

On Being an Ombudsman: Protecting the Public Interest While Navigating the Minefield of Policy Networks

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Résumé de l'article

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ARTICLE (ÉVALUÉ PAR LES PAIRS / PEER-REVIEWED)

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Résumé

Après 50 ans d'histoire institutionnelle au Canada, l'objectif des ombudsmans est passé de la résolution de plaintes individuelles à l'amélioration de la qualité des services gouvernementaux pour tous. Les nouveaux outils de l'univers des ombudsmans ont permis de conceptualiser et de promouvoir l'équité administrative. Les ombudsmans ont acquis une expertise qui, partagée avec le gouvernement, a amélioré la prestation des services. Les enquêtes systémiques publiques sont désormais considérées comme l'expression ultime de l'efficacité des ombudsmans. Un dialogue constant avec les fonctionnaires et les administrateurs des organisations lie inévitablement les ombudsmans aux réseaux politiques. Si les liens informels avec les réseaux de politiques peuvent aider les ombudsmans à résoudre des cas, ils peuvent aussi, par inadvertance, créer une distance entre les ombudsmans et les plaignants. Ancienne responsable des ombudsmans à l'Université Columbia, Marsha Wagner souligne l'importance d'identifier les problèmes systémiques dans la pratique des ombudsmans; c.-à-d. les ombudsmans qui ne se concentrent pas sur les problèmes systémiques sont tournés en dérision comme des « aspirants ». Cet article suggère que le pendule est allé trop loin, passant du plaignant individuel à une approche systémique, et invite à la prudence dans la pratique contemporaine de l'ombudsman.

Mots-clés

ombudsman, plaignants, client, résolution, impartialité, réseaux politiques

Abstract

After 50 years of institutional history in Canada, the focus of ombuds has shifted from resolving individual complaints to improving the quality of government services for all. New tools in the ombuds world enabled the conceptualization and promotion of administrative fairness. Ombuds' acquired expertise, which, shared with government, improved the delivery of services. Public systemic investigations are now seen as the ultimate expression of ombuds effectiveness. Consistent dialogue with public servants and organisational administrators inevitably links ombuds to policy networks. While informal links to policy networks can help ombuds resolve cases, they can also inadvertently create distance between ombuds and complainants. A former ombuds officer at Columbia University, Marsha Wagner emphasizes the importance of identifying systemic issues in ombuds practice, i.e., ombuds who do not focus on systemic issues may be derided as "wannabes". This article suggests the pendulum has swung too far from the individual complainant to a systemic focus and urges caution in contemporary ombudship.

Keywords

ombudsman, complainants, client, resolution, impartiality, policy networks

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INTRODUCTION

New parliamentary and organisational ombuds¹ inevitably face a fundamental question – “Who is your client?” – and many ombuds rethink this question at different points in their careers. Personal experiences of the authors of this paper help to demonstrate this point. Thirty-five years ago, when Daniel Johns (co-author) began working as a provincial ombudsman investigator, he was taken aback by the confrontational tone with which his crusty 60-year-old colleague delivered this question. Johns stammered out something about justice for the complainant. This seemed logical. After all, when he applied for the job, he saw the ombuds as a knight in shining armour, who burst through government indifference and red tape, demanding redress for the little person. “Wrong!” the late Ed Chetner corrected him. “You don’t have a client. It isn’t your business to take sides.” Johns quickly mended his ways, and Chetner’s concept governed subsequent investigations and activities. Parliamentary ombuds are expected to understand and accept their role as a neutral third party, acting as impartial agents – in the case of Johns, the Alberta Legislative Assembly – on behalf of neither the complainant nor the bureaucracy.

Similarly, in a first interview as a university ombuds, Brent Epperson (co-author) was asked: “Who do we serve?” and “Do you think you can get past your time as an advocate?” Having previously worked in social services and as a student advocate, Epperson was inclined to say something about protecting disadvantaged clients and advancing social justice. If he was going to be completely honest, he would have admitted that he was attracted to a preconceived vision of ombudship that aims to level the scales and defend the underdog from powerful institutions. Epperson responded cautiously to the interview question, citing International Ombudsman Association (IOA) standards of practice, and arguing that ombuds serve the “principles of fairness instead of the perceived interests of clients.” He had a desire to help people in need, but also understood that making a difference depended on understanding power and steering through complex systems.

¹ For the purpose of this paper the term “ombuds” will be used, except when the official, legal name is different such as “ombudsman” or ombudsperson.

