



Taxpayers'
Ombudsman

Annual Report 2008-2009

Office of the Taxpayers' Ombudsman

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Cat. No.: Rv6-2009

ISBN: 978-1-100-50318-9

This publication is also available in electronic format at www.taxpayersrights.gc.ca

TAXPAYER BILL OF RIGHTS

1. You have the right to receive entitlements and to pay no more and no less than what is required by law.
2. You have the right to service in both official languages.
3. You have the right to privacy and confidentiality.
4. You have the right to a formal review and a subsequent appeal.
- 5. You have the right to be treated professionally, courteously, and fairly.**
- 6. You have the right to complete, accurate, clear, and timely information.**
7. You have the right, as an individual, not to pay income tax amounts in dispute before you have had an impartial review.
8. You have the right to have the law applied consistently.
- 9. You have the right to lodge a service complaint and to be provided with an explanation of the Canada Revenue Agency's findings.**
- 10. You have the right to have the costs of compliance taken into account when administering tax legislation.**
- 11. You have the right to expect the Canada Revenue Agency to be accountable.**
12. You have the right to relief from penalties and interest under tax legislation because of extraordinary circumstances.
- 13. You have the right to expect the Canada Revenue Agency to publish its service standards and report annually.**
- 14. You have the right to expect the Canada Revenue Agency to warn you about questionable tax schemes in a timely manner.**
- 15. You have the right to be represented by a person of your choice.**

TAXPAYER BILL OF RIGHTS



November 20, 2009

The Honourable Jean-Pierre Blackburn, P.C., M.P.
Minister of National Revenue
555 MacKenzie Avenue, 7th floor
Ottawa, Ontario
K1A 0L5

Dear Minister:

I am pleased to submit, for tabling in each House of Parliament, the first annual report of the Taxpayers' Ombudsman.

This report provides an overview of our activities and operations from April 1, 2008, to March 31, 2009. It highlights the achievements of our office, as we work to ensure that taxpayers and benefit recipients get the professional service and fair treatment they are entitled to from the Canada Revenue Agency.

Yours truly,

J. Paul Dubé
Taxpayers' Ombudsman

November 20, 2009

Susan J. McArthur, B.A.
Chair, CRA Board of Management
555 MacKenzie Avenue, 7th floor
Ottawa, Ontario
K1A 0L5

Dear Madam Chair:

I am pleased to submit the first annual report of the Taxpayers' Ombudsman.

The report covers the period from April 1, 2008, to March 31, 2009. I trust that the information contained in this document will assist you in your responsibility to oversee the organization and administration of the Canada Revenue Agency (CRA).

The report focuses on the development of the Office, and our relationship with the CRA. Most importantly, it also focuses on how we have already made a difference in the lives of many Canadians.

Sincerely,

J. Paul Dubé
Taxpayers' Ombudsman

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Message from the Ombudsman

Message from the Ombudsman



It is an honour and a privilege for me to be Canada's first Taxpayers' Ombudsman. The Office of the Taxpayers' Ombudsman was created to support the priorities of "stronger democratic institutions, increased transparency, and fair treatment of all Canadians."¹ Among other things, the Office is mandated to uphold the service rights outlined in the Taxpayer Bill of Rights.

While most Canadians have no complaints about the way they are treated by the Canada Revenue Agency (CRA) when paying taxes, receiving benefits or requiring services, some people do have significant grievances about their dealings with this vast bureaucracy. With the appointment of a Taxpayers' Ombudsman, taxpayers now have an independent, impartial officer to review their unresolved complaints about poor service or unfair treatment. My role is to see that Canadians get the professional service and fair treatment they are entitled to from the CRA.

I was appointed by Order in Council on February 21, 2008. This Annual Report covers the period from April 1, 2008 to the end of our first fiscal year on March 31, 2009. There will also be references to activities during the period from my appointment to the commencement of our first fiscal year.

Not surprisingly, much of our first year of operations involved building the organization and establishing operating procedures. At the same time, we were handling growing numbers of taxpayer enquiries and complaints about the CRA. It has been a challenging but rewarding exercise. The Interim Report, released in March 2009, marked our first anniversary, highlighted some of our early successes, and raised awareness of the Office. The Annual Report contains new information on the structure, accomplishments, and long-term objectives of the Office.

¹ Taxpayers' Ombudsman Accountability Profile, May 2, 2007

In addition to answering queries and investigating individual complaints, we laid the groundwork for the research and analysis of systemic issues. We negotiated protocols for the exchange of information with the CRA. We developed a vision, a mission statement, and a three-year strategic plan for fulfilling our mandate. We enlisted the collaboration of various associations, interest groups, and other government departments in

Despite the fact that we are still building the organization, I am pleased to report that the Office has made a significant difference in the lives of many Canadians. We have also helped the CRA to improve its service delivery by bringing administrative deficiencies to its attention. We have effectively intervened in a variety of situations in which taxpayers felt that they were not dealt with professionally or fairly. In many instances,

Order in Council (OIC) - A legal instrument made by the Governor in Council pursuant to a statutory authority or, less frequently, the royal prerogative. All orders in council are made on the recommendation of the responsible Minister of the Crown and take legal effect only when signed by the Governor General.

Privy Council Office

helping us communicate with Canadians. Management and staff underwent valuable training in complaint investigation, and in what we might term “the art of ombudsmanry.” We built and updated our Web site and responded to many media enquiries. We accomplished all this as we built the new organization from the ground up.

Our first year of operations certainly exceeded projections in terms of the number of individuals and businesses who contacted us to file a complaint, make an enquiry, or request assistance. Before we began operations, it was estimated that we would hear from 2,700 taxpayers. In fact, during the period covered by this report, we were contacted by almost 5,000. We completed more than 500 investigations.

as a result of our intervention (but without our having to make any formal recommendations), the CRA fixed the problem to the complainant’s satisfaction. In other cases, our recommendations led to an appropriate resolution. Several examples are provided in this report.

I am also mandated to investigate systemic issues that may negatively affect groups of taxpayers, and to make recommendations for the correction of such problems. By identifying trends in individual complaints, and through consultations with tax professionals and associations, my Office has targeted several systemic issues for investigation. During the latter half of our first year, we developed our initial investigation plans, created information frameworks for each issue, and began research. We have assigned a team to focus on systemic investigations. The next stage involves obtaining the information we need from the CRA to complete our analysis.

The outcome of these systemic investigations is important enough to warrant separate treatment, and will be the subject of special reports in the future.

My mandate also includes raising awareness of the Taxpayer Bill of Rights. After all, rights cannot provide maximum protection if people do not know about them.

In December 2008, we launched a national outreach tour that allowed us to meet with taxpayers, tax professionals, interest groups, various associations, and CRA employees in various regions of the country. The objective of the tour was twofold: first, to raise awareness about the Taxpayer Bill of Rights and the role of the Taxpayers' Ombudsman; and second, to learn about the systemic issues that can characterize the relationship between taxpayers and the CRA. The tour was a success on both fronts.

Our outreach activities have enabled me to meet many knowledgeable and helpful people, both within the CRA and outside it. I am truly grateful for the encouragement and pledges of support I have received from people and organizations across the country.

