

EVALUATING THE EFFECTIVENESS OF AN OMBUDSMAN: A RIDDLE, WRAPPED IN A MYSTERY INSIDE AN ENIGMA*

Professor Anita Stuhmcke
Faculty of Law, University of Technology Sydney
Anita.Stuhmcke@uts.edu.au

For the most part, effective methods to evaluate the overall impact of Ombudsman, as Churchill's quote aptly suggests, remain unknown. Ombudsman must be doing well, the institution is entrenched internationally as an access to justice mechanism and is growing in both scope and application. However, the adoption of appropriate measures of 'success' have long been a source of puzzlement for both offices and stakeholders.

This paper asks the question as to how best to measure and account for the contributions – both tangible and intangible – that the institution of the ombudsman makes to the system within which it operates? This paper provides an overview of research which has been done to date on ombudsman effectiveness in terms of accountability to stakeholders. In doing so the paper distills practical aspects of such research including: how offices evaluate their own performance; research by external observers as to ombudsman effectiveness and research by 'stakeholders' such as government. The paper sources assessment measures from annual reports of ombudsman – bringing a comparative international analysis to the ombudsman toolbox with respect to how ombudsman gather and report information about their service to their stakeholders.

* Churchill W Radio Broadcast (1939)

Introduction

Thank you for asking me to speak here today. It is a pleasure to participate in this distinguished international gathering of ombudsmen and I look forward to any comments and suggestions you may have at the end of the session.

The effectiveness and evaluation of ombudsmen is of interest to ombudsman offices and the stakeholders in the offices including:¹ governments, public policy makers, citizens, government employees, government agencies, society at large, employees of the ombudsman office and government agencies, contractors, other integrity institutions and advocacy groups.

In thinking about the most significant contributions of a government ombudsman, many first think about control of government action. Lack of transparency of administrative decision making, failure of government accountability, undermining the rule of law, mistrust of government, damage to democracy, citizen's failure to obtain redress for grievances, waste, fraud, abuse – these are a few of the costs which government would like to control – and mitigate. Some observers first think of legal control – making sure that serious concerns do not unnecessarily escape the boundaries of executive government decision making so that disputes are settled in-house or at least not by the judicial arm of government. Still others first think about a healthy democracy. When dissent or complaints are managed and heard and change results, then good government thrives and a populace will be content and creative. Finally most observers think first and last of fairness, access to justice, welfare, equity – how citizens are treated by their governments.

It follows that the establishment of ombudsman offices by government is not (or should not be) done to make a profit. The starting point for any evaluation of ombudsman should be that the organisation is not about the generation of revenue or the so called 'bottom line'. Even if we assessed all costs and whatever benefit we could cost – and it showed that an ombudsman was not cost effective this by itself does not mean that the ombudsman program lacks benefit or value or is wasteful.

This leads to a contradiction as while there must be an application of traditional cost-effectiveness the value of the ombudsman cannot be measured accurately using traditional cost-effectiveness metrics. There is intangibility in the operation of an ombudsman. The challenge is therefore to cost – or at the very least sell as a success to office stakeholders - principles that cannot be accurately measured such as integrity, fairness, equity and humane treatment. This is the very practical requirement that ombudsmen, as a government agency, must 'sing for your supper'.

This paper addresses how ombudsmen report on cost effectiveness and has two aims:

1. To identify international research which evaluates ombudsmen
2. Provide evaluation examples (including 'best practice' and novel)

The overall assertion in the paper (although I am not claiming it has been specifically proven) is that Ombudsmen can show they are cost effective.

¹ Rowe 2001; Lo et al 2011

Limited 'external' research

There remains² limited research which is external to (or independent of ombudsman) in the area of ombudsman evaluation.³ What external research has been done overwhelmingly supports the success of the institution.⁴ A central feature of existing evaluation literature is the absence of an accepted or universal methodology used to support this conclusion.⁵

International literature acknowledges that '[M]ost evaluations of ombudsman offices are, at best, approximations'⁶ and that 'evaluating programs like the ombudsman institution is an exceedingly difficult and uncertain endeavour. It is impossible to come up with a framework that is foolproof.'⁷

This highlights the 'natural' obstacles in the way of ombudsman effectively measuring outputs, including:

- That the ombudsman is part of a wider system – both of government and of integrity organisations. Any one part of the system may be responsible for what performs well or what performs badly.⁸
- the essence of the ombudsman institution itself, that is neutral and often works informally – that it offers options and fosters appropriate and efficient redress of concerns and grievances and may work towards systems changes. There is an inherent subjectivity to the office – assisting individuals to understand or to resolve their own disputes – the lowest point of dispute resolution approach so that often the complaints do not materialise and/or systemic improvements preventing an untold number of complaints.
- the practice of ombudsman – for example, it has often been disputed as to whether a reduction in individual complaints is a sign of ombudsman success.
- the objectives of ombudsman are not to make citizens happy with their services necessarily but rather to ensure an absence of maladministration in decision making. The focus of the office is therefore upon process not outcome. The result may be dissatisfied stakeholders who may be subject to fair process however who do not think the outcome is fair.

