

# **Multi-Layer Ombudsing:** “Just desserts” for Ontario School Boards

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July 2015



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## Multi-Layer Ombudsing: “Just Desserts” for Ontario School Boards

### Introduction

In Ontario, we have recently been served up provincial ombuds oversight over school boards<sup>1</sup>, but even as we get our first taste, should we be asking for dessert?

In my view, everyone connected with the public education system in the province ought to be considering whether the Office of the Ontario Ombudsman is going to be able to fully satisfy an appetite for fairness in relation to the multitude of school board related issues that impact over two million elementary and secondary school students in the province.<sup>2</sup> In this paper I will argue that there is value to continuing to add more ombuds options to the educational oversight menu.

This point of view is consistent with official statements from Ombudsman Ontario that point out that as an office of last resort, the office “...encourages municipalities, universities and school boards to create or reinforce local ombudsman or other complaint mechanisms and accountability offices”<sup>3</sup>. Comments made by the Ontario Ombudsman indicate that his office intends to focus on “broad, systemic investigations”, and that “...Ontarians will be best served if school boards and municipalities respond to that [the public’s demand for accountability] demand by supporting their own accountability offices.”<sup>4</sup> In addition, in the past few years a number of educational ombuds initiatives had gained momentum, for example, in June 2014 the Toronto Catholic District School Board (TCDSB) approved budget for an independent ombudsman<sup>5</sup>, and

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<sup>1</sup> Ombudsman Ontario will start accepting complaints about school boards as of September 1, 2015. Ombudsman Ontario, “When can I complain to the Ombudsman about my municipality/university/school board?” (2015), online: Ombudsman Ontario <<https://ombudsman.on.ca/About-Us/MUS-FAQ.aspx>>. In this paper I use the term “ombuds” as opposed to the commonly used terms “ombudsman/men” and “ombudsperson/s”, and the *Canadian Guide to Uniform Legal Citation* (McGill Guide) style of citation for footnotes. I would like to extend my thanks to Gemma Kerr, Assistant Ombudsperson at Ryerson University, for her comments. The title is a play on the phrase ‘just deserts’ (pronounced *desserts*, from the concept of getting what one *deserves*): in this article I suggest that the implementation of a multi-layer ombuds structure, would be both fair (just) and rewarding (deserts) for school boards.

Wiktionary, “Just deserts” (2015), online: Wiktionary <[https://en.wiktionary.org/wiki/just\\_deserts](https://en.wiktionary.org/wiki/just_deserts)>

<sup>2</sup> Ontario Ministry of Education, “Education Facts 2013-2014” (2014), online: Ontario Ministry of Education <<https://www.edu.gov.on.ca/eng/educationFacts.html#enrol>>.

<sup>3</sup> Ombudsman Ontario, “Does the Ombudsman replace local complaint mechanisms?” (2015), online: Ombudsman Ontario <<https://ombudsman.on.ca/About-Us/MUS-FAQ.aspx?lang=en-CA>>.

<sup>4</sup> Andre Marin, “Andre Marin goes to school”, *The Toronto Sun* (June 20, 2015), online: <[www.torontosun.com](http://www.torontosun.com)>.

<sup>5</sup> *Ibid.* According to Mr. Marin’s article, the TCDSB abandoned this initiative after the passage of Bill 8: “Bill 8 was inspired by the public’s demand for accountability. Ontarians will be best

in 2013 the organization People for Education was advocating for a provincial “special education ombudsman”<sup>6</sup>.

I am conscious of the fact that making the case for the development of new local level ombuds offices in a sector that is itself newly under provincial ombuds oversight is part of a larger debate, one that was flagged by Greg Levine in his comments about the expansion of Ombudsman Ontario’s oversight into the MUSH<sup>7</sup> sector:

[I]s it better to centralize ethical oversight or to encourage and enhance local oversight by giving meaningful powers as well as financial incentives and structural help to local governments to create effective systems?<sup>8</sup>.

In the public education sphere, centralization versus localization does not need to be an either/or proposition: I believe that a multi-layer ombuds structure may be just the right recipe for fairness in public education in Ontario.

## Setting the Table

### Elementary & Secondary Public Education in Ontario

Within public education in Ontario there is incredible diversity among school boards including: language (French/English); religion (Public/Catholic); and location (geographic /institutional). According to the 2013-2014 Education Facts from the Ontario Ministry of Education, the Ontario publicly funded school system encompasses 72 school boards, 10 school authorities, and 1 provincial schools authority,<sup>9</sup> which in turn look after approximately 2 million elementary and secondary students in over 4,900 schools. Provincial school boards receive over

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served if school boards and municipalities respond to that demand by supporting their own accountability offices, and universities bolster the ombudsmen that most already have. “

<sup>6</sup> Kristin Rushowy, “People for Education calls for special education ombudsman”, *The Toronto Star* (May 27, 2013), online: Toronto Star

<[http://www.thestar.com/yourtoronto/education/2013/05/27/people\\_for\\_education\\_calls\\_for\\_special\\_education\\_ombudsman.htm](http://www.thestar.com/yourtoronto/education/2013/05/27/people_for_education_calls_for_special_education_ombudsman.htm)>. According to Rushowy, Education Minister Liz Sandals was not keen on the idea of a special education ombudsman, saying special education already has “more review capacity and more advisory processes than any other area of education.”

