

Guide for Ombudsman Institutions
How to Handle Complaints

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PREFACE

This Guide is to share knowledge about best practices developed by *Ombudsman*¹ institutions around the world to receive complaints. This core function of *Ombudsman* institutions ranges widely in complexity and subject matter and depends in large degree on national legislation creating the office. This Guide provides personnel of *Ombudsman* institutions with accessible guidelines on how to communicate and interact with individuals and groups that contact the *Ombudsman* institution to make complaints or seek information, and generally how to handle complaints. More specifically, this Guide contains best practices on policies regarding receipt of complaints, procedures to be followed when receiving complaints, personnel policies, confidentiality, bias, service equity (i.e. everyone receives the same level of services and the same access to service), physical access to an office, and protection of complainants and witnesses against retribution. It does not suggest the type of advice that should be given regarding these complaints, as this will vary according to national legal provisions and the mandate of the *Ombudsman* Institution.

This Guide was produced by the UNDP Regional Centre for Europe and the Commonwealth of Independent States in Bratislava as part of an ongoing programme to support national human rights institutions in the Commonwealth of Independent States. Specialists at the Regional Centre offer policy advice on democratic governance, poverty and environmental issues in interested

countries of the region, and develop and implement regional programmes to contribute to human development. As they do so they gather, analyze, share and apply the lessons learned and knowledge generated. The aim of the specialists at the Regional Centre is to provide clients with the best knowledge and information available. This Guide is one of several knowledge manage-

1 The term *Ombudsman* is the Swedish work for an official appointed to receive and pursue cases of breaches of administrative duty, first established in Sweden in the 18th century. To an English speaker this term does not appear to be gender inclusive since it includes the word 'man'. This has led to widespread discussion among experts providing support and advice to *Ombudsman* institutions worldwide. These discussions have tried to identify a better English term that refers to the offices headed by both Ombudswomen and Ombudsmen. This has proven difficult and the debate has not been resolved.

The United Nations Development Programme (UNDP) is an international organization with the important mandate of promoting gender equality. UNDP makes a point of using gender inclusive terminology. Therefore, the UNDP Regional Centre for Europe and the Commonwealth of Independent States has decided to use the Swedish word *Ombudsman* to modify the term institution (i.e. *Ombudsman* institution) to refer to national institutions headed by women and men, and to italicize the word to indicate that it is a foreign word. The head of the *Ombudsman* institution, the officeholder, will be referred to as the Ombudsperson throughout this publication. This is to reflect a gender inclusive understanding of the position. The term Ombudsperson is intended to encompass all other forms of the word, such as Ombuds, Ombudswoman, Ombudsman, human rights commissioner, parliamentary commissioner of administration and others.

ment publications produced by the Regional Centre in 2005 and was prepared at the request of the network of Ombudspersons. The Regional Centre organizes and facilitates biannual meetings of this Network to share experience and build capacity of Ombudspersons and their personnel to function effectively according to internationally accepted standards.

The Guide was prepared under the direction of Mr. Sergei Sirotkin, Policy Advisor on Human Rights at the Regional Centre. The recommendations in the Guide draw on data, knowledge and experience regionally and worldwide accumulated during the past two decades. The draft was reviewed and revised by Ombudspersons from the Commonwealth of Independent States at a Roundtable organized by the Regional Centre in late 2004. We hope that Ombudspersons in the Commonwealth of Independent States and other countries find the Guide useful in improving their responses to complaints by individuals and groups seeking justice.

Please send comments and questions about the Guide to Mr. Sergei Sirotkin at sergei.sirotkin@undp.org.



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They reviewed and commented on earlier drafts of the Guide, greatly enriching the final product.

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INTRODUCTION

Institutions first called “*Ombudsman*” were established in the 18th Century in Sweden. The first Ombudsperson appointed by parliament was created by the Swedish Constitution of 1809. The institution spread throughout Scandinavia and then into the Commonwealth countries, North America and Europe. Poland was the first Warsaw Pact nation to create an *Ombudsman* institution in 1989. *Ombudsman* institutions with competence over alleged violations of human rights have since spread throughout many of the nations of the Commonwealth of Independent States, Central and Eastern Europe as well as Asia and Latin America. Currently more than 120 nations have Ombudspersons at some level of government.

The characteristics of *Ombudsman* and National Human Rights Institutions (NHRI) are described in the Paris Principles relating to the status of national institutions approved by the UN General Assembly.²

The United Nations Development Programme (UNDP) developed this guide through the Bratislava Regional Centre in response to the specific needs expressed by Ombudspersons and the Community of Practice (CoP) of UNDP practitioners working with *Ombudsman* institutions. The Ombudspersons and UNDP practitioners suggested the topics and information included.

GUIDE CONTENTS AND SUBJECTS NOT INCLUDED

This guide’s goal is to present some of the best practices that have been developed internationally for the consideration of *Ombudsman* institutions and intergovernmental organizations such as UNDP that support them and endorse their efforts and goals.

The guide contains information on best practices from the experience of Ombudspersons on the receipt of complaints, policies and procedures surrounding the receipt of complaints as well as personnel policies. The guide also presents best practices about confidentiality, bias, service equity, physical access to an office, and protection of complainants and witnesses against retribution. These best practices are presented so Ombudspersons and their staff can consider implementing or adapting them to improve the function and performance of their institutions.

The guide does not cover investigations of *Ombudsman* institutions and how they are conducted, how to work with specific types of complaints or complainants, how to construct a computerized complaint registration system

² Principles relating to the status of national institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993 - <http://www.ohchr.org/english/law/parisprinciples.htm>

or use it, media relations, strategic planning and how to educate the public. Those topics will be the subjects of additional guides if the network of practitioners decides that they should be written.

The guide is a Knowledge Management product intended to be organic—revised and expanded as practitioners deem appropriate and necessary.

ADAPTATION FOR LOCAL PRACTICE

Each *Ombudsman* institution and NHRI has its own legal basis in the country's constitution and the law creating the institution as well as in the regulations, and policies and procedures adopted for each institution. If there is a conflict between the guide and national legislation, national legislation should be followed. If provisions in national legislation do not agree with international standards, Ombudspersons and their staff should seek amendments to the legislation to bring it into agreement with international standards.

Individual institutions may have different ways to accomplish the same goals described here as best practices that have been developed in other countries.

No one set of practices can fit every local situation. The basic concept of an independent, impartial institution that receives and investigates complaints about alleged violations of human rights will be implemented through different methods in different countries. What is important is that the *Ombudsman* institution is seen to be independent and impartial, capable of conducting fair and impartial investigations credible to both complainants and the agencies and authorities under the institution's competence.

REGULATIONS, POLICIES AND PROCEDURES

In whatever manner an *Ombudsman* institution is structured under law, one of the most important characteristics is to create one or more documents that set out how the office will function. While it is difficult to create a manual early in an office's history, it is exceedingly important to begin and to eventually draft and adopt regulations that amplify and complement what is contained in the law creating the *Ombudsman* institution. The regulations should be further amplified in a set of policies and procedures the Ombudsperson can change instantly that set out how the office operates and functions.

The significance of documents and manuals to the efficient, effective and consistent operation of an *Ombudsman* institution is strongly emphasized. Practices should be documented in written policies and procedures.

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1. COMPLAINT RECEPTION

1.1. Introduction

The first contact many individuals will have with the Ombudsperson's office is to present a complaint or seek information. In the early years after an *Ombudsman* Institution is created, many who visit the office have complaints or seek information about matters that are not within the Ombudsperson's competence as set out in the Constitution and law creating the office. Experience has shown that even decades after an Ombudsperson's office has been created, many people still do not know its function, what matters it can receive complaints about that may be investigated, or how to approach the office successfully.

The following general principles may be useful to inform the method and manner of receiving complaints in an Ombudsperson's office:

- Each person will receive a fair and unbiased consideration of their point of view by staff when considering their complaint.
- No person who seeks help from the office of the Ombudsperson shall be harmed by using the office.
- People should expect and receive timely response to their requests for help by the office of the Ombudsperson.
- Likewise, agencies and their staff may expect and receive prompt and timely pursuit of complaints by the office of the Ombudsperson.
- Agencies and government employees will receive courteous and unbiased consideration of their positions during Ombudsperson's inquiries.
- Confidential information provided to staff of the *Ombudsman* institution shall be guarded and protected by the office to the extent guaranteed by law.
- Confidences expressed by agency staff or citizens to investigators of the *Ombudsman* institution will be respected to the extent agreed and required by law.
- Staff will provide as complete and as accurate information to citizens and agencies as reasonably possible. If in doubt, the information will be verified before passing it on.
- It is part of our responsibility to empower people by teaching them how to pursue and resolve disputes with government.

1.2. Introduction to complaints

Contacts by the public with an Ombudsperson's office tend to be of three types. First, complaints about alleged violations of human rights. Second, complaints about maladministration in government. Third, questions about authorities under the Ombudsperson's competence or requests for information brought to the Ombudsperson either because the person does not know where else to turn or the *Ombudsman* institution was the first institution the person thought about asking.

The types of matters that an Ombudsperson can consider are defined in the legislation creating the office. Some Ombudspersons can accept and investigate complaints about alleged violations of human rights. Others can investigate complaints of alleged governmental maladministration. Still others can investigate both kinds of complaints.

All Ombudspersons are contacted by members of the public bringing matters outside the office's competence. The staff generally attempts to help each person bringing a concern to the office either to get it resolved, investigated or to refer the person to another authority that can help, if one exists. In some instances, the Ombudsperson can do nothing to help and no other authority exists that the *Ombudsman* institution can refer the person to for assistance or information. In these situations, the Ombudsperson or the staff explains that there is no other authority that can help and if possible explain why that is.

1.3. Who receives complaints

Ombudsman institutions around the world have organized the function of receiving complaints in different ways. Who receives a complaint and whether that person has other responsibilities within the *Ombudsman* institution is often a function of the size of the individual office, whether it is national, regional or local, and the number of staff available to receive and investigate complaints.

When a new office is created, the Ombudsperson often is the person at the beginning who receives complaints and determines whether they are within the office's competence as set out in national legislation governing the office. Once the staff increases and the number of complaints presented to the office grows, it normally becomes impossible for the Ombudsperson to receive all complainants and all complaints. When that happens, the Ombudsperson normally has the ability under the legislation to delegate some of the Ombudsperson's functions to staff. Intake—the receiving of complaints—is one of the functions normally delegated to staff. Along with receiving the complaint, the intake officers will make initial determinations whether complaints are within the *Ombudsman* institution's competence. These determinations should be reviewed by the Ombudsperson or supervisors and managers of the intake staff.

Smaller offices tend not to have staff specialize in the different functions of the institution, while larger offices do. Each has its advantages and disadvantages.

Staff who investigate the complaints they receive present a constant face to the complainant and agency. They collect needed information when the complaint is first presented by the complainant whether in writing or in person and determine whether the complaint is within the *Ombudsman* institution's competence (and refer complainants who present matters outside of the *Ombudsman* institution's competence to other agencies that can assist). They investigate those complaints that are appropriate for investigation, draft a report for the Ombudsperson's consideration and signature that includes a summary of the complaint, and how it was investigated, along with draft findings and recommendations. The complainant and agency interact with the same person throughout the process.

Staff who specialize in receiving complaints but do not investigate them become adept at collecting the information needed during receipt of the complaint. They make early determinations whether the matter the complainant brings in writing or in person is within the *Ombudsman* institution's competence or if the subject is one that should be referred elsewhere. They may become highly capable of dealing with difficult people and of relating to people who are less able to communicate effectively and efficiently. Often offices that separate receipt of complaints from investigation of them are larger and have specialized investigative teams that work on specific types of complaints about alleged violations of human rights.

Ombudspersons occasionally discuss the question of how much experience those who receive complaints should have and what level of ability they should be able to demonstrate before beginning contact with the public. Offices that rotate investigators through the intake function tend to use all their investigators unless one is working on a complex, lengthy investigation where intake would be an interruption. Offices that have an intake team try to increase the team's capacity for receiving complaints. In both cases, Ombudspersons have realized that the initial contact between an individual with a complaint or an inquiry and the office sets the tone and the individual's view of the office that may be difficult to change or improve later. They understand that often the most experienced staff are best at ensuring a positive contact especially at the beginning.

The first person a complainant meets at the *Ombudsman* institution creates the person's first and often most lasting impression of the office. That staff member is usually either a secretary or the receptionist. This individual is one of the most important staff an Ombudsperson has. The right person in this position can create a welcoming, warm atmosphere where all people, regardless of any of their characteristics or social position, are greeted in a friendly manner and made to feel welcome. The Ombudsperson should place special

emphasis on choosing the right person to greet people so that those who visit the office come away with the warm welcome they should receive.

1.4. How are complaints received

Offices internationally will receive complaints in the manner the complainant wishes to present them. The modes include personal visits, written complaints mailed, e-mailed or faxed to the *Ombudsman* institution, or telephone calls. Ombudspersons who receive complaints by electronic mail often warn complainants that e-mail is not secure and that they cannot guarantee the confidentiality of complaints arriving by e-mail. Receiving complaints by telephone requires the staff to verify the identity of the person calling to prevent fraud or other mischief.

Some *Ombudsman* institution laws require complainants to put their complaint in writing and include specific information. Staff in countries where that is required will often do as much as possible to assist the complainant without requiring a written complaint. For example, staff may make phone calls or write letters that could resolve the complainant's problem short of investigating a complaint. When it is clear the complaint must be in writing to continue further, staff will assist individuals who are not capable of putting their complaint in writing and then sign it.

The requirement for a written complaint should not be a barrier to using the Ombudsperson's office, especially if the complainant is not literate. At the same time, individuals who are capable of writing their complaint and are reluctant to do so should be encouraged to use their own abilities to write out the complaint without staff assistance.

1.5. Role and responsibility of the person who receives complaints

While the role and responsibility of the intake officer varies from office to office, some characteristics are common. The intake officer seeks the information needed to determine whether the person visiting the office has a grievance or complaint about an agency or institution under the *Ombudsman* institution's competence. Many individuals approach the *Ombudsman* institution seeking information or have complaints about matters, individuals or institutions that are not part of the mandate.

The intake officer seeks the information needed from the complainant to determine what course of action is appropriate. In instances where the individual does not have a complaint within the *Ombudsman* institution's competence, the intake officer will offer appropriate assistance or information and may refer the person elsewhere for additional assistance.

People contacting the Ombudsperson's office should receive information or education about the office and its responsibilities. This could be done in

a short conversation or with a pamphlet or brochure that simply and clearly explains the Ombudsperson's role and responsibilities and what the office can and cannot do for people.

Intake officers may help individuals who have a complaint understand appeal procedures they can follow and how to make use of them or take other actions on their own behalf that could resolve their grievances.

Complainants should be treated so they do not feel they are being shuffled around or being treated impersonally. The *Ombudsman* institution should not be perceived as part of an impersonal, uncaring 'bureaucracy'. One goal of a good intake officer is to listen to complainants, help them understand the situation they face and the laws and regulations that may apply and understand the Ombudsperson's role. Complainants with matters outside the *Ombudsman* institution's competence should leave feeling that they have been heard, their concerns understood and then referred to other agencies that may assist. If there are no other agencies that can help, they should feel that at least they have been heard and understood by someone who listens carefully and cares about their problems.

1.6. Where complainants are received

Offices of the *Ombudsman* institution normally have rooms set aside where intake officers can receive complainants. These rooms provide a location where a complainant will feel comfortable and the intake officer will not feel threatened by difficult complainants. Most Ombudspersons locate their offices either in their own building or in buildings with no other government agencies. That provides confidentiality to the complainant. People who fear for their own safety if they make complaints should not have to risk being identified by visiting the office of an *Ombudsman* institution.

Similarly, the safety of the intake officer must be assured. Some few complainants are physical or psychological threats to themselves or others. Some offices have installed concealed and silent alarm buttons, for example, which when pressed will alert other staff or security officers to help protect the staff from such individuals.

