

Topic : The Ombudsman and multiple Jurisdictions

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Firstly I would like to thank the IOI for inviting me to speak today. It has been a very interesting breakout session and I hope that my short paper won't be the exception to that.

As all of us here are already aware, every Ombudsman position brings with it challenges that are specific to the role. One role is never "easier" than another - but they are all different. When I was asked to speak on the topic of the Ombudsman and multiple jurisdictions it was that difference that I tried to find. What perspective did I have on this topic that might not only be different, but also of interest? I quickly found that difference in my past experience as a multi-jurisdictional Ombudsman in a small state and that is what I will be talking to you about today.

My first Ombudsman role following a 16 year career as a barrister was as one of 15 Commissioners of the Independent Police Complaints Commission having spent the preceding 3 years in a similar role as a board member of the Police Complaints Authority. It was a body with a very specific jurisdiction and in that sense it was a fairly straightforward role. Of course there were challenging times. Early on in my appointment [Example to follow].....

When I was appointed as the Complaints Commissioner for the Cayman Islands I thought that my experiences at the IPCC had prepared me for whatever challenges I was about to face – only to discover that those challenges were like nothing I had experienced before!

The role of Complaints Commissioner was entirely different - instead of being one of 15 Commissioners with a narrow jurisdiction, I was the only Commissioner in a small state with a mandate that covered every aspect of public administration [multiple jurisdictions and it quickly became apparent that my 5 year term would essentially be conducted in a goldfish bowl.

The Cayman Islands has a total population of just over 56,000. As the Complaints Commissioner my office had a mandate that covered 93 government entities which not only included core government but also what I like to call the "alphabet of government" - Agencies, Boards, Commissioners, Departments etc.

My decisions had the potential to cut across all aspects of life and everyone knew who I was. I was highly visible among a small population - there was nowhere to hide, literally. In fact one weekend - early in my time there - I was on the beach when a little old Caymanian man came up to me.

"You're the new Complaints Commissioner" he announced

"Yes, I am" I replied

"Well, I want to make a complaint!", and he proceeded to launch into this meandering account of long-standing issues he'd had with the Cayman Islands Government.

"Er...Sir, wouldn't you prefer to come and see me in my office on Monday morning?" I asked.

He squinted into the sun and looked at me quizzically. "This is Cayman! You're here; I'm here; what's the problem?"

"Well", I said, reaching for a towel and trying to cover myself, "I haven't got a pen, for a start....."

With this and other similar incidents I came to learn very quickly that there would be no privacy, I was under observation 24/7 and that while the principles of the work were no different, but the challenges were polar opposite. Specifically that in smaller states:

- a) Perception is more likely to be accepted as reality, whether you like it or not; and
- b) The office and office-holder are very often seen as one and the same.

Added to this is the fact that in a small state the Ombudsman is often seen, and acts, as a referral service for people who attend the office as the first point of contact for complaints, even on matters outside the jurisdiction of the Ombudsman. e.g. if one party to a marriage suspected their spouse of actual infidelity (or even if they had their eye on someone in the office) if the third party was a foreign national they would call immigration and get their work permit revoked and the person would have to leave the island in 2 weeks. This was even if the attentions were completely unwanted! They would come to my office believing I could sort it out.

Contrary to popular belief Cayman is not just an island paradise for the rich. While there is a significant amount of wealth there are plenty of “ordinary” people living there too. There are also pockets of poverty; it just tends to be better hidden than in some other parts of the Caribbean. Those without resource are more likely to use the office in this way. As such a quasi-welfare role can end up being established as the default position.

For all of these reasons the issue of confidentiality becomes the biggest challenge - not just keeping your private life private, but keeping the work of the office confidential until decisions are issued. That challenge extended to both the perception of confidentiality and the reality. On one occasion I was interviewing for a new investigator and taking notes during the interview. This caused one candidate particular concern - they wanted to know why I was taking notes and who would see them. That is the reality of operating in a small state - if a candidate for a job is concerned what will happen to their personal data, imagine the fear of someone who wants to raise a complaint about the actions of a government body. I am proud to say that in my time as Complaints Commissioner there was never a single leak and I worked tirelessly to ensure that the perception matched the reality to protect our credibility and raise the level of trust Caymanians had towards us.

When I first took office, confidence in the work of the Complaints Commission was at 30%. Through the standard of our investigations, the outreach and education programme undertaken and a commitment to treating everyone with fairness and professionalism, confidence levels had raised to 75% by the time I stood down.

That confidence didn't necessarily translate to acceptance from all areas of government. Over the course of my 5 year appointment I made decisions that were very unpopular, but they were the right decisions to make, and I shone a spotlight on things that had gone wrong, including serious financial impropriety. I learned that there can be penalties for vigorously protecting integrity and that in smaller states it can be easy to clip the wings of an Ombudsman by imposing financial restrictions - something I am sure you all may be able to relate to in these economically challenging times. Any reduction in funding has the ability to affect your ability to deliver your role – especially if you are already operating with quite limited resources. However when that reduction is also accompanied by an apparent reluctance, if not complete failure, to implement recommendations that have been made and proposals for restructure that have the ability to completely render the position as powerless, as the case is currently leading to the very recent resignations of 4 out of 5 members of the OCC oversight committee, it does make you question whether the reason was the financial crash or simply an excuse to hide behind as they want to restrict independent scrutiny.

In 5 years I learned a lot about myself and my resilience. What all of these challenges ultimately gave me was a new perspective on what the role of the Ombudsman can be and that will always stand me in good stead and indeed has done for my new role. As the Service Complaints Ombudsman for the Armed Forces I am again in a single jurisdiction role and while the total population of the armed forces is roughly 3 times that of the entire Cayman Islands, it is still a small community and one in which perception can be accepted as reality. My life is no longer lived in a goldfish bowl, I have a sense of anonymity back in my private life and to date haven't been approached in an inappropriate location by someone who wants to discuss a complaint, but many of those concerns remain. Thankfully what also remains is my commitment to independence, impartiality and integrity - and regardless of jurisdiction or the size of the population we cater for, those are the values that ensure any Ombudsman can truly represent the interests of the people and work to right injustice wherever it is found.

Thank you