

# Informality the Fourth Standard of Practice

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## ABSTRACT

In the 1970's and early 1980's, organizational ombuds recognized three basic pillars of their profession: independence, confidentiality and neutrality (impartiality). Informality was recognized as a fourth principle, or pillar of practice, somewhat later. This happened relatively slowly, over at least fifteen years, after the first three pillars were widely adopted. This article briefly describes that process. The article asserts that informality is an essential principle for the profession as practiced today—as essential as independence, confidentiality and neutrality. Without informality, the other three principles of OO practice could not function in today's legal climate, and many managers would find OOs to be interfering with their

authority. Informality permits OOs to offer a very wide variety of informal options, to all cohorts, and across all organizational boundaries.

## KEY WORDS

zero-barrier office, informality, standard of practice, organizational ombudsman, interest-based option, mandatory reporting, conflict management system

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## IOA STANDARDS OF PRACTICE

**4.1** The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and — with permission and at Ombudsman discretion — engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

**4.2** The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

**4.3** The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

**4.4** The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.

**4.5** The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual.

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During the 1970's and early 1980's, the ombuds who are now called "organizational ombuds" recognized three basic pillars of their profession: independence, confidentiality and neutrality (impartiality). Informality was recognized as a fourth principle, or pillar of practice, somewhat later. This happened relatively slowly, over at least fifteen years, after the first three pillars were widely adopted. This article briefly describes that process. The article asserts that informality is an essential principle for the profession as practiced today — as essential as independence, confidentiality and neutrality. These are the ideas to be discussed:

- Without informality, the other three principles of practice could not function in today's legal climate, and managers would find OOs to be interfering with their authority.
- The principle of informal practice for OOs makes it much easier for employers to provide a low-key, "universal" access point for conflict management. Ombuds offices provide a near "zero-barrier" option<sup>1</sup> — a universal access point throughout an entire organization.
- The principle of informal practice makes it much easier to offer a considerable variety of informal, interest-based options for conflict management. This is otherwise difficult in organizational conflict management systems, where most options are increasingly formal, and often highly specialized<sup>2</sup>.
- The principle of informality is an important part of a supportive context for people to report illegal behavior anonymously.
- Informal practice is an important part of the context in which people are most likely to come forward with problems and issues that are new to the organization and therefore puzzling.
- The principle of informality may be especially useful to people who are shy, fearful, confused, angry, unsure, or depressed, to discuss their concerns.
- The principle of informality for ombuds helps ombuds to support the informal problem solving networks of an organization.
- The principle of informality, perhaps surprisingly, helps ombuds to support the formal, and rights-based, options in an organization — by being "approachable."

## INFORMALITY BECOMES THE FOURTH PRINCIPLE FOR OOS

In my memory, it was Ella Wheaton who persuaded colleagues from the University and College Ombuds Association, CalCaucus, The Ombudsman Association — and by extension now IOA — that informality should be considered the fourth pillar of the organizational ombuds profession.

This happened in the context of discussions about OO standards of practice, and parallel discussions about different sub-groups of ombudsmen. The discussions spanned the late 1980's and the 1990's. This was the period when the first OO Standards of Practice and Codes of Ethics were being drafted and discussed among organizational ombuds.

In addition, there were discussions among ombudsmen from other subgroups, about the similarities and differences among the various kinds of ombudsmen. Subgroups included classical ombudsmen, executive ombudsmen, Older American Act advocate ombudsmen, organizational ombuds and others. These debates became focused in and around meetings of the Ombudsman Committee of the American Bar Association in the late 1990's and early 2000's. Ella Wheaton and I were representatives of the University and College Ombuds Association on that Committee.

Ella Wheaton was at the time a distinguished organizational ombudsperson at the University of California at Berkeley, (and later the first ombudsman at the Department of Justice, during the tenure of Attorney General Janet Reno.) Wheaton had been a talented Manager of Employee Relations before being named ombudsperson at Berkeley. She had significant experience and a deep understanding of what it meant to pursue employee concerns in a formal way, as a manager or staff professional would do. She understood what it meant to “represent the employer.”

