

**SHAPING THE FUTURE: TAKING THE INITIATIVE
IN A TURBULENT ENVIRONMENT**

by

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SHAPING THE FUTURE: TAKING THE INITIATIVE IN A TURBULENT ENVIRONMENT

Roberta Jamieson *

In North America, the millennium has come to mean something about change, something about a fresh beginning, something about crossing over a divide into a new era.

If we were to draw a graph to demonstrate the intensity with which human society has reconfigured itself over the last decade, and if we then drew a graph to show how ombudsmen have reconfigured ways of doing business, would there be any similarity in the two graphs? Can we say that we have kept up with change?

If ombudsmen are leaving themselves out of the change equation, there is a chance they will become irrelevant. And if we want to keep up with the real world, to keep ourselves relevant, do we understand that it will take creative action—and leadership?

There is no getting away from the wave after wave of change that the world is experiencing. Even the nature of change has changed. It happens faster, creating profound paradoxes and complexities. It seems to have escaped all hope of human plan.

I would like to focus on the various categories of change that involve ombudsmen, and to suggest ways in which we might respond.

This is a speech with more questions than answers. This is not because the questions do not have answers. On the contrary, each question has a multiplicity of answers. That is why each one of you needs to find your own answers, create your own options, take your own actions. So let's look at change and the ombudsman.

The Preconditions for Ombudsmanship

The world is undergoing changes in the very foundations of the environment that make it possible for effective ombudsmanship to take place. We know some countries are moving toward greater democracy and want to establish an ombudsman as a pillar of good government. We know that in such cases, certain preconditions must exist if institutions which promote accountability, like the ombudsman, are to be effective.

Are there impartial courts? Is there an independent and critical media? Does a representative legislature exist, and does it have the freedom to act independently of police and military forces? Is the public generally aware of their rights and, if not, is there an environment in which an ombudsman can create this awareness?

Although we see it as common sense that ombudsmanship requires such preconditions, is there agreement as to what those preconditions are? How can they be measured? Is there a list of standards that we could apply to judge the effectiveness of a new ombudsman's office? Could there be?

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As a corollary, have we acknowledged that in established democracies, it is possible for conditions of democracy to crumble sufficiently that the environment, which permitted an ombudsman to be effective, no longer exists?

Ombudsmen have an obligation to take leadership in ensuring that the basic conditions for effective ombudsmanship prevail.

Should ombudsmen become aware of local, regional and international events, which might have a negative impact on the ombudsman's ability to keep governments and institutions accountable?

Do we advocate for creating a culture in which redress, review of decisions and resolution of complaints are integral values?

Do we work with others who seek to improve the quality of democratic society generally? Do we become part of networks for accountability of powerful institutions, be they public, private, national or international?

Globalization

Let's play out those questions against the backdrop of that change phenomenon known as "globalization".

Not all that many years ago, the North American public was talking about improving health care, waging a war on poverty and improving accountability of governments. We wanted participatory democracy. We valued innovative vision. We wanted to achieve social justice, equity, healthy interdependence and community well-being.

We've retreated from all that. Those goals have been pushed off the public agenda, and now the agenda is filled with talk of global competition, deficit reduction, privatization, dismantling the welfare state and deregulation.

The "do more with less" mantra proclaims the rule of the day on the one hand, while the public is being reassured that all this change will result in a higher standard of service.

A whole new language of public debate has emerged, and our ability to even discuss social issues has been diminished.

Ideas about collective ways of dealing with social issues have lost ground to the argument that a state or country's ability to compete will determine the future well-being of the people. It's inevitable, they say, because of "globalization".

The interests of the wealthy are often seen to be "necessities", while the needs of the poor are seen to be a drag on our economic success.

The traditional role of government to ensure that corporate values did not overrule the public good, that the desire of the wealth to dominate a democracy was kept in check, has been abandoned in typical fox-in-the-chicken-coop fashion.

Corporate values are not entrenched in the core of government decision-making, and social values have become afterthoughts.

Notions of the common good have become severely eroded.

Governments have become the servants of corporations rather than the servants of people.

Our democratic societies are becoming meaner places to live.

The restructuring demanded by those who push for globalization does not even attempt to speak to those who have been disadvantaged historically.