Ombudspersons should consider how to protect the safety of staff both from threats by individual complainants who appear at the office as well as those who might seek out staff outside the office and threaten them. Staff should know what to do in an emergency to gain rapid assistance and how to protect themselves.

1.7. Collecting information

Information about complaints that may later be the subject of an investigation is collected in the first contact between the office and the individual with a grievance. This information needs to be collected regardless of the manner

in which the complaint is presented. Complaints are grievances about specific types of acts under the *Ombudsman* institution's competence. Requests for information are different and will be handled differently.

The following steps are generally taken during an intake interview, consideration of a written complaint and preliminary evaluation of all complaints regardless of how they are presented to the *Ombudsman* institution:

- Identify the complainant: The intake officer seeks the person's identity—the complainant's name, address, phone number and any other relevant information that helps with a preliminary examination of the complaint. Some individuals may refuse to identify themselves. (See the section below on anonymous complaints.) It may be helpful in persuading someone who wishes to remain anonymous to discuss the confidentiality the office provides and the protections complainants may have against retribution.
- Identify the agency that is the subject of the complaint: Laws establishing the *Ombudsman* institution set out in one way or another the agencies over which the Ombudsperson has competence. In any case, the intake officer determines which agency, authority or institution is the subject of the person's grievance. This information is used to examine the complaint, assists in its investigation and is then recorded in registration of the complaint.
- Identify the act the person is complaining about: Some people have one specific action that is the subject of their grievance. Others will tell a life history of perceived or actual wrongs. Laws establishing the *Ombudsman* institution identify those acts over which the Ombudsperson has competence. To determine whether the office may investigate, the intake officer needs to know which act(s) the person wants the office to examine. If the actions have been taken and documented in letters or other written form, the intake officer requests those documents or copies of them.

Questions can be asked during an intake interview. Written complaints that do not contain the information necessary to identify the complaint, the agency that is the subject of the complaint and the act that is being complained about cannot be dealt with in the same manner. Intake officers must assess whether anything can be done with the complaint. They may write back to the complainant seeking additional information if the complainant has provided a name and address. They may also be able to make preliminary inquiries if the authority that is the subject of the complaint is sufficiently identified. Ultimately, if these efforts do not yield the minimum amount of information to register and accept a complaint, staff will close the complaint for lack of sufficient information to register and accept a complaint.

1.8. Recording information collected

All offices of the Ombudsperson need some form of registration system to record information collected at intake and monitor complaints that have been registered and not yet completed. For offices with sufficient budgets, the best system is a computerized registration database. These systems are normally written by programmers and tailored to the needs of a specific office. Very few systems have been transferred easily and successfully from the office that originally created it to other offices since the kinds of information each office tracks can vary widely.

Offices that do not have the economic resources needed to purchase sufficient computers have developed paper-based systems to record the information received and track the complaint until it is closed.

While computers are significant labour-saving devices in tallying numbers of complaints against specific agencies and producing charts and graphs about demographic data on complainants for annual and other reports, etc., paper systems can also be developed to achieve nearly the same goals, although with larger amounts of human labour. Designing such registration systems correctly the first time is key since it is very difficult to make significant changes later and produce meaningful and comparable statistics if major changes have been made in the information collected. Experts who have developed computerized complaint registration programmes exist in a number of countries. They can help determine what information needs to be collected and tracked.

1.9. What information is needed for a complaint to be registered and accepted

Ombudspersons normally track all contacts made by the public with their office. Any contact entails time and work to be devoted to communicating with the person and either registering a complaint, assisting the complainant to take further action to resolve a problem or referring the person to other agencies and institutions.

The information needed to record interaction with a person who does not have a complaint under the *Ombudsman* institution's competence differs from that needed to register and accept a complaint. These differences should be structured into the recording mechanisms, whether they are computer- or paper-based. A complaint that is registered is one with sufficient information provided to enter it in the paper or computerized registration system. A complaint that is accepted is one that meets the requirements to be within the *Ombudsman* institution's competence.

Each office will decide what information to record to register a complaint. Often the following data is included when a complaint is registered: date complaint was received, case file number to identify this specific complaint, complainant's name, address, city, state, province, region, postal code, telephone number including city code, other contact information such as fax or cell phone numbers, e-mail address, identity or passport number if required to be able to examine the complaint, sex, method of contacting the office, name of the agency or institution the complaint is against, and a summary of the alleged violation of human rights or other action subject to the *Ombudsman* institution's competence.

In addition to information that identifies the complainant and provides specifics about the complaint, intake officers will ask complainants to provide any written documentation about the complaint that the complainant possesses such as letters, decisions or other documents.

Most offices will assist complainants to attempt informally to resolve their problems or to progress to the next step or stage in dealing with their concerns without opening a full investigation and often without putting the complaint in writing. These complaints are registered even though they may be closed quickly.

A number of laws establishing the *Ombudsman* institution require the complaint to be in writing. Intake staff will often assist those who are not literate to put their complaint in writing in their own words and then sign it. At the same time, they encourage those who are literate but reluctant also to write out their own complaints. Intake staff are conscious of the office's limited resources and the need to be efficient. Intake officers and managers can discuss this issue to strike appropriate balances without making complainants feel unwelcome or unheard.

Ombudspersons may wish to write policies that determine when a complaint must be in writing and what discretion the intake officer has to assist the individual without requiring a written complaint.

All contacts, whether they are requests for information, assistance, complaints where action is taken without a written complaint or written complaints, should be recorded either on paper or in a computerized registration database so the office's statistics are a true reflection of the actual workload. Registration also helps if a complainant makes additional complaints to the office later.

1.10. Summary of issues presented in a complaint

One of the most important results of receiving a complaint is an understanding of the issues the complainant wishes the Ombudsperson to consider. This is true whether the complaint is received during an interview with the complain-

ant or in writing to the office. Offices will often create a short summary of what the complainant alleges took place. This summary can then form the basis for action on the complaint. In complaints that are fully investigated, the summary is a boundary around the issues to be examined. It defines the investigation.

Complainants with grievances about government often find it difficult to focus on the basic cause or reason for their complaint. Intake and investigative staff of the *Ombudsman* institution should help complainants identify during the intake interview the root causes for their concerns, identify the issues that need to be reviewed and whether there is an appeal or alternative way to resolve their complaint.

Different approaches may be used in taking a complaint. Some intake officers prefer to ask complainants to relate the chronology of what took place and then ask questions to better understand the complaint. Others will ask complainants to first focus on the issue they want investigated and then go back and seek a chronology of events if it is important to understanding the complaint and what should be investigated.

In any initial fact-finding intake interview, it may be helpful if the complainant is asked:

- What is the basis of his or her understanding of the complaint or grievance?
- What kind of relief does the complainant seek?
- Why does the complainant believe he or she is entitled to that relief?

A well-taken intake defines the problem both from the complainant's perspective and from the *Ombudsman* Institution's competence. Defining the problem starts with understanding it from the complainant's perspective. That definition directly relates to how the complaint will be analyzed. The intake officer will determine whether it is within the *Ombudsman* institution's competence, what type of rights violation is being alleged and what standards are to be applied during an investigation to determine whether the complaint has validity, and how the complaint is to be investigated.

A good summary or restatement of the problem entered in the computerized or paper registration database contains a thoughtful, concise statement of each allegation made by the complainant either during an intake interview or in the written complaint. It sets the focus of what will be examined or investigated, suggests the manner in which to conduct the investigation and is stated in a way that allows the Ombudsperson to come easily and clearly to a conclusion about what the complainant alleges took place.

1.11. Who can accompany a complainant

A key characteristic of *Ombudsman* institution laws is confidentiality for the complaint and complainant. That is discussed in greater detail in Section 3. Confidentiality. It is, however, a factor in this section. It can help intake staff decide whether to allow other people to be present during an intake and if present what the intake officer should be willing to say in their presence.

Where enabling legislation requires confidentiality, that requirement is an obligation of the office. Complainants are free to speak publicly about having visited the Ombudsperson and making a complaint. They may even wish to be accompanied by other individuals who may have information about the events that are the subject of the complaint. The complainant may wish to be accompanied by relatives, friends, members of a non-governmental organization (NGO), a lawyer, a journalist, etc.

Ombudspersons should set policy in advance of the question arising about whose presence to allow and whose not. In general, it is difficult for staff of the *Ombudsman* institution to object to the presence of relatives, friends, or even lawyers if the complainant legitimately wishes them present. The intake officer needs to determine, however, whether the complainant truly wishes the presence of these individuals or whether they have pressured the complainant to be present. If pressure has been exerted, the staff should consider excluding such individuals from receipt of the complaint. The same is true of members of an NGO.

Journalists can more easily be excluded even if the complainant wishes them present. It is much more difficult for the Ombudsperson to preserve confidentiality if journalists are present when a complaint is received. Additionally, in many offices, the Ombudsperson has set the policy that only one person—the Ombudsperson—speaks for the office to the media. If other people are authorized, they are generally not intake officers. Yet persistent journalists may pressure the intake officer into making statements during an intake that do not represent the official position of the Ombudsperson or the office.

Most often, offices of the *Ombudsman* institution have policies that establish procedures for deciding to open a full investigation of a complaint. The decision to investigate is rarely made during receipt of a complaint. More often, the complaint and the issues it presents are discussed internally among the intake officer, the investigators and the appropriate supervisors. Intake officers should not promise any complainant, accompanied by others or not, what action will—or will not—be taken on a complaint.

1.12. People who speak languages other than official state languages

Ombudspersons in countries with official and unofficial languages should make extra efforts to have staff who speak other languages, especially those spoken by statistically significant portions of the populations. Anyone should be welcome to present a complaint to the Ombudsperson in the language the person is most comfortable speaking or writing.

When the *Ombudsman* institution has a large staff, hiring intake officers who speak a wide variety of the languages spoken in the country can make a significant difference in how the office is perceived among those who have grievances. This is particularly true of groups who may feel persecuted because of the language they speak or their ethnicity, race or religion. When an intake officer who speaks their language receives their complaint, they tend to feel that they will be respected, heard and their complaint given the serious consideration it deserves. Making people feel at home in the language in which they are most comfortable is also an element in service equity. (See Section 5. Service Equity for a more detailed discussion of this and other elements of service equity in an *Ombudsman* institution.)

When someone seeks to present a complaint to the Ombudsperson in a language not spoken or read by the staff, a qualified interpreter may be retained to interpret for the complainants or to translate a written complaint. Normally, when other individuals trained to interpret or translate are available, friends and relatives are not considered qualified interpreters. They may inject their own thoughts and feelings into the conversation without making clear that these do not come from the complainant.

1.13. People who are deaf or have a hearing disability

Providing interpreters trained and qualified in sign language for the deaf is equally important as providing qualified staff or other qualified interpreters for people who speak languages different from the official state languages.

The goal here is the same—to make such individuals welcome and to ensure that they may clearly communicate with the office in as easy and natural a manner as possible.

Where budget allows, *Ombudsman* institutions have set up special lines for teletext typewriting (TTY) machines for the use of those who cannot hear to allow typewritten communication via a TTY machine over the telephone. Staff should be trained how to use these machines.

1.14. People who are blind

Intake staff should be trained to be sensitive to the needs of individuals who have no sight. If they arrive at an office unaccompanied by a sighted person, it is important to help them feel at ease and move around the office avoiding furniture and moving to the correct room for receipt of their complaint. Again, the goal is to make them feel comfortable, attended to with compassion and understanding and not to feel patronized or that they are inferior to people who have sight.

Some *Ombudsman* institutions prepare materials in Braille. Their intake officers may also have business cards that are in Braille. Signs on the doors are also in Braille so the blind know where they are and do not get lost. These sorts of considerations will help provide service equity for the blind.

1.15. Anonymous complaints

How to handle complaints from individuals who refuse to identify themselves to the intake officer may depend on the specific law creating the *Ombudsman* institution. If the law requires complainants to provide their names, anonymous complaints must be rejected. They should, however, be entered into the office's records indicating that the complaint was anonymous and closed without any additional action.

Other laws provide that a complainant must be someone personally affected by the act that is the subject of the complaint. Similarly, without knowing the complainant's name, this test cannot be met with certainty. How could it be determined whether the complainant was personally affected by the act if the complainant's name is not known?

All of this does not mean, however, that once the intake officer knows the complainant is unwilling to provide his or her name that the conversation should end. A number of purposes may be served in continuing the conversation. From the complainant's perspective, the intake officer may be able to provide information or refer the complainant to other agencies and institutions that could assist in solving the problem even if the complainant still wishes to remain anonymous. From the Ombudsperson's perspective, anonymous complainants may provide sufficient information that could be investigated. Closing an anonymous complaint without acting on it should not preclude opening an Ombudsperson-initiated investigation if it is warranted.

Some offices draw a distinction between anonymous complaints and complaints where the Ombudsperson knows the complainant's identity but has not disclosed it to anyone else. Many and perhaps most complaints cannot be

examined or investigated without disclosing the complainant's identity to the authority that is the subject of the complaint. Some complaints may be examined and investigated without identifying the complainant. This is particularly true when the complainant is not personally affected or where sufficiently large numbers of individuals have been affected by an act that opening an investigation would not identify any one of them as the complainant.

Ombudspersons generally discourage anonymous complaints. Intake officers will attempt to persuade complainants to identify themselves to the office. They will indicate the protections that exist for complainants along with a realistic assessment of whether the protections are effective.

Complainants normally retain the power to decide whether to be identified outside the office. If a complaint cannot be examined or investigated without identifying the complainant, the office may promise to stop examining or investigating such complaints once the need to identify the complainant becomes clear until the complainant can be consulted. In cases where a complainant still refuses to be identified, the complaint is then closed.

The danger in accepting and acting on anonymous complaints is that the official or public servant accused of violating a person's rights will be unable to confront the person making the accusation. That lack of knowledge could prevent the official from presenting an effective defence. Some complainants would welcome the opportunity to file complaints that might be without basis if they could do so anonymously. The Ombudsperson's office should not be an instrument for anonymously generated retaliation against officials and public servants.

1.16. Complaints from groups or persons other than those affected by the alleged violation of human rights

Some laws that create *Ombudsman* institutions specifically entitle groups or individuals who are not personally affected by an alleged violation of human rights to file a complaint about it. Others are silent on this issue.

Ombudspersons whose laws are not clear often choose to accept complaints from anyone even if they have not been personally affected as long as anyone who has been personally affected by the violation consents to the matter being examined or investigated. This permission is critical if one person or a very small group was the target of the violation. Those individuals may be adversely affected if the *Ombudsman* institution chooses to investigate either based on a complaint or on an Ombudsperson-initiated investigation. Harm could be done if permission is not sought.

1.17. Determining whether the complaint is within the Ombudsman institution's competence

The first act undertaken by staff of the *Ombudsman* institution once a complaint is received is deciding whether it is within the *Ombudsman* institution's competence and can be accepted. Some national legislation creating *Ombudsman* institutions specifies the amount of time the office has to determine whether the complaint is within the *Ombudsman* institution's competence. In those countries, that deadline should be met since the Ombudsperson will likely be insisting that other authorities meet deadlines specified in legislation that governs them.

Jurisdiction normally is determined by the answers to three questions:

- Who may complain? Is the complaint presented by an individual or group that may, under the law creating the *Ombudsman* institution, bring a complaint to the office?
- What agency, institution, official, civil servant is the target of the complaint? Is the individual or agency alleged to have acted or not within the *Ombudsman* institution's competence as defined by the law creating the office?
- What kind of act is alleged to have taken place? Is the act that is the subject of the complaint one the law gives the Ombudsperson the authority to examine and investigate?

For a complaint to be within the *Ombudsman* institution's competence:

- The individual or group presenting the complaint must be able to do so under legislation establishing the *Ombudsman* institution;
- The complaint must be about an individual or authority over which the *Ombudsman* institution has competence; and
- The alleged violation must be among the types of acts the law authorizes the Ombudsperson to examine or investigate.