We also faced considerable challenges in the first year. The organizational structure and staffing levels established for this Office before my appointment had to be modified. It has taken time to get the right people into the right positions. Nonetheless, we have made great strides in building an effective organization.

Despite still having some building to do and positions to fill, I am grateful to have a core team of knowledgeable and highly motivated professionals who are committed to fulfilling the mandate of this Office. Due to their forward thinking and considerable efforts, we are providing tangible benefits to all stakeholders. We are all looking forward to building on our successes in the years ahead.



From left to right: Mr. J. Paul Dubé, Taxpayers' Ombudsman, Mr. Robert Oliphant, M.P. (Don Valley West), Mr. Don Davies, M.P. (Vancouver Kingsway), Mrs. Denise Savoie, M.P. (Victoria), and Mrs. Carol Hughes, M.P. (Algoma—Manitoulin—Kapusking).



What is an Ombudsman?

What is an Ombudsman?

An ombudsman is an independent and impartial officer who deals with complaints about an organization or agency, whether private or public. Typically these complaints involve issues that the organization or agency has been unable, or unwilling, to resolve to the complainant's satisfaction. Because complaints to an ombudsman are confidential, he or she may hear about issues that the organization is not aware of or simply not motivated to resolve.

"The factors which have led to the rise of the institution of Ombudsman are well known. Within the last generation or two the size and complexity of government has increased immeasurably, in both qualitative and quantitative terms. Since the emergence of the modern welfare state, the intrusion of government into the lives and livelihood of individuals has increased exponentially. Government now provides services and benefits,

ombudsman/ombudsperson / 1 an official appointed by a government to investigate individuals' complaints against public authorities, etc.
2 N. Amer. an official within an institution who investigates complaints from employees, students, newspaper readers, etc. [Swedish = legal representative]

Canadian Oxford Dictionary

There are two general categories of ombudsmen. Organizational ombudsmen work within organizations, usually as recourse for employees or students. Classical, or parliamentary, ombudsmen work in the public sector providing oversight of government departments and agencies. This year marks the 200th anniversary of the appointment of the first parliamentary ombudsman in Sweden, the country that pioneered the concept. The institution of ombudsman has since been adopted in many jurisdictions around the world.

Brian Dickson, a former Chief Justice of the Supreme Court of Canada, provided some insightful and often-quoted observations on the development of the institution of the ombudsman:

intervenes actively in the marketplace, and engages in proprietary functions that fifty years ago would have been unthinkable.

As a side effect of these changes, and the profusion of boards, agencies and public corporations necessary to achieve them, has come the increased exposure to maladministration, abuse of authority, and official insensitivity. And the growth of a distant, impersonal, professionalized structure of government has tended to dehumanize interaction between citizens and those who serve them."²

² (B.C. Development Corp. v Friedmann (Ombudsman) (1984) 2 S.C.R. 447; per Dickson, C.J. at page 459)

Speaking from a British perspective, the legal scholar H.W.R. Wade has described the important role the ombudsman has come to fill in governments:

“The vital necessity is the impartial investigation of complaints... What every form of government needs is some regular and smooth-running mechanism for feeding back the reactions of its disgruntled customers after impartial assessment, and for correcting whatever may have gone wrong. Nothing of this kind existed in our system before 1968, except in very limited spheres. Yet it is a fundamental need in every system. It was because it filled that need that the device of the ombudsman suddenly attained immense popularity, sweeping round the democratic world...”³

Governments around the world have recognized that the traditional controls over the administration of government policies – namely the legislature, the executive, and the courts – are neither completely suited to providing the oversight a vast bureaucracy requires, nor entirely capable of it. Chief Justice Dickson made this point well:

“The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislated bodies are such that they are naturally unable to give careful consideration to the workings of the entire bureaucracy. Moreover, they often lack the investigative resources necessary to follow up on any matter they do elect to pursue.

The limitations of the courts are also well known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases.”⁴

The problem has also been expressed as follows:

“Thousands of decisions are made every day by governments or their agencies and if some of them are arbitrary, unjustified, or unfair, there is no easy way for the ordinary citizen to get redress.”⁵

Chief Justice Dickson summarized the role of the Ombudsman as follows:

“The Ombudsman represents society’s response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. The Ombudsman can “bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds...”

³ (See Wade, *Administrative Law* (5th ed.), pp 73-74)

⁴ (Friedmann, *supra*; at page 460)

⁵ (Donald C. Rowat; *An Ombudsman Scheme for Canada* (1962), 28 *Can. J. Econ. & Poli. Sc.* 543 at p. 543)

On the other hand, he may find the complaint groundless, not a rare occurrence; in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.

In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.”⁶

they need to improve. An ombudsman facilitates that feedback.

By reviewing a complaint impartially, an ombudsman determines whether a complaint has merit, and advises the parties involved. In some instances, the decisions or actions of the organization will be found to be without fault. As noted by Justice Dickson, having an impartial outsider validate their work can be beneficial to the morale of employees.

When a complaint is found to have merit, the ombuds-

“As an impartial officer, I am not an advocate for taxpayers nor am I a defender of the CRA. I will be an advocate for my recommendations.”

J. Paul Dubé

The institution of ombudsman has evolved over two centuries and proliferated around the world. Yet many people are still not aware of what an ombudsman does. People often have misconceptions about the authority of an ombudsman, seeing the lack of power to enforce recommendations as a weakness rather than a strength. Organizations often see the figure as an adversary, rather than as a valuable strategic partner capable of providing crucial insight into the effectiveness of their programs. Although some organizations do not acknowledge the fact, complaints are a valuable source of feedback that can help them realize where they excel and where

man provides recommendations for corrective action to the organization. These are usually made public. This is intended to be a useful and productive dialogue, one that helps the organization to improve itself. If the organization chooses not to follow those recommendations, it will have to explain its reasons to the public. This allows the ombudsman to “marshal public opinion behind the appropriate causes,”⁷ as Justice Dickson observed.

In short, the work of an ombudsman is to address administrative problems that the courts and the legislature cannot effectively resolve. The objective is not to attack public organizations or their personnel, but rather to help them be the best they can be.

⁶ (Friedmann, *supra*; at page 461)

⁷ (Friedmann, *supra*; at page 463)

About the Office of the Taxpayers' Ombudsman

About the Office of the Taxpayers' Ombudsman

Origins

Fairness is essential to a tax system based on voluntary compliance and self-assessment. The CRA operates on the premise that taxpayers are more likely to comply with the law if they are treated fairly and have the information and services they need to meet their obligations.

The CRA interacts with more Canadians than any other government organization in Canada. Every year, it processes some 24 million individual tax returns and 1.6 million corporate returns. It also administers

Taxpayers, business and professional groups, associations, and Members of Parliament have long called for more CRA transparency and accountability, as well as for measures to ensure better service for taxpayers. In response to these calls for action, the Taxpayer Bill of Rights was strengthened in 2007 when eight service rights were added. These additions were intended to make the CRA more accountable by ensuring that taxpayers are treated fairly and are provided with the quality of services, advice, and information they need from the CRA.

Taxpayer Defined

A “taxpayer” means a person who, under the program legislation, is liable to pay a tax, is eligible to receive an amount as a benefit, or is provided a service by the (Canada Revenue) Agency.

