

**CHALLENGES FOR THE OMBUDSMAN IN A
CHANGING SOCIO-ECONOMIC ENVIRONMENT**

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Introduction

As the title of this Conference suggests, Ombudsmen are not immune from the changes taking place in the societies within which we operate.

Worldwide, there are major changes confronting Ombudsmen in the social, political, and economic environments within which we work. There are increasing challenges to our mandate or potential limitations on our powers or the breadth of our jurisdiction. There is the challenge of technology, specifically as we grapple with the need to balance the State's need to generate and hold records, increasingly in digital form, about individual citizens, and the right of those individuals to challenge information that is held and used in decisions that relate to them, or impact on them. The challenge of maintaining confidentiality in the face of increasing demands for openness and transparency.

And in most countries there is a growing demand for Ombudsman services and in many places the Ombudsman is increasingly required to take on additional jurisdictions especially in the field of human rights.

The current global financial crisis demands austerity in public spending and as the pressures come on the State Sector to cut budgets and trim service, the Ombudsman is faced with a rising demand for redress of service delivery failures and little or no additional resources to meet this need.

A few months ago, I canvassed IOI members about the specific challenges facing them in the next 3 – 5 years. As well as the ones I've just mentioned, were:

- How to maintain the independence of the office in this climate of change
- How to create a climate of responsiveness in agencies so they get it right first time.
- Raising the capacity and capability of staff and meeting the competition for skilled staff
- How to deal with the erosion of the Ombudsman role due to the proliferation of industry and other bodies claiming "ombudsman" status
- The need to ensure that the Ombudsman institution remains and credible and relevant recourse for our respective citizens
- Maintaining oversight of bodies delivering public services but which are, increasingly, being partially or wholly privatised.
- Managing multiple jurisdictions
- Responding to the needs of an ageing population and
- Managing risk

This is by no means an exhaustive list. It is however reflective of the major issues which face us and which we must meet if we are to remain relevant and effective in our primary role of ensuring administrative justice and procedural fairness, mediating the relationship between the governing and the governed and encouraging trust in government by ensuring that public bodies operate fairly and transparently and are fit for purpose.

That the role of Ombudsman in this challenging environment also requires us to be more proactive and have the courage of our convictions to defend our findings in the face of increasingly conservative government responses and increasingly vehement right wing opinions about what constitutes justice – particularly in respect of some of the most vulnerable in our society – means this isn't a job for the faint hearted. If it ever was!

Nelson Mandela has said “I learned that courage was not the absence of fear, but the triumph over it. The brave man is not he who does not feel afraid, but he who conquers that fear.”

At the British and Irish Ombudsman's Association Conference earlier this year two presentations (on recent challenges to the Ombudsman's recommendations in the UK and Ireland in the Equitable Life case and the “Lost At Sea” case) illustrate the point.

The first was a long running saga around fair and transparent payments to policy holders where there had been an absolute failure to observe due process and where regulations were plainly ill founded. The government's initial response was to reject the report. The Ombudsman challenged that publically, and through the political process, and indicated she was prepared to call the relevant Ministry to account in a public hearing as to the reasons for the refusal which were not at all clear to her or to the public. The Government finally accepted the broad thrust of the recommendations but not to the extent envisaged.

In Ireland, the “Lost At Sea” case involved a one off and time bound compensation scheme for the owners of vessels which had sunk. The complainant's application was rejected as out of time and not meeting all the eligibility criteria. The Ombudsman's investigation found that the design of the Scheme was contrary to fair and sound administration, it had not been adequately advertised, there were poor record keeping practices leading up to the sign off of the scheme which resulted in an inability to track the process of changes to the Scheme.

The Ombudsman recommended compensation for the complainant because these deficiencies had militated against a successful application. The recommendation was rejected.

Following the Ombudsman's further and public argument about the justice of this and the way in which debate in the Parliament had been stifled, and considerable support for her position in political and media comment, the new Coalition government has proposed to strengthen the relationship between the Ombudsman and the Parliament with the creation of an “Investigations, Oversight and Petitions Committee” which would be responsible for receiving and debating her annual and special reports and for ensuring her criticisms and recommendations are acted on.

It has always been the hallmark of the Ombudsman that they are independent and forthright in defence of good governance.

In some places to do so can be dangerous - if not perhaps life threatening, then providing an opportunity for attempts to limit the Ombudsman's role and powers. We need to be vigilant and mutually supportive in the face of these threats and support our colleagues when they “Speak Truth to Power”. That is the value of the various associations of Ombudsmen such as the AOA where we can share experience on best practice and how to navigate our way through the challenges inherent in the role. That is

why the IOI is making serious efforts to strengthen its regional members, and to reach out to other Ombudsman associations and link with them in support of our mutual objectives.