Thirty-five years and eight years into our respective careers, we still question our early assumptions and roles. In this article, we re-examine the roots of ombudship to consider whether we (and our colleagues) are meeting the intentions of the lawmakers when they voted legislative ombuds into existence, as well as the intentions of universities and other public institutions when they began to establish organisational ombuds six decades ago.

KNOW WHERE YOU CAME FROM TO KNOW WHERE YOU ARE GOING: EVOLVING BEYOND FOUNDATIONS OF RETURNING TO OUR ROOTS?

It is helpful to start this analysis with the premise that professions exist because they are necessary or, alternately, because they are theoretically grounded in an imagined political community that justifies their existence (1). Health-care professionals; farmers and food distributors; emergency service workers; some types of manufacturers and maintenance providers; energy, transportation, and communications service providers; and educators are all seemingly necessary professions in the sense that they exist in some form in all post-industrial societies. The ombuds is not an objectively necessary profession. The role is not found in all national and institutional contexts. Since it is not necessary to ensure the fundamental needs of society, its foundations are political, and its survival is vulnerable to political changes. Where ombuds exist, budget crises and political shifts sometimes lead to the closing or substantial downsizing of ombuds offices. And yet, while not necessary, the role of the ombuds is deeply entrenched in liberal and social democratic visions of good governance and the rule of law. In this sense, ombuds exist as a profession to ensure fairness and as reassurance that public services or organisations function in a manner that serves the common good (2,3).

Parliamentary ombuds were established to address the power imbalance that individual citizens encounter when dealing with an increasingly complex public service. Following the creation of legislative ombuds offices in Sweden (1809), Finland (1920), Denmark (1955), Norway and New Zealand (1962), the first legislative ombuds in North America was created in Canada, in the province of Alberta, in 1967 (4,5). New Brunswick followed shortly after in the same year, taking direct inspiration from the legislation in Alberta and New Zealand (6). In Alberta, Backbench MLA Albert Ludwig introduced the ombuds concept to the legislature at least as early as 1963. Ludwig said members of legislative assemblies and cabinet ministers could not investigate all the complaints they received from constituents and therefore an ombuds should be appointed (7). The idea finally took off in Alberta in 1966 with the publication of the Clement Report (8). Carl Clement called for the appointment of an ombuds to “assist the ordinary citizen who is bewildered by the complexities of departmental Government and feels that he has been done an injustice.”

Clement quoted extensively from Donald C. Rowat, then chairman of the Department of Political Science at Carleton University. Rowan wrote:

Briefly stated, the argument for an Ombudsman scheme derives from the fact that all democratic countries in the twentieth century have experienced a shift from the laissez-faire to the positive state. The accompanying tremendous growth in the range and complexity of Government activities has brought with it the need to grant increasing powers of discretion to the executive side of Government; and as Dicey has warned us, “wherever there is discretion, there is room for arbitrariness”. It is quite possible nowadays for a citizen’s right to be accidentally crushed by the vast juggernaut of the Government’s administrative machine. In this age of the welfare State, thousands of administrative decisions are made each year by Governments or their agencies, many of them by lowly officials; and if some of these decisions are arbitrary or unjustified, there is no easy way for the ordinary citizen to gain redress. (8)

When subsequent ombuds acts were passed across Canada, the motivation of legislators remained consistent with Rowat’s statement. For the purposes of illustration, two other provincial Hansards (transcripts of Parliamentary debates) were selected and surveyed based on time periods. The Newfoundland and Labrador legislation was the most recent in 2001, while the British Columbia ombuds took office in the intermediate period in 1977. In introducing a bill to establish an ombuds, the British Columbia Attorney-General at the time, Garde Gardom, stated:

Bill 14, Mr. Speaker, deals with the establishment of a commissioner of grievances. This is another plank in the programme for protection and assistance of the individual: an ombudsman to help Joe Q. Citizen wade through the morass of bureaucratic delay through the webs and the tangles of regulations and red tape (9).

The history of the Newfoundland and Labrador ombuds is complicated by the fact that the position was repealed in 1990 but re-established in 2001 under the title Citizen’s Representative. Ed Bryne, the MLA proposing re-establishment saw the role of the ombuds in classic terms:

[The ombuds] was created so that average citizens, people without recourse, who had concerns with government, who, in their view, had been wronged by government, or had been mistreated by government, or had not been dealt with properly by government, or had not been dealt with on a level playing field by government, would have an independent arm’s-length individual to report to (10).