If any one of these elements is missing, the complaint is not within the *Ombudsman* institution's competence.

Several examples will help understand this tripartite analysis:

If the law establishing the *Ombudsman* institution requires complainants to be personally

If the law establishing the *Ombudsman* institution requires complainants to be personally affected by the act that is the subject of a complaint and someone who is not so affected makes a complaint, it is outside of the Ombudsperson's competence even if the other two requirements are met.

If the law establishing the *Ombudsman* institution only allows investigation of complaints against government institutions and the complaint is about a private company, it is outside of the Ombudsperson's competence even if the other two requirements are met.

If the law establishing the *Ombudsman* institution only allows investigation of complaints about alleged violations of human rights and the complaint is about an act that even if it occurred is not a violation of human rights, it is outside of the *Ombudsman* institution's competence even if the other two requirements are met.

Since this tripartite analysis is key to making decisions on what is under the Ombudsperson's jurisdiction, an important part of the *Ombudsman* institutions policies and procedures manual should be devoted to a clear analysis of what matters are jurisdictional under the specific law creating the *Ombudsman* institution and what matters are not. Legislation creating the *Ombudsman* institution often indicates individuals or institutions that are not under the office's competence. The laws will also indicate subject matter that may not be within the *Ombudsman* institution's competence. A good analysis of the *Ombudsman* institution's legal foundation written in a manual for all to read, understand and follow is essential to responding consistently to similar complaints or complaints about similar subjects that are not under the office's competence.

1.18. What complaints can be declined

Legislation establishing the *Ombudsman* institution often indicates matters that must be declined for investigation or that may, at the Ombudsperson's discretion, be declined. Many laws establishing *Ombudsman* institutions require an Ombudsperson to decline to investigate matters where the complainant lacks sufficient personal interest. Other laws allow the Ombudsperson the discretion to decline to investigate matters that are older than a specific amount of time—often a year or two. These laws permit the Ombudsperson to decide if specific circumstances will allow an investigation to be conducted. Often decisions about these matters will depend on whether the events are capable of being investigated after the passage of that much time—are the individuals who acted still available for questioning, does documentary evidence still exist, are witnesses still alive, etc.

Intake personnel need to understand both the bases for accepting a complaint for examination or investigation and for declining to examine or investigate.

1.19. Determining what action will be taken on a complaint

Once it is clear that a complaint comes under the *Ombudsman* institution's competence, it may be handled in a number of different ways:

- Asking the complainant to pursue available remedies.
- Assisting the complainant to achieve a resolution.
- Mediating between the complainant and agency.
- Deciding to investigate the complaint.

Depending on the organizational structure the Ombudsperson gives to the office's work, intake officers may appropriately implement one or more of these methods. When the same person who receives complaints also investigates them, all of these methods can be employed at one time or another.

A brief discussion follows of each method and the situations where Ombudspersons have found the method appropriate:

Pursuing available remedies: Some laws creating *Ombudsman* institutions require a complainant to give the agency complained of an opportunity to correct the situation before the *Ombudsman* institution acts. This is normally an acceptable and appropriate requirement if it is reasonable. It is reasonable, for example, if the staff of the *Ombudsman* institution know that the agency will receive the complainant's request and seriously consider it. It is not reasonable if the complainant will experience retribution or the agency or institution will not seriously consider the complaint. In instances where the matter complained about is within the *Ombudsman* institution's competence and the agency will not consider the complaint seriously or treat the complainant appropriately, the office will consider whether to investigate the complaint without requiring the complainant to contact the agency first.

Using available remedies accomplishes two goals. First, in an ideal world, government agencies would have in place an effective complaint resolution mechanism to receive and respond to grievances from the public or the agency's employees. A number of Ombudspersons around the world have written manuals to help agencies develop credible and effective internal complaint resolution mechanisms. Where these mechanisms have been established and work, they may result in fewer complaints to the *Ombudsman* institution about that agency because the mechanism tends to resolve those complaints that are more easily handled. Unresolved grievances may still be presented to the Ombudsperson.

Second, the Ombudsperson should not become the first line of appeal for the public or the agency's employees. If that were to happen, the office would in effect take over the agency's work.

Third, using any appeals processes that exist creates a record the Ombudsperson can examine later if the complaint is not resolved and may reduce the work required to fully investigate a complaint.

An intake officer referring a complainant to an available remedy needs to be certain that it exists, is reasonable and that the complainant may still exercise the right to appeal. If any questions exist, the intake officer should contact the persons in charge of the remedy to determine if it still exists, is reasonable and that the complainant can still exercise the right of appeal. Complainants referred to available remedies should be informed of their right to appeal to the Ombudsperson if the grievance is not resolved or if they believe their rights still have been violated.

Assisting the complainant: With some complaints, all the complainant needs is some assistance to resolve the problem. Assistance can come in the form of providing information the complainant does not have, knowledge of a process the complainant has not been informed about or how to fulfil some prerequisite that the complainant was not informed existed.

If the intake officer can do anything to help the complainant achieve a resolution that is preferred to starting a mediation or investigation that otherwise would be unnecessary.

Mediating between complainant and agency: This technique is best used when neither the complainant nor the authority is clearly right or clearly wrong. In this situation, the Ombudsperson can help both parties see that the situation may require additional discussion to achieve a resolution. The staff can use that knowledge to help both sides better see the situation to reach an understanding or a compromise that helps both sides resolve the issue.

Deciding to investigate: Investigations are most useful where the facts or laws are in contention, where the parties are unlikely to come to an agreement or to restore violated rights without a full investigation to determine the facts and analyse them in light to the law. Investigations require time and effort to interview witnesses, read records and analyze all this information to reach a conclusion and then make recommendations if violations of rights are found to have taken place. If a resolution is possible, it is preferable to conducting a full-scale investigation.

Because the Ombudsperson is usually the only person in the institution appointed by the legislative body, the Ombudsperson therefore is ultimately responsible for all decisions made in the institution's name. This means the Ombudsperson must be able to review all decisions to investigate complaints

in a quick and efficient manner. Normally, a computerized complaint registration database provides an Ombudsperson with the ability to review these decisions and reverse ones that need to be changed.

While the Ombudsperson is the final authority supervising the institution's work, the *Ombudsman* institution normally is unable to be the first instance of decision making on each and every complaint. That work has to be delegated and divided among a group of trusted individuals who have demonstrated to the Ombudsperson their capacity for making good decisions.

1.20. Multiple complaints and multiple complainants

The question of how to register and account for multiple complaints from a single complainant or a single complaint from multiple complainants is one of reflecting the workload of the Ombudsperson accurately and also having statistics that clearly identify the agency against which a complaint is made. The paper or computerized complaint registration system needs to be structured to account for all of these situations accurately.

Some guidelines may help sort out what to do in these situations.

Single complainant, multiple complaints against one agency: One person may have a number of complaints about different actions or different aspects of the same set of actions by the same agency. One way to account for this is to open separate complaints about those actions that have nothing to do with one another, even though they are about the same agency. If the actions complained about are related or linked together and all taken by the same agency, the complaint could be opened against the same agency but include more than one issue for examination or investigation.

Single complaint against one agency, multiple complainants: The best reflection of the amount of work this situation requires is to open each person's complaint as a separate one. Each person will receive individual communication about the examination or investigation of the complaint, even though it might be exactly the same letter, for instance, though addressed separately to each complainant, when communication is advisable or required. If the computer or paper registration system is properly designed, one complaint can be designated as the primary complaint and the others can be designated as secondary complaints and linked together via the primary complaint.

Single complainant, multiple complaints against multiple agencies: Here again, because it is difficult to account for all of the complaints one individual might have against multiple agencies, it is best to open each as a separate complaint against a different agency. This provides an accurate accounting of how many complaints have been received about a specific agency. Most often each complaint will be separately examined or investigated unless the actions

taken by different agencies are so linked together that the actions of each agency may not be separately examined.

1.21. Referring complainants whose complaint is outside the *Ombudsman* institution's competence to agencies that can assist in resolving the complaint

The *Ombudsman* institution is often seen by the public as the place to complain about anything. While education of complainants and the public may help reduce this misperception, some proportion of the public will still see the office in that light.

Individuals with a complaint outside the *Ombudsman* institution's competence should be assisted by referring them to another agency that has the power to examine the complaint or help resolve it. How these referrals are made may depend on national legislation and what is appropriate in a specific case. Some legislation permits the *Ombudsman* institution to forward a complaint directly to other authorities with the power to act on them. In other instances, the complaint must be returned to the complainant with advice on where the complainant can apply or appeal to an agency with the power to act in the matter.

Intake officers and their support staff can collect information about other agencies, how they can help complainants with which problems or concerns and have that information available to help complainants with complaints outside the *Ombudsman* institution's competence. They also need to be ready to explain to individuals with problems that cannot be examined or resolved by any other authority how that is the case. For example, when a court ruling is final and no appeals remain, the intake officers need to be prepared to explain how there is no authority to which the complainant can refer and that the judgment is final.

The intake officer needs to be certain that any referral is made to an authority that indeed has the power to act or assist the complainant and should contact the authority if there are questions about the referral's appropriateness.

1.22. Initiating an investigation without a complaint

Many laws creating *Ombudsman* institutions have provisions for the Ombudsperson to initiate an investigation without a complaint. The laws may vary in the guidance they give the Ombudsperson. Some indicate clearly that the matter must be one that could otherwise be investigated under the law creating the *Ombudsman* institution if a person or group that could present a complaint had brought it to the office.

Ombudspersons are well advised to think through the use of this power before starting to exercise it. In situations where the law creating the *Ombudsman* institution requires the complainant to have a personal interest in the matter that is the subject of the complaint, a number of Ombudspersons believe that sooner or later events that should be complained about will be brought to the office. In situations where the law does not require complainants to have a personal interest, events that should be complained about will even more readily make their way to the Ombudsperson. In some few offices around the world, the Ombudsperson feels comfortable reading the daily newspaper and if a matter appears to be one that should be investigated, the Ombudsperson will initiate an investigation.

The power to open an investigation without a complainant is significant for individuals who may suffer violation of their rights or injustices and not be capable of bringing a complaint to the Ombudsperson. Children, for example, may fall into this category. Individuals with mental health problems held against their will in state institutions are another.

Ombudspersons around the world vary in their readiness to use this power. Some feel it is to be used only in the most severe circumstances where clearly no one will complain. Others are more willing to entertain greater use of the power. Most Ombudspersons will allow the power to be used only with their personal approval. They believe the potential for criticism of the office for using this power is best evaluated by the Ombudsperson and not delegated to staff.

1.23. Entering the initial information in a paper or computer file to register the complaint

Policy set by the Ombudsperson indicates who is responsible for collecting this information and entering it to register the complaint. The policy will also set a deadline by which the information must be entered. Supervisors or managers are responsible for reviewing the entries to ensure they are accurate and follow any specific policies or concerns that might need to be observed. They help make sure the entries are done consistently in a prescribed office style.

1.24. Requests for information

Ombudsman institutions regularly receive many different kinds of inquiries about all sorts of matters. Often they are about some government agency, how it functions, how to reach it, how to obtain a benefit, etc. Especially when the institution is new, individuals do not know exactly what it does if they have heard or read about it and will bring all sorts of matters to the office, many of which are not within the *Ombudsman* institution's competence.

Ombudsman institutions normally attempt to help every individual who seeks information whether or not the question is about agencies under the *Ombudsman* institution's competence. Some offices have developed extensive lists of other agencies and places to refer people and organized them into databases that are regularly updated as changes take place. Since one of the most important aspects of referring someone somewhere else is to be sure that inquirers are being referred to the proper place and will receive the information they seek, intake officers should attempt to determine the proper place and if necessary call or write the person making the inquiry later with accurate information. Referring someone inappropriately harms public perceptions of the office.

Intake officers should also examine every inquiry to determine whether it is actually a complaint. People may contact the Ombudsperson asking a question but really be seeking assistance or have a grievance. Those inquiries should be treated as complaints and not referred elsewhere.

1.25. Dealing with angry or upset complainants

How to deal with angry or upset complainants is so specific to individual cultures that it is difficult to set out guidelines that will work across national boundaries. This is a problem every office encounters.

Intake officers should receive training specific to their country and its cultures in how to deal with such complainants and have regular opportunities to discuss among themselves and with supervisors or managers techniques they have developed that appear to work. The more techniques intake officers have available, the greater the likelihood that they will be successful in calming such complainants and actively listening to their grievances.

Intake officers need to be sensitive to all of these questions and possess excellent judgment about whether what the complainant wishes to discuss is a question, a request for assistance or information, or a complaint.

1.26. Responding to rude or abusive complainants

Staff of the *Ombudsman* institution should not have to take abuse. That, however, does not stop some complainants from being rude or abusive. In some situations, it is possible to halt the rudeness or abuse, particularly by offering the complainant the opportunity to return in calmer moments.

Ombudspersons and their staff welcome people to the office who are unwelcome in other state or government offices. The staff, however, should not have to pay the price of being subject to abuse. When offering the complainant the opportunity to return in calmer moments does not work or when an individual repeatedly abuses staff either verbally or threatens physical abuse,

the Ombudsperson can consider banning that individual from being physically present in the office. The Ombudsperson may restrict these types of individuals to communicating via phone or in writing. What is important is that they not be banned from communicating with the office.

Even rude and abusive complainants as well as those who are psychologically disturbed or ill may have had their rights violated or been subjected to injustices and should have the opportunity to file their complaint.

1.27. Suicide threats

The office of the Ombudsperson should have a plan of action to put into effect if someone threatens suicide while physically in the office or on the phone with a staff person. Plans will vary from country to country and even from office to office. Psychologists recommend taking every suicide threat seriously even though there may be some indications that acting on the threat may be a greater or lesser likelihood.

Normally the office attempts to put the individual making the threat in touch with qualified professional assistance that can help the person work through the problems that prompted the threat. Since few staff of the *Ombudsman* institution are professionally trained in this area, it is helpful to provide continuing education with those staff who have public contact on how to handle people who threaten suicide.

One legal note: Depending on the wording of confidentiality provisions in the law establishing the *Ombudsman* institution, communicating anything about a suicide threat outside the office could be viewed as a violation of confidentiality. That technicality can often be avoided by getting the person's permission to communicate with the person's doctor or psychological professional. Since suicide threats are often pleas for help, it is normally easy to get this permission.

1.28. Threats of physical harm to others

A threat of physical harm to others made in the presence of the staff of the *Ombudsman* institution needs to be evaluated for the degree of seriousness and to determine whether the staff member hearing the threat can report it to the proper authorities.

Some individuals make threats of physical harm and have absolutely no intention of acting on them. Others have every intention to carry out the threat. The task for an intake officer is to distinguish between these two extremes so a decision can be made by supervisors, managers or the Ombudsperson about what action to take, if any.

Individuals who make general threats appear to be less likely to act on them than those who make specific threats that include a time, place, means and

target. This may vary from country to country, culture to culture. In any event, the Ombudsperson should seek to train staff with public contact where such threats may be made on how to evaluate them and what action to take.

Taking action, such as reporting the individual a threat of physical harm may have consequences. Depending on the wording of confidentiality provisions in the law establishing the *Ombudsman* institution, communicating anything about a threat of physical harm to others outside the office could be viewed as a violation of confidentiality. That technicality can often be avoided by getting the person's permission. Sometimes this needs to be done by prodding the person making the threat with a statement such as "Well, if you're so serious about doing this, you don't mind who I tell, do you?"

1.29. Security in an Ombudsperson's office

Since the Ombudsperson's office will attract people who are difficult to deal with or present threats to others, it is important that each Ombudsperson thinks about office security and how to protect the staff. Ombudsperson offices generally welcome people who wish to complain who may not be welcome in other government offices. Staff of the *Ombudsman* institution often can relate to these individuals in ways that reduce the likelihood that they will be a threat to the individual staff member. That is not, however, always possible.

