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# OPC Register

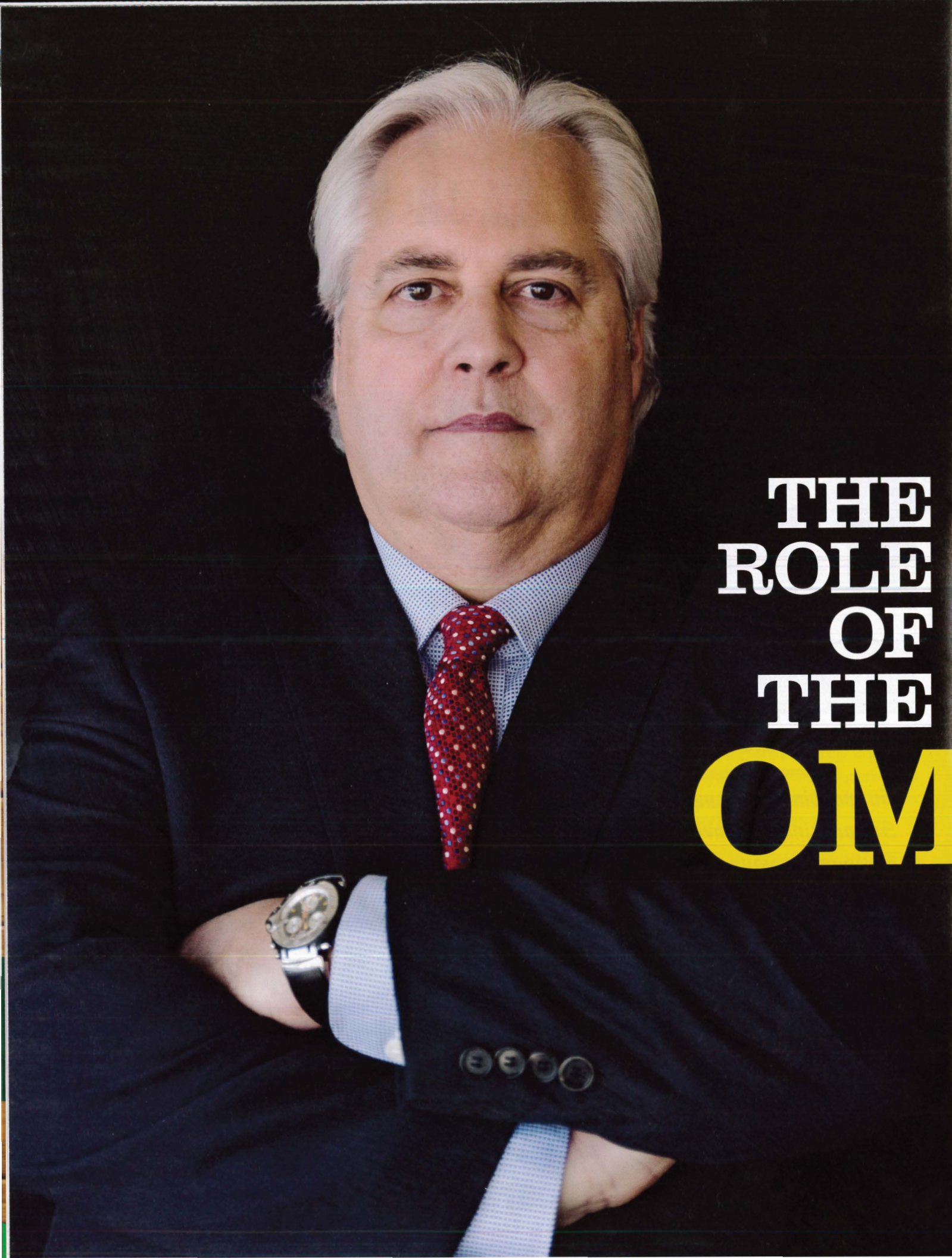
THE MAGAZINE FOR ONTARIO'S PRINCIPALS & VICE-PRINCIPALS