Wheaton appeared to recognize that organizational ombudsmanry had emerged as a new and different profession. From the first she spoke explicitly about “OO informality.” At the time, most practitioners implicitly took informality for granted. In 1973, MIT President Wiesner instructed his Special Assistants, who became Ombuds, that they were to practice with no formal management authority. McDonnell Douglas put this descriptor into their Ombudsman Handbook in 1991. UCOA included informality in their 1994 Best Practices. There were many OOs practicing informally and speaking of informal conflict management throughout the 1970's, 1980's and 1990's. But it took time to become an OO Standard of Practice — in 1995 for TOA, and in 2000 for UCOA.

Ella Wheaton presented the idea as an essential professional principle, a basic tenet for being an OO. She persuaded other OOs and me that organizational ombuds would not be able to practice according to the OO Standards of Practice, unless we explicitly labeled ourselves as informal practitioners. The “need for an explicit label” was the kind of elegant insight that immediately seemed obvious. We had not thought of it in just her way — after all most of us were practicing informally — until she spoke of it<sup>3</sup>.

A number of US practitioners immediately thought she was right. However, some felt that informality was just one of several other good characteristics of an OO — like civility, fairness, non-discrimination, and equanimity. And some also thought that informality could be taken for granted and did not need to be mentioned as a separate principle<sup>4</sup>.

In addition, a few ombuds were — and are — doubtful about using the word “informality.” The term has several meanings and is somewhat ambiguous. It can mean “no management decision-making power.” This particular idea is, in fact, now part of the OO Standard of Practice.

However, the term “informal” is also used to describe a “complaint that is not in writing” and “conflict management that leaves no written record.” This interpretation of the word can cause confusion. Some ombuds write recommendations, and some, for example, in Canada, write their opinions about concerns that come to them.

One ombud wrote that: *“The word ‘informality’ itself is problematic. It leads to an image of a gum-chewing, jean-clad ombud that is not a real part of the organization. Perhaps we are trying to create a new definition for the word ‘informal’ which may or may not be understood by others. (An alternative would be) something like “off the record resource” — more at the crux of why an informal resource is different — or maybe ombuds should just say that ombuds practice is ‘not formal’.”*

Another ombud noted that different people and different cultures may interpret “informality” in different ways. For example, OOs may be perceived to have considerable power despite their not making managerial decisions.<sup>6</sup> Not having formal power does not mean “powerless.” An ombud has some referent authority and moral authority, power from information, expertise, problem-solving ability, perseverance, relationships. An ombud may commend exemplary management actions and may be able to find ways to illuminate destructive actions. Ombuds also derive power from the fact that going to an ombuds office may be the least bad alternative for people with concerns.

In these respects, and perhaps others, the term informality is not a perfect term. But Wheaton’s powerful insight about the need for an explicit label — embedded in the concept of informality that is described in Standards of Practice — became part of the platform for the OO profession. This article is meant to help illuminate the concept, and why practitioners perceived the need for an explicit label.

### **Practice embedded in the four principles produced a new kind of profession.**

The subtleties of Wheaton’s insight about the need for an explicit informality principle are profound. An organizational practice that is based on the four principles is unique in the framework of Western employment relations. There are no other professional employees, at least within US organizations, whose practice is configured in the same way. At present, in the US, organizational ombuds are the only professional employees who do not “represent” their employers and who assert that they do not accept notice for the employer. As informal conflict managers, OOs do not make management decisions or policies; ombuds do not keep case records for their employers, or serve as witnesses. Investigations for the purpose of administrative decision-making should always be done by others.

### **The four pillars of ombuds practice are essential to each other.**

In addition to practicing *informally*, OOs are designated as neutrals. Ombuds practice is independent of all ordinary line and staff functions within an organization. Ombuds keep near-absolute confidentiality.

I believe that these four basic tenets of organizational ombudsmanry are essential to each other.

Consider the interdependence of neutrality and independence. One could not maintain *neutrality*, without being as *independent* as possible. (Imagine trying to be a neutral, if given an order by a superior.) It also would not be easy for a conflict specialist to maintain *independence*, over time, within an organization, without being impartial and neutral. (Imagine how people would view the ombud who was openly taking sides between and among managers.)

Consider the interdependence of informality and confidentiality. Informality is an underpinning for *confidentiality*. Ombuds could not be permitted to be near-absolutely confidential without being designated as “informal” practitioners. A manager who makes formal decisions must be openly accountable to higher levels of supervision.