The Alberta, British Columbia, and Newfoundland and Labrador examples demonstrate that legislative ombuds offices were established between the 1960s and 2000s with the goal of protecting the rights of individual citizens in liberal and social democratic constitutional contexts. In the same period, organisational ombuds began to emerge. Simon Fraser University created the first university ombuds office in North America in 1965 (4). Mirroring the same provincial-level desire to level the playing field for the average citizen, *The Peak* (Simon Fraser University's student newspaper) celebrated the establishment of the campus ombuds office:

By this act of foresight, we have a man whose sole duty is to protect the little man from bureaucratic errors. The ombudsman is the best answer for the little man's grievances against maladministration. As far as our investigations show, SFU is the first North American university to establish a campus ombudsman (11).

Demonstrating the liberal–democratic political–ideological links between legislative and higher education ombuds, the article referenced New Zealand's national ombudsman office as inspiration for Simon Fraser University. Citing an interview with New Zealand's national ombudsman, Sir Guy Powles, the article depicts the ombudsman as a “watchdog” for individual rights:

Sir Guy reports that in 1964 his office received 760 complaints of bureaucratic maladministration. Of these, 400 did not warrant investigation or were outside his jurisdiction. Of the 360 investigated, however, 55 were found to be justified. A person might wonder why all this work for only 55 justified complaints. Why? Because, working on the principle that no innocent person should suffer, if the ombudsman “watchdog” had sniffed out only one real case of governmental misconduct, he would have justified his own existence (11).

Here we see that the inspiration for Canada's first university ombuds office justified the existence of legislative ombuds on the basis of service to individuals who had been mistreated by government. In a newspaper interview with Simon Fraser University's first ombuds, John Mynott, the focus on individual service to correct maladministration is further emphasized:

My job consists of helping the student with a problem or grievance. The student comes to me when he feels that he has been done a personal injustice or when many students are being inconvenienced or are having their rights infringed upon... Almost everyone has heard the regular run down on the position of ombudsman – you know, grievance man, complaint department, etc. I like the job because, in general, I like talking to people and I'm willing to try to help people. It's great experience learning to meet people and learning, especially in my case, how to look at a problem and ask myself where to go and what to do to solve the problem and then to go and do it (12).

Similar to their legislative ombuds colleagues, university ombuds were established in Canada to manage individual cases. Whether legislative or organisational, the ombuds was intended to have a complainant focus, and correct administrative misconduct and errors. Looking back at those early years, it is difficult to identify any focus on systemic investigations or policy advising to improve the functioning of administration and establish fairer policies.

While legislatures and institutions created the ombuds to assist ordinary or average individual citizens to cope with complex government, ombuds have taken the initiative to offer value-added services. More than simply offering one-off assistance based on individual complaints, they have taken on the role of improving government. The rationale is obvious. If administrators learn to be fairer, they avoid frustrating citizens and thus help to reduce complaints. Reducing complaints saves time, money, and possible court action for both sides. This goal is laudable, but it is not the key service that the early legislators and public sector administrators had in mind.

Service to individuals has not been forsaken. All Canadian ombuds continue to report successes in receiving, investigating, and resolving complaints from the ordinary person. However, in this article, we take the position that in the Canadian ombuds community, the pendulum has swung (too far) away from the individual toward the value-added services, which requires more discussion and coordination with public servants or organisational administrators. Improving governance is a good thing. But in the end, ombuds do not serve government nor the leadership of their organisations. Arguably, as officers of the legislature, legislative ombuds work for the legislature. Similarly, organisational ombuds report to a board of governors, board of directors or ombuds committee composed of representatives from different core constituency groups. However, as demonstrated above, the marching order given to the earliest legislative and organisational ombuds was to help individual complainants.

In an April 2021 conversation with the Manitoba ombuds on a separate topic, we learned that Manitoba is already articulating a client-centre approach (13). Manitoba became concerned that the needs of the public body are sometimes placed ahead of the complainant. In public presentations, Manitoba takes the following position:

To be clear that our clients are:

- Complainants
- Inquirers seeking advice or comment
- Public interest

The client is not:

- Public bodies or trustees under investigation
- Media
- Employees (13)

The Manitoba ombuds' effort to clarify who they do and do not serve is admirable. All legislative and organisational ombuds should strive to do this clearly, in the same way that they explain their services and jurisdictional limitations. However, as the next section demonstrates, this is not representative of the new realities in the profession.

