

**OMBUDSMAN INSTITUTIONS  
AROUND THE WORLD: ANALYSIS AND COMPARISON  
OF A PLURALITY AND PRACTICE**

by

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OCCASIONAL PAPER #59  
January 1997

ISSN 7116349

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Whatever our starting point, we have a common interest and common goal: improving the quality of democracy enjoyed by our respective people by providing them with an ongoing opportunity to have an effective independent review of their complaints and concerns about government, and to remedy any injustice and unfairness.

More and more, governments are realizing that allowing — even promoting — scrutiny of their decisions actually improves governing. Rather than feeling that independent investigations will undermine government, they see that the public's confidence in government is increased when the public has access to an ombudsman. Governments are coming to realize that through the recommendations of an ombudsman, problems can be identified and corrected early. Injustice can be remedied instead of festering into discontent.

I salute you for your dedicated interest on behalf of your people in increasing the quality of democracy and I sincerely thank you for the opportunity to be with you. By sharing our experiences with each other, we can all learn.

I have been asked to speak about ombudsman institutions around the world, to offer to you a buffet of ideas from which you can custom-build the model of ombudsman which is appropriate for your own country at this particular point in its history.

Just a few days ago I was at a conference of North American Ombudsman. There were ombudsman there representing every conceivable reconfiguration of the classic ombudsman model. We had not only ombudsman dealing with government, but ombudsman dealing with institutions of higher education, the corporate sector, banking, and the media. We had ombudsman whose jurisdictions are broad, and others who dealt with very specific subjects such as prisons or language rights. We had ombudsman who reported to parliaments, and those who reported to state governors and mayors. Some followed the classic ombudsman model, others were shaped as human rights commissions.

Personally, I see this diversity as wonderfully synergetic, as hope for a promising future, and something to be nurtured and encouraged.

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\* Ombudsman of Ontario, Canada. Member of Board of Directors. Remarks delivered at Second International Workshop on Ombudsman and Human Rights Institutions, Chisinau, Moldova, May 21 - 23, 1996.

But in addition to diversity, we also found ourselves united at this-North American conference. The same common threads which united us there are those which provide us with a common interest here in Moldova:

the belief that access to independent review of decisions is a right which all people should have as well as an obligation which all powerful institutions should fulfill if they wish to hold themselves out as participants in a democratic society.

Exactly how that should be done in Armenia or Latvia or the Ukraine or Canada is something which must be appropriately shaped to fit circumstance, custom, culture, and history. There is no one answer, no one right way.

Human rights are universal. Indeed, they are set out in the Universal Declaration of Human Rights. They belong to everyone on the planet, regardless of jurisdiction, by virtue of being a human being. The way we protect these rights, however, must be fine-tuned to fit local reality. Each of us is permitted then, indeed encouraged, to shape our respective institutions in a manner which is appropriate to our circumstances.

Now that I have said that, I feel comfortable in telling you something of my own situation in Ontario, which is a province of Canada, and about ombudsmanship in Canada. I wanted first to make sure you would not think I was trying to convince you that our own way was the best way.

Now you know that the reason I am telling you about Canada is that you may find certain ideas useful as you build your own model of ombudsmanship. In Canada, most of the provincial legislatures have classical ombudsman independent of government, while there is no ombudsman assisting the federal Parliament. This is not by design, however, and there is still a call for the federal government to have an ombudsman. We do have specialized ombudsman at the federal level dealing with corrections, language rights, and access to information.

Our provincial ombudsman deal primarily with questions of administrative fairness, while separate human rights commissions at both the federal and provincial level deal with human rights complaints in both public and private sectors according to various human rights codes. Most grounds of complaint of discrimination are common to all: race, gender, religion, nation of origin, etc.

The commissions have enforcement powers and report to a Minister rather than reporting to a legislature, and do not consider themselves to be ombudsman. In Ontario, I review complaints about the manner in which the Ontario Human Rights Commission carries out its mandate.

Typically, for the investigation of a complaint, Canadian parliamentary ombudsmen have power to subpoena, guarantee of confidentiality, immunity from being compelled to testify, the power to enter and inspect all public facilities, and a term of office which varies from five to ten years — some period which goes beyond a single government's maximum term of office.

Generally, we can investigate “on our own motion”, i.e. on our own initiative, as well as in response to a complaint. We are all accessible directly by members of the public as opposed to receiving complaints only from members of the legislature. While there is no limit to the recommendations which can be made, most frequently they concern offering an apology, reviewing an unfair decision so as to make a fair one, providing financial compensation, changing procedures, and, on occasion, changing the law.