By the same token any manager who does formal investigations for the organization must keep case records, and be prepared to be a witness. This is especially true with respect to investigations of issues that are subject to Federal and state compliance laws. It is much easier to maintain confidentiality if one is not acting for management and making management decisions.

Informality is also an underpinning for *independence*. By definition, independence does not combine well with formal, hierarchical, decision-making power within an organization. Independence is also an underpinning for informality: it is easier to come up with a variety of options, as an independent professional who is apart from ordinary line and staff structures.

### **Ombuds informality helps in adding many options to a conflict management system.**

Each of the four principles of organizational ombudsmanry is described above to be essential to the other three principles of the profession. For the same reasons, each of the four tenets helps ombuds to provide many, different, informal options, within a conflict management system. This is important for the organization.

In contemporary conflict management theory, an organization needs a spectrum of conflict management channels. This is because people are not all alike in their choices of how to pursue a concern or a conflict. In addition, organizations need to be able to deal with different issues in different ways. In short, people need options — and organizations need options — for managing conflict.

This is especially true in complex organizations and those with diverse populations. In complex organizations staff functions are likely to be specialized and line management often operates in

silos. The fact that OOs have no formal managerial authority in any domain helps them to be able to “hear” concerns, and also offer options, across all internal organizational boundaries.

In any random organization, some employees and managers (and students and professionals) prefer formal, hierarchical, win-lose decision-making. A significant minority of any random population appears to prefer formal management channels for most conflicts. A higher percentage will prefer or require formal channels for certain issues, like criminal behavior. Formal options are necessary.

However, there are employees and managers who heartily dislike formal channels — and cannot easily be persuaded to use them<sup>7</sup>. Some people simply will not use or invoke formal channels even in the presence of illegal behavior. If these people are to come forward timely with their concerns, and if their conflict is to be managed effectively within an organization, it will help to have a near-zero-barrier office within the system.

Many employers say they would like conflict management to be informal, and interest-based, whenever possible. And, it is obvious that line managers and HR managers and other staff managers settle many concerns and disputes informally and very well. But in these days of legal vulnerability, managers may feel that they must immediately take control of the disputes that come to them<sup>8</sup>. It has become harder for ordinary line and staff managers to permit employees with concerns to have a voice in deciding how to handle the concern. Conflict management systems now may be structured by and around the General Counsel’s office, HR, and other compliance offices. New interest-based options are often organized in a formal way<sup>9</sup>.

Ombuds offices — of course — refer people to all conflict management options in the organization: formal and informal, rights-based and interest-based. But, in addition, in part because they have no decision-making authority, ombuds offices can themselves offer a wide spectrum of informal options.

This spectrum is often overlooked in contemporary discussions of “ADR.” “ADR” often refers to external conflict management options that are important — but few — and used only occasionally. An ombuds office offers many internal options that are used in hundreds of cases a year. These options include:

- delivering respect, for example, affirming the feelings of a visitor, while staying explicitly neutral on the facts of a case<sup>10</sup>,
- active listening, serving as a sounding board,
- providing and explaining information, one-on-one, for example, about policies and rules, and about the *context* of a concern,
- receiving vital information, one-on-one, for example, from those reporting unacceptable behavior,
- reframing issues,
- helping to develop and evaluate new options for the issues at hand,

- offering the option of referrals to other resources, and to “key people” in the relevant department,<sup>11</sup> and to managers and compliance offices<sup>12</sup>,
- helping people help themselves to use a direct approach, for example, helping people collect and analyze their own information, helping people to draft a letter about their issues, coaching and role-playing,
- offering shuttle diplomacy, for example, helping employees and managers to think through proposals that may resolve a dispute, facilitating discussions,
- offering mediation inside the organization,
- “looking into” a problem informally,
- facilitating a generic approach to an individual problem, for example instigating or offering training on a given issue,
- identifying and communicating throughout the organization about “new issues,”
- identifying and communicating about patterns of issues,
- working for systems change, for example, suggesting new policies,
- following up with a visitor, following up on a system change recommendation made by the OO.

All of these options may help to empower employees and managers, and students and faculty, in effective informal dispute resolution throughout the organization.

