

chat with
Shahid Minto



A procurement ombudsman was part of the government's *Accountability Act* initiative passed at end of 2006. The Office of the Procurement Ombudsman (OPO) operates at arm's length from federal government departments, and has, in its own words, three key roles:

- Review departmental procurement practices to ensure greater fairness, openness, and transparency in federal procurement and make recommendations;
- Review complaints from Canadian suppliers respecting award of a contract for acquisition of goods below \$25,000 and services below \$100,000, as well as the administration of a contract, regardless of dollar value;
- Ensure the provision of an alternate dispute resolution process at the request of each party to a contract.

Shahid Minto, named procurement ombudsman designate last September, was officially appointed as the Government of Canada's first Procurement Ombudsman on May 5, 2008. He is a chartered accountant with a master's degree in political science and a professional degree in law. He joined the Office of the Auditor General (AG) in 1977 and served as Assistant AG from 1989 to 2005. Minto then worked as Chief Risk Officer at Public Works and Government Services Canada (PWGSC) from September 2005 to September 2007, with a mandate "to strengthen the fairness, transparency and accountability of the department's operations and manage the department's ethics and fairness monitoring programs." He now works with a staff of 20 and an annual budget of some \$5 million.

Let's chat with Shahid Minto on his approach to this new role.

Neither fish nor fowl

Newman: The procurement ombudsman was put in place through the *Federal Accountability Act*, legislation developed, to some extent, to redress perceived shortcomings seen through the lens of the sponsorship scandal. Is that an appropriate context for the OPO initiative? As an independent resource, the OPO reports through PWGSC. Was there consideration given to making the procurement ombudsman an officer of Parliament?

Minto: There were discussions about status as an Officer of Parliament, however, as an interested candidate, I was not involved. Administrative ombudsmen are normally appointed by the deputy minister or the minister and report to them and their mandate can be changed quite quickly. The advantage in having authority through the *Accountability Act* is that I hold a legislative position, appointed by order-in-council and my mandate, once approved by Parliament, cannot be changed without Parliamentary approval. That gives me more independence.

I have been given a mandate and I am going to make it work. Our appropriation comes through PWGSC. However, the intention of the *Accountability Act* was clearly that we work at arm's length from government departments. We signed a MOU with the DM of PWGSC that supports and maintains our independence. PWGSC provides us with administrative services on a cost basis and we pay through line item transfers. It makes no sense to have a separate administration unit. I'd rather put my money into the program side. There we have total and complete independence. We are responsible for what we will do, where we do it, how we do it and how we report. There is absolutely no interference from any central agency, minister's office, or deputy's office. My budget is approved separately by Treasury Board.

Not just your dad's old recourse

Newman: The Canadian International Trade Tribunal (CITT) is another mechanism for contract disputes. It is perceived as having a defined and rules-based process that benefits suppliers who deal with it regularly, know its specialized functioning, and can afford the costs. How does that square with OPO operations?

Minto: We stressed making our regulations fairer and simpler from an operational perspective, especially for small businesses. For example, the first draft of the legislation indicated that complaints had to be filed within 10 days of the award of a contract. For large businesses, that may be reasonable, but for a smaller business, it could be onerous. We asked for a 30-day minimum and added flexibility if something were to occur beyond the power of the supplier. The government accepted. We want to be very nimble, responsive and helpful.

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One focus of my mandate is to deal with complaints from suppliers, either for contract awards or contract administration, similar to the CITT on the award side, except CITT has a mandate for goods over \$25,000 and services over \$100,000. Before the OPO was created, for amounts under that, small and medium businesses had no neutral, independent, arms-length place to go with their complaints.

A second part of our mandate is contract administration. The Government of Canada signs multi-year contracts: for submarines, there are 20-year maintenance contracts; for computer systems, 10-year operating contracts. Over the life of these contracts, circumstances, people's understanding and even people change, so issues come up in everything from delay in payment to inspection, schedules and other aspects. In that area, our mandate is not focused on any dollar limit. CITT does not have any mandate to look at the administration of contracts, only the award. Another distinction is our capacity to provide alternate dispute resolution. If both parties agree, we can engage mediators and other tools to address their concerns. The Department of Justice has established a centre of expertise to deal with alternate dispute resolution and we work with them in a specially designed structure and framework.

CITT does not address one aspect of our mandate in the Act that may have the most value – to review procurement practices of all government departments and make recommendations for improvement to ensure that they support openness, fairness and transparency. My mandate is government-wide and comprises the whole procurement process, the full supply chain – the preventive part of the job. Done well, this will link the aspect of complaints directly to that of procurement practice review. If we find a number of complaints in one area of procurement, we can take a prescriptive approach to address changes to the system itself, not only a one-off individual case. If we are effective in dealing proactively, the reactive should diminish considerably. We must demonstrate to both private sector people and government employees is that we know the business; we are independent and neutral; and we work professionally with rigour to earn their trust. When we recommend something, it is not to take anyone's side – it is because we believe it is the best solution.

Who do you love?

Newman: There are a lot of people and groups who have a very real interest in federal procurement. Who do you see as your primary interest, clientele or stakeholder?

Minto: Ultimately, all Canadians, to ensure they can have confidence in the public procurement process. More specifically, we see our stakeholders as two-fold: suppliers, particularly smaller suppliers – the SMEs and public servants. We want to demystify the government procurement process for suppliers – to simplify, explain and show people what they need. As for public servants, I was with the AG during program review in the mid-90s and I know the impact of cuts in auditors, financial officers and procurement specialists. So, I have to address the capacity side in the public service and bolster our truly professional public procure-

ment community – better trained people with good tools and strong leadership – that would transform the procurement business. Public servants genuinely want to better serve the public and the supplier community. If we can help them do their jobs better, we are also serving the supplier community better.

People have become increasingly risk averse. PWGSC does 80,000 contracts annually. Mistakes will happen and if one goes bad, some people see everything gone bad. Consequently public servants increasingly avoid risk by going by “the book,” but the books have become volumes and unless we reduce the volumes of those books, things will not be done right. People often choke on rules, rules and more rules. We are going to encourage government departments and Treasury Board to look hard at the rules in light of the principles we wish to achieve, rather than the rules themselves, to give people a chance to exercise their professional judgement and hold them accountable for the results, not just the process. We find that many rules are contradictory or overly complicated and defeat the purpose for which they were set up.

How do we know thee?

Newman: What has the OPO done to let people know it exists and what it can do?

Minto: Officially, we have been set up since May. We have already met with about 30 deputy ministers, four or five industry associations, and with members of Parliament. I have spoken at public conferences and to procurement officers themselves in the regions since my interim appointment in September.

Public procurement people are looking for help. They are isolated. The procurement community in the government has taken a real beating in the last few years and morale is fairly low. People are saying “get some of these rules off our backs and let us get on with the job.” They are face to face with suppliers and departments who need their services and often bear the brunt of any anger that is present. I remember a time when procurement was a very good career path for a young person joining government, working with different commodities and departments. We don't seem to have that anymore. Hopefully we can contribute through our work to a more professional community – a place of choice for young people joining government.

So far, the OPO has received 50 to 70 inquiries or complaints, though few formal complaints. We hope to work more closely with the media, and business and industry associations to communicate effectively. We hope to have literature, booklets and pamphlets, out soon. We are not planning advertising, but will issue a public notice that we are operational. We have a significant outreach program and budget to do it, but the real proof will be how we perform. *nm*



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