

**Annual Report
2002-2003**

**Adjudication and Conflict Management Office (ACMO)
Passport Office**

Cat. No. E77-1/1-2003
ISBN: 0-662-67811-7



Passport Office Bureau des
passeports

Office of the Adjudicator and Ombudsman
Ottawa, Canada
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Annual Report 2002 - 2003

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Adjudication and Conflict Management Office (ACMO)

April 25, 2003

Mr Michael J. Hutton,
Chief Executive Officer
Passport Office
200 Promenade du Portage
Gatineau, Quebec K1A 0G3

Mr Chief Executive Officer,

I am pleased to table the first Annual Report of the Adjudication and Conflict Management Office (ACMO). During the 2002-2003 fiscal year, our efforts have focussed on the principal functions of the ACMO, namely:

- the independent review of recommendations for revocation or suspension of passport services, and
- planning the establishment of the Office of the Public Ombudsman.

We have also focussed on developing benchmarks in relation to alternative mechanisms for resolving contractual disputes between the Passport Office and its suppliers of goods and services. Work has been completed to publicize procedures available for employees wishing to proceed with the internal disclosure of information concerning wrongdoing in the workplace. We also undertook preliminary consultations with the delegated departmental authority responsible for Privacy Protection and Access to Information.

With the limited resources allocated for these projects and initiatives, we believe we have set the basis for further action consistent with the nature of the mandate which we now must implement in certain areas and perform with full authority. There is no doubt that staffing actions will be necessary quite soon during the new fiscal year, so that the clients, employees and business partners of the Passport Office can benefit from the procedures and means of recourse which will be available to them.

Yours sincerely,

Jocelyn Francoeur

Jocelyn Francoeur, LL.B.
Chairperson
Adjudication and Conflict Management Office

Canada

An agency of the Department of
Foreign Affairs and International Trade

Un organisme du ministère des
Affaires étrangères et du Commerce international

Executive Summary

The **Adjudication and Conflict Management Office (ACMO)** works in five distinct areas of activity where it exercises its institutional independence in relation to the corporate structures within the Passport Office :

- adjudication of security files ;
- Public ombudsman;
- providing mediation services on contractual disputes;
- disclosure of wrongdoing in the workplace;
- protection of privacy and access to personal information.

It was in January 2002 that an independent **Adjudicator** formally assumed office to consider recommendations for the revocation or suspension of passport services. The last quarter of 2001-2002 was dedicated primarily to considering and reviewing recommendations which had been pending prior to the appointment of the Adjudicator. During the said period, 18 decisions were handed down. None of them was the subject of judicial review. A comprehensive review of jurisprudence to date - comprising 140 decisions - was conducted during the new fiscal year, during which time 34 decisions were handed down.

We took part in the First Forum of Canadian Ombudsman in Canada at the end of the fiscal year. The event gave us an opportunity to discover the best practices of Ombudsman offices. The experience gained at the Forum was to allow us to complete the preliminary research and documentation for the establishment of an office of the **Ombudsman**, a task which is now largely completed. The responsibility of this Office will be to examine in an independent manner complaints from the public which have not been resolved through the internal process available at present. Essentially, the Ombudsman will apply an equity test with respect to administrative decisions made by the Passport Office, with which the people concerned have difficulties. The *Ombudsman's Checklistist* outlines the major equity standards to be sought in delivering high quality and transparent services. This list, which is given at the end of the Annual Report, is broadly based on publications and recommendations which are available and which were developed during the Ombudsman Forum. The role of the Ombudsman is to act as an agent for change, encouraging both parties, that is the Agency and its clients, to think through the issues and work towards an acceptable solution, when a situation requires a change in practices or expectations. The Office of the Ombudsman will become operational during the coming year, when communication tools intended for the public are implemented and the staffing of resources completed.

Through the Ombudsman's site, the business partners of the Passport Office will find information on **alternate dispute resolution mechanisms for settling contractual disputes**. The tools available have been listed and a number of helpful links with sites of general interest on the subject will be proposed.