Order in Council - P.C. 2007-0828

benefits to nearly 11 million Canadians. Even if the CRA had a 99.9% satisfaction rate in those 36 million transactions, there would still potentially be 36,000 complaints about the way taxpayers were served or treated.

Taxpayers do not expect the CRA to be perfect. However, they do want the CRA to fix things when they go wrong. Until recently, taxpayers and benefit recipients who felt that they had not received professional service or fair treatment from the CRA had only one place to go if they wanted to file a complaint—back to the CRA. That meant putting their complaints into the same hands that had originally caused the problem.

However, rights do not afford much protection without awareness, oversight and redress. For many years, various stakeholders proposed the idea of an ombudsman to oversee the CRA's service to taxpayers. In December of 2006, after hearing testimony from witnesses and submissions from a range of stakeholders—such as the Canadian Federation of Independent Business and the Minister of National Revenue—the House of Commons Standing Committee on Finance recommended the appointment of an ombudsman to improve the CRA's service to taxpayers. Canada's first Taxpayers' Ombudsman, J. Paul Dubé, was appointed in February of 2008.

Mandate

The Ombudsman's mandate is to assist, inform, and advise the Minister of National Revenue about any matter relating to services provided to taxpayers by the CRA. That mandate is fulfilled by:

- providing an impartial, independent, and efficient system for handling individual complaints from taxpayers about the service or treatment they receive from the CRA
- identifying and investigating emerging and systemic service issues related to CRA programs and processes and making recommendations for improvements or corrective action directly to the Minister of National Revenue
- facilitating taxpayer access to the CRA
- developing awareness of the Taxpayer Bill of Rights and the role of the Taxpayers' Ombudsman

There are, of course, limitations to what the Ombudsman can do. The Ombudsman cannot review any matter that arose prior to February 2007, unless asked by the Minister to do so. The Ombudsman is not mandated to review decisions of the courts or matters that are before the courts. Nor can the Ombudsman review the administration or enforcement of CRA program legislation, except to the extent that the review relates to service matters.

In other words, the Ombudsman is not a tax court and does not deal with disputes strictly about amounts of tax owing to the government.

The Taxpayer Bill of Rights

The Taxpayers' Ombudsman is responsible for ensuring that the CRA respects the service rights contained in the Taxpayer Bill of Rights. This document is a set of fifteen rights that govern the relationship between taxpayers and the CRA. Seven of these deal specifically with the administration of the CRA's tax laws and policies, and so do not fall within the mandate of the Ombudsman.

Eight rights entitle taxpayers to appropriate standards of service and fairness in their interactions with the CRA. These are matters that the Taxpayers' Ombudsman is mandated to uphold by reviewing complaints from Canadians who feel their service rights were not respected. These eight rights are summarized as follows.

Taxpayers have:

- The right to be treated professionally, courteously and fairly.
- The right to receive complete, accurate, clear and timely information from the CRA.
- The right to lodge a service complaint and to receive an explanation of the CRA's findings.
- The right to have the costs of compliance taken into account when tax legislation is administered.
- The right to expect the CRA to be accountable.
- The right to expect the CRA to publish service standards and to report annually.
- The right to expect the CRA to warn them about questionable tax schemes in a timely manner.
- The right to be represented by a person of their choice.



“It is reassuring to know that we can avail ourselves of the services of your team to facilitate relationships between taxpayers and the Canada Revenue Agency.”

Letter from Mr. Lessard, M.P. (Chambly–Borduas) to Mr. Dubé

“The creation of the position means Canadians now have someone independent and impartial, outside the CRA, to uphold service rights, review complaints, and address systemic problems”

Article on Web site of Carol Hughes, M.P.
(Algoma–Manitoulin–Kapusking) dated June 8, 2009

All evaluations of the CRA’s professionalism and fairness, whether in the context of individual complaints or systemic issues, are based on the criteria contained in those eight rights. They are the foundation for any investigation carried out by the Office of the Taxpayers’ Ombudsman.

The Organization

The activities of the Office of the Taxpayers’ Ombudsman are carried out by three units working in unison.

The **Operations Unit** comprises the Intake, Individual Examinations, and Systemic Investigations teams. Members are responsible for assessing, processing, and investigating individual complaints, providing information and referrals, investigating systemic issues, and recommending solutions to problems.

The **Communications Unit** provides strategic advice for the Office’s communications activities, such as media relations, parliamentary affairs, and public outreach. Team members perform media monitoring and analysis, public opinion polling, publications planning, and special events planning. This team also manages the Office of the Taxpayers’ Ombudsman’s Web site.

The **Corporate Services Unit** provides advice and integrated organizational services. Team members are responsible for corporate planning, quality assurance, financial management, human-resource management, information management, contracting, and information technology.

Mission

Our mission is to enhance the Canada Revenue Agency's accountability in its service to and treatment of taxpayers and benefit recipients through independent and impartial reviews of individual complaints and systemic and emerging service-related issues.

Vision

We are recognized for our expertise in promoting fairness and for our value in helping the Canada Revenue Agency provide the highest level of service.

Principles

Independence

- The Office of the Taxpayers' Ombudsman operates at arms length from the Canada Revenue Agency.

Impartiality

- The Ombudsman is neither an advocate for the taxpayer, nor a defender of the Canada Revenue Agency.
- The Ombudsman considers the position and perspective of both the taxpayer and the Canada Revenue Agency when examining a complaint or issue.

Fairness

- The Office of the Taxpayers' Ombudsman acts with equity and justice.

Confidentiality

- The Ombudsman holds all communications with those seeking assistance in strict confidence and does not disclose confidential communications unless given permission to do so.

Our First Year

Our First Year

Infrastructure

Despite intake volumes that exceeded our projections and challenges in building our office infrastructure, we were able to meet our objectives for the first year of operations.

