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The Right Honourable David Carter
Speaker of the House of Representatives
Parliament
Private Bag 18 888
Parliament Buildings
Wellington 6160

05 September 2015

Re: **Request for an inquiry into the Office of Ombudsmen's handling of complaints against the Health and Disability Commissioner (ref. # 3xxxxx); and request also for your support for a wider inquiry and audit into the Ombudsman's Office by the Office of the Auditor General (OAG); response to your letter dated 25 August 2015**

Dear Right Honourable Mr Speaker

Thank you for your letter dated 25 August 2015, which was in response to my request from 15 May that I sent to your Office by email on 16 May 2015. In my request letter, accompanied by a number of attached relevant documents, I had sought your assistance in the above mentioned matters of concern. In particular I had requested you to launch a special inquiry into the Office of the Ombudsmen's handling of two complaints I had made against the Health and Disability Commissioner (under the Ombudsman's ref. number 3xxxxx), and I also asked for your support for a wider inquiry and special performance audit into that same Office - by the Office of the Auditor General.

While I respect and appreciate your response, and while I understand the limited oversight responsibilities that you as Speaker of the House of Representatives have over the Office of Ombudsmen, I regret that I cannot agree with many of your conclusions in this matter. I acknowledge that you made inquiries into the matters of concern that I presented to you, and sought a response from Chief Ombudsman Beverley Wakem. I take note that under the heading '*1. Request for Inquiry into Decision on Complaint*' you comment, that it was Dame Beverley Wakem's "*personal*" decision not to investigate the complaints I had filed with her Office, and that she arrived at her decision only after considering all facts she considered to be relevant. Furthermore I also take note that she continues to reject the criticism I made of her investigator, who assisted her in reaching her decision.

In your response you do refer to a letter with a decision from Chief Ombudsman Beverley Wakem that was supposed to have been sent to me on 14 May 2014. You write that "*nothing in that letter supports a suggestion that your complaint was not given proper consideration*". You note that this letter was "copied" by me to your Office (with my correspondence and the attachments).

In the other matter for which I sought your assistance, you wrote under the heading '*2. Request for Auditor General Inquiry*', that you were aware that I had already made such a request to the Office of the Auditor General (OAG), and that it had been declined on at least three occasions. You referred to the "AOG's" letter dated xx April 2015, in which the OAG's Maria Rawiri restated to me, that the OAG would not be conducting an inquiry. That was indeed a third, disappointing response I received from that Office, and a copy of it had been provided to you, as you rightly confirm. I take note that in your letter you are on four occasions referring to the "AOG", which I presume is meant to be the OAG.

My response to your comments, considerations and conclusions

As already stated above, I appreciate your response, and also the inquiries you have made into the matters of my concern with the Chief Ombudsman Dame Beverley Wakem. I am though not aware of any letter dated 14 May 2014 that I ever received from the Chief Ombudsman or any of her staff. Nor did I send you a copy of a letter with that particular date. The Ombudsman's decision you may be referring to can only be a first letter signed by Beverley Wakem on 28 May last year, which contained her decisions on my two (not just one) complaints against the Health and Disability Commissioner (HDC). I may again assume and conclude that both my complaints were actually assessed, considered, and that the corresponding decisions upon them were also prepared, firstly by the Ombudsman's investigator Xxx Xxxxxxx. As a person who has worked in administration, I am fully aware that Dame Beverley will not have herself looked at every single document with correspondence or other evidence that I presented. She will have relied on her own staff doing this, and then made the final official decisions on my complaints herself, as it is her senior function and responsibility.

I never asserted that it was Miss Xxxxxxx alone - as investigating officer, who made the ultimate decision/s upon my complaints. The comment in your letter is therefore not quite correct, when you write under '1. Request for Inquiry into Decision on Complaint': *"You have referred to the Chief Ombudsman's investigator as having made the decision of which you complain."*

Hence I did not seek a review of a decision made by Miss Xxxxxxx when writing to the Ombudsman again on xx June 2014. I did rather address the particular comments, considerations and explanations in Dame Beverley Wakem's letter from 28 May 2014 in such a way, that I attributed them to have been prepared for her by Ms Xxxxxxx. By doing this, I gave Ms Wakem the benefit of the doubt, and an opportunity to look herself at the issues I raised, or have another investigator review my complaint and the decision she had already made. It was upon reading and considering that letter from me, when Dame Beverley Wakem then responded with a final letter to me, dated xx July 2014.

