



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

Ashley Bursey, Communications Manager:

Good morning everyone and thank you so much for joining us for our first webinar about how we deal with complaints related to school boards. My name is Ashley Bursey. I am the Manager of Communications for the Ontario Ombudsman's office. We're going to turn to our speakers in just a minute but I have a few housekeeping items first.

First, as you know, we've asked you all to submit questions in advance and that's because we have more than 100 people tuning in today, so we wanted to try to address your questions during the presentation and then turn to more specific questions once the presentation has ended. I'll be back after the PowerPoint 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. We'll send that link to all participants in the coming days as well as share it on our Twitter and Facebook, and I encourage to sign up for our newsletter so you'll get details there as well, as well as more information about our outreach and complaint numbers about school boards.

Our speakers today will be our General Counsel, Laura Pettigrew, as well as our Director of Investigations, Sue Haslam.

But first, I am 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 share a few words. Mr. Paul Dubé's career has been in law and he established the first office of the Canadian Taxpayers' Ombudsman. We are so pleased to welcome him to our office and team, so without further ado, Mr. Paul Dubé.

Paul Dubé, Ombudsman of Ontario:

Thank you very much Ashley, and welcome everybody. Thanks for turning out in such great numbers.

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

I think a really important part of the role of Ombudsman is building relationships, especially with stakeholders, and especially with stakeholders such as school boards. So a big priority as I take on this role is to keep the lines of communication open among stakeholders in my office, and I know that it's a priority that everyone in the office shares.

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



The overall theme of this webinar is ‘What to expect when the Ombudsman calls’ and what I can say to you is, what you can expect are no surprises. You’ll learn this about me as time goes on, but fairness is integral to the way I operate, to what I bring to the job and so as we provide oversight to various stakeholders, and we look into issues of transparency, we promote fairness. I really believe firmly that we have to walk the talk; we have to be fair and transparent ourselves, so you can expect that from us.

We’re not here to name, blame, and shame – and in fact most of our work is done behind the scenes. You’ll hear later on how the processes unfold but really, my priority is, whenever possible, to find “win-win-win” situations. I can’t stress that enough; we want to hear from you, we want to have an ongoing dialogue, look for solutions and get as much information as possible so we can provide that constructive feedback - and maybe we can prevent complaints and problems from arising in the first place.

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, Laura and Sue, take over and explain more about the office, how we deal with complaints, and what to expect when we come calling. I promise, we do not bite.

Thank you.

Laura Pettigrew, General Counsel:

We’re going to cover a number of topics this morning. One is, what is an Ombudsman, for those who don’t know; a little bit about our mandate and powers under our legislation, the Ombudsman Act, and how we actually handle complaints, and then a little bit about our new jurisdiction since September when it comes to school boards. And then there be an opportunity for some of your questions to be answered.

We knew that we were going to get jurisdiction over new areas for a while, and we have been making a concerted effort to go out into communities, to talk to stakeholders, to conduct outreach and education and hear what they have to say. Some of you have participated in roundtables that were held by our office in conjunction with Canada’s Public Policy Forum. We went out into communities to hear your concerns, to hear your questions, to provide some answers, and to learn.

We have also attended many conferences, as speakers and also as participants, to get an idea of the issues that affect the school board community.

A lot of what we heard was concern about what it’s going to mean to us when the Ombudsman comes, and some fear of what the impact of our jurisdiction will be in the school board sector. I think a lot of that has been driven by a lack of understanding or misunderstanding about how we operate in the majority of the cases that we deal with.

A lot of people know us for our big systemic reports that come out from time to time. Those are important, but they don’t represent the bulk of the work that we actually do, which is behind the scenes in most cases; informal, collaborative and cooperative.

We are trying, through our outreach and education efforts as well as today, to dispel some of the myths and misunderstandings about our role and how we function.



For those of you who aren't aware of what an Ombudsman is, and some of you may not be, the concept of Ombudsman, actually, the first modern parliamentary Ombudsman came from Sweden, and the term Ombudsman is Swedish, over 200 years ago. It's a gender-neutral term and the idea behind the Ombudsman is that the Ombudsman's a citizen's representative, a facilitator; somebody who can connect the ordinary citizen with the government bureaucracy that can affect them.

There are currently ombudsman offices all over the world. There are hundreds of parliamentary ombudsmen all over the world; some of them are actually embedded in constitutions.

In Canada, we don't have a federal ombudsman of general jurisdiction, but every province, with the exception of Prince Edward Island, has a provincial parliamentary ombudsman. Our Ombudsman has been around since 1975, our Ombudsman institution, so over 40 years.

The Ombudsman is appointed under the Ombudsman Act, on recommendation of the Legislative Assembly by Cabinet and the Lieutenant Governor. Similar to the Information and Privacy Commissioner, the Auditor General, the Environmental Commissioner, the Ombudsman is an Officer of the Legislative Assembly. The Ombudsman currently serves a five-year term that is renewable.

You just met our new Ombudsman, Paul Dubé, who takes office tomorrow; we're all excited by that event. Mr. Dubé, as Ombudsman for the last couple of appointments, was appointed through an all-party selection committee at the Legislative Assembly.

The Ombudsman is responsible, its primary role, is to carry out independent and impartial investigations of complaints. Our services are free. We operate under the Ombudsman Act and the Ombudsman can delegate authority to staff.

We currently have authority to investigate complaints of over 1,000 public sector organizations. In the beginning, we dealt with provincial public sector organizations, of over 500 ministries, agencies, boards, commissions, corporations, and tribunals. Now we have 82 school boards added, 21 universities that receive direct and regular funding from the government, and 444 municipalities; so we have essentially doubled our jurisdiction.

Complaints can come in from individuals, from organizations, from associations, corporations. Members of the provincial parliament can also bring forward complaints, and typically, that's on behalf of their constituents.

The Ombudsman also has the unique ability to initiate an investigation on his own motion, his own initiative. This is generally done where there is an issue affecting a large number of people, something about a policy, a practice, a piece of legislation is having a significant impact on folks. It's affecting the system. We call those systemic investigations.

The Ombudsman may initiate a complaint based on something he has read in the newspaper, seen in the media, or an issue that has arisen in the Legislative Assembly of concern.

