

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

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This paper is dedicated to the memory of Liz Hoffman, a Canadian Ombudsman whose leadership, vision and compassion live on.

The year is 2009. Three scenes are unfolding:

Weather-worn, an elderly woman struggles in from the cold to warm tea and friendly voices. She has been buffeted from desk to desk within offices; from office to office within branches; from branch to branch within departments. She hopes she has found a place where her voice can be heard.

Across the country, a student knocks tentatively on the door marked "Ombudsman." He has a learning disability registered with the appropriate campus office. One of his teachers seems to have taken a disliking to him, and the student often feels slighted during class discussions. A rude comment made by the teacher about people hiding behind disabilities confirmed the student's fears. But he does not know how to proceed, fearing that confronting the teacher directly might make matters worse. He steps gingerly into the office, hoping for a way forward.

In a Toronto home, a middle-aged woman has spent the morning navigating telephone trees in an attempt to solve a problem with a federal department. She is no further ahead at noon, and moves dejectedly to prepare lunch while glancing at the paper. On the front page is an article about ombudsman offices in Canada. She wonders if there is one that can help her.

These scenes are not unusual. Most Canadians have experienced frustration in interfacing with public and private institutions and encountered barriers getting information or services in timely or effective ways. Many have found that technological advances meant to improve efficiency operate to exclude or hold them at arm's length, whether they are disconnected just as their call is about to be answered or surfing a website where the frequently asked questions speak about everything but their query.

¹ This paper was written by the 2008 Forum of Canadian Ombudsman (FCO) Liz Hoffman Ombudsperson Research Award recipient chosen by the FCO Research Committee in August 2008 following a Call for Papers. Its purpose is to describe Canadian Ombudsman processes, contributing accurate and comprehensive information based on interviews and research about the range of ombuds practices with particular emphasis on organizational and executive ombudsman models. The paper further aims to assist the public, ombuds practitioners, sponsoring institutions and potential users of ombuds services to better understand how the ombudsman role contributes to fairness.

Automated voices do not feel. Computer-assisted responses cannot exercise discretion. Generic procedures applied by front-line workers may result in unfairness, even when none was intended by policy-makers. Citizens dealing with large organizations may find their problems or issues swallowed in a maze of overlapping policies, or slipped through cracks to inaccessible regions below the floorboards. Organizations, focused on achieving their missions, feature momentum and complexity. Their values often include efficiency, time-saving, cost-saving, competition and meeting targets -- profits or outputs (Hampden-Turner and Trompenaars 1993). Even the most well-meaning organizations and their employees may leave individuals with concerns or complaints “out in the cold” through sheer differences in scale. A problem that seems to an individual to be taking over or blocking progress in her life may be a case number to a worker. Small questions mishandled expand to major stumbling blocks.

Three hundred years ago, these kinds of experiences may have been less common. Fewer layers existed within institutions to hold citizens at arm’s length. Technology and mechanization had not yet replaced front line human contact. Even so, the need for someone to act as a filter between government and the people was recognized in 1713 in Sweden when King Charles XII established the Office of the Supreme Ombudsman. Its successor, the Parliamentary Ombudsman Office, was opened in Sweden in 1809. The office facilitated the resolution of grievances related to executive and administrative branches of government, bridging power distances between citizens and institutions, and ultimately setting a precedent that has spread around the world.

Ombudsman practices have evolved considerably since their debut. There is every reason to believe that they will continue to evolve and proliferate, especially in Canada where several new offices have been established in the past five years, particularly in the federal, university and private sectors. This makes sense given predictions by futurists and others that there will be shorter and shorter intervals between paradigm shifts in the world (Kurzweil 2001). Contemporary Canadians are caught up more and more in technologically-advanced, computer-mediated settings. If time and opportunity for human contact and personalized attention to issues continues to contract, the services of ombudsman offices will become ever more essential.

In this paper, I trace the broad outlines of Canadian ombudsman practice, including shared features and divergences among offices across sectors, with a particular focus on organizational and executive ombuds. Based on a literature review, visits to ombuds websites, and interviews with sixteen ombudsman from diverse sectors across Canada, I summarize the features of ombudsman offices – how they are constituted, who inhabits the roles, what kinds of issues they address, and the boundaries of their work. Finally, I summarize interviewees’ comments about the future evolution of Canadian practice.

Terminology and Working Definitions

The first challenge I encountered in this project was terminology for its main subject. A variety of different terms are used to denote ombudsman practice. The term ombudsman comes from the Swedish words *ombudsman* and *ombuds man*, meaning representative. Because the term is not gendered in Swedish, some argue that it need not be adjusted for use in Canada. But as one of my interviewees pointed out, the term ombudsman *sounds* gendered when used in English. An analogy can be drawn to the word alderman, which literally means ‘elder man’, and was changed in most Canadian municipalities to the more inclusive term ‘councillor’ in the past two decades. Short of giving an etymological explanation to everyone who visits an ombudsman office, it may be advisable to adapt the word ombudsman to current English usage, observing contemporary sensitivity to gendered language. My interviewees were split on this question; some of them were comfortable leaving ombudsman intact in acknowledgement of its Swedish origin. Others suggested the term ombudsperson, which addresses gender issues, but is arguably more cumbersome. Several people used the shorter form “ombuds”, eliminating the apparent gender reference altogether. In this paper, I use the term ombudsman for the field of practice following the lead of the Forum of Canadian Ombudsman. I also use “ombuds” because it can be adapted to the term ombudsing as a way of denoting practice in its various forms.

Another challenge arose from different terminology to describe ombudsman practices outside classical, legislative settings. The term hybrid is used in a number of ways to connote combinations of jurisdiction, orientations or roles. Canadian scholar Linda Reif (2004, 3) uses the term hybrid for offices that have jurisdiction over complaints involving public sector conduct, especially over human rights.

In general, hybrid has been used for a variety of approaches that deviate in one way or another from the traditional classical ombudsman. Concerned that its descriptive effectiveness has been diluted by different uses, I use ‘organizational’ and ‘executive’ as terms to describe Canadian ombudsman offices outside the legislative context. Before elaborating further on distinctions related to types of ombuds practice, I define the term generally.

What is Ombudsing?

According to the Forum of Canadian Ombudsman (FCO), “[a]n ombudsman is an independent, objective investigator of people’s complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes

recommendations to the organization in order to resolve the problem.”² The essence of ombudsman practice is fair review; they shine light on an issue or problem, and engage it in a variety of ways including

- listening carefully to stories of all concerned
- gathering information related to the issues
- engaging (directly or indirectly) those whose work is the subject of a complaint in informal dialogue
- conducting shuttle diplomacy between complainants (in French, les demandeurs) and those involved in the issue from an institution or department
- facilitating or mediating a resolution using problem-solving approaches
- investigating issues that may have wide effect even if they have not been the subject of a specific complaint
- functioning as an early warning system within organizations, reporting potential fairness issues to management before complaints multiply
- modeling fair processes and natural justice in their work, and
- making recommendations internally and sometimes publicly about specific and systemic issues.

Ombudsman work at a distance, familiar with the system but not a formal part of it. Standing at arm’s length from organizations, they are like wise elders whose presence gives individuals a conduit to the collective face of an institution. They are an interface, practising dynamic in-between-ness in ways that promote voice, procedural satisfaction and accountability.

The FCO describes the two most common kinds of ombuds in Canada and other countries as

- legislative (or classical) offices established by statute, and
- executive offices created internally by institutions.

Classical ombudsman report findings and recommendations to ministers of the Crown, the provincial legislature or Parliament. Executive or organizational ombudsman report to the head of the organization where they function, whether government department [not the ministers?], crown corporation, university, college or business enterprise.³ As noted earlier, the executive or organizational ombudsman is sometimes called a ‘hybrid’, denoting its multiple deviations from the classical model. The relatively recent proliferation of various types of ombuds offices in Canada has spurred debates and attempts to re-articulate and clarify the different forms of ombudsing.

In contrast to the two categories of ombuds outlined by the FCO, the American Bar Association (ABA) distinguishes four types of practice: legislative, executive, organizational and advocate. The description of legislative ombuds corresponds with the above descriptions of classical practice, though it is more narrowly cast. Executive ombuds are located in either the public or private sector and receive

² http://www.ombudsmanforum.ca/whatis_e.asp

³ *ibid*

complaints from the public or internal constituents. Through investigations, they may either work to hold the entity or specific programs accountable for actions and failures to act, or work with officials to improve the performance of programs.⁴ Organizational ombuds are generally described as “facilitat[ing] fair and equitable resolutions of concerns that arise within [an] entity”, and must have the power to conduct inquiries (as distinct from formal investigations).⁵ An advocate ombuds in the U.S. “may be located in either the public or private sector and like the others, evaluate claims objectively but is authorized or required to advocate on behalf of individuals or groups found to be aggrieved.”⁶ Examples of the advocate ombuds role are quite limited, occurring in settings like long term care facilities or with particular populations such as youth.