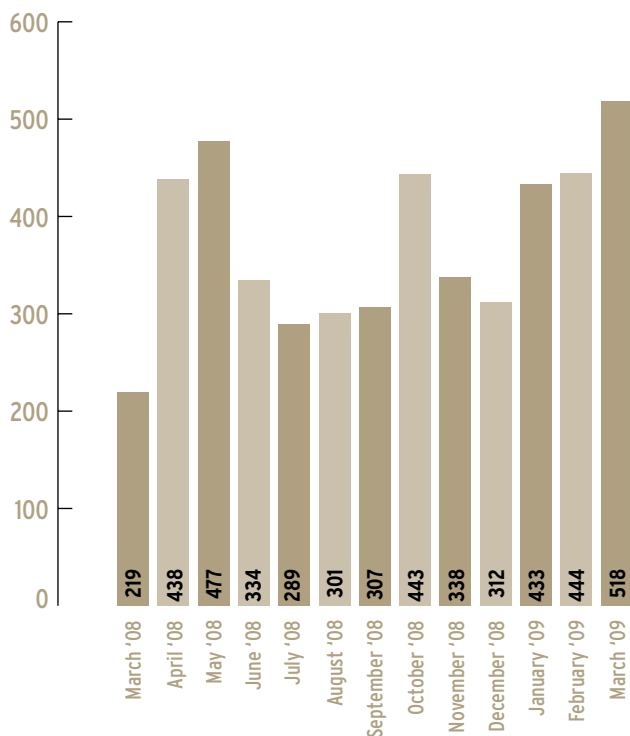
FIRST-YEAR ACHIEVEMENTS

2008-2009 Objectives	2008-2009 Accomplishments
Develop a Human Resources Plan and commence staffing positions	<ul style="list-style-type: none"> • Identified office staffing needs and appropriate classification levels • Established organizational structure • Developed job descriptions and job competency profiles • Conducted initial staffing
Develop operating procedures and protocols	<ul style="list-style-type: none"> • Established procedures for receiving individual complaints and enquiries, conducting investigations, and reporting on findings. • Established procedures for identifying and investigating systemic issues • Developed a Business Continuity Plan • Negotiated Memorandum of Understanding with the CRA for the exchange of information
Procure a case tracking and information storage system	<ul style="list-style-type: none"> • Negotiated contract with the British Columbia Provincial Ombudsman for purchase of their Case Tracker System (CTS) • Ordered modifications to CTS to suit the specific needs of the Office of the Taxpayers' Ombudsman
Develop a communications plan and outreach strategy	<ul style="list-style-type: none"> • Developed communications products such as a corporate signature, leaflets, booklets, and posters • Launched national outreach tour to promote awareness of the Taxpayers' Ombudsman and the Taxpayer Bill of Rights • Produced an Interim Report
Provide continuing training and education to management and staff	<ul style="list-style-type: none"> • Management and staff received ombudsman and investigative training • Developed and implemented in-house training for intake and examination officers

Complaints and Enquiries

Canadians contact the Office of the Taxpayers' Ombudsman for many reasons and with many different needs. We often provide valuable assistance even when not dealing with complaints. We assist taxpayers by informing them of their rights, making a request for assistance to the CRA on their behalf, or helping them access mechanisms for redress within the CRA, such as the Appeals Branch.

Number of Complaints / Inquiries / Requests for Information



When taxpayers come to us with a problem that falls within our mandate, we always seek to resolve the problem at the lowest level possible and as quickly as possible. This may involve asking the CRA to provide information or assistance that the taxpayer was unable to obtain. It may involve an exchange of information with the CRA that causes it to rethink its position with respect to a particular taxpayer. However, if a taxpayer is unable to achieve a quick and simple resolution with the CRA, we will undertake a complaint investigation.

Individual Examinations

For the period of April 1, 2008 to March 31, 2009, the Office of the Taxpayers' Ombudsman received nearly 5000 enquiries, complaints, and requests for assistance from taxpayers or their representatives. Many of those calls, letters, and faxes were simple information requests or complaints not related to our mandate.

Some of the matters were resolved by providing the taxpayer with information or an explanation of their rights, while others were referred to the CRA or another government department.

From those contacts, we opened 1038 files for further investigation.

The specific numbers for our Examinations Unit are as follows:

- 4853 enquiries, requests, and complaints received
- 1038 files opened
- 954 files closed

Some complaints were rejected very early on in the investigation stage: for example, if the nature and scope of the taxpayer's complaint was unclear, a review was required to determine if the complaint was outside our mandate.

- 422 files closed without investigation (referrals to CRA-Service Complaints for first level of complaint redress, file closed because complainant was too abusive of staff, referrals to the Appeals process or the Tax Court because the complaint was not within our mandate, complaint withdrawn following an explanation of taxpayer's rights or the complaint process, etc.)
- 532 complaints resulted in investigation (160 Requests for Information and 91 Requests for Assistance to CRA, 281 reviews resulted in upholding the CRA's original action without requiring input from the CRA)
- 84 files carried over into the next fiscal year

Our intervention in many cases led to a variety of corrective responses by the CRA, ranging from apologies to taxpayers, to the release of seized bank accounts, the payment of benefits or refunds, or changes to CRA policies or procedures.

The first three examples here were published in our Interim Report and are highlighted again because they are such significant examples of the types of issues we dealt with in our first year.

Case Histories

Canada Child Tax Benefit and the single mom (No. 1)

A single mother, who relied on the Canada Child Tax Benefit (CCTB) to make ends meet, had her benefits suspended by the CRA. The CRA asked her to provide proof that her children were born in Canada. Letters from people who knew the family—including a letter from the doctor who delivered her babies—were deemed insufficient. The dispute went on for months, and the mother was facing foreclosure on her mortgage and the possibility of losing her home. She filed

a complaint with the Ombudsman, who reviewed the matter. Following the Ombudsman's intervention, the taxpayer received a \$38,000 retroactive CCTB payment, and was able to keep her home.

CCTB and the single mom (No. 2)

A woman living on minimum wage, and relying on tax credits, had separated from her common-law partner in March 2006. In her application for increased CCTB and other family allowance supplements, she advised the CRA of her change in marital status. In 2008, the CRA requested proof of her marital status. She provided the CRA with a copy of her new lease without the ex-spouse's name, utility bills in her name only, the phone number of her former spouse and a letter from the mother of the former spouse stating that her son resided with her. The CRA did not accept these documents as proof of a change in marital status and claimed a repayment of \$4,200 in tax credits. The CRA even asked her to obtain a copy of her ex-spouse's tax return. As a result of the Ombudsman's intervention, the CRA did eventually recognize the change in marital status, and issued a payment of \$1,500 to the taxpayer.

The need for fairness in exceptional circumstances

A man suffering from an inoperable brain tumour lost many of his tax records in a house fire in 2005. As a result of not filing tax returns on time, he had penalties and interest imposed on his personal income tax account as well as his goods and services tax (GST) account. He applied for relief under the *Income Tax Act*, asking that he be absolved of these penalties and interest due to the exceptional circumstances and hardships that led to them. The applications for income tax and GST relief were processed in two different tax offices. Although the same evidence was considered by both offices, one office granted relief while the other said the taxpayer did not qualify. The Ombudsman reviewed the case and questioned the apparent lack of fairness in the outcome of the taxpayer's request for relief. As a consequence, the CRA granted the man's request and cancelled the penalties and interest on both accounts.

Ombudsman mediates manageable payment plan

A woman who had been audited disagreed with the audit conclusions, claiming to have been taxed on income that she never received. She made several unsuccessful attempts to convince the CRA that the audit findings were incorrect. The CRA imposed penalties and interest on the amount assessed. Despite the taxpayer's protests that the amount owing was both incorrect and beyond her ability to pay, the CRA initiated collection action against her. The taxpayer claimed that the stressful situation, which had gone on for nearly a decade, was affecting her

and agencies, but no one could tell her where the letter originated or why the debt was claimed. Eventually, the woman's Member of Parliament referred her to the Ombudsman. The Office of the Taxpayers' Ombudsman facilitated discussions between the CRA and the Ontario Ministry of Revenue and it was discovered that the CRA was collecting on behalf of a provincial program. The correspondence did not make this clear, and it was finally determined that this taxpayer should not have been in the collection database. As a result of our intervention, her name was removed and her refund was issued.

Your most unhappy customers are your greatest source of learning.