THE EVOLUTION OF OMBUDS PRACTICE

While many or most ombuds around the world might agree with Manitoba that the complainant is paramount, in reality the balance has shifted. Since 1990, the ombuds world has begun to develop new tools and understandings of administrative fairness, as well as operating models aimed at conflict resolution. The result has been an evolution from a people-oriented approach to a more process-oriented approach.

In the beginning, the possibility of becoming an expert on administrative processes did not register in the consciousness of many ombuds. But over time, this became possible when ombuds developed the ability to describe fairness at an intellectual level. In contrast to today, the first ombuds in Canada, George McClellan, described a less academic approach when he investigated complaints from individual citizens. In his 1968 annual report, he explained how he approached his work: "I tried to view this whole situation through the eyes of a reasonable man, not necessarily versed in the intricacies of formal law" (14, p.12). In other words, he applied the standard of common sense. If he had tried to articulate concepts of administrative fairness in 1967, it is unlikely that the civil service of that era would have been ready for or receptive to such arguments. Common sense was likely the argument that fit the time. There is no question that McClellan aimed to help complainants, even inserting in his annual reports examples of where he exceeded his jurisdiction, such as to assist a senior citizen who was pressured into buying a magazine subscription. He had no interest in judging processes. He looked at the merits of a case, evaluating the proverbial rights and wrongs that some person or agency had to account for in an individual case.

Several forces led to ombuds offices adopting a more process-oriented methodology, based on the development of an intellectual understanding of administrative fairness. Some ideas were borrowed from academic texts published in the 1980s and 1990s (15,16). Court cases, notably the Supreme Court of Canada case *Baker v. Canada (Minister of Citizenship and Immigration)* (17), set out fairness expectations that no one, ombuds nor bureaucrats, could ignore. The British Columbia ombuds was a pioneer in defining fairness, beginning with a 34-point checklist in 1990 (18). New tools quickly followed. The Saskatchewan ombuds adopted a concept for a Fairness Triangle from the mediation world, which explores three questions:

1. What was decided?
2. How was it decided?
3. How was the complainant treated? (19)

The triangle remains the operational model of several provincial ombuds offices as well as ombuds offices in universities and colleges. In the mid-1990s, Alberta developed the Administrative Fairness Guidelines (20), which it applies to this day.

Armed with a new understanding of what actually comprises fairness, ombuds began to take seriously the oft repeated joke that the goal of an ombuds is to improve government to the point that the ombuds is put out of business. Now an ombuds could move beyond resolving individual complaints. As subject matter experts on administrative fairness, an ombuds could offer workshops and advice to civil servants to not only find a remedy for the individual complainant but also fix the system so the same mistake would not be repeated. An illustration of the importance placed on improving government is the 2020 publication by the Canadian ombuds community of a 20-page booklet called *Fairness by Design* (23). Well researched and attractively presented, it helps public servants achieve fairness. It is only one of several such resources. Most offices list numerous seminars and presentations the ombuds office is willing to deliver to any public service that requests them.

Another enticement for systemic and process-oriented recommendations is an ombuds' ability to initiate investigations, sometimes called "own motion investigations". Much has been achieved using this tool. An example of a significant own motion report was *A Game of Trust*, a report released by the Ontario Ombudsman in 2007 aimed at protecting the public from theft and fraud in public lotteries (22). This report caused several other provincial ombuds to launch their own investigations with similar results and findings. Subsequently, protections were implemented across the country. The respect generated by this sort of report encourages the perception that public systemic investigations are the ultimate expression of an ombuds effectiveness. As early as 2000, Marsha Wagner, a former ombuds officer at Columbia University, noted the importance of identifying systemic issues in ombuds practice (21). Wagner points out that ombuds who do not focus on systemic issues may be derided as "wannabes".

It is easy to understand why ombuds are attracted to lead-story news coverage based on systemic investigations rather than individual complaints. Generating news coverage is more than ego. It is one of the few effective methods that ombuds have to bring the value of their services to public attention. Own motion investigations generate much needed publicity for ombuds at a time when making the public aware of the services offered by an ombuds is an ongoing struggle. By measuring the amount and reach of news coverage, some ombuds offices can calculate how much each news story would be worth as paid advertising. An ongoing weakness in the ombuds community is public awareness. One of the last surveys of public awareness in Canada was conducted by the *Protecteur du citoyen* du Québec (the Québec ombuds) in 2012 (24). Respondents were asked where to take complaints about public services, including social and health services. When the respondents were given no prompts or hints, only 11% could identify the *Protecteur du citoyen*. Fifty-seven per cent of the respondents could not name any agency. When given a choice of five possible agencies, 33% picked out the *Protecteur du citoyen*. No ombuds office in Canada can expect to rate significantly higher in public awareness than that achieved by the *Protecteur du citoyen*.