So it is important for the Ombudsperson and staff to plan for those situations where a staff member must be protected or where the office is threatened by one or more individuals who would like to physically harm the staff. Plans need to be formulated in advance of problems. Staff need to know what to do when a problem arises. Because what is appropriate security in one office may not be appropriate in another office in another country, each Ombudsperson should make plans locally to fit local circumstances. In some countries, what is appropriate security in one part of the country may differ from what would be appropriate in another part of the country.

The level of security should be sufficient to prevent likely problems but not so high as to discourage people from coming to complain or that employees find it difficult to function and do their jobs. Part of the art of being an Ombudsperson is determining how to have efficient and effective security in place that does not discourage people from using the office or make it difficult for staff to do their jobs.

1.30. Persons who want to speak only to the Ombudsperson

Each Ombudsperson should set policy on how staff respond to people who want to speak only to the Ombudsperson. There are people who come to the office who feel they have not been properly attended to if they do not speak

personally to the Ombudsperson. Of course, if the Ombudsperson is not physically in the office or the headquarters office is in another location, it may be impossible for that individual to speak personally to the Ombudsperson.

When the person is in the building where the office of the *Ombudsman* institution is located, the policy is needed for staff to know what to do. Whatever the policy, it should be applied consistently so people similarly situated are treated equally.

Three examples of a policy:

- One Ombudsperson never sees members of the public. The Ombudsperson says the office is so large, the country's population so big that the work would never get done if the Ombudsperson personally saw complainants and other individuals.
- In another office in a much smaller jurisdiction with fewer people, all reasonable efforts are made to persuade complainants to present their complaints to intake officers. The Ombudsperson will see complainants who still insist on speaking personally to the Ombudsperson after those efforts are made.
- In the third office, the Ombudsperson has chosen to have specific hours to be available to the public and to receive complaints personally but only during those hours.

1.31. Calls from members of Parliament or Executive authorities

In *Ombudsman* institutions where there is one Ombudsperson, it is appropriate for that single officeholder to be the institution's public face. Relationships with the media are discussed in Section 2.7. When a Member of Parliament calls the office of the Ombudsperson, it is appropriate for that parliamentarian to speak directly to the Ombudsperson. In fact, if the Ombudsperson wishes, the Ombudsperson can set policy so that any call from a parliamentarian will be directed to the Ombudsperson personally unless there is a good reason for some other member of the staff to take the call.

Who takes calls from Executive authorities may depend on who is calling, what the purpose of the call is and whether it is about a complaint that is being investigated. It is appropriate for the Ombudsperson to take calls from ministers. It is appropriate for investigators to take calls from individuals in Executive authorities who have been contacted in the course of an investigation.

What is most important in determining who can take which call is that it be clear that the only person who can speak officially on behalf of the *Ombudsman* institution is the Ombudsperson or someone to whom that task has officially been delegated.

1.32. Complaints about the intake officer or other staff of the *Ombudsman* institution

Complaints about intake officers or other staff may be made from time to time. Each Ombudsperson should have a procedure that sets out the process for receiving, investigating and responding to such a complaint. The procedure should detail whether the complaint must be in writing, what grounds can form the basis of a complaint, who receives such complaints and investigates them, when a response must be made to the complainant, whether a public file is created about each complaint against staff and what must be contained in it if one is created.

2. PROCEDURES

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2. PROCEDURES

2.1. Personnel policies and procedures

The personnel section of an *Ombudsman* institution's policies and procedures manual is one of the most important. Here the Ombudsperson can:

- Summarize the various sections of the jurisdiction's laws as they apply to the Ombudsperson and staff;
- Set policy on how staff members are recruited, hired, evaluated, promoted, disciplined or terminated;
- Create the classification of positions in the office;
- Establish position descriptions for all job classifications;
- Establish general and minimum qualifications for positions;
- Set policy on how candidates for staff positions are hired, their applications reviewed and rated, their references checked;
- Establish work hours and how flexible they may be;
- Set policy for overtime and compensatory time;
- Establish which holidays the office will observe;
- Set policy on various types of leave including annual, vacation or personal, sickness, parenthood, disability, injury, military duty, and whether employees must take a minimum number of personal leave days each year;
- Describe the process that the Ombudsperson will use to determine which staff will be laid off in the event layoffs are necessary and how staff will be chosen for rehire from layoff status if that proves possible;
- Establish the procedure to discipline employees;
- Create a grievance procedure;
- Set policies governing staff training, including study tours and other training events, and who will be eligible for them; and
- Include copies or citations of any laws, regulations or other personnel policies of the jurisdiction applicable to the staff of the *Ombudsman* institution.

This is also the place to establish that the *Ombudsman* institution does not discriminate in employment practices nor provide services based on race, religion, colour, ethnic or national origin, sex, age, marital status, changes in marital status, pregnancy, parenthood, sexual preference or physical handicap.

Unless the laws of the jurisdiction require otherwise, the personnel policies can also establish that office staff serve at the Ombudsperson's discretion.

Additionally, the personnel policies can establish any other policies or procedures the Ombudsperson finds advisable or necessary. Publishing these policies and procedures in a manual creates transparency for the staff about how matters critical to good morale are to be handled.

2.2. Position descriptions

Good management practice suggests that the Ombudsperson create a position description for each job classification within the staff of the institution. Position descriptions set the expectations for an employee's performance.

At a minimum, a good position description contains:

- A general description of the position's responsibilities that distinguish it from other positions;
- Examples of the specific duties expected of the person holding the position;
- The knowledge, skills and abilities the person holding the position is expected to possess;
- Minimum qualifications for the position;
- Salary for the position.

Position descriptions help the staff member holding the position know what work is expected and form the basis for evaluating the individual's performance.

2.3. Hiring staff

Hiring is a process that includes recruitment, receipt and screening of applications, interviewing applicants, testing, possibly interviewing the finalists a second time, checking references and making an offer. The hiring process must be in accord with any national legislation on hiring that applies to the staff of the *Ombudsman* institution.

Recruitment can begin once a position description is drafted. The position description forms the basis for writing advertisements published over a period of time in the leading newspapers where potential applicants are likely to read them. Advertisements are normally purchased to appear periodically over the course of a month. They contain a description of the position, its responsibilities, the knowledge, skills and abilities expected from applicants for the position and what is required to apply for the position. Requirements often include a letter of application, a complete C.V. listing each position and its salary that the person has held for at least the past 10 years and often longer with the name, current

address and current phone number of at least three professional references. The advertisement indicates how application may be made for the position and where applications will be received. A deadline for receiving applications is set.

Receipt of applications begins once the ad is published. *Screening of the applications* can begin once the deadline for applying has passed. The goal of screening is to select the top applicants for interviews. The Ombudsperson would do well to involve staff in screening applications. A consensus of who are the top applicants normally develops when several people screen the applications. Often the top few applicants and those who hardly have any qualifications for the position are clear from an initial reading of the applications. The remaining applications probably contain a few individuals also worth interviewing and a large number who should not be interviewed.

Interviews of the top applicants should be scheduled. In an office with a large staff, the first interview might be with the person who will supervise the individual who is hired and a colleague or peer of that person. Having several staff participate in interviewing helps broaden and improve the assessment of the applicants and to build a team spirit among the staff. The Ombudsperson will participate in interviewing the top finalists. The Ombudsperson and staff should develop a list of standard interview questions to be asked of every applicant. Some questions may be asked of candidates with specific qualifications that might not be asked of others without those qualifications.

Testing of applicants can indicate whether they have the abilities to do specific tasks required by the position. One example is that applicants who will be responsible for writing letters or investigative reports could be given tests of those abilities. Writing exercises can be composed that test an individual's ability to write a letter or an investigative report for the Ombudsperson's signature.

Second interviews will help evaluate the top finalists. If the Ombudsperson did not participate in the first interviews, it is appropriate for the Ombudsperson to conduct the second interviews. A standard list of questions for all of the finalists is appropriate. The goal of the second interview is to help rank the finalists.

Reference checks should be made of any professional references requested of candidates. A standard list of questions about candidates helps judge and compare the strength of references among the candidates. References listed by the applicants are expected to be excellent. In fact, if they are not, that raises questions about the individual's judgment in picking people as references who cannot offer the highest recommendation. It is important to go beyond the references listed by the candidates. Former employers should be called and everyone should be asked for the names of others who might offer a different view of the candidate. Among the questions asked of each reference should be at least one designed to indicate the candidate's weaknesses.

Offering the job comes at the end of the process when all of the information gathered has been evaluated. The Ombudsperson will consider all of the information gathered during the hiring process. The factors such as seeking different previous experience and backgrounds among the staff can be considered as well and the top candidate selected. The Ombudsperson or the supervisor will offer the position to the chosen candidate. Individuals who come to work in the *Ombudsman* institution should be employed either on a probationary basis where they can be discharged without reason at the end of a specified term such as three or six months, their employment can be extended on a probationary basis or they can be permanently hired. The best test of an individual for employment with the office is the initial period working for the office. Flaws and problems that cannot be detected in other ways will generally show up during the initial period of employment if they exist.

2.4. Performance evaluations of staff

The job performances of the all employees at the *Ombudsman* institution should be evaluated periodically. Employees should know the office's general evaluation standards, their position description, the laws and regulations that create the *Ombudsman* institution, and its history, philosophy and policies.

Performance evaluation is a continuing process involving the Ombudsperson, managers, supervisors and staff. The evaluation process requires observing, interacting, evaluating, record keeping, mutual communication and training. Performance evaluations let staff know where they stand, give them credit for work well done, help them improve performance, and help plan workload and assign personnel effectively. Performance evaluations may be used to justify merit salary increases, promote, transfer, demote, suspend or dismiss staff.

In an *Ombudsman* institution, in addition to evaluating aspects of work that can be objectively quantifiable, staff performance is measured on subjective judgments of a staff member's human skills, talents, flexibility, patience, loyalty and honesty among other characteristics. The nature of work at the *Ombudsman* institution creates exceptional demands on supervisors and staff to perform to high standards and to evaluate and be evaluated on that work and those standards. A performance evaluation, then, is a supervisor's best professional judgment of how a staff member's work meets the office's job requirements.

For managers who have little or no experience in performance evaluation, books about staff evaluation may provide valuable suggestions and techniques for creating a detailed programme to evaluate staff performance. In an *Ombudsman* institution, the following principles may assist in creating such a system and in evaluating staff performance in ways that will tend to improve performance and increase morale. Again, these principles should be applied

only as far as they work in a country's culture and contribute to the success of the *Ombudsman* institution.

While written performance evaluations may be annual, performance evaluation needs to be more regular and on going. High-quality staff work should be praised. The work at the *Ombudsman* institution environment can be stressful and demanding. Frequent reminders of the valuable contributions to it will help keep morale and performance at a high level.

Daily contact with staff should include objective, factual, candid and specific comments about a staff member's work quality. Staff who have regular contact with complainants and the public should have regular formal and informal evaluations of their work.

Written formal, annual performance evaluations may better serve the staff member and supervisor if both fill them out about the staff member's performance and then exchange them. Self-evaluation by staff can soften and ease what might otherwise be a tension-producing experience. Discussion of the written evaluations before they are made final allows staff to offer differing views and opinions that might need to be considered. Draft evaluations may be modified to reflect new information or perspectives gained during open and frank discussion.

Staff performance should be evaluated only on job-related behaviours and attitudes. A written performance evaluation should be free of bias, not consider or focus on personal beliefs unless those beliefs impede the staff member's ability to meet acceptable performance standards. As the *Ombudsman* institution needs to be independent and impartial toward agencies, the Ombudsperson needs to be as impartial as is humanly possible in evaluating staff work performance.

Standard performance evaluation forms developed for each job classification can assist managers and supervisors in ensuring that each job classification is consistently evaluated even if the individuals who hold the jobs are supervised or managed by different people. The standards on which staff in different job classifications will be evaluated should be detailed policies and procedures manual of the *Ombudsman* institution. Those standards are often best developed by collaboration among the Ombudsperson, managers, supervisors and staff who perform the work of each job classification. That collaborative effort tends to lead to greater acceptance among those evaluated of the legitimacy of the standards since the Ombudsperson and managers have not imposed them.

2.5. Investigative staff workload and supervision

No single approach to organize and apportion the workload of investigative staff at the *Ombudsman* institution has been perfected that can be recommended. It has not proved possible to develop methods for measuring how much work an investigator can be expected to accomplish over a specific time period—how

many complaints of what complexity can an investigator be expected to examine or resolve during what period of time. This is particularly the case since the organization of investigative workloads tends to be particular to each office and depend on the extent of the office's competence and the size of its staff, as well as the rate at which the jurisdiction's population complains to the *Ombudsman* institution.

Two basic approaches can be used to evaluate individual investigator workloads and the office's overall general performance. The first approach examines individual workloads and attempts to compare the work performed by different investigators. The second approach examines the office's workload and attempts to set standards and expectations for how long it will take to close what percentage of the complaints made to the office.

Both approaches require a properly designed method to account for and track complaints. The system should note who was responsible for handling, examining or investigating each complaint and how much time elapsed from the date the complaint was presented to the office until it was closed—when no further action remained to be taken on the complaint. Systems to help manage investigative workloads are best accomplished through a properly designed computerized complaint registration and tracking database but they can also be implemented in paper-based systems that are designed to track the necessary information. Paper systems require more work while computers can do the work automatically once the information is entered.

Managers, supervisors and individual investigators should be able to generate lists of open and closed complaints from the computer according to investigator. A list of open complaints by investigator is that investigator's current workload. Investigators who can generate such a list from the computer can track which complaints have been assigned to them, how long they have been open, what should be done next on each, etc. These lists can also be prepared in a paper-based system, but their accuracy will depend on who prepares the list and how accurate and reliable it is. As long as the information to be tracked has been accurately entered in a computerized system, those lists will be accurate and reliable.

Managers review lists of complaints open with all investigators to have an idea of whether the workload is reasonable and balanced among them. Investigators are likely to be looking at that aspect of their work and trying to reach the same judgment. Workload balance is a subjective judgment, so it is difficult to be scientific about it. Some complaints are closed in a day or less. Others are much more complicated and when investigated require large amounts of fact-finding, analysis and report writing. Ombudspersons and their staff tend to want to spend as much time investigating a complaint as is necessary. In some offices, this has resulted in ever longer investigations, much to the dissatisfaction of those complainants whose complaints have been open for lengthy periods of time. In these offices,

Ombudspersons and staff have tried to develop better, more efficient methods of working to reduce the amount of time it takes to conduct a full investigation of a complaint while still maintaining the integrity of the investigation.

Periodic case reviews are necessary to keep complaint work flowing and prevent difficult-to-reduce backlogs from forming. Reviews often take the form of a meeting between an investigator and supervisor to discuss open complaints, what has been done since the last review, what the next steps are, what new complaints have been received that might need investigation and where the priority should be placed. The supervisor will emphasize discussion of the oldest complaints with a view toward encouraging what needs to be done that will resolve them or enable them to be investigated and closed.

The supervisor may also transfer complaints to balance caseloads among the investigators or when it will help to resolve a complaint more quickly or efficiently. Complaints may also be transferred when another investigator has particular knowledge or experience about the subject of the complaint, when the investigation should be conducted in another regional office because the people or documents required in the investigation are located there or to avoid conflicts of interest. Conflicts of interest are discussed in Section 4.1, 'What is bias in the Ombudsperson's work'. Also, when an investigator leaves the staff, that person's work will be transferred to other investigators offering a supervisor another opportunity to balance the workload.

When complaints are transferred, the supervisor should ensure that the investigator to whom the complaint has been transferred is briefed about the complaint and the focus of the investigation, as well as what has been done up to the time of the transfer.

The investigator to whom a complaint has been transferred should consider contacting the complainant for two reasons: to inform the complainant of the change in investigators and to hear from the complainant directly to avoid possible confusion or misinterpretation.