At the IOI's recent Board meeting in Zambia we were delighted to have as observers members of the Executive of AOMA and then to formally discuss with them the creation of a Memorandum of Understanding which would offer options for a closer future relationship.

Remaining Relevant

The biggest challenge for all of us is to remain relevant and responsive and to manage our constrained resources to best effect. That has certainly been foremost in my mind in managing my own office. We have focussed on improving the effectiveness and efficiency of our service and the quality and consistency of our analysis.

Why should we care about efficiency and effectiveness. First of all because we are accountable to our stakeholders. As a Parliamentary Ombudsman I am accountable to Parliament for the performance of the office. While our accountability requirements may differ between country and state, we all have them. Among other things, I am required by the New Zealand Public Finance Act to provide information on our future operating intentions, including:

- the specific impacts, outcomes and objectives we seek to achieve or contribute to;
- how we intend to perform our functions and conduct our operations to achieve those impacts, outcomes and objectives effectively and within a changeable operating environment; and
- the main measures and standards we will use to assess our performance and the cost-effectiveness of our interventions.

Secondly, we are responsible for ensuring proper administration in the agencies we oversee, and we therefore have a responsibility to model good administrative behaviour – including standards of efficiency and effectiveness. We would not be credible otherwise.

Finally, we are spending taxpayers' – or stakeholders' – money – and we are obliged to them to perform the best that we can and to keep them informed of our performance. As Ombudsmen, we simply won't last long if we are not demonstrating an ongoing commitment to doing things better.

Drivers of efficiency and effectiveness

There are also internal and external drivers requiring increased efficiency and effectiveness, some of which we will all be facing, and some of which are particular to my office.

First, is the **increasing demand for services**. I know the New Zealand Office of the Ombudsmen is not alone in experiencing a significant increase in work over the last few years. We had an 11.5% increase last year in complaints and requests for assistance as compared with the previous year. We are not expecting that trend to reverse any time soon.

The matters we're being asked to adjudicate on are becoming increasingly complex. The only way we can manage this situation without a significant fiscal injection (which realistically we are unlikely to receive) is to try and extract more and better efficiencies.

Second, there is the **current economic environment**. Things are tight, and will remain so for the foreseeable future. The agencies we oversight will be required to do more with the same or fewer resources; to improve efficiency and redirect resources to the frontline. At the same time, members of the public who are struggling to cope in straightened financial circumstances will become increasingly reliant on government services and support. They have high expectations about the level of service they are entitled to receive, and if those expectations are not met they are likely to complain. This is probably a factor in the increased demand for Ombudsmen services, and can be expected to elevate complaint levels in the short to medium term.

Our Chief Justice noted that paying attentive care to the small matters and the ordinary citizens needs, and doing that effectively, will provide social "glue" in times of stress.

Effective and efficient Ombudsmen oversight in these circumstances becomes critical, yet at the same time our interventions must be practical, relevant and proportionate.

Third – and this is specific to my office – we have been and are facing a "free and frank" appraisal of our operations in the **freedom of information jurisdiction**. This began with a paper by law lecturer and media commentator, Stephen Price and a research project and book published by Nicola White (appropriately called "Free and Frank"), and continues with a review of New Zealand's official information legislation by the Law Commission.

The issues raised in public submissions to the Law Commission were no surprise to us really – submitters wanted clearer guidelines or examples about recurring requests, relying more on precedent or explicit presumptions about release or withholding as opposed to a case by case approach; they complained about the time taken to investigate requests; they thought our guidance notes added complexity but not clarity.

Fourth, surveys of our stakeholders and complainants reveal some additional shortcomings. Whilst they said some very nice things about our professionalism, competence and independence, the survey also revealed some uncomfortable truths. Complainants and agencies were concerned about the length of time investigations took. They felt our communications with them could be clearer and easier to understand. It was also apparent that we weren't reaching all segments of the population – the majority of complainants surveyed being male, European, and over 40 years of age.

We were also receiving **feedback from our auditors** that our performance information focused too much on our "activities", without identifying why we were doing those activities – our outcomes – and demonstrating how those activities contributed to the achievement of our outcomes. This is basic stuff in a "*managing for outcomes*" world, but we needed to start from scratch.

Fifthly, we are promoting a review of the Ombudsman Act to bring it up to date with modern practice.

