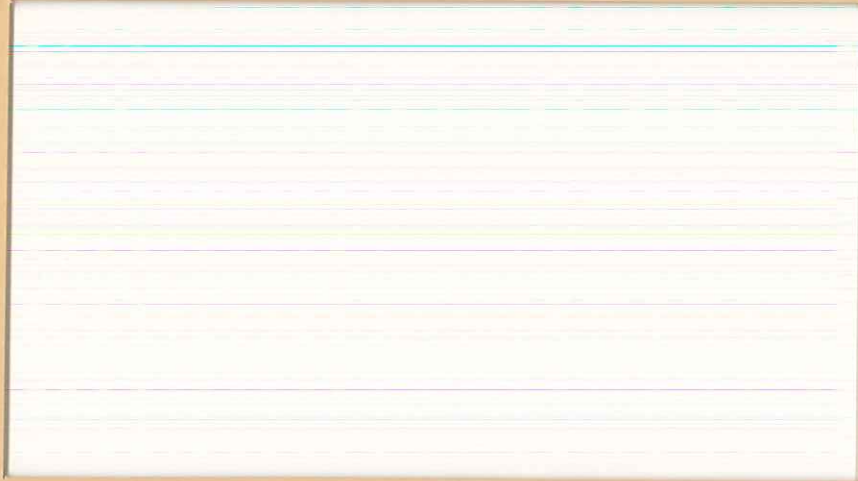


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**INTERNATIONAL OMBUDSMAN INSTITUTE**

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A NOTE ON COMMON ADMINISTRATIVE ERRORS

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## A Note on Common Administrative Errors

The main causes of error in administration and or complaints about administration may be summarized as follows:

1. Failure to determine relevant issues.
2. Failure to obtain accurate and complete relevant information.
3. Failure to consult affected parties.
4. Failure to apply relevant information properly to the relevant issues.
5. Failure to inform affected parties of decision accurately and adequately.
6. Failure to act in appropriate time.
7. Failure to be prepared to revise decisions or actions which have been taken.
8. Failure to act with appropriate demeanour and courtesy.

### Comment

1. It is clearly essential that an administrator must direct his mind to the relevant issues - one must ask oneself the correct question because clearly, if one does not ask oneself the correct question, one cannot obtain the correct answer.

This is a fairly simple proposition to state, and it is fairly obvious, but it is a very fundamental one and is stressed without apology. It is often useful for the administrator to ask himself - what is the real problem here? He will find that once he has accurately defined the problem, he is more than half-way to the answer.

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<sup>1</sup>Acknowledgments to Dr. D. E. Paterson, Office of the Ombudsman, Wellington, N.Z.

In the first place, a consideration of improper issues may cause the mind to be directed away from those issues which it should consider.

Secondly, it would be unwise to assume that there is in any given case only one relevant issue to be considered. Frequently there may be several issues which should be considered, either at the same time, or one after another.

Thirdly, it follows that what is a proper issue is not necessarily fixed and immutable throughout the entire period of consideration, and over a period of time the proper issues to be considered may alter, and there may well, in fact, be a succession of issues which require to be considered.

Finally, what is a proper issue is to be determined with reference to the terms of the instrument authorizing the decision in question, whether it be a statute, a bylaw, a regulation or the like; the instrument by which the power in question is conferred. In interpreting the terms of that instrument, regard must be had both to the specific words that are used and also the general purpose infusing the instrument.

2. Another fertile cause of error in administration is the failure to obtain and consider all relevant information available before a decision is made. The decision maker should divert his mind not only to the facts presented to him, but also to the question whether there ought not to be more or other facts, and if so, how these should be obtained. The discovery of a fact unknown to the decision maker is a common ground for upsetting a decision. Admittedly, when the fact is discovered the decision maker will often readily change his decision.

3. Then there is lack of consultation. Consultation with persons who are to be affected by decisions which are to be taken is clearly desirable and is broadly in accord with the principles of natural justice. It also has certain practical advantages.

By acquainting the persons to be affected with what is being proposed by the administrator, it has thus the effect of assisting to dispel suspicions and distrust which may have arisen merely from a lack of knowledge as to what the administrator had in mind. This result of consultation should not be regarded purely from a public relations point of view. It is important that trust should be engendered and unnecessary suspicion should be removed from those who will eventually be subject to the administrative action that is proposed, and who may well be called upon to cooperate with the administrators.

Consultation has another important advantage: it assists in avoiding the two basic errors just discussed, that is, failure to consider the proper issue and failure to have regard to relevant information. This is particularly so when the administrative action extends over a period of time because there may well be changes of physical circumstances, changes of persons involved, changes of attitudes of the same persons, which may develop and of which the administrator may be completely unaware unless he has maintained contact with the persons to be affected by the action. Consultation is essential to good administration.

4. Then there is failure to apply the relevant information properly to the relevant issues. That is to say, when one has ascertained what the relevant issues are and consulted the parties affected and obtained all the

relevant information, one then has to apply that information to the relevant issues and give an answer to the questions that are posed by those issues.

Several difficulties may arise in this connection. The issues may require a decision as to whether a factual situation did or did not exist, or happen in the past, or whether it does or does not exist or occur in the present, or whether it will or will not occur in the future. If the relevant information relating to the factual situation which is in question is all consistent and complete, then the decision as to the factual situation is not one of very great difficulty. There may, however, be various items of information pointing to a certain factual situation whilst other items of information point to a different factual situation. It then becomes difficult to decide which items of information should be given greater weight and what the correct decision as to the factual situation should be.


