

PLENARY I : "Evolution of Ombudsmanship"

Topic : Evolution of Ombudsmanship, the Case of Hong Kong

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Dear Fellow Ombudsmen and Colleagues,

Sawadeeka! Good morning!

Introduction

The ombudsman institution, with its important mandate of monitoring public administration on behalf of citizens, is one of the linchpins of democratic society. It evolves as our society matures. Thanks to the invitation of the IOI President and the Conference Host, Chief Ombudsman of Thailand, I am much honored to have this opportunity of sharing with you the Hong Kong experience to illustrate this evolutionary process.

The Genesis

It was in as early as the 1960s that a suggestion was made in Hong Kong for the setting up of "a simple, inexpensive and effective machinery for safeguarding fundamental rights and freedoms and for enabling those who have suffered from violation of their rights to receive assistance in obtaining redress". However, little had subsequently happened. Even in the seventies, citizens still had to air their grievance via the then Office of the Unofficial Members of the Executive and Legislative Councils. In Hong Kong, these two Councils were the highest authorities responsible for policy and law making respectively. In those days, their unofficial members were all appointed by the Government. From the small number of public complaints it received (about a hundred or so in a year), it was evident that such an indirect channel, lacking impartiality, was not particularly attractive to citizens.

In 1987, the Government conducted public consultation on "redress of grievances", which resulted in a majority view in support of the setting up of an independent authority to deal with complaints about maladministration. That was the prelude to the gradual, incremental reform leading eventually to what we have as the "Office of The Ombudsman" in Hong Kong today.

set up by statute. However the Government was still not prepared to go all the way to establish a fully autonomous ombudsman system. Notably, the title of "Ombudsman" was not adopted. The purview of the office was confined to handling administrative complaints referred by Members of the Legislative Council. The jurisdiction of the office was narrowly defined, citizens still had no direct access to the Commissioner, and the office was predominantly staffed by civil servants seconded from the Government. Understandably, the community would still have no great confidence in the impartiality and effectiveness of the office's work. The number of public complaints received by COMAC in its early years of operation remained small: less than 200 per year.

Steady Development

The 1990s saw a substantial move towards open and democratic governance in Hong Kong, with more and more members being elected to the Legislative Council, as well as to the District Boards, which were consultative bodies for the administration of the eighteen districts in Hong Kong. The community naturally expected to be able to play more part in monitoring and influencing the Government's work through some independent channels.

Notwithstanding its limited jurisdiction and restricted powers, the COMAC office endeavoured to gain more public support and confidence by its fair findings and frank comments on the Government's action. At the same time, the Government's trust in the office increased as it became apparent that the office was bent on raising the standard of public administration rather than witch-hunting. The time was ripe for the office to take a greater leap forward.

In 1994, by legislative amendments, a historic step towards more open and accountable administration, the Commissioner's scope and powers were significantly increased:

- public complaints could be made directly to the Commissioner;
- Anonymised investigation reports could be published for public scrutiny;
- in addition to Government departments, some public bodies came within the Commissioner's jurisdiction;
- the Commissioner could conduct "direct" (i.e. self-initiated) investigations even without complaints.

Moreover, in 1995, the Government started to adopt a Code on Access to Information in furtherance of greater transparency and accountability, under which all Government departments are required to make available to public the information they hold, unless there is a good reason as specified by the Code to withhold it. In 1996, the COMAC office, besides being properly re-named "the Office of The Ombudsman", was specifically empowered by law to investigate cases of non-compliance with the Code. With such empowerment, The Ombudsman took up a role close to that of the Information Commissioner in some other jurisdictions.

In 2001, the Office was further empowered by statute to deal with complaints by mediation. That served to more efficiently resolve complaint cases involving no or only minor maladministration. The service is getting more and more popular. The number of cases resolved by mediation has increased from just a few in the early years to over 130 last year.

Full Independence and Further Growth

The Office of The Ombudsman gained full autonomy as a corporation sole in 2001. With financial independence as a key feature, the Office has full power over its financial arrangement. An inflation linked lump-sum government subvention ensures no reduction in government funding and the Office can forward any surplus as reserves for future development. It is indeed a great financial protection for a public organisation. Aside from its financial independence, the Office also established its own administrative and personnel systems which are independent from the Government practices. Since then, all staff are directly appointed by The Ombudsman.

I wish to emphasise that our independent status is guaranteed by law. The law of Hong Kong stipulates that The Ombudsman is not a servant or agent of the Government. He / she is appointed for a term of five years, and shall be eligible for re-appointment. Besides, The Ombudsman cannot be removed from office unless there are specific reasons (such as ill health or misbehaviour). Removal must be sanctioned by resolution of the Legislative Council. The Ombudsman is the only person to decide how to exercise the powers laid down in the Ombudsman Ordinance. Even the Chief Executive of Hong Kong cannot instruct The Ombudsman on how to perform his/her duties.

The law also states that if The Ombudsman and his / her officers are acting in good faith when exercising their powers, they are not liable to civil actions. This is a very important protection, because very often we criticize during giving comments and people may regard the criticism as defamation and file a civil suit against the office.

Power of The Ombudsman

The Ombudsman Ordinance gives extensive powers to The Ombudsman :

- a. to obtain any information, document or things and to make any enquiry from any person;
- b. to summon any person to give information;
- c. to examine a witness under oath;
- d. to publish investigation reports which The Ombudsman thinks is in the public interest to do so.

Indeed any person who fails to co-operate with The Ombudsman commits an offense and is punishable by law.

Conclusion

From the small initial setup that bore little resemblance to an ombudsman institution 27 years ago, to the full-fledged, independent office that it is now today, the Office of The Ombudsman in Hong Kong has been ever growing in tandem with the social and political changes of the city. Gradually but surely, through hard work and perseverance, it has gained the support and confidence of the public it serves and also of the legislators, the Government and the media.

In 2015 / 16, our office handled over 12,000 enquiries, completed 5,200 complaints and published 8 “direct” investigations over a wide range of topics which involved immense public interests. More than 270 recommendations and numerous other suggestions were made to Government departments and public bodies for improvement of their services. The announcement of the Office’s investigation reports attracts wide media coverage and their positive comments on our investigation findings have been most encouraging.

Looking back at history, it is evident that the Office has helped enhancing public administration and advancing the grievance redress system.

With continued support from all sectors of the community and all stakeholders, I am confident that the Office will continue its healthy development and go from strength to strength. For sure the Hong Kong experience is just one of many ways by which an ombudsman institution may grow and prosper. I hope that my sharing has given you a vivid example of a live case.

Before I conclude the presentation, I would like to express my sincerest gratitude to the IOI and its Secretariat, as well as the host the Thai Ombudsman Office, for their tireless commitment for this important event and their warm hospitality to conference delegates. Last but not the least, may I send my best wishes for a successful, effective and inspirational conference.

Thank you very much.