<sup>7</sup> MUSH: Municipalities; Universities; School Boards; Hospitals. The “MUSH sector” is also generally understood to include long-term care homes, children’s aid societies and police services. Ombudsman Ontario, “Backgrounder: Opening Ontario’s MUSH sector to scrutiny” (March 2014), online: Ombudsman Ontario <<https://ombudsman.on.ca/Files/sitemedia/Documents/MUSHMar6-Backgrounder-EN.pdf> > (hereafter referred to as the “MUSH Backgrounder”).

<sup>8</sup> Greg Levine, “Hit pause on expanding ombudsman oversight”, *The London Free Press* (August 2, 2014), online: <<http://www.lfpress.com/2014/08/01/hit-pause-on-expanding-ombudsman-oversight>>.

<sup>9</sup> For simplicity, all references to “school boards” include school authorities.

\$22 billion in annual funding from the Ontario government and employ over 129,000 teachers, administrators and early childhood educators (ECE).<sup>10</sup>

The *Education Act, R.S.O. 1990, c.E.2* provides the framework for a multi-layered education system, with the top layer being the Ontario Ministry of Education (Minister of Education), which provides funding and educational direction through the development and administration of various educational statutes and regulations. In the next layer are school boards, which have significant responsibility for how the funding they receive is allocated and utilized, as well as for the administration of education policy and the development of local level programs, guidelines, and procedures. Most school boards are made up of elected Trustees who implement their collective decisions through a board's senior staff person - the Director of Education. School boards also employ supervisory officers who report to the Director of Education. Schools, under the leadership of principals, are responsible for the instruction and discipline of students and ensuring that board and provincial priorities are met. Classrooms make up the lower level with teachers having more limited, but still important discretion in terms of day-to-day decision-making and how the various school, board and provincial rules are applied in practice.<sup>11</sup>

This highly regulated, multilayer system can be extraordinarily complex to navigate: in addition to multiple levels of decision-making and appeal, directives arise at every level. Adding to the complexity is in fact that many of the actions of school boards will necessarily bring into play dozens of other pieces of legislation, from the Ontario *Human Rights Code* to the *Youth Criminal Justice Act*.<sup>12</sup>

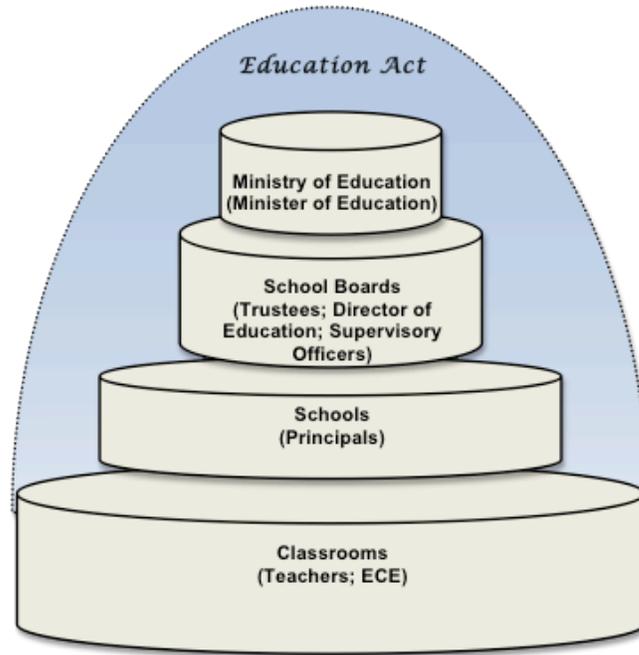
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<sup>10</sup> Ontario Ministry of Education, *supra*.

<sup>11</sup> Ontario Ministry of Education, "Who's responsible for your child's education?" (2015), online: Ontario Ministry of Education <[www.edu.gov.on.ca/eng/document/brochure/whosresp.html](http://www.edu.gov.on.ca/eng/document/brochure/whosresp.html)>; Ontario Public School Boards' Association *et al*, "Education in Ontario" (2014), online: Ontario Municipal and School Board Elections 2014 <<http://elections.ontarioschooltrustees.org/en/education/education-in-ontario.html>>.

<sup>12</sup> Ontario School Trustees *et al*, "Good Governance Guide - Chapter 6: Legal Responsibilities and Liabilities" (2014), online: <<http://cge.ontarioschooltrustees.org/en/legal-responsibilities-and-liabilities.html>>.

## Diagram 1: Public Education in Ontario



**Ontario's Public Education System**

### The way things were: Before September 1, 2015

Decisions happen at every level from the classroom, to the school principal's office, to school board meeting rooms. For many issues, the school board is a final level of appeal, however specific types of decisions such as deciding to suspend or expel a student or identifying a student as an exceptional student, may be appealed to a specially-constituted committee, board or tribunal (e.g. the Child and Family Services Review Board; the Special Education Tribunal). In addition, if an issue involves an alleged human rights violation, the aggrieved party may seek to pursue an application through the Human Rights Tribunal of Ontario.<sup>13</sup> While decisions from these bodies are final, in certain circumstances it may be possible to seek judicial review.<sup>14</sup>

Ombudsman Ontario has always had oversight over the Ontario Human Rights Tribunal, the Ministry of Education, the Child and Family Services Review

<sup>13</sup> Emond Harnden LLP, "Human Rights Tribunal rules that it is not an avenue to appeal decisions by Special Education Tribunal" (August 2010), online: Emond Harnden Law <[www.ehlaw.ca/whatsnew/1008E/Focus1008.shtml](http://www.ehlaw.ca/whatsnew/1008E/Focus1008.shtml)>.

