

Watchdogs and Wise Ones in Winter Lands: The Practice Spectrum of Canadian Ombudsman

Michelle LeBaron

EXECUTIVE SUMMARY

Ombudsman in Canada occupy distinctive and increasingly important roles in the public and private sectors. This paper, informed by interviews with Ombudsman across the country, outlines the features and fault-lines that set Canadian practice apart. Canadian Ombuds practice is characterized by diversity, dynamism, and adaptive design informed by multicultural realities and a general commitment to ensuring accountability, transparency and fairness in decision-making. While important differences exist between public and private sector offices as shaped by incumbent Ombudsman and constituting frameworks, Canadian Ombudsman are internationally acknowledged for their leadership in defining fairness and modeling effective practice.

As denoted by the paper's title, the spectrum of practice across Canada spans "watchdog" vigilance against unfair practices to the considered wisdom of elders. While provincial offices are legislatively constituted and conduct formal investigations, organizational and executive Ombudsman tend to work more informally on the "wise elder" side of the spectrum. However, most Ombuds interviewed across sectors expressed preferences for informal resolutions that draw on relational, negotiated approaches. Context shapes the range of tools and strategies Canadian Ombudsman apply: regional and organizational cultures vary, so what works on Toronto's Bay Street may not work on Broad Street in Regina or Government Street in Victoria. Similarly, approaches in universities and other organizations across the country vary depending on history and differences in the ways offices are constituted.

The interviews and literature reviewed in the paper reflect that Ombuds offices in the private and public sectors contribute significantly to organizational capacities for responsiveness, transparency and fair practice. Ombudsman are uniquely able to take the pulse of the systems they monitor and respond to individual complaints. Organizations instituting Ombudsman offices should ensure that they have sufficient independence, job security, executive support and resources to play the dual roles of "wise elder" and benevolent "watchdog" effectively. Additional research to explore users' experiences of, and satisfaction with, Ombudsman services would be important to validate these conclusions.

The paper concludes that Ombuds practice in Canada will continue to develop and expand. While the economic downturn may lead to cost-saving measures, Ombuds offices are arguably even more necessary in the increasingly mechanized, bureaucratized and impersonal systems that characterize contemporary private and public sector organizations. This expansion will be justified if Ombuds offices can continue to fulfill their promise as independent listeners who assist in not only addressing, but preventing problems.

David McNabb, Chair, FCO Research Committee
and Deputy Ombudsman RBC Ombudsman Office

A Response to Michelle LeBaron's paper
*Watchdogs and Wise Ones in Winter Lands:
The Practice Spectrum of Canadian Ombudsman*

The words Watchdogs and Wise Ones immediately make the Ombudsman concept more understandable and accessible to Canadians and Ombuds practitioners. Michelle LeBaron's paper maps a practice spectrum in Canada that confirms a diversity of Ombudsman offices in governments, in educational institutions and in private sector organizations. She refers to Ombuds in Canada as leaders of fairness and change in their work contributing to organizational capacities. Inevitably individual complaints and systemic issues include some form of controversy over host system decisions or behaviour or a policy or process. "*Ombuds see themselves as leaders, and want to be involved in the big pictures as well as individual matters*".

Questions for reflection and learning are many and I will pick one. What is the public currency of Ombudsing in Canada when "*...important differences exist between public and private sector offices as shaped by incumbent Ombudsman and constituting frameworks*"? Said another way, if the work of an Ombudsman was like a currency accepted and used across any context in Canada in service of fairness and change, how might Ombudsman leaders condition capacity of our host systems? In my view Ombudsman service differentiation and system capital of Ombudsman programs are the public currency of Ombudsing in Canada.

In her paper LeBaron asks whether there is a distinctively Canadian approach to Ombudsing and she notes "*...the Canadian landscape has settled as progress had been made over the past few years under the auspices of the FCO in unifying ombuds across a spectrum of practice.....Canadian values of welcoming diversity and fostering collaboration seem to be guiding steps forward.*" Of course the Forum of Canadian Ombudsman umbrella provides a welcoming place where Ombuds from all spheres of practice in Canada come together for networking and professional development. We notice and track, imagine and rehearse best practices of our colleagues and compare them to our own. These exchanges help us establish and differentiate our own professional identities and orientations in the service of fairness and change and capacities of our host systems.

Heartening for this writer is the respect for differences in personal orientations and in practice context among FCO members. It is this respect for differences between members and personal learning that has settled and unified FCO as a maturing organization since its inception in 2001. However it would not be supportable from my point of view to conclude that different spheres of practices will disappear or that context of practice will not matter.