Despite these natural obstacles evaluation is increasingly necessary through external requirements such as:

- to improve stakeholder understanding of the office and the roles it performs ;

² Earliest examples include Danet 1978; Hill 1976

³ Fowle 2008, 35

⁴ Kucsko-Stadlmayer (ed) 2008; Seneviratne 2002 & Buck et al, 2011; Satyanand 1999; Richard 2003 & Hill 2002; Uggla F 2004; Melton 1991; Fombad 2001; Ambroz 2005; Lo and Wickins 2002.

⁵ Evaluations range from 'the most informal intuitive sense of goodness or badness to more formalised scientific analysis' see Aufrecht & Hertogh 2000, p. 393

⁶ Ibid, p. 400

⁷ Ayeni 1999

⁸ Review of Victoria's integrity and anti-corruption system, 2010

- to highlight and analyse trends in office operations ;
- to amplify scrutiny of Office operations; and
- to promote reflection upon the nature and effect of the administrative law institutions that ensure government accountability.

Evaluation must be done – the question then is how best to do it?

Filling the evaluation void – Ombudsman are doing it for themselves

This void in external evaluation has largely been filled by ombudsman offices themselves. Ombudsmen have done extensive research into evaluating their own performance and impact⁹ This research has been done by individual offices (as described below) and by ombudsman associations -such as the Asian Ombudsman Association.¹⁰ Such practitioner evaluation occurs through ombudsmen setting their own goals, evaluating their own measures and reporting on their performance against them.

The intention in this talk is to capture a broad representative cross-section of evaluative techniques and some interesting developments in evaluation.¹¹ Many of the techniques I will show you are sourced internationally from Annual Reports, websites and material such as newspapers and pamphlets.

So, how do you evaluate and demonstrate the success of an Ombudsman office?

1. Data analysis

This measure refers to a variety of evaluative techniques:

Complaint Numbers¹²

Complaint Statistics¹³

Complaint efficiency and costing¹⁴

Budget reporting¹⁵

Cost benefit analysis¹⁶

Staff statistical analysis¹⁷

Customer satisfaction surveys¹⁸

⁹ Marin & Jones

¹⁰ Asian Development Bank (2011)

¹¹ Due to language limitations many of these examples are from Australasia or other English speaking countries.

¹² Example: Armenian Human Rights Defender 2011 para 1, p. 154

¹³ Example: National Ombudsman of the Netherlands 2011

¹⁴ Example: Western Australia Ombudsman 2010-2011 p. 19; Uganda Ombudsman 2011 p. xii

¹⁵ Example: Toronto Ombudsman 2011 p. 26; Ombudsman of Alberta 2011 p.45

¹⁶ Example:Smith 1998, p. 20

¹⁷ Example:South Africa Public Protector 2010 p. 67

¹⁸ Example:Trinidad and Tobago 2010 p. 5

Comparative complaint analysis¹⁹

Benchmarking against a strategic plan or value statement²⁰

Benchmarking against other offices²¹

2. Descriptive analysis

Case studies²²

Office observations (on its own performance)²³

Unsolicited feedback²⁴

Staffing changes²⁵

Comments on performance of agencies²⁶

3. Social engagement

Outreach activities²⁷

Speeches²⁸

Training²⁹

Policy changes³⁰

Publicity³¹

4. Promotion of trust

Identifying complaints about you³²

¹⁹ Example:Australian Commonwealth Ombudsman 1995-1996 p.5

²⁰ Example:Public Services Ombudsman for Wales 2010-2011 p.6

²¹ Example:Victorian Ombudsman 2010 p. 17

²² Example:National Ombudsman of Namibia 2010

http://www.ombudsman.org.na/attachments/069_Ombudsman%20Annual%20report%202008%20FINAL.pdf

²³ Example:McLeod 2003 p.18

²⁴ Example:Uganda Ombudsman 2010 p. 74

²⁵ Example:Australian Commonwealth Ombudsman 1994-1995 pp.45–6.

²⁶ Example:USA Ombudsman of State of Iowa 2011 p.4

²⁷ Example:Irish ombudsman 2011 p. 5

²⁸ Example:Ombudsman for Nova Scotia 2011 p. 26

²⁹ Example:Ombudsperson British Columbia 2011-2012 p. 4; New South Wales Ombudsman 2011 p.