The shift toward alternative dispute resolution (ADR) techniques encourages a more public sector-oriented approach. ADR can provide the best possible service for complainants, which is one reason Alberta joined the rest of the country and began employing these techniques in 2018. Results can be faster and simpler for all parties. One side of the Fairness Triangle focuses on relationship building. The triangle has proven to be an excellent operation model for many ombuds offices. However, do ADR techniques build necessary ties, which might favour the public sector? With whom are the strongest relationships built? Will an ombuds lean toward the one-time complainant or the same civil servant or organisational administrator whose co-operation is necessary when called upon several times a year? To be efficient and to close the case, is it expedient to defer to the frequent government or organisational contact? Is it better to save some good will for the next complainant?

There are good reasons why an ombuds may emphasize the development of relationships with the public sector. When the Alberta Ombudsman gained municipal jurisdiction in 2018, co-author Johns participated and agreed with the decision to spend most of the ombuds' energy in the first year on working with the municipalities. It was anticipated that adding about 400 new municipal authorities from the municipalities to the workload mandated the achievement of efficiency. Complaints could only be resolved if the municipalities understood the ombuds' role, the legal requirement for the municipality to respond, and the advantages of resolving complaints through an ADR process. It was reasoned that municipalities faced the biggest adjustment. If they did not understand the process, complaints could not be resolved efficiently. The majority of effort thus went to publications, seminars, and participation in trade fairs and conventions attended by municipal representatives.

None of the history outlined in this article should be viewed as critical of the ongoing value of legislative or organisational ombuds. However, it should provoke some healthy scepticism and reflective questioning among ombuds and researchers of public policy and conflict resolution. Who is our client? Are we serving them as well as we should? Our apprehension is reinforced by the publishers of this journal when it called for submissions. The guest editors of this issue of the *Canadian Journal of Bioethics* wrote:

Thus, Complaints Commissioner offices examine processes and situations related to dissatisfaction, experiences and respect for rights of users (e.g., students, patients). *These examinations aim primarily at improving the quality of services, but also at easing social tensions and thus diverting conflicts from the courts.* The Complaints Commissioner office is intended to be a neutral and independent trusted actor. Following a complaint or intervention by the Complaints Commissioner, a review may lead to recommendations to the organisation *with the aim of improving the organisation's practices* (25, italics added for emphasis).

Many valid justifications can be offered for the above wording. The call for submissions was aimed at a wide spectrum of ombuds and complaint commissioner offices. Their mandates may not be legislative and could be quite different. Nevertheless, the wording may accurately reflect the prevailing wisdom, even in the parliamentary ombuds world. If so, in the evolved understanding of the ombuds practice, we can ask whether the primary goal of ombuds has become improvement in government and organisational practices. If so, have the needs of the complainant been lost in this gradual transition away from the individual-centred approach? Or are the needs of complainants best served by the dual focus on individual complaints and systemic issues?

THE OMBUDSMAN AND POLICY NETWORKS: STRATEGIC OMBUDSHIP, A NECESSARY EVIL, OR THE BETRAYAL OF CLIENT SERVICE?

Since the first legislative and organisational ombuds offices emerged in the 1960s, both government and society have changed dramatically. As society's expectations and the role of government evolved, and state and non-state actors converged in networks to shape policy-making processes (26). The use of network theory varies among social science disciplines, but Borzel offers a simplified definition of policy networks that captures the way the concept is frequently employed in public policy:

[Policy networks can be understood] as a set of relatively stable relationships which are of non-hierarchical and interdependent nature linking a variety of actors, who share common interests with regard to a policy and who exchange resources to pursue these shared interests acknowledging that co-operation is the best way to achieve common goals (27).

Because these networks are largely informal, Bogason and Toonen point out that they enjoy a greater flexibility in problem-solving than formalized and defined agencies or organisations (28).

To illustrate an example of policy networks in action in a particular policy sphere, examining the 2010 American *Affordable Care Act*, Genieys, Darviche, and Epperson (29) outline the key role of long-term insiders who possess a combination of profound policy knowledge, broad experience in health policy-making, common values, a commitment to practical politics that focus on legislative success, and a commitment to collaboration to see a reform effort through to the end. These elite long-term insiders circulate between high-ranking positions in government, where they directly influence policy outcomes, and research positions in influential think tanks or universities, where they deepen and share their knowledge while remaining connected to their health policy network (26,27). In the case of the *Affordable Care Act*, this network of insiders:

- Maintained collaboration in a complex reform campaign, consistently focusing on preserving key elements of the existing health-care system (in opposition to a single-payer system);
- Maintained aspects of market-oriented health care;
- Kept the focus on cost control; and
- Maintained the largest possible political coalition to ensure legislative success (29, p.74).