The second approach to workload examines the amount of time it takes to complete work on a complaint. The example below comes from Howard Kushner, Ombudsperson of the Canadian province of British Columbia. He examined the workload of his office to help define what success means for the work of the *Ombudsman* institution. After discussing the matter, he and his staff developed these time frame goals for investigations:

- 70 percent files closed within 90 days
- 85 percent files closed within 180 days
- 90 percent files closed within 1 year
- 95 percent files closed within 2 years
- 100 percent files closed within 3 years

The team also set targets for how many files would be older than a year:

- in 2002 less than 20 percent
- in 2003 less than 15 percent
- in 2004 less than 10 percent

The group also set standards of performance for contacting complainants:

- within five working days of the file being assigned to an investigator, and
- contact with a complainant at least once every 90 days to report on the status of the investigation.

To insure that files are reviewed in a timely manner, the team set standards to decide whether to investigate by:

- making a decision whether to commence an investigation within 30 days of a file being assigned to an investigator, and
- sending notice to an authority within 30 days of decision to investigate.

Since intake is separated from investigation, the following performance measures were established for intake:

- phone calls returned within four hours, and
- responses to letters, faxes, and Internet-filed complaints—within two working days.

The outcome of these measures assists the office in responding to the question “Are we being efficient?” The measures assist in answering the question “Are you doing a good job?” by showing how the office deals with the process of the investigation—its timeliness and responsiveness. The goals have the virtue of encouraging timely and efficient action on complaints and at the same time recognizing that some complaints are very complex and require more time to thoroughly investigate.

This approach to workload focuses on the work product of the entire office, how timely and responsive the office is based on measurable performance standards. Since it was developed with the investigative management team it has the advantage of their “ownership” of the standards and their willingness to see that they are met. The standards were not imposed by the Ombuds person but rather were developed by those who would be responsible for ensuring that they could and would be met.

2.6. Communicating with complainants

Investigators normally communicate with complainants to inform them whether the complaint has been accepted for investigation and if not, why not; advise those with open complaints of the status of their complaint and the actions that have been taken on it; and to notify complainants when their complaints have been closed.

Regular communication with complainants is critical to support among complainants. These are people who normally have not been kept informed what their government is doing about their situation. Ombudspersons find generally that it is both a good idea and practice because it increases the institutional transparency and makes the *Ombudsman* institution more accountable to complainants.

Some laws establishing the *Ombudsman* institution require complainants to be notified within a specified time whether their complaint has been accepted for investigation and if not the reason(s) why it was not accepted. The sooner that determination has been made and communicated to the complainant, the better. That efficiency gains respect and credibility for the *Ombudsman* institution, especially if it is not normal among other government authorities in the country.

Policy should establish which staff can communicate what information to complainants. The intake officer may communicate the decision to close the complaint to the complainant if it is made without much investigative effort. The investigator may communicate the decision if there has been at least some investigative effort and reasons have developed for not conducting a full investigation.

Some offices allow letters to be drafted, signed and sent to complainants without supervisory review. Any questions about content of letters to complainants should be resolved by supervisors, managers or ultimately by the Ombudsperson. Decisions should be communicated to complainants by telephone in countries where that is acceptable.

Decisions to close complaints should be reviewed when the information is entered into a computerized registration database. If the supervisor feels the decision was made in error, the complaint can be reopened or a new one opened and the complainant informed of this action. With paper-based registration systems, decisions to close complaints should be reviewed before that decision is communicated to the complainant.

Investigators are normally the people who communicate the status of a complaint that remains open and under investigation to the complainant. This communication is also very important for the office's credibility and authority in the complainant's eyes for reasons noted above.

When an investigation is completed, most *Ombudsman* institutions prepare a report to the agency. These reports normally include a summary of the complaint, a description of the investigation and the facts developed from it, an analysis of the facts in light of the laws governing them, and the *Ombudsman* institution's findings on the complaint and recommendations where appropriate to remedy the violations of rights found or to prevent future viola-

tions. The person who investigates the complaint normally drafts the report for review and signature by the Ombudsperson.

A number of laws establishing *Ombudsman* institutions provide that only the Ombudsperson can make findings and recommendations on a complaint and issue a report. Since the Ombudsperson cannot do all of the investigative work, it is delegated to investigators. Supervisors, managers and the Ombudsperson review their work before it is made final. When a complaint is closed, whether it has been fully investigated or not, the results of the examination of the complaint are normally communicated to the complainant by letter. The investigator who examined a complaint normally signs letters closing complaints that have not been fully investigated. The Ombudsperson, especially in those jurisdictions where only the Ombudsperson can sign and issue an investigative report, normally signs letters and reports closing fully investigated complaints even if the report has been drafted by someone else on the staff.

2.7. Communicating with agencies and authorities

Communications with agencies and authorities often parallel those with complainants. Some Ombudspersons will inform an agency when a complaint has been made against the agency and then closed without a full investigation. Most will not inform the agency if the complaint was not within the Ombudsperson's competence or it was closed for reasons that put it outside the Ombudsperson's competence.

Many laws establishing *Ombudsman* institutions require that an agency be notified when an investigation of it is being conducted. The notification may be to the head of the agency, the person accused of the act(s) being investigated or both. Who writes and signs such letters is a matter the Ombudsperson should decide and include in the policies and procedures manual. It could be the investigator, the investigator's manager or supervisor, or the Ombudsperson.

During the course of business, communications may be necessary with different levels of a government authority. Most Ombudspersons have determined who can sign what kinds of letters to which government officials and whether they need review by a higher level of *Ombudsman* institution authority before being sent. Normally, at the highest levels of government authority, the Ombudsperson must review and approve or sign the final draft.

Communications with authorities can be the root of the most significant problems a newly created *Ombudsman* institution faces. When a new institution is created, especially in a country with no history of such an institution, the existing authorities may not understand how they are to relate to this new body. They may not be willing to disclose information the law on

the *Ombudsman* institution says the Ombudsperson is entitled to receive from the authority, they may not be willing to admit staff to places of high security, and/or they may be unwilling to disclose files and other information that the Ombudsperson is entitled to have under the law creating the *Ombudsman* institution.

It is important for the Ombudsperson to build good channels of communications with each authority under the office's competence. The Ombudsperson needs to be able to communicate clearly with each authority and help the authority understand the Ombudsperson's powers and responsibilities. Cultivating good communications with authorities is not necessarily the same as cultivating good relations. The Ombudsperson and the authorities will disagree from time to time about how to resolve complaints or restore rights that have been violated. (This will be discussed in greater detail in a Guide on how to conduct Investigations.) But these disagreements should not result in a breakdown in communications.

The Ombudsperson should request that all staff report any communications problems with authorities. Deadlines for responding to requests from the *Ombudsman* institution should be carefully monitored. When they are not met, the *Ombudsman* institution should have a clear way of dealing with that, generally by contacting higher levels of responsibility within the authority.

The Ombudsperson should always be willing to communicate with authorities when they wish to discuss matters further. Communication can form the foundation to resolve problems and restore rights. On occasion, the Ombudsperson needs to go more than half way toward meeting with agencies and authorities to communicate in order to resolve problems and restore rights.

2.8. Relations with the mass media and who speaks for the *Ombudsman* institution

How Ombudspersons handle these relations varies. In small offices, the Ombudsperson may handle all inquiries from the mass media and be the only official voice of the *Ombudsman* institution. In small offices in small jurisdictions with few mass media outlets, that can be a reasonable practice.

In larger jurisdictions with significant numbers of media outlets, the Ombudsperson would do nothing but handle media relations. Many *Ombudsman* institutions in larger jurisdictions have media relations officers who may be authorized to one degree or another to speak officially on the office's behalf. If that is the practice, the media officer needs direct and often immediate access to the Ombudsperson to determine what can be said, how it should be said and what cannot be said. Legal restrictions may prevent revealing some information.

Whoever speaks officially on behalf of the office needs to have the Ombudsperson's confidence. The reason is that the Ombudsperson is the officeholder, named under the provisions of the jurisdiction's law. Unless there is more than one, the Ombudsperson is the only person responsible to the appointing authority for the office's work.

2.9. Access to documents and other records

A fair and impartial investigation of a complaint requires that the Ombudsperson and staff to whom this function has been delegated have access to documents and other records on which they will base a determination of the facts. In many countries, Ombudspersons have the power to issue a subpoena, a legal document that requires its recipient to produce whatever has been listed.

In the countries of Central and Eastern Europe and the CIS, subpoenas have not been part of the legal system. Legislation establishing *Ombudsman* institutions in these countries therefore uses different words to give Ombudspersons the power to compel the production of evidence the Ombudsperson or staff believe they need to see to find the facts about what the complainant has alleged.

The question of whether Ombudspersons and their staff will establish clearly their powers to compel production of documents and other records will be a key determining factor in how these institutions are viewed by complainants, agencies, the public in general and the international community. Without complete access to the relevant information, an investigation may come to incorrect conclusions.

Ombudspersons who have subpoena power are normally limited in very few and explicitly stated ways. The general principle is that the Ombudsperson can subpoena anything that could be subpoenaed in a court case. There are few government records investigators of *Ombudsman* institutions do not have legal access to according to the laws that create these institutions. They generally have access to confidential records—even records that are not available to members of parliament or the public, for example.

By the very nature of the investigative process, Ombudspersons are attempting to determine what took place at events that form the basis of a complaint—events the Ombudsperson and investigators were not present to witness. Without access to all of the available information and testimony from those who were present, the Ombudsperson's investigation is open to criticism that it is not complete and the missing information could potentially have led the Ombudsperson to a different finding, a different conclusion.

Even if the law establishing the *Ombudsman* institution is clear on this point, some authorities will be reluctant to release information to investigators of the office. Their reluctance is only important if they can cite some legal

basis for preventing the Ombudsperson from having access to the records. It is often a good technique for investigators to ask civil servants or officials who are denying access to records what their legal authority is for denying that access. Which law allows them to deny access? Speaking to their supervisor may help. Asking for a signed document denying access that states the legal basis may be helpful but only if the investigator believes the records will be available at a later time and would not have been altered.

Some legislation establishing *Ombudsman* institutions gives access to confidential information on the condition that the Ombudsperson not release the information. In other words, the Ombudsperson and staff can look but cannot quote. If an investigator is obtaining information that may be confidential, the investigator should determine that when receiving the material. Asking the person providing the information normally suffices. In some instances, anyone releasing confidential information is committing a criminal or civil offence. Under the law establishing the *Ombudsman* institution, staff may not release confidential information even after leaving the Ombudsperson's employ.

Investigators who are told of conflicting legal provisions concerning the Ombudsperson's access to information should immediately report the situation to their supervisor or manager. They should seek advice from the *Ombudsman* institution's legal services department.

Denial of access to information is one of the most serious threats to the Ombudsperson's authority and to the institution. The ability to investigate complaints independently and impartially rests on complete access to the facts. Ombudspersons and their staff should consider doing everything possible to gain access to information that the office is entitled to review to preserve the integrity of the office's investigations.

2.10. Access to and inspection of places where people are held against their will

Ombudspersons are normally guaranteed access to pre-trial detention centres, prisons, penitentiaries, mental hospitals or wards—any place where people are held by the state against their will. That access is normally not conditioned on receiving anyone's permission, advising the institution in advance of the visit and inspection or other unreasonable conditions. Visits to these institutions are an additional method to make the Ombudsperson's office accessible to people who cannot physically go there. It is reasonable for the institution to insist that the investigator of the *Ombudsman* institution provide proof of employment with the office and the power to visit such institutions. It is also reasonable that these visits take place during normal business hours and, absent specific reasons to the contrary, when agency staff are present.

Intake and investigative staff of the *Ombudsman* institution should be able to see prisoners outside of the presence of agency personnel if necessary. Staff need to be aware of safety issues and prepared to summon agency personnel if the person being interviewed should become a personal safety threat. If the visit is in conjunction with an investigation, at least two members of the Ombudsperson's staff should be present to witness any critical interviews.

Any member of the Ombudsperson's staff who encounters access problems or believes there will be access problems should consult the Ombudsperson in advance of a visit.

Many laws establishing the *Ombudsman* institution also provide that inmates may write the Ombudsperson a letter that should be mailed immediately to the *Ombudsman* institution without being opened and read. Similarly, correspondence from the Ombudsperson to an inmate should be delivered unread immediately to the inmate. Staff who suspect that the confidentiality of communications between the Ombudsperson and inmates has been violated should report the matter immediately to the Ombudsperson. Under normal circumstances, interfering with confidential communication from or to inmates and other individuals held against their will should be treated as one of the most serious obstructions to the Ombudsperson's work. Action should be taken immediately to bring such interference to an end.

Staff at pre-trial detention centres, prisons and penitentiaries are acting appropriately when they bring an unopened letter from the Ombudsperson to persons held against their will and open it in front of them to ensure that the letter contains no prohibited items. They should then give it unread to the recipient.

2.11. Testimony

Access to individuals who have information about the events contained in an allegation is another form of access to information. Obtaining this access is equally important. All of the suggestions in Section 2.8 Access to documents and other records apply here as well. One difference between gaining access to documents and other records and gaining access to people with information is that the method and manner of gaining the access to people can affect the information that is obtained. Ombudspersons who have the power to compel testimony through issuing a subpoena to force a person to appear and testify under oath and penalty of perjury or simply demanding an appearance that will occur have a choice between using the power to compel or requesting an interview.

Each has its advantages and place in an investigation. Compelled testimony is more formal, normally taken under oath and tape-recorded. The individual may be prosecuted for perjury if false testimony is given. Interviews are more

informal, not taken under oath or penalty of perjury and a choice is made whether to tape them.

An interview is more appropriate to: gather routine information from a cooperative witness; when the witness's identity as the source of information or of corroboration of other testimony is not important rather than direct or supporting testimony from an identifiable witness; to overcome the hostility of an adverse or reluctant witness when doing so informally appears to offer an advantage rather than taking testimony under oath; and for narrative testimony rather than extensive questioning for details or specifics.

Compelling testimony under oath is more appropriate to: fix the testimony of a witness who may have reason to change it later; authenticate other evidence—something that helps the Ombudsperson ascertain the truth of an allegation that is being investigated, especially confidential information; pin down the testimony of a critical witness whose identity will be disclosed in the investigative report; determine the position of an agency that may have acted wrongly and establish whether there may be support for the agency's position; gather information from an uncooperative or hostile witness who must be compelled to testify; question an important witness known to be leaving the jurisdiction and unavailable later; question a witness who might be subject to retaliation for cooperating with the investigation and whose testimony is important for the investigation.

Techniques for interviewing and asking questions of a witness compelled or invited to appear will be discussed in the future Guide on how to conduct Investigations.

2.12. Physical evidence

Rarely will the Ombudsperson take custody of physical evidence. The reason is two-fold. First, most investigations of the *Ombudsman* institution normally do not involve seeking newly discovered physical evidence. Second, the *Ombudsman* institution is not a police institution with facilities and procedures required to protect such evidence from tampering and ensuring that it is admissible in a criminal or civil matter. For this latter reason, a number of Ombudspersons prefer not to actually take physical custody of agency files but rather make copies of documents important to the investigation.

In those instances when investigators of the *Ombudsman* institution discover new evidence of a crime, unless the evidence is likely to be removed or destroyed, the investigators are better counselled to contact the appropriate authorities, assuming the investigator has confidence that they will act within the law.

Ombudspersons who believe their staff are more likely to handle physical evidence should have them trained by the appropriate police authorities of the

jurisdiction in the collection, identification, and preservation of evidence to establish a “chain of custody” if a matter is reasonably expected to go to court.

2.13. Travel associated with complaints and investigations

Ombudsman institutions normally pay the costs of travel associated with examining or investigating complaints. The policies and procedures manual should specify what forms must be filled out in advance, who approves travel, what expenses will be reimbursed, which travel methods are acceptable, whether advances will be made and how much they will be, how payment to reimburse travel will be made, how soon an overpayment of an advance against travel costs must be reimbursed, under what circumstances receipts must be obtained, how to treat situations where receipts are not practical or possible, the rate of reimbursement for use of a staff member’s personal automobile, whether the office will pay for damages to a privately owned vehicle used for official travel, renting a vehicle for official travel and so on.

