

## A QUICK STUDY ABOUT THE WORK OF AN OMBUDSMAN

### What is an Ombudsman?

According to the Forum of Canadian Ombudsman, an umbrella organization that makes it possible for people to share information and views and to promote the ombudsman concept across Canada, the word Ombudsman means as follows:

*An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organization in order to resolve the problem.*

The two most common types of Ombudsman in Canada and in other countries are:

- **Legislative (or classical) ombudsman** who is appointed by statute and who can report findings and recommendations to ministers of the Crown, to the provincial legislature or to Parliament.
- **Executive Ombudsman** who reports only to the head of the organization to be investigated, such as government departments or Crown corporations, universities/colleges or businesses.

### What are the Roles and Responsibilities of the Ombudsman?

The mission of the Ombudsman is to foster confidence in the public or within the organization by promoting the principles of fairness, integrity and good governance. Priorities include complaint processing and fulfilling public service duties. The Ombudsman can furthermore contribute to reaching a goal of complaint prevention and reduction.

The Ombudsman's function is to resolve conflicts with flexibility, acting as a moderator. The Ombudsman takes into consideration imbalances that may exist between the parties in conflict and works to translate the values of the public and the government or the organization into a dynamic framework resulting in constructive interaction. Often the more vulnerable party is the citizen and on occasion the government or organization may be symbolically vulnerable, either way the imbalance of power may play a key role. By way of an Ombudsman office, both sides gain an accessible context of conflict resolution through negotiation, with the Ombudsman working to re-establish healthy and more balanced relationships.

## **What are the Ethical Standards?**

The Ombudsman explains to complainants how the government or organization works and/or facilitates public education such that the public is then better able to articulate complaints or expectations. The Ombudsman operates based on four (4) critical principles of operation, which include:

### **1. Independence**

The Ombudsman must be independent to the greatest degree practicable. The Ombudsman has discretion to accept or reject matters for investigation. The Ombudsman's office should be organizationally separated from the government or organization operations to be investigated, plus communications and record keeping must be separate and independent. Should absolute independence not be achieved, sufficient separation must be ensured.

### **2. Confidentiality**

Confidentiality is of special concern and is offered at the Ombudsman's discretion to complainants, employees, and witnesses when it is necessary to elicit pertinent information or to protect the source of needed information. The Ombudsman takes care, however, to not offer confidentiality where it cannot be protected.

### **3. Impartiality**

The Ombudsman clearly conveys that neither the complainant's representative, or the government or organization to be investigated in a client. Both parties must be able to place confidence in the Ombudsman knowing that the Ombudsman has no vested interest in the outcome of a complaint investigation. The Ombudsman does not allow personal views regarding the subject matter or the parties involved to influence any decisions about which complaints to accept or how they are investigated.

### **4. Credible Review Process**

If there are internal avenues of appeal within the government or organization, the complainant is required to trigger them before the complaint is reviewed by the Ombudsman.

The focus of the office is to resolve complaints about government or organizational activities that fall under the jurisdiction of the Ombudsman and nothing beyond.

The Ombudsman receives complaints by way of a formal and standardized intake process. The process for how complaints are to be made, received, and acted upon, including the scope and manner of investigations, is defined and transparent. The complainant is required to provide the Office of the Ombudsman with details about the complaint, including relevant documentation and the names of persons having information about the matter.

The Ombudsman responds to complaints by:

- gathering facts and information;
- reporting findings;
- issuing recommendations;
- bringing reason and understanding to disputes.

While conducting investigations is the primary function of an Ombudsman, not all inquiries and complaints require a formal investigation. The Ombudsman has the discretion to act informally to resolve a complaint. Other services include providing information and referrals, processing individual matters, coaching people to take action on their own behalf or mediating.

The Ombudsman's office completes investigations in a timely manner and keeps both the complainant and other involved parties apprised of the status of the file. There are no fees charged to the parties for the services of the Office of the Ombudsman.

The Ombudsman ensures that complaints are addressed in an unbiased and objective manner. This is done by ensuring that both the complainant and the government or organization are given the opportunity to provide the Ombudsman with information and feedback concerning the complaint. Telephone and personal interviews, letters of request, short surveys and supporting document collection and review are relied on to resolve the dispute.

The Ombudsman is normally granted authority to review an administrative act from the broadest perspective with the goal of improving governance. The standard list of possible administrative acts that are subject to a complaint include acts that are:

- contrary to law or regulation;
- based on mistaken facts or irrelevant considerations;
- unsupported by an adequate statement of reasons;
- performed in an inefficient manner;
- unreasonable, unfair, or otherwise erroneous even though in accordance with law.

The Ombudsman advises the complainant and the government or organization regarding the closing of any complaint and discloses her reasons for any complaint not resulting in a published report. The Ombudsman provides an explanation to a complainant when a case is not accepted for investigation. Examples of the reasons why cases are not accepted include the following:

- complaint subject matter is outside the Ombudsman's jurisdiction;
- complainant has other available remedies;
- complaint is made in bad faith, is frivolous or vexatious;
- complaint is minor or has been previously investigated;
- complainant will not provide information necessary to conduct an investigation.

### **What is the Best Approach When Responding to Complaints?**

It is suggested that the Ombudsman at a minimum do as follows:

- Work independently and impartially and with absolute integrity at all times. An evidence-based alternative dispute resolution process (ADR) process is proven to be more gratifying to all parties involved, especially when the subject matter is difficult, upsetting and intimidating for the complainant;
- Hold no interest in the outcome of the dispute, other than to leave all parties involved with a feeling that the process was transparent, neutral, accessible, easy to understand, complete and fair;
- Work very well with people and establish trust and communication rather quickly;
- Maintain a good attitude towards the parties and gives parties the time they need to be heard or the guidance they need to make statements about relevant subject matter;
- Always use clear and plain language to explain the process or the result;
- Clearly indicate the important aspects of the "debate" to all parties;
- Strive to offer good and relevant use of examples and illustrations to explain difficult concepts or to avoid discussing sensitive subject matter;
- Effectively assess the facts, the evidence and guidelines;
- Prepare public reports that are clear and helpful for future reference.

### **What About Ombudsman Reporting?**

The subjects of the Ombudsman's reports are consulted and afforded the opportunity to respond to the report prior to them being published. Identifying information about complainants and witnesses is changed to protect confidentiality.

The Ombudsman reports generally on her activities to the Minister, legislature, Chairman of the Board or the public, whichever applies. Her report normally describes the work of the previous quarter/year, including the number of inquiries, the number of cases resolved informally, cases investigated and investigations pending, recommendations made and whether or not they were implemented in whole or in part.