I would also like to tell you a bit about Ontario and my work there as Ombudsman. Ontario has a population of about 11,000,000 — more than twice as large as Moldova. However, the area over which that population is spread is 82 times larger, extending far into the north. Through ten offices, the staff and I serve people living in isolated northern villages accessible only by air, and in metropolitan Toronto where there is a population of about 3,000,000.

I became Ombudsman in 1989 with an appointment for a ten-year term. I am an Officer of the Legislature, appointed by it and reporting to it.

And now that you know something about me and where I come from, I would like to invite you to join me on a tour of the world to look at the practice of ombudsmanship. My objective is not to offer a scholarly review, but rather to demonstrate the diversity which is available for your consideration.

We will find in every region of the planet there is an explosion of interest in the ombudsman concept — some 75 countries now have ombudsmen at national, regional or local levels.

It is clear that as peoples struggle to improve the democracy they enjoy, they seek to establish reforms necessary to give them confidence in their governments.

People want access to an independent monitor — even when the ombudsman does not support a complaint, people feel reassured that at least they have been treated fairly by their government. Everywhere, people want human rights to be protected and enjoyed. They want to receive natural justice in their dealings with powerful institutions. They want some way in which the ordinary person can resolve disputes over unfair administrative decisions. They want to ensure that officials are honest and do not use their power for their personal gain.

As the globe shrinks and we become each other's neighbours and trading partners, there are also external pressures on all countries to adhere to universal standards of fairness.

These are some of the factors behind the increased interest in establishing ombudsman, and in using the ombudsman process.

**It should be understood, however, that the enjoyment of all these rights are now seen as human rights to which every person is entitled, rights which every person can expect the ombudsman will defend.**

I say that because, like yourselves, I come from a jurisdiction in which there are so many minorities the majority seems to have disappeared. There are over a hundred languages spoken in Toronto alone. Ontario has a wonderful mix of races, cultures, languages, and religions, and the Ombudsman must serve each in an equitable way. There is diversity of economic power, of age groups, persons with disabilities, persons who are gay or lesbian, single parents, and the Ombudsman must provide custom-designed service to each person to fit his/her particular combination of diversities.

The more vulnerable a group is to decision-making by government — prisoners, for example — the more necessary it is that they know the ombudsman is available to them, that the ombudsman is accessible to them, that they will not suffer reprisal if they come forward with their complaint, and that the ombudsman will investigate their complaint and obtain redress to remedy any injustice which has occurred.

In our tour of the world, we will find ombudsman called by that name, and others who are known as “Public Protectors”, “Parliamentary Commissioners”, “Defenders of the People”, “Mediators”, etc. I believe our colleague from Poland is known as the “Commissioner for Civil Rights Protection.”

Some ombudsman will be shaped as human rights commissions. In Papua, New Guinea, the Republic of Taiwan, and elsewhere, the ombudsman is principally an anticorruption watchdog to monitor the behaviour of leaders.

In Asia, generally we will find the ombudsman concept only recently reemerging. Pakistan has built on its Muslim history and values to create an active ombudsman institution nationally and in two provinces. India has an increased interest in the ombudsman at the state level with a National Human Rights Commission. Thailand, Malaysia, and Japan are among countries on the threshold of establishing ombudsman.

In Australasia and the Pacific, there is an active association of ombudsman who meet regionally. Australia has ombudsman at the federal and state levels, while New Zealand has a very dynamic federal ombudsman. The ombudsman of the Pacific Islands have rich cultural dimensions in which to operate and in many instances have incorporated cultural principles into the classic ombudsman approach.

As my colleague Justice Florence Mumba reminds me, Africa had ombudsman-like institutions long before Arab and European influences arrived there. In post-colonial Africa and

with the emergence of state governments, the ombudsman institution has reemerged in a wide variety of situations ranging from the one-party rule of Tanzania, the military government of Ghana, and open democracies such as Malawi and South Africa.

Most African ombudsmen are appointed by and report to their national presidents, but operate with statutory protection which supports their independence. A number of other African countries have recently initiated processes which may lead to the establishment of an ombudsman. Regional meetings are held every two years, and South Africa, whose constitution speaks of the ombudsman as “Public Protector”, is planning to hold a workshop to train investigators later this year in cooperation with the International Ombudsman Institute.

Our tour now arrives in Central and South America. Just last month, I was in Mexico to participate in the First Congress of the newly-formed Ibero-American Federation of Public Human Rights Commissions. This region is experiencing very rapid growth in the establishment of human rights commissions based on the ombudsman concept.

As our colleague Dr. Jorge Maiorano of Argentina has said, just ten years ago, even suggesting that the ombudsman could operate in Latin American countries would have been considered a dream.

