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Charles Howard

Abstract

This article is an edited and abridged version of a plenary session speech given at the 2014 International Ombudsman Association (IOA) Annual Conference by Charles L. Howard. It first provides an historical context in which to consider the role an organizational ombudsman and then presents a critique of some organizational deficiencies of IOA and observations on the challenges facing organizational ombuds. Finally, it offers suggestions for addressing these concerns.

Keywords: ombudsman, history, dispute resolution, governance, measures of success, public policy, membership, program evaluation

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Keywords: ombuds, empirical research, practice paradigm, evidence-based practice

Blueprint for Success: Designing a Proactive Organizational Ombudsman Program36

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Organizational ombudsman programs are increasingly recognized as a best practice of highly effective organizations. This article expands John Barkat's 2002 white paper that has been used as a guiding and benchmarking document for ombudsmen and the study of integrated dispute resolution systems. It outlines basic features of the organizational ombudsman role, including its key standards of impartiality, confidentiality, independence, and informality, as well as the three main functions of problem identification and assistance, organizational critical self-analysis, and promotion of conflict competence. The article further elaborates on the hallmarks and practices contributing to the effectiveness of ombudsman programs that not only identify systemic issues and root causes of problems, but also act as catalysts for change to improve the workplace through use of "smart power" and proactive engagement. Integration of these elements into ombudsman programs facilitates a proactive and engaged model of practice that can contribute to more efficient, productive, and collaborative organizations.

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This article looks at the possible uses of technology to augment ombudsman practices. The increased use of technology in society impacts the way in which clients may wish to communicate with an ombudsman, and argues that it is incumbent on ombudsman practitioners to stay relevant by the use of technology.

Keywords: ombudsman, online dispute resolution, technology, ODR, software, hardware

Online Dispute Resolution and Ombuds: Bringing Technology to the Table73

Colin Rule and Indu Sen

Abstract

People in industrialized countries now conduct most of their professional and personal communication using technology. Disputes and misunderstandings occur with or without technology, but its proliferation introduces new wrinkles in the fabric of workplace conflicts. Virtual "visitors" to an ombudsman's office and other stakeholders increasingly expect to use technology to help resolve workplace disputes. In this article, the authors, one a practicing ombuds and the other an online dispute practitioner, discuss how technology is changing the work of ombudsmen, offering both challenges and opportunities, and share some lessons learned and new capabilities gleaned from the field of online dispute resolution (ODR).

Keywords: online dispute resolution, ODR, technology, communication, negotiation, virtual, conflict resolution, computer-mediated communication, mediation

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EDITORIAL

Note from the Editors

Howard Gadlin and Samantha Levine-Finley

In many English-speaking countries, tin and aluminum are the traditional gifts for celebrating a tenth wedding anniversary because they represent durability and flexibility. Tin is best known as a component of alloys like bronze (tin and copper) or solder (tin and lead). The International Ombudsman Association (IOA) is itself an alloy, a combination of the University and College Ombudsman Association (UCOA) and The Ombudsman Association (TOA) designed to combine the strengths of each group of organizational ombuds. And aluminum, the third most commonly occurring element in nature, is valued for its ability as a conductor of thermal and electrical energy as well as its ability to resist corrosion. An apt metaphor for the ombuds role in organizations.

This issue of the Journal of the International Ombudsman Association (JIOA) is the first of two editions celebrating the ten years of this merger. Appropriately, given the growth of our profession, the focus of most of the articles is on constructing our future rather than celebrating the past. Which is not to say that we are ignoring that past.

Indeed, the first paper, by Charles Howard, originated in a widely acclaimed keynote speech he gave at the IOA's 2014 Annual Conference. An attorney who literally wrote the book about the history of organizational ombuds, Chuck's thoughts about the future of the IOA begin with an examination of the broader historical context within which the organizational ombudsman role developed and locating that role in relation to the growth of large multi-national, multi-cultural organizations, the decline of unions, and the growing presence of women in the workforce. With these developments we face an odd combination of areas of government regulation and legislation mixed with many complex dimensions of organizational life for which there are not and cannot be rules, regulations and formal procedures. This is where Chuck locates our work and he reflects on the challenges facing ombuds and IOA as an organization meant to promote, develop and protect organizational ombuds. His observations about the way IOA has to develop further can serve as both cautionary notes and a call to action along many fronts.