“We can’t afford it,” governments will say. “We can’t find the money.”

The practical consequence is reduced resources for social infrastructure at the very time the need for effective social infrastructure has increased.

In Canada at least, the divide between the rich and the poor is greater than ever and the number of people who are poor has increased dramatically.

How is the Public to Hold Government Accountable?

How is the public to hold government accountable for these decisions which have an impact on schools, on public health and employment opportunities, on public housing and on assistance to people who are vulnerable?

In our work at Ombudsman Ontario, we were proactive in dealing with fiscal restraint by doing own-motion investigations to examine the effects of systematic underfunding of public services. Too often public servants were asked to put on a brave face and assume responsibility for decisions that had been taken by someone else. We put before the public exactly who was receiving the impact of the cuts and, to a degree, the future costs which those cuts would entail. We demonstrated clearly the effect on single mothers and children who were hurt by limited funding in one agency, and injured workers in another.

We knew that the real effects of closing mental health facilities would be more homeless people, more psychiatric survivors in the jails and more psychiatric survivors approaching our offices for help. We responded internally by being proactive on these issues in our training. We brought psychiatric survivors in-house to train us on how best to serve this important and growing segment of our clientele.

Our reports helped the public to have the benefit of greater transparency in public affairs rather than permitting the reality to be painted over with layers of finger-pointing and buck-passing which disguise just who is to be held accountable for decisions.

Globalization has caused governments to become invisible in the fundamental decision-making which affects the public’s well-being. Historically, the ombudsman was to increase accountability of government—but what is the ombudsman to do when the decision-making becomes unreachable?

All countries are now competing for space in the global marketplace. In their efforts to be players, however, they find that multinational corporations are making the rules. They have the power to affect a country’s fiscal and environmental health. Governments generally have responded by agreeing to play by the corporate rules in the interest of attracting investment.

Corporations are focused on the bottom line, on productivity and on efficiency—all

concepts that maximize returns. Their relationship with the public is as shareholder/ consumer.

In the wake, public cynicism and loss of confidence in government is at an all-time high. The criticism of government is most acute in the field of health care.

The government's response, typically, is to think of itself as corporate boards, calling the public "stakeholders", polling them as consumers to learn preferences regarding government goods and services. The first victim of this shift is democracy.

Ironically, the willingness of corporations to listen and respond to public opinion has never been greater.

The People Are Seeking Accountability

In these circumstances, the public turns more and more to institutions such as the ombudsman to hold government accountable for the unfairness which results from this kind of decision-making. This matches the increase in the public's realization that it can exercise power as consumers, and can use this power to extract greater accountability from the corporate boardroom. The result, of course, is an increase in ombudsmen in the private sector and an increase in complaints.

With governments abandoning their responsibility to regulate corporate conduct—and I know there are those who argue that government should keep its nose out of the marketplace—people are taking over the task. They are investing in corporations which can pass ethical tests. In Europe, a supranational European Code of Human Rights has been established. The Organization for Economic Cooperation and Development has established a code on corrupt practices. People are expecting such agencies to regulate both corporations and nation-states.

At the same time, people are subjecting international agencies to intense scrutiny and are using all means available to hold them accountable.

The result of all this is profound change in our historical nouns of decision-making for both the public and private sectors. It is inevitable, then, that the entire landscape of the ombudsman to resolve complaints about the unfair impact of institutional decisions is being dramatically reshaped. This means ombudsmen have clear challenges to change the way we work and how we conduct our day-to-day business.

It used to be that the public knew where decisions affecting their lives were made, how they were made, when they were made and who made them. Today, decisions which affect a community's economy, its style of life and its environment, may be made by distant and esoteric organizations such as the World Bank, the World Trade Organization (WTO), the International Monetary Fund (IMF) or agencies created by the North American Free Trade Agreement.

Do you feel the decisions have been unfair? Unjust? Just where do you complain?

We have to ask ourselves the same questions the public are asking. Who are the ombudsmen that keep the World Bank, the IMF and the WTO accountable? Who assures transparency in decision-making? Who keeps the structure democratic? How do the people keep themselves in the accountability equation?

We see a whole new area of complaint-bringing organized by non-governmental

organizations who are taking these unreachable organizations to task for not living up to high standards.