LeBaron's 'fault lines' capture the existing landscape that characterizes the internal debates among Ombuds about the utility and appropriateness of Ombudsman models of practice. LeBaron notes "*Independence is the key departure point between classical and organizational ombuds practice in Canada. While all organizational ombuds I interviewed articulated independence as a value, the array of constituting mechanisms perceived and actual distance from the (host system) administration and case-handling procedures vary significantly.*"

She confirms that Ombudsman fidelity to the ideals of fairness, independence, impartiality and confidentiality when intervening will "*function like a continuo to engage all people in telling hopeful and sometimes jointly satisfying stories.*" To borrow a term from the IT information technology industry, a 'service oriented architecture' (SOA) for Ombudsman office operations will combine and package one or more Ombudsman ideals or functions together in service of fairness and change and capacity of the host system. If we think of these and other Ombudsman ideals such as 'credible review process' from the public sector classical model and 'informality' from the organizational model as part of the essential ground of all Ombudsman work, we can combine and integrate one or more Ombudsman ideals regardless of sector, into relevant differentiated services that build system capital in a particular context.

For example in my Consumer Financial Services practice, consumer and company acceptance of an Ombudsman case outcome relies on a credible review process. This requires Ombudsman independence (or self distancing) and understanding integrated with the contradictory Ombudsman ideals of confidentiality and openness. A mentor of mine said years ago this (question of applying Ombudsman ideals) is a yes/and proposition and not simply an either/or proposition. Dean Roger Martin, Rotman School of Management, University of Toronto says the following about his book *The Opposable Mind; How Successful Leaders Win Through Integrative Thinking*, "*Integrative thinking is the ability to constructively face the tension of opposing models and instead of choosing one at the expense of another, generate creative resolution of the tension in the form of a new model*".

The public currency of Ombudsing in Canada relies on relevant differentiated Ombudsman services that build system capital of Ombudsman programs and capacities for effective government, education and private enterprise. Metaphors for public currency of Ombudsman services now include bridges, doors, windows, and mirrors that occasion, open and close, frame, and reflect success in transactions and relationships of the underlying system. The Forum of Canadian Ombudsman will continue to have a role in reality testing the public currency of Ombudsman practices in the public interest.

Adrienne Clarke, University Ombudsperson
University of Western Ontario
Panel Response to Michelle LeBaron's *Watchdogs and Wise Ones in Winter Lands:
The Practice Spectrum of Canadian Ombudsman*

Question: How important is the notion of flexibility to the future of Ombudsing in Canada?

Fundamental to the concept of Ombudsing in Canada is the notion of flexibility in establishing terms of reference that allow Ombuds offices to meet and adapt to the needs of their host institutions. For those unfamiliar with Ombuds work Michelle LeBaron's work is revelatory for showing us the richness and diversity Ombuds practice in Canada; and for Ombuds professionals, this kind of research encourages us to reflect on our own practice, and to consider how our work both as individuals and as a professional organization may be strengthened by this diversity.

In contrast to Ombuds practice in the US which is seeking more rigid standards of practice, Canada's interest in pursuing a more flexible Ombuds model provides greater sustenance to the profession, including opportunities for growth. Whether it is a college or university Ombudsperson that employs a range of informal dispute resolution mechanisms, including mediation to resolve a dispute between a student and a professor, or the CBC's Ombudsman whose mandate allows him to determine "whether the journalistic process or the broadcast involved in the complaint did, in fact, violate the Corporation's journalistic polices and standards," the terms of reference for both positions have been guided by an informed understanding of what the institution needs in order to enhance its integrity, accountability, and transparency.

If this kind of flexibility were to be replaced by rigid standards of practice in an effort to define what an Ombuds is and what it isn't, how sustainable would such standards be? Efforts to systematically define the Ombuds role are ultimately self-defeating in that they diminish Ombuds potential to identify new ways to add value to the populations they serve. If the Ombudsperson is unable to grow and change in response to changing circumstances, Ombuds will cease to be leaders in creating meaningful change. In explaining the concept of fairness to academic leaders I often quote the educator John Dewey: "Fairness does not mean that everyone gets the same thing; fairness means that everyone gets what he or she needs." The same is true for organizations looking to establish Ombuds offices. A one size fits all approach is rarely effective. What works for one organization may not work for another, again reaffirming the idea that flexibility is the lifeblood of Ombuds practice.