<sup>14</sup> *Sigrist and Carson v London District Catholic School Board*, 2010 HRTO 1062 (CanLII).

Board<sup>15</sup> and the Special Education Tribunal<sup>16</sup>. At various times the Ontario Ombudsman had been granted the power to oversee a particular school board if the Ministry of Education had appointed a supervisor for the board. For example, between June 2008 and January 2012, the Toronto Catholic District School Board fell under the umbrella of Ombudsman Ontario<sup>17</sup>, and between August 2012 and November 2013 the Windsor-Essex Catholic District School Board (Windsor-Essex CDSB) was under Ministry supervision and therefore, provincial ombuds oversight.<sup>18</sup> I also note that in a few of the cases highlighted on the Ombudsman Ontario website, the office intervened with the Ministry of Education in respect of concerns of individual students in provincial schools for the deaf.<sup>19</sup>

Given that over the years Ombudsman Ontario has already been involved at some level with public education issues in Ontario, I believe it is important to look more closely at this new offering and what it is going to be adding to the menu.

### **New menu item: Ombudsman Ontario over school boards**

The proclamation of parts of Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014* ("Bill 8") means that the Ontario Ombudsman can begin to accept complaints about the actions and decisions of school boards as of September 1, 2015. More specifically, Ombudsman Ontario, "...will be able to investigate complaints about the administrative conduct of school boards that have not been resolved by local complaint mechanisms or appeals processes."<sup>20</sup>

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<sup>15</sup> Ombudsman Ontario, "Who We Oversee" (2015), online: Ombudsman Ontario <<https://ombudsman.on.ca/About-Us/Who-We-Oversee.aspx>>.

<sup>16</sup> Ombudsman Ontario, *2002-2003 Annual Report* (Toronto: Ombudsman Ontario, June 2003), online: Ontario Ombudsman <<https://ombudsman.on.ca/Ombudsman/files/47/479d7d09-7a75-411b-a8fe-13a0b639cf72.pdf>>.

<sup>17</sup> Ombudsman Ontario, "Ombudsman now has the power to investigate the Toronto District School Board" (June 5, 2008), online: Ombudsman Ontario <<https://ombudsman.on.ca/Newsroom/Press-Release/2008/Ombudsman-now-has-the-power-to-investigate-the-Tor.aspx>>; Leona Dombrowsky (Education Minister), "Supervision Ends At The Toronto Catholic District School Board" (January 28, 2011), online: Government of Ontario <<http://news.ontario.ca/edu/en/2011/01/statement-by-education-minister-leona-dombrowsky.html>>.

<sup>18</sup> Ombudsman Ontario, "Ombudsman now has the power to investigate the Windsor-Essex Catholic District School Board" (August 28, 2012), online: Ombudsman Ontario <<https://ombudsman.on.ca/Newsroom/Press-Release/2012/Ontario-Ombudsman-now-has-the-power-to-investigate.aspx>>.

<sup>19</sup> Ombudsman Ontario, "Sign of Compassion" (2012), online: Ombudsman Ontario <<https://ombudsman.on.ca/Investigations/Selected-Cases/2012/Sign-of-compassionA-refugee-assistance-group-conta.aspx>>; Ombudsman Ontario, "A Positive Intervention" (2009), online: Ombudsman Ontario <<https://ombudsman.on.ca/Investigations/Selected-Cases/2009/A-Positive-Intervention.aspx>>.

<sup>20</sup> Ombudsman Ontario, "What kind of school board issues will the Ombudsman be able to investigate?" (2015), online: Ombudsman Ontario <<https://ombudsman.on.ca/About-Us/MUS-FAQ.aspx?lang=en-CA>>.

In comparison to the 25,000+ complaints that Ombudsman Ontario deals with annually, they have turned away relatively few complaints about school boards: over the *past 9 years* only 966 complaints could not be investigated.<sup>21</sup> However, when we look at instances when Ombudsman Ontario has been granted oversight over a school board, such as with the Windsor-Essex CDSB (between August 2012 and November 2013), the office received 8 complaints about the board in 2012/2013, and 4 in 2013/2014.<sup>22</sup>

Considering there are 83 distinct school boards in Ontario, including several such as the Toronto District School Board (TDSB) and the TCDSB that are significantly larger than the Windsor-Essex CDSB, it seems likely that there will be more complaints coming forward than the 966 number suggests. That hypothesis is supported by information from the Commission scolaire de Montréal (Montreal French School Board) which indicates that as of 2012 that office was handling approximately 450-500 cases per year.<sup>23</sup> The Montreal French School Board has over 100,000 students and 15,000 employees, so it is roughly comparable to the TCDSB which has over 93,000 students, and over 10,000 staff.<sup>24</sup> The largest school board in Ontario, the TDSB, is over double the size of the Montreal French School Board and the TCDSB, with over 230,000 students and 36,000 permanent and occasional employees.<sup>25</sup>

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<sup>21</sup> MUSH Backgrounder, *supra*. As of June 20, 2015, that number was 1,243: Marin, *supra*.