Bill Gates

health. Our review concluded that the woman would have great difficulty in paying the debt even if the assessed amount were correct. We arranged a meeting between the taxpayer and CRA officials to a) explain the audit findings in detail, and b) put in place a feasible payment plan. The taxpayer was relieved to finally understand her tax situation, and to have a payment plan that would not result in hardship.

Confusing communications

A woman received a letter in 2008 entitled "Notice to Pay an Outstanding Debt." It said that a 2007 tax refund would be withheld and applied against a balance owing on a "Crown debt." The letterhead read "The Government of Canada," yet it did not indicate the department or agency or give a contact name for enquiries. A toll-free number directed the taxpayer to the Ontario Ministry of Revenue, but no one there was able to provide any information about the debt. The taxpayer was referred to several departments

Right payment; wrong account

Several taxpayers complained to us that their payments to the CRA were being applied to the wrong accounts (businesses usually have several accounts with the CRA; one for GST, one for payroll deductions—one for each type of tax owed). In one case, a taxpayer who participated in the Voluntary Disclosure Program (whereby taxpayers declare previously undeclared income under a limited amnesty) had penalties and interest on a GST account cancelled. He submitted a payment against the remaining balance owing, but the payment was applied to a different account. The man was unable to find out from the CRA where his payment had gone, and his bank account was seized. He complained about being transferred from one collection agent to another as he tried in vain to find out what had happened to his payment. Our investigation revealed that although a cancellation of the penalties and interest had been approved by the Voluntary Disclosure Program, the cancellation had not been applied to his account.



The Honourable Jean-Pierre Blackburn, Minister of National Revenue and Minister of State (Agriculture), accepts the first interim report from Mr. J. Paul Dubé, Canada's Taxpayers' Ombudsman at a morning press conference on Parliament Hill – March 12, 2009.

Fairness is not an attitude. It's a professional skill that must be developed and exercised.

Brit Hume

Furthermore, the GST payment had been applied to a previous GST account rather than the current account. The CRA cancelled the penalties and interest. Our intervention brought to an end an ordeal that the taxpayer described as stressful and confusing.

Ombudsman intervention leads to refund

The CRA seized shares belonging to a taxpayer and advised that if his tax debt was not paid within 30 days, the shares would be sold. The taxpayer claimed that it would be impossible for him to meet the CRA's demands. He requested a Statement of Account from the CRA but he did not receive it in a timely fashion. The taxpayer was also unable to contact the collections manager responsible. Once the Office of the Taxpayers' Ombudsman got involved, the taxpayer received the information he required and it was determined that he was entitled to an \$8,300 refund.

Summary

These case histories illustrate the various ways in which the Office of the Taxpayers' Ombudsman has been able to help individual Canadians with their service-related problems with the CRA. They also demonstrate the value of the feedback provided to the CRA by the Office of the Taxpayers' Ombudsman. When these two organizations engage in productive dialogue, both the CRA and taxpayers benefit.

Systemic Issues

It is always gratifying when our intervention in a dispute between a taxpayer and the CRA leads to a resolution of the problem. (No doubt it's a great relief for the taxpayer, too.) However, many complaints about service are due less to a one-time error or misjudgment, and more to an underlying issue that will cause the problem to recur if not corrected. If we only resolved individual complaints in isolation, without looking at the policies and procedures that gave rise to them, we would miss the opportunity to identify problems that may affect many more taxpayers.

For this reason, the Order in Council mandates the Ombudsman to:

- 4 (2) (b) Identify and review systemic and emerging issues related to service matters that impact negatively on taxpayers.

The objective is to identify and help correct service and fairness problems that could have a negative impact on a large number of taxpayers and to do so as quickly as possible. We do not wait until we have hundreds of complaints about an issue before we decide that it merits investigation at a systemic level. Stakeholders want to know about problems before they escalate and the aim of our intervention is to preclude escalation. That is why the Order in Council stipulates that:

- 6 (2) The Ombudsman may review any issue within the Ombudsman's mandate, on the Ombudsman's own initiative, or on receipt of a request from a taxpayer or their representative.

Defining Systemic Issues

The CRA itself defines a systemic issue as one that "has the potential to recur and generate complaints if not identified and appropriately addressed. It encompasses all the people, procedures, work processes, and computer systems that we employ to conduct our business."

The Office of the Taxpayers' Ombudsman has adopted that definition.

Identifying Systemic Issues

To be able to provide the most effective and timely recommendations, we take a proactive approach to identifying systemic issues. In our dealings with taxpayers and through our consultations with tax professionals, elected representatives, associations, and interest groups, several issues about the way the CRA serves Canadians have been brought to our attention. The Ombudsman may hear about issues from people or groups who would never bring such matters to the attention of the CRA.

We can launch a systemic investigation on our own initiative (see Section 6 (2) of the Order in Council), without any prior complaints, if it appears to us that an issue might be negatively affecting taxpayers. However, we must respect our mandate: we may only investigate issues arising from the administration or enforcement of CRA program legislation to the extent that these relate to service matters.

This Office will shortly be announcing systemic investigations on its Web site. We invite taxpayers, tax professionals, and anyone with information or complaints about potential systemic issues to contact us.

Researching Systemic Issues

Once an issue is identified as systemic, we determine its nature and scope. We start by gathering information from CRA systems and what is available publicly. The additional information we require is obtained through requests to the CRA.

We do not conclude that there is a systemic problem until we complete our research. We do not form an opinion on the merit of a complaint, nor reach a conclusion on an issue, until we have thoroughly analyzed it. There may be a valid reason for a particular CRA practice, or the activity being complained about may occur only in exceptional and unavoidable

circumstances. On the other hand, it may be that one of the CRA's administrative activities, policies, or procedures is negatively affecting taxpayers and needs to be corrected as soon as possible.

Only when we have completed our analysis and concluded that there is in fact a systemic problem, do we make a recommendation for corrective action.

Issues Identified

Summarized below are some of the systemic issues we have identified to date. They are in various stages of research and analysis. Every examination of the CRA's decisions, activities, and procedures involves consideration of whether they respect the service rights contained in the Taxpayer Bill of Rights.

The Right to Fair Treatment

Canada Child Tax Benefit (CCTB)

A change in family status can affect eligibility for the CCTB. This review will determine whether the CRA is serving benefit recipients well and administering the CCTB program fairly. We have received complaints from single mothers who have had their CCTB payments cut off and documentary proof of their status rejected. Complainants claim that there do not appear to be clear guidelines for what proof is required by the CRA to verify a change in family status.

The Right to Professional Service

Allocation of payments

Businesses and individuals have complained about misallocated payments. Although directions (in the form of a remittance voucher or other written instructions) were attached to payments made by cheque, some of these were applied to incorrect accounts, incorrect months, and/or incorrect tax years.



Mr. Dubé on set for interview at CBC Radio One 91.5 FM

“Rights cannot provide maximum protection if you do not know about them”.

J. Paul Dubé

The Right to Clear, Complete, Accurate, and Timely Information

CRA policy on access to professional working papers

One of the most common complaints from tax professionals is that the CRA sometimes requests the notes, drafts, and other “working papers” generated in the course of advising their clients. Several years ago, the CRA began a consultative process related to the review and amendment of its Acquiring Information from Taxpayers, Registrants, and Third Parties policy. Complainants claim that the CRA has promised that an amended policy would soon be released, but the policy is not yet finalized and details on its implementation are unknown. We will look into the timeliness and accuracy of CRA communications on this subject.

