

## AN OMBUDSMAN CAN INFLUENCE ATTITUDES

Although the introduction of the Ombudsman institution dates back at least 200 years, its proliferation within Canadian society is roughly three decades old being first introduced by means of provincial Ombudsman offices.

In 1984, the issue of whether the Ombudsman of British Columbia had the power to investigate a complaint relating to a provincial Crown corporation's refusal to renew a lease was heard in Canada's highest Court. Twenty five years ago, the Supreme Court of Canada discussed the justification for Ombudsman services as follows:

“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, 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...has come the increased exposure to maladministration, abuse of authority and official insensitivity.”<sup>1</sup>

The Ombudsman institution continued to proliferate across Canada, with the introduction of federal Ombudsman services in the early 1990s. Newly launched federal Ombudsman offices are currently serving the following segments of the population: passport holders; taxpayers; veterans and suppliers.

Ombudsman services are largely defined and discussed in terms of the fundamental principles of independence, confidentiality, jurisdiction, complaint taking, due process, accessibility and reporting. This paper discusses none of these fundamentals but rather how the introduction of an Ombudsman serves to quickly trigger a reduction in realities or perceptions of secrecy, maladministration or a lack of transparency. The Ombudsman, while primarily appointed to handle complaints, can also indirectly lead cultural change within an organization.

I was appointed in September 2008 to assume the role of the National Capital Commission's (NCC) inaugural Ombudsman. The NCC, a federal Crown corporation has the duty of creating, preserving and communicating Canada's capital region as an expression of Canada. The introduction of an Ombudsman to the NCC was a "remedy" suggested in a special report prepared by a panel of three distinguished Canadians. The panel addressed the major irritants and constraints that had plagued the NCC in the years preceding 2006. The report specifically recommended that an Ombudsman be appointed, for the following reasons:

*"Given the large number of irritants that the Panel has become aware of (many of which appeared to be resolvable rather easily but had been allowed to drag on for very long periods) there is a need for a place where problem resolution must occur."*<sup>2</sup>

It is the above paragraph that I first turned to when I began to serve; in hindsight a useful beacon. My goal was and remains to help address administrative problems as well as contribute to the NCC's present goal of improved conflict resolution with the public. In recent months, I have observed first hand that an Ombudsman, if accorded proper authority and independence can influence organizational culture so as to embed and reinforce conflict resolution and promote direct access to decision makers.

Implementing deliberate strategies to lead the NCC's organizational culture was not included in my Ombudsman strategic plan for year one; nevertheless cultural change has been a subtle and ongoing result since I started to serve. The NCC is increasingly mindful of complaints and their early resolution. For example, since my appointment, the NCC Client Services team has been restructured and was provided with a clear updated mandate in regard to responding and resolving complaints as they are made in the first instance.

Surveys show that cultural change is a very difficult leadership responsibility and cannot simply be imposed. Furthermore, experts agree that cultural transformation within any government organization requires time and effort. I am of the view that the organizational action of introducing an Ombudsman is a powerful change-agent, so long as the Ombudsman has a clear vision and the ability to communicate it clearly. It should be noted that absent sharing clear advice about the work of the Ombudsman, a negative cultural change may occur in the form of organizational opposition or fear.

The cultural change that an Ombudsman can effect on the public is limited but warrants effort and attention. Cultural change in the public arena can be first achieved by means of announcing formal and controlled procedures for filing last resort complaints with the independent Ombudsman. Developing public awareness and understanding of the Ombudsman's mandate is the first step. In leading cultural change, the Ombudsman spends a great deal of time educating citizens about the issues involved, trying to address the complaint in plain language and working to eliminate feelings of intimidation or formality. A complainant most often is seeking someone to help uncover where the problem lies and how to resolve it. Having an Ombudsman allows for direct access, which many complainants find as important as resolving the problem itself.

The Ombudsman can have a direct impact on leading the cultural change necessary to remedy frayed relationships and instill a new culture within a governmental organization that seeks to be sensitive to today's societal demands. Furthermore, offering of Ombudsman services communicates and confirms a belief in individual initiative coupled with shared responsibility – a governance format that meets modern day imperatives of transparency, reconciliation of interests and if possible, a culture of consensus.

The value of an Ombudsman, when measured is most often assessed based on tangibles such as costs compared to the number and the type of complaints received. Measuring the value of an Ombudsman should also recognize the intangible value of the slow and steady cultural transformation of all parties and how their conduct, attitudes and understanding toward each other are improved. In 2003, Nathalie Desrosiers, the former President of the Law Commission of Canada addressed a crowd in Ottawa and mentioned numerous authors and their work, some of them speaking directly to the value of an Ombudsman. The most powerful quotes are repeated below:

a) Ombudsman services, when introduced can transform the organization's attitude towards complainants and complaints as it can go from hostile to receptive and dynamic. Having an independent review can in fact boost, not assail, employee morale.

“...many of the complaints investigated by the ombudsman do not result in findings of wrongdoing on the part of the authority investigated. As noted by the Supreme Court of Canada: "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.”<sup>3</sup>

b) The introduction of Ombudsman services sends a message that conflict resolution is valued by its leadership and this will prompt suitable and necessary organizational attention and reaction to complaints.

*“Furthermore, although it is important for the ombudsman to make clear what the consequences of his finding should be, he **has to leave it to the government to decide what action to take about those consequences. This demands an active stance on the part of the government.** What might at first sight appear to be a weakness is, in fact, the key to the significance of the ombudsman.”<sup>4</sup>*

c) The Ombudsman can influence public opinion from incredulity, suspicion, a perception of maladministration coupled with lack of access to a clear understanding of complaint reduction.

*“...only one in ten investigations actually faulted the administration.... But in the other nine cases, the ombudsman is still doing something. He **explains to complainants why the official action was correct**, even if it was misunderstood and a sense of injustice still lingers. It is as important to remove lingering doubt as it is to correct wrongdoing. In all investigations, the ombudsman is reducing friction between citizens and government.”<sup>5</sup>*

Canadian society now expects government activities to be more inclusive and open and this has led to Ombudsman services gaining momentum in the last decade. The introduction of Ombudsman services at face value is merely a role-centered solution but I have come to observe that it is equally an attitude-centered solution. I am strongly of the view that introducing Ombudsman services immediately initiates change in attitudes and values within the organization that serve to convert skills and behaviour in a direction favourable to conflict resolution or the elimination of maladministration, changes that meet the expectations of Canadians.

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<sup>1</sup> *B.C. Development Corp. v. Friedmann* [1984] 2 S.C.R. 447 at 459-461.

<sup>2</sup> *Report of the panel on NCC Mandate Review "Charting a New Course"; December 2006, recommendation #28, page 39.*

<sup>3</sup> *B.C. Development Corp. v. Friedmann, supra*, at 460.

<sup>4</sup> Oosting, M. (1995): "The Ombudsman and His environment – A Global View". British and Irish Conference. University of Warwick, par. 9 and 10.

<sup>5</sup> Viktor J. Pickl, "Investigating Complaints: A Comment" in Gerald E. Caiden, ed., *International Handbook of the Ombudsman: Evolution and Present Function* (Greenwood Press: Westport, CT: 1983) at 92.