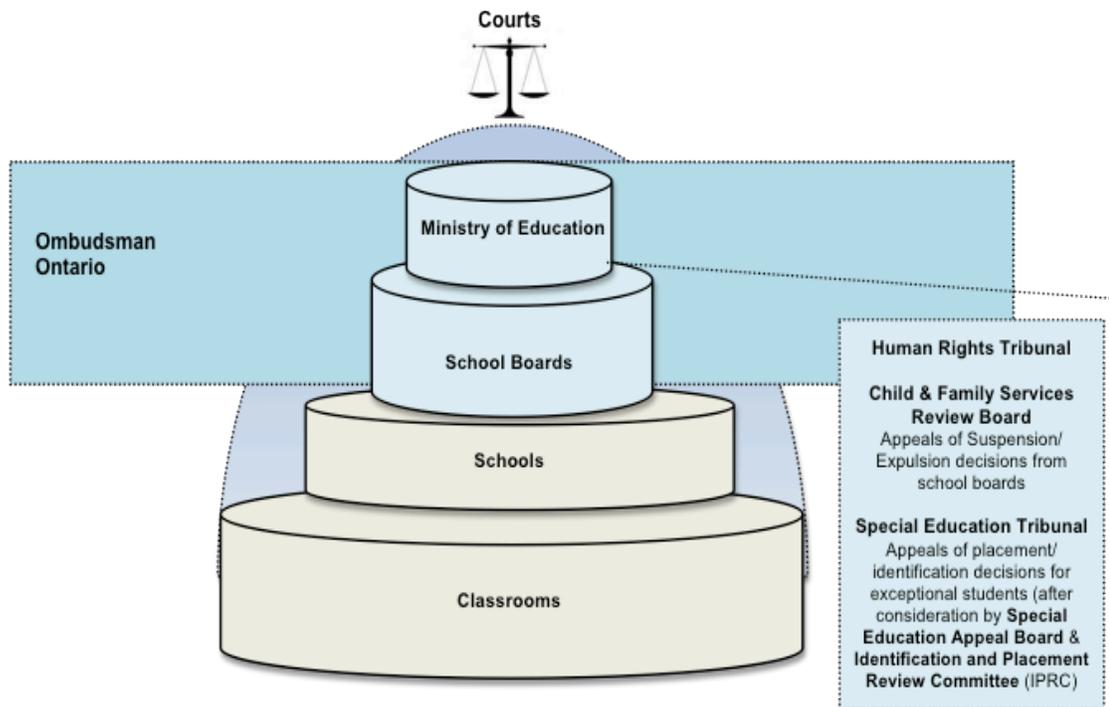
<sup>22</sup> Ombudsman Ontario, *2012/2013 Annual Report* (Toronto: Ombudsman Ontario, July 16, 2013), online: Ombudsman Ontario <<https://ombudsman.on.ca/Files/sitemedia/Images/Reports/AR-EN-Web.pdf>>. Ombudsman Ontario, *2013/2014 Annual Report* (Toronto: Ombudsman Ontario, June 23, 2014), online: Ombudsman Ontario <<https://ombudsman.on.ca/Ombudsman/files/db/db9a5292-209f-4cd1-87ba-81c4150f3be4.pdf>>.

<sup>23</sup> Patrick Robardet, "Ombudsmanship in Education: From Complaint-Handling to Facilitating Governance and Improving Relations and Operations" (November 2012), online: <[http://events.oct.ca/conference/pdf/workshops/Ombudsmanship\\_in\\_Education\\_-\\_Patrick\\_Robardet.pdf](http://events.oct.ca/conference/pdf/workshops/Ombudsmanship_in_Education_-_Patrick_Robardet.pdf)>.

<sup>24</sup> Toronto Catholic District School Board (TCDSB), "Statistics" (2014), online: TCDSB <[www.tcdsb.org/Board/aboutus/Statistics/Pages/default.aspx](http://www.tcdsb.org/Board/aboutus/Statistics/Pages/default.aspx)>.

<sup>25</sup> Toronto District School Board, "Quick Facts" (2015), online: TCDSB <[www.tdsb.on.ca/AboutUs/QuickFacts.aspx](http://www.tdsb.on.ca/AboutUs/QuickFacts.aspx)>.

Diagram 2: Ombudsman Ontario Oversight after September 1, 2015



Ontario's Public Education System

Regardless of the number of complaints about school board decisions and actions will actually be brought to Ombudsman Ontario starting this fall, it is important to consider not only the volume of complaints but also their nature. Ombudsman Ontario may “literally have operators standing by”<sup>26</sup> to respond to complaints, but could or should those complaints have been responded to before the complainant felt the need to pick up the phone?

In the sections that follow I have considered first, what the Ombudsman’s office and others have said in the past in support of the “push for MUSH”<sup>27</sup>, second, what the critics of extended oversight have said, and lastly, I have looked at what the types of school board concerns that can now be brought forward for investigation.

<sup>26</sup> Marin, *supra*.

<sup>27</sup> The “push for MUSH” was an issue that had been brewing since the Office of the Ontario Ombudsman was first created in 1975 without oversight over the MUSH sector: MUSH Backgrounder, *supra*.

## Why the push?

At the core of the “push for MUSH” (school boards) campaign appears to be the desire to ensure that Ontarians who have issues with school boards have “recourse to an independent, impartial authority that can investigate their complaints”<sup>28</sup>, and, in my view, a sense of entitlement: many other provincial ombudsmen oversee school boards so it is *only* fair to extend the scope of the Ombudsman Ontario’s oversight.