The chief differences between organizational and executive ombudsman in the U.S. as described by the ABA seem to be in scope and breadth of practice, and authorization to investigate. Given that many U.S. ombudsman offices in universities, colleges and organizations do not have the authority to investigate, the distinction makes sense. While the ABA criteria for all four types of ombuds include the authority to “issue periodic reports”⁷, some of my interviewees reported that many U.S. offices do not publish frequent reports, whether because they are not authorized to report publicly, due to privacy concerns or – in some instances – because they prefer to work beneath the radar and avoid embarrassing their host institutions.

In both Canada and the U.S., ombuds practice is growing rapidly, particularly in the organizational and executive domains. In Canada, these domains are marked by innovation and responsiveness in dispute system design and practice.

Organizational and Executive Ombudsman

Diversity characterizes the wide range of work done by executive and organizational ombudsman in large Canadian private and public sector organizations. As Raymonde Saint-Germain pointed out in 2007, diversity arises from... “the matters we handle, the context of our mission, the nature of the relationships involved, the types of services or actions we investigate, [and] the types of individuals or groups who solicit our help...” She goes on to observe that “diversity or uniqueness can stem from who we help, what we help them with, the problems they face, our institutional context, how we intervene, and even why we intervene.”

⁴ <http://www.abanet.org/adminlaw/ombuds/115.pdf>

⁵ *ibid*

⁶ *ibid*

⁷ *ibid*

Marsha Wagner observes that organizational ombuds often take on a coaching role, encouraging civility and fostering mutual respect within their institutions. She suggests that "...the ombuds can guide people in the organization to gain insight into the quality of their interactions with others and can address the climate of interaction. In giving a complainant or a respondent a range of options, the ombuds is indirectly teaching methods of conflict resolution" (Wagner 2000, 104). In addition to coaching and educational roles, the organizational ombudsman often has responsibilities to identify problem areas and observe trends, and also to take steps to try to assure that appropriate improvements are made (Wagner 2000, 107).

Although executive and organizational ombudsman emphasize independence from the managerial hierarchy of their organizations, they are not established by statute but from within the governance structure of their institutions. In universities, for example, ombuds are often appointed upon recommendation of some combination of the faculty senate, the student government, and the university administration (Farrell, 2004; Gadlin, 2000; Darling, 2006-7). In corporations, upper management typically establishes the position in response to a variety of internal and external pressures, especially in companies that are moving away from traditional notions of managerial authority and vertical hierarchical organization (Gadlin, 2000; McNabb, 2006).

Canadian scholars Daniel Jacoby and Patrick Robardet frame the classical ombuds role as that of a 'change agent.' While organizational ombuds use different avenues than classical ombuds to encourage, achieve and support durable change, they can be as potent in stimulating change as their legislatively-appointed colleagues. This is particularly true when systemic issues are identified, and preventive or ameliorative steps are suggested to prevent similar problems in the future.

Canadian ombuds have adapted their roles to changing social, economic and political conditions and have thus pioneered the transformation of ombuds work to creatively meet new needs. Over the past twenty five years, several forms of organizational and executive ombudsing have been developed including colleges and universities; consumer financial services; and news and media. I briefly summarize these sectors followed by an overview of classical practice.

Ombuds in colleges and universities

Many academic ombuds offices were established in Canada during the 1970s and given specific terms of reference which spelled out their authority and responsibility. As Carolyn Stieber describes, "Canadian schools could look to the many provincial offices for guidance, since every province except Prince Edward Island had established an ombudsman" (2000, 51). This helped academic ombuds gain respect and legitimacy when they were first established.

According to Nora Farrell (2004,1) Ombudsperson at Ryerson University “an academic Ombudsperson is an advocate for fairness and equity rather than for individuals’ specific complaints; a specialist in conflict resolution processes who generally approaches the resolution of conflict informally and from the perspective of both an ethic of care and an ethic of rights; and uses a variety of means to assist with the resolution of conflict.” The University of Victoria ombuds website notes that the academic “[o]mbudsperson is also an ‘agent for change’, recommending improvements to policies and advocating for fair procedures. The Office offers workshops and talks on conflict and communication, fairness and related issues.”⁸

Farrell explains that, “[i]n the Canadian tradition, an academic Ombudsperson occupies a ‘quasi-classical’ ombuds role” (2004, 1). This means that while they have the power to investigate and have unfettered access to all organizational records and information relevant to the complaint; the ability to make recommendations and publish annual or occasional reports; and the authority to initiate an investigation on their own motion, they do the vast majority of their work informally. They use various forms of dispute resolution including shuttle diplomacy, facilitation, active listening, problem identification, generation and evaluation of options, coaching, mediation and providing information and referrals.

According to Ian Darling, Fanshawe College Ombuds, organizational ombuds demonstrate and add value in an organization by:

- fulfilling their formal roles as outlined in the terms of reference of the office
- helping improve informal dispute resolution processes, thus increasing institutional capacity to resolve complaints
- handling toxic emotions, and
- generating goodwill (2007-8, 1).

He elaborates on the usefulness of neutralizing toxic emotions by reframing issues, carrying messages between parties, and allowing people to feel heard (2007-8, 1). This allows parties to a dispute to focus on the issues rather than their emotional turmoil.

McMaster University Ombuds Shelley Lancaster and Carolyn Brendon highlight their concern with systemic issues and fairness, writing that they “often inquire how the university might improve a practice, policy or procedure to reflect its commitment to building a fair, inclusive and student-focused university.” They submit that “being right isn’t always enough” ---providing a fair process is an equally important part of how a university demonstrates openness to hearing all points of view. This broad view of fairness, they argue, is particularly important in a university setting as it tends to mitigate the power differences that inevitably exist. They note that the relational aspects of fairness are very significant in the

⁸ <http://www.uvss.uvic.ca/ombudsperson/index.htm>

university context, since negative relations “most often cause individuals to complain they have been treated unfairly and prompt them to pursue remedies that they might otherwise forego” (2008, 1).

In 1983, academic ombuds established an association known today as the Association of Canadian College and University Ombudspersons (ACCUO). Detailed information on ACCUO is listed in Appendix II. Canadian academic ombuds in diverse institutions make a variety of recommendations for change in policies and procedures. Examples are listed in Appendix III.

Whether involved with an academic setting or not, most Canadians have dealings with the financial sector. A different approach to practice arose there in the form of executive ombuds offices.

Consumer financial services ombuds

Executive ombuds roles have evolved in the past fifteen years to address the needs of Canadians. Royal Bank of Canada (RBC) Deputy Ombuds Dave McNabb explains that his office was a response to the voices of small business customers who felt poorly treated by large banks as they emerged from economic recession in the early 1990s. He relates that “discussions between the industry and federal regulator of banks in 1993 resulted in small business access to a national system of non-binding, independent third party mediation of disputes between small businesses and banks” (2006, 645). Because of low participation in this system by small businesses, it was agreed the next year that “all large federally regulated banks would establish an internal Ombudsman Office to hear and resolve the complaints of small businesses” (McNabb 2006, 645). According to McNabb, executive ombuds offices “identify and resolve errors and omissions in service, provide an alternative to litigation, and are an instrument of good governance resolving how company values (and behaviours) are extended into transactions” (2006, 645).

In 1996, an industry funded independent Canadian banking ombudsman service -- later renamed Ombudsman for Banking Services and Investments (OBSI) -- was founded to review complaints by small businesses against the chartered banks. Shortly after its establishment, its mandate was expanded to cover unresolved consumer complaints as well. Since 2002, following discussions among government, industry and consumer groups about consumer protection in financial services, the provincially-regulated investment industry firms have joined as well other financial services firms. Through the OBSI, and now the ADR Chambers Banking Ombuds Office for RBC banking complaints and the Insurance industry ombuds services, “[t]oday, at least ninety-five percent of consumer financial clients in Canada have access to an industry Ombudsman redress system” (McNabb 2006, 645). More detail is available in Appendix IV.

The RBC ombuds has recently noted that, “[o]ver the past several years, we have observed a noticeable shift in the nature of complaints brought to our office. Complaints about transactional errors are relatively straightforward to assess and adjudicate. However, an increasing number of complaints originate from less tangible root causes related to behaviours, misunderstandings, cultural differences, or personal opinions regarding the quality of advice or service provided” (RBC, 2006). These relational or psychological aspects of complaints are increasingly significant in multicultural Canada. A preventive orientation has led the RBC ombuds to take a “...direct and proactive role in working with clients and RBC to mediate and resolve concerns prior to the need for a full Ombudsman assessment” (RBC, 2006).

While banking ombuds---like other executive and organizational ombuds---have been criticized for insufficient independence and impartiality, executive ombuds fulfill valuable roles. They ensure that whether a client’s account balance is \$500 or several thousand dollars, the person can be assured that the ombuds will respectfully and efficiently address their complaint. Marie Farrell-Donaldson explains that one of the key functions of executive ombuds “is maintaining and increasing confidence in the organization by affording access to users, regardless of their status. Be it a prisoner complaining about prison administration or a newspaper reader having the confidence that the newspaper ombudsman will review his concerns relative to insensitive and racist reporting, the investigation will be objective and appropriate action will be taken ” (1999, 417). The role of ombuds in the media is further explored in the next section.