The long-term insiders advanced the *Affordable Care Act* with a network that included people within different branches of government and beyond the formal confines of government departments (30).

Beyond health policy, networks have been extensively studied in multiple policy areas. As policy network research expanded from the 1970s through the first decades of the 2000s, subcategories of networks such as policy communities and issue networks were differentiated and developed. Policy communities are fairly stable, yet informal interpersonal relationships between senior civil servants, political staffers, and lobbyists who are united by common values and perceived interests, and where the conventions and boundaries of collaboration are relatively well defined (31,32). For our purposes, research into issue networks and ombuds interactions in the policy sphere is more pertinent. According to Hugh Hecl, issue networks are larger groups of civil servants, interest group advocates, and policy researchers (both in higher education institutions and think tanks) who are committed to the same issue and form interdependent and informal collaborative relationships with less clearly defined boundaries (33). As advocates for fairness and good governance, legislative and organisational ombuds inevitably intersect with issue networks.

Despite their commitment to the principles of independence, impartiality, and informality, legislative and organisational ombuds unquestionably remain actors in the policy process when evaluated according to common definitions in policy network literature. According to Henry, any person who:

- Interacts with the policy system;
- Takes part in making or evaluating decisions;
- Exchanges information with government or takes part in political coordination on issues;
- Promotes solutions to dysfunctional systems; or
- Advocates to include disenfranchised parties or disregarded issues in the policy-making process

is a potential actor in a policy network, which is typically composed of people who share beliefs and institutional commitments (34, p.361-63). Ombuds were established as recipients of individual grievances against government or organisations, charged with evaluating claims and seeking solutions to grievances; and given investigative powers and the authority to publish reports and recommendations. This inevitably placed them on the trajectory to be integrated into issue networks.

Ombuds who want to reduce future grievances through policy recommendations may progressively be tempted to deepen their integration into the policy-making apparatus through consulting with decision-makers and serving on policy committees or informal policy working groups. Ombuds may be asked to conduct research projects with civil servants or academics who regularly collaborate with government. Bogason and Toonen argue that networks make themselves essential to the policy-making process, in part, “by mediating rituals and discourses, and by developing mediating roles – even those which might be illegal in formalized orders – because networks have greater diversity and flexibility than formal organisations” (28, p.224). For many ombuds, being discursively part of a solution to a policy problem and informally mediating dialogues between policy actors is a tempting endeavour. Engaging in informal policy networks seems innocuous and natural to many ombuds, but an their tacit or explicit engagement in the work of policy networks arguably increases the network’s legitimacy and risks the perception that the ombuds is aligned with government or organisational decision-makers.

As early as the 1990s, it already appeared to academic observers that “the whole administrative world now seems to consist of networks” (28, p.208). The influence of that was only expected to increase as western administrative models globalized and policy actors increasingly communicated and collaborated internationally (28). Globalization and international collaboration through policy networks contributed directly to the spread of the ombuds institution. Erkkilä writes:

The cross-national collaboration seems to have been a major factor in the diffusion of the Ombudsman institution from the 1960s to 1980s. But starting from the 1990s, cross-national learning bilaterally or through association membership has been increasingly complemented by transnational policy networks, where international organisations, most notably the UN, are promoting the Ombudsman. This also links with the prominent global discourses on human rights and good governance (35, p.34).

The internationalization of the ombuds institution should not be interpreted as the result of international networks supplanting local practices. Instead, Erkkilä explains that it reflects discussion and collaboration between local, national, and international ombuds networks, associations, and the media. Media coverage of ombuds practices has increased public awareness globally and subsequently added public pressure on ombuds to focus on systemic change (36).

The spread and entrenchment of the ombuds role is something that ombuds and all people concerned about fairness and individual rights should celebrate. However, the link between internationalization of the position and the increased focus on systemic issues in ombuds practice deserves careful scrutiny. Writing in defence of the Council of Europe's Venice Commission Principles on protecting and promoting the ombuds institution, Andrew Cutting wrote:

In a true democracy, it is critical that governments can be properly held to account for their actions... A simpler solution may be to seek the help of an Ombudsman... During their investigations, the Ombudsman should have unrestricted access to all relevant information as well as the power to interview relevant officials. As a result of their work, Ombudsmen should be able to address recommendations to state bodies, including calling on parliament and the government to amend or adopt legislation. Preferably, they should also be able to formally challenge the constitutionality of relevant laws and regulations (37).