In terms of school boards, and some people say 'Why do you say 82? There aren't 82 school boards', well the breakdown is this: There are 72 district school boards: 31 English public, 29 English Catholic, 4 French public, and 8 French Catholic, but we also have jurisdiction over six section-68 school authorities, two district school area boards, a secondary school board, and a Protestant separate school board.

Our main focus is on the administrative conduct of those under our jurisdiction. Our Act describes this as “the Ombudsman’s function is to investigate any decision or recommendation made or act done or omitted in the course of the administration of a public sector body”. In the provincial context, the courts have separated out legislative decision-making. So if you have a piece of legislation that is approved by the Legislative Assembly or you have regulations that have been issued by Cabinet or an Order in Council that has been issued by Cabinet, that process is not within our authority to look at. But once you have public servants or others that are charged with implementing the provisions of that legislation, that regulation or order in council, that’s administration, and we can look at that.

It’s very similar to the way that we will look at matters that come before school boards; distinguishing between that broad public policy-making function and the administration.

You’re probably familiar with Bill 8 - the *Public Sector and MPP Accountability and Transparency Act, 2014*, which received royal assent in December 2014. As of September 2015, we have had jurisdiction over school boards. As of January 1, 2016, our jurisdiction has extended to municipalities and universities.

Currently, we have 86 employees; you see the budget there. **[showing slide]** Last fiscal year, we dealt with over 20,000 complaints and inquiries. But, as our jurisdiction has doubled, we are in expansion mode. We’re trying to grow our organization to be able to accommodate and effectively deal with the various complaints that we are now receiving about the new areas of jurisdiction.

To give you some idea of the complaints that typically we get, here are the 5 most complained about organizations in our last fiscal year, 2014-2015. **[showing slide]**

This excludes provincial correctional facilities. We do have authority to receive and action complaints from Ontario’s provincial correctional facilities, and we get a lot of complaints, thousands of complaints every year about those and they run the gamut of issues relating to inmates. Typically, we receive a lot of complaints about programs that involve income supports and benefits that people rely on for basic supports; Family Responsibility Office, Ontario Disability Support program, Workplace Safety and Insurance. Now, you’ll see Hydro One was number one that year, and the reason for that was that we were actually conducting a large systemic investigation that was spurred on because Hydro One brought in a new billing system and it created all sorts of issues for its customers; and we received a lot of complaints. In fact, a record number – close to 11,000 complaints about that particular organization – so it topped the chart that year.

We also had a lot of complaints about the Private Career Colleges Branch of the Ministry of Training, Colleges and Universities, and that was related to a specific private college that the Ministry had to withdraw the registration of, which led to a number of students complaining to our office.

I’m going to go through a basic summary of what the *Ombudsman Act* provides, the formal process for resolution of complaints, but I want to preface that by telling you that in most cases that we deal with, that in over 20,000 complaints that come in every year, we are not using those formal provisions of the Act. We are using alternate dispute resolution techniques; we are co-operatively closing things relatively quickly.

Before we ever launch a formal investigation, you should know about the issue well in advance. As Mr. Dubé said, there shouldn’t be any surprises because we try to deal with things informally with folks, and we only issue notices of intent to investigate as a last resort.

We commence our investigations by issuing a notice; it goes to the head of the public sector body, and it summarizes very succinctly the issue that we are looking at. Once we're in an investigation, the Act gives us very robust powers of investigation. The Ombudsman staff are delegated the authority to require disclosure of information and documents, and public sector officials within our authority are required to comply with our request for disclosure.

There is an exception, and that is with privileged documents. Organizations can withhold documents on the grounds of, for instance, solicitor-client privilege, but many waive that privilege because they want to explain and justify why they've taken particular actions.

We also have the authority to summon individuals to come before us and testify under oath or affirmation, and that applies to anybody, not just employees and officials of a particular organization.

We have the right to enter premises – and there are certain procedural requirements around that. However most of the time, if we're going out, say to a school board to meet with officials, we're doing so on a co-operative, consensual basis. We're not giving a formal notice, we're just saying "Can we come and talk to you?", and usually the answer is yes.

Historically, where we have used our powers of entry has been in the correctional field. For instance, you may have inmates complaining about the conditions of confinement and raising concerns, and we may want to have the opportunity to go out and see for ourselves what's happening, and in those cases we'd issue a formal notice that we're going to inspect, usually without very much notice, so that we can see things in their natural state.

One of the concerns that we have heard repeatedly from new stakeholders relating to Ombudsman's jurisdiction is, "What are you going to do about the historical complaints, the repeat complaints, the vexatious complaints? They take so much time and resources to deal with; now you're on the scene, what's it going to mean?" We understand. There are individuals out there who are firmly committed to their point of view and hold it, despite perhaps being given reasonable explanations. We sometimes refer to them as querulants; they are very obsessed about a particular issue, and will not accept reasonable explanations. But we also look at the nature of the issue being raised, because we separate out the behaviour and the conduct from the issue that's coming forward.

We look at the facts, and we have broad discretion under our statute not to investigate in a number of circumstances, including if we feel that a complainant is vexatious, a complaint is frivolous, it's not being made in good faith. If something comes to us over a year after the facts on which it is based, we can also use our discretion not to investigate, but what we tend to do is look at the individual fact situation, look at the impact on the individual, see if it's still an ongoing issue of concern before exercising our discretion. But we are very good and very experienced at dealing with individuals who continue to complain despite having received good communication, a good recent response, reasonable information. Sometimes what we say as a selling point in terms of our jurisdiction to stakeholders in communities is when we are involved, you can refer people on to us that may be taking up your resources repeatedly by coming back about the same issues, and we can give an independent, impartial view and, if you've done everything that you should, we can put that stamp of credibility in terms of what you have done.

Now, you'll see there at the bottom of the slide [\[showing slide\]](#) it says 'offence provisions' and yes, resisting the Ombudsman, hindering the Ombudsman, failing to meet the Ombudsman's lawful requirements, making false statements, being misleading can result in a provincial offence, a prosecution, and, on conviction, up to \$500 fine and up to three months in jail.



These provisions, as far as I'm aware, have never been actually used in Ontario, and I'm not aware of any other province that has similar offence provisions ever using them. Typically ombudsmen don't resort to these methods, but they underscore the seriousness of an Ombudsman's investigation when we're in the formal stages of investigations.