Recent events in Seattle, Washington and Windsor have been catching governments completely off guard—who would have thought the public might be interested in these events? People are taking to the streets to demand accountability, to seek greater transparency.

Increasingly, the public is demonstrating the power they can wield on a global scale as buyers of consumer goods. They are exercising this power by rewarding companies who stand for high ethical values and boycotting those who do not (for example, because of their use of child labour or sweatshop conditions).

Entire European countries stop buying products because a company's practices do not meet high ecological standards, because the land on which resources are located is the subject of a land claim by a First Nation, or because a First Nation has a complaint before an international human rights commission. Then, it seems, the public's concerns are heard.

The power of the rapid sharing of information is, of course, a critical element in this linkage of public interests across national boundaries. More people have more access to more information, and with it the public is exercising more power. Look what one woman with a fax machine accomplished from her home in Vermont—nothing less than an international treaty against the proliferation of land mines and a Nobel Peace Prize for her efforts.

Where should the ombudsman be in these changing circumstances? What are the ombudsman's options? How do we meet change? And how do we take leadership in creating it?

I am motivated in this responsibility in calling upon all ombudsmen to work very hard in conjunction with a broad and concerned network to ensure that the preconditions for the work of ombudsmen are maintained and strengthened.

I believe legislative ombudsmen have a responsibility to hold governments accountable wherever they abandon the public good and act against the welfare of the people.

I believe corporate ombudsmen have a responsibility to hold corporations responsible for the social values which must accompany capitalism if it is not to destroy us—read Adam Smith!

I believe university ombudsmen have a responsibility to hold university administrations responsible wherever they abandon the historic mission of the university's role in a democratic society.

Would it not be irresponsible of us, the guardians of our institutions, if we did not?

Privatization

One result of globalization that affects the ombudsman so much that it demands special treatment is privatization. The question is not whether the public or private sector can do a particular job better—rather it is the question as to whether the right to independent resolution of complaints will be in place wherever the public's money/interests are at stake.

University campuses are being corporatized. Jails, prisons, hospitals—just about any service is now up for grabs.

You may have heard the media reports about the tragic deaths in Ontario caused by dangerous bacteria in the water system of a small town. The reports note that the provincial government privatized water testing in 1996 as a cost-saving move (and I might add was criticized for doing so by Eva Ligeti, the province's environment commissioner). The private laboratory which did the testing is apparently a franchise of an American company. It sent a report to the municipality, but feels it had no duty to raise any alarm that the water was grossly contaminated, nor did it have a duty to contact health officials. Under the old system, the government labs would have alerted medical officers who would have recognized the danger and taken immediate action.

So who is the public to complain to about this? The province will tell you the testing was privatized. The American headquarters says, "Not our problem. We're not involved." The laboratory involved says, "Not our duty to do anything—we just send back the reports." The health officials will say they were never informed. Mothers and fathers will grieve over their dead children. Where does the ombudsman fit into this privatization equation?

One thing we can do, of course, is to advocate for the creation of ombudsman offices within any new bodies established, or the extension of existing ombudsman jurisdiction, as was done in Nebraska with health care.

The provincial Ombudsman could initiate an investigation to determine whether the provincial ministry was negligent in any way, and to make recommendations about how to prevent reoccurrences.

We can note the absence of a municipal ombudsman in the equation. Municipalities are often overlooked as places where an ombudsman could be very effective in obtaining accountability for public services.

The Private Sector Ombudsman

Another great current of change regarding ombudsmen is the tremendous increase in private sector ombudsmen.

This welcome movement has, however, created a new imperative for ombudsmen—the need for us to work together to develop among all ombudsmen the highest possible standards. For standards of independence, public sector ombudsmen have much to share. For standards for our ombudsmen codes of ethics, corporate ombudsmen have taken the lead.

We should also develop, share and adopt standards for determining whether people have been treated fairly. This will be particularly important as services which the public has received from the public sector are delivered more and more by the private sector.

As ombudsmen, you are in a position to develop an effective network with clear and common standards on which the public can rely in dealing with their complaints of unfairness.

Maintaining Relevancy

Another issue of critical import is that of ombudsmen maintaining their relevance in the face of change. Where do you need to extend yourselves in order to stay relevant in the decade

ahead?