In comparison with earlier quotes on the role of legislative ombuds in the 1960s, we see a clear shift away from protecting the rights of the average citizen toward systemic investigations to ensure government accountability. This shift is not limited to legislative ombuds. Writing in *Negotiation Journal* more than 20 years ago, Wagner offered the following description of the role of an organisational ombuds (italics added for emphasis):

Though the organisational Ombudsman's role may sometimes be regarded as *only* a facilitator of individual problem solving, in fact the Ombudsperson is *ideally situated within the organisation to make recommendations for systemic change*, based on patterns of complaint brought to the office. Indeed, the Ombuds is *obligated to take steps to prevent future recurrence of a problem*, as well as to resolve the problem at hand. Furthermore, because of the Ombuds' *broad understanding of the organisational culture, the needs of its leaders and other stakeholders*, the Ombuds office — in addition to being a vital component of the organisation's conflict management system — may also *participate in designing, evaluating and improving the entire dispute resolution system for the organisation* (21, p.99).

The framing in this passage is revealing. The value of individual problem-solving is minimized. The ombuds is positioned as a professional who is perfectly placed, and in fact required, to make systemic policy recommendations to prevent future problems. The ombuds is expected to be a policy professional who is attuned to the priorities of senior leadership and politically astute enough to know the proprieties and expectations of key stakeholders. Charged with collaboratively "designing, evaluating, and improving" policy, Wagner's ideal ombuds is fully integrated into the organisation's policy network. This seems very different from Sir Guy Powles' ombuds who "justifies his own existence," by ensuring that "no innocent person should suffer" (11). But is it? Did ombuds migrate to the upper crust of governments and organisations while leaving their complainants to meander in the trenches? Or did they simply adapt to evolution in governance and learn to work smarter to serve complainants more effectively?

It is not surprising that ombuds practices have evolved and the focus has shifted from a complainant-oriented to a systemic approach during the last six decades. As we acknowledge in this article, governments and organisations provide a more complex array of services. Citizens and consumers have higher expectations. Globalization of the ombuds function and the rise of local, national, and international policy networks increases pressures on ombuds to follow new trends in complaint mitigation. Like other professionals, ombuds like to feel that their work has an impact. Systemic investigations and recommendations may seem like opportunities to make a greater difference than managing individual cases.

In keeping with changing times, an optimistic interpretation of the focus on systemic issues is that it exemplifies strategic ombudship. In navigating complex contemporary systems of governance, ombuds must focus on the big picture, know the policy orientations of their elected or organisational leaders and core constituency groups, become experts in policy-making and issue framing, and take full advantage of policy networks to become agents of change. Van der Pol (38) argues that the integration of ombuds into policy networks in which they nourish collaborative relationships with civil servants is essential to succeeding in their mission. Other ombuds want to take the focus on systemic issues even further. Cited in Gill (39), former Ontario Ombudsman André Marin has advocated for a more public and assertive approach to legislative ombudship that brings systemic concerns to the public's attention and affirms the ombuds' place as a checkpoint in the architecture of governance (40).

A pessimistic interpretation of the focus on systemic issues is that it betrays both the origins of the ombuds profession and the needs of contemporary complainants. Ombuds with their heads too high in the policy clouds and too well integrated in policy networks are presumably more disconnected from Jane Q. Citizen and her challenges navigating the provincial bureaucracy, electrical utility, or university registrar's office. Furthermore, in a time when we have witnessed a global rise of anti-democratic governments that reject equity, trample minority rights, and reverse social progress, being perceived as disconnected from the needs and priorities of average citizens and partial to policy elites is a risky strategy for a politically constructed institution that is not objectively necessary. When an institution already struggles with public awareness about its services, it is unwise to relegate individuals' concerns to the back shelf in favour of serving on policy working groups and writing reports that only a handful of policy analysts and elected officials read in detail. The average citizen, electrical utility-consumer, or student will never read an ombuds report, but they will likely remember if an ombuds patiently and professionally helped them or a loved one to rectify an administrative error.