Ombudsmen all over the world operate with confidentiality provisions, and it's very important. In terms of our access to information, we get access under the *Ombudsman Act* and we have very broad access to all sorts of sensitive and confidential information. Reflecting that, the Ombudsman takes an oath of confidentiality and partiality. We actually have our staff take an oath as well, and we cannot reveal information, except in limited circumstances.

Our investigations are confidential; in fact, they're carried out in private. Statements and information that we receive during the course of an investigation are not admissible in court or tribunal proceedings against anyone, with the exception if somebody perjures themselves, lie under oath, that can be used against them in a trial for perjury. Again, that has never happened, based on my knowledge of this office, which goes back quite a few years.

The Ombudsman's process is also protected from judicial review. It's only in limited circumstances where someone is saying we're acting without jurisdiction or can demonstrate we are acting in bad faith that people can challenge our process.

The Act also provides that information and documentation supplied to the Ombudsman is privileged – so it can't be used in any other proceeding. Neither the Ombudsman nor the Ombudsman's staff can be called to give evidence in court or any other proceeding.

Finally, our office is not subject to the information and privacy regime in the province, so people can't access our information under the *Freedom of Information and Protection of Privacy Act* or its municipal equivalent.

As a result of the Bill 8 amendments, one of the other things that has happened is that when we have an on-going investigation, to protect the integrity and privacy of that investigation, if a school board wants to have a meeting and consider an on-going investigation or a preliminary report we have issued before it's public, the *Education Act* has been amended to provide that the board would have to go into closed session; that's section 207(2.1) of the *Education Act*.

Last resort. This is another important concept for all ombudsmen. Traditionally, ombudsmen act as a last resort. That's why, in terms of our discretion, if someone has an alternate remedy available to them, if they haven't yet gone to the organization in question to complain and see what they can do about the matter, we generally would refer them back as part of our last resort practice.

But also, the statute provides that if somebody has a statutory right of review on the merits to another body, then we can't intervene until that right has been exhausted or has been fully exercised.

We are not judges. We are not a tribunal. Our process isn't adversarial. We are engaged in independent and impartial fact-finding. We can only issue non-binding recommendations. There's no final determination of anybody's rights or responsibilities as a result of an Ombudsman investigation, and our Act reflects that, because it says no one is entitled to a hearing. The interests involved don't require a hearing of evidence where everybody gets to attend and hear everybody else's evidence and cross-examine each other. This is not part of the process.

The Act does recognize though, that before the Ombudsman finishes an investigation and issues a

public report with recommendations, the organization involved has to have an opportunity, as part of the fairness, to respond. And that is done through our preliminary reporting process. Typically our reports and recommendations are addressed at the organization as a whole, not any particular individual employee. So, normally it is the organization that gets an opportunity to comment on the preliminary report.

Through that process, we provide a report to the organization, they can provide clarifications, they can correct facts, they can provide all sorts of information about the recommendations and the practicality of implementing them. It would be really premature and unfair to the organization if that document was released prior to the organization having an opportunity to respond and have those comments reflected in a final report. So, consistent with fairness, our confidentiality requirements and the general integrity of our process, those documents are confidential. And those closed meetings I referred to earlier, those provide an opportunity when you get a preliminary report at a school board, to go into closed session to consider it.

We developed a practice to ensure the confidentiality of our reports, where we will send them out to an organization, but we get them back, and they are not to be marked or copied; they're our documents. We have organizations sign undertakings before we provide those documents just to ensure the confidentiality and integrity of our process is maintained.

That practice is now reflected in the Ombudsman Act as a result of the Bill 8 amendments. That's a general rule. It applies – it prevails – over the Freedom of Information legislation and any other rules about record keeping or document retention that may apply. Once we've received representations to a preliminary report, those are reflected in the final report that we prepare.

Sometimes, we won't prepare a final report. It's quite possible that – and it has happened from time to time – the response we receive to our preliminary report, satisfies the Ombudsman and there's no need to do a full final report. It may be that the resolution will be reflected in some other way. Sometimes, in response to the preliminary report, the Ombudsman's satisfied, but still feels in the public's interest it's important for folks to know how it has been resolved and we may issue a report under our annual reporting section. But sometimes we find that we are not satisfied with what's being suggested in terms of implementing our recommendations and the Ombudsman will issue a final report and recommendations along with any comments, final comments of the organization.

In the provincial sector, those are filed with the Legislative Assembly, and become public documents. In the school board sector, the way it works, a final document – a final report – will be provided to the school board and then it can be made public.

That reporting process is really our greatest power because we can't issue orders, we can't compel anybody to do anything, but by issuing reports publicly and bringing attention to issues, we exercise moral-suasion. We put out what we found, why we think certain recommendations should be implemented and then the organization is faced with the prospect of explaining to its stakeholders why it doesn't want to implement those recommendations publicly. In the vast majority of cases where we've done formal final reports and issued recommendations, they have actually been implemented by organizations. And in cases where we haven't issued a final report, quite often, as I've said, there will be some kind of summary of what we've done, either a stand-alone report or as part of case summaries in our annual reporting.

We don't have unlimited scope in terms of what we can find under the Ombudsman Act. There is a section that sets out the opinions that the Ombudsman can reach. He can find that administrative conduct has been contrary to law, unreasonable, unjust, oppressive. He can also find that – if administrative conduct has been based on a rule of law, of legislation, on regulation, or an order in



council, or other legal process, that is itself unreasonable and wrong. He has a broad scope for issuing recommendations. We can make all sorts of recommendations for improvement.

Now, Sue is going to talk to you a little bit more about the nuts and bolts of how we resolve complaints at our office.

Sue Haslam, Director of Investigations:

Thank you, Laura.

I want to tell you a little bit about some of the teams at our office that deal with complaints handling, as well as our approach to complaint handling.

The Early Resolution Team deals with individual complaints that are generally quickly resolved.

The Investigations Team also deals with individual complaints, but these ones are usually a little more complex or perhaps they have some urgency attached to them so they're immediately assigned to the Investigation Team.

The Special Ombudsman Response Team, also known as SORT, conducts the broader systemic investigations of our office. You may be more familiar with this team because most of their reports are issued publicly.