We, many of us, are becoming well known for our talents in the field of alternative dispute resolution, as the expert complaint resolvers that we are. Can we not also be seen as experts in “maintaining accountability”?

If we position ourselves well, public and administration alike will call upon us to design mechanisms which improve transparency, and establish standards and criteria by which accountability can be measured.

Can we develop expertise and professionalism in other areas, even establishing ombudsman interest groups on specific topics, specialists in dealing with issues of transparency, a sector which specializes in resolving complaints related to corrupt practices? A sector which develops expertise in the special field of alternative dispute resolution which involves a government as one of the parties or a sector which has the know-how to help us provide equality in our workplaces, equitable services to our clients and promotes equity in institutional service delivery?

Let me give you an example. A group of international non-governmental organizations called Coalition 2000 is working together on the Internet to deal with the issue of corruption in government, which impacts on international commerce. This coalition developed a set of corruption indices, developed a methodology based on a model of corrupt behaviour, brought together public and private sectors, prominent individuals and the non-governmental sector. We might ask ourselves: where were ombudsmen in this commendable task?

Can we use the Coalition as a role model on how to go about developing standards and measurements in other fields? When there is fundamental change, new organizations and networks spring up to meet new needs and new circumstances. What are we doing in this regard? This conference is one very positive initiative which recognizes change. It would have been difficult to conceive in the 1980s that a conference of this sort would occur, that there would be so many categories of ombudsmen—legislative, corporate, university, health care, municipal and all the rest—all gathered to discuss common interests.

You have to do more of this and as we cross sectors, we can help each other. Although we can see the blurring of responsibilities between sectors, ombudsmen have not yet developed linkages with one another’s jurisdictions.

If students complain to a university ombudsman about the intrusion of the corporate sector in their environment by determining priorities, curricula and even professors, and the university defends itself by saying it has been driven to breach academic independence because governments are underfunding, and governments say the electorate has demanded cuts in deficits and cuts in taxes, and the corporate sector says it is only stepping in to fill an urgent need to keep education relevant, where is the jurisdiction to deal with the complaint and to make recommendations to all parties involved?

Would this be a situation where a coalition of ombudsmen could investigate the situation and could a multisectoral team be formed?

Governments can work together, companies can work together, everyone can work together—why shouldn’t ombudsmen also work together?

Is there any reason why we cannot collaborate on certain issues with other officers of the legislature? Could a team be formed by staff of the ombudsman, the auditor general and the privacy commissioner to deal with a complainant that a governmental agency is building cradle-to-grave files on every Canadian, “for research” of course.

Could a banking ombudsman and a university ombudsman join a bar association to develop fair practices with regard to collections on student loans?

Are ombudsmen promoting the kind of legislation and changes in their mandates so that they can participate in such cooperative endeavours while protecting confidentiality?

Is it conceivable that people who are marginalized in a developing country might appeal to an ombudsman about the adverse impact they are experiencing as a result of the foreign mining corporation taking over their common lands and livelihood, with the result that an investigation is instituted involving the ombudsman in the country where the corporation has its headquarters?

In Canada we have been reading a great deal about a Canadian resource exploration company operating with the support of the Canadian Government in the Sudan, where there are accusations that the government is routinely violating human rights. It is alleged that the company is itself violating human rights, as well as facilitating government violations.

How are concerned Canadians to know what the role of their government is? How can they have an independent investigation to determine the facts? Should the Canadian Human Rights Commission be able to look at these allegations? Should not ombudsmen be more active in strengthening international institutions such as the United Nations Human Rights Commission to deal efficiently with questions such as these?

Ombudsman in the International Scene

Have ombudsmen worked hard enough to ensure that they can take an independent role in the activities of international organizations rather than be subject to government instructions or be shut out entirely?

Can we make more use of international mechanisms? Our colleague from Argentina, a former *Defensor del Pueblo* Dr. Jorge Maiorano, took a complaint to the Organization of American States when the government failed to implement certain recommendations.

Are we aware of the rights of the child? The developing international convention on the rights of indigenous peoples? The rights of peoples to determine their own destiny within a nation-state?

As change occurs, significant issues involving the relationship of people and government have become increasingly complex and frequently seem to define themselves in a way which places themselves outside the ambit of the ombudsman. There is an urgent need for flexibility, a need to be creative in the interpretation of your mandates.