The dream has come true. In Mexico, for example, in just five years, a National Human Rights Commission has been put up and running, and its work is now complemented by Commissions in every state of the country and the federal district of Mexico City. The judiciary, state attorneys, and the police are very much within the jurisdiction of these human rights commissions.

This impressive array of thirty-some Commissions report to both the executive and legislative powers, and has constitutional protection. The National Commission has made a number of very courageous and dramatic interventions in situations of serious conflict. In addition to its investigations, the Commission is dedicated to educational efforts to establish a “human rights culture” throughout the country, and especially amongst police and prison officials. The creation of an awareness amongst the public and officials alike that there is a standard for fair treatment and there is a right to complain without fear of reprisal has represented a tremendous effort on the part of the Mexican Commissions.

Two years ago, Argentina established a “Defender of the People” as its national ombudsman. El Salvador’s Ombudsman has emerged from the peace agreement which ended the civil war. Costa Rica’s “Defender of the Inhabitants” was created in 1992, elected by the legislature and provided with functional and administrative independence. Peru’s new Constitution of 1993 established a “Defender of the People” to defend the community’s individual and collective rights. A technical mission of ombudsmen from Costa Rica, Guatemala, Mexico, and Argentina have supported the development of a “Defender of Human Rights” in Nicaragua. Panama is in the process of drafting legislation after a widespread consultation process, another example of a country being assisted by the regional members of

the international community of ombudsman. And of course I must mention that Puerto Rico has had a very active and outspoken Ombudsman since 1977.

If we now pass through the Caribbean, we will find in addition to the Spanish-speaking countries, those English-speaking nations in which there are a number of ombudsman organizations.

With regard to North America, I have already told you about Canada and its network of parliamentary ombudsman. In the United States, on the other hand, the executive ombudsman seems to predominate, i.e., an ombudsman appointed by and reporting to the executive branch of government rather than to the legislative branch. Human rights in the U.S. are considered primarily as “civil rights”, with a variety of mechanisms available, including the courts, for enforcement.

And so we come to Europe, where the ombudsman has spread out from its origins in Sweden in 1809, Finland in 1919, and Denmark in 1955 to some sixty-six ombudsmen at this time. In addition, the European Union has appointed its own Ombudsman.

In addition to countries represented here, Bulgaria, the Czech Republic, Estonia, Italy, Macedonia, Malta, and the Slovak Republic have -taken serious moves towards setting up national ombudsman and see that move as a principal measure of reform and democratization.

European ombudsman have their own Institute and regional meetings, just concluded, and I assume all persons here have established relationships with these organizations of their European colleagues.

And so we have ended our world tour, and you are back to apply new ideas to your own situation.

As you create and improve your ombudsman, there are some questions you will face. My task is to help identify the questions — your task will be to find the appropriate answers.

One set of questions relates to the scope of jurisdiction. Will your ombudsman have jurisdiction to investigate boards, commissions, and tribunals whose decisions affect many people each day? What will be its jurisdiction over the judiciary? Over law enforcement agencies? Will it have jurisdiction over all levels of government, such as municipalities? What about quasi-public institutions such as universities and hospitals? Will the jurisdiction include human rights as well as administrative fairness?

Can the ombudsman investigate complaints regarding corruption? International experience shows us that unless the public freely enjoys human rights, and unless they know there is no immunity protecting corrupt practices, people will not feel free to come forward with complaints about administrative unfairness.

I suggest you might approach this multiplicity of questions about jurisdiction not by first asking if the ombudsman should have jurisdiction in a particular area, but rather by asking: “What is the best way for the public to have an independent review of complaints with respect to each of these areas?”

Once this question has been answered, you can move on to a second set of questions relating to the powers you provide to the ombudsman. Will the ombudsman be able to inspect public facilities such as jails, hospitals, and institutions where persons with disabilities reside? Will the ombudsman have unrestricted access to documents? Will the ombudsman be able to subpoena by law officials and their records? Will the ombudsman have standing in court should this be necessary to have issues addressed?

A third area of decisions to be made has to do with the protections offered the ombudsman: Will the ombudsman be able to protect the confidentiality of records and of complainants? As a necessary part of this protection, will the ombudsman be immune from being compelled to testify in court about information collected during the course of an investigation?

Then we have the questions related to independence. Unless people see the ombudsman as independent, the ombudsman will have little credibility. The ombudsman must be seen as someone who is free from government influence in arriving at findings and making recommendations.

Many questions may be asked regarding independence: Will the ombudsman be able to control the manner in which investigations are held? Will the ombudsman be able to initiate investigations on her own motion? Will the ombudsman have control over the staff she hires and the manner in which her resources will be spent? Is the ombudsman’s term of office long enough that she will not be seen as a political appointment and will not be subject to removal except for good cause? Does the public have direct access to the ombudsman, or does the ombudsman have to wait for an intermediary to file a complaint?