The Legal Services Team also deals with individual complaints and they also assist with the more complex cases that we get, the more technical cases. The Legal Team is also really helpful in terms of conducting some behind-the-scenes research and did a lot of research in preparing us for the expansion of our jurisdiction into school boards. The Legal Services Team also has a sub-team called OMLET, which is the Open Meeting Law Enforcement Team. They are responsible for dealing with the complaints that Laura just mentioned with open meeting complaints.

Our office is, as we have said, is an impartial body; we don't advocate, so when we say a complaint is resolved, we mean that we are satisfied, that the complaint is resolved. And often times, or sometimes, maybe not often, but there are times when we are satisfied and maybe the complainant is not satisfied. Our job is to conduct an impartial review and to come to a decision based on that evidence and facts.

Our office does not become an advocate until an investigation has actually been completed and recommendations have been issued by the Ombudsman. It is at that point that the Ombudsman advocates for those recommendations to be accepted and implemented in the interest of the public.

Our office receives complaints in various ways: Telephone, mail, letters, through our website, as well as people who come to our office for interviews.

The majority of complaints are handled by the Early Resolutions Team, and they are composed of about 30 Early Resolution Officers, three Managers and one Director.

The Early Resolution Team focuses on trying to resolve complaints through alternative dispute resolution strategies. They will contact the complainant; they will do a very detailed intake. It's really important that we talk to the person complaining to us, understand what the concerns are, and get as much information as we can from that individual. Then we do a little bit of research, we may pop on to the organization's website, understand the program, legislative framework, and sometimes we

contact the organization to get additional information.

Our intake calls are audio-recorded and saved to our case-management system, and this assists us to ensure that we retain accurate and complete information.

As Laura mentioned earlier, we do have discretion not to investigate a complaint. Generally, we would exercise that discretion not to review a matter if the complaint is frivolous or vexatious or is not made in good faith, or if our initial review does not reveal a problem. We might exercise our discretion if there's another remedy available that the individual needs to use before contacting our office, or if there has been a significant passage of time, which makes it very difficult for us to complete a complete review and we are unable to access certain information or do an effective review.

Some complaints are closed without us having to contact school boards or other organizations. Many of the complaints, I have to tell you, are referred to internal complaint and appeal mechanisms that are available. Sometimes, as mentioned, we do have to make some inquiries and gather information in order for us to have enough information to make a determination that the complaint is resolved.

Our practice also is, when we're contacting the organization, we would like to speak with the person who was directly involved with the complaint. That's really important that we speak with that individual in terms of gathering information, so we don't work with contacts at various organizations. We have found that, from our years of experience, that it is actually more efficient for both organizations if we speak with those that are directly involved and can provide that information to us, otherwise we sometimes experience a broken telephone in terms of messaging.

We also track complaint trends at our office, and this is really helpful in terms of assessing whether there could be a potential systemic issue that requires more fulsome investigation. We also keep an eye on any potential problem issues. Staff will send out internal email alerts when they receive complaints that are compelling or potentially serious so that we can triage these complaints very early in our process for more immediate assignment and work.

The Early Resolutions Officers will carry out research regarding relevant programs and organizations. And we have two really helpful tools that we've set up in-house, that help us share the information that we gather when we're doing research.

The first tool that we have is called the Personal Ombudsman Web Resource – it's also nicknamed "Snoopdog". Staff can access that web source – it's just for our internal purposes – to get information on various programs or good contacts that we have with the government.

We also have a wiki. This is based on software similar to Wikipedia. This again allows staff, internally, to access and share information; it's very helpful for us, particularly when we're learning new jurisdictions.

More than half – 53% – of our complaints are resolved within two weeks and about a quarter of them – three quarters of them, I should say – are resolved within less than a month through our early resolution efforts. So, when you look at, we received approximately – over 20,000 complaints a year, that's a good track record in terms of handling complaints. Most of them are resolved in short order, but there are other complaints that do require some time and they require some time because they might be a little more complex, a little more technical.

The Investigations Team

Currently, we have 16 general investigators. Often they work in teams – they have their own caseload – but often they work in partners with other investigators or early resolution officers. Generally that happens when the complaint is more complex and more involved. There are other factors that indicate that perhaps it's helpful to have two investigators present during the course of a review. Sometimes it's to manage difficult conversations; it's been very helpful when you have a couple of people present to help with those difficult conversations, whether it is with the people that are contacting us for help or sometimes, when you need to provide more information, in a situation that is new to an organization and they are not very comfortable.

Investigators also carry out further research; they make inquiries, they obtain additional documentation and they interview witnesses over the phone or by Skype.

Like the Early Resolution Officers, our goal is to try to resolve cases, and we do this through alternative resolution methods. We have a very good track record for this and as a result, we haven't often had to launch a formal investigation.

Even though we are looking at individual complaints and resolving individual complaints, we are looking to keep an eye out for any potential systemic issues, and oftentimes, when we're looking at an individual complaint, if we see that others could be similarly affected, the resolution that we obtain does help many others, so we're always looking for opportunities to bring about resolutions, not only for the individual but other people who may be similarly affected.

We focus on understanding the root causes of problems and our focus again too, is improving processes, policies going forward.

If we are unable to resolve a complaint or concern at a local level, we may have to take some other steps. What we've done in cases is escalate them up the hierarchy at the organization so that we speak with the senior government officials and bring the individual complaint to their attention. We've had great success in resolving matters when we've escalated it up the hierarchy.

We also will bring cases – individual cases – to our quarterly meetings. We have quarterly meetings with organizations where we have the highest complaint levels against them. These meetings are very productive and very welcomed by the organizations. At these meetings we resolve individual complaints and we also share with the organizations our complaint trends. It allows them to see what the trending issues are and maybe areas that they can be proactive and take some steps so that issues don't fester and become entrenched.

If the issue is not resolved and it requires a more formal investigation, we will launch a formal investigation. Having said that, there have been very few formal investigations that we've had to do, but when we do launch an investigation, there are no surprises. Generally, we've been in contact with the organization and we've tried to resolve the matter. Before we launch an investigation we are required to notify the organization of our intention to investigate.