## The Role of the Ombudsman

Working with school boards to resolve complaints

▶ COLLECTIVE EFFICACY ▶ MANAGING CONFLICT ▶ MENTORING JOURNEY



# THE ROLE OF THE OMBUDSMAN

Working with school boards to resolve complaints

By Peggy Sweeney    Photography by Ethan Horst Mitchell and Stefanie Neves

The *Ombudsman Act* provides the Office of the Ombudsman of Ontario with the authority to oversee and investigate the provincial government, including provincial ministries, Crown corporations, tribunals, agencies, boards and commissions. The Ombudsman's mandate was also extended to school boards in 2015 and municipalities and universities in 2016. The office receives more than 20,000 complaints from the public about these organizations per year.

The office is headed up by Paul Dubé, who began his five-year term as Ombudsman on April 1, 2016. He is the seventh person to serve as Ombudsman since the office was established in 1975. Prior to this role, Mr. Dubé practiced criminal law, with a focus on the protection of rights conferred by the *Canadian Charter of Rights and Freedoms* and the promotion of procedural fairness. In 2008, he was appointed as the first federal Taxpayers' Ombudsman, tasked with creating a new office to uphold the Taxpayer Bill of Rights and promote fairness in the Canada Revenue Agency's treatment of, and service to, taxpayers.

Dubé's role is to be an independent, impartial officer of the Legislature, promoting transparency, accountability and fairness within the public sector. People generally complain to the Ombudsman when they believe they have been subjected to maladministration or procedural

But do Ontario citizens need an Ombudsman to resolve complaints? Can't they approach their MPP or seek action through the courts? Dubé acknowledges there are occasions when both of these bodies can and should intervene with complaints, but he stresses that his office has an important, distinct role. "While MPPs do great work and try to help their constituents, they don't necessarily have the resources, connections or ability to solve problems, especially at the systemic level.

"And even if courts did look into maladministration or procedural unfairness, which they don't really, it is very prohibitive in terms of cost and time to proceed down that path, and it is usually a very slow process. The advantage of our office is that it is free, independent and reports to the people of Ontario through the Legislature. We fill the gap between what MPPs and the court system can do."

Dubé points out that the office is one of last resort. "We always ask complainants if they have gone through whatever local dispute resolution mechanism is available to them. If there is a right to appeal a decision through another body, then we wait for that process to conclude. Despite the large number of complaints received each year, almost all – over 90 per cent – are resolved without formal investigations."

Sometimes, formal and lengthy investigations are deemed necessary and are undertaken. In the past, the Ombudsman's office has looked into the government's direction to police on de-escalating conflict situations, the monitoring of unlicensed child care providers, delinquent child support, use of force in jails and services for adults with developmental disabilities who are in crisis.

"The vast majority of our recommendations are accepted, even though we don't have the power to order anyone to accept them. Our power is in our voice. We compile irrefutable evidence. We tell very compelling stories. We are fair and balanced in the analysis of evidence that we review. And we walk the talk of procedural fairness – we are fair in our approach when we investigate a public body.

"Notice is given to any organization we are investigating so they know what we are looking into. The public sector body then has ample opportunity to provide input to the investigative process and to work with us collaboratively in finding solutions. Potential recommendations are run by the organization, with an opportunity for them to provide feedback on the findings or anything else that is reported publicly.

"At the end of the day, we make feasible, sensible recommendations. After the process we go through, public sector bodies are hard pressed not to accept our recommendations."

Dubé notes that many of the issues under investigation are not a surprise to the organization or body involved. "Usually we are not discovering something that the organizations didn't already know. But we shine a light on it and bring attention to that problem. Often this is what is required; otherwise there is no political will to solve the problem."

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unfairness. His function is to resolve complaints and, ideally, prevent them from recurring.