That letter contained the following comments: *"I do not intend to respond to the points raised in your correspondence. On the information before me I find no basis for me to take up an investigation"*. After expressing her limitations she also wrote: *"I cannot see the need to commence and investigation under the Ombudsmen Act 1975, into the HDC's handling of your complaints, for the reasons explained in my earlier letter."* Dame Beverley then closed her letter with these comments: *"As to your comments regarding Ms Xxxxxxx I reject these utterly and find both your allegations and tone offensive. No further communication will therefore be entered into regarding your complaint against the HDC."*

It was this second response from Ms Wakem that I admittedly found very upsetting and unreasonable, even more so than the earlier response with her decision. I had made great efforts to point out a number of detailed aspects that her investigator must clearly have failed to acknowledge, to correctly understand and to therefore objectively and fairly consider. I simply asked for a review of a decision, as I felt that relevant evidence had been overlooked or not been given the attention it deserved, and that some irrelevant evidence had instead been relied on. But in her response Ms Wakem simply dismissed my request and bluntly refused to look again at my complaint.

While I appreciate that Ms Wakem does under the Ombudsmen Act 1975 have discretion to investigate a complaint, or to take no action, it remains to be my view that she has failed in fulfilling her function and responsibilities under the Ombudsmen Act, as I outlined in my letter to your Office. With my letter to Ms Wakem from xx June 2014 I had then initially expressed my concerns that her investigating officer Ms Xxxxxxx had failed in her duties. With my complaint from xx November 2013 I presented clear evidence (email copies and letters) about staff at the HDC Office being dishonest about correspondence and evidence they received from me in relation to the earlier HDC complaint under reference C11HDCxxxxx. I presented further evidence in relation to that complaint, showing that the HDC had compelling reasons to investigate my complaint to their Office. I also presented clear evidence with my second Ombudsmen Act complaint from xx Dec. 2013, being in relation to the other earlier HDC complaint under reference C12HDCxxxxx, which should have raised serious questions about the fairness, objectivity and reasonableness re the way my complaint had been handled.

I do maintain my position that while the Ombudsman can under section 17 (1) (b) of the Ombudsmen Act 1975 refuse to investigate a complaint, **Ms Wakem and her investigator did in the case of my complaints fail to have regard to all the circumstances of the matter, when deciding that a further investigation was unnecessary.** Relevant evidence, and the impact of any decision made,

must be important matters to consider by an Ombudsman, when conducting an assessment and an initial investigation, while having regards to all the circumstances of the matter. In my view, this did not happen in the handling of both of my complaints. I reassert what I stated in Para [19] in my letter to your Office from 15/16 May 2015, that the Chief Ombudsman has failed in performing her duties, as one should reasonably be able to expect from her. As an employer she should have examined the performance of her investigator by reviewing the way my complaint was handled.

In having considered all this, I do understand that investigators, and also the Ombudsman herself, can despite of all their efforts to apply due diligence and care in performing their functions, still be prone to make mistakes. As that would likely have been the reason for the disputed decisions, then I would have appreciated the responsible person/s to re-examine their relevant actions and conclusions, and what evidence they may have based their decision on. But this appears to not have happened, as it was already made clear by Dame Beverley Wakem in her letter from xx July 2014. Ms Wakem clearly refused to review my complaints, by relying on the competency of her investigator. Hence I remain extremely disappointed about her response to your Office, which you have communicated to me.

As for my three requests to the Office of the Auditor General, I do also in that regard consider, that apparently not all my correspondence and evidence was given the required consideration, and that the OAG used various explanations and justifications to uphold their repeated decisions to not investigate the Office of the Ombudsmen. But as it has been explained to me, that the Auditor General does also have a certain discretion to decide on what requests for inquiries she may follow or act upon, and that her Office can also prioritise such requests, while giving consideration to matters such as available resources, I have given up on any hope that there will ever be any action taken.

I already expressed my disbelief and great disappointment about the OAG's refusal to conduct an inquiry and special performance audit into the Office of Ombudsmen by way of a letter dated xx April 2015. This letter was also sent to your Office for your attention. Apart from some also presented earlier correspondence with the OAG, I only received one further letter from their legal department, dated xx May this year, which was in response to a Privacy Act request I made to them on 0x May. It revealed that there had been no correspondence between the OAG and the Office of Ombudsmen, but some notification of your Office about the OAG's letter to me from 09 April this year.