Any travel to receive complaints should be authorized in advance by a supervisor or the Ombudsperson. A publicity campaign should precede each such visit so that people in the community are aware that a staff member will visit to receive complaints. The time and place where complaints will be received should be announced well in advance and should take place at a convenient location where most people in the community feel comfortable talking with a staff member of the *Ombudsman* institution. Complaint intake should be scheduled during the day and evening, if possible, to allow those who work to present complaints without having to leave work.

When possible, the staff member should arrange to speak to schools, local gatherings, meetings of non-governmental organizations or on radio interview programs to explain the office’s functions. Arrangements need to be made in advance and the staff member should attempt to determine the kinds of questions that may be asked. The staff members should bring copies of the latest annual report and a supply of brochures about the office and what it does. If appropriate and time allows, the staff member should visit government agencies and institutions over which the *Ombudsperson* has competence to discuss the *Ombudsman* institution’s functions, answer questions about the office and get to know the local officials.

2.14. Legal advice to the Ombudsperson

Some laws provide that the *Ombudsman* institution will receive legal advice from other agencies. Whether or not that is the case, Ombudspersons

should have among their staff lawyers knowledgeable about the law creating the *Ombudsman* institution and any other laws that affect the office's work.

An Ombudsperson, particularly one who is not an attorney, will have at least two such attorneys—one who is most experienced and well-versed in laws governing the office and another who is learning that body of law, including any court cases in the jurisdiction or cases from other jurisdictions that could be persuasive. These attorneys should be available to the Ombudsperson to offer legal advice on matters affecting the office and its work as the need arises. Depending on the amount of legal work the office needs, these attorneys may have other job responsibilities within the office. In some offices, for example, they are also investigators and offer legal advice when needed.

These attorneys should also be encouraged and expected to maintain contact with their counterparts in countries with similar legal traditions and other countries where the common law precedents could at least be persuasive legal authority.

2.15. Not providing legal advice to complainants

The Ombudsperson and staff should be careful not to provide legal advice to complainants. There are at least several reasons for this. First, many staff of the *Ombudsman* institution are not attorneys. Only licensed attorneys may practice law in a jurisdiction. Even staff who are attorneys should not function as attorneys for complainants.

Second, the *Ombudsman* institution's impartiality is an important part of the office's foundation. Offering legal advice, without consideration of whether that creates an attorney-client relationship between the staff member and the complainant, would compromise the *Ombudsman* institution's impartiality. The *Ombudsman* institution does not have clients, does not represent individuals or agencies and that is one way the Ombudsperson maintains the office's independence as well as its impartiality.

2.16. Interpreters and translators

One of the basic principles of service equity and fair treatment of all is that anyone who communicates with the *Ombudsman* institution be able to do so in the language and manner that person is most comfortable using. Requiring use of specific languages that are not a person's native language puts those individuals at a disadvantage and is not equitable service. In *Ombudsman* institutions where the staff can be sufficiently large, efforts should be made to hire staff who speak and read a diversity of languages used in the jurisdiction. Where possible, they can be used as in-house interpreters or translators. It is important, however, that they be competent to perform these functions. Effective interpreters not

only have a fluent understanding of both languages but are also able to interpret the complainant's or witness's words in an unbiased manner.

Ombudsman institutions normally identify a community of qualified interpreters and translators trained to perform those functions in the various languages spoken and written in the jurisdiction. Other institutions in the community may also maintain lists of local, qualified interpreters that the *Ombudsman* institution could draw upon. When no one on the staff can serve the function, the Ombudsperson, a manager or a supervisor will approve funding in advance to pay a local interpreter.

2.17. Authorities that refuse to cooperate with the Ombudsperson or staff

When *Ombudsman* institutions are created in countries with no history of the institution, it takes a large effort by the Ombudsperson and staff to educate agencies and authorities about the *Ombudsman* institution's powers and responsibilities. This effort is similar to the one needed to educate the public who may become complainants. The difference is that an uneducated number of agencies and authorities can impede the Ombudsperson's work and eventually the *Ombudsman* institution's credibility in the community.

Attempting to reduce the number of uncooperative agencies and authorities is a multi-pronged educational effort. At the most elementary level it means educating agency leadership—ministers, deputy ministers, etc.—about the *Ombudsman* institution's powers and how the Ombudsperson can actually help an agency improve and function better in the public's eyes. Soon after a new *Ombudsman* institution is established, this may mean making individual visits to ministers and other high government officials to get acquainted and lay foundations for good relationships.

No better time exists to initiate a good relationship than before the Ombudsperson has to bring the first complaint to the minister for resolution of rights. The slate is clean. There is no history of controversy over how specific situations should be handled. A minister and Ombudsperson can speak without barriers and disagreements over what one or the other institution did that perhaps adversely affected their relationship.

Soon, however, complaints will be received. If care is not used in skilfully attempting to persuade the agency or authority about the recommendations made on specific complaints, if the ground has not been prepared for the agency to understand the *Ombudsman* institution's powers and responsibilities, disagreements will arise. If they are not worked out to the satisfaction of both the *Ombudsman* institution and the authority, the relationship may start to disintegrate and become worse. In some instances these relationships can

be repaired with sufficient good will on both sides. In other instances, something more is required.

What is most likely to improve the relationship could be the subject of study and internal discussion within the office among staff, supervisors and managers with the Ombudsperson. If improvement is not possible, then the question becomes what is most likely to move the agency, willing or not, toward accepting the *Ombudsman* institution's recommendations. Occasionally, it is appealing to higher authorities with greater power than the one that is not being cooperative. On other occasions, it is going public—releasing an investigative report about the violation of rights. Sometimes the public can create enough pressure that the authority has no choice but to accept the *Ombudsman* institution's recommendations even though it would prefer not to.

In these situations, an Ombudsperson should take counsel with senior managers and staff. The Ombudsperson's artistry at human relations can often determine whether the institution will be successful at building good relationships with office holders that will in turn benefit complainants who were wronged or suffered violation of their rights or other injustices.

2.18. What will the Ombudsperson and staff discuss publicly about the work of the office

While *Ombudsman* institutions are impartial and independent, they have strong values. Their values are found in the laws they are sworn to respect and uphold. One part of the *Ombudsman* institution's role is to be an advocate for good governance, respect for human rights, equality, justice and the rule of law. If nothing else, the *Ombudsman* institution is an institution of the rule of law. Evaluations of complaints are based on legal standards, international treaty obligations and what is fair and equitable. Ombudspersons will speak publicly about the role and responsibility of the office, how it works, what types of complaints it receives, how many and how they are resolved or not. They are free to speak publicly on the specifics of issues, concerns and complaints that have been fully investigated as long as they do not violate confidentiality as their law defines it by revealing information that is required to be kept confidential.

They refrain from making political comments or statements. They do not comment on specific situations that depend on knowing facts when they have not investigated a complaint or the situation. They understand that media reports are not the same as investigations of the *Ombudsman* institution.

Ombudsman institutions assess what their public role should be. In some countries, an Ombudsperson who speaks out publicly is drawing upon the public's good will without knowing how much of it is left. In other countries,

the Ombudsperson's continuing public presence is both appropriate and important for improving the observation of human rights, improving public administration and for maintaining the health of the *Ombudsman* institution.

2.19. Records that will be maintained

Ombudsman institutions maintain two main types of records—administrative and investigative.

- Administrative records, which are often subject to public records laws and open to the public with some exceptions, include budget records, personnel records (normally confidential), correspondence to and from the office not about complaints or investigations and an index to make these files easily available.
- Investigative records are normally confidential and not subject to public records laws or open to the public. They include intake forms, investigator notes and records about the investigation, documents copied for the investigation, tapes and transcripts of testimony taken about a complaint, any other copies of information or evidence about the complaint, drafts of investigative reports and correspondence about the complaint. Any index to these files would also be confidential.

2.20. Retention of records

The *Ombudsman* institution normally either follows the record retention requirements of the jurisdiction as set in national law if it covers the *Ombudsman* institution or, if there are none, the Ombudsperson sets a record retention policy for the office. There are many ways to file records and different schedules on which either to archive or destroy records. Filing should be functional, include an indexing system and records should be retained for the time they likely would be needed.

The records that can be destroyed soonest are files of individual complaints that did not result in a full investigation with a report. Those that should be kept longest are the full investigations. An argument can be made that after a few years, the file on each full investigation should be reduced to copies of all correspondence and any other official documents, the original investigative report and that everything else should be destroyed. The remaining file would be archived either in the office or at some other secure site where the Ombudsperson could control access to it.

Confidential records should be destroyed either by incinerating them or shredding them in a secure facility. The staff should be confident that any

business that contracts to destroy the records actually destroys them without reading them first.

Ombudsman institutions normally maintain reading files of all out-going correspondence. These files are usually available to the Ombudsperson, any deputy Ombudsperson, managers, supervisors, and investigative and intake staff. These records should be kept in a secure, safe location and be available only to designated staff.

3. CONFIDENTIALITY AND TRANSPARENCY

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3. CONFIDENTIALITY AND TRANSPARENCY

3.1. What is defined by the Law on *Ombudsman* institutions as confidential

Each law creating an *Ombudsman* institution defines what is confidential for the Ombudsperson.

In the “Ombudsman Legislative Resource Document,” an occasional paper published by the International *Ombudsman* Institute with its office in Edmonton, Alberta, Canada, one of the principles relates to confidentiality of an Ombudsperson’s office, provides sample language and commentary to explain the principle:

“Principle 25. The Ombudsperson maintains confidential any matter related to complaints and investigations including complainants’ identities and the records of the *Ombudsman* institution, except as the Ombudsperson deems necessary to discharge the duties created under this Act and to make reports this Act authorizes.

“Sample language: The Ombudsperson shall maintain confidential any matter related to complaints and investigations, including the complainants’ identities and investigative records of the *Ombudsman* institution, except as the Ombudsperson deems necessary to discharge the duties created under this Act and to make reports this Act authorizes.

“The Ombudsperson may create a public summary of closed complaints received and how they have been resolved, investigated or declined. This summary may be maintained by the office in a computer system and made available by the *Ombudsman* institution to assist in the management of government programs, respond to inquiries about the performance of government agencies, and educate and inform the public about the activities and performance of the *Ombudsman* institution. A summary prepared and distributed under this section may not disclose the name or other personal information about the complainant.

“*Ombudsman* institution records of complaints and investigations are not subject to any Act or law concerning government records, retention schedules or archiving of government documents. The Ombudsperson may set policy to govern the retention of case files and other office records.

“Commentary: Confidentiality encourages confidence in the *Ombudsman* institution by complainants who fear retaliation or retribution if they complain. A public record of closed complaints that does not identify the complainants makes the office more transparent and accountable and helps the public understand what complaints the office receives and how they are resolved or investigated.”

The obligation to keep matters confidential is sometimes confusing to the public. The *Ombudsman* institution must keep identities of complainants confidential, for example, and yet many complaints require disclosing the complainant's identity to the authority if they are to be resolved. Where that is the case, intake officers will ask the complainant to waive confidentiality. If it is not waived, the complaint will not be examined and will be closed. Clearly some complainants want their complaints against authorities publicized and are not concerned that their identities be protected. Since they will waive the confidentiality requirement, the Ombudsperson and staff are then no longer under that obligation to keep their identities confidential. Similarly, in some cases, the nature of the complaint and the events surrounding it have already been publicized. In those cases as long as the complainants are willing to waive their right to confidentiality, the *Ombudsman* institution is not bound by the confidentiality requirement.

The *Ombudsman* institution investigates complaints and issues an investigative report at the end of the investigation. Often those reports are presented to parliament, made public and sent to the media. How does that provide confidentiality? Normally, all confidential material that might have been included in a preliminary version of the report, one that was sent to the authority for its response, will be removed. The names of complainants who refuse to allow publication of their names are removed. Identifying details that would tend to reveal the identity of the complainant are removed. All references to confidential information provided to the *Ombudsman* institution during the investigation are removed.

One purpose of confidentiality is to protect the identity of complainants and witnesses to whom confidentiality has been promised. Another is to enable the office to receive candid opinions from witnesses and civil servants and access to all authority records and otherwise restricted or tightly held information.

For this and other reasons, the *Ombudsman* institution functions out of the public view when complaints are made and investigated. No one has a right to be present when a complaint is being presented to the Ombudsperson or when investigators are interviewing someone to protect the individuals involved. Confidentiality, however, is not intended to prevent the *Ombudsman* institution from being at least partially transparent and fully accountable. For that reason, investigative reports are often made public and the *Ombudsman* institution prepares an annual report of the office's activities to help increase transparency and make the office accountable to the public and to Parliament.

Violation of confidentiality requirements during employment is generally grounds for termination. Confidentiality obligations continue after an Ombudsperson's term expires and after staff leave the *Ombudsman* institution's employ. Each *Ombudsman* institution will also need to determine whether the require-

ments of confidentiality prevent trainees and volunteers from having access to confidential information. When employees violate confidentiality requirements, they can be sanctioned by being terminated. That consequence is not as severe for trainees and volunteers and may not serve as sufficient deterrent.

3.2. What information in the *Ombudsman* institution's possession must not be disclosed

Specific information the Ombudsperson possesses that must not be disclosed depends on the law creating the *Ombudsman* institution.

What is generally not disclosed is information about open complaints, the identity of complainants whether their complaints are open or closed, including any details other than their names that may tend to identify them, and information developed during the course of an investigation required by law to be kept confidential.

3.3. What steps are taken to protect confidential information in the *Ombudsman* institution's possession

Some physical steps are taken to protect confidential information. Good security practice indicates confidential information should be locked when unattended. File cabinets with secure locks are checked each evening to be sure they are locked and that no confidential information is out in plain view in the event that the office is burglarized. Each staff member who has access to confidential information and can use it during the day is provided with a secure place to lock it when unattended.

The office itself is secured and locked with security services patrolling it at night if that is warranted. No staff should remove confidential material from the office. Ombudspersons may wish to implement other security practices that will tend to keep confidential information confidential. Some information may only be available to staff who need to know it or work with it in the office.

One factor to be considered in the degree of security employed in protecting confidential information is what is practical and feasible. While some offices can finance file cabinets with secure locks, others cannot. The important result in security is that confidential information is protected. There are a number of ways to do that. Each office should determine what is the most effective and affordable method to protect confidential information entrusted to the office for safekeeping.

Another important protection is one found in many laws establishing the *Ombudsman* institution —the privilege not to testify or to produce office records in court. The '*Ombudsman* Legislative Resource Document', an occa-

sional paper published by the International *Ombudsman* Institute, contains a section on protecting the Ombudsperson, staff and former staff from being compelled to testify or produce evidence:

“Principle 49. The Ombudsperson, staff and former staff shall not be compelled to testify or produce evidence.

“Sample language: The Ombudsperson, Deputy Ombudsperson, staff and any person engaged by the Ombudsperson to assist in any inquiry or investigation and any former Ombudsperson, Deputy Ombudsperson, staff and any person formerly engaged by the Ombudsperson to assist in any inquiry or investigation shall not be compelled to testify or produce evidence about their activities in the *Ombudsman* institution or in any investigation in any judicial, quasi-judicial or administrative proceeding except as may be necessary to enforce this Act or pursue penalties for any offence.

“Commentary: This protects confidentiality of complainants and *Ombudsman* institution records, prevents the Ombudsperson and current and former staff from being used as tools of discovery and saves the Ombudsperson and current and former staff from spending much time in court”.

Efforts to force the Ombudsperson, staff and former staff to testify or produce evidence are the most serious incursions on the *Ombudsman* institution’s confidentiality and a strong defence should always be mounted to resist them.

3.4. Responding to requests for information the Ombudsperson cannot disclose

The best response to requests for information the Ombudsperson cannot disclose is an educational one—to explain how the law creating the *Ombudsman* institution makes the specific information requested confidential. This is an opportunity to educate the public and media about the *Ombudsman* institution and how it functions. Complaints that are still open and being investigated should not be discussed. If the Ombudsperson or staff are asked about them, they should reply that they can neither confirm nor deny that the *Ombudsman* institution has such a complaint.