Finally, I believed that we needed to reposition the Office to better match the needs of complainants, reflect the reality of modern agency structure and practice within a greatly

altered State Sector, and bring modern management practice, quality assurance and consistency of decision making into the office. The latter has involved establishing clearer lines of devolved decision making and accountability, and developing a much needed research and professional development capability to future proof the office and better support for the Ombudsmen in their work and decision making. Following from this is a strengthened capacity and capability to actively assist the agencies we oversight to “put it right” in the first place, more effectively.

Measuring Effectiveness

We have all developed various measures to differing degrees of effect, such as the number of cases closed; time taken to close cases; and number of recommendations made and actioned. We report against these measures. We benchmark our performance against that of other Ombudsman offices in our region and undertake internal reviews and, as I have already mentioned, we undertake complainant and agency surveys.

However, there are some inherent difficulties in measuring Ombudsman effectiveness. Many of an Ombudsman’s achievements come through the action of others, and not always at an Ombudsman’s explicit direction. As a result of an Ombudsman’s intervention an agency and complainant may settle a concern directly. One Ombudsman investigation may lead to a process improvement that affects numerous individuals who may otherwise have had a legitimate complaint. The fact that individuals can access free and independent complaint resolution mechanisms may also help avoid the escalation of costs associated with protracted disputes. But how do we measure those savings?

Mary Rowe, Ombudsman and Adjunct Professor of Negotiation and Conflict Management at the MIT Sloan School of Management has some ideas for communicating Ombudsman effectiveness that may be helpful, for instance:

- Effective tracking of complaints to identify emerging problems and potential solutions so the office becomes known for providing helpful “heads up” and support to agencies
- Inclusion in general climate surveys to test knowledge, use and value of Ombudsman organisations; and
- Publically reporting the five or six most serious problems and issues in the past year: cases that resulted in significant outcomes or achievement of efficiencies can go some way to demonstrating the cost-effectiveness of Ombudsman interventions.

Back to basics

I said earlier that we had received some criticism regarding our performance framework. Without a cohesive performance framework it was difficult to demonstrate to everyone’s satisfaction that we were operating efficiently and effectively.

So we got back to basics and thought about:

- what we have to do;
- what we want to do; and
- why we have or want to do it. And importantly

- was our structure and management relationships appropriate for an enhanced future

We identified an overarching outcome of enhanced public trust and confidence in a fair, responsive and accountable government, and six intermediate outcomes. Four of these intermediate outcomes reflect what we *have* to do under our statutory jurisdictions – the Ombudsmen Act, the official information legislation, the Protected Disclosures Act, and the Crimes of Torture Act. Two of them reflect what we *want* to do, in terms of freeing up capacity to make some proactive, systemic improvements to state sector capability in administrative, decision-making and complaints-handling processes, and improving public awareness of, and access to, Ombudsman services. We also identified some strategic priorities for the short-medium term, including:

- improving work practices to deliver faster, better and more consistent responses to complaints, and identifying measures to streamline complaints handling and investigation processes;
- developing ways of better communicating key Ombudsmen decisions and settled principles so that agencies and requesters know the “rules” and can predict how they might apply in particular circumstances; and
- promoting greater openness and proactive disclosure of official information where appropriate to reduce the administrative burden and transaction costs of reacting to individual requests for similar information.

This was a significant shift in mind-set for my office. Historically, we were reluctant to do anything other than what we were specifically charged to do by Parliament – that meant waiting for something to go wrong before doing anything about it. We were reluctant to undertake public awareness-related activities because we did not want to be seen to be ‘touting for business’, yet we cannot hope to be effective if we are not reaching the diversity of communities that make up New Zealand society.

We were also reluctant to give people the ‘answers’, even in a general sense, in case we were conflicted if the matter ultimately came to us for determination.

What we have realised is that if we don’t fill the gap, someone else will, and we are not sure that we would like what they might fill it with.

In the Ombudsmen Act context, we are without statutory timeframes for responses to Ombudsman requirements. So whether Ombudsmen’s requirements should be time-bound is one issue we would propose to consider in any review of the legislation. In any event, we must get better at identifying when delays are due to agency inaction and consider publicly reporting that information as an incentive for timely compliance

Closing remarks

In the end, continued confidence in the Ombudsman’s office rests on having clearly articulated outcomes, supported by a “fit for purpose” structure; a demonstrably high level of trust and integrity between the office and those it deals with; capable and competent staff, transparent and robust processes; impartiality and fairness; confidentiality; and a credible review process.

The role of the Ombudsman in both the private and public sector is vital to a well functioning democracy, and to the maintenance of high standards of conduct in

government and business. The economic and social health of our countries depend on all our institutions functioning as well as they can and dealing in a principled way with their consumers. Our role is to ensure that they do, and that role is more important in this changing climate than ever before.

I look forward over the course of this Conference to hearing how you are meeting the challenge.