Expanded oversight also plays into the current public appetite for greater government accountability and transparency. As lamented by the Ontario Coalition for Accountability, “...when, oh when will the powers that be open up and let school boards – spending billions of your dollars – have the same third-party oversight as government ministries that dole out the big bucks”.<sup>29</sup> In November 2014, one new TDSB trustee pointed to desires to increase accountability and to prioritize “rebuilding public trust” as reasons to consider having an independent ombudsman for the board.<sup>30</sup> One month later, that wish may have come true, but it is unclear whether this was actually a call for Ombudsman Ontario oversight or for a new TDSB ombudsman.

Beyond broad fairness and budgetary rationales for expanded ombuds oversight in this sector, there are proponents of the expansion efforts who see it as a concrete way to support individual parents: “Letting the ombudsman look into complaints as an objective third party gives parents that extra level of help when they’re fighting for their kids’ best interests.”<sup>31</sup>

## What the critics say

There are those that do not appear to like the taste of ombuds oversight, at least in the context of school boards, and who have spoken out against Ombudsman Ontario’s expansion. In 2013 the Ottawa-Carleton District School Board rejected a motion that would have opened the door for the Ombudsman Ontario to examine complaints about bullying and school closures. According to an Ottawa Sun article, trustees expressed confidence in their own abilities to resolve concerns and the availability of existing complaints processes. One trustee is quoted as saying, “There’s something to be said about having someone on the ground who knows the local system, who can pick up the phone and fix it....”

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<sup>28</sup> MUSH Backgrounder, *supra*.

<sup>29</sup> Ontario Coalition for Accountability, “Ontario’s school boards need to be under the scrutiny of an ombudsman” (July 7, 2012), online: Ontario Coalition for Accountability <[www.ontariocfa.com](http://www.ontariocfa.com)>.

<sup>30</sup> Sachin Maharaj, “Finally, a new era at the Toronto District School Board?”, *The Toronto Star* (November 12, 2014), online: <[www.thestar.com/opinion/commentary/2014/11/12/finally\\_a\\_new\\_era\\_at\\_the\\_toronto\\_district\\_school\\_board.html](http://www.thestar.com/opinion/commentary/2014/11/12/finally_a_new_era_at_the_toronto_district_school_board.html)>

<sup>31</sup> Michael Aubry, “Ottawa school board wants bully ombudsman”, *The Ottawa Sun* (March 23, 2013), online: <[www.ottawasun.com/2013/03/23/ottawa-school-board-wants-bully-](http://www.ottawasun.com/2013/03/23/ottawa-school-board-wants-bully-)>.

worry about making bureaucracy too complicated and too distant if things can be sorted out on the ground.” Another trustee commented, “We’re on the ground, and the Ombudsman is in Toronto; I can go directly to the school and deal with the issue.”<sup>32</sup>

Another example occurred during the consultation regarding Bill 8. A joint submission was made by four school board/trustee associations against the expansion of Ombudsman Ontario’s oversight over school boards for reasons including:

We would emphasize that the education sector is complex and involves not just the delivery of education but the physical and mental health of students, raising issues that go beyond the expertise of an Ombudsman. Furthermore, in the education sector there are currently provisions for review of decisions, most of which involve external third parties, including internal standard reviews, objections, appeals and hearings.<sup>33</sup>

While acknowledging Ombudsman Ontario’s role as an office of last resort and the willingness of school boards to be “partners in advocacy for transparency and accountability”, the associations argue that they “have strong concerns that legitimate and necessary school board processes will be undermined and even taken advantage of by those seeking to generate attention, including media attention, for their own purposes.”<sup>34</sup>

Reading between the lines, I discern a similar sense of entitlement underlying the critics’ side as I noted above in ‘Why the pu S h?’: the belief that school boards are uniquely capable of dealing with educational issues, and so it is only fair to let school boards (and trustees) keep doing what they do best – without interference. There also seems to be a preference for conflict resolution to occur early, informally, and at the lowest possible level. This would appear to align more closely to localized ombuds structures, as opposed to provincial legislative ombuds oversight, but in the next section I take a closer look at what Ombudsman Ontario says about their role and what types of concerns are likely to be brought to their office, and whether there might be a way for the critics to find solace in a different form of ombuds.

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<sup>32</sup> Michael Aubry, “Board rejects Ombudsman’s nose in school business”, *The Ottawa Sun* (April 3, 2013), online: <[www.ottawasun.com](http://www.ottawasun.com)>.

<sup>33</sup> Ontario Public School Boards’ Association *et al*, “Joint School Board Submission to the Standing Committee on General Government re: Bill 8, Public Sector Accountability and Transparency Act, 2014” (November 26, 2014), online: Ontario Public Service Board Association <[www.opsba.org/index.php?q=advocacy\\_and\\_action](http://www.opsba.org/index.php?q=advocacy_and_action)>.