Ombuds in news and media

Ombuds in the field of news and media ensure that journalistic ethics are observed in all radio and t.v. programming and press. As Robert Rabinovitch, President and CEO of CBC /Radio-Canada writes, “The Ombudsman's office plays a vital role at CBC/Radio-Canada and reflects our commitment to accuracy, integrity and fairness in our journalism.” According to CBC/Radio-Canada’s website:

CBC/Radio-Canada has two Ombudsmen, one for its English networks and the other for its French. Each investigates audience complaints and comments, and evaluates compliance with journalistic policies related to the networks' Radio, Television and online programming. He or she serves as an impartial and independent appeal body for citizens, and may also alert journalists and managers to issues causing public concern based on comments and complaints received. CBC/Radio-Canada's Ombudsman's offices have served as a model for other media organizations around the world.⁹

⁹ <http://www.cbc.radio-canada.ca/newsreleases/20050808.shtml>

Some major Canadian newspapers have also established ombuds-like roles. Indeed, “Kathy English is the [*Toronto*] Star's Public Editor. The Public Editor position encompasses the roles of reader advocate and guarantor of accuracy, serving as a liaison between the *Star* and its many readers, both print and online.”¹⁰ She reports to the publisher and not the editor in chief, so her independence is enhanced. Early in her tenure, she wrote an article taking on the mantle of “idealist in residence” [idealist at the TS] – and she sees her job as addressing the gap between ideals and the realities of daily publishing. It would be interesting to see how ombudsman in other sectors identify with this role description.

News media ombuds are the furthest from classical practice of the three categories above. The role of classical ombudsman is pivotal to understanding the history and trajectories of the ombuds field in Canada.

Classical Ombudsman

Scholar Donald C. Rowat describes Canada as an early international leader in the development of classical offices. When Alberta created an ombudsman office in January 1967 and New Brunswick followed the same year, they were part of “the spread of the institution from Scandinavia to the rest of the world, [becoming] so successful that they now serve as prototypes for other countries,” (Rowat 1995,126). By the early 1970s, most other provinces and several municipalities had taken similar legislative action (Hyson 2004, 4-5; Stieber 2000, 50). Today, all Canadian provinces except for Prince Edward Island have an ombuds office (Levine 2004, 241). No classical ombudsman has been appointed in the federal sector, while some specialized ombudsman offices have been instituted, such as the offices of the Commissioner of Official Languages, the Correctional Investigator, and newer offices like the Taxpayers’ Ombudsman/Ombudsman des Contribuables¹¹ (Lundvik 1985, 13; Rowat 1995,1).

Ulf Lundvik situates the introduction of ombuds services in Canada in relation to enormous post-war growth in the range and complexity of government activities, especially the expansion of public services at both the provincial and federal levels (1985,13). Donald C. Rowat contextualizes the creation of these offices by noting that during the late 1960s, victims of administrative errors were resorting to extreme forms of protest in the absence of more accessible and effective means by which to seek redress. The creation of the ombuds office was thus a way to minimize this type of protest and find a less disruptive and more effective way to resolve complaints. Stewart Hyson argues that the most succinct case for the establishment of ombuds offices comes from the federal government’s 1977

¹⁰ <http://www.thestar.com/comment/columnists/94572>

¹¹ <http://www.taxpayersrights.gc.ca/menu-fra.html>

study acknowledging that citizens had “gained access to a wide range of government services and support systems” without ways to protect themselves from vulnerabilities to civil servants’ decisions (Canada, 1977 quoted in Hyson, 2007, 5). He concludes that “it was in this context...that the advocates of the Ombudsman idea emphasized [its] organizational attributes” (Hyson 2007, 5).

Drawing on the *Ombudsman Acts* from Ontario and B.C., Greg Levine cites three other primary reasons that offices were established:

- a need to protect against the abuse of power by the state
- the insufficiency of existing mechanisms to handle grievances arising from state actions, and
- the utility of having a watchdog which serves both the legislature and the public (Levine 2004, 241).

Hyson summarizes the developments: “[s]uffice to say that, during the early and mid-1960s in Canada there were several private members’ bills and opposition parties’ proposals to adopt the Ombudsman idea, [and] supportive academic works by such scholars as Professor Donald C. Rowat” (Hyson 2007, 4).

The classical ombuds office seemed particularly pertinent in the Canadian context since, as Hyson describes, ‘the ombudsman, like a traffic director, is able to weed-out complaints about matters falling outside the government’s jurisdiction.’ This job is essential in a federation like Canada where people don’t always understand the division of powers between federal and provincial governments (Hyson 2007, 6). Hyson also links the institutionalization of ombuds to the Canadian state’s dedication to having a mechanism by which to meet democratic expectations.

The four provincial ombuds I interviewed all described their roles as extending beyond complaint-handling to monitoring government accountability and transparency. They stressed the importance of providing access to justice, and generally overseeing the democratic and administrative processes of public authorities to enhance citizens’ perceptions and experiences of efficacy. These descriptions relate to Hyson’s observations about how classical offices in Canada have evolved over their three-decade tenure. In 2007, he wrote that there has been a discernable change to a more proactive leadership style in Canadian ombusing. He argues that this change is most evident with the Ontario ombudsman, the largest office in the country, most recently with the appointment of André Marin to that office in 2005. Marin has said that the ombudsman institution needs to adjust continuously to changing circumstances in order to remain effective.¹²

¹² This broadening of approach did not originate with the appointment of Marin in 2005. The 1985 decision of the Supreme Court of British Columbia in *Levey v. Friedmann* established that provincial ombuds have jurisdiction over everything done by government authorities in the implementation of government policy. See *Levey et al. v. Friedmann* (1985) 63 B.C.L.R. 229 (**B.C.S.C.**)

Hyson continues: “[a]ctually, this is a matter that bears watching in future research endeavours: are we in fact witnessing a shift in Canada (as in the case of André Marin and Bernard Richard in New Brunswick) in terms of appointees to the position of Ombudsman—from people with impartial credentials to proactive people with experience in investigating alleged maladministration?” (Hyson 2007, 10-11). Marin’s proactive style has been evident in his choice of words and communication strategy, his systemic investigations and his focus on e-government (Hyson 2007, 13).

While my sample of four provincial ombuds is too small to comment definitively on Hyson’s question, it is worth noting that all four share backgrounds in law and advocacy. Saskatchewan’s Kevin Fenwick comes from extensive practice as a mediator, facilitator and conflict resolution trainer, while BC Ombudsman Kim Carter’s background includes roles as an advocate, prosecutor and appellate counsel, as well as an appointment as first female Canadian Chief Military Judge. Before being appointed in Ontario, Marin served as the first ombudsman for the Department of National Defense and Canadian forces, while Bernard Richard in New Brunswick practiced as a lawyer and social worker, as well as serving as an M.L.A.

Roles of classical ombuds

Like the original Swedish ombuds established to assist citizens with grievances against the executive and administrative offices of governments, the contemporary classical ombudsman emphasizes statutory independence from governmental control, power to investigate complaints, and the authority to publish findings and recommendations. In a much-cited definition, American scholar Larry B. Hill notes ten attributes of the classical ombudsman:

“...the classical ombudsman is (1) legally established, (2) functionally autonomous, (3) external to the administration; (4) operationally independent of both the legislature and the executive, (5) specialist, (6) expert, (7) nonpartisan, (8) normatively universalistic, (9) client-centered but not anti-administration, (10) both popularly accessible and visible” (1974, 1077).

Hyson describes the classical ombudsman as an independent officer of the legislature who can function impartially without being subject to the chain of command in the public service. This increases the legitimacy of the ombuds in the eyes of the public (Hyson 2004, 6). Articulating a key justification for the role, Isabelle Fortier argues that the classical ombuds “has gained a solid credibility as a complaint-handling mechanism which helps and allows citizens to protect and defend their rights in front of a powerful and complex State” (2006, 1). Scholar Greg Levine describes ombuds as “a force for social good and administrative justice.” He notes that this role involves putting wrongs right and promoting fairness in public administration (Levine 2004, 239).

Isabelle Fortier gives an outline of the multiple roles that classical ombuds play in the Canadian context, all of which, she argues, sustain democratic values in three connected spheres.

“First, the ombudsman functions as part of the ‘redress system’ where the values of justice, equity and fairness predominate; second as part of the ‘integrity system’ where the ethics of government and public administration are paramount; and finally as part of the ‘accountability system’ where transparency serves to hold government responsible.”

Fortier maintains that the ombudsman’s key functions are to mediate the relations between citizens and the state by facilitating participation, securing values and democratic processes, and by giving voice to names and interests (Fortier 2006, 2).

These functions were confirmed by Canadian classical ombuds I interviewed. In addition to responding to individual complaints, they variously described their roles broadly as including

- raising the bar for service to the public
- articulating and fostering best practices
- encouraging government agencies to offer a spectrum of services with appropriate dispute prevention and resolution mechanisms
- reporting on the general landscape of issues including substantive, procedural and relational dimensions
- promoting confidence in governance structures and processes
- providing access to justice, especially for those who have limited access to resources for redress
- commenting on systemic issues, especially those where social justice may be compromised, and
- holding government accountable for the accessibility and workability of its policies and avenues for citizen engagement.

