

WHAT IS IT LIKE TO BE AN

Organizational Ombudsman?

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If you are wondering about the relatively new profession of organizational ombudsmanry — and if you find it hard to pronounce the word *ombudsman*, wonder why people use so many forms of the word, wonder why people appear to use the word to refer to different professional practices, and wonder why the profession has recently appeared — then you are in the majority of the population. I will therefore try to lay out some ways of thinking about the profession.

Where Does the Word Ombudsman Come from?

I am told that the term comes from Old Norse. My favorite story about the original ombudsman is that he or she was a person who could arrange for and convey restitution — perhaps several valuable animals — from a murderer to the family of a person who had been murdered. This mode of dispute resolution apparently helped to prevent private vengeance — a concept important today to many intra-institutional dispute resolution specialists. (I wish I might have had the chance to meet and talk with one of those original experts.)

Many people do not know where to put the “s” in *ombudsman*. If you wish, you may say *ombuds* or *ombud*. These are terms used by a number of practitioners. In addition, if you do not feel comfortable with the appearance of a

“generic male” professional title, then — like some practitioners — you might use the term *ombudsperson*. Most ombuds practitioners are accustomed to various forms of the word, though some prefer *ombudsman*. (I sometimes get communications addressed to “Dear Ombuddy.” My three favorites were letters addressed to “Dear Alms-buddy,” “Dear Omnibus-person,” and “Dear Embalmsman.”)

The title of ombudsman is assiduously guarded by classical ombudspople in many countries who use it in only one context — to describe an independent guardian of the rights of citizens who is appointed by statute.¹ (The first ombudsman of this type was appointed in Sweden in 1807). In some countries it would be illegal to use the title of ombudsman for an intra-institutional practitioner like the contemporary North American organizational ombudsman. Organizational ombudsmen outside North America are often called something else.

Ombudsmen in an Internal Dispute Resolution System

Some ombudspople in organizations serve by themselves as dispute resolution practitioners, or with others in a traditional, single grievance channel. However, organizations are increasingly moving toward *integrated conflict management systems* in which the ombuds function provides some options. There are several basic changes implicit in this evolution.



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The first is the idea of a *system* which deals with all persons in the workplace and all kinds of problems — rather than a single grievance procedure solely for workers grieving against management and solely for resolution of a limited list of disputes. The second is the goal of *conflict management*, which includes the idea of teaching all managers and team workers how to use conflicts and dissent for continuous improvement, as well as providing dispute resolution for specific grievances. A third idea is that of *integrating* conflict management options and structures within the context of the organization's overall human resource strategy.

An integrated conflict management system has multiple access points for people with concerns and problems, and there are multiple options for managing conflict which are often available in parallel rather than as designated steps of one procedure. The options are initially available for *complainant* choice for most problems rather than solely a *supervisory* choice, which used to be the typical mode for a nonunion

environment, or within a single grievance channel, which is the typical mode in a unionized environment. These options are interest-based, rights-based, and power-based. A complainant

may in many circumstances either loop *forward* from an interest-based option to a rights and power-based option, or loop *back* from a rights-based option to an interest-based option. The system is open to managers with concerns, as well as employees. It takes virtually every kind of concern of interest to people in the organization, including for example, disputes between co-workers and between fellow managers, teammates, and groups, as well as the classic concerns about conditions of employment and termination. There is an overall system of conflict management embedded in the organization's human resource strategy and backed by top managers. An ombuds office helps to support a systems approach and to provide many of the options.

What Kinds of Problems Does An Organizational Ombudsperson Address?

People who call upon the ombuds office do not have to be able to define their concern in order to find help, though they sometimes are surprised by this fact. The first sentence we hear might

be: "I am not sure if I am in the right place and I am not even sure if I have a problem" or "I presume there is nothing you can do, but I am terribly upset and my friend said I had to come see you." Organizational ombudspersons hear about any and all kinds of problems. Like the problems that come to HR/IR, a union steward, a safety office, or ethics or audit or EEO office, the concerns that come to us may be open agendas or hidden agendas, and may be justified grievances or fantasies or even malicious complaints.

However a safety office or ethics or EEO or audit department usually handles specific types of behavior, much of it illegal. The problems that come to an ombuds practitioner may be well specified — or they may be undefined, or extremely complex. Ombuds offices also deal with behavior that is problematic but not illegal. Unlike a union steward, the ombudsman is not primarily focused on complaints arising under a contract. (Where there is both a union and an ombuds office, the ombuds practitioner typically does not deal with members of the union on matters arising under the bargaining agreement. However, many other kinds of problems are brought in by union members.)