On occasion, it becomes public knowledge that the *Ombudsman* institution does have such a complaint and a denial appears less than candid. In those cases, the Ombudsperson can confirm the existence of such a case but not discuss it or reveal any additional information. If pressed and willing, the Ombudsperson can offer to make the investigation results public if the case is of sufficient significance.

3.5. What information may be disclosed

Information about general office procedure may be discussed. The annual report and any investigative reports that have been released are open to the media and the public. Many *Ombudsman* institutions try to prepare summaries of closed complaints that do not include the complainant's name or any other information that could identify the complainant.

Investigators will provide complainants with information on the status of a complaint and return copies of information or documents received from complainants back to them. Status reports will not contain confidential information or information provided by the authority in confidence and will not reveal a finding or recommendation on a complaint until the *Ombudsman* institution has approved and released them publicly.

Copies of information or documents provided by an authority during an investigation may be returned to the authority that provided them once the *Ombudsman* institution staff member is satisfied that the person requesting them is indeed entitled to have them and is employed by the authority.

3.6. Transparency

While a number of aspects of an Ombudsperson's work are confidential, the institution needs to maximize wherever possible its transparency and accountability to the legislative body that appoints the Ombudsperson, the authorities that are under the *Ombudsman* institution's competence and the public that is served by an independent and impartial institution.

Balancing the confidential nature of some parts of the Ombudsperson's work are the aspects of it that should be open to the public. Ombudspersons make annual reports to the legislative body and the public about their activities during the year. These reports include at a minimum an accounting of the complaints registered by the office, how they were resolved, which authorities were the subjects of the most complaints, what recommendations were made by the Ombudsperson and implemented by the authorities, what suggestions were made for amendments in national legislation to improve it or harmonize it with international treaties and other obligations and which authorities, if any, have chosen not to implement the *Ombudsman* institution's recommendations.

In addition, the *Ombudsman* institution's budget should be open to the public, although any aspect of it that might tend to reveal confidential information should remain closed and confidential.

3.7. Balancing confidentiality and transparency

The Ombudsperson and staff may occasionally find themselves in the position of having to balance conflicting obligations. Requirements for confidentiality written in national legislation may make it difficult for the *Ombudsman* institution to be transparent. Each Ombudsperson needs to analyze the requirements of national legislation governing the office on the question of confidentiality to determine what must remain confidential and how to balance that requirement with an obligation to report to the legislative body that created the office and appoints its holder and to the public the office serves.

If the *Ombudsman* institution follows national legislation on confidentiality, it becomes easier to sort out what matters can be communicated to the public and in what ways. Annual reports along with special investigative reports will help create confidence and credibility in the public for the *Ombudsman* institution. Public confidence and credibility are absolute requirements for successful and effective *Ombudsman* institutions.

4. BIAS

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4. BIAS

4.1. What is bias in the Ombudsperson's work

In the context of investigations, anything that prevents an impartial examination of the complaint, its allegations, the complainant, the agency, its responses, the witnesses and their testimony may be bias. Bias can result from prejudice or a mind that is already made up. It can be real or simply perceived by someone else.

Bias can result from a conflict of interest, real or perceived. Complaints that involve the friends or family members of an *Ombudsman* institution staff person, or the business, organizational, professional or personal association of the staff person or close family members of the staff person should be handled by someone not involved or affected by those relationships.

4.2. How can bias be reduced and eliminated from the Ombudsperson's work

The primary responsibility for disclosing conflicts of interest must rest on the individual staff member who knows all of the various relationships, past experiences and situations that can constitute a conflict of interest or appear to be a conflict of interest.

These conflicts can be handled by transferring the investigation of complaints where they may exist to staff who do not have the conflicts. The test for whether a transfer of investigative responsibility is needed is whether the individual who could be adversely affected by the conflict would want the complaint investigated by someone else. For example, if a complaint comes to an investigator about someone who is the investigator's cousin, would the complainant want that complaint transferred to someone who is not related to the cousin? Most often these complaints should be transferred, even if the complainant agrees that no transfer is necessary, because the potential for problems during and after the investigation is too great.

One good tool for Ombudspersons to be aware of all the relationships that can cause conflicts of interest or their appearance is to require an annual disclosure form from each staff member. These forms can require disclosure of financial relationships, memberships or volunteer relationships in businesses, corporations, non-governmental organizations, associations or other groups that might bring complaints or be the target of complaints. At the same time, it is important that the free speech and freedom of association rights of *Ombudsman* institution staff be respected.

Ombudsman institution staff should be sensitive to their own biases or prejudices and raise them with the Ombudsperson or their supervisor if they are assigned a complaint where those biases and prejudices could prevent them from being impartial and conducting a fair investigation. The public, complainants, authorities, civil servants and public officials should perceive the Ombudsperson and staff as fair, impartial and independent in their personal and professional lives.

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5. SERVICE EQUITY³

Introduction: The traditional *Ombudsman* institution model is that everyone receives the same service and has the same, equal access to the office. Office hours for receiving complaints are the same for everyone. The process of receiving complaints is the same for everyone. The traditional model emphasizing equal service in the form of equal treatment, however, disadvantages some people. An equal treatment model of service treats everyone the same. A service equity model treats people differently according to their diversity, needs and circumstances to achieve equitable service for everyone.

Ombudspersons around the world must provide timely, relevant and fair service. In addition to providing high quality service, a service equity model recognizes the public's diversity and honours fairness and relevance. Designing appropriate models of service delivery that consider changing demographics requires flexibility and creative adjustments to traditional administrative procedures. Ombudspersons can and must provide equitable and efficient service.

5.1. Definitions of service equity and equitable service delivery

'Service equity' and 'equitable service delivery' originated as terms describing a method of analysis and a set of practices used to ensure that systemic barriers, intentional or not, are removed from organizational policies and practices. The concept of equity was employed specifically to address the reality that under "equal treatment" the diverse needs of previously excluded groups and individuals were not adequately served and their access to public services was undermined.

³ This section on service equity is quoted, summarized, condensed or drawn from 'Managing for Equitable Service Delivery', by Roberta Jamieson, September 1999, © 1999 *Ombudsman* institution Ontario. During her years as Ombudsperson of the Canadian Province of Ontario, Ms. Jamieson pioneered development of the concept of service equity as it applies to Ombudsperson's work. Substantial contributions are also drawn from 'Service Equity Standards: A Systemic and Structural Approach,' Client Research Group, *Ombudsman* institution Ontario, June 1998, and from 'Standards for Equitable Service Delivery,' March 2000, Ontario Complaints Resolution Manual, Appendix A.

5.2. Foundation for development of effective and equitable practices

Three principles provide the foundation for developing equitable and effective practices:

- (a) The necessity to examine critically policies or practices that may appear neutral so systemic barriers, systemic disadvantages and/or adverse impact to service access can be removed;
- (b) Acknowledgement of and respect for differences among groups and individuals so that those who provide service can use appropriate and realistic procedures for service delivery; and
- (c) Recognition that power and privilege inherent in policies, behaviours and structures, at times, may work against some people or groups the *Ombudsman* institution must serve.

5.3. Standards for equitable service delivery

Fundamental to achieving service equity is the commitment to equal consideration and respect for all complainants in providing services. Equal consideration and respect do not necessarily mean identical treatment, since respecting the differences between people and groups of people (including different circumstances, needs and wants) often require different treatment.

Equal respect for all complainants means both being sensitive to the possible implications of the complainant's apparent or stated social location, and not stereotyping or being inflexible based on that awareness.

Social location is about who people are and how they identify themselves. It is based on factors including: gender, religion, ability, sexual identity, race, age, colour, marital status, physical appearance, family status, ethnicity, class, culture, geographic location, citizenship, criminal record, residency status, education, occupation, language, aboriginal status, political, trade union and community group affiliations.

Social location is not just about recipients of the *Ombudsman* institution's service. It shapes staff perception, and how the Ombudsperson and staff understand and interact with complainants and colleagues. Equitable service must take into account the social location of the Ombudsperson and staff, and the impact that may have on others. The Ombudsperson and staff must therefore foster critical self-awareness, because their social location, lived experience, and the degree to which they are knowledgeable about issues of importance to complainants, affect the *Ombudsman* institution's ability to provide services effectively and equitably.

These standards relate directly to an Ombudsperson’s mandate, vision, mission and to all the office’s work. They focus on internal practice and external service delivery. They provide an Ombudsperson with a way to measure the office’s effectiveness and progress in achieving equitable service delivery.

Value difference and demonstrate respect

- Be open and receptive to communication styles that differ from your own.
- Demonstrate sensitivity to issues being presented, regardless of the behaviour being exhibited.
- Identify and challenge your own assumptions, as these will affect your interactions.
- Be aware that non-visible identities (such as hidden disabilities) may exist and impact interactions.
- Educate yourself on the various non-visible identities that exist and the systemic issues faced by people in those groups.
- Do not make assumptions about any groups an individual “may” belong to.
- Ask open-ended/clarifying questions to gain more information.
- Challenge others on their assumptions and commentary about any groups, particularly when these are disparaging, disrespectful or uninformed.

Listen actively to enable meaningful participation

- Seek to connect with others by identifying and challenging any discomfort you may experience within yourself.
- Move beyond assumptions about behavior and demonstrate empathy and respect.
- Make an effort to listen for what may be behind the words – particularly to others who experience difficulty expressing themselves.
- Expand your own perspective by taking the time to understand that of others.
- Take the time to listen without interrupting.

Promote and ensure full access to service of the Ombudsman institution

- Make adjustments in work hours and locations to accommodate groups that cannot access service of the Ombudsman institution easily.
- Recognize and offer options for service to meet the needs of groups that may require assistance to access service.

- Select locations that are barrier-free and centrally accessible for people.

Practice attitudinal openness

- Provide options without making assumptions about an individual's choices for *Ombudsman* institution service delivery and/or access.
- Do not label people by characteristic unless it is explicitly relevant.
- Use appropriate language to characterize people when relevant (e.g. person with disability as opposed to disabled person) by putting the individual in the picture first, followed by any relevant description.
- Speak in plain language and explain the process and procedure of the *Ombudsman* institution and other authorities openly and clearly.
- Be aware of your own social location and its relationship to that of others.
- Be sensitive at all times to potential or real systemic barriers to *Ombudsman* institution access.
- Provide practical and useful referrals and service options to complainants and colleagues when programs or procedures do not meet their needs.

Actively implement inclusivity

- Seek input and participation of as many diverse groups as possible in all *Ombudsman* institution initiatives.
- Identify and discuss systemic issues that may exist or occur due to organizational change.
- Be open to explaining details that others may require to engage fully in the process you are following.
- Seek learning opportunities to educate colleagues on particular equity issues.
- Identify opportunities to reach groups that have historically experienced barriers to accessing services.

Recognize power and privilege

- Acknowledge your own power and privilege in each interaction or process in which you are engaged.
- Be open to hearing the impact of your actions and assumptions and take responsibility for them.
- Name mistreatment when you observe it happening and work in a constructive way to address it.
- Continuously educate yourself and learn from your experiences about the impact of discrimination and mistreatment.

Communicate appropriately and effectively

- Be open and flexible in the methods and vehicles used to communicate with others, both within the Ombudsperson's office and externally.
- Ensure that publicity for programmes run by the *Ombudsman* institution reach targeted constituencies.
- Be responsive to the need for translation and interpretation in every interaction and undertaking.
- Access and adjust all materials for bias, prejudice and systemic impact.
- Share your knowledge and experience concerning appropriate referrals for complainants who need particular services in the community.
- Consult with community resources on an ongoing basis to ensure appropriate referrals and to maintain relevance with community trends.
- Ensure that all *Ombudsman* institution materials reflect in illustration and text, the diversity of the population.

Foster participation

- Be explicit about the elements of fairness that are built into the complaint resolution process.
- Present your knowledge, skills and perspectives fully and appropriately with complainants and colleagues.
- Use communication and public education strategies that ensure that useful information is reaching all potential complainants, including non-traditional and alternative networks and media within diverse communities.
- Volunteer information about the complaint resolution process and keep complainants and other staff informed appropriately on a regular basis.
- Maintain regular contact with complainants on the progress of any investigation.

Recognize personal/professional responsibility and accountability

- Participate fully in training and education provided on the issues of service equity and accountability.
- Take responsibility when you make mistakes and when something you do or say is hurtful to others.
- Adopt the service equity framework in all aspects of your work and bring forward questions or issues that require clarification.
- Be direct about your own conflicts or struggles and respectfully address differences with others.

Identify systemic issues

- Ask clarifying questions to better understand an individual's complaint of systemic discrimination.
- Seek out opportunities to discuss the visible/obvious and hidden/invisible impacts of systemic discrimination.
- Actively identify trends and opportunities to undertake systemic and system-wide investigations.
- Be clear on the groups in society that experience systemic discrimination.
- Continue to seek out learning opportunities to examine and understand the nature of systemic discrimination.

5.4. Considerations essential to implementing service equity

Phased approach: If equity-based organizational change is initiated, changes should be planned in specific phases. The phases should include those that: (a) institute new practices for old ones based on “equity” and “equitable access;” (b) connect new roles, responsibilities and practices at work; (c) establish working groups and staff task forces to address the challenges; (d) train all staff and management in the necessary new practices and skills for new equity approaches; (e) document work results in policies, manuals and guidelines; (f) identify appropriate language to discuss issues that emerge and use these terms consistently to develop solutions; and (g) plan and analyze to critique service and work practices so that inequities and contradictions in traditional work methods are uncovered.

Tools and approaches for consistent practice: To achieve consistent practice and information which can be relied upon and used with confidence, various tools and approaches should be designed to build consistent and reliable practices:

(1) *Service Equity Checklist:* A checklist of consistent indicators guide Ombudsman institution staff in providing equitable service to address individual needs. (See Section 5.3.)

(2) *Complainant Data Collection:* A data collection process provides and improves factual reporting on complainant demographic diversity. Included are age, gender, race, occupation, income, aboriginal status, disability, social assistance and employment and unemployment by sector.

(3) *Anti-Racism, Equity and Conflict Resolution Training:* Training in equity, anti-racism, conflict resolution and cross-cultural communications is essential to increase Ombudsman institution staff skills and knowledge to help carry out the necessary analysis and to improve and expand service equity.

(4) *Equity Outreach and Public Education*: Gaps in service as well as other needs can be identified in public opinion polls and complainant data collection. To respond to gaps in service and needs, public education can increase knowledge and community based understanding of the *Ombudsman* institution's mandate. Such education increases and enhances staff capacity to develop appropriate service delivery practices and to communicate with particular communities' needs.

Leadership vision and modelling: Persistent leadership with personal integrity and a high degree of interpersonal skills are necessary to build service equity. Service delivery and goals promoting equity should address the needs of diverse groups and individuals and be incorporated into a strategic plan for change. An essential element of the *Ombudsman* institution is improving the quality of democracy and governance. Ensuring democracy and human rights are two aspects that make it essential that services provided by the *Ombudsman* institution are delivered to all sectors of the population.

Office-wide ownership-building: Changing institutional culture is difficult and takes time. *Ombudsman* institution staff and management face many challenges in making equity changes, specifically in their traditional values and norms. Changing from traditional structures to those that require and promote collaborative practices in an organization can be difficult. Once, however, staff realize that equity-based change is relevant to internal operations such as administration and finance and not just to outreach, public education and complaint resolution and investigation, they work towards achieving equity-based change across the *Ombudsman* institution. Placing individuals from different parts of the office in working groups to develop equity initiatives helps to build strong staff commitment.

Management of resistance to change: Resistance to change while normal is an organizational challenge. Over time resistance to organizational change can be managed and lessened by effective leadership, shared ownership and collaboration. New equity practices pose challenges to traditional working patterns, working rules and office processes. Especially challenging is the need to recognize social differences to deliver equitable service. Performance management and office-wide training are helpful to manage such resistance.