The jurisdiction of Canadian classical ombuds varies, with Ontario having the most limited jurisdiction and the Nova Scotia office the broadest scope of service. Several interviewees noted the importance of extending ombuds’ jurisdiction to MUSH – municipalities, universities, school boards, hospitals, and the Ontario ombuds’ website explains the rationale for its advocacy on this point.¹³ The MUSH sector yields high numbers of citizen complaints, relating as it does to many aspects of day-to-day life, entitlements, basic services and - in some cases, life and death. The Nova Scotia Ombudsman and the Ontario Ombudsman have charts on their websites showing the jurisdictions of classical ombuds by province/territory.

In some jurisdictions, notably Ontario, the ombudsman initiates investigations into issues with widespread impact using a process called Special Ombudsman Response Teams (SORTs) (Hyson 2007, 13). The aim of this process is to be

¹³ <http://www.ombudsman.on.ca/en/hot-topics/push-for-mush.aspx>

proactive, but not activist. As with all classical ombudsman investigations, work done using SORTs is executed methodically and with attention to fairness. All classical ombudsman interviewees emphasized that they come to issues with an open mind, make recommendations based on evidence, and share findings with the public.

Fundamental to the classical ombuds role is independence. Citizens need to know that the office is not another finger on the long arm of the state poised to poke or even escalate their grievances. The guarantee of independence flows from the way classical offices are constituted for fixed terms by legislation, with hiring and dismissal handled by a committee of the legislature. 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 administration, and case-handling procedures varied significantly.

In both Canada and the US, significant differences between and within spheres of ombuds practice have generated tensions. The following section explores some of the issues and conflicts.

Classical and Organizational Ombudsman: Affectionate Sisters or Alienated Rivals?

While conflict between the two spheres of ombudsman practice may have created confusion for those outside the field about exactly what ombuds do, the multiplicity and variations of ombuds roles has also yielded conflict, resentment and concern *within* ombuds practice. American writing on the subject is summarized by Howard Gadlin:

“The classicals are concerned that the approach of organizational ombudsman will compromise the rights of those who turn to them, as well as possibly leave unaddressed important issues of justice and injustice. In turn, the organizationals are wary of the classical insistence on an approach that is fundamentally judgmental in the face of issues whose complexity and mutuality defy clear-cut judgments of right and wrong. In addition, organizational ombudsmen often see themselves functioning as they do precisely to provide an alternative to other formal investigatory programs that exist within their organizations” (Gadlin 2000, 43).

Stieber agrees, observing “there is a certain distance, sometimes verging on disdain, between the classical ombudsmen and all others, which is often verbally reflected by some version of you-are-not-a-real-ombudsman” (2000, 52-3). Indeed, this divide was most famously articulated by Hill who distinguished between “real ombudsmen” and “organizational ombudsmen”, noting that the

latter are “simply mediators” (Wagner 2000,100). It is also evident in Hyson’s contention that it is increasingly difficult to grasp the ombuds idea because “the moniker is now popularly—and inaccurately—used in other forums such as numerous public sector organizations for their service desks to handle clientele complaints” (2006, 8).

It is important to note that there are many variations with both classical and organizational models in both Canada and the US. Stieber’s explanation that “the development of the ombudsman field was like a scattering of wild flowers, not an orderly design for a garden” (Stieber 2000, 51) helps explain why ombuds roles take so many forms today. As with mediation, questions of who is inside and who is outside the bounds of defined practice relate to politics and power as well as legitimate concerns around public access and clarity.

American scholars Howard Gadlin and Sharan Levine writing in 2008 point out that there are other important issues that these conflicts may be masking. They reiterate that the most important focus is sound ombuds practice, especially as offices proliferate. Host organizations need a thorough understanding of the essence of the role, including the critical importance of

- carefully defining the terms of reference for the office
- independence and confidentiality protections
- unrestricted access to agency records
- management support for objective examination of actions and transactions
- adequate funding and personnel resources, and
- fostering an organizational climate where an ombuds office can succeed.

Canadian interviewees concurred with this view. One classical ombudsman put it this way: “The differences between classical and organizational ombudsman, or who uses the term ombudsman, do not keep me awake at night. The most important thing is to keep heading in the right direction, to foster empathy with citizens who may be intimidated by government departments, and to find a way that people can be heard even if their desired outcome is ultimately not achieved.”

To paraphrase T.S. Eliot, we come again to our beginning, summarizing the threads that connect ombuds offices across the spectrum of practice in this quote that pertains to the spectrum of ombuds practice in both the US and Canada:

“Common threads run through the conceptual fabric of every ombudsman’s office – all aim to humanize administration, to support fairness, accountability, and equity. All ombudsmen can be approached in confidence. No ombudsman has enforcement or disciplinary powers. All depend on the power of persuasion, as well as the credibility of the office which leads individuals to trust it. Although the *process* in achieving objectives of fairness and accountability may differ, the *product* is the

same: a chance for ordinary people, those without power or prestige, to be heard and to get fair treatment (Stieber 2000, 56-7).

Is there a Distinctively Canadian Approach to Ombudsing?

The fault lines explored above have been manifest not only in the U.S. but historically in Canada. However, the Canadian landscape has settled as progress has been made over the past few years under the auspices of the FCO in unifying ombuds across a spectrum of practice. While classical ombuds have their own organization that meets annually, many classical ombuds are also active in the FCO and participate in conferences, trainings and consultations alongside organizational and executive ombuds. While there is still robust discussion about the boundaries and definitions of spheres of practice, Canadian values of welcoming diversity and fostering collaboration seem to be guiding steps forward, and this is heartening for ombuds in multiple fields of practice, as well as useful for public education. One of my interviewees expressed support for this more flexible approach, asking: “How sustainable are rigid definitions?”

The ombuds I interviewed were mostly of the view that fostering awareness of commonalities and acting on them is a shared priority of most organizational and classical ombuds in Canada. They drew distinctions between Canadian and U.S. ombuds practice, observing that the U.S. field has been shaped significantly by the legal profession and legal considerations in general. Some of them pointed to the Standards of Practice of the U.S.-based International Ombudsman Association (IOA)¹⁴, which describes the ombudsman as a neutral, confidential, informal *dispute resolution* mechanism (emphasis mine). The emphasis on dispute resolution generally connotes practice in which no formal investigations occur and written records are not kept, though ombuds may informally inquire and provide systemic feedback to host organizations.

Almost all of my Canadian organizational interviewees perceived their practices as broader than this, and expressed discomfort with the strict dichotomy arising from the IOA practice standards separating organizational and classical ombudsing. I also heard concerns about the language used in some U.S. organizational contexts, for example, calling people who come to the ombuds ‘visitors’ instead of complainants (or *demandeurs*, en Français). “Visitors are people who come to tea or dinner, not people with a complaint against an official,” one of my respondents said. English-speaking Canadian ombuds across practice spectrums refer to people who come to their offices as complainants. In Québec, the term *demandeur* is used in some offices. The French term is more

¹⁴ IOA is the product of a recent merger of The Ombudsman Association (TOA) and UCOA (the University and College Ombudsman Association)

expansive than complainant because it easily includes those who come for advice or information.

One interviewee who began practice within the past decade was surprised to encounter considerable differences between Canadian and U.S. practice at the first ombudsman conferences he attended. He observed that ombuds in Canadian academic contexts tend to be closer to the classical model than their U.S. counterparts given that Canadian university ombuds have the power to initiate investigations in the absence of specific complaints. Another respondent reported that some university ombuds in Québec and other provinces [pourquoi préciser?] have recommended specific settlements in some cases, for example specifying cash compensation. This kind of outcome would be rare or non-existent in U.S.-based university ombuds practice.

When I asked about what makes Canadian practice distinctive, one interviewee suggested that Canadians may not be as prone to complain as others. People in Canada tend to be patient and polite, and not “pushy”, and so may find it too much trouble to fight with an agency or organization. One ombudsman emphasized that Canadian practice has evolved differently from other countries, especially in private sector contexts. Canadian ombuds have freer access to records and files than their U.S. counterparts. The spectre of litigation does not loom as large, so there is more spaciousness surrounding practice.

Some respondents suggested that multicultural policy shapes ombuds practice in Canada. This policy leads to focus on culture broadly defined, including the culture of organizations. Canadian ombuds, according to this line of thought, tend to be attuned to the cultural dynamics of the organizations where they serve, and offer leadership in assisting others understand and function well within organizational and ethnic cultures. Other interviewees pointed to Canadian notions of social justice and fairness, and the contrasting legal and social ways these notions have evolved in Canada and the U.S. They pointed to a more communitarian orientations in Canada, yielding a sense that individual issues are directly linked to systemic issues, and so should be addressed to ensure fairness.

Another of my respondents observed that Canadians are known internationally for being “relentlessly optimistic.” We don’t take offense easily, we endure, and are results-oriented. Canadians believe in positive change, have a commitment to talking things out, and have a political history of compromise. These attributes influence our worldviews, and explain why Canadian ombuds offices may be less oriented to adversarial processes than collaboration, even as they understand their role in more formal ways than their American counterparts.

Images of Canadian Ombudsman

Further insights into Canadian practice arise from the spectrum of metaphors used by ombuds offices and ombudsman themselves to refer to their leadership and roles. Metaphors are compact, multi-sensory images that point to a gestalt – a holistic picture of a complex phenomenon. They convey proportion, orientation, perspective and attitude. When members of a field of practice have many metaphors, it is a sign of multiple role dimensions or diverse ideas about the roles. As discussed earlier, the evolution of the field has led to diverse ideas about the ombudsman role, and the complexity of practice involves multiple role dimensions.