We would prepare and send a notice – a letter – advising of the issue that we are reviewing, but before we send that letter we do a lot of preparation. We prepare an investigation plan that sets out the strategy of the investigation and it also sets out timelines.

In the case of a Ministry, the notice of intent to investigate would be sent to the Deputy Minister. In the case of school boards, it would be sent to the Director of Education. And where appropriate, sent to the Chair of the Board, but either way, the Chair of the Board would be copied on the notice.

As mentioned, the notice briefly sets out the issue under investigation.

We also send out what we call a Wish List letter, and in that letter we set out all of the documents that we are aware of that we would like to review. In addition, we set out in that letter that we are interested in any documents that the organization feels we should see, given the matter that we are investigating.

In preparation for our expanded jurisdiction to school boards, we took a number of steps to get ready. One of the things that we did is we set up a dedicated school board team. We felt it would be very important to have people at the office specialize in school board complaints. This dedicated team is composed of Early Resolution Officers, Investigators, Legal staff as well as senior management. We really do work as a team to problem-solve cases, to talk about cases, and to discuss next steps.

School board complaints that come in are flagged to this dedicated team and this allows us an opportunity to determine where the case should be assigned, whether it's the early resolution team or the investigation team or the legal team, or SORT, for that matter.

We have weekly meetings with the dedicated staff and we talk about individual cases at these meetings, and we share information. These meetings are extremely helpful. As we're learning and we're continuing to go through, receiving complaints and we're learning in this area, it's great to have an opportunity to talk about cases and to share information.

We regularly triage staff caseloads to ensure that all of our cases continue to move forward in a timely way, so when we talk about team work, we talk about the managers working with individual staff members to problem-solve cases and keep them moving forward so that we provide timely service to those who are contacting us.

I'd like to tell you about a couple of cases that we've had some success in, in terms of resolution when we've worked with school boards.

In the first case, it was about a complaint involving a school bus situation. In this instance, in the same week, in two unrelated incidents, two four-year-olds were dropped off at the wrong bus stops. One boy was missing for 40 minutes. During that time, his sister rushed to the school to report her brother missing, the secretary contacted the bus company, and the woman that found the boy by the side of the road returned him to the school.

Although a policy requiring a family member to ask for their child at the school bus when the school bus stops was introduced this year, the bus driver omitted to follow the protocol when the child decided to get off at a stop with a friend. After the mother called the bus operator to complain, they apologized for the error, and provided an explanation for the mistake.

When we contacted the general manager of the transportation consortium, he looked into the matter and took a number of steps. We also contacted the school board as well because with this consortium, both school board representatives and members of the consortium were part of the committee that overlooked the policies regarding bussing.

The steps that were taken further to this incident included speaking directly with the school bus driver involved and doing some further training with the school bus driver, creating a lost child protocol, and there was a commitment to improve the reporting of those incidences and to track these incidences by the consortium and the school board. In addition, there were plans to provide

further and additional training to bus drivers. There have been no further incidents in this region, as far as we know, so that was a good outcome. That was as a result of some inquiries we made.

The next example involves one of those more sensitive, urgent types of complaints. We received a complaint from the parents of an 11-year-old boy with a severe, life-threatening allergy to peanuts, tree nuts and also to dairy products. He had previously suffered anaphylactic shock from touching a doorknob at the school. The parents did not understand why the school board would agree to the school having a nut-free environment, but also not having a dairy-free environment as well; they just couldn't understand in the circumstances.

After we made inquiries, we found out that the school board had put in place a number of steps to follow its policies regarding severe allergies. In this case, they had a comprehensive avoidance strategy in place for this particular student, which included that the student would eat at his desk, products which contained nuts, tree nuts, or milk products would not be brought into the classroom, all items had to have product labels, and if the products were missing labels, or indicated that there might be an allergen, they were sent home with a sticker on it and an alternative safe food was provided.

There were other protocols in place as well, such as a strict hand-washing policy and a strict requirement that students eat in their own classroom. The Board – after we had conducted our review – had taken steps to accommodate situations involving allergies with nuts because there was a high number of students at the school with nut allergies. However, the school did not make the same accommodations for dairy products because there weren't the same level of students. Instead it put into place very strict protocols of avoidance, and we were satisfied that in the circumstances of this case, the board had properly made the accommodations with the student.

Laura's now going to talk to you a little bit about our Special Ombudsman Response Team.

Laura Pettigrew, General Counsel:

The Special Ombudsman Response Team operates a little bit differently than the other sections of our office in that they are not doing a lot of informal resolutions; they are doing full, formal field investigations. These are the serious, high profile, systemic issues that are impacting a lot of individuals, that have significant effects; and it's handled by a team: there's a director, there are seven dedicated investigators, and staff from other areas of the office – Early Resolution Officers, Investigators, lawyers – can get involved with the team as needed, to support them. It's a very intense formal investigation; they may have witnesses under summons. Most of our Special Ombudsman Response Team investigations are going to result in a public report.

There's going to be a notice of investigation; there will likely be a public notice that an investigation is underway, because there is significant public interest in the issues that go to SORT and are investigated. As well, we're looking for relevant witnesses to come forward.

How do we identify issues for systemic investigations at the SORT level? As you heard from Sue, we're always looking to look beyond the individual circumstances, to look at root causes, to make suggestions for improvements in policies, practices, etc. and quite frequently that's done informally. But sometimes there is an intractable issue; it is just one that is not amenable to early resolution efforts and we need to conduct a full investigation.

We'll look at our complaint trends and patterns to see if individual complaint resolution isn't really getting at something or there's something of a large volume that we've got to address in a different

way. We will monitor the media to see what issues are out there of significance. We will look and see what's happening at the Legislative Assembly.

Since 2005, when the Special Ombudsman Response Team was established, it has conducted 35 large-scale systemic investigations and it has been very successful. Most of the recommendations issued as a result of SORT investigations have been implemented and have brought about very significant change.

For instance, we did an investigation of the Ontario Lottery and Gaming Corporation. As a result, a number of improvements were made to ensure protection of consumers against fraud and theft of lottery tickets, and regulation of lottery sellers.

We did an investigation into the newborn screening program. We've done investigations to assist in better access to cancer drugs. We looked into the correctional system; we looked into cases where inmates were abused by correctional staff and then the circumstances were covered up because of a disturbing code of silence, and we made a number of recommendations for improvement in that area.