The federal government has implemented a *Policy on the Internal Disclosure of Information concerning Wrongdoing in the Workplace*. Under this **policy of integrity**, all government agencies are required to designate a senior disclosure officer.

This responsibility has been given to the Chairperson of ACMO, since he or she is the person who officiates in an independent manner over the operational and management structure of the Passport Office. During this process, we published on the Passport Office's Intranet the mechanisms, means and procedures available to Passport Office employees. There were no complaints filed during the year.

Obligations under legislation and policy governing **Protection of Privacy and Personal Information** are an area crucial to the work of the Passport Office. These obligations are such that an in-depth and objective examination has been undertaken with the Department of Foreign Affairs and International Trade (DFAIT) in relation to current mechanisms to ensure compliance and appropriate delivery. Through the support of PPT's Office of Legal Counsel, our preliminary discussions with DFAIT have progressed so well that we will soon be tabling joint recommendations with and to the Department. Our objective is to ensure service delivery consistent with established rules. A new privacy protection policy, subjecting any government initiative to a privacy impact study, has significantly increased the workload of PPT and DFAIT employees. The Passport Office is constantly evolving so as to meet significant fluctuations in the volume of business resulting from bilateral initiatives or international standards. Therefore, in the coming years a number of impact studies will have to be completed. As a result, it is desirable to recruit and develop in-house expertise on these issues.

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1. Adjudication of security files

The grounds for revoking and refusing passport services are stated in the *Canadian Passport Order*. The *Order* is available on the website of the Passport Office at www.ppt.gc.ca. Any decision to refuse to issue or to revoke a passport is subject to the recourse of judicial review.

The procedure governing such actions is based on discretionary authority. Refusal or revocation decisions are in essence administrative decisions, subject to rules of natural justice and procedural fairness. The Adjudicator, the Legal Counsel of the Passport Office and representatives of the Administrative and Constitutional Law section of the Department of Justice have been actively involved in developing the process.

i) Investigation procedure

The Security, Policy and Entitlement Branch of the Passport Office is an investigative body identified in the *Privacy Act*. The Security, Policy and Entitlement Section (the Section) is responsible for administering the investigation program. When the Section is notified of events which might constitute cases of abuse or unlawful use of passports or travel documents, a security file is opened and an investigation may be undertaken.

The Section's investigations seek to determine whether passport applicants or holders should have their passports revoked or applications refused under the *Order*. If there is evidence to support a proposal to refuse or revoke, the subject of a security file is notified by a formal proposal letter written by the Section. The subject is given the opportunity to respond to the allegations of the Section.

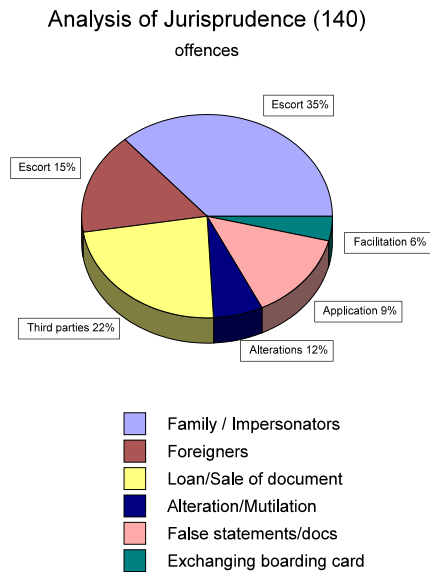
The Section's proposal letter asks the subject to submit directly or through advisers or counsel all information deemed relevant. The section has an obligation to consider this information as part of its investigation. After considering all information available, the Section may authorize the issuance of a full validity passport or a passport for a limited period of time and containing certain conditions. Alternatively, in the event that the Section considers that the information seems to support a conclusion that grounds for refusal or revocation do apply, the Section can recommend that an Adjudicator, acting on behalf of the Passport Office, make a decision. The responsibility of the Adjudicator is to refuse or not refuse the issuance of a passport and also to hand down a decision on the recommendations concerning revocation.