In regards to your brief comments about the OAG having already considered my requests for an inquiry and a special audit, and that you do not intend to consider my request further, I can only express my great disappointment. It is my impression that it is due to questions about available resources and resulting prioritisation of matters the OAG deals with, why many deserving requests for inquiries or performance audits not accepted and taken action on.

Conclusion

Having been made aware of your limited authority over the Office of Ombudsman, and also understanding that you cannot get involved in "staffing matters" at that Office, same as that you cannot review any findings or decisions with respect to individual complaints of that Office; I am nevertheless disappointed about your response. Given the fact, that the Ombudsmen are accountable to Parliament for the general performance of their functions, it is my impression that you as Speaker of the House of Representatives do have some powers to ensure that sufficient scrutiny is applied, and that at least proposals for needed improvements to the Office's performance, are considered - and where appropriate recommended. This should in my view have enabled you to perhaps consult with the OAG about a possible special inquiry. I again note though, that you do not consider this to be necessary.

In view of your response, I feel that I have exhausted my efforts to seek any remedy or solution to my complaints from any so-called "watch-dog" authority like the Officers of Parliament or from you as Speaker. Earlier requests for investigations, for reviews, and for inquiries or other measures - like a performance audit - have already all been dismissed as "unnecessary". This has extremely disappointed me and as a matter of fact also destroyed my faith in the mentioned Offices. In my view, the systems that are in place are broken, dysfunctional and clearly not delivering the kinds of outcomes they are meant to deliver under the statutory and institutional framework that exist here in New Zealand. I say this, knowing that there are many other persons, who have gathered similar experiences with particularly the Health and Disability Commissioner, in fewer cases also with the Privacy Commissioner, and in increasing numbers of cases with the Office of Ombudsmen.

I can inform you also, that the situation at the Office of Ombudsmen has by no means improved over recent times, as recent letters sent to me by Ombudsman Professor Ron Paterson and Deputy Ombudsman Leo Donnelly reveal. Both have repeatedly mentioned a lack of resources, a high workload, unavoidable delays and recently even a need for them to prioritise cases they deal with. This does make it abundantly clear that the Office of Ombudsmen is severely under-funded, and unable to perform its functions and responsibilities in a timely manner. The existing work load pressures that the Ombudsmen and their staff face will inevitably in at least some cases lead to poor quality outcomes in assessments and investigations of complaint matters brought to their attention.

Given your oversight role of the Officers of Parliament, for their general performance and function, I consider it appropriate to pass on to you two recent letters that present sufficient further evidence that the Office of Ombudsmen requires more resources to function. I will attach the copies of letters from Prof. Ron Paterson and Leo Donnelly to the email that will also carry this letter. Also will I attach one (of a few) letters from me, in which I had requested an update on the progress of complaints.

I will leave it up to your Office to consider whether there is any other action you may be able to take, so as to ensure that the Office of Ombudsmen will be able to receive more funding and resources in future, so that it can fulfil its very important role. At present I cannot recommend any person with any matter of concern to complain to the Office of Ombudsmen, simply for the unacceptably long times it takes to even get a first response, let alone a decision upon a complaint. I would rather recommend to people that they seek remedies through the judicial system, if and where this may be possible.

In regards to the two complaints to the Office of Ombudsmen, which I presented to your Office, I will now consider passing these matters on to a senior investigative journalist, for his examination. I may alternatively also consider taking other steps, to raise more public awareness about the unacceptable situation we have with the Office of the Ombudsmen, and also the Health and Disability Commissioner's Office. People are in ever increasing numbers being denied justice, and this is most certainly a matter of significant public interest and concern.

Once again, though, I thank you for at least having looked at the matters I brought to your attention.

Yours sincerely

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Attachments to the email(s) carrying this request letter (for your interest):

- 1). Speaker of Parliament, Complaint abt Ombudsman, re HDC complaints, ltr, X. Xxxxxxx, 05.09.15;
- 2). Ombudsman, complaints, 39xxxx + 39xxxx, request f. update, X. Xxxxxxx, ltr, 17.05.15.pdf;
- 3). Ombudsman, O.A. complaint Dr Xxxxx, also update re complt 36xxxx, reply, R. Paterson, 17.08.15.pdf;
- 4). Ombudsman, Complaint, Ref. 39xxxx, reply by Dep. Ombudsman, 31.08.2015.pdf.