Summary

Through the investigation of systemic issues and the publishing of its findings, the Office of the Taxpayers’ Ombudsman will provide valuable feedback to the CRA on where it excels and where it needs to improve.

Communications and Outreach

If the Office of the Taxpayers’ Ombudsman is to play an active role in helping Canadians to receive the best possible service from the CRA, we need to better inform them about their rights as taxpayers. Building a relationship of credibility, understanding, and trust with the CRA is also crucial to our success. Much time and effort goes in to ensuring effective communications with all our stakeholders.

The objectives of our outreach activities for this reporting period were to create awareness among taxpayers and benefit recipients, and to gain insight from stakeholders such as associations of tax professionals, interest groups, parliamentarians, civic associations, and CRA employees. All were invited to share their experiences relating to services provided by the CRA.

The national outreach tour, launched in December 2008, allowed the Ombudsman to begin meeting stakeholders in Toronto, Vancouver, and Calgary and will continue into the next fiscal year. This is an ideal way to expand our visibility and build relationships, as well as an extremely effective way to gain insight into the systemic issues and trends that characterize the relationship between taxpayers and the CRA.

Additional outreach activities included media interviews, public education events, presentations at conferences, and public speaking engagements about the role of the Ombudsman. These events gave us the opportunity to raise awareness of the Office and to create mutually beneficial partnerships with stakeholders.

Media interviews for this reporting period resulted in 45 print articles and 45 broadcasted interviews with an estimated reach of 1,977,053 Canadians.

During the first year of operations, our Web site was visited 82,690 times, an average of 226 times per day. The site provides valuable information about our organization; we are in the process of enhancing it to make it a more interactive resource for stakeholders.

Looking Ahead

Looking Ahead

The Office of the Taxpayers' Ombudsman has several operational objectives for the upcoming year. Here are some of our priorities.

Systemic Issues

The Ombudsman will continue to assist the CRA by identifying systemic issues that negatively affect taxpayers, and by making recommendations on how those problems can be solved. We have already identified several such issues and a team of examination officers has been assigned to conduct research and analysis. The Ombudsman will publish his findings on systemic issues in special reports.

Public Opinion Research

Because we wonder whether the number of complaints accurately reflects taxpayer satisfaction with the CRA, we have commissioned some research into public opinions to look at the factors that may be affecting complaints. Is there a reluctance to complain about the CRA? If so, why are taxpayers reluctant to speak up? These are the types of questions we hope to answer by surveying Canadians.

Ombudsman's Consultative Committee

One of the most effective ways to learn about trends in the relationship between taxpayers and the CRA is to consult people who have first-hand knowledge of that relationship. To that end, we will establish an Ombudsman Consultative Committee.

This committee will provide ongoing advice to the Ombudsman by helping to identify potential systemic matters related to our mandate and helping assess the effectiveness of outreach activities.

The consultative committee will consist of up to a dozen volunteers from across Canada, selected by the Ombudsman for a two-year term. Members will be selected from various professional and stakeholder groups for their ability to provide advice on issues and feedback on strategies.

Outreach

The Ombudsman has accepted invitations from several organizations to speak at conferences and seminars in the upcoming year. Such presentations and consultations with professional associations are part of our ongoing efforts to raise awareness of the Taxpayer Bill of Rights and to demonstrate the benefits the Office brings to all stakeholders in the tax system. The Ombudsman also looks forward to receiving information from the tax professionals who deal with the CRA on a regular basis.

Final Word

At the Office of the Taxpayers' Ombudsman, we are in the process of building a valuable organization—one that has already demonstrated benefits to stakeholders such as taxpayers, the CRA, the Minister of National Revenue, and tax professionals. We have made a significant difference in the lives of many Canadians. We have helped the CRA improve its accountability and its service to taxpayers. Ours is evidently a much-needed organization, and we will continue to work toward maximizing its potential in the years ahead.

Despite the overall professionalism of the CRA personnel who administer service complaints programs, many of the individual taxpayers we helped had been unsuccessful in trying to resolve a dispute with the CRA on their own. Furthermore, because we hear about issues that may not be brought to the attention of the CRA, we are uniquely positioned to research and report on issues related to the CRA's accountability and service to Canadians.

Taxpayers, tax professionals, parliamentarians, business people, and interest groups across the country have all told us that they are grateful to finally have an independent Ombudsman to oversee the CRA. It is clearly something Canadians want.

Our observations to date are that the CRA serves Canadians well most of the time, but not always. The CRA treats taxpayers fairly most of the time, but not always. The CRA does many things very well, but not everything. When an organization as powerful as the CRA misses the mark in its treatment of a taxpayer, the consequences, such as cancellation of benefits, seizure of bank accounts, or imposition of penalties and interest, can be overwhelming for that business or individual.

When assessing the accountability of a government organization, it is important to keep in mind the objective once mentioned by Ontario's Ombudsman, André Marin:

“Accountability isn't about tearing down or embarrassing government officials. It's about holding government officials to the highest standards that we believe they can achieve, and trusting that government is, as a whole, capable of serving the public good. It's about refusing to be complacent, and remembering that the “administrative state” isn't a machine, it's people.”⁸

Like the “administrative state,” the CRA is not a machine; it is a group of people. Most of the people we deal with at the CRA are highly competent, dedicated, and professional. We believe they are capable of achieving the highest standards and serving the public good. However, we also believe that we have an essential role to play in helping them build on their strengths and realize their potential.

By fulfilling our mandate, we can and will help the CRA to act on its values of integrity, professionalism, respect, and cooperation. We can and will help it to provide unparalleled service and value to its clients. In so doing, we will be contributing not just to the efficiency of government, but to the well-being of taxpayers and benefit recipients.

⁸ (André Marin, Ombudsman Ontario, 2008)

Contact the Office of the Taxpayers' Ombudsman

Mailing Address

Office of the Taxpayers' Ombudsman
724 - 50 O'Connor Street
Ottawa ON K1P 6L2
Canada

Hours of Operation

8:15 a.m. to 4:30 p.m. (Eastern Time)
Monday to Friday (except holidays)

Telephone

613-946-2310 (outside Canada and the United States)
Toll-free: 1-866-586-3839 (Canada and the United States)