101

³⁰ Example:Queensland Ombudsman 2010 p.26

³¹ Example:Ontario Ombudsman 2010; Hong Kong Ombudsman 2012

³² Example:Parliamentary and Health Services Ombudsman 2011-2012 p. 9

Conclusion

Evaluation was 'conceived and developed to generate knowledge that could be used to improve policies or programs or to make decisions about whether a program should continue'.³⁴ While it may not be possible to effectively measure the success of ombudsmen what is clear is that ombudsman practitioners are forging their own paths with respect to criteria and evaluation. The result is that justifications for budget and proof of impact may be established through a wide ranging and large number of methods, from counting hits on websites to complex statistical evidence of complainant satisfaction.

The challenge going forward will be to think through how the data accumulated may be conceptualised for the relevant stakeholder audience *within* the framework of the ombudsman institution. The conundrum is that as Danet notes 'Ultimately, the ombudsman is concerned with justice and injustice ...[Y]et what could be more intangible than injustice? How shall we measure it? What criteria can we use to assess it before the introduction of the ombudsman?'³⁵

Put simply, there are thus two complementary measures of success for ombudsman. The first measure is by demonstrating value to targeted stakeholder groups. I believe that the examples given in this presentation show that these methods can prove ombudsman impact and effectiveness.

The second measure of success however is more complex and rests on a paradox, as in order to measure the concepts that Danet refers to – justice and injustice - the measure of success must turn on absence. In other words the existence of justice is only proven by an absence of injustice – good administration is proven by the number and severity of negative outcomes. However herein lies a further paradox as for example, high complaint rates may be indicative of injustice or poor administration but low complaint rates do not necessarily signify a just administration. There is thus asymmetry in the meaning of ombudsman data.

So, where does this leave the measurement of that which is intangible about ombudsman performance? I would suggest – and here further work is needed –the measure of success of ombudsman in delivering justice (or good administration) may be proven through efforts of an office to create a shared knowledge amongst stakeholders as to where the edge of injustice lies. Ombudsman offices build a just administrative culture based on a shared understanding of principles such as integrity and accountability and while the data evidencing this may not be obvious many of the examples given above – such as training and speeches may contribute to the cataloguing of efforts made by an ombudsman institution to define the edge of injustice. These efforts should not be sidelined in any evaluation of impact.

³³ Example: NSW Ombudsman 2010-2011 p.14

³⁴ Slattery 2010

³⁵ Danet (1978) p. 342

Reference List

Journal Articles

Ambroz M (2005) The mediating role of the Ombudsman in the protection of human rights. *International Journal of Social Welfare* 14: 145

Danet B (1978) Toward a Method to Evaluate the Ombudsman Role. *Administration and Society* 10(3): 335

Fombad CM (2001) The Enhancement of Good Governance in Botswana: a Critical Assessment of the Ombudsman Act, 1995 *Journal of Southern African Studies* 27(1): 57

Hill LB (2002) The Ombudsman Revisited: Thirty Years of Hawaiian Experience. *Public Administration Review* 62(1): 24

Lo C & Wickins R (2002) Towards an Accountable and Quality Public Administration in Hong Kong: Redressing Administrative Grievances Through the Ombudsman *International Journal of Public Administration* 25(6): 737

McLeod R (2003) Twenty Five Years of the Commonwealth Ombudsman. *AIAL Forum* 36: 15

Melton GB (1991) Lessons from Norway: The Children's Ombudsman as a Voice for Children. *Case Western Reserve Journal of International Law* 32(2): 197

Slattery D (2010) The political inherency of evaluation. *Evaluation Journal of Australia* 10(1):17

Smith P (1998) Red Tape and the Ombudsman. *Canberra Bulletin of Public Administration* 88: 18-20.

Uggla F (2004) The ombudsman in Latin America. *Journal of Latin American Studies* 36(3): 423

Books

Buck T, Kirkham, R. and Thompson B. (2011) *The Ombudsman Enterprise and Administrative Justice*. Farnham: Ashgate

Kucsko-Stadlmayer G (ed) (2008) *European Ombudsman-Institutions: A comparative legal analysis regarding the multifaceted realisation of an idea*. Springer International

Hill, LB, (1976) *The Model Ombudsman*. Princeton University Press

Seneviratne M (2002) *Ombudsmen: Public Services and Administrative Justice*. Cambridge University Press

Book Chapters

Aufrecht & Hertogh (2000) Evaluating Ombudsman Systems. In: Gregory R & Giddings P (eds) Righting Wrongs: The Ombudsman in Six Continents. International Institute of Administrative Sciences

Ayeni V (1999) Evaluating Ombudsman Programmes. In: Reif LC (ed) The International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute. The Hague: Kluwer Law International

Online Documents

Rowe M (2001) Effectiveness of Organizational Ombudsmen.
http://web.mit.edu/ombud/publications/effectiveness_final.pdf Accessed 1 September 2012