<sup>34</sup> *Ibid.*

## The fine print

As I mentioned above, the Ontario Ombudsman has been very clear about the role that his office will play in respect of school board complaints:

Here's the first lesson of Ombudsman 101: The Ombudsman is an office of last resort. Wherever possible, we will work with boards so they resolve complaints at the local level. To paraphrase that Shakespeare speech we all learned in school, I come to support local complaint mechanisms, not to replace them.<sup>35</sup>

Individuals who contact Ombudsman Ontario can expect that if they have not already availed themselves of existing school board complaints and/or appeal processes, they will be required to do so. The Ontario Ombudsman has also been very clear about the tools that his office has at its disposal and the methods that he believes are key to his office's effectiveness:

Fortunately, the Ontario *Ombudsman Act* establishes a very different model. It contains robust investigative tools, such as the power to enter premises and ability to take testimony under oath. We are scrupulously impartial while conducting an investigation, but once it is completed, we make recommendations and use moral suasion (including social media) to convince the powerful to change their ways.<sup>36</sup>

Data collected by Ombudsman Ontario in respect of the 147 school board issues that had to be turned away in 2013/2014<sup>37</sup> and their MUSH FAQ on their website indicates that concerns about the following may now be investigated under the new school board mandate:

- school and school board policies
- student discipline
- adequacy of special education supports
- availability of complaint processes
- responses to bullying
- illegal closed school board meetings
- customer service and poor communication.

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<sup>35</sup> Marin, *supra*.

<sup>36</sup> Ontario Ombudsman, "Public officials not obliged to be abused" (December 26, 2014), online: Ombudsman Ontario <<https://ombudsman.on.ca/Resources/Articles-by-the-Ombudsman/Marin--Public-officials-not-obliged-to-be-abused-o.aspx>>.

<sup>37</sup> Ontario Ombudsman, *2013/2014 Annual Report* (Toronto: Ombudsman Ontario, online: Ombudsman Ontario <<https://ombudsman.on.ca/About-Us/MUS-FAQ.aspx?lang=en-CA>>).

From this small sampling of the “ones that got away”, we can see that school board issues are likely to be diverse in terms of subject matter and potential impact (i.e. individual concerns vs. board-wide or cross-board issues).

## Taste-testing ombuds alternatives

As I noted at the beginning of this paper, Ombudsman Ontario’s expanded oversight over school boards does not mean that there is not room for additional layers of oversight in the education sector in Ontario. In this “taste-testing” section I will provide an “*amuse-bouche*” overview of the ombuds role, summarize the cravings for oversight, and offer up a taste of what local ombuds offices might be able to offer.

### An ombuds *amuse-bouche*

Although there can be vast differences among ombuds offices, the essence of ombudsing involves “the fair and expeditious resolution of complaints in an impartial, confidential and independent manner.”<sup>38</sup> As described by Michele LeBaron:

Ombudsman work at a distance, familiar with the system but not a formal part of it. Standing at arm’s length from organizations, they are like wise elders whose presence gives individuals a conduit to the collective face of an institution. They are an interface, practicing dynamic in-between-ness in ways that promote voice, procedural satisfaction and accountability.<sup>39</sup>

An ombuds office can operate almost exclusively as an investigative office of last resort, or be more oriented toward informal resolution and prevention simply by mirroring respectful behaviour and providing individuals with a safe place to air their concerns. According to the Association of Canadian College and University Ombudspersons (ACCUO) website, among the many reasons why an ombuds office might be appropriate in the educational context are the fact that an ombuds:

- conveys the institutions commitment to being fair
- promotes a constructive approach to conflict resolution
- helps avoid long and costly litigation
- helps formal processes run more smoothly
- provides a user-friendly source of information about policies, rights and avenues of redress

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<sup>38</sup> Forum of Canadian Ombudsman (FCO), “What is an Ombudsman/Ombudsperson?” (2011), online: FCO <[www.ombudsmanforum.ca/en/?page\\_id=172/](http://www.ombudsmanforum.ca/en/?page_id=172/)>.

<sup>39</sup> Michelle LeBaron, “*Watchdogs and Wise Ones in Winter Lands: The Practice Spectrum of Canadian Ombudsman*” (April 2009) at 5, online: FCO <[www.ombudsmanforum.ca/en/?page\\_id=184/](http://www.ombudsmanforum.ca/en/?page_id=184/)> .

- helps identify policy weaknesses and gaps in the system.<sup>40</sup>

There are differences between what a large, well-funded provincial legislative ombuds office such as Ombudsman Ontario offers in terms of oversight compared with a smaller local/organizational/institutional-level ombuds office. As a result of these differences “between and within spheres of ombuds practice” there are what LeBaron identifies as “tensions”, perhaps most markedly between ombuds offices that are established by statute (legislative/classical) and those that are created by an institution (organizational/executive).<sup>41</sup>

Ombuds structures are uniquely capable of being designed and implemented in a way that addresses the concerns and needs of a particular constituency. Ombudsman Ontario has made it clear that even in a legislative ombuds context is possible to adjust one’s mandate and to employ a particular style of ombudsing. Since 2005, Ontario Ombudsman Andre Marin has been engaged in a renewed “push for MUSH”; ten years later one could say that he achieved MUS but not ‘H-all’, but he has definitely raised the office’s profile though the use of social and mainstream media.

While Ombudsman Ontario may be in an ideal position to do systemic and cross-board investigations, it is less clear that the office can provide the sense of informality and ‘ground level’ resolution of individual concerns that a local school board office might offer. Similar to Ombudsman Ontario, any new school board level ombuds could be set up as an independent office, with the power to impartially investigate complaints, make recommendations on the basis of the principles of fairness and provide confidential complaint resolution.