This aspect of decision making is one which is very difficult to review. For if a decision maker has asked himself all the correct questions, and taken into account all the relevant information and no irrelevant information, and has consulted the parties directly affected, and has exercised his discretion or judgment on the basis of his accumulated experiences, expertise, and technical skill, it is difficult to say his decision is wrong and should be replaced by that of another person, perhaps without the background of the decision maker. The whole question of "Wrong Decisions" is a subject in itself.

5. Once the decision has been made upon the relevant issue it becomes then necessary to communicate that decision, whether it be in the form merely of the giving of information or advice, or in the making of an order, to the persons who are required to act upon it.

In this act of communication there may sometimes be error. It may be that the decision is not communicated at all; or it may be that the content of the decision is communicated upon the basis of some assumptions or qualifications which are not expressed so that the result is misleading or inadequate; or it may be that the decision is expressed in terms which are themselves uncertain and ambiguous.

The result is therefore that it would be unfair to expect persons to act in accordance with the decision or to penalize them for failing to act in a particular way in response to it.

6. An aspect of administrative action which may frequently lead to error is its timing.

 A failure to take action at the appropriate time may well result in that action being incorrect or inappropriate; and it may well result also in considerable opposition and resentment being taken by the private citizen to it.

Administrative decisions need not necessarily and always be taken rapidly or quickly, because appropriate timing does not always involve rapid or quick action; sometimes it may involve deferment to allow further information to come to hand. Delay for delay's sake cannot be advocated, for there is nothing so dangerous as to delay making a decision which is difficult in the hope that it will become easier to make that decision as time goes on. In the normal course of events, experience shows that difficult decisions do not become any easier to make as time goes by, and they should be grappled with as soon as all the relevant issues and information have been determined.

On the other hand, of course, to act precipitately is as bad as to



act tardily, because this will normally result in relevant issues not being determined and relevant information not being obtained or being overlooked. It is sometimes very tempting when faced with a difficult situation to make a rapid decision to cut the Gordian knot instead of teasing out the tangled ends, but this temptation should be resisted. However, a good Army staff training saying used to be: "The wrong decision given in time is frequently better than the right decision given too late." Finally, what is an appropriate time for decisions or actions to be taken depends sometimes on quite extraneous circumstances which have nothing to do with the issues in question.

In this tangled web of conflicting counsel lies full scope for the exercise of the art of administration.

7. Readiness to reconsider or review a decision which has been taken and communicated is a vital element in good administration.

Not infrequently after a decision has been made and communicated to the private citizens who are to comply with it, further information comes to light, possibly from them, possibly from some other quite extraneous source, and this indicates that the original decision is, or may be, incorrect. At that stage, when the decision maker believes that he had come to a decision which was correct at the time, and he has a number of other pressing matters requiring attention, there is a very human temptation to feel that one should refuse to reconsider the decision that has been taken. But this temptation should be resisted because there may well be in the additional information something that indicated that the original decision, although it may have been at the time believed to be correct, and although it may at the

time of the information then available have, in fact, been correct, is a proper one no longer. Intransigence and refusal to review that decision can only mean that an incorrect decision has been perpetrated and perpetuated.

Moreover, and this is sometimes worse, if it becomes apparent that a decision which has been made is incorrect, then the administrator is often tempted or indeed required by circumstances, to justify the incorrect decision and support it in one way or another; thus the original incorrect decision may be compounded and the administrator may be led on to take other administrative action which is incorrect and which contains errors which are sometimes grosser than those contained in the original decision - grosser both in the extent of the errors and also in the intention which lies behind them, since they may be deliberate as distinct from the original error which may have been quite unintentional.

For these reasons, therefore, it is important that an administrator should be ready to reconsider his decision when it is brought into question. This applies also to an Ombudsman, who should always be willing to re-open a case and review a decision, at least once.

8. Finally, there is an aspect of administration which is sometimes thought of as less than an integral part of official public administration, but which is one nevertheless which can give rise to justifiable complaint to an Ombudsman - that is conduct of an unbecoming kind by an officer of the governmental authority.

Persons carrying out public functions are expected to observe certain standards of behaviour, both in the conduct of those functions, and also in the conduct of their private lives which have some bearing upon

their public functions, and it has been the experience of Ombudsmen that sometimes those standards are not met.

All the functions of government, whether central or local, can be carried out fully and effectively only if the persons carrying them out have the confidence and co-operation of the persons affected by those functions. If there is something in the conduct or the behaviour of the public official which removes that confidence and co-operation, then there is correspondingly a reduction in the effectiveness of the administration.

Usually, the complaints with regard to the behaviour or the manner of public officials, have related to the way in which a public official has spoken to or dealt with a member of the public, and usually the complaint has been that the official has been unduly discourteous and brusque in his manner. The potential for such discourteous behaviour is, of course, most strong where the official is carrying out an enforcement type of function, and accordingly complaints have been made as to the discourteous and overbearing attitude adopted by some police, traffic officers, etc. But the clerk behind the desk is not immune from such behaviour. Sometimes the decision process itself is thrown out of gear by peremptory public servant behaviour.

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