Hydro One was our most recent investigation – and it was last year – into the billing practices and the timeliness and effectiveness of its responses to consumers who raised complaints. If you follow the news, you may know that Hydro One is no longer within our jurisdiction or subject to any of the accountability officers of the Legislative Assembly as a result of legislation that came in as a prelude to the partial privatization of that company.

We have two ongoing systemic investigations through SORT at the moment. One has been going on for quite a number of years in conjunction with a lot of individual complaint resolutions on Sue's side, and in the early resolution area. We are looking at services and programs available to adults with developmental disabilities who are in crisis situations.

We're also looking into the direction provided by the Ministry of Community Safety and Correctional Services to police services around de-escalating conflict situations.

I'm going to briefly tell you about one of our SORT reports that came out quite some time ago. It was one of the first reports we did, and the reason I'm going to do that is, often when I go out and do presentations – I get asked *'Why do you do these big reports with the shiny covers and the catchy names and what's the point of that? You talk about working co-operatively, informally and then you go and you do these reports and you come out publicly. Why is that?'* Well, we try to resolve things informally. It's to everybody's benefit to come to agreement, to get improvements in the public interest as quickly as possible. However, some issues aren't amenable to that process. Sometimes people dig in their heels, sometimes there's just too much history; sometimes the only way to incite change is to bring public attention to it. You've got to issue reports that someone's going to read. Our experience is if you issue very long, boring investigative reports with lots of technical language, nobody's going to pay attention to them. So we really try to write reports that are going to illustrate the human impact of government maladministration in order to act as a catalyst for improvement.

With the newborn screening issue, it came to our attention as we were actually conducting another investigation. We were looking into the Ministry of Health and Long-Term Care's refusal to fund a drug for a teenage boy from Barrie who suffered from a rare metabolic disorder. The government said that it was a trial drug; it shouldn't be used. In fact, it was saving his life. He had a degenerative condition and the degeneration had stopped when he got on the medication; it was prolonging his life and giving him some quality of life for his final years, and as a result of the investigation, we

actually got the Ministry to agree to fund the medication.

But in the course of our investigation, we got some documents as a result of a disclosure request and one of them was an email, which was quite enlightening because it talked about a concern that our investigation would uncover something going on in the metabolic diseases program of the Ministry, and it talked about a coroner's inquest. It had all sorts of odd acronyms in it. When we did a little research, we discovered that it was talking about the newborn screening program and there had been a medical advisory committee on metabolic disorders that was giving advice to the Ministry and it had basically suspended operations. It had done so over the newborn screening program because the committee had been advising the government for years that it had to improve the program in Ontario for screening newborns for metabolic disorders.

At the time, every newborn born in a hospital had a heel prick blood test done and it was evaluated for two metabolic disorders, and that had been the case for many years. However, science had advanced and the standard regimen for testing in some other provinces of Canada and other parts of the world – even some third-world countries – was to test for at least 29 disorders. The significance of this was that the geneticists were telling the government, failure to increase the number of tests that are done on a newborn is resulting in children who are born with diseases undetected, and because no one knows to watch out for these diseases, when they become ill, they may become, with a common cold, they may become irretrievably brain damaged or they can die. In fact, fifty children a year, on average, were either succumbing to undetected metabolic disorders or becoming very ill as a result of the failure to detect those disorders. They were urging the government, sort of behind the scenes, to take action.

The Coroner was actually – who is responsible and pays a lot of attention to child deaths – was starting to test children dying under the age of two to see if they had undiagnosed metabolic disorders and was finding an alarming number of them did. The government knew all this and, to make matters worse, the two tests that we were doing were being done using antiquated methods. The reagent necessary for one of the tests was no longer being manufactured and Ontario's stockpile of the reagent was running out.

Other countries were using technology called tandem mass spectrometry, which allowed for a single blood test to be tested simultaneously for a variety of disorders. Ironically that technology was actually being produced just outside of Toronto and shipped all over the world. We were not using it in Ontario. So the government was in a situation where it had been receiving this advice that it had to change, it knew at some point it had to, but nobody was taking action. There was a real lack of leadership, a real silo mentality in different departments. Nobody was taking the initiative or taking change of this newborn screening program. It was seen as a little bit of an orphan program; it wasn't a fit with other programs so not much action was happening.

So by the time, we looked into it, we thought, oh, this is something that's really important. It was actually quite shocking to those of us who worked on the investigation to see that the government had not heeded these very dire messages concerning the children in the province, so we launched an investigation and we issued a report. The value of the report was not so much in the recommendations it made, because frankly it didn't make any recommendations, but it cast light on what had happened. It set out – and this is one of the advantages of the Ombudsman – we can go behind the scenes and see everything that happened; the gaps in the system, how people dropped the ball, how they were able to dismiss such an important issue and consider it as simply a matter of financial inconvenience. We were able to bring all that to light and to work and put pressure on government officials to ensure that newborn screening was enhanced and that the program was significantly enhanced.

At one point, the government was thinking well maybe we'll increase it a few tests, but at the end of the day, because of the moral suasion as a result of the attention that we were able to shine on that particular issue, the government did move. There is now a new testing facility at the hospital for sick children in Ottawa and we are testing for 29 metabolic disorders. If you go on the website for that testing facility at CHEO, you'll see some success stories and how important that whole program is.

We could've just sat and had meetings behind the scenes. That wasn't going to do it for this one. We needed to bring full attention to the issue and each of the report covers that you see and the others that aren't showing here [showing slide] relating to our systemic reports, reflect cases where we felt there was no other option. As a last resort we had to do a full investigation and public reporting. The public deserved to know what was going on.

Now, I'm going to talk a little bit about school boards. I'm going to talk a little bit because we're sort of new to the game in terms of school boards. We've been around in the oversight business for a long time but we've only had jurisdiction since September.

We had a little of bit of experience along the way. As some of you may know, there have been a number of occasions when the Ministry of Education has taken over supervision of individual school boards. We had a number of cases that had happened. In those cases, we did receive complaints – frankly, not a lot. There was the Catholic board in Toronto from 2008 to 2011 that generated 22 complaints; the Windsor-Essex Catholic board from 2012 to 2013, four complaints, and Dufferin-Peel from 2006 to 2007; there were very few complaints about that board. In all those cases, we made inquiries with the supervisor. We monitored the Board's progress in dealing with issues, but we didn't launch any investigations at the time; we were able to resolve things informally.