As the fairness issues facing Canadian society become increasingly diverse and complex, so must the range of both formal and informal dispute resolution mechanisms employed to address them. Without flexibility in standards of practice we will be compromising our ability to be truly responsive to societal changes that bring about noticeable shifts in the types of complaints that are brought forward. In reflecting on past Ombuds practice and looking towards future possibilities, professional organizations such as FCO, ACCUO

and IOA would do well to focus ways to tap into this richness and diversity to assist Ombuds in their ability to adapt to the constantly evolving and multifarious needs of Canadian society.

Howard Gadlin, Ombudsman, National Institutes of Health

The Ice is Always Whiter on the Other Side of the Border:
Comments on Michelle LeBaron's paper
Watchdogs and Wise Ones in Winterlands

Michelle LeBaron's thoughtful discussion of the ombudsman profession in Canada exemplifies many of the same features she identifies in the community of Canadian ombudsmen: a preference for collaborative rather than adversarial discourse, a smoothing out of differences for the sake of maintaining civil and cooperative relationships, and a pride in a shared national identity that differentiates Canadians from their more numerous, more argumentative, pushier neighbors to the south. Her observations also reveal both the markings of her primary field of conflict resolution and her warm and humane personal style: Michelle quite easily identifies areas of commonality even as she sensitively explores differences that might otherwise serve as the basis for ongoing conflict. Even when she differentiates the Canadian ombudsman world from that in the United States she manages to do so descriptively, without any explicit critical comparison of the two. For the most part, I have no quarrel with Michelle's overall characterization – I agree that there is more harmony among ombudsmen in Canada, that organizational ombudsmen in Canada have a broader conception of their role and are more like classical ombudsman than their US counterparts (and that this is to their advantage), that they benefit from a less adversarial system and less intrusion from the legal profession. But I wonder whether in Michelle's inclination to harmony she might overlook some distinctions and disagreements that, however stressful they are to endure, point to areas in which the ombudsman concept is underdeveloped and the ombudsman field is inhibited from further growth and blocked from playing a more significant role in both our countries. There is not enough space to do justice to each of these here so I will formulate them as a set of questions with only a hint of an answer.

1. *Is the ombudsman role part of the broader world of conflict resolution?*

Michelle's paper goes back and forth on this, at times referring to the ombudsman as within the conflict resolution world and participating in its sensibility and commitments, and at other times seeming to share the classical ombudsman's preference to see themselves as of another world. By not choosing she may have missed an opportunity to show how peace among the Canadian ombuds has been achieved via the repression of differences that matter. Early in the paper she cites a Canadian university ombudsman who locates the O within the conflict resolution field. Later on (p,13) she cites a classical ombudsman who gives a description of the classical ombudsman role which any worthwhile organizational ombudsman could claim for their own. Elsewhere she refers to the classical ombudsmen's objection to be included under the heading conflict resolution. She cites Rowat's account of the conditions that supported the creation of classical offices in the late 1960's but these conditions are almost identical to those that led to the emergence of the organizational ombudsman role and, for that matter, to the broader conflict resolution movement. Generally, the ombudsman world has not understood its connection to broader social changes.

2. How do the differences between the different forms of Ombudsman practice matter? What do the commonalities across different types of ombudsman practice mean? Do the characteristics and distinctions that ombudsmen use in their own self-descriptions match reality. Do we really accomplish what we say we do?

Kurt Lewin once said “A difference that makes no difference is no difference.” Years ago, the psychologist J.D. Frank demonstrated that underneath the different self-descriptions of psychologists from different schools of psychotherapy there were certain commonalities that actually accounted for their effectiveness. It would be helpful if our discussion of differences was grounded in something more than our own self-descriptions and assertions and a search for underlying similarities and differences rather than apparent distinctions.

The virtue of Michelle’s paper is also its liability – she is deeply dependent on the self descriptions and reflections of those she interviewed as well as the writings of others in the field. In whatever country I am in I am struck by how self-serving and uncritical are our accounts of our own efficacy. For too long we have argued for the value of the ombudsman role by asserting that we are independent, impartial, and fair without examining seriously the operative social, political and organizational constraints that might limit our ability to match the ideals of the role. The assertions about the ombudsman as change agent is one of the many in which I question whether we are the most accurate analysts of our own efficacy.

3. What specifically do we mean when we speak about fairness; how do we know if we have achieved it; and does it mean the same for classical and executive/organizational ombudsmen?

