

THE OMBUDSMAN'S ANNUAL REPORTS

A Discussion Paper

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THE OMBUDSMAN'S ANNUAL REPORTS

I. INTRODUCTION: TO WHOM? FOR WHAT?

The Ombudsman's annual reports are directed to the following groups and individuals:

- (1) The Legislature
- (2) The Chief Executive
- (3) The Administrative Agencies;
- (4) the general public, via the media;
- (5) staff within the reporting office;
- (6) other Ombudsmen; and,
- (7) scholars.

While the interests of the seven groups may vary, in the main they converge and overlap. Still, to oversimplify, the special concern of each may be postulated as follows:

- (1) The Legislature wants to justify the expenditure for the office;
- (2) the President, Prime Minister, Premier or Governor want to know how the agencies are performing;

This paper is an offshoot of my current study of the work of Ombudsmen in prisons, which relies considerably on annual reports.

I am grateful to the University of California for a Faculty Research Grant which provided a Research Assistant. Ms. Debbie Cott counted pages and case summaries in preparing the chart, and gleaned from the annual reports the Ombudsmen's various statements as to how they chose cases for summarization.

One of the topics on the agenda of the third Conference of Canadian Ombudsmen, held a year ago in Halifax, Nova Scotia (September 23-25, 1975), was "uniform nomenclature in tabulating and reporting. . . complaints." (See PROVINCE OF NOVA SCOTIA: FIFTH REPORT OF THE OMBUDSMAN [1975], pp. 10-11.) This paper is intended as a continuation of that discussion.

- (3) agency personnel want to know if they escaped unscathed, or, if not, how much it hurts;
- (4) the public wants to be alerted or reassured, and, in either case, entertained;
- (5) the Ombudsman writing the report wants it to serve all of the above and to stimulate internal communication in a way which enhances the efficiency of the office;
- (6) other Ombudsmen want to compare the operation with their own; and,
- (7) scholars want to know everything.

With a view to establishing how well the annual reports meet these needs, I have examined the annual reports from each of the four Nordic countries and all of the state, provincial or national annual reports which I have received from Ombudsman offices in Australia, Canada, New Zealand and the United States. There were 33 from Canada, 16 from the United States, 13 from New Zealand, and 7 from Australia, plus several Quarterly Reports from Victoria. The First Report of the Alaska Ombudsman, covering the last six months of 1975, is not included. I did not look at the reports from urban Ombudsman offices (except for Seattle), from military or language Ombudsmen, nor from Ombudsman offices in emerging nations. Hopefully, with appropriate changes, the observations in this paper may also be suggestive for local government Ombudsmen, categorical Ombudsmen, and Third World Ombudsmen.

The requirement of an annual report to the Legislature is found without exception in the Ombudsman statutes. Except in Scandinavia (see Appendix), there are no specific requirements as to content. The phrase found most frequently directs the Ombudsman simply to report on, concerning or relating to "exercise of his functions" (New Zealand; Alberta; Manitoba; New Brunswick; Saskatchewan;

Iowa; Nebraska; Seattle; South Australia; Victoria; Western Australia). Two of these jurisdictions add an equally broad reference to "powers" (Saskatchewan) or "duties" (Saskatchewan; Manitoba). Three other jurisdictions, following the Danish lead, indicate that the Ombudsman shall give a report of or discussing "his activities" (Quebec; Alaska; Hawaii). One of these adds that it shall also include "his recommendations" (Quebec). It has been left to the Ombudsmen, then, to establish the form and substance of their own annual reports.

II. STATISTICAL ANALYSIS

Each annual report contains a statistical analysis of the work of the office. Half of them--those from Scandinavia, New Zealand and Australia-- contain two separate but related systems: one which accounts for all of the cases which have come in during the year in question; and, one which accounts for all of the cases whose consideration has been completed during the year in question. Keeping these two systems separate is essential in order to maintain "double-entry" circularity, in which the sum of the parts is equal to the whole.

This basic principle is not followed in the other half of the Ombudsman offices--those in Canada and the United States. Instead, the disposition of cases is recorded according to the year in which the complaint was received. This combined approach presents no problem during the first year of operation. In subsequent years, it becomes cumbersome and confusing, unless one simply ignores the disposition of those investigations not concluded in the same year as they were made, which seems to be the case in Iowa and Nebraska. Elsewhere, the figures for a given year must be repeated and revised each year, and the final picture does not emerge until all of the complaints from that year have been finally resolved.¹ It is tedious for the reader to calculate the total work actually done in a given year.