The kind of complaints that we received about school boards I don't think should surprise anybody and they also seem to follow a cycle. I don't think anybody would be surprised to hear that in September bussing was a huge issue for folks and generated a lot of complaints to our office. Special education is of course a significant concern in this area; school staff – and that's folks complaining about school staff; employee issues – employees complaining to us about schools and student safety and security, and often that relates to bullying issues, expulsion, tensions, that sort of thing.

In a special complaint area, most of the concerns relate to individual education plans, decisions of the identification placement review committee. We refer people to the appeal processes that are available with respect to those issues. In terms of school staff – again, most schools have a process for dealing with staff complaints in terms of teachers, there's the College that has a responsibility in terms of the profession of teaching that may be an appropriate referral in some cases. Again, these likely do not surprise anybody in terms of the topics.

We have some figures – and they change daily – but the total as of today [March 31, 2016], I understand, are at 392 complaints since September and there is the breakdown of the boards where those have been identified [showing the slide]. Now, it says unspecified school board and that's where somebody has clearly a school board complaint but for whatever reason, once they find out more about us, doesn't even tell us what the school board they're complaining about is, but we still record it because it is relating to a school board issue.

We have just over 130 ongoing complaints, so less than half of the complaints we've received are still in the process. Most are being closed, most through informal referrals and quick inquiries. It shouldn't come as a surprise that the largest volume of complaints is addressed to the English language public school boards; they have the greatest student population, served the most people. Then we have the English Catholic boards. The French public and French Catholic boards have

fewer complaints, again not unexpected. In terms of our new jurisdiction, how it's worked out, unsurprisingly, there are 444 municipalities out there and they have generated the most complaints – I think we have well over 900 at this point – then comes school boards, then universities.

I'd just like to address a point; Sue mentioned the open meeting and closed meeting complaints. We actually have additional jurisdiction that I didn't go into detail about at the outset and that has to do with – since January 2008 – the provincial Ombudsman was tasked with investigating complaints that municipalities, their local boards, their committees, have they inappropriately closed meetings to the public. That's under a combination of municipal acts and our act, and if a municipality hasn't appointed their own closed meeting complaint investigator, the Ombudsman acts as investigator; we act for 213 of 444 municipalities. In most of the cases that we investigate as a closed meeting on our Open Meeting Law Enforcement Team, which is lodged in the legal department are formal and result in formal reports. It's very technical; it's an enforcement function. We're looking to see if legislation is being complied with or the technicalities of procedure by-laws.

When it comes to school boards, school boards also have obligations in terms of keeping meetings open to the public, except in terms of certain exceptions. That doesn't come within our Open Meeting Law Enforcement Team jurisdiction, but people who had concerns – if anybody has concerns – about the meeting process of a school board, they can certainly bring it to us as part of our general jurisdiction.

We've been spending a lot of time recently going out and talking to individuals and we've received a lot of frank and open feedback, which we're listening to, and trying to incorporate. There was some concern at times about the tone of the former Ombudsman; some of our reports, some of the media, Twitter, that kind of thing that's gone out, and we're listening and I think that we're very committed and you certainly heard the new Ombudsman today indicate to you his style. We are looking for a collaborative, co-operative relationship, moving forward. We want to hear from you. We want to hear your feedback. If you have a question or if you have a concern, about a process, something you don't think is right, please contact us. Feel free to contact us. We want to keep those lines of communication open – and as I said – in those cases we're going to endeavor to resolve things informally. We don't think it's in anyone's interest to start doing formal investigations in every case. It's everybody's benefit. We're all in this together, in the public interest, to improve services for the public.

There will be some of those cases, those limited cases, those few cases that we feel that have to go into systemic, a full systemic investigation, for instance through the Special Ombudsman Response Team, but for most cases we're relying on your co-operation to try to get things done as effectively and efficiently as possible.

I'm just going to make a little pitch. I talked about expansion of our office. We basically doubled our jurisdiction and as a result, we are looking for new staff. We're looking for people with early resolution experience, investigative experience, legal experience. If you or you know somebody else that might be interested, please refer them to our Careers site.

Here's how to reach us: On our Facebook, follow us on Twitter, we have a YouTube channel, we have our Watchdog newsletter you can sign up for.

We're going to take some questions now, and Ashley Bursey, our Communications Manager, is going to help facilitate this. We received quite a few questions and some of them may have been answered as a result of our presentation so we will now go ahead and endeavor to answer the questions that you have.

Ashley Bursey, Communications Manager:

Thank you very much to Laura Pettigrew and Sue Haslam. As we've mentioned, Laura Pettigrew, our General Counsel and Sue Haslam, Director of Investigations.

So our first question is about the *Education Act*. The question is, "*I've seen cases where the Education Act has not been applied properly. Do you expect Ontario Ombudsman oversight to effect real change?*"

Laura Pettigrew, General Counsel:

It may. If we get a case, for instance, where the allegation is that the school board has not appropriately applied the *Education Act*, once we'll get the all facts, we'll look at the legislation, we'll look at what the school board has done and we'll assess whether or not that is the case. We may make some suggestions for improvement.

The other thing that we do – and I think it's important to have with all our systemic reports – in any case where an organization has agreed to implement some changes, we monitor. We don't just say "Oh great", we're going to shut this case and never go back to it. We're going to maintain contact and monitor and ensure that changes are made. I also think ultimately, there will be – those intractable issues will come up in the school board area and we will at some point down the line, be involved in a systemic investigation. I think it has the potential to bring about real change. Another thing to remember is school boards have a partner in the Ministry of Education. The Ministry of Education is also under our jurisdiction. There may be issues that come to light in the course of investigating school boards that show a gap, a legislative gap, or some other feature that really is the responsibility of the Ministry and we may look to the Ministry in terms of making recommendations for improvement.