Satyanand (1999) Growth of the Ombudsman Concept. Journal of South Pacific 3
http://www.vanuatu.usp.ac.fj/journal_splaw/articles/Satyanand1.htm#1 Accessed 10 May 2007

Review of Victoria's integrity and anti-corruption system, 2010
<http://www.ssa.vic.gov.au/products/view-products/review-of-victorias-integrity-and-anti-corruption-system.html> Accessed 20 August 2012

Reports

Marin A & Jones G (2011) Measuring Ombudsman Performance: Setting Performance Standards and Indicators. In: Asian Development Bank, Strengthening the Ombudsman Institution in Asia

Lo CW, Yee HWH, Liu NN, Li H (2011) Ombudsman and Stakeholder Engagement for Improved Service Delivery. In: Asian Development Bank, Strengthening the Ombudsman Institution in Asia

Asian Development Bank (2011) Strengthening the Ombudsman Institution in Asia.

Annual Reports

Armenian Human Rights Defender (2011) Annual Report <http://www.ombuds.am/en>
Accessed 20 August 2012

Australian Commonwealth Ombudsman (1995-1996) Annual Report
<http://www.ombudsman.gov.au/> Accessed 10 July 2012

Australian Commonwealth Ombudsman (1994-1995) Annual Report

Hong Kong Ombudsman (2012) The Smart Complainant
<https://ofomb.ombudsman.hk/game/EN/game1/game1.html> Accessed 20 August 2012

Irish Ombudsman (2011) Annual Report
<http://www.ombudsman.gov.ie/en/Publications/Annual-Reports/2011-Annual-Report/>

National Ombudsman of Namibia (2010) Annual Report
http://www.ombudsman.org.na/attachments/069_Ombudsman%20Annual%20report%202008%20FINAL.pdf Accessed 20 August 2012

National Ombudsman of the Netherlands (2011) Annual Report,
<http://www.nationaleombudsman.nl/english> Accessed 20 August 2012

New South Wales Ombudsman (2011) Annual Report
<http://www.theioi.org/australasia-pazifik/australia/new-south-wales-ombudsman> Accessed 20 August 2012

Ombudsman of Alberta (2011) Annual report <http://www.theioi.org/north-america/canada/ombudsman-of-alberta> Accessed 10 July 2012

Ombudsman for Nova Scotia (2011) Annual Report <http://www.theioi.org/north-america/canada/ombudsman-nova-scotia> Accessed 13 September 2012

Ombudsperson British Columbia (2011-2012) Annual Report <http://www.theioi.org/north-america/canada/ombudsperson-british-columbia-2011> Accessed 13 September 2012

Ontario Ombudsman (2010) Annual Report, You tube:
<http://www.youtube.com/user/OntarioOmbudsman> Accessed 1 September 2012

Parliamentary and Health Services Ombudsman (2011-2012) Resource Accounts
http://www.ombudsman.org.uk/_data/assets/pdf_file/0010/16030/PHSOresourceaccounts2011-12lowres.pdf Accessed 11 May 2012

Public Services Ombudsman for Wales (2010-2011) Annual Report
<http://www.ombudsman-wales.org.uk/> Accessed 10 July 2012

Queensland Ombudsman (2010) Annual Report <http://www.theioi.org/australasia-pazifik/australia/queensland-ombudsman> Accessed 10 July 2012

Richard B, (2003-2004) Ombudsman, New Brunswick Office of the Ombudsman, *Annual Report of the Office of the Ombudsman*

South Africa Public Protector (2010) Annual Report
<http://www.southafrica.info/about/democracy/pubprotect.htm>

Toronto Ombudsman (2001) Annual Report <http://www.theioi.org/north-america/canada/ombudsman-city-of-toronto> Accessed 10 July 2012

Trinidad and Tobago Ombudsman (2010) Annual Report <http://www.theioi.org/caribbean-latin-america/trinidad-tobago/ombudsman> Accessed 10 July 2012

Uganda Ombudsman (2010) Annual Report <http://www.theioi.org/africa/uganda/inspector-general-of-government> Accessed 3 September 2012

Uganda Ombudsman (2011) Annual Report <http://www.theioi.org/africa/uganda/inspector-general-of-government> Accessed 10 July 2012

USA Ombudsman of State of Iowa (2011) Annual Report <http://www.theioi.org/north-america/usa/state-of-iowa-ombudsman> Accessed 3 September 2012

Victorian Ombudsman (2010) Annual Report <http://www.theioi.org/australasia-pazifik/australia/ombudsman-victoria> Accessed 1 April 2012

Western Australia Ombudsman (2010-2011) Annual Report http://www.ombudsman.wa.gov.au/Publications/Annual_Reports.htm Accessed 10 July 2012

Theses

Fowle F (2008) A Blueprint for the Evaluation of an Ombudsman's Office: A Case Study of the ICANN Office of the Ombudsman. La Trobe University