Fax

613-941-6319
Toll-free: 1-866-586-3855

Internet

www.taxpayersrights.gc.ca

Appendices

Appendices

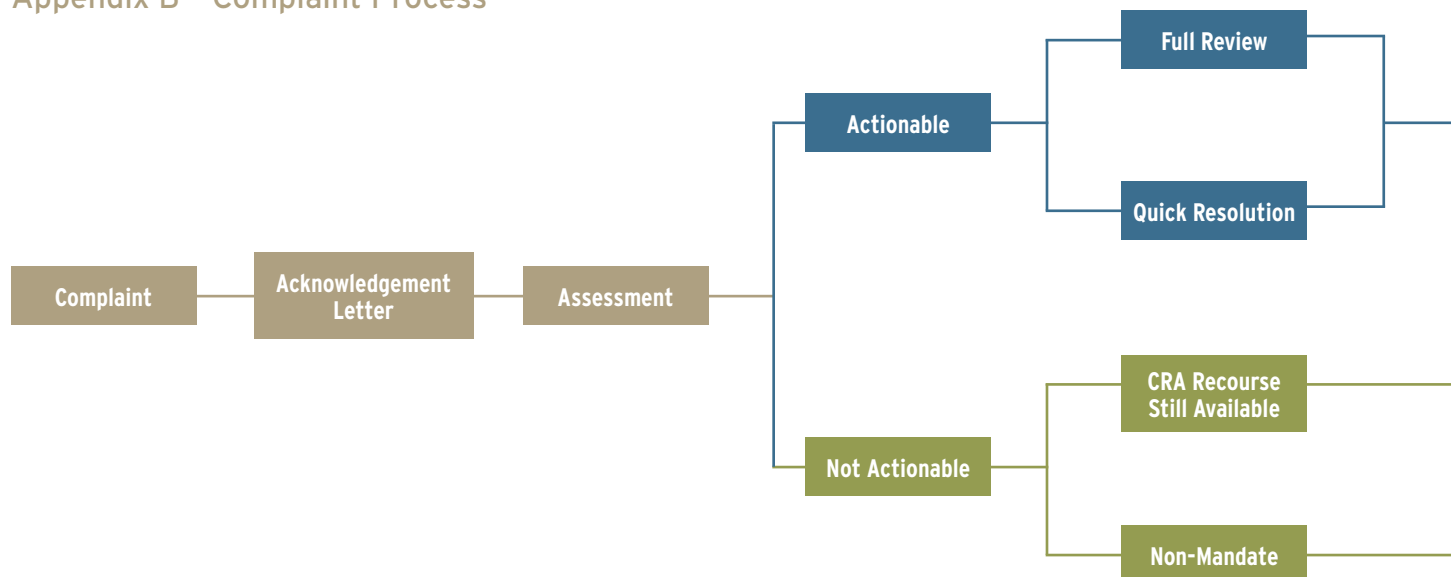
Appendix A - Financial Report

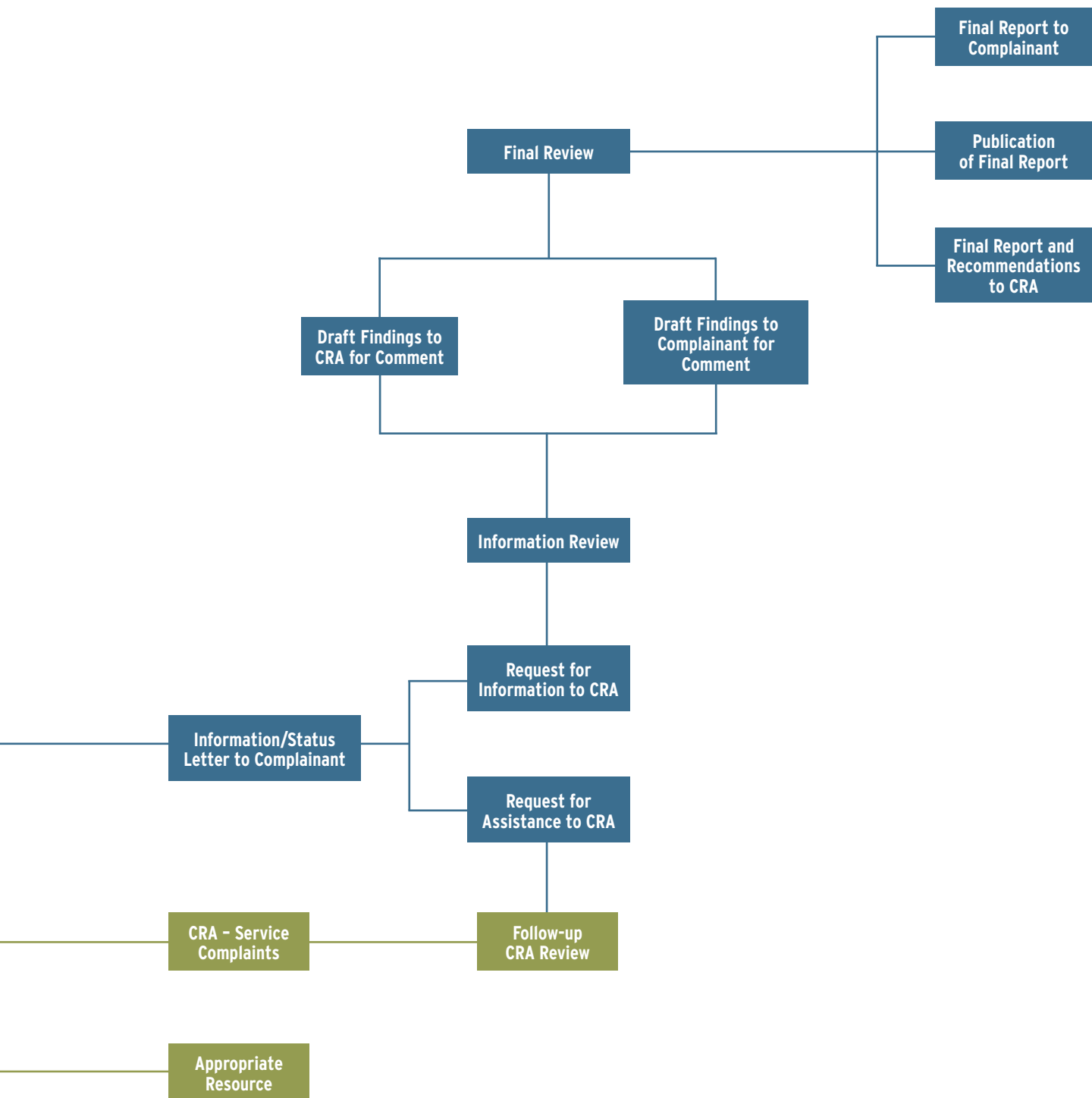
Actual expenditures for the Office of the Taxpayers' Ombudsman for the fiscal year ending March 31, 2009, amounted to \$1.7 million. Salaries were the largest expenditure, totalling \$1.36 million (80% of total annual expenses). During the first year of operations, we identified needs that had not been considered in the original budget. These needs are now included in the planning process and future budgets will reflect these expenditures.

Summary of Expenditures

(April 1, 2008–March 31, 2009)	(\$000)
Salaries	1,360
Training and Education	66
Professional Services	60
Information Technology Services	59
Travel	56
Office Equipment	32
Printing and Publishing	31
Telecommunications	30
Office Expenses	24
Annual Operating Expenses	\$1,718

Appendix B - Complaint Process





Appendix C

Order in Council P.C. 2007-0828

Whereas, pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act*, the Governor in Council may appoint a special adviser to a minister;

And whereas the Governor in Council deems it necessary that there be a special adviser to the Minister of National Revenue acting as the ombudsman for taxpayers;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby sets out in the annexed schedule the terms and conditions of employment of the special adviser to the Minister of National Revenue, to be known as the Taxpayers' Ombudsman, who may be appointed by the Governor in Council under paragraph 127.1(1)(c) of the *Public Service Employment Act*.