Although many people think of grievances in the workplace exclusively as problems between a worker and the

The Ombudsman Association Standards of Practice

- > We adhere to The Ombudsman Association Code of Ethics.
- > We base our practice on confidentiality.
- > We assert that there is a privilege with respect to communications with the ombudsman and we resist testifying in any formal process inside or outside the organization.
- > We exercise discretion whether to act upon a concern of an individual contacting the office. An ombudsman may initiate action on a problem he or she perceives directly.
- > We are designated neutrals and remain independent of ordinary line and staff structures. We serve no additional role (within an organization where we serve as ombudsman) which would compromise this neutrality.
- > We remain an informal and off-the-record resource. Formal investigations — for the purpose of adjudication — should be done by others. In the event that an ombudsman accepts a request to conduct a formal investigation, a memo should be written to file noting this action as an exception to the ombudsman role. Such investigations should not be considered privileged.
- > We foster communication about the philosophy and function of the ombudsman's office with the people we serve.
- > We provide feedback on trends, issues, policies and practices without breaching confidentiality or anonymity. We identify new problems and we provide support for responsible systems change.
- > We keep professionally current and competent by pursuing continuing education and training relevant to the ombudsman profession.
- > We will endeavor to be worthy of the trust placed in us.

supervisor or employer, ombudspeople also deal with many disputes that arise between co-workers or concerns about subordinates. Though many people think of internal dispute resolution systems as structures to serve workers, ombudspeople hear from many managers as well as workers. Ombudspeople deal with some of the same concerns as employee assistance professionals, but unlike most EAP practitioners, organizational ombudspeople deal directly with workplace problems and with the problems of the clients of the given employer. And — unlike safety, ethics, EEO, audit, or HR/IR — an ombudsperson is not a compliance officer. (On the other hand, sometimes an ombuds office is a kind of no-cost stepping stone for a person who knows that something must be done about an illegal problem or a crime, but is afraid and anxious about how to get the information where it needs to go.)

I have been an organizational ombuds practitioner for 24 years, seeing or hearing from nearly 1,000 people a year. I serve the faculty, employees, and managers of my institution, and also the “clients” of my particular employer, namely students. Of a thousand concerns a year, perhaps 300-400 take longer than an hour. (Like many ombudspeople I do not usually classify concerns and cases as “serious” or “not serious,” since what might seem serious to me may not seem so to the visitor to my office and vice versa.) Common concerns include every kind of mean and/or discriminatory behavior, conditions of employment and educational life, all kinds of ethical problems, career and mentoring ques-

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tions, dependent care, health and financial concerns, concerns about systems change or changes in policy, etc.

The Functions and Purposes of an Organizational Ombuds Office

People often incorrectly think ombuds practitioners work in just one sector of the economy (perhaps academe, or just in corporations, or just in government). People may also wrongly typecast the organizational ombudsperson as an arbitrator or formal investigator — or even as a criminal investigator. Others incorrectly think of us as advocates in the sense of a lawyer or union steward.

In fact, organizational ombudspeople have essentially *all* the functions of any conflict management specialist *except* those of being a formal fact-finder for disciplinary purposes, a judge, an arbitrator, or an advocate. An organizational ombudsperson is a confidential and informal information resource, communications channel, complaint-handler, mediator, and dispute-resolver who may “look into” problems informally. Ombudspeople work for systems change and also for the resolution of individual disputes. Organizational ombudspeople are employed by all kinds of public and private institutions, agencies, and corporations. The basic purpose of an ombudsperson is to foster values and behavior such as fairness, equity, justice, equality of opportunity, and respect. The ombudsperson often will be especially concerned with respect to those who are — or who see themselves as — less powerful than others in a given situation.

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Confidentiality and Neutrality

There is almost no statement about organizational ombudspersons that applies to all practitioners. There is, however, a growing consensus among those who subscribe to the code of ethics of any organizational ombuds association — and especially for those who subscribe to the Standards of Practice of The Ombudsman Association (left) — about the paramount importance of confidentiality and neutrality.

The typical organizational ombudsperson is designated as a neutral within an organization. Ombudspersons usually report at or near the top of the organization, outside ordinary management channels. (An *outside* organizational ombudsperson works on contract as an ombuds service provider and may report to the CEO or to the head of the division that is contracting with the practitioner.) The designation of neutrality and direct access to the CEO help to preserve the independence and contribute to the effectiveness of ombudspersons. The practice of near absolute confidentiality helps to preserve the right of people who contact the ombudsperson to decide themselves how to deal with their concerns. This practice also helps to preserve the independence of the ombudsperson. The only exception to confidentiality in the Standards of Practice is when there appears to be an imminent risk of serious harm and there appears to be no other responsible option for the ombuds practitioner.

Organizational ombudspersons typi-

cally will not answer questions from anyone, including senior managers, about those with whom they may have had contact.

They work to maintain the privacy of everyone with whom they have spoken, unless they have permission to speak in the context of informal problem-solving. In cases where ombudspersons serve as formal mediators, they typically have an agreement with the parties that they will not be called in any subsequent formal action taken by any party. In order further to safeguard the appearance of neutrality and confidentiality, ombudspersons typically do not appear as witnesses in formal proceedings inside or outside their organizations. Most assert a privilege that belongs to the office itself rather than to the parties to a dispute. Ombudspersons do of course serve managers — who may call upon the practitioner in the same fashion as anyone else — but the ombuds practitioner does not represent or act formally on behalf of a manager or of the employer.

Who is Served?