## Cravings

From the discussion above, I have compiled in chart form a summary of school board ombuds services ‘cravings’ – essentially a list of services or results that proponents and critics have indicated are desirable. I have indicated with check marks (☐) and/or comments whether in my view Ombudsman Ontario is likely to be able to fulfill this craving, and where a layer of school board ombuds-other might be able to do so.

### Ombuds services attributes – school boards

Attribute sought	Ombudsman Ontario	Ombuds Other
Somewhere to go with complaints (beyond school board)	☐	☐

<sup>40</sup> Association of Canadian College and University Ombudspersons (ACCUO) FAQs, online: ACCUO <[www.uwo.ca/ombuds/accuo\\_aoucc/english/faqs.html#why](http://www.uwo.ca/ombuds/accuo_aoucc/english/faqs.html#why)>.

<sup>41</sup> As defined by the FCO: LeBaron, *supra*.

Attribute sought	Ombudsman Ontario	Ombuds Other
Independent of the school board	<input type="checkbox"/>	Could be set up that way
Impartial / objective review / investigation	<input type="checkbox"/>	<input type="checkbox"/>
Confidential	<input type="checkbox"/>	<input type="checkbox"/>
Demonstrate school boards' commitment to being fair	<input type="checkbox"/>	<input type="checkbox"/>
Tools for investigation	<input type="checkbox"/>	Unlikely to be as 'robust'
Hold the school board accountable for actions / spending	Recommend; persuade	Recommend; persuade
Greater transparency	Depends on outcome	Depends on outcome
Rebuild public trust	<input type="checkbox"/>	<input type="checkbox"/>
Support and for parents advocating for their children	Advocate for fairness	Advocate for fairness
Knowledge and expertise re: education / school board issues	<input type="checkbox"/>	<input type="checkbox"/>
Ensure that existing review and appeal mechanisms are used	<input type="checkbox"/>	<input type="checkbox"/>
Help formal processes run more smoothly	<input type="checkbox"/>	<input type="checkbox"/>
Informal issue resolution	More formal processes	<input type="checkbox"/>
"On the ground" dispute resolution	More removed	<input type="checkbox"/>
User-friendly source of information re: policies/rights/appeal	Potentially more intimidating	<input type="checkbox"/>
Constructive conflict resolution	<input type="checkbox"/>	<input type="checkbox"/>
Avoid litigation	<input type="checkbox"/>	<input type="checkbox"/>
Identification of policy weaknesses and gaps in the system	<input type="checkbox"/>	Potentially limited scope

## A "100 mile" approach

Recent years have seen the emergence of a "100-mile diet" food trend in sourcing local ingredients, and I see a parallel between this trend and what appears to be a certain consensus between both the Ontario Ombudsman and his critics that "...local problems are best dealt with at the local level."<sup>42</sup>

As the critics noted, the education sector is "complex" on many levels, and although I do not agree that Ombudsman Ontario would not have or be able to obtain the necessary expertise to deal with educational issues with a physical and/or mental health component (indeed as evidenced by many of their SORT investigations, Ombudsman Ontario can provide a very high level of analysis on very complex multi-component issues), the *perception* of fairness and competency can be as important as reality.

<sup>42</sup> Marin, *supra*.

There are potentially many advantages to local oversight, including the ability to respond quickly and informally to unique challenges at the local level. There may be greater opportunities to intervene at an earlier stage in an issue (i.e. before all the appeal avenues are exhausted or the issue escalates) to talk about fairness concerns and to see if any issues can be addressed before moving to the next process step. Local ombuds could reduce the number of school board issues that end up on Ombudsman Ontario's plate (or on social media).

A "local" ombuds might be (or be seen to be) more understanding of education issues and school board culture. A school board ombuds' terms of reference could include reference to addressing gaps or inadequacies in existing dispute resolution mechanisms and ensuring that those mechanisms are being implemented fairly. It would seem that there is no shortage of policy and good intention already in place to deal with many issues that might arise for students, parents, teachers and staff. For example, for complaints of discrimination or harassment by students, staff or trustees the York Region District School Board has a comprehensive complaint resolution process, including "Early/Site-Based Resolution of Complaint", "Formal Complaint Process" and "Appeal Process/Final Review of Decision".<sup>43</sup>

It may be possible to create a local level ombuds (or multiple ombuds) to service a particular constituency – for example to address the particular types of issues that arise in certain boards. I noted above that among the boards/authorities there are divisions of language and religion (English Public; English Catholic; French Public; French Catholic), geography and purpose (geographically isolated and hospital-based school authorities), size and composition. The question of whether it would be more appropriate to have a single "education ombuds", individual school board ombuds or an ombuds for a particular coalition of school boards is beyond the scope of this paper, although in my opinion the answer may depend as much on levels of financial support from Ontario Ministry of Education and various individual school boards as on commonalities of concern and constituency.

### **Next on the menu: Multi-layer ombuds?**

Seven years ago, Michelle LeBaron asked a number of interviewees about the future of ombudsing in Canada and the general consensus was that there would continue to be a growth in the number of "specialized ombuds offices across sectors and in diverse contexts".<sup>44</sup> While the new layer of provincial oversight in education seems to support this prediction, growth has not been exponential or quick. Adding new layers is unlikely to happen quickly, but this new step in

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<sup>43</sup> York Region District School Board (YRDSB), "Board Procedure #240.0 Respectful Workplace and Learning Environment" (June 2014), online: YRDSB Policies & Procedures <<http://www.yrdsb.ca/AboutUs/Policy/Pages/default.aspx>>.