Perhaps both the optimistic and pessimistic interpretations of the gradual transition from a focus on client service to a focus on systemic issues miss the mark. Ombuds should embrace the fact that they work in, and must navigate, political spaces. As such, a confident and politically strategic approach to advocacy focuses primarily on client service – the same core ombuds casework mission that Sir Guy Powles and John Mynott articulated many decades ago – while keeping an eye on the big picture and the fickle political waves that move the system. Ombuds need to focus on both in order to thrive. Navigating these times of global political upheaval requires a historical understanding of our role and core mission, including ombuds' foundations in liberal and social democratic philosophy and institutions – institutions that expressly promote tolerance, the rule of law, and a commitment to responsive and compassionate governance as features of the good society. The consistent connection to the public and prioritization of individual needs, as well as knowledge of our own history, can give ombuds confidence in making policy recommendations to preserve trust in public institutions. This strategy is also the best suited to surmount the challenge of public awareness of the ombuds profession.

CONCLUSION

A full return to the 1960s' complainant-based approach to ombudship is unlikely. A significant systemic approach is here to stay, but ombuds must be vigilant and keep the needs of the complainant at the front of their minds. During the first 50 years, the ombuds community woke to the potential for them to improve government. The experience from ongoing investigations, academic work on administrative fairness, influential court cases, and a better understanding of how to apply effective tools such as own motion investigations and ADR techniques created the opportunity to be proactive. The momentum generated by these changes swung the pendulum toward focusing on addressing the needs of public services, realizing that an improved public service would better serve the citizenry. While commendable, a real concern now exists that the pendulum has swung too far. Now is the time to remember that the legislators created the ombuds to serve the complainant. The primary task assigned to the ombuds is not to improve government, but to level the power imbalance between individuals and government. So, what should ombuds do? We propose the four following steps to help reset the pendulum.

Examine present mission and value statements to ensure that serving complainants is at the top of the list

The call for submissions by the *Canadian Journal of Bioethics* accurately reflected what is revealed by present mission and value statements when it wrote: "These [ombuds] examinations aim primarily at improving the quality of services..." (25). Instead, the legislative direction should be the first priority: resolve complaints for individuals.

Create a complaint-centred approach similar to that of Manitoba

Ombuds staff must understand the value of serving complainants. If complainants do not feel valued, respected, and served, then they have no incentive to complain. Without complaints, an ombuds loses opportunities to not only serve the public but also to make recommendations to improve the quality of government services. Manitoba is developing a strategy to ensure its staff are trained to serve complainants (13). Some of its preliminary thoughts are that excellent services happens when staff:

- Understand the motivation of the complainant and what they hope to achieve.
- Respect their time and energy. If their objectives do not align with the ombuds' mandate, they should not be encouraged to file (filing is a right and any decision to proceed must be respected).
- Connect complainants to the service they need, without interfering in their journey with any other service provider.
- Maintain boundaries to fulfill the ombuds mandate.
- Meet or exceed expectations (13).

Invest as much effort into searching for complainants as in preparing reports, advice, and seminars for public services

Ombuds offices prepare excellent resources for government agencies to improve the fairness of their practices. An example is the *Fairness by Design* booklet (23). Most ombuds offer additional fairness guides and advice on their websites. Seminars, workshops, and online resources are offered. All of this work is worthwhile. However, the same level of energy is not as visible

on the complaint side. The effort would probably be misplaced if it was put into similar written resources for complaints because they are not as likely to read them. Nonetheless, the same effort should be put into assisting complainants through other means, such as: meeting with advocacy groups, attending events for perspective complainants, or even buying advertising.

At conferences, make the search for complainants a reoccurring topic

At the national level, conferences and training session emphasize how to reach complainants; the topic is too important to be left solely with the communication specialists. At ombuds gatherings, interest is always generated by topics such as successful investigations, investigation techniques, measuring offices' effectiveness, and debating administrative fairness. While all are excellent and necessary discussions, most ombuds offices will concede that the major weakness of the Canadian ombuds community is public awareness. At every major ombuds event, this weakness should be addressed in a prominent way. Frankly, the reason the topic is undervalued is because it is boring. Everyone presents the same ideas because everyone uses the same techniques. Everyone has a dynamite website and uses social media. With little to report, little is accomplished. The same discouraging (although undoubtedly true) remark is repeated: Public awareness is difficult because no one is interested in learning about the services of an ombuds until they have a complaint. On the other hand, lack of effort expended on public awareness ensures it will never improve.

Pursuing these four steps will help ombuds move forward in addressing their core mission of service to individuals and their secondary essential mission of systemic investigations and policy recommendations to promote good governance.

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