ii) Adjudication procedure

When a file has been referred to the Adjudicator for a decision, the Adjudicator considers the whole file and delivers a decision in writing supporting or rejecting the recommendations of the Section. If the recommendation of the Section is upheld, the Adjudicator makes a ruling on the length of the period of suspension of services. The Adjudicator acts independently and informs the subject, his or her advisors and counsel, of the decision. A copy of the decision is appended to the file considered by the Adjudicator. The file is returned to the Section. The decisions of the Adjudicator are considered final as from the date of receipt by the person to whom it is sent, that is the subject(s) of the investigation. The latter may challenge the decision by submitting an application for judicial review to the Federal Court of Canada within thirty (30) days of receiving the said decision.

iii) Number and types of intervention

During the fiscal year 2002-2003, thirty-four (34) decisions were added to the one hundred and six (106) previous rulings listed to date. Eleven (11) of these cases were represented by counsel. The Adjudicator upheld the recommendations of the Section in thirty-two (32) cases and rejected two (2) recommendations for revocation. No decision was submitted to Federal Court for judicial review.



The facts stated in support of recommendations by the Section can be grouped as follows: (number of cases submitted in 2002-2003)

Escorting travellers with fraudulent travel documents (5 cases)

Escorting individuals impersonating members of the immediate family (12 cases)

Lending or selling a passport to a third party (8 cases)

Altering/ mutilating a document (4 cases)

False statements/false documents in support of a passport application (3 cases)

Exchanging boarding cards with third parties (2 cases)

Among the investigations conducted to date¹, three (3) requests for interim service (filed while the investigation was underway) were submitted by subjects on compassionate grounds. None was upheld by the Section. The Adjudicator reversed a negative decision and ordered the issuance of a limited-validity passport, with geographic restrictions. In another case, the Adjudicator expressed concern that the application had remained more or less in abeyance because of the lack of a formal letter from the Section expressing a definitive position on the application. The same subject presented a second application on different compassionate grounds, which the Adjudicator considered should have been accepted, at least in part. In fact the members of the subject's family should not have been penalized because of the alleged act committed by the subject of the investigation.

In delivering his decision, the Adjudicator rules on the length of the period of suspension of services, when the recommendation of the Section is upheld. Jurisprudence to date is quite cautious and the maximum period imposed corresponds to the maximum length of a fully valid passport, that is five (5) years. In other words, the period of "suspension" cannot be longer than the period during which one can potentially "enjoy" a passport, in the event that the application were granted. In the case of fraud, untruthful statements or the unlawful use of documents leading to revocation and/or refusal to issue, the aggravating and mitigating factors of each individual case are examined by the Adjudicator.

¹ The reader should not presume that the Security, Policy and Entitlement Branch opened only 34 security files during the year. ACMO reports only on those files which were referred to its particular jurisdiction. As explained under 'Investigation procedure', some files may have been the subject of issuance authorizations by the Section, and others may be the subject of ongoing investigation.

The main mitigating factors are cooperation with the authorities and the humanitarian motivations of subjects when it is found that an application for refugee status has been allowed. In the case of aggravating factors, we should mention the traffic of minors whose fate at the point of landing remains unclear, collusion or participation in a smuggling ring, challenging or denying overwhelming evidence, or scorn towards the consequences of a wrongful act. Taking all these factors together, we see that in 2002-2003 the Adjudicator imposed periods of passport service suspension varying from five years to five years minus fifteen months.

iv) Review of operational procedures

On the basis of jurisprudence accumulated, the Passport Office has undertaken a review of operational procedures. This study should make it possible to determine the main factors to be taken into consideration in deciding to undertake, complete and refer investigations and recommendations for refusal, revocation or suspension of passport services. The CEO of the Passport Office has asked the agency's Legal Counsel to table recommendations and asked for the participation of directorates involved, as well as ACMO.