The criticism in the preceding paragraph is minor; the residual statistical inconsistency in some of these reports does not undercut their overall capacity to supply essential information. It does, however, point to a more

¹ See PROVINCE OF ALBERTA, REPORT OF THE OMBUDSMAN 1974-75, pp. 19-20; PROVINCE OF MANITOBA, REPORT OF THE OMBUDSMAN 1975, p. 3; PROVINCE OF NEW BRUNSWICK, EIGHTH REPORT OF THE OMBUDSMAN 1974, pp. 88-89; PROVINCE OF NOVA SCOTIA, FOURTH REPORT OF THE OMBUDSMAN 1974, p. 92; QUEBEC, THE PUBLIC PROTECTOR: SIXTH ANNUAL REPORT 1974, p. 167; SASKATCHEWAN, OFFICE OF THE OMBUDSMAN: THIRD ANNUAL REPORT 1975, p. 30 and pp. 116-21, SECOND ANNUAL REPORT 1974, p. 26, FIRST ANNUAL REPORT 1973, p. 4; STATE OF HAWAII, OFFICE OF THE OMBUDSMAN 1974-75, p. 85 (Table 2).

important general problem, i.e., the absence of a common statistical format which would enhance comparability.

I would suggest that the Association of World Ombudsmen which may emerge from this Conference consider the establishment of a working group to study record-keeping, with a view to preparing a draft for a model reporting system. As a precursor, in the paragraphs which follow, I have attempted to develop a standard nomenclature for incoming cases.

A. CASES OPENED

A cumulative composite of the categories used in the Ombudsman's annual reports to define total incoming workload contains the following items:

- (1) Number of unrecorded contacts for which no file or estimated basis;
- (2) Number of recorded contacts for which no file is opened;
- (3) Number of inquiries which are outside the Ombudsman's jurisdiction;
- (4) Number of matters taken up by the Ombudsman on his own initiative (mainly in Scandinavia); and,
- (5) Proper complaints.

The first two of these are mostly requests for information and referral. Almost without exception, they are concluded immediately. While they are part of the Ombudsman's workload, they are not part of his caseload. The Ombudsman's caseload is composed of investigations which he takes up on the basis of his own motion or in response to an inquiry or complaint. Most of the caseload relates to complaints, i.e., grievances registered by complainants on subjects and about agencies all of which are within the Ombudsman's jurisdiction. In some annual reports, the caseload is presented on an agency- by- agency basis; if

a choice has to be made, it seems to me that it would be more useful to itemize closed rather than opened cases.

In addition to making some of the above distinctions, most Ombudsmen also supply the following information about incoming cases:

- (1) place: the geographical location of the client;
- (2) time: the month in which the contact was initiated; and,
- (3) manner: whether the contact was made by mail, by telephone, or in person.

The annual reports in Iowa and Nebraska add the number of complaints referred by a third party, and the position (e.g., legislator, state official) held by the intermediary.

The annual reports from the Ombudsman offices in New Brunswick and Quebec also supply information as to the sex of the complainant and the language of communication. Other socio-economic information is very difficult to obtain. One way to secure such information without violating privacy would be to pinpoint the home addresses of those clients who complain or inquire, and then to correlate location with income level as established by census tracts. This has been done on a pilot basis by the Ombudsman in Seattle.²

B. CASES CLOSED

That portion of the Ombudsman's caseload which is received or completed in a given year becomes the subject of the second cycle of statistical information in the Ombudsman's annual reports. The utility of the "Cases Closed" accounting system depends in part upon the effectiveness of the screening provided by the "Cases Opened" system. Requests for information, referral or service should be disposed of in a manner which does not clog the record-keeping system, so that

² ANNUAL REPORT OF THE SEATTLE/KING COUNTY OMBUDSMAN, 1975, p. 6.

the Ombudsman can concentrate his efforts on the statistical analysis of serious inquiries and complaints.

In Sweden and Finland, the bottom line of analysis of completed cases is expressed in terms of the fault of vindication of the civil servant. In Denmark and Norway, the calculation or criticism may also be personal. (See Appendix). A more important distinction finds Sweden and Denmark providing data about fault or criticism on an agency-by-agency basis, while Finland and Norway supply such information only on an overall basis. In my opinion, the utility of this statistical information lies in its application to a particular agency, and I would further suggest that, for umbrella agencies, the data might well be presented according to functional sub-agencies.