Many metaphors were named by interviewees, and these led to interesting conversations about the ways they frame practice. They include:

- watch dogs (with a snarl or a smile)
- bridges over troubled water
- mirrors
- tricksters (in the mythological sense of one who traverses boundaries)
- catalysts
- conduits
- translators or cultural interpreters
- bees that stir the donkey forward with their sting
- people walking a balance beam
- respectful annoyances
- stewards
- guardians
- canaries in a mineshaft
- court jesters
- giant ears
- rushing waterfalls
- scales of justice
- geometric designs illustrating balance and overlaps
- prism
- a shell that reflects the light
- models of good citizenship
- early warning systems
- safety nets (for organizations)
- half way between a priest and a psychotherapist
- a skunk at a garden party
- lap dogs (not used by ombudsman themselves, but by detractors critical of organizational ombuds' different degree of independence when compared to classical ombuds)

One of the most evocative images in the above list is the rushing waterfall. It conjures dynamic, fast-moving work where there is a lot of energy and power. Rushing waterfalls can also be dangerous; serious consequences can follow if

things that might fall over the falls are not carefully handled. An ombudsman who sees their role in this way will be attentive to context, timing, and the need for thoughtful and subtle attention to people and issues, whether delicate or robust. They will strive to work in ways that are responsive and dynamic. Those observing their work over time may see beauty in a job well and sensitively done – rushing waterfalls attract many people at their edges. My conversations with Canadian ombudsman left me with a sense of appreciation for their pursuit of balance and the harmonizing contributions they make to those they serve.

Another powerful metaphor is being half way between a priest and a psychotherapist. Ombuds listen a great deal. In many cases, they are not able to assist complainants in achieving their preferred outcome. But they do offer salve for the open sores of feeling rebuffed and disregarded, and this is often hugely important. Issues brought to ombudsman may have substantive, relational and symbolic components. While a particular concrete outcome may be the presenting request, escalation has often occurred because of relational missteps whether from miscommunication or perceived insult. Symbolic issues implicate identity, and may arise when someone believes their treatment arises from racism or negative appraisal of identity related to anything from sexual orientation to religion to generation. When symbolic dimensions are part of an issue, hurt can go deep. This is where the priest and psychotherapist come in. While ombuds are neither of these roles, the listening and caring that are part of both of these roles are particularly important when someone has been hurt in their dealings with an agency or department. Ombuds cannot compel apologies in such cases, but they can assist people to come together in a situation when an apology may be forthcoming. And, particularly in the campus context, they can refer complainants to therapists or counsellors who can give people the psychological support they may need.

One way that Canadian ombudsman could continue to dialogue about their roles and role boundaries would be to explore these and other metaphors for practice. These conversations could also point to important elements for training, and common threads to inform practice standards as they are developed over time.

How Influential is the Personality and Training of an Ombudsman on the Approaches of an Office?

Another aspect of practice diversity relates to the personality, training and orientation of the ombudsman. In Canada, and the U.S., ombudsman exemplify diversity in approach and orientation, while also sharing convictions about essential features of practice like confidentiality, independence, impartiality (McNabb 2006, 644). As one classical ombuds put it: “What works in one province may not work in another. What works for one ombudsman may not work for another.” To be successful, ombudsman have to find an approach that

fits their personality, skills, talents and comfort levels as well as the cultural contexts in which they function.

Most interviewees agreed with this general proposition: that the office will have a different internal climate and way of conducting external relations depending on who occupies the ombudsman chair. An investigator from one provincial office who had worked under three different ombudsmen confirmed this truism, and of course it makes sense. Management styles, system design preferences, cultural and professional orientations, communication strategies and ways of addressing issues vary across time, personality and circumstance. As the variety of metaphors in the previous section make clear, the sensed and felt impact of an ombuds office can prickle or nudge, affecting relational climates within ombuds offices and subject organizations positively or negatively. In the crush of a high-volume waterfall, navigating attentiveness to substance while maintaining sensitivity to relationships may be challenging. But doing both of these things well is essential to the overall and longterm effectiveness of an ombuds office.

Some respondents emphasized that the way an office works should be about fidelity to the ombudsman model -- whether classical, executive or organizational -- not the personality of the incumbent. Looking more deeply, the question itself may unnecessarily dichotomize: the hiring process itself is a dialogue between the committee and the candidate during which ideas about approaches and orientation are shared. Those employing ombudsmen will gravitate to those whose values match their conception of the role, and ombuds candidates will be drawn to roles that mesh with their orientations. When ombuds offices are closely identified with a specific individual and their approach, succession problems may result. It is hard to step into the shoes of an iconoclastic leader. Some of my interviewees expressed confidence that different orientations to the work will even out over time. With this in mind, ombudsmen should strive to do their work well, balancing the need to exercise leadership with sensitivity to extremes that might impede prospects for her or his successors.

All the ombuds I interviewed across a range of approaches emphasized the need to stand back and act in a fair manner. This leads to an examination of what constitutes fairness.

Canadian Ombuds on Fairness

Fundamental to the ombuds role is fairness. But fairness is an elusive idea. Many of us believe we know it when we see it, but it is important to remember that fairness is always related to context and process. Ombuds are challenged to make determinations of fairness based on responsive, flexible applications of clear criteria, rather than substituting their own opinions about what might be fair. Fairness was defined as one respondent as including timeliness, respect, and

responsiveness in addition to appropriate outcomes. Another of my interviewees described alternating between subjective and objective questions to assist those who come to him to perceive fairness more broadly. For example, he might ask, “What happened two years ago in a similar situation that may be influencing your judgment now?” and “If this happened in the presence of the president, would it still be unfair?” and “How do you understand the relationship between student and teacher?” and “What could happen in the future that might change this situation?”

As is evident from the above questions, the element of time is important in addressing fairness. In some organizational offices, complaints can be made at any stage of a matter. The ombuds has to carefully weigh the ripeness of a dispute, and make a determination about intervening informally at an early stage. Sometimes, doing so will assist in preventing an unnecessary escalation of an issue. Other times, it may be best to wait until other avenues have been exhausted. These considerations are most relevant to organizational offices which are not set up as resources of last resort.

The Saskatchewan Ombudsman is among the most succinct in expressing a focus on fairness. The mission of the office is clear: to “[p]romote fairness in the provision of services by the Government of Saskatchewan”.¹⁵ But fairness is a notoriously subjective concept. Most people who come through ombuds’ doors feel they have been treated unfairly. In some cases, those about whom they are complaining are well aware of the alleged unfairness, yet not able or unwilling to change the outcome, constrained by some combination of policy, procedure, or law that shape their interpretation of fairness. Other times, those whose conduct has offended may be unaware of the unfairness a complainant perceives.

In the case of classical ombuds, some guidance is contained in legislation. In Saskatchewan, for example, the relevant act directs the ombudsman to determine fairness by investigating whether a decision, act or omission was unreasonable, contrary to law, unjust, oppressive, improperly discriminatory, based on a mistake of fact or law, or wrong. In a plain language booklet available on his website, the SK ombudsman explains these criteria, giving examples.¹⁶ The booklet refers to ‘common sense’ – a term often used, but generally ethnocentric. If common sense were more common, the office of the ombudsman would receive fewer visitors! Still, offering resources like this that spell out what complainants can expect is a practical and accessible way to normalize complaints, assist people to formulate realistic expectations, and take away some of the mystery of an otherwise broad, diffuse term.

For executive ombuds in the financial services sector, fairness “reveals itself independently and can be best thought of as good citizenship in consumer

¹⁵ <http://www.ombudsman.sk.ca/mission.html>

¹⁶ <http://www.ombudsman.sk.ca/pdf/fairnessbooklet.pdf>

financial services relationships”, reconciling the contributions and responsibilities of each party in transactions and relationships (McNabb 2006, 649). Like their colleagues in other sectors, consumer financial services ombuds deal with multiple issues and have to employ an expanded conception of ‘fairness’ beyond straightforward criteria of maladministration to address a wide range of complaints. Acceptance of recommended outcomes depends on whether those involved perceive the ombudsman review as procedurally and substantively fair.

The McMaster University Ombuds 2008 report explains that, following the Saskatchewan Ombuds’ classification scheme, they focus on three facets of fairness: substantive, procedural, and relational (Lancaster and Brendon 2008). Substantive fairness requires that rules, regulations and practices of the University be followed; procedural fairness refers to the process used in arriving at decisions; and relational fairness focuses on how institutional representatives interact with individuals. The ombuds note that they hear complaints about all three aspects of fairness in their work—sometimes, all in one case.

Another aspect of fairness concerns the proportion of resources devoted to individual complaint responses versus systemic issues. One classical ombudsman told me that he noticed that his office was spending 95% of its time responding to individual complaints. This left few resources for attending to and addressing systemic issues. Changes are underway in that office, and the ombudsman has set a target of spending 75% of office resources on effectively responding to individual complaints, and 25% of resources on systemic issues. The same ombudsman mentioned that it is useful and important to foster an awareness within government that the office can be a resource for government departments when they are writing legislation and designing programs. If fairness is considered early in the process, many potential problems can be avoided.