In the course of our work, we presented to the Legal Counsel our comments on certain problems. ACMO believes the process must be clear, consistent and understood by all directorates. At the same time, the processes involved must be transparent and fair to the subjects themselves by not imposing an unjustified burden on them. The results of this review are expected during the coming year.

2. Establishing the Office of the Ombudsman

i) Current complaint resolution process

The Passport Office processes all complaints referred by a member of the public by examining the nature of the application. The directorates concerned, whether involved in operational, policy or corporate activities, are consulted. Generally, explanations, corrections or amendments are delivered to the complainant, through a letter signed by the CEO of the Passport Office. The process used is therefore internal and self-developed to some degree.

ii) Future process - involving the Ombudsman

To complement the internal complaint resolution process, the Passport Office has agreed to set up an Office of the Ombudsman within ACMO. The role of the Ombudsman is to assess in an independent manner the impact, reasonable character and legality of the demands placed by the Passport Office on the applicant who is dissatisfied with the service and has filed a complaint. ACMO will report on the activities of the Ombudsman in its subsequent annual reports.

As an agent for change, the Ombudsman will encourage the two parties to think through the issues so as to work towards a solution, when a situation requires a change in practices and expectations.

The Ombudsman intervenes upon request, mainly when the positions of the parties (the Passport Office and the complainant) cannot be reconciled. This implies that the complaint has first been formally considered and handled in accordance with the internal complaint resolution process. The Ombudsman may also determine that to refer the complaint to the first level would be unfair or

create a serious disadvantage - if only because of the time required to do so. In such cases, the Ombudsman could intervene immediately, identifying the crucial issues and questions at stake. The purpose of such proactive intervention is to help the Agency and the plaintiff to appreciate more quickly the source of their respective expectations and motivations, and the distance which must be covered in order to arrive at an equitable situation which is consistent with legislative requirements.

The process envisaged is as follows. Upon receipt of a complaint, the Ombudsman determines whether the complainant has previously been in contact with the Passport Office. In some cases, the Ombudsman will be able to initiate the processing of complaints which have not been dealt with at the first level. In both cases, he will take the necessary steps with the relevant sector (operational, corporate, policy) to communicate the viewpoint of the complainant, discuss it with the appropriate staff responsible and work to bring the parties closer together. If this proves not to be possible, he draws up recommendations, which will be communicated to both parties. The best solution is always the one the parties reach and accept themselves, and therefore the Ombudsman favours reasoned negotiations between the parties. Some questions may already have been dealt with by the Ombudsman, in which case the previous conclusion would be applied again.

iii) Comparative study with similar offices

We researched some international sites of foreign offices issuing travel documents, with which the Canadian Passport Office has close links (the five-nation 'ad hoc' forum). None of these agencies (in Australia, New Zealand, the United Kingdom and the United States) has an official ombudsman. Two of the jurisdictions refer their serious (or second-level) disputes with applicants to an external Ombudsman operating at the government level. These are New Zealand and the United Kingdom. Two others, Australia and the United States, have an internal complaint settlement service, as well as a charter of service for their clients.

Our research also looked at sixteen (16) sites of federal institutions selected as benchmarks, as our objective was to discover and build on the presence of public ombudsmen, that is those whose sphere of activity is geared towards the general public. This study - which revealed we are in a relatively new domain - produced the following list:

- Two agencies with an appointed Ombudsman, namely :
 - CIDA, with a mandate focussing on staff;
 - National Defence, focussing on staff and activities affecting staff.
- Two agencies with an internal complaint processing service, through an operational component within the institution, namely:
 - The Customs and Revenue Agency;
 - Public Works and Government Services Canada.
- Some institutions which do not have an ombudsman or internal complaint processing service are linked to an external agency mandated to act as an ombudsman, namely :
 - The RCMP Public Complaints Commission.
 - The Canadian Transportation Agency.

