a complaint.

There may cases, and in fact a lot of our systemic investigations that are conducted by the Special Ombudsman Response Team, we do identify complainants and that’s because, with their consent, we use their stories. We use their stories to create a human face; when you use individuals rather than hypothetical situations, it creates more momentum for change. People have more difficulty dismissing impacts on individuals who are identified and are made real for them, so we do, at times, use their names.

Sometimes, people also ask, “*Is my name going to appear in your report?*” when we’re investigating, and, for the most part, we do not identify individuals from government, from public sector organizations, in our report. We may refer to positions, if that’s particularly relevant; there may be cases where they’re very senior level officials who we’re quoting where we may identify them, but we’re not investigating individual staff members; that is not our focus. We’re looking at the organization as a whole and we see it as the system; the organization is responsible for the system. It’s not about any individual employee, and that’s – again – one of the reasons why we’re investigators; we don’t have hearings, people don’t come with lawyers representing them. That’s not what we’re about.

Ashley Bursey, Communications Manager:

Thanks. This is actually our last question so we may end a little bit earlier than planned today. A question about how a municipality can keep track of Ombudsman complaints if our staff called the relevant staff person directly instead of going through a point of contact person?

Sue Haslam, Director of Investigations:

It hasn’t been our practice to deal with contact persons at different organizations. This is because in our long history of experience, working with a contact person can oftentimes result in delays in terms of reviews and also, sometimes leads to a bit of a broken telephone in terms of the messaging so it hasn’t been seen to be very efficient and effective for the organization or for ourselves. Generally we don’t work with contact persons; what we try to do is speak with the individuals who are directly involved in the complaint.

In terms of municipalities keeping track of our calls, we understand that there are – many of the organizations do want to keep track of our calls and our contacts and we tell them that yes, absolutely, that’s something that would be the responsibility of the municipality to, for example, keep track of.

Laura Pettigrew, General Counsel:

They can also contact us. I think it’s really important to keep the channels of communication open. If you want to find out how your municipality is doing statistically, if there are complaints that you don’t know about. We may not be able to disclose the details because of confidentiality, but in some circumstances, we may be able to provide statistical information about the number of complaints, the general area of complaints, and also if municipalities have any feedback they want to give us, if they have a concern, maybe they’ve received a call and they think that we’re not following our proper process or if they have questions, we really want to encourage you to contact us.

We’re all learning and we want to make sure we have the best process possible, so please feel free to contact us with any questions or concerns you might have.



Ashley Bursey, Communications Manager:

Thanks very much, Laura. Thanks, Sue. That brings us to the closure of our session on complaints about municipalities. This will be archived and posted online, on our website. We will contact everyone who signed up to register and participate to let you know when, as well as send information out on Twitter, on Facebook and through our newsletter. So lots of ways to share it, if you'd like to share this with your colleagues or anyone you think might be interested.

Thank you very much for tuning today. Thank you to our presenters. Thank you to Mr. Dubé.

Please check out our website and, if you have any questions, all our contact information is available right there. Thanks very much.