SCHEDULE

INTERPRETATION

1. The following definitions apply in this schedule.

“Agency” means the Canada Revenue Agency continued under subsection 4(1) of the *Canada Revenue Agency Act*. (Agence)

“Board of Management” means the Board of Management of the Agency established by section 14 of the *Canada Revenue Agency Act*. (conseil de direction)

“Minister” means the Minister of National Revenue. (ministre)

“Ombudsman” means the Taxpayers' Ombudsman. (ombudsman)

“program legislation” means program legislation as defined in section 2 of the *Canada Revenue Agency Act* and any legislation administered or enforced by the Agency on behalf of a provincial government, aboriginal government, public body performing a function of government in Canada or other agency or department of the Government of Canada. (législation fiscale)

“taxpayer” means a person who, under the program legislation, is liable to pay a tax, is eligible to receive an amount as a benefit or is provided a service by the Agency. (contribuable)

APPOINTMENT

2. The Ombudsman shall be appointed by the Governor in Council for a term of three years, which term may be renewed, and may only be removed for cause by the Governor in Council.

STAFF AND SUPPORT

3. The staff of the Office of the Taxpayers' Ombudsman shall be employed pursuant to the *Canada Revenue Agency Act* and shall be within the Agency.

MANDATE

4. (1) The mandate of the Ombudsman shall be to assist, advise and inform the Minister about any matter relating to services provided to a taxpayer by the Agency.

- (2) In discharging the mandate, the Ombudsman shall
 - (a) review and address any request for a review made by a taxpayer or their representative about a service matter or a matter arising from the application of the provisions of sections 5 and 6, 9 to 11 and 13 to 15 of the Taxpayer Bill of Rights;
 - (b) identify and review systemic and emerging issues related to service matters that impact negatively on taxpayers;
 - (c) facilitate access by taxpayers to redress mechanisms within the Agency to address service matters; and
 - (d) provide information to taxpayers about the mandate of the Ombudsman.

LIMITATIONS ON AUTHORITY

- 5. (1) The Ombudsman shall not review any matter that arose more than one year before the day on which the Office of the Taxpayers' Ombudsman is established, unless the Minister requests that the Ombudsman do so.
- (2) The Ombudsman shall not review
 - (a) the administration or enforcement of program legislation other than to the extent that the review relates to service matters;
 - (b) Government of Canada legislation or policy or Agency policy, other than to the extent that the legislation or policy relates to service matters;
 - (c) a request for a review arising from the application of a provision of the Taxpayer Bill of Rights that is not referred to in paragraph 4(2)(a);
 - (d) the provision of an administrative interpretation by the Agency of a provision set out in the program legislation;
 - (e) any decision of, proceeding in or matter before, a court;
 - (f) legal advice provided to the Government of Canada; and
 - (g) confidences of the Queen's Privy Council for Canada.

REQUESTS FOR REVIEW

- 6. (1) The Ombudsman shall review any issue within the Ombudsman's mandate at the request of the Minister.
- (2) The Ombudsman may review any issue within the Ombudsman's mandate on the Ombudsman's own initiative or on receipt of a request from a taxpayer or their representative.
- (3) The Ombudsman may
 - (a) refuse to deal with a request for review, except if the request is made by the Minister;
 - (b) determine how a review is to be conducted; and
 - (c) determine whether a review should be terminated before completion.
- (4) In exercising the discretion set out in subsection (3), the Ombudsman shall consider such factors as
 - (a) the age of the request or issue;
 - (b) the amount of time that has elapsed since the requester became aware of the issue;
 - (c) the nature and seriousness of the issue;
 - (d) the question of whether the request was made in good faith; and
 - (e) the findings of other redress mechanisms with respect to the request.
- 7. (1) The Ombudsman shall only review a request if the requester has exhausted the available redress mechanisms, unless there are compelling circumstances.
- (2) To determine whether there are compelling circumstances, the Ombudsman shall consider such factors as whether
 - (a) the request raises systemic issues;
 - (b) exhausting the redress mechanisms will cause undue hardship to the requester; or
 - (c) exhausting the redress mechanisms is unlikely to produce a result within a period of time that the Ombudsman considers reasonable.

8. The Ombudsman shall inform the requester of the results of the review or any action taken to respond to their request, but at the time and in the manner chosen by the Ombudsman.

ACCOUNTABILITY AND ANNUAL REPORT

9. (1) The Ombudsman shall report directly to and be accountable to the Minister.

(2) The Ombudsman shall, before December 31 of each year following the first full year of operations of the Office of the Taxpayers' Ombudsman, submit an annual report on the activities of the Office to the Minister and to the Chair of the Board of Management for the preceding fiscal year. The Minister shall cause a copy of the annual report to be tabled in each House of Parliament.

(3) The Ombudsman shall publish an annual report as soon as it has been tabled by the Minister.

(4) If it appears to the Ombudsman that information in an annual report would reflect adversely on any person or organization, the Ombudsman shall give those affected an opportunity to comment and shall include a fair and accurate summary of the comments in the annual report. With respect to the inclusion of any personal information in the annual report, the Ombudsman shall comply with the relevant provisions of the *Access to Information Act* and the *Privacy Act* and any other applicable Act of Parliament.

OTHER REPORTS AND RECOMMENDATIONS

10.(1) The Ombudsman may issue reports, with or without recommendations, at any time concerning any review or other matter that is within the Ombudsman's mandate. Recommendations contained in a report may be made to either the Minister or the Minister and the Chair of the Board of Management.

(2) The Ombudsman shall attempt to resolve all issues within the Ombudsman's mandate at the level at which they can most efficiently and effectively be resolved and shall, in so doing, communicate with any officials that may be identified by the Agency.

(3) The Ombudsman's recommendations are not binding.

(4) The Ombudsman may request a management response from the Agency that indicates what action is contemplated or being taken with respect to the report's recommendations or explains why the recommended action will not be taken. If the management response is considered unacceptable or is not received within a reasonable time, the Ombudsman may submit the report to the Minister or to the Minister and the Chair of the Board of Management.

(5) The Ombudsman may publish any report, other than the annual report, on the expiry of 60 days after it has been submitted to the Minister.

(6) If it appears to the Ombudsman that information in a report would reflect adversely on any person or organization, the Ombudsman shall give those affected an opportunity to comment and shall include a fair and accurate summary of the comments in the report. With respect to the inclusion of any personal information, the Ombudsman shall comply with the relevant provisions of the *Access to Information Act* and the *Privacy Act* and any other applicable Act of Parliament.

CONFIDENTIALITY

11.(1) The Ombudsman and any person acting on the Ombudsman's behalf shall not disclose information of any kind that is obtained by or on behalf of the Ombudsman, or prepared from information obtained by or on behalf of the Ombudsman unless, in the case of information concerning a taxpayer, the taxpayer consents in writing to its disclosure.

(2) Despite subsection (1), the Ombudsman and any person acting on the Ombudsman's behalf

(a) may disclose information that does not, directly or indirectly, reveal the identity of the taxpayer to whom it relates; and

(b) shall disclose information if required by an Act of Parliament to disclose information but only in accordance with, and for the purposes of, that Act.