In terms of departments providing a service to the general public, we see therefore that this position of Public Ombudsman seems to constitute a precedent. Where the notion of Ombudsman is recognised and in operation, the organisation sponsoring this function distances itself from it for reasons of transparency and consistency with the objectives sought in implementing the said function. Within the Passport Office, given the nature of the mandate of the Agency created through royal prerogative, it is clear that the Ombudsman has firstly power of recommendation and not power of coercion with respect to the said institution. However, the recommendations of the Ombudsman are a powerful incentive for the Passport Office and its decision makers to amend, improve or in some circumstances rescind policies or practices deemed inadequate or problematic.

The First Forum of Canadian Ombudsman provided a rich source of information on which we could draw. The publication of an *Ombudsman's Checklist* allows government agencies to see the tests which will be applied to the practices which may be the subject of a complaint. For the client, these *Equity Standards* make it possible to assess the reasonableness of the complaint. We plan to publish a similar list for the benefit of all interested parties.

iv) The Ombudsman office's structure

As there are no similar positions in departments (in contrast with crown corporations) providing a service to the public for a charge, we have not been able to take as a model any established structure providing a similar function. The only statistics available relate to the annual volume of correspondence at the Passport Office, from which it is difficult to extrapolate the number of (second level) complaints likely to be raised with the Ombudsman.

In any event, basic planning for the Office of the Ombudsman was carried out as part of this work. Budget planning for the Passport Office reflects the resources which we consider adequate to implement the function during the next fiscal year. The edited content of an Ombudsman Website is already practically completed. We now have to actually set up the site and make it available in both official languages.

v) Positions to be filled and difficulties to be resolved

When the Ombudsman Website is launched, the Office of the Ombudsman will have to be ready to deal immediately with requests for information and complaints it receives. It is therefore necessary to draw up,

classify and staff positions. As this is a relatively new sphere of activity, there is no generic description for such positions. As a result, the most fundamental questions concern the application or non-application of collective agreements, and Public Service hiring and remuneration procedures. At the Canadian Ombudsmen forum, prominent public Ombudsman acknowledged staffing their offices without PSR (public service regulations) constraints, all the while securing government “non salary benefits” to their employees. This recruiting and hiring model sustains the independence of their office, which for an important part, rests on healthy perceptions which have to be nurtured. Hence, that is our privileged approach.

3. Services for mediating or adjudicating contractual disputes

In view of the institutional independence ACMO enjoys in relation to corporate structures within the Passport Office and since the Adjudicator and Ombudsman are familiar with its business processes and products, the Passport Office has entrusted to ACMO the task of setting up alternative resolution mechanisms for contractual disputes. This is a voluntary process through which the Passport Office and a supplier of goods and services submit disputes which could arise in the performance of a contract or requisition.

The parties will be offered a choice of mediation or adjudication services. An analytical grid has been developed indicating the advantages and options of each method. These tools and approaches for the private sector and the Passport Office will be described on the Ombudsman site. A review of the tools available from the various bodies involved in alternative dispute resolution will allow ACMO to suggest to the parties specific mandates designed in accordance with the type of mechanism selected.

The services available come within the scope of **Alternative Dispute Resolution mechanisms (ADR)**

4. Disclosure of wrongdoing in the workplace

During the fiscal year 2002-2003, Treasury Board Secretariat adopted the *Policy on the Internal Disclosure of Information concerning Wrongdoing in the Workplace*. The brochure issued at the time by the Secretariat clearly describes the aims and commitment of the government:

“This policy is part of the government’s commitment to building a strong foundation of values and ethics in the Public Service. It is designed to help employees disclose alleged wrongdoing in a safe and constructive manner. It also ensures that they will be treated fairly and protected against reprisals when they make a disclosure in good faith.

Under this policy, government departments and agencies have been asked to designate a senior officer responsible for receiving and examining allegations of wrongdoing, initiating investigations if necessary and making recommendations. At the Passport Office, this responsibility has been entrusted to ACMO since it acts impartially with respect to the files under its responsibility. During the year, we published on the Bureau’s Intranet site the procedures for using these services and the protection offered by ACMO in relation to disclosure.