Ashley Bursey, Communications Manager:

Thanks, Laura. A second question: "*What would you do with an issue has already been through the courts and is brought to your office?*"

Laura Pettigrew, General Counsel:

Well, that's an interesting question. We do not – I've talked about what we have authority over, I didn't talk about what we didn't have authority over, and one of the things we don't have authority over are judges or the courts, so we can't overturn a judge's judicial decision, we can't act as an appeal body, we're an alternative to the court. If a law is decided in a particular way, we can't counteract that. We don't have a way of overturning the law, but what sometimes we find is, courts are constrained by their nature, by the issues that they can decide, and they are constrained by the law. They have to apply the law to the facts of the case. So even if something's been to court, there may be fairness issues, there may be systemic issues that the court cannot look at and that we might be able to review. It all depends on the issue and the facts of the case.

Ashley Bursey, Communications Manager:

All right, next question: "*How will the Ombudsman's office address concerns and needs of parents and caregivers on behalf of students in a timely manner?*"

Sue Haslam, Director of Investigations:

Good questions. We have a number of strategies and approaches in place internally within our office to support the work of the staff, to ensure that complaints are processed and moved along in a really timely manner. One of the things I talked about today was triaging complaints that come into our office. By triaging we can identify those cases that are time-sensitive or perhaps there's some urgency to them or they're compelling cases and they need to be prioritized. We have ways to prioritize cases that come in. In addition to that, we also have cases that are a little more complex and a little more technical, so those types of cases may take a little bit of time. What we do is we stay in regular contact with those who complain to us and we try to set realistic timelines or expectations around how long this might take us to review.

We're also very clear about what we can and cannot do, which is often very helpful; it helps parents understand what's involved in the process. One of the things that we also do to try to ensure that things move along quickly is we have regular file reviews with staff, we have regular weekly meetings to talk about cases so that we can efficiently respond to the people who have contacted us and provide them with a really good service.

Ashley Burse, Communications Manager:

Thanks, Sue. This is a question that I understand we've heard a few times: "*Are you going to contact principals and teachers directly?*"

Sue Haslam, Director of Investigations:

We generally do not contact teachers and principals. Where we make our inquiries is with the school board level, with superintendents that are directly involved in the complaint, perhaps the superintendent that was the last decision-maker involved in the complaint. Now having said that, there been one or two complaints where we were actually referred back to the principal and we did speak to the principal, but generally, our practice and our inquiries have been at the school board level.

In the event that we had a full-scale investigation, we may need to contact the principal, staff and anybody who we felt could provide information in order to ensure that we conducted a full and thorough investigation. Having said that, we've not launched any formal investigations as of yet.

Ashley Burse, Communications Manager:

Next question: "*How will the Ombudsman address complaints about transportation consortiums and other third-party service providers?*"

Sue Haslam, Director of Investigations:

From the complaints that Laura just talked about, it didn't come as a surprise in September to us that we did receive a high number of bussing complaints. Consortiums are agents of the school boards and agents of the school board in terms of implementing school board policy on

transportation. Consortiums generally do have internal complaint resolution processes and where they do, we would make referrals.

In addition, in the example that I provided today, we do contact consortiums and we gather information. We've contacted the school board in that particular case as well, to gather information and the information has been provided and it's been very co-operative sharing of information, which resulted in a very quick resolution of a case. In fact, the consortium in the school board were most appreciative of our further follow-up in discussions with them on that particular case, so I think that's a good example of where we've been very proactive in terms of our outreach to the various partnerships that are out there involving school bus policies.

Ashley Bursey, Communications Manager:

Next question is about how much information a school board might be sharing with the Ombudsman, especially related to the Ontario student record.

Laura Pettigrew, General Counsel:

This is something that's interesting. When we got this jurisdiction, we heard a lot of questions about the Ontario student record. I'm actually not aware of any cases where it's actually become a real issue. Quite often, the information we get is extraneous to the school record, but there may be cases where the Ontario school record is pivotal and we might have to review it. Certainly, parents have certain rights and if they consent to us reviewing it, that's one way of dealing with it. We're going to have to see, I think, and problem-solve all those cases if there are any concerns around the information in the student record. As I said, a lot of the information we can obtain outside of the student record itself.

Ashley Bursey, Communications Manager:

Thanks, Laura. This is our last question: "*What happens if you get a complaint about a teacher or other staff member?*"

Laura Pettigrew, General Counsel:

We're not there to investigate individual staff. That is not our role. There's usually a complaints process internally at the school board and we would refer people to it, in appropriate cases. As I said earlier, it may be that the College of Teachers would be an appropriate referral. We're not about ensuring discipline of a particular teacher.

Sometimes what we'll look at, when people are complaining about specific staff, what our role is, we just want to make sure that the proper process has been dealt with at the school. If there is a concern about a teacher, that the appropriate mechanisms, internal mechanisms, have been deployed; there's been some review, there's been some investigation, there's been some consideration.

We're also entitled to get information that isn't disclosed to the actual complainant. A lot of time, people say "*Well, the school board or somebody we complained about staff and they said they*



looking into it and took action, but they won't tell us what it is, and I want certain discipline to take place."

We might contact the organization just to confirm what steps they took, but we wouldn't disclose that to the complainant. They're not entitled to the personal information around any particular discipline of a staff member. That's all subject to our own confidentiality provisions. If it's a case where we have an employee of a school board complaining to us or if a teacher is complaining about the school board, in most cases they are covered by a collective agreement. We don't get involved in and interfere in labour relations. We would refer them to their union grievance process and the remedies that they have in labour law.

Ashley Bursey, Communications Manager:

Thanks very much, Laura, Thank you, Sue. Is there anything you'd like to add?

Sue Haslam, Director of Investigations:

I think we're good, thank you.

Ashley Bursey, Communications Manager:

All right. Thanks again, Laura Pettigrew, General Counsel and Sue Haslam, Director of Investigations as well as our new Ombudsman, Mr. Paul Dubé, who you saw earlier in this presentation.

I just want to let all the participants know that our archived video of this entire webinar will be circulated in the next week or so. As well, we'll post it on Twitter, Facebook and we'll share it in our newsletter. If you haven't already signed up for our newsletter, make sure you do so. We do circulate information about complaint numbers and case summaries, and just general information about our office and work.

Thank you everyone for tuning in today. Remember, if you have any additional questions, you can always reach us at our website: ombudsman.on.ca. Thanks!

*CHEO: Children's Hospital of Eastern Ontario