

*Financial Administration Act*

system has been the most effective weapon. The question period is part of the political process that focuses attention upon individual problems. The grievance procedures provide a number of ways under the rules both of this Parliament and that of the United Kingdom, of an opportunity for debate and examination of questions of supply. This provides an opportunity for bringing clear to the public eye individual grievances. Because this opportunity is there the administration is made conscious of the fact that arbitrary action can in due course be subject to some kind of review in Parliament. The parliamentary system has provided excellent protection through that opportunity for review and examination, and it has been entirely through a political rather than a legal process. I think if one looks across the full range, going back several centuries, one can claim that our own system has had a very considerable measure of success.

The fact that we have this bill before us today, the fact that the United Kingdom has a parliamentary commissioner, and the fact that a number of Canadian provinces, which also have the parliamentary system, have created an office which is comparable to that of an ombudsman, is recognition that there is a limitation in our parliamentary system and that the system has not been fully capable of satisfying the requirements. I think this limitation would have to be recognized, as the hon. member has done. Even if we had the greater facilities for individual Members of Parliament to which he referred, for example, the facility of a secretary and a constituency office where during a member's absence while in Ottawa his constituents would have the right to recourse to him by message being passed on, and what is often more important a facility at this end—because as hon. members know, it is all very well to talk of a problem during a 15 minute interview with a constituent but this may involve up to two hours telephoning trying to track it down with the public service—there is a limit on what 264 members can do. I take it that for this reason other jurisdictions have adopted the ombudsman system as an institution. The hon. member has put in his bill a connecting link so as to establish and make clear the primary responsibility of Parliament with regard to the institution and the fact that the parliamentarian has to be the initiator of action rather than the parliamentary commissioner.

Having described what I regard as one of the most satisfactory systems, let me say a

few words about what I think is one of the least satisfactory systems, that is, the Administrative Procedure Act of the United States. Even with my professional bias I can say this has been a cardinal example of how badly things can be done from time to time by lawyers. I think one would have to say, in defence of the members of my profession, that the United States Administrative Procedure Act arose not so much through a professional bias of that kind, but—I think I am correct in saying this—out of a necessity to meet the requirements of the United States constitution and the ultimate right under the Bill of Rights to have recourse to the courts system. I suggest that the APA, as it is known, makes this case of administrative procedures the least satisfactory one due to the nature of formal litigation which is expensive and time consuming. It has had the effect of a denial of the process of administrative review through the courts. There has to be a big question, there have to be funds behind the individual and he must have time if he is to obtain ultimate and effective recourse under the Administrative Procedures Act.

We too are to a degree establishing that kind of system in Canada and we are to a degree reconstituting our own court procedures so as to provide better procedural access and a better basis for administrative law than has existed in the past. There is, no doubt, the kind of situation which an administrative system can handle with the necessity of a rather formal proceeding. What is required is a less legalized proceeding which an individual can follow such as, for example, that which an ombudsman is designed to handle. This brings me to the institution for which I have particular admiration—the institution in France to which I referred earlier, the conseil d'état. As the parliamentary system and common law has been evolved in Anglophone countries, so the conseil d'état is a unique institution which has evolved from an entirely different institution. The French started off as we did, with an institution of one kind, but procedure has caused it to be adapted in another way.

I had the opportunity, when I was Parliamentary Secretary to the Minister of Justice, of visiting the conseil d'état in Paris and of talking to the secretary of that august body. I had an opportunity of observing the scale and nature of the problems with which they deal. I must say that that institution as such has great appeal to me. It seems to me it is one of particular success in France since it was