The key stages in processing cases of disclosure are:

- researching the facts
- sorting (being able to re-direct disclosure)
- examining the disclosure
- resolution (mediation and discussion)
- investigation
- recommendation to the CEO and decision

The site is available to the vast majority of Passport Office employees. We also prepared an article for the

employees' quarterly newsletter, *Passages*. Unfortunately, the article was not published. However, we intend to use this medium when reaching out to more employees, as recommended in the *Policy* which stipulates that efforts must be made to inform employees about the recourses available to them. During 2002-2003 no disclosure was made or consultation sought from ACMO.

5. Privacy protection and access to personal information

Obligations resulting from policies on privacy protection and access to personal information are crucial to the business process of the Passport Office. Treasury Board Secretariat (the *Secretariat*) has set out a policy requiring that all government initiatives be subject to an impact study on privacy. The effect of this will be to considerably increase the amount of work demanded of employees of the Passport Office and DFAIT. The Passport Office is constantly evolving so as to meet significant changes in the volume of business resulting from bilateral initiatives or international standards. Therefore, over the coming years, a number of impact studies will have to be completed. It is therefore desirable to develop in-house expertise on these issues and to ensure that resources are put in place to absorb the increased workload.

An examination of existing mechanisms to ensure compliance with the policy of the *Secretariat* has been undertaken, in conjunction with the Department of Foreign Affairs and International Trade (DFAIT). With the support of PPT's Office of Legal Counsel, our preliminary discussions with DFAIT have made such clear progress that we will soon be able to present joint recommendations with and to the department. Our objective is to ensure the delivery of passport services in compliance with the rules governing the protection of privacy and personal information. For example, consideration has been given to the designation of an office of expertise to examine, advise and participate in the development of impact studies on privacy in the case of current and future projects by the Passport Office and also to report on the administration of the program within the Agency.

There is a wide-range of duties and responsibilities to be assumed as a result of these policies, such as:

- implementing policies, procedures and methodologies related to the application of the legislation
- ensuring an adequate description of the organisation's sources of information in Info-Sources
- advising senior management, lawyers and program directors to ensure the provisions of the Act are properly implemented
- preparing annual reports
- training and further educating employees on requirements concerning the collection, use, disclosure, treatment, conservation and withdrawal of personnel information.

The preliminary data collected have been used to develop a first *Long-Term Financial Planning* for this office. The amount required is approximately one quarter of a million (slightly higher during the initial year of implementation).

Appendix : Ombudsman's Checklist

Communications

- The Passport Office provides the public with intelligible information.
- Forms are written in simple language.
- Clients receive all the information they need.
- Partners receive necessary information to better serve the client.
- Clients are treated with courtesy.
- Clients' personal information is protected by the Passport Office.

Offices and services

- The Passport Office responds quickly to phone calls.
- Voice mail, e-mail, telephone answering devices and toll-free lines are available to the public.
- Offices are accessible and adapted to meet the needs of people with reduced mobility.
- The environment is safe and healthy for employees and clients.

Decision making

- Individuals affected by a decision may provide information and evidence to support their position.
- Decisions are made within a reasonable timeframe.
- Reasons for decisions are communicated.

Procedures for appeal, review and examination of claims

- Clients are informed, at the time the decision is made, of existing appeal or review procedures.
- Procedures for handling complaints are clearly explained.
- The public has the opportunity to make suggestions on improving the service.

Organisational issues

- Employees have clear titles, reflecting the duties they perform.
- The Passport Office has tools for assessing the quality of its services.
- The various sectors of the Passport Office work together to offer the best possible service.
- The decision-making process affecting citizens' rights is clearly explained.

A word of thanks :

The above list is based largely on the Equity Standards published by the Ombudsman of British Columbia. We wish to express our gratitude for his work with private, provincial and federal counterparts at the Forum for Canadian Ombudsman.