If it is brought to an ombudsman's attention that a family has no housing, no food and that children are sick, can the ombudsman hear the complaint that is being made and act on it? “Not within our jurisdiction,” you say? What if we receive a thousand such complaints? If

an issue raises the public's concern about government action, should there not be at least consideration as to whether the ombudsman should be involved?

Are there not many occasions in which complaints on their face appear to be political and social issues yet do in fact involve subjects which are clearly within the jurisdiction of an ombudsman? If we hear that a First Nation community is experiencing an epidemic of suicides by twelve year-olds or teenagers, should a public sector ombudsman not examine the role of government administration in such a situation—especially if the population has a high degree of dependency upon government?

Change in the Ombudsman's "Customer Relations"

What about our clients? What is changing about the people who ask for our services and what is changing about the way we respond?

There is one test to see if you have changed with the times at the same rate as your clients: is there easy access to your user-friendly website? Through the website, do you receive—even encourage—complaints and inquiries by e-mail? Do you use e-mail for replies when that is appropriate? How do you accommodate people who do not have access to the Internet and e-mail?

Is your ombudsman office on a hundred other websites as a link, on websites of advocacy groups or familiar to support and peer groups for marginalized people? Do the websites of the agencies within your jurisdiction advise their clients about the services available from the ombudsman? Do you have a client-centric strategy which permeates your entire operation, designed to provide client satisfaction and positive relationships? Is the strategy a part of training?

Is your staff trained to deal with rights issues, as well as issues of administrative unfairness? Do we understand how to provide equitable service rather than equal services to diverse peoples?

Change in the Ombudsman's Workplace

There are also organizational changes in the way we do business and the kind of staff we hire. The workplace environment is not the same as the 1980s. Increasingly, persons are offering themselves as independent consultants willing to make themselves available to an employer for a period of time rather than being in search of a life-long employment destination. People today are looking for a work environment that is supportive, appreciates performance, cares about its staff, is inclusive, includes them in decision-making and offers opportunities for promotion. Does that describe your office? And if not, are there things you can do to move in that direction? Are you rewarding creative attitudes through recognition programs or by promoting awareness?

Is your workforce representative of the public you serve? Are they accessible, flexible and mobile? Is decision-making shared? Have you escaped the rigidity of a bureaucratic, paper and written-rule regime? Providing a motivated and inclusive workplace is very much a part of leadership for change.

Change and the Ombudsman's Image

Has the image of the ombudsman changed to keep pace with the times? Do ombudsmen promote an image that is based in reality, that results in the public regarding you as expert, efficient problem solvers? Do you provide an image of service which will be of value to the public service and corporate employers, as well as an investigator of complaints? For example, do you protect the person complained against from unjustified complaints? Do you help governments and institutions resolve small problems before they become big ones? Just what is the image that the public you serve have of you? Do you know?

We cannot expect the public to regard the ombudsman as an important pillar of democracy if the ombudsman seems to look and act in the same way it did when the office was created.

Do you post service standards and publish results? What about client satisfaction surveys? Are they part of your own commitment to ongoing transparency and evaluation?

Does your staff understand that client satisfaction—feeling they have been treated well, promptly and fairly—may be your best defense against critics who think your government, university or corporation can do without an ombudsman?

There will be, of course, a variety of reactions to my suggestion that ombudsmen acknowledge and shape change. Some will want to play it safe. Others will keep their heads down, do their jobs as best they can and hope that if they stay out of the line of fire they will survive.

I am sure there will be those of you who, with the best of intentions, will say, “Play it safe. Championing change is the slippery slope for the ombudsman.” Well, we are already on the slope, we’ve already taken the first steps, and we can either go down it skillfully or tumble down.

I’m not suggesting that ombudsmen march on Washington or Sacramento or Ottawa. I am not suggesting that independent organizations become partisan, nor do I suggest that ombudsmen take political positions. I do suggest that ombudsmen speak out in areas in which they have a legitimate role, that you speak on the basis of your investigative findings.

Ombudsmen need to speak out wherever the public’s rights to an independent investigation is affected.