I have spoken of the need for independence, and while independence is necessary for credibility, accountability of the ombudsman is also a condition for credibility. Is there provision for the ombudsman’s accounts to be audited outside of government? Is the ombudsman required to issue a public report at least annually? I might mention here that the fact that the ombudsman depends upon others to implement her recommendations is also an element of accountability since it requires the ombudsman always to be sure of her facts and grounds for her decisions.

With respect to the ombudsman’s foundation, is the mandate so solidly based it cannot be changed by political whim — for instance, is it embedded in the Constitution or as a second choice, in law? Once embedded, will the ombudsman be provided with solid tools to carry out the mandate?



What are the mechanisms through which the ombudsman can be guaranteed sufficient resources to permit her to fulfill her mandate? If the mandate is to provide services to the people, will the ombudsman be accessible to the people? In rural areas? To people who cannot read? How will access be assured for people in jails? For those who cannot come to the ombudsman's office? For people with disabilities? Children? For people who are often without a voice but whose needs are often the greatest?

To whom will the ombudsman report on an annual basis? Will these reports be distributed to the media and the public? To whom can the ombudsman appeal for support when a government agency refuses to implement a recommendation? In both instances, you may want to consider relating the ombudsman's reporting relationship to the part of the governing system which has the greatest power to give effect to recommendations. Some countries have created the relationship with the executive, others with the legislature or parliament, wherever the ombudsman can find the strongest support for implementation of recommendations.

Will your ombudsman be specifically empowered to employ international standards and conventions as a benchmarks to use in making findings and arriving at conclusions? For example, the treatment of prisoners or the rights of children?

And then we come to questions about who will serve as your ombudsman. Will it be a person who will be courageously and ferociously independent of government? A person whose integrity and honesty is unquestioned? A person of sufficient stature whose decisions will be respected almost without question?

I might note here that if an ombudsman is to retain credibility, the ombudsman cannot be an advocate, other than an advocate for fair and just treatment. Advocates are a vital part of the panorama, but the ombudsman plays a very different neutral role. Because the ombudsman's recommendations must be seen as fair rather than as "compassionate" or favouring a particular point of view, government is more easily persuaded to implement the recommendations.

Finally, despite our enthusiasm for the ombudsman, we must constantly recognize that the ombudsman is not a panacea to cure all of a country's problems. The ombudsman must be one of a number of mechanisms which are installed to enhance democratic government.

Neither can we assume that we can install an ombudsman in any situation and expect that it will be an effective mechanism. Especially in the case of the classical ombudsman the environment must be certain conditions of stability, of security, of willingness of government officials to be held accountable for their actions. When these basic requirements do not exist, it would almost be better for the ombudsman not to be on the scene, since her presence would create a false image that democracy was alive and well. First, then, the conditions for effective ombudsmanship must be established and only afterwards can an ombudsman be expected to be effective.

In closing, I would like to comment on the tendency to characterize the countries which

you represent as “new democracies”. I do not see things that way. My understanding is that you represent very old democratic traditions which offer you a solid foundation on which to build, and I encourage you to look to your own cultural roots for underpinning for your efforts. You are not alone in your search, nor should you feel at all embarrassed by it. The world over, we are all in transition.

The task you are engaged in here is a beautiful and noble mission to which every country of the world should be committed: strengthening the quality of their democracy by subjecting powerful government to the independent scrutiny of the ombudsman process. That is our struggle in Ontario and Canada as much as it is yours here. We just have different starting points.

You may know that the ombudsmen of the world are joined in an organization known as the International Ombudsman Institute. I am a member of the Board of that organization, and I can tell you of the great interest which my colleagues hold in the efforts which you are making. We have technical and professional resources which are available to you as you implement your plans to establish or improve ombudsmanship for your people. The Institute holds a conference every four years, and the world’s ombudsmen have gathered in Canada, Israel, Sweden, Australia, and Austria for past conferences. The next conference will be held in Buenos Aires in October 1996 on the theme of “The Ombudsman and Human Rights” and I invite you all to attend.

Canada, as I mentioned, has been enriched by peoples from all over the world who have come to share our hospitality and I have no doubt that among the Canadian Ombudsmen are people who speak Ukrainian, Russian, Polish, Romanian, and every other language represented here. Indeed, my own staff in Ontario is that cosmopolitan and diverse. Please consider my colleagues in Canada, my colleagues internationally in the I.O.I., and myself as being among your supportive allies as you move ahead in your mission.

I thank you for your attention. I look forward to speaking with you throughout this conference so that I may share with you and learn from you.