The word is bandied about in many discussions of the ombudsman role but there are no indications that it means the same thing to different ombudsmen nor that it is used in consistent ways within the field. At the same time, the notion of fairness underlies the work of all varieties of ombudsman. There is almost always a strong component of subjectivity in judgments of fairness – how can we move toward consistency in our use of the term?

Patrick Robardet, Ombudsman
Commission scolaire de Montréal (Montreal French School Board), Quebec
Comments on Michelle LeBaron's *Watchdogs and Wise Ones in Winter Lands:
The Practice Spectrum of Canadian Ombudsman*

Michelle LeBaron's paper offers an interesting portrait of some general aspects of ombudsing in Canada. Admittedly, if the ice seems to be whiter on this side of the 45th parallel, the turf on one's own fellow ombuds ground is not necessarily greener.

It would be cumbersome to review all the strengths of the paper or, for that matter, to try and retrieve some weaker points. Overall, the general impression is the striking diversity of ombudsing in Canada. Hence the following question: Can we make some sense of this diversity?

The identification of metaphors to describe how current Ombuds see themselves in action is highly valuable. Most Ombuds would probably espouse several of these metaphors. Interestingly, those listed, save the Lapdog image, are quite different from the metaphors used by the people we serve or the media where depictions such as Zorro, the White knight in shining armor, or Don Quixote, not to mention the Advocate of lost causes, are quite common. Is there a need to educate our public? As a corollary, there is also the perception by many of the people we serve, that too often the ombuds role is as easily defined by what it cannot do as by what it can achieve for our visitor or complainant. The resolution to that, which is a practical one, is in constant flux.

For me, the paper raises the issue of deviation or distortion in Canada of the classical model. Although this issue cannot be addressed in short comments such as these, suffice to say that the notion of distortion in Canada is mostly unwelcome as it relies on a limited view of what the ombuds function has been since 1713 (not 1809) and how it was able to evolve to accord with the needs of each and every context where it has been implanted. In Canada the classical model, in fact, now looks more as an ideal-type model in the Weberian sense, as an intellectual representation of a general type that can be used to account for empirical evidence (what exists), not as an ideal type of what should be a virtuous or model (in the moral sense) ombuds office. In my view, the so-called classical model also lacks uniformity and shows signs of distortion. The classical model we use in Canada as benchmark is not the Swedish office, but an adaptation of the Danish model by New Zealand in the 1960's, fitted to the Westminster-type parliamentary context in a common law setting. This model, which has been adopted by the Canadian provinces, is far from being universal in the world. In short, the promotion of the classical model too often reflects an ideology; it depicts the ombuds role as that of citizen's defender against bad government. This role does exist but it is only part of a broader picture, however.

In effect, the ombuds role can be defined by a variety of criteria. The facilitation aspect of the function, its role as a communicator, a problem-solver, even a stakeholder, a policy maker, etc., are parts of this broader picture. Personally, I have always had the feeling I need to reinvent myself daily in my job and to adapt to constantly changing needs and circumstances.

Since Michelle LeBaron's paper is just a first chapter of an unfinished larger book we all continue to write, the broader picture should include a revisiting of the position of the office vs. other internal and external mechanisms for redress and correction of wrongdoing or for better communication and securing advice and help, either in an organization or in government. These additional elements should include the notion of the ombuds as a last resort, the concept of subsidiarity and the relative efficacy of the ombuds vs., say, the courts, the legislature, a board of directors, etc. The notion of providing redress or a correction needs to be elaborated upon. Some of these aspects have already been discussed by the courts and will gain greater momentum with issues of governance and multifarious accountability processes. Newer roles have been developing such as risk manager, coaching leaders, policy making, or indirect representation of interests.

In sum, Michelle LeBaron's paper offers us a real opportunity to revisit further our vision and our understanding of the ombuds function without being encumbered by blinders and ideology. Sharing common values, the common four basic tenets of independence, impartiality, confidentiality and fairness, may prove less useful to account for all the diversity we witness. It may be that diversity, or capacity to fit one's environment, should be added as a fifth tenet. As more offices are created outside the traditional legislative, government context, a new ideal-type (in the Weberian sense) should be constructed. The notion of construction befits the office as ombudsing has been a work in progress since 1713 and ombudsing is a construct in itself. Then, one would not have to feel as a "second class office" where marked differences exist with the classical model. The latter would, in turn, keep its highly significant importance as the original promoter of ombudsing values while becoming an illustration, proper to a governmental setting, of a new (ideal-type) model ombuds office that can be shared by all offices in Canada and elsewhere. Thus, more work lies ahead, both for Michelle LeBaron and all of us.