Fairness also relates to the degree of independence and perceived independence of the ombudsman. This consideration applies to not only the hiring/firing/reporting aspects of ombudsman offices, but to their physical location. Since classical ombudsman offices are typically stand-alone, this concern arises mainly with reference to organizational ombudsman. Many organizational offices are located on the premises of subject agencies. When this is the case, attention needs to be paid to whether people can come and go from the office without being observed by administrators or others in the organization. Some of my respondents made a point of the importance of their offices being located away from the main premises of the subject agency in a physical location where people’s visits to the office go unobserved by others. Others underplayed the importance of this factor as it relates to perceived independence and fairness.

Finally, fairness is something that relates not only to individual’s experiences and perceptions, but to solutions and their implementation. Ombudsman often find

themselves hearing complaints that raise questions about transactions where miscommunication, negative innuendo, neglect or delay leave citizens with the perception that they have been dealt with unfairly. After investigating a case where unfairness may exist, the challenge is to effect a fair resolution. Fairness -- even in situations of significant power asymmetries --- does not mean siding with or championing one side. It is to look for places where respectful, appropriate and reasonable outcomes can emerge from a collage of conflict. There are many routes to fair outcomes, and the ombudsman I interviewed exercised creative problem-solving in uncovering them.

What of the Future of Canadian Ombudsing?

My final question to interviewees was about the future of ombudsman practice in Canada. The high cost of litigation, delays in court processes and the pace of change were named as factors influencing the rapid growth in ombuds services. Almost all respondents predicted further proliferation of specialized ombudsman offices across sectors and in diverse contexts. Municipal and aboriginal governments, private business, and federal sectors were mentioned as areas where rapid growth is occurring. One respondent cautioned that productive growth in the private sector may be limited by the current recession. Several interviewees predicted increasing legislative entrenchment of offices in the public sector.

Given rapid growth, several ombudsmen discussed the importance of rigor alongside flexibility in education and design. Some suggested the need for a charter that would broadly shape the evolution of ombudsman practice in Canada without being unduly restrictive. Many indicated needs for increasing study of various modes of practice, and for specialized and in-depth training in dispute system design and ombudsman service provision. Several also flagged the importance of public education and awareness, especially given the proliferation of offices in the federal sector.

The theme of leadership generally flowed through responses to this question. Ombuds see themselves as leaders, and want to be involved in the big pictures as well as individual matters. Concerning the balance of practice components, several ombudsmen indicated that they would like more opportunity to address systemic issues. Having a platform to contribute to practices, rules, policies and regulations as they are being formulated was also mentioned as desirable. Preventing unfairness before implementation is clearly more attractive than attempting to address it once negative effects have flowed.

The public editor at the Toronto Star, Kathy English, emphasized that the demographics of typical ombuds in Canada are changing. No longer is the typical ombuds a greying civil servant close to retirement. Younger people are

embracing the role, and this has implications for how job security and independence will need to be addressed in the future. As new and diverse people take on ombuds roles, it will be interesting to see how the roles themselves change. One interviewee wondered how the ombuds role will function in the future in relation to organizational governance and ethical practice. Another suggested that ombuds offices will increasingly become effective parts of learning organizations, modeling collaboration and ways of addressing power imbalances.

Martine Conway, University of Victoria Ombudsman, tapped a common thread when she stressed that the strength of ombudsing arises from the plurality of practice. Ombudsing has endured and spread due to the appeal of its core promise: to be an independent voice for fairness, and its adaptability to specific settings. There is every indication that this practice will continue to develop in Canada.

The Essential Continuo of Ombudsing in Canada

In the Baroque period, before music was written down the way it is now and before it could be read by chamber musicians, a leader played a bass line called a continuo on a harpsichord that set tempo and key, keeping everyone playing together. The continuo provided the harmonic structure of the music. My interviews and research brought this image to mind: current --- and likely future -- Canadian ombudsman with fidelity to fairness, independence, impartiality and confidentiality, offer processes that function like a continuo to engage all people involved in telling more hopeful, and sometimes jointly satisfying, stories.

We come back to the three characters we met at the outset of this article: the weather-worn, elderly woman who had been buffeted about within government agencies, the student with a learning disability who had felt insulted by his teacher, and the woman who had tried unsuccessfully to get answers by phone. They all sought the help of an ombudsman. They were given a listening ear, all for the first time. And being heard changed everything. Being heard gave each of them a new continuo underlying their stories of disrespect, disregard and frustration.

The ombuds I interviewed, the many ombudsman websites I reviewed and the annual reports I read have led me to this simple conclusion: that there is substantial social value in having someone look over the shoulder of institutions. It is important that this someone have social and organizational power to effect change, that they be able to think laterally and creatively, and that they be adept at communicating and bridging differences. This someone needs to demonstrate superb organization and make intentional decisions about how they will exercise

leadership and address the differences in power between those who come to their office and those who are the subject of complaints. Whether they are confrontational or indirect, forceful or subtle, proactive or responsive – it is important that these “someones” pay attention both to the particular stories of individuals and the collective stories being enacted by institutions. And that they make the circle of connection between individual and collective stories, with a spirit of curiosity about how others in the past, present or future might be impacted by them.

Relationships are central for these “someones”, but they have to navigate them carefully, not aligning with individuals with problems or institutional actors. The role can be an isolated one. It can be heavy and difficult as complex issues come tangled through the door, carried by people weary and beaten down by “the system.” It can be intellectually and emotionally taxing. Central to the role is helping people (people aggrieved and those who triggered the trouble) see stories not in black and white, but in a complex prism of colour. It is to shine light on nuance, possibility and perspective. It is to work in the shadows, attending to saving face and dignity. It is to care about fairness, and the way rigidly-applied policies can slice the skin of people just trying to do business. While the role needs fierce determination, it also calls for kindness.

As Martine Conway at the University of Victoria has written, this someone also has to resist the “ways of the hero.” The stories people live into being can be full of pathos and archetypal struggles between them (‘good guys’) and others (‘bad guys’). Those receiving the stories have to resist the familiar plots, refusing to become the saviour of those who identify as victims or of those in authority who might like someone else to make hard decisions for them. Sometimes these someones have to be willing to be villains themselves, pulling out their “Agent of Reality” badge to challenge peoples’ stories into more complexity, nuance and empathy.

Is the ideal someone a wise one or a watchdog? The answer is yes. The ideal someone is reflective, thoughtful and wise – able to draw on experience and judgment to effectively assist those seeking their services. The ideal someone is also assertive – willing and able to make up their mind about fairness across a range of situations and to stand up to those in authority who may not like their perspective. Is a watchdog too confrontational an image for a Canadian in this role? Perhaps the answer depends on the way the metaphor is perceived. If a watchdog is there to deter exploitation and negative events, then the role fits. If the watchdog is there to make noise when something is out of order, the role fits. Only if the watchdog is vicious are there questions of fit. But none of the ombuds I encountered fit that description.

One of the people I interviewed suggested that ombuds should strive to make their services unnecessary. In an ideal world, issues would be dealt with, organizations would think proactively about fairness, and things would function

smoothly as individual problems were resolved. While this may be theoretically possible, we are a long way from its practical realization. We will need the continuo and new music that ombuds provide for a long time in the future. Ombudsman dance to their own music, to refrains that must resonate in the halls of power, yet must be accessible to people of all walks of life. Canada is better for their presence.

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Negotiation Journal 16(1): 49-57.

Wagner, M. L. (2000) "The Organizational Ombudsman as Change Agent." *Negotiation Journal* 16(1): 99-114.

APPENDIX I

LIST of OMBUDSMAN INTERVIEWED

All interviews were conducted in November and December 2008. Interviewees agreed that their names would be included on the list of those consulted, but specific comments would not be attributed to them in the paper without express permission.

Suzanne Belson, Senior Investigator, Department of National Defense/Canadian Forces