The four tenets of ombuds practice, taken together, help to build the image of a (near) zero barrier office that can offer many options. At the risk of repetition, it seems worthwhile to mention specific contributions of the four principles, in the particular context of providing the informal, off the record options listed above.

**Confidentiality** is obviously key for this purpose and it depends on informality. As noted above, near absolute confidentiality can be permitted by the organization only for conflict management professionals who do not make judgments or formal decisions for the employer. (Note that near-absolute confidentiality is different from the professional practice of ethics officers who protect privacy as much as possible, but who must investigate, make judgments, keep records, and testify when necessary.) The ombuds role in a conflict management system needs to be explicitly designated as informal, if lawmakers and the public are to permit practitioners to offer various options off the record.

**Independence** also is key to being able to offer a variety of options rather than just one option, and independence inside an organization depends on informality. That is, the ombud must be seen as a professional who is not part of any formal line or staff structure that has the right or duty to take control of a concern in a specific way.

**Neutrality** also is key — the visitor should believe that that an ombuds practitioner will not take sides for any person. Informality means that the ombuds has no formal authority or duty to do so.

### **Informality also helps the OO to build a bridge to formal options.**

Providing informal options in a conflict management system is of course not the only purpose of the OO office. Coaching people to learn how to deal with conflicts on their own is also not the only function of an organizational ombudsperson.

The effective OO will offer *appropriate* dispute resolution to employees and managers. This includes offering referrals to the formal and rights-based options of line and staff management, as well as offering informal options. The effective OO will support the entire conflict management system<sup>13</sup>. The four tenets of ombuds practice help, because they make the office seem, to many people, to be an approachable place to begin<sup>14</sup>. An ombuds office may, thus, be able to be a helpful stepping-stone for some people who discover that they need to contact a compliance office or use a formal option in the conflict management system.

## **SUMMARY**

The organizational ombuds office can be seen as one where anyone in the organization can come with distrust and fear, shame and embarrassment, bewilderment and frustration, grief and rage — or news of illegal behavior — or even a surprising, new, happy suggestion for progress — without immediately suffering bad consequences. People can come from any part of the organization and from any cohort. They can consult on any kind of workplace issue. This is true, in part, because the ombud has no formal decision-making authority.

**Informality** is mutually supportive with the other three tenets of the OO profession. Informality in the OO office supports many effective options in an organization's conflict management system, for managers and employees, students and others. Informality is appealing to many people, and may help people in need to come forward with new issues, and with their most serious problems. Informality may serve to help people learn how to deal with most concerns on their own and may help to support the day-to-day conflict management skills of managers and employees throughout the system. Informality may also, perhaps surprisingly, help people who need to find formal and rights-based options.

Most OOs find that a significant proportion of their practices, and much of their ability to surface "new" problems, and to surface illegal behavior, comes from being seen as very low barrier practitioners. The four principles of ombuds practice, which support each other, contribute to a near zero-barrier office that is able to span the whole organization and everybody in it.



## ENDNOTES

<sup>1</sup> A near-zero-barrier office is one where a person who might use the office would anticipate little or no cost, in terms of loss of privacy, loss of control, or risk of retaliation. In addition, the concept of zero barriers suggests *inclusion* across the internal boundaries of the organization. Inclusion means that everyone in every cohort that works for the organization — and people of every background and rank — are welcome. Having an office of this kind, by definition, means that it will be more likely that an organization will get to hear about important problems.

<sup>2</sup> David Lipsky's 2010-2011 survey — **The Use of ADR by U.S. Corporations — Results from a 2010-11 Survey of the Fortune 1000, Cornell University, ILR School, 2012** — comes from information from corporate attorneys. Lipsky notes that corporate attorneys see arbitration as increasingly legalistic and court-like, and corporation counsel report using arbitration less frequently. Lipsky reports that *"A vanguard of corporations now rely on a portfolio of interest-based options to resolve disputes at the earliest possible stage and avoid the use of arbitration and other rights-based options."* The interest-based options include: mediation, fact-finding, early neutral evaluation, and early case assessment. Most of the interest-based options described by counsel in this report appear to be quite formal. However one company in six now reports having an ombuds office — double the proportion reported in the 1997 survey. An organizational ombuds office offers referral to *both formal and informal options* — appropriate dispute resolution, case by case. And the OO is entirely informal. The OO thus appears to be a unique support to a conflict management system.