I believe the public believes in the ombudsman, believes the ombudsman will look out after their interests and alert them to dangers which threaten their relationship and rights in the democratic equation.

I am suggesting that ombudsmen exercise their mandates in a way that takes full advantage of the opportunities they have, to use their influence, networks and powers in a responsible proactive manner.

Becoming an ombudsman doesn’t mean you put your social responsibilities and your promotion of inclusive human rights on hold. To the contrary—aren’t those the characteristics which were important factors in being selected as an ombudsman?

To those who say “no thanks, I’m more comfortable on the sidelines,” I say those sidelines are becoming very narrow. No institution and no position is safe unless it is relevant

and needed by the public.

Perhaps more than others, ombudsmen must stand up as accountable leaders in the forefront of change.

Ombudsmen were created in response to a wave of change two or three decades ago, and can be easily swept away by the waves of change which are now occurring if we just stand still and let it engulf us.

We have a fantastic opportunity to stay on the leading edge!

One initiative I was involved in may serve as an example of what I mean. Last year, we organized a conference called “Accountability, Governance, and Human Rights in an Era of Change.” We brought in persons in related fields from outside the ombudsman community to meet with ombudsmen. We invited a good mix of international participants. And yes, we did find a commonality of interest and concern, and a desire to keep this network active.

Taking Leadership in Shaping Change

So assume leadership!

I am not talking about coping with change, or surviving change. Let’s talk with each other about shaping change!

Leadership in collaborative problem solving!

Leadership in offering vision about the kind of governance the public deserves!

Leadership for the long haul—something which goes beyond the next election, the next quarter’s financial statement, the next promotion—that is what we are profoundly missing.

Are ombudsmen forbidden to be visionary?

From the privileged position of the ombudsman can you take the long view? To have the broader public interest clearly in your heart? To maintain fierce independence, to stand up and be counted with no axes to grind?

This is the very stuff from which the ombudsman institution was created!

Have ombudsmen become so trapped in the fine print of our charters that we have forgotten our origins?

We are not alone in this, mind you. Lots of support is available.

New institutions are active in supporting greater accountability and transparency, in marking the path to better governance—privacy commissioners, ethics officers and conflict commissioners are a few examples.

We have colleagues—internationally as well as at home--who have terrific ideas to share!

The media is available if we use it well.

Taking Care of Ourselves

The most important element in all of this, of course, is yourself. We need to take stock of ourselves.

We need to take care of ourselves, to continue with our personal development.

We need to understand our personal strengths and weaknesses so we know when to lead and when to seek support. We must recognize our frailties, our confusions.

We need to keep ourselves flexible, to maintain our compassion and sensitivity to differences.

We need to maintain focus lest we forget about why we are ombudsmen and whom we are working for.

We need to keep ourselves strong.

We must recognize that too often we confuse “leadership” with position and power. Too often we strive for position because we want to make changes, and then once we have increased power, we seem to forget just what it was that we wanted it for.

We have to leave behind the invisible baggage which weighs us down. We have to become aware of the way we have incorporated patriarchy, racism, colonialism and notions of superiority into the style of our lives.

Leadership means beginning with ourselves, acknowledging this part of ourselves.

Leadership means acknowledging our realities, speaking openly about the way we see the world and sharing strategies for dealing with our feelings.

Leadership is about celebrating successes when we achieve them, about promoting best practices and about sharing new ideas.

Leadership means developing a new sense of community among ourselves, revitalizing our spirits.

You can acquire and promote the attitudes which will be successful in helping you work across lines, valuing cooperation and joint ventures, being the bridge that brings cultures into discussing their common future.

Leadership means getting together more often—finding those who will join us in planning, strategizing, sharing experiences and testing new ideas.

Leadership means encouraging provocative discussion, pushing the edges of the envelope and knowing all this involves calculated risk-taking.

Ombudsmen need to be people who speak with vision, not privately in whispering circles, but publicly, openly. Vision is right here in this room—why hide it?

The public today craves leaders who hold themselves accountable to a transparent high standard, leaders who are there when it counts, leaders who build consensus on strategic action rather than merely their positions of power. Isn't that what ombudsmen are skilled at? Increasingly, an ombudsman's style of leadership will be in demand.

I salute you for what you have already done, and look forward with great anticipation to

the changes that you will generate.