Laura Bradbury, Commissioner, Fair Practices Commission, Ontario

Kim Carter, Ombudsman of British Columbia

Martine Conway, Ombudsperson, University of Victoria

Ian Darling, Ombudsperson, Fanshawe College

Paul Dubé, Taxpayer Ombudsman, Government of Canada

Kathy English, Public Editor, Toronto Star newspaper

Nora Farrell, Ombudsperson, Ryerson University

Kevin Fenwick, Ombudsman of Saskatchewan

Barbara Finlay, Deputy Ombudsman of Ontario

Odette Lagacé, Ombudsman, Université Laval

Dave McNabb, Deputy Ombudsman, Royal Bank of Canada

Pierre Neidenspacher, Ombudsman Coca-Cola

Bernard Richard, Ombudsman of New Brunswick

Patrick Robardet, Ombudsman, Montréal School Board

Lisette Thibault, Ombudsman, Canadian Heritage

APPENDIX II

COLLEGE and UNIVERSITY OMBUDSMAN in CANADA

ACCUO Members

University of Alberta <http://www.uofaweb.ualberta.ca/OmbudService/>
Algonquin College <http://www.algonquincollege.com/ombudsperson/>
Athabasca University <http://www.athabascau.ca/studserv/ombuds.html>
Bishop's University <http://www.ubishops.ca/ombudsman.htm>
Brock University <http://www.busu.net/en/content/ombuds/index/>
Carleton University <http://www.carleton.ca/ombuds/>
Camosun College <http://www.camosun.bc.ca/ombuds/>
Concordia University <http://www.concordia.ca/ombuds>
Confederation College <http://www.confederationc.on.ca/ombuds/>
Dalhousie University <http://www.ombudsperson.dal.ca>
Dawson College <http://www.dawsoncollege.qc.ca/stsv/ombud/index.php>
Douglas College Student Union <http://www.cfslocal18.ca/>
Fanshawe College <http://www.fanshawec.ca/ombuds/>
École des Hautes Études Commerciales (HEC) <http://www.hec.ca/ombudsman/>
Lakehead University <http://bolt.lakeheadu.ca/~ombuds/>
Université Laval <http://www.ulaval.ca/ombudsman/>
University of Manitoba <http://www.umanitoba.ca/staff/ombudsman/>
McGill University <http://www.mcgill.ca/ombudsperson/>
McMaster University <http://www.mcmaster.ca/ombuds/>
Université de Montréal <http://www.ombuds.umontreal.ca>
University of New Brunswick <http://www.unbf.ca/studentervices/studentadvocate/>
Polytechnique Montréal <http://www.polymtl.ca/ombudsman/>
Université du Québec à Montréal <http://www.uqam.ca/ombudsman>
Ryerson University <http://www.ryerson.ca/ombuds>
Seneca College <http://www.senecac.on.ca/home/ombuds/>
Université de Sherbrooke <http://www.usherbrooke.ca/pdee/>
University of Toronto <http://www.utoronto.ca/ombudsperson/>
University of Victoria <http://www.uvss.uvic.ca/ombudsperson>
University of Waterloo <http://www.ombudsperson.uwaterloo.ca/>
University of Western Ontario <http://www.uwo.ca/ombuds/>
Wilfrid Laurier University http://www.wlu.ca/homepage.php?grp_id=948
University of Windsor <http://www.uwindsor.ca/hrights>

Members of the ACCUO represent 25 universities and 8 colleges.

As an organization, ACCUO:

- * fosters an understanding of the ombuds function
- * acts as a central source of information for current and potential ombuds offices
- * provides support and professional development for its members
- * sponsors research on issues of interest and concern to its members
- * represents the professional interests of its members
- * promotes the ombuds concept in Canadian universities and colleges

<http://www.uwo.ca/ombuds/accuoeng/frames.htm>

Their website suggests that educational institutions should have ombuds offices to:

- convey the institution's commitment to fairness
- promote constructive approaches to conflict resolution
- help avoid long and costly litigation
- help formal processes run more smoothly
- provide a user-friendly source of information about policies, rights and avenues of redress, and
- help identify policy weaknesses and gaps in the system.

According to ACCUO, university ombuds come from a variety of backgrounds - law, social work, academic disciplines, student services and other areas. While there is no standard qualification to be an ombudsman, they emphasize that certain qualities are essential: ombudspersons are good listeners, have excellent analytical skills, and a keen sense of fairness.

The mix of cases varies somewhat from institution to institution. These differences reflect differences in the mandates at different institutions - some ombudspersons deal with landlord/tenant problems, or sexual harassment, or with staff and faculty problems as well as student issues. A survey of ACCUO members conducted in spring 1996 revealed that complaints about teaching or course management and cases involving academic appeals were the most common for most practitioners in Canadian educational institutions. The Association of Canadian College and University Ombudspersons' constitution is available here: <http://www.uwo.ca/ombuds/accuoeng/frames.htm>

APPENDIX III

ACADEMIC OMBUDSMAN in CANADA

Academic ombuds' recommendations are far-reaching, diverse, context specific, and focused on addressing immediate and long-term needs of academic institutions.

At Fanshawe College, for example, Ian Darling's 2005-06 recommendations included amending the conflict of interest policy to clarify expectations relating to intimate personal relationships, and reviewing the Academic Standing policy to eliminate ambiguous terms that had lead to unfair treatment of students. In 2006-2007, he issued 'words of caution' related to the academic appeals process through which students were treated unfairly, as well as related to the campus security services, which had been the focus of over fifteen complaints.

Noting increasing tensions around new university policies, Lancaster and Brendon recommended in 2008 that McMaster University explore new ways to engage various university constituencies in the development of policies affecting them. They also recommended that the University Secretariat consider preparing and circulating short yearly summaries of important changes to Senate policies as a quick reference to help keep staff and faculty informed of policy changes that could affect their work (2008, 5).

Noting increasing complaints relating to incorrect advising or lack of advising, Farrell recommended in 2006 that a plan be developed for establishing department-specific advising roles, with support for advisors to be well equipped with up-to-date information and sufficient time to provide in-depth, timely and accurate academic advice to students.

These are just a few examples of systemic recommendations made by college and university ombudsman to reduce tensions and increase fairness. More examples can be found in the annual reports of academic ombudsman In Québec and other provinces across the country,

APPENDIX IV

CONSUMER FINANCIAL SERVICES OMBUDSMAN in CANADA

Ombudsman for Banking Services and Investments (OBSI) has more than 650 participating firms across the banking services and investment sectors (making it one of the most expansive and comprehensive ombuds service networks in the world). Participating firms include: banks - domestic and foreign-owned; credit unions; Investment Industry Regulatory Organization of Canada (IIROC) member firms; Mutual Fund Dealers Association of Canada (MFDA) member firms; Investment Funds Institute of Canada (IFIC) member firms; RESP Dealers of Canada (RESPDAC) member firms; Federal trust and loan companies and other deposit-taking organizations. The list of participating firms* can be found here: <http://www.obsi.ca/UI/ParticipatingFirms/ParticipatingFirms.aspx?csid1=All>

The OBSI is one of three independent, industry-specific complaint-handling services that make up the Financial Services OmbudsNetwork (FSON). The OmbudsNetwork also includes:

- The Canadian Life and Health Insurance OmbudService (CLHIO), which provides services to clients with complaints related to life and health insurance companies; and
- The General Insurance OmbudService (GIO) which handles complaints for customers of property and casualty insurance companies, including home, auto and business insurance.

Each of the three ombuds services has an independent board of directors to ensure it remains arms-length from the financial services industry and each publishes an annual report on its activities. According to their website, OBSI resolves disputes between participating banking services and investment firms and their customers if they can't solve them on their own. Their website states

“We are independent and impartial, and our services are free to consumers. You must first complain to the firm involved, but if you remain unsatisfied you have a right to bring your case to us. As an alternative to the legal system, we work informally and confidentially to find a fair outcome.”

<http://www.obsi.ca/UI/AboutUs/OurWork.aspx?langID=1>

OBSI is not a regulator, and because they are impartial they don't advocate for consumers or the industry.

* Effective November 1 2008 ADR Chambers Banking Ombuds provides Ombuds services for RBC Royal Bank banking clients.

APPENDIX V

PROVINCIAL OMBUDSMAN OFFICES, WEBSITES and SLOGANS

<i>Province</i>	<i>Slogan</i>	<i>Current Ombud</i>	<i>Website</i>
Alberta	Focused on Fairness	G.B. Button	http://www.ombudsman.ab.ca/
British Columbia	B.C.'s Independent Voice for Fairness	Kim Carter	http://www.ombud.gov.bc.ca
Manitoba		Irene Hamilton	http://www.ombudsman.mb.ca
New Brunswick		Bernard Richard	http://www.gnb.ca/0073/Index-e.asp
Nova Scotia		Dwight Bishop	http://www.gov.ns.ca/ombu/history.a sp
Ontario	Ontario's Watchdog	André Marin	http://www.ombudsman.on.ca/en.asp x
Saskatchewan	Promoting Fairness	Kevin Fenwick	http://www.ombudsman.sk.ca/
Quebec	(Public Protector)	Raymonde Saint- Germain	http://www.protecteurducitoyen.qc.c a/
Yukon		Tracey Anne-McPhee	http://www.ombudsman.yk.ca/

APPENDIX VI

OMBUDSMAN MANDATES ACROSS PROVINCES

Mandat des services d'ombudsman des provinces et territoires

	Services du gouvernement provincial ou territorial	Conseils scolaires	Services de protection de l'enfance	Hôpitaux publics	Établissements de soins infirmiers et de soins de longue durée	Municipalités	Examen des plaintes contre la police	Universités	Divulgence d'actes fautifs
Nouvelle-Écosse	Oui	Oui	Oui	Oui	Oui	Oui	Oui	Non	Oui
Alberta	Oui	Non	Oui	Oui	Oui	Non	Oui	Non	Non
Colombie-Britannique	Oui	Oui	Oui	Oui	Non	Oui	Non	Oui	Non
Manitoba	Oui	Non	Oui	Oui	Non	Oui	Oui	Non	Non
Nouveau-Brunswick	Oui	Oui	Oui	Oui	Non	Non	Oui	Non	Non
Terre-Neuve-et-Labrador	Oui	Oui	Non	Oui	Oui	Non	Oui	Oui	Non
Ontario	Oui	Non	Non	Non	Non	Non	Non	Non	Non
Québec	Oui	Non	Oui	Oui	Oui	Non	Oui	Non	Non
Saskatchewan	Oui	Non	Oui	Oui	Non	Non	Oui	Non	Non
Yukon	Oui	Oui	Oui	Oui	Oui	Oui	Non	Non	Non

Source: Nova Scotia Office of the Ombudsman, "Finding ways to help government work better," Annual Report, 2006-007, p. 4.