In New Zealand, the focus is on whether the complaint was justified, and the data are supplied on an agency-by-agency basis, as they are elsewhere except for Iowa and Nebraska. Within the language of justification, there are a variety of sub-categories of analysis which I shall not attempt to enumerate. The present set of classifications permits gross comparisons of results, but it would be a worthwhile task for a working group on record-keeping to try to sort out the diversities.

As far as record-keeping is concerned, the greatest contribution made by the first Ombudsman office outside of Scandinavia--or, more appropriately, by Sir Guy Powles, the dean of the world's Ombudsman corps--is the provision in the New Zealand annual reports of a list of all complaints for a given year, by agency, subject and result, the last keyed to the Ombudsman Act. This schedule permits the reader to make his own tabulations. All of the Commonwealth offices have followed this tradition, until its recent elimination in Saskatchewan.³

³ See SASKATCHEWAN, OFFICE OF THE OMBUDSMAN: THIRD ANNUAL REPORT 1975, p. 1. Until 1961, the annual reports from the Ombudsman office in Finland contained a list of complaints by the name and position of the complainant and by subject, but with no indication of result.

A contribution of more modes proportions, but in the same spirit of accountability, has been made in the Nebraska annual reports, in the form of a chart which indicates the number of days which elapse from receipt of a complaint to its final disposition.

III. CASE SUMMARIES

About half of the pages in the annual reports are devoted to Case Summaries.⁴ (See Chart). With some oversimplification, it may be said that the statistical portions present the quantity of work, while the Case Summaries portray the quality of work.

One purpose of the Case Summaries, in a collage of the Ombudsmens' own words, is to give or select a variety of sampling of complaints which show matters of current interest or which illustrate or demonstrate typical or representative cases and the matter in which they are investigated. Current interest aside, I would suggest that the need for this kind of Case Note declines with passing years, as the readers become familiar with the style of the office. Thus, in Quebec, Judge Louis Marceau decided to exclude "isolated cases which required simply a question of appraisal of the facts or were the result of accidental administrative problems..."⁵

Case summaries also serve a disciplinary purpose, as a discreet form of the carrot and stick of publicity. "They . . . demonstrate the manner in which some Departments of Government are more complained against than others," as the first North American Ombudsman, George McClellan, put it.⁶ Seattle Ombudsman Paul Meyer chooses his Illustrative Cases to "show how the Office moves from an individual complaint to a broader policy issue in an effort to prevent recurring

⁴ Called Case Comments (Alberta), Examples of Complaints (Nova Scotia), Case Notes (New Zealand, South Australia and Western Australia), Case Summaries (Hawaii and Iowa) or Summaries of Cases (Manitoba), and Complaint Summaries (New Brunswick and Quebec) or Summary of Complaints (Saskatchewan). There are no Case Summaries in the annual reports from Nebraska, although the Ombudsman occasionally issues special reports on the investigation of a group of related complaints.

⁵ QUEBEC, THE PUBLIC PROTECTOR: FOURTH ANNUAL REPORT 1972, p. 13.

⁶ PROVINCE OF ALBERTA, REPORT OF THE OMBUDSMAN 1968, p. 5. Although it is by no means dominant, the structure of criticism is highly formalized in the annual reports from Denmark, Finland and Sweden. (See Appendix.)

Chart. Case Summaries in the
Ombudsman's Annual Reports

ANNUAL REPORTS FROM OMBUDSMAN OFFICES IN:	I. Ave. Total Pages	II. Ave. Case Summary Pages	III. Col. II as % of Col. I (rounded)	IV. Ave. No. of Case Notes	V. Ave. No. of Pages per Case per Note
(1) Alberta (9) ⁺	133	83	62%	42	2
(2) Manitoba (6)	107	72	67%	25	2.9
(3) New Brunswick (7)	44	8	18%	19	.4
(4) Nova Scotia (2)	85	37	44%	35	1
(5) Quebec (6)	272	134	49%	305*	.4
(6) Saskatchewan (3)	114	70	61%	85	.8
(7) South Australia (3)	102	49	48%	46	1
(8) West Australia (3)	83	47	57%	23	2
(9) Victoria (1)**	137	76	56%	26	2.9
(10) Hawaii (6)	119	57	48%	59	1
(11) Iowa (5)	77	42	55%	115	.4
(12) Seattle (2)	46	19	41%	21	.9
(13) New Zealand (13)	96	62	65%	65	1
(14) Denmark (5)	317	250	79%	74	3.4
(15) Norway (5)	121	80	66%	58	1.4
(16) Finland (5)	137	66	48%	47	1.4
(17) Sweden (5)	621	553	89%	107	5.2

+ The number of annual reports comprised in the average is indicated in parentheses

* Distorted by the inclusion of 659 Case Notes in the 1970 Annual Report

** Three Quarterly Reports have been averaged in with a single Annual Report

situations and thereby generally to improve the delivery of governmental services."⁷

There is a noteworthy lack of statutory or other guidelines for the selection of cases to be included in the annual reports. The publication of a list of all cases as found in the Commonwealth annual reports (described above), is an antidote to caprice or bias. It gives the reader an opportunity to see which cases have not been summarized.