<sup>3</sup> Ella Wheaton had intended to write her own article about "informality" for this issue of JIOA but was not able to do so. In a personal communication for the present article she wrote: *If an OO crossed into the formality realm, it would interfere with offices that have formal institutional and professional responsibilities, and with the protocols and accountabilities that stand up in formal arenas. An organizational OO lacks the legal and organizational protections that would be required to handle formal conflicts. Once the OO becomes duplicative of other services with historical organizational roles, it becomes a vulnerable office and it creates organizational vulnerabilities. If the OO function "stays in its (unique) lane" the formal offices will support its existence (HR, General Counsel, Employee Assistance Programs, Labor Relations and others)."*

<sup>4</sup> According to Tim Griffin in a personal communication: *"(Informality) was a vital element of all three (fundamental principles) prior to its adoption as a codified principle, and most of us practiced accordingly. This is not to say that having it explicitly stated is a bad thing, but I question the somewhat revelatory status to which you attribute this. I was on the UCOA board and the Code Ethics/SOP committee (including a joint one with TOA) during the time period to which you refer in your article. My recollection is that Ella's (and others') suggestion for individual inclusion of informality as a stand alone principle was received as a pre-existing given, in terms of the acceptable standards of practice as they existed at that time. Any dissension was more related to the necessity to individually cite a principle that was already so inherent in the existing principles as it was seen by some to be unnecessary and even in a way redundant."*

<sup>5</sup> Personal communication from Mary Simon.

<sup>6</sup> In a personal communication, Ann Bensinger wrote: *"I struggle with giving informality the same weight as the core criteria. In my observation, part of why people turn to an ombuds is that even if we work informally, the post carries with it, for lack of a better descriptor, an aura of formality. It seems to me that the informality is from an OO's perspective; it reminds us of how the OO differs from the formal processes. Still, in my observation this distinction does not always extend to how OOs are perceived. It strikes me that informality is still very much a U.S. concept that I'm doubtful translates with the same result. Much of my own effectiveness was built around informality. It's how I got things done. At the same time, my position in the organization and access to the top was undoubtedly an undercurrent in what took place."*

<sup>7</sup> See Rowe, Wilcox and Gadlin, "Dealing With — or Reporting — Unacceptable Behavior, in JIOA, 2009, vol 2(1).

<sup>8</sup> As an example, in 2011, managers in US academic organizations were told that, under Title Nine, they must report student complaints of sexual assault. Managers in various US corporations and agencies are expected to report specified "adverse information."

<sup>9</sup> Lipsky, op.cit.

<sup>10</sup> It seems likely that “delivering respect” is the most highly valued — or one of the most highly valued — functions of an OO, from the point of view of those who have contact with the office. In addition, it may be the most cost-effective — or one of the most cost-effective — functions of an OO.

<sup>11</sup> See the article in this issue of *JIOA*, by Noriko Tada, which presents this point in depth.

<sup>12</sup> It seems likely that organizational ombuds have the widest purview for referrals of any persons in an organization. And, over time, they may also be the best-informed sources of referral.

<sup>13</sup> See “An Organizational Ombuds Office In a System for Dealing with Conflict and Learning from Conflict, or ‘Conflict Management System’” by Mary Rowe in *Harvard Negotiation Law Journal*, 2009, at [http://www.hnlr.org/?page\\_id=35%3E](http://www.hnlr.org/?page_id=35%3E).

<sup>14</sup> Approachability is by definition the hallmark of a zero-barrier office, which in turn requires informality. Informality appears to many people as a definitional element of a zero barrier office. Many people do not wish to fill out forms. Many do not wish to learn or use the formal modes of address and custom that attach to the caste system of organizations. Many do not wish to be required, before they speak, to learn how the law defines their concern. Many people appreciate the fact that no one can be formally required to go to an ombuds office. Many appreciate being welcomed and addressed as an equal — rather than someone who must cede control over a concern. (In fact many people are worried about having someone immediately seize control over their concerns.) Many people appreciate having their *feelings* affirmed, even if their *facts* are received with studied impartiality.