An organizational ombudsperson may serve *internal staff* (employees and managers) or *clients or customers of the organization*² (such as students, patients, franchisees, nursing home residents, newspaper readers, retirement plan participants, banking customers, certain citizens, etc.) or both internal staff and clients of the organization. Some ombudspersons who serve the employer's clients do so in a manner similar to that of classic, statutory

ombudspersons. That is, some ombudspersons who serve the clients of the employer may look into a problem and issue a written report with opinions as to right and wrong. A common example would be that of a newspaper ombudsperson. Some other organizational ombudspersons who serve clients of the employer also use this mode. However, most ombuds practitioners who deal with internal staff, and many of those who deal with students do all their work informally, put almost nothing on paper and keep no case records for the employer. This is perhaps especially true in the U.S.-Canadian academic ombudsmen practice more in the style of classical ombudsmen.

How Does the Ombudsperson Work?

By tradition an ombudsperson may not make or change or set aside a law or management policy or decision. By tradition an ombudsperson may agree or not agree to help a person who contacts him or her. Ombuds practitioners often prefer not to deal with third party complaints. However, at their own judgment, they may agree to listen to a third party, and in certain rare cases this service may be very valuable to the organization.

By tradition an ombudsperson may act "on his or her own motion (or initiative)" if he or she perceives a problem that appears to need attention. Acting in this fashion, the ombuds practitioner would try not to run a risk — or give any impression — of violating the confidentiality of any visitor to the office. This kind of action would be most likely to occur when the practitioner personally sees some problem, for example, a safety

hazard or a management document that seems indecipherable and needs to be rewritten. It might also happen if the practitioner sees multiple problems of the same sort and finds a way to bring a pattern to the attention of management, without betraying the identity of any visitor.

People who call upon an organizational ombudsperson need *options* and usually can be offered a number of different options from which to choose. In fact, the customary practice of offering options, rather than choosing for a complainant how a complaint will be handled, helps to define the ombuds profession within organizations.

Conclusion

The ombuds role within organizations faces some challenges. People who do not understand the designation and practice of neutrality by an organizational ombuds often wonder how neutral a practitioner can be if he or she reports to the CEO. They often do not understand that organizational ombudspeople do not make management decisions or keep case records for the employer and that they virtually always respect the privacy and confidence of those who come to see them and of others attached to a case.

It is still common to find lawyers who think all employment related-ADR or "appropriate dispute resolution" happens *outside* the organization (with external mediators and arbitrators). Some employment and dispute resolution specialists still think that ombudspeople are there "to tell complainants what to do," or maybe even to give legal counsel. Many still presume that ombuds serve workers only in disputes "against management." Others still think of the ombudsperson as an arbitrator. Some classical ombudspeople, who are con-

cerned about misuse of the title of ombudsman, question the independence and neutrality of organizational ombudspeople — even of those who are practicing to the Standards of Practice.

Most important of all, ombuds practitioners themselves wrestle daily with the demands of neutrality and confidentiality and of standards of excellence in addition to Standards of Practice. Nevertheless, for me it is the most interesting profession in the world. I would encourage anyone with strong dispute resolution skills, who is a "natural mediator" (rather than a natural judge, arbitrator, or advocate) to consider this profession. Build the function around you in the internal dispute resolution system of an organization where you are well known and trusted, join the lively professional conferences and training sessions, and help us build a profession.

1. Organizational ombuds practitioners are different in some significant ways from classical ombudsmen, who are generally appointed by legislative bodies. Classical ombudspeople receive complaints about the administrative acts of government agencies. They may have jurisdiction over all agencies of a local or state government or only over certain agencies. Outside of the United States, they may be national ombudspeople with powers to investigate a number of agencies nationally. Specialty ombudspeople of a classical nature in all countries may deal with the needs of a defined population such as children or crime victims. Classical ombudspeople are independent—they are also designated as neutrals and have many of the functions described in this article. They, however, also serve an important additional role for citizens as formal investigators and fact-finders with subpoena power and strong legal safeguards for their independence and the confidentiality of their records. In addition they can and do publish public reports that make findings on whether a complaint was

justified and offer recommendations to the agency investigated. Like organizational ombudspeople, they have no power to enforce their findings or recommendations.

2. There is much confusion about the use of the term "client." I do not use the term "client" to refer to a person who comes to my office or calls me—lest it appear that I am an advocate for that person, as distinguished from being an advocate for a fair process with respect to that person. I do use the term "client" to refer to those who are clients of the organization—by the same token, a client ombudsperson is a person who serves the clients of the employer.



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As an M.I.T. ombudsperson, Mary Rowe has daily contact with real situations that are often the raw data of her research about uses of power, negotiations, dispute resolution mechanisms, coping with difficult people, and harassment. She has explored ways to build systems to surface problems quickly and deal with them successfully. She is an Adjunct Professor of Management at M.I.T.'s Sloan School and has written extensively about the subtle "microinequities" that people of color and women often suffer. She has helped to design a number of major dispute resolution systems and she teaches a popular course on negotiations and conflict management.