<sup>44</sup> LeBaron, *supra*.

committing to fairness through ombuds oversight in elementary and secondary school education in Ontario should not be a last step.

It would be fruitful to capitalize on the public interest and debate surrounding ombuds oversight that started in 2014 following the introduction of Bill 8, and which will continue during the roll-out of Ontario Ombudsman oversight over school boards in September 2015, and over universities and municipalities in January 2016.<sup>45</sup> It will also be important to build upon work and/or campaigning that has already been done in some school boards toward developing school board level ombuds offices, for example the TCDSB ombudsman office<sup>46</sup>, which was an initiative started in May 2012 to create an independent ombuds office that would report to the TCDSB Board of Trustees, which had its budget approved in June 2014<sup>47</sup>, but which has not evolved since then.

There is also much to be learned from Quebec, where school board ombuds have been mandatory for parent and student concerns since 2009, and more specifically from the Montreal French School Board Ombudsman which predates the provincial directive, arising out of board policy not legislation, and has a broader mandate.<sup>48</sup>

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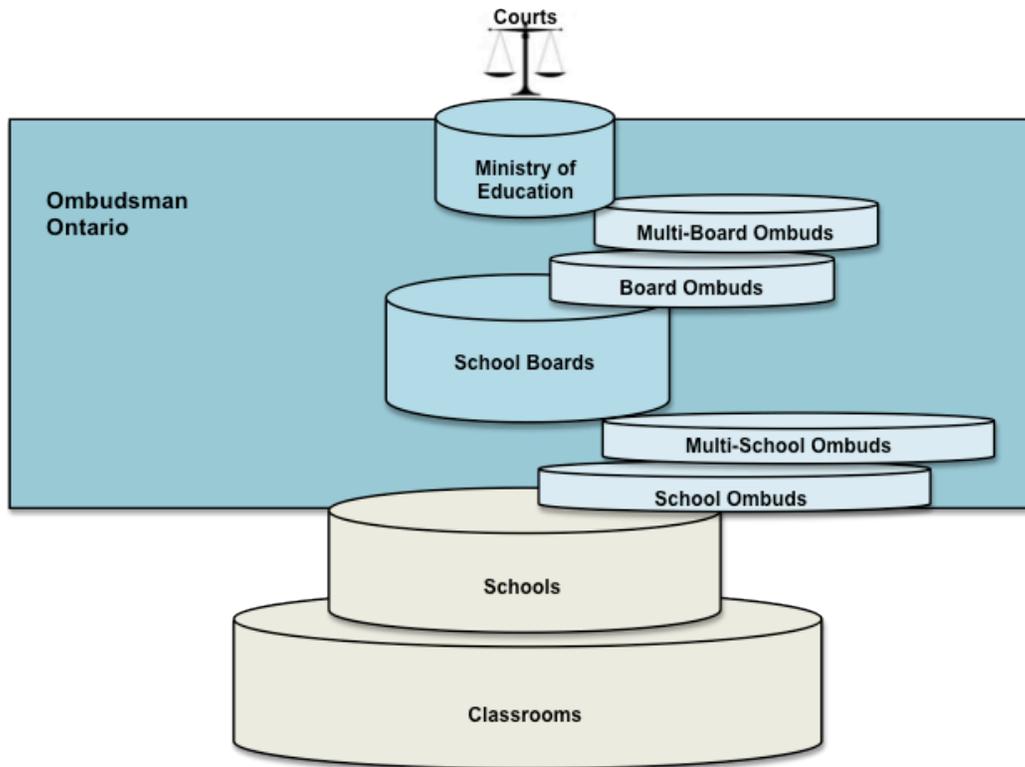
<sup>45</sup> Ombudsman Ontario, "Ombudsman oversight coming soon to municipalities" (May 21, 2015), online: Ombudsman Ontario <<http://www.ombudsman.on.ca/Newsroom/Press-Release/2015/Ombudsman-oversight-coming-soon-to-municipalities,.aspx>>.

<sup>46</sup> TCDSB, "Draft Ombudsman Report" (May 10, 2012), online: TCDSB <<https://www.tcdsb.org/Board/TrusteesoftheBoard/Committees/Pages/pre/Governance-Framework,-May-10,-2012.aspx>>.

<sup>47</sup> Moira MacDonald, "Toronto Catholic school board approves 'long overdue' ombudsman position to referee conflicts", *The National Post* (June 17, 2014), online: National Post <[http://news.nationalpost.com/toronto/toronto-catholic-school-board-approves-long-overdue-ombudsman-position-to-referee-conflicts?\\_federated=1](http://news.nationalpost.com/toronto/toronto-catholic-school-board-approves-long-overdue-ombudsman-position-to-referee-conflicts?_federated=1)>.

<sup>48</sup> Robardet, *supra*.

**Diagram 3: Multi-level ombuds oversight (options)**



**Ontario's Public Education System  
with Multi-layer Ombuds Structure**

In conclusion, school boards across Ontario will soon have a taste of provincial level ombuds oversight and I believe boards need consider whether this oversight might be complemented by the flavours of school or board level ombuds. I believe that developing a multi-level ombuds structure for publicly funded education in Ontario would be a recipe for success.