Systemic remedies to address systemic issues: Establishing equitable service delivery involves examining critically *Ombudsman* institution policies, procedures and practices to remove systemic disadvantage, systemic barriers and/or adverse service delivery impact to groups and individuals.

Expansion of professionalism concept: Many individuals in an organization that establishes service equity and equitable service delivery may feel threatened by the demands and challenges of equity, especially by new inclusive practices

and procedures. Standards for professionalism should be developed and established that include but are not limited to “an ability to recognize and address bias, prejudice and discrimination at both an individual and systemic level.” Essential is accepting the importance of interpersonal skills such as empathy, listening and facilitating in acting on the office’s values and delivering its mandate.

5.5. Organizational diagnosis to promote and enhance equitable service delivery

An efficiency assessment or review of an *Ombudsman* institution’s essential services should be conducted to affirm that the Ombudsperson’s vision is relevant in light of a changed environment of equitable service delivery. After such a review, managers of the *Ombudsman* institution can undertake appropriate initiatives to redesign the organization to improve efficiency and promote equitable service delivery.

Flatten bureaucracy: Flattening bureaucracy can often result in better decisions. For example, downsizing divisions, reducing the number of managers and creating a position to which managers report, can streamline the *Ombudsman* institution and make it more efficient.

Review intake and investigation functions: Assessing the efficiency of the *Ombudsman* institution’s core services to the public entails an operational review of intake and investigations. Such an assessment may uncover problems such as the following:

- Standards that are not clearly enunciated, lacking or remain unchanged;
- Management skills that demonstrate the need for more emphasis on creativity, analysis, and development-oriented tasks that are necessary for flexible resource re-allocation;
- Timelines that increase for investigating and resolving complaints;
- Equity outreach and public education information based activities that decrease when such activities are crucial for strong community relations;
- Organizational culture characterized by stress, burnout and mistrust;
- Little or no change in processes, practices or systems.

5.6. Structural changes that foster service equity

In an equity-based *Ombudsman* institution, problem solving, decision making and effective information sharing require very different structures from those in traditional bureaucracies. Key structural changes that focus on promoting service equity should be identified and implemented after assessing the current structure. For example:

Elimination of functional isolation: Large public institutions and agencies have traditionally used and preferred work processes separated by operation-

al functions. If resources are reduced and fewer people are available to do the same amount or more work, such a separation of roles and responsibilities does not allocate resources efficiently and works against consistent equitable service delivery. New models can be established where office functions are integrated, more attention is paid to accountability and to institute standards and procedures developed to build capacity and strengthen performance.

Job evaluation system to ensure fairness and equitability: Whenever an Ombudsperson changes the way of doing business, jobs may change. To ensure that equity practices are followed, it is essential to review the existing performance evaluation system. The review should involve wide staff consultation and be based on consistency and inclusion.

5.7. Meeting the challenges of equitable service delivery management

Ensuring equitable treatment and accessible service requires critical and continual review of *Ombudsman* institution practices. Policies and practices of an institution can have an adverse impact, indirectly or directly, on members of vulnerable or marginalized groups or on people who experience discrimination.

Establishing a framework for equitable service: An understanding of privilege and power is essential to successfully implementing service equity. “Power and privilege refer to the social advantages and associated privileges that accompany membership in certain groups.” While some groups operate with a relative sense of confidence that they will be respected and accepted, others are often disrespected, face barriers or are treated unfairly.

Privilege and power grow from membership in certain groups or may be awarded when specific authority and responsibilities are assigned to certain institutions or individuals. As an example, investigators interacting with complainants have power assigned to them by their staff positions and privilege since they may use their discretion, have authority to influence or make decisions about how to proceed with any case, and have access to information. Complainants have much less power in any such relationship, as they may not know the authority delegated to staff, the *Ombudsman* institution’s competence and the process of investigation.

The respective social groups to which a staff member or complainant belong need to be considered so that appropriate group associations will help ensure equitable service delivery. In almost every interaction, power and privilege intersect.

Inclusiveness and accessibility are essential to removing service barriers and achieving equitable service delivery. The Ombudsperson and staff must

recognize and accommodate the particular needs and circumstances of individuals and deliberately reach out to marginalized groups if everyone in the population is to be represented in both the design and delivery of *Ombudsman* institution programs and services.

Standards for equitable service delivery: Standards for equitable service delivery provide a detailed framework of consistent procedures and practices for all staff to follow. The office's commitment to equitable service delivery is demonstrated by incorporating the standards into the performance management system as goals for each staff member to achieve.

Performance management: The most basic tool for work-related learning is factual, objective, job-based performance feedback given in a relevant and timely manner. A performance management system that is effective and builds capacity is one that enables a manager to establish work-related goals and objectives, provide on-going, consistent management support and feedback to a team or individual on how well they reach targets, goals and standards within an equity context.

Examples of two main components of a performance management system:

1. A management framework that allows management and staff to identify and agree upon job-related goals, responsibilities, and performance measures related to technical and interpersonal competencies.
2. An annual work plan and performance agreement established within a performance management framework.

Ombudsman institution evaluation: Formal evaluation systems provide a key measure of office transparency and public accountability. They strengthen an *Ombudsman* institution's learning culture by motivating the incorporation of lessons learned from both failures and successes. Establishing an evaluation system to measure the effectiveness of service provided by the *Ombudsman* institution helps to ensure these standards are consistent with the principles of the office's mission.

5.8. Barriers to service equity and possible remedies

Identification and removal of barriers to services provided by the *Ombudsman* institution is essential at every phase of service delivery, from intake to complaint resolution. To ensure accessible service and equitable treatment for complainants, office and individual practices need to be examined.

The following chart prepared by the Ontario Ombudsperson is an example of how one office identified a number of barriers, and sketched the steps that could be taken to remove the barriers as they applied to the Ontario office.

Barrier Identification	Remedy
<p>1. Traditional hours of service curtailing the ability of groups of people from accessing services of the Ontario <i>Ombudsman</i> institution</p>	<ul style="list-style-type: none"> • provide service outside regular office hours as required • accommodate child care (and other) needs, where possible and appropriate
<p>2. Ontario <i>Ombudsman</i> institutions are located in urban and/or regional centres which may prevent groups of people living in under-serviced areas and in geographically distant communities (e.g., far north) from accessing services of the Ontario <i>Ombudsman</i> institution.</p>	<ul style="list-style-type: none"> • ensure that budget allocations promote mobile intake clinics and appropriate travel • ensure communications materials are widely disseminated • that in the absence of personal contact, other means of providing service are available (e.g. telephone, special complaint forms etc.)
<p>3. Behaviour that may be perceived as disrespectful, or dismissive of the complainant. This may include disparaging comments about complainants to colleagues, or comments that would contribute to a poisoned work environment.</p>	<ul style="list-style-type: none"> • treating everyone with respect • active listening • moving beyond assumptions about behaviour and listening in ways that demonstrate empathy and respect • checking your own commentary and challenging that of others directly
<p>4. Inappropriate behaviour with/towards/about people with a range of mental health challenges</p>	<ul style="list-style-type: none"> • staff training • active listening • identify biases and assumptions to enable respectful and attentive listening (listening with connection) • identify discomfort and not attach blame and/or be dismissive
<p>5. Lack of understanding, knowledge, experience and/or exposure to complainants with non-visible disabilities (e.g., psychiatric, developmental, HIV/AIDS, epilepsy, chronic fatigue)</p>	<ul style="list-style-type: none"> • staff training • guidelines for standards of service that staff are held accountable to
<p>6. Making decisions based on biases, prejudices, stereotypes and inappropriate attitudes</p>	<ul style="list-style-type: none"> • review <i>Ombudsman</i> institution procedures, policies and practices at all stages of the process to ensure there are sufficient guidelines to provide for consistent approaches • incorporate structure and flexibility in order to meet the circumstances and needs of complainants

<p>7. Offices or intake clinics that are not fully accessible</p>	<ul style="list-style-type: none"> • ensure that all <i>Ombudsman</i> institution offices, including facilities, are accessible to complainants with mobility disabilities • ensure that intake clinics are accessible; where such a location cannot be found, special measures should be taken
<p>8. Materials and communications that are not accessible for complainants who are deaf, hard of hearing, blind or visually impaired</p>	<ul style="list-style-type: none"> • materials available in alternate formats • sign interpreters • teletype • public education with consumer groups
<p>9. Access to services provided by the Ontario <i>Ombudsman</i> institution limited for complainants who are:</p> <ul style="list-style-type: none"> - in psychiatric and other hospitals, nursing homes, and other institutions - homeless - low/no income 	<ul style="list-style-type: none"> • information and visits to institutionalized complainants (especially psychiatric hospitals) • intake clinics in areas where people can easily attend • improve telephone and correspondence service as points of contact and communication • toll-free telephone service
<p>10. Language barriers and/or use of inappropriate levels of language</p>	<ul style="list-style-type: none"> • use of clear language • language should be at a level appropriate for the complainant, or where unknown, at grade 6-8 level • use translation and interpretation services, including cultural interpretation • avoiding language that labels people by a characteristic (e.g. “the disabled” – “people with disabilities” is preferable)
<p>11. Attitudinal barriers in service delivery of the Ontario <i>Ombudsman</i> institution that discourage First Nations and Aboriginal people and members of Immigrant, Refugee, and/or People of Colour communities</p>	<ul style="list-style-type: none"> • seek guidance from Elders, cultural interpreters, and other community resource people as appropriate, to assist in communication and access • finding ways to be (and to appear) less bureaucratic
<p>12. Requirements under the act regarding confidentiality</p>	<ul style="list-style-type: none"> • consent from complainant

<p>13. Complaints 'in writing' may form a barrier to people who do not live close to an office of the Ontario <i>Ombudsman</i> institution and/or to people with literacy/language issues and some disabilities</p>	<ul style="list-style-type: none"> • take complaint down for complainant and indicate it has been read back to the person, approved and signed or marked by the complainant or authorized representative. • complaints on audiotape, etc. are transcribed, read back to the person, approved and signed or marked by the complainant or authorized representative
<p>14. Individuals with child/elder and/or other family responsibilities may have difficulty accessing services provided by the Ontario <i>Ombudsman</i> institution</p>	<ul style="list-style-type: none"> • arrange intake clinics in easily accessible locations • accommodate child care (and other) needs where possible and appropriate
<p>15. Limitations/unevenness of consultations with community-based organizations</p>	<ul style="list-style-type: none"> • develop and implement strategic approaches • incorporate individual contacts and resources in the development of strategic service delivery • create representative, community based Advisory Board to assist Ontario <i>Ombudsman</i> institution in achieving service equity • ensure open lines of communication and mechanisms for feedback to improve services delivered by the Ontario <i>Ombudsman</i> institution

6. PHYSICAL ACCESS

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6. PHYSICAL ACCESS

6.1. Barriers to access

Two types of barriers to access to an *Ombudsman* institution exist—physical and psychological. Physical barriers often prevent people with disabilities from entering. For example, an office that can be entered only by climbing a large number of steps is not accessible to someone who must use a wheel chair.

Psychological barriers can be just as real and effective. Having to enter a government building that contains offices of the authority the person wishes to complain against can also be a barrier to access of the *Ombudsman* institution. Offices that have large amounts of security, where a person must repeatedly present an identity card, where security is handled by uniformed police or the security forces all have barriers to easy access by complainants.

6.2. Removing the barriers and creating ease of access

Physical barriers often can be removed easily by constructing alternative means of access. When significant barriers cannot be removed, the Ombudsperson will need to find a new office. If the office is in a government building that requires high security, moving the office is likely to be easier than removing the security.

Constructing well-designed ramps for wheel chairs instead of steps provides access for people with disabilities. Providing direct access to the office from a street level entrance with few doors and few places where identification needs to be shown also helps create an easy physical access. Armed and uniformed security guards may also prove to be a psychological barrier. Restrooms should be designed with stalls large enough to accommodate a wheel chair.

The section on service equity also contains suggestions that if implemented make the *Ombudsman* institution more accessible to different social, economic, ethnic and religious groups. The goal is that everyone be welcome in the office of the *Ombudsman* institution and made to feel welcome by having the fewest barriers to access possible. Removing the physical and psychological barriers is one way. Reaching out to potential complainants outside the office and outside normal business hours is another way.

7. PROTECTION AGAINST RETRIBUTION

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7. PROTECTION AGAINST RETRIBUTION

7.1. What is retribution

An individual who files a complaint or participates in any way in an investigation of an *Ombudsman* institution that is subjected to reprisals or denied any rights, privileges or benefits because of filing the complaint or participating in the investigation is being punished with retribution.

7.2. How can it be detected

Retribution in its crudest forms is fairly easy to detect. When the person or authority that is the subject of a complaint denies rights, privileges or benefits to which a complainant would otherwise be entitled, it would appear on the surface at least that retribution is being employed to discourage more complaints or additional cooperation with the investigation.

In the most sophisticated forms, retribution can be very difficult to detect. Experienced individuals can devise all manner of punishments that may not be obvious forms of retribution but punish the individuals nevertheless.

7.3. Who does the Ombudsman Institution protect against retribution?

The *Ombudsman* Institution should protect anyone who is denied rights, privileges or benefits or otherwise punished for making a complaint with the Ombudsperson or cooperating with an investigation conducted by the *Ombudsman* institution.

7.4. How can the Ombudsman institution provide protection against retribution

The most effective methods to protect against retribution are those initiated by the Ombudsperson and that don't require the person who has been subjected to the retribution to hire attorneys or file lawsuits. It is important to have effective provisions on this subject in the law creating the *Ombudsman* institution.

The "*Ombudsman* Legislative Resource Document" contains three principles that would protect individuals from retribution and punish anyone found guilty of such acts if placed in the law establishing the *Ombudsman* institution:

"Principle 52. No person who files a complaint or participates in any way in an investigation conducted by an *Ombudsman* institution shall be subject to reprisals or denied any rights, privileges or benefits because of such action.

“Principle 53. Anyone who subjects complainants to reprisals or denies them any rights, privileges or benefits shall be guilty of an offence with a specific penalty that may include a jail sentence.

“Commentary: These principles allow the Ombudsperson to protect complainants and witnesses in investigations from adverse action. These provisions offer better protection than so-called whistleblower acts because the Ombudsperson seeks enforcement and under whistleblower protection the whistleblower has to hire a lawyer and sue to obtain the protection.

“Principle 54. Anyone who complies with a requirement of the *Ombudsman* institution is immune from prosecution for an offence in the production of any information, document or thing.

“Sample language: No person is guilty of an offence against any other act of (the legislative body) by reason of compliance with any request or requirement of the Ombudsperson to furnish information or produce any document, paper or thing, or by answering any question of the Ombudsperson or staff.

“Commentary: This provision protects government employees who comply with requirements of the *Ombudsman* institution from prosecution under other acts.”

8. GLOSSARY

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8. GLOSSARY

Investigative workload: The number of complaints or investigations each investigator has open at any given moment. Also the amount of complaints or investigations of what complexity an investigator can be expected to examine or resolve during what period of time.

Investigation: The *Ombudsman* institution's process of examining a complaint—determining the facts, the laws governing the facts, analyzing the facts in light of the laws, making a finding on the allegations made by the complainant and making recommendations to restore rights or prevent them from being violated in the future.

Supervision: Overseeing, not controlling.

Evidence: Something that helps the Ombudsperson ascertain the truth of an allegation that is being investigated. Evidence can be testimony, documents, or other physical things that prove or tend to prove facts that help the Ombudsperson determine the truth of an allegation.

Testimony: Declarations made in response to questions from the Ombudsperson or members of the Ombudsperson's staff.

Receiving a complaint: Taking the information a complainant presents to the *Ombudsman* institution about an alleged violation of human rights or maladministration of a government authority.

Accepting a complaint: Determining that a complaint is within the *Ombudsman* institution's competence or jurisdiction as set forth in the law creating the institution.

Values: Beliefs or ideas held by the Ombudsperson and staff.