The inclusion of a cumulative index classified by subject and by agency greatly enhances the precedential value of the Case Summaries in Denmark, Norway and Sweden. It is a relatively easy task to add the key phrases from the current year's Summaries to those which have gone before. The Norwegian annual report also lists all of the statutes which have been mentioned in the Case Summaries. Elsewhere, only the Quebec annual reports are supplied with an index, which is extensive but not cumulative.

The impact of the annual reports in the Nordic countries is further strengthened by their summarization in the regional journal of public administration, Nordisk Administrativt Tidsskrift. From 1938 to 1958, inclusive, the Swedish Ombudsman reports were summarized in Förvaltningsrättslig Tidskrift, the journal of administrative law, and in 1928 they were summarized in Statsvetenskaplig Tidskrift, the journal of political science. A similar service could be provided by law reviews in the English-speaking (and for Quebec, French-speaking) countries. Since 1968, the annual reports from Sweden have contained a Summary in English, which is useful even to those who read Swedish.

⁷ JOINT SEATTLE/KING COUNTY OFFICE OF THE OMBUDSMAN: QUARTERLY REPORTS JANUARY 1, 1974 to SEPTEMBER 15, 1974, p. 10.

IV. CONCLUSION: COSTS AND CLIENTELE

The information supplied in the annual reports tells what Ombudsmen accomplish, but not what they cost. The latter can be inferred grossly from the roster of staff which is provided in most annual reports. As an example of what can be done, the Minnesota Correctional Ombudsman, Theartrice Williams, gives a breakdown both of budget allocation and actual expenditure for a given year,⁸ and the Seattle Ombudsman devotes a page of his current report to a general discussion of his budget, with an indication of the total amount appropriated.⁹

To volunteer such information is an example of the openness which Ombudsmen attempt to inspire in other agencies. Cost factors are particularly useful to legislators in jurisdictions which are considering the establishment of an Ombudsman office.

Somewhat ironically, the Ombudsman's clientele are not among the target groups for his annual reports. Of course, each complainant is notified of the outcome of his own case, and it would be impracticable to send a copy of, excerpt from or citation to the annual report even to those whose cases are summarized.

It would be possible, however, to reprint selected Case Summaries from one or more jurisdictions treating with a single topic or agency (prisons, medical services, social welfare, etc.) in a pamphlet which could be directed to appropriate groups of past or prospective clientele (inmate libraries, hospitals, nursing homes, etc.). Such a publication would increase the utilization of the Case Summaries, both within the state of origin and elsewhere. The booklets would also be useful as supplemental reading in appropriate academic courses.

⁸ STATE OF MINNESOTA, OMBUDSMAN FOR CORRECTIONS: 1974-75 ANNUAL REPORT, p. 20 (Appendix C).

⁹ ANNUAL REPORT OF THE SEATTLE/KING COUNTY OMBUDSMAN 1975, p. 7.

Inevitably, this paper has focused on alleged shortcomings. In conclusion, it should be emphasized that the Ombudsman's annual reports, on the whole, are useful documents which meet the needs of those to whom they are directed.

V. SUMMARY OF RECOMMENDATIONS

- (1) The statistical record of cases which have come in and cases which have been completed during a given year should be kept separately.
- (2) A working group should be established to study record keeping, with a view toward the development of a standard nomenclature and a model reporting system.
- (3) In addition to presenting the location of complainants by city or county, street addresses should be used to identify the kinds of neighborhoods in which the complainants live.
- (4) Statistical information about the results of the Ombudsman's inquiries and investigations should be provided on a functional agency-by-agency basis.
- (5) Each annual report should contain a complete list of all complaints for that year by agency, subject and result, keyed to the Ombudsman's statute (which should be appended).
- (6) The Ombudsman should indicate the range and frequency of intervals between opening and closing cases.
- (7) Over time, the Ombudsmen should reduce the number of Case Summaries which treat mainly with issues of fact or with minor non-recurrent lapses.
- (8) Each annual report should contain a cumulative index classified by subject and by agency.
- (9) Law reviews in nearby Universities should be invited to publish summaries and analyses of the annual reports.
- (10) The Ombudsman should include reasonably detailed information about their budgetary allocations and expenditures.
- (11) From time to time collections of Case Summaries dealing with a particular topic should be published separately.