"The *Ombudsman Act* gives us strong powers of investigation," Dubé explains. "We have a broad scope to reach opinions about a public sector body's conduct, including whether it appears to have been contrary to the law; if it was unreasonable, unjust, oppressive or improperly discriminatory; or was based on a mistake of law. We look at the setup, administration and framework for administration and whether it is working well. Typically, we don't get involved in policy decisions. But once a policy is decided or a program set up, we look at how it functions in the public sector."

Dubé stresses what the role is and what it is not. "When we receive complaints, we are not an advocate for either party. As my grandmother used to say, 'No matter how thin you make a pancake, there are always two sides.' It's important that we have an open mind, are impartial, objective, neutral and independent. We are the referee. We are not in the game."

While some may question if or why the education sector needs another complaint mechanism, Dubé is adamant that the expansion of the Ombudsman's mandate to include school boards is a good thing. "Complaints should be embraced by all organizations. They are a great source of feedback."



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When a complaint is received, it is triaged to determine how to move forward in the most efficient manner. Outreach is conducted with trustees, school councils, principals, teachers, support staff and other board officials to inform them of the Ombudsman’s role and seek their suggestions on how to best work together.

“Serious and urgent matters receive priority. But the vast majority of complaints are handled by the early resolution team. Early resolution officers use alternative conflict resolution strategies to resolve complaints. It is also important to note that we have the discretion not to investigate in certain circumstances. For example, if the complaint is frivolous, vexatious or not in good faith; if an initial review does not reveal a problem; if there is another remedy available; if there has been a significant passage of time since the incident occurred; or if we are unable to deal with the matter effectively. In fact, many complaints are closed without contacting the orga-

nization itself. We make that determination upfront.

“Since we are the office of last resort, many complaints are resolved by referring individuals to internal complaint and appeal mechanisms. Sometimes we have to make inquiries to get the relevant facts before we can close a case or resolve it. We’re still learning about individual school boards. And they are learning about us.”

While most complaints are resolved at what Dubé terms a “low level,” some are escalated. In these cases, the office can escalate the case up the hierarchy of the organization. If the issue remains unresolved, a formal investigation may be launched. “Only a small fraction of cases are dealt with through formal investigation. For school boards, we have had only one systemic investigation launched since our oversight began.”

That one investigation involves busing. It is a result of the shortage of school bus drivers in Toronto in September 2016. When the investigation was announced, the office had already received 49 complaints, which has now grown to over 100. The investigation is looking at whether the boards involved (public and Catholic) prepared for and notified parents about the situation and whether the boards were adequately prepared to deal with the situation.

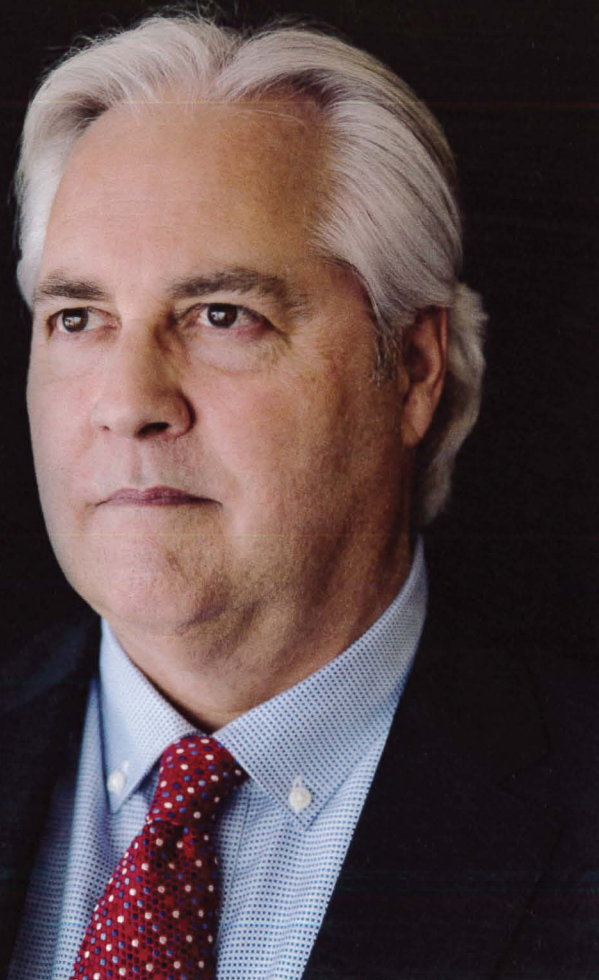
In 2015, the Ombudsman’s office had jurisdiction to receive complaints from more than 500 public sector bodies. With the expansion of its oversight to school boards, school authorities, universities and municipalities, its mandate effectively doubled.