APPENDIX VII

DISPUTE SYSTEM DESIGN for CANADIAN OMBUDSMAN OFFICES

This appendix contains information about how the dispute system design components of the International Standards Association relate to Canadian ombuds office design and practice, and may be of particular use for those setting up new offices.

Dispute system design

A guide to effective dispute system design is found in recently formulated International Standards Organization (ISO) guidelines for dispute resolution external to organizations.¹ These guidelines relate to dispute resolution processes for complaints that have not been resolved by internal mechanisms in an organization, and so are useful in assessing ombudsman services. They do not fit with all aspects of ombudsman services because of the unique nature of ombuds work, as will become clear in the discussion below.

It is beyond the scope of this section to thoroughly analyze each element of the guidelines as it relates to Canadian ombuds practice, but this would be a useful project for future research.² I have chosen five key elements as touchstones, and will use them selectively with illustrations from my research to explore the connections between dispute system design and Canadian ombuds practice. The five touchstones are:

- selected guiding principles
- dispute resolution framework
- planning, design and development
- resources
- maintenance and improvement

1. Guiding principles – The ISO guidelines include the following principles as essential to effective practice:
 - a. Accessibility
 - b. Suitability
 - c. Fairness
 - d. Competence
 - e. Timeliness
 - f. Confidentiality
 - g. Transparency

¹ International Standards Organization 10003:2007 (E)

² The 8 components of the ISO Standards are: scope, normative references, terms and definitions, guiding principles, dispute-resolution framework, planning, design and development, operations, and maintenance and improvement. See International Standards Association 10003:2007 (E)

- h. Legality
- i. Capacity
- j. Continual improvement.

Given the centrality of fairness, I will explore how it is described and how Canadian offices fit with the ISO criteria. Fairness is defined in this way: “The organization should engage in dispute resolution with the intent of fairly and honestly resolving the dispute with the complainant.”³ To ensure fairness, the guidelines suggest that personnel should be impartial and objective. Independence is also named as an important component of perceived fairness.

Applying this criteria to the Canadian ombuds offices I researched yields a mostly positive appraisal of their design and operations. Classical offices address fairness on their websites, train staff members in ways to conduct fair investigations and arrive at fair determinations, and at least one office (Saskatchewan) takes a proactive approach by providing training to government departments on fairness in service provision. Classical offices, as discussed earlier, are independent and have the capacity to initiate investigations and issue public reports. Most university and college ombudsman in Canada also approach the ISO fairness criteria, though not all share the same degree of independence. Organizational and executive ombudsman display the greatest variance from the fairness standard. They do not have the same degree of job security, thus skate a thinner line between naming systemic or individual abuses and burning bridges with management. As well, some may not be authorized to initiate investigations, or to investigate at all. Their roles tend to be consultative, informal and persuasive. Some ombudsman have a mandate to deal only with internal complaints, so perceptions of their independence may be harder to maintain over time depending on perceived bias or sensitivity to internal politics.

The ISO fairness criteria imposes a requirement of authentic commitment by management to honest and fair resolutions. Future research could examine the ombudsman for various federal departments [minister?] according to this criteria. Information would need to be gathered about several factors including how they are constituted, their degree of independence from subject agencies, whether and how freely they have access to files and information within agencies, whether they can conduct investigations on their own initiative or at all, who is employed in their offices and how past alliances of employees are perceived, whether they can publicize their findings and if so, whether there are restrictions on such publication including requirements to first disclose information to subject agencies.

The criteria of capacity is worth highlighting before leaving this section. Many of the ombudsman I interviewed indicated that they would be better able to do their work if their resources were increased. If an organization wants to be able to

³ 18 International Standards Organization 10003:2007 (E), 4.

point to an ombudsman office as evidence of their good will, they need to give it the resources to put that good will into effect. They also need to have the fortitude to give the ombudsman enough latitude to point out weak links or flaws in internal systems. Otherwise, the potential of the ombudsman will be undermined and may ultimately lead to ineffectiveness.

2. Dispute Resolution Framework – Of the several issues included in this portion of the guidelines, I will focus on the aspects of policy and commitment. The guidelines provide that “[i]t is particularly important that top management demonstrate and promote”⁴ the commitment to an effective and efficient dispute resolution process. Further, they stipulate that the dispute resolution policy in place in an organization should be clear and unambiguous. Many ombuds reports I surveyed relate to lack of clarity in internal dispute resolution policies and to management or front line worker practices that do not comply with existing dispute resolution processes. The criteria set out in the guidelines may be helpful to ombudsman in assessing the adequacy and degree of appropriateness of dispute resolution systems in the organizations they monitor.

More to the point, the guidelines suggest that external systems like ombudsman offices should have clear dispute resolution processes themselves. My research uncovered a wide variation in practice in this area. Some ombudsman use mediation; others will set up joint meetings between complaints and subjects of complaints, but not act as third parties. Some use investigation frequently, others tend to work informally exclusively or almost always. Some ombudsman have access to top decision makers, and others have circuitous channels they navigate within agencies or departments. The capacity to have and follow effective dispute resolution processes depends, at least in part, on the willingness of internal players to cooperate with ombuds. When new ombudsman offices are launched, it may take some time for credibility and trust to build within subject agencies so that dispute resolution processes can be effectively applied. This is also a function of leadership: if the signals from top management that cooperation and access are expected are not strong, the requisite trust and credibility may never be built. The danger, of course, is that dispute resolution procedures relating to ombudsman practice may come to mimic the layered bureaucracy they were designed to untangle.

3. Planning, design and development – The guidelines stipulate that clear objectives should be articulated about what is to be achieved by dispute resolution. The objectives should be consistent with the dispute resolution policy and their fulfillment should be measurable using performance indicators. This is very difficult to do, particularly in ombudsman offices where many issues are not formally pursued, but may be the subject of conversations, informal consultations or referrals. Some of my respondents spoke of a trend to more

⁴ Ibid, 5.

record-keeping and most of them report on the numbers and types of issues they encounter in a reporting period (generally one year). But they tend not to report details of outcomes due to confidentiality, and the outcomes may or may not actually “resolve” the disputes of complainants. As ombuds consider how this guideline applies to their work, it will be important to include material, relational and symbolic dimensions of issues in attempts to measure outcomes. Put differently, procedural, psychological and substantive aspects of issues are all relevant to fulfillment of dispute resolution policy objectives.

This section of the guidelines speaks to coordinating implementation of agreements including assigning responsibilities for required actions and confirming that necessary actions have been completed. These criteria do not map well onto ombuds practice, since ombuds do not have the power to assign or compel anyone to act in accordance with an agreement. Ombuds can continue to inquire, and can ultimately shine light on areas where there was not follow-through, but this does not meet the more narrow tests set out in the guidelines.

4. Resources – This area is useful for assessing ombuds work because it stresses the importance of providing dispute resolution offices with adequate resources to meet their mandate. Several of the ombuds I interviewed pointed to lack of sufficient resources as one of their major challenges. Particularly in universities and colleges, offices may have one or two staff members, and may be stretched beyond capacity in responding to requests from the campus community. The guidelines suggest that resources include attention to personnel, information, funding, materials, and infrastructure. When resources are sufficient, the organization will be better able to attract and hire appropriate providers of service, contribute to their ongoing success, participate meaningfully in dispute resolution processes, and evaluate the performance of the provider and processes used.

5. Maintenance and improvement – Finally, the ISO guidelines relate to ongoing monitoring of agreements and the dispute resolution process. As with other categories, the fit with ombudsing is not perfect because the language requires the organization to collect information on the nature, progress, and results of all disputes. Confidentiality of ombuds services precludes sharing these details with subject agencies. The ombuds offices themselves keep information, but they may or may not keep the specific information contemplated by the guidelines. Canadian organizational offices approach the standard more fully than their American counterparts, as was discussed earlier.

Overall, these standards provide touchstones for organizations setting up or evaluating ombudsman offices. But they are not a clear or easy fit, faltering on the things that make ombudsman practice distinctive, especially confidentiality and independence. As well, because ombuds use a wide variety of processes from informal to formal and may or may not be involved in anything resembling a

“resolution” of a dispute, the central frame of these standards is an imperfect fit. This begs the question of which standards should be used to design and measure effectiveness of an ombudsman office. American standards (IOA or ABA) do not fit well with Canadian practice, as has been discussed. Future work could be done on developing criteria to effectively gauge Canadian ombudsman practice.

The following articles discuss dispute system design for ombudsman offices:

Rowe, M. “An Organizational Ombuds Office in a System for Dealing with Conflict and Learning from Conflict, or “Conflict Management System””. *Harvard Negotiation Law Review Online* 2008. http://www.hnlr.org/?page_id=52 (Accessed 30 December 2008)

Miller, D. “Managing Cultural Differences in an International Organization Conflict Management System”. *Harvard Negotiation Law Review Online* 2008. http://www.hnlr.org/?page_id=54. (Accessed 30 December 2008)