APPENDIX: REQUIREMENTS FOR AN ANNUAL REPORT TO PARLIAMENT
FROM THE OMBUDSMEN IN THE NORDIC COUNTRIES

I. DENMARK¹⁰

A. The Ombudsman Act. Sec. 10: "The Ombudsman shall submit an annual report on his activities. . ."

B. Parliamentary Directives

Art. 13. "In that report, he will, inter alia, bring out decisions in individual cases which may be of general interest; he will also mention the cases referred to in Articles 11 and 12. . ."

Art. 11. ". . . cases where he deems existing laws and administrative regulations to be inadequate."

Art. 12. ". . . investigations of a case [which] reveal that any person coming within his jurisdiction has committed mistakes or acts of negligence of major importance . . ."

¹⁰ Translations appended to Stephan Hurwitz, "Denmark's Ombudsman," Wisconsin Law Review (1961), pp. 194-99.

II. FINLAND¹¹

A. The Constitution Act. Art. 49:

"The Ombudsman shall present... an annual report on the administration of his office, on the state of the administration of the law, and on defects which he has noticed in legislation."

B. Parliamentary Instructions. Art. 8:

"The Ombudsman shall present... each year a report on his functions and on the observance of laws and regulations in the courts and public administration. The report must also enumerate the resolutions passed by the Parliament for which action, due to be taken by the executive power, was not completed at the close of the year. The Ombudsman shall further point out, when considered appropriate, any imperfections found in laws or decrees, expressions in them found to be ungainly or of conflicting wording, especially when differing interpretations, uncertainty or other inconvenience in legal or administrative practice has resulted, and shall propose measures to eliminate such imperfections."

¹¹ Translations found in Mikael Hidén, The Ombudsman in Finland (University of California, Berkeley: Institute of Governmental Studies, 1973), pp. 181-91.

III. NORWAY¹²

A. The Ombudsman Act. Sec. 12:

"The Ombudsman shall submit an annual report of his work . . ."

B. Parliamentary Instructions

Sec. 14.

"The Ombudsman shall . . . each year submit . . . a report on his work . . ."

[The Report] shall contain a survey of the action taken in such individual cases as the Ombudsman considers of general interest, and shall mention the cases where he has found cause for drawing attention to defects in Acts or administrative regulations, or on which he has reported specially pursuant to Sec. 15."

Sec. 15.

"If negligence or errors of major importance or consequence come to the Ombudsman's knowledge, he shall give the Parliament and the administrative organ concerned a special report about it."

¹² Translation found in Donald Rowat, ed., The Ombudsman: Citizen's Defender (1965), pp. 322-28.

IV. SWEDEN¹³

- A. The Riksdag Act. Chapter 8, Art. 10, refers to "the Committee which examines the Annual Reports of the activities of the Ombudsmen."
- B. Parliamentary Instructions (Swedish Statutes 1975:1057).

Sec. 11.

The Parliamentary Ombudsmen shall present a printed Report. . . every year. . . The Report shall give an account of the measures taken by virtue of Section 4 and Section 6. . . and Section 7, as well as of other significant decisions pronounced by the Ombudsmen. The Report shall also present a survey of activities as a whole.

Sec. 4

The Ombudsmen shall take action to remedy deficiencies in legislation. If. . . they should find reason to raise the question of amending legislation or any other measure the State should take, the Ombudsmen may present a statement on the subject to the Riksdag or to the Government.

Sec. 6.

An Ombudsman deals with a matter by issuing a decision in which he states his opinion. . . An Ombudsman may also make pronouncements aimed at promoting uniform and proper application of legislation.

In the capacity of special prosecutor, an Ombudsman may prosecute an official. . .

. . . The Ombudsman may make a report to the person or body which has the authority to decide on disciplinary measures.

¹³ Translation supplied in The Swedish Parliamentary Ombudsman (2d ed.: Stockholm, 1976), pp. 23-35.

Should an Ombudsman deem it necessary for the official to be dismissed or debarred. . . he may make a report thereon to the person or body which has the authority to decide on such measures.

Sec. 7.

If an authority has pronounced a decision against an official in a matter concerning. . . discipline, dismissal or debarment. . . an Ombudsman may institute proceedings in a court of law in order to get the decision amended.