

Lying in unison - TEACHING NOTES

Synopsis of case

In late 2002 an Algerian refugee arriving at Auckland airport was detained as a threat to national security. This attracted the attention of journalists, but a communications manager in the New Zealand Immigration Service (Ian Smith) denied anyone had been detained. The truth quickly came out and with it editorial comment about the ethics of misleading the press. Smith circulated the editorial to 300 people with the facetious comment “I was let down badly, everyone agreed to lie in unison, but all the others caved in and I was the only one left singing the original song.”

Within days the opposition research unit used the Official Information Act¹ to request any information connected with the detention of the refugee. Eventually the Ombudsman authorised the request, but without having been informed of Smith’s facetious annotation. The opposition promptly produced a copy of Smith’s comment about lying in unison as evidence of an organised cover-up.

The opposition’s disclosure came in the first week on the job of a new Secretary of Labour, James Buwalda (the Immigration Service was part of the then Department of Labour). Buwalda commissioned an internal investigation and issued a public report within four weeks. He “found no evidence” of deliberate deception but initiated employment action against unspecified employees. Six months later the Ombudsman published the results of his own inquiry. This was much more complete and damning than the internal inquiry as it concluded that Smith had “deliberately dissembled”. Another press and political rumpus occurred as the internal inquiry was dismissed as a whitewash.

This teaching note has been written by Adjunct Professor Mark Prebble (School of Government, Victoria University of Wellington). It has been designed for use with the case studies 2013-147.1 and 2013-147.2. The use of teaching notes is restricted to authorised persons.

© The Australia and New Zealand School of Government. Version 27-08-2013. Distributed by the Case Program, The Australia and New Zealand School of Government, www.anzsog.edu.au. No further reproduction or distribution permitted without prior written consent.

¹ Equivalent to the Freedom of Information Act in Australia.

How this case could be used

This case offers several teaching opportunities, including:

1. Issues of **public accountability** and conducting **inquiries**. This would focus on the interaction between Buwalda's inquiry process and the Ombudsman's inquiry. It could cover methods of running inquiries: for example, why did Buwalda use an internal auditor rather than an external person with greater expertise or possibly referring the inquiry on to another agency (such as the Ombudsman, the State Services Commissioner or the Auditor-General all of whom have powers to run formal inquiries)? And were the terms of reference "conspiracy to deceive" too narrow?
2. Links between public accountability and **employment obligations**. Buwalda was in a tricky position. Though he could have little faith in Smith, he had to be careful what he said in public. If he had said in public that Smith was not trustworthy (like the Ombudsman did) he would probably have lost an employment case for unjustified dismissal. But by releasing a weaker report it seemed that he could not see the magnitude of the offence and it looked like no one would be held to account. This raises another question about managing an inquiry: once Buwalda had completed his inquiry, why did he publish his report, rather than pass it to the Ombudsman as a contribution to the Ombudsman's inquiry? That might have allowed him to continue his employment process without exposing him to charges of cover-up.
3. **Leadership** issues, including use of investigations as a means of coming to grips with a new department. During the course of his investigation Buwalda learnt enough to know that he had inherited a bigger culture problem than he had anticipated. That gave him an opportunity to lay down public markers about the behaviour that he expected, but it is a bruising way to establish a relationship with a new team.

All these issues are better explored in executive teaching sessions, or possibly the more technical issues exposed in issue two (accountability and employment) might be explored in a specialist post-graduate course looking at issues of public sector employment.

The management of inquiries may seem a little esoteric, but senior officials often need to handle such matters. In addition, any person can be swept up into an inquiry, and an understanding of the problems faced by those conducting inquiries may help those being enquired into to survive what can be a stressful process.

The suggestions for class discussion in this note relate to issues of public accountability and their links to employment obligations. Those interested in the case as an example of coming to grips with a new team and a new department will need to fit the narrative into the leadership approach that they wish to illustrate.

Course audience

- Middle and senior managers on MBA/MPM and executive programmes.
- Honours/Masters level students on specialist courses on public sector employment.

Suggestions for Class Discussion

The case study is structured so that at the end of the A Case it is not clear that Smith has been deceitful. It is equally possible at that point that he has just been a bit cavalier at the outset and the interactions with the Ombudsman were all a misunderstanding. But there are sufficient hints to show that he is at least unreliable and a bit cocky: these include his initial careless handling of the press, his habit of writing facetious comments, his apparent inability to find notes he had written, and his failure to complete a security clearance. The fact that his behaviour had endured for some years also gives a hint about the culture problems that Buwalda was unearthing. This gives an opportunity for discussions on the options the Buwalda faced, and then on the course that he followed.

This case can be taught alongside *Advice under pressure: the OzCar Controversy* and *The New Communications Manager* cases. The *OzCar* case is a close parallel, with the guilt of the protagonist unclear until the B Case. *The New Communications Manager* demonstrates the opposite; management in that case jumped to the conclusion that the new employee had failed to declare a conflict, when the fault lay entirely with the managers. Taken together this suite of cases demonstrates the importance of calm deliberation when handling processes of public accountability.

A discussion based around processes of accountability (Bovens, Mulgan) can stimulate lively interaction. Among most practitioners inquiries are unpopular; many are in favour of the truth, but they don't much like the available methods to establish the truth.

Among a group of executives it is likely some will have had some involvement in some form of inquiry, either as a sympathetic onlooker to the strain endured by colleagues, or as a hapless participant whose behaviour is the subject of the inquiry. Getting them to talk about their experience gives extra reality to the theory. Similarly there are often participants who have spent time in a CE's office, or in a legal team; such people will often have seen the process of setting up an inquiry or even conducting one. They too are a useful source of experiences to share with the group.

References, recommended reading

Bovens, Mark (2005) Public Accountability, in Ferlie, E., Lynn, L.E. and Pollitt, C. (eds) *The Oxford Handbook of Public Management*. Oxford: Oxford University Press, pp182-208.

Mulgan, R. (1997) The process of public accountability *Australian Journal of Public Administration* 56, (1): 25-36.

Prebble, M. (2010), *With Respect; Parliamentarians, officials and judges too*, Wellington: Institute of Policy Studies, especially chapter 12.