For OPC Members, the additional jurisdiction over school boards has raised concerns and questions, as there is now another layer and another body looking at the way schools operate on a daily basis. But Dubé emphasizes that examining isolated incidents is not the priority of the office.

“Generally we aren’t looking at single incidents. If we look at complaints in isolation, we would miss the opportunity to figure out what the root causes are, solve them and prevent them from recurring. We more often look at systemic issues.”

That said, the office does resolve individual issues, often referring complainants back to existing complaint mechanisms at the school board for resolution. As of today, 1,327 complaints about school boards have been received by the Ombudsman. Once it gained this new jurisdiction over school boards, one of the first things the office did was to set up a dedicated team of early resolution officers, investigators, legal counsel and senior management.

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Ninety per cent of the complaints received against school boards so far have been closed. There are approximately 100 ongoing. The most common complaints are about staff and trustee conduct, special education, transportation, enrolment and boundary issues, employment issues and student safety. The office does not get involved in employment issues.

Dubé encourages educators not to be afraid or suspicious of the complaint process. “Resolving complaints can be done more satisfactorily, more effectively and more efficiently in a collaborative process rather than through an adversarial one. We don’t often deal with principals and vice-principals directly. Usually, we deal with superintendents and school boards. But I reiterate that this process can be in your interest, as it may resolve long-standing issues. Whenever a complaint is resolved, the complainant is satisfied, the public-sector body has information to improve its systems, and it is a win-win for everyone.

“We go in with an open mind, talk to all the people we need to talk to and are very careful to get all the relevant evidence. Depending on what the evidence reveals, we either make recommendations or tell the complainant they were well served.”

If done correctly, the result of these investigations benefits all citizens. “The mission of our office is to strive to be an agent of positive change while promoting fairness, accountability and transparency in the public sector. We put those values into action. We are very proactive. A lot of our work is done behind the scenes.

“A senior public official once said to me that we act as a canary in the

coal mine for the government, as an early warning system. Sometimes just giving a heads-up about a situation effects policy change.”

Educators know that relationships are the key to success in our sector. Paul Dubé feels the same way about his work. “Relationships are at the heart of what the Ombudsman does, so it is essential that we build trust and credibility with all stakeholders, who need to believe that the Ombudsman will act fairly and work collaboratively with them. Our goal is to build better systems, enhance public confidence and reduce complaints.

“Successful organizations know that embracing complaints allows them to get more buy-in from their stakeholders. It’s human nature – if people think an organization is not going to treat them fairly, they won’t fully engage with that organization. They won’t accept the decisions of that organization. The opposite is true as well. If an organization is seen as open and willing to listen, people will be more willing to buy in. Complaints are an opportunity to strengthen relationships. The Ombudsman is a facilitator in that regard. We bridge between stakeholders.”

While another complaint mechanism may be an added obligation for educators, the current Ombudsman wants principals and vice-principals to understand that the office intends to work with school boards, seeking their advice and perspective, and looking for ways to improve the system. At the end of the day, that has to be a good thing for our students. ▲

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