One of those fronts is research. We are fortunate to have an excellent paper, “Moving Forward with Research in the Organizational Ombuds Profession,” by Shereen Bingham, who is both a professor of communication and ombudsperson at the University of Nebraska, Omaha. Shereen first reviews the somewhat sorry state of current research on the ombuds profession, but then moves us, via a comparison with the social work field, to consider the potential value of bringing an evidence-based practice sensibility to our work. Here we get the benefit of Shereen as both a researcher and an ombuds because she lays out, in a way that no one in the field has ever done before, four concrete suggestions for moving forward with research: identifying crucial questions, linking those questions to theoretical frameworks, conducting research in practice settings, and providing support for ombuds research.

If Shereen has outlined a research program, in his paper, John Barkat, ombudsman for the United Nations, provides a vision of the proactively engaged ombudsman that, if it were enacted, could provide material to keep teams of researchers busy for decades. In “Blueprint for Success,” an updated version of a paper John wrote more than ten years ago and that circulated like a samizdat, John calls for a proactive interpretation of the ombudsman role. This is a major reconceptualization of the ombudsman role. Building on an expansive reading of the four pillars of ombudsman work — confidentiality, independence, neutrality, and informality — John turns them into principles that can enable an ombudsman to be a resource for change in his/her organization. John’s blueprint delineates three major, inter-related ombuds functions: problem assistance, organizational self-analysis, and the promotion of conflict competence.

In keeping with our focus on the future we asked two pairs of authors, independently, to write about technology and its implications and potential for ombuds work. Although there is considerable overlap in the papers we are publishing both because they address the issues raised for ombuds by technology in somewhat different ways and in contrasting, but complementary, voices.

Ombuds’ stance toward technology parallels the profession’s reluctance to embrace research; we have been hesitant about incorporating new technologies and online dispute resolution into our practice. Some of that hesitance resides in the belief that nothing can quite match face-to-face contact as a way of engaging people and establishing trust. This preference for in-person contact flourishes even though many ombudsmen practice in organizations in which there are severely limited opportunities for such interaction.

Another concern is about protecting the confidentiality of online communications. Most ombudsmen decorate the signature bloc of their email with a warning about the difficulty in protecting the confidentiality of electronic communications. Some even urge people not to use email for confidential communications or discussing substantive matters. Of course, confidentiality is crucially important, but these papers point out that we live in a time when changes in communication may be altering the way people think about confidentiality. Both papers begin with a very realistic acknowledgment of the ubiquity of what Dan Rainey, chief of staff for the National Mediation Board, and Frank Fowlie, ombudsman for the International Organization for Migration at Geneva, refer to as “technology-assisted communication” and direct our thinking to a consideration of its implications for our work.

Online dispute resolution pioneer Colin Rule and Indu Sen, ombudsman at the International Baccalaureate Organization, emphasize as well the incredible, and for the most part untapped, potential of online dispute resolution to expand the reach and enhance the impact of ombudsman programs everywhere. More important, both papers should lead us to re-think our understanding of confidentiality as well as how to best protect it without taking a Luddite stance toward contemporary communication technology.

On behalf of the Editorial Board, we hope that you find this issue thought-provoking and enjoyable. We welcome your feedback about the JIOA. Please contact us at jioa@ombudsassociation.org to share ideas and suggestions.

Observations of an “Inside Outsider” on the Future and Challenges Facing IOA and the Organizational Ombudsman Profession

CHARLES HOWARD

ABSTRACT

This article is an edited and abridged version of a plenary session speech given at the 2014 International Ombudsman Association (IOA) Annual Conference by Charles L. Howard. It first provides an historical context in which to consider the role an organizational ombudsman and then presents a critique of some organizational deficiencies of IOA and observations on the challenges facing organizational ombuds. Finally, it offers suggestions for addressing these concerns.

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KEYWORDS

Ombudsman, history, dispute resolution, governance, measures of success, public policy, membership, program evaluation

Introduction

I have been described as an “inside outsider” and believe that is a good description. I am not an ombudsman, but I have represented ombuds and ombuds offices for twenty-five years, and have been intimately involved in many of the legal issues relating to the role. I have enormous respect for what ombudsmen do and believe it is an increasingly necessary function in organizations. Despite my support for the profession—or, rather, because of it—I want to raise various issues in an effort to help promote the profession.

I will offer some unvarnished observations of the International Ombudsman Association (IOA) from my perspective as an “inside outsider.” In this sense, my goal is to speak truth to power in the best traditions of ombuds practice. I will also offer recommendations on how better to proceed. Having identified its mission of having an organizational ombuds in every organization, the present challenge for the IOA and ombuds is to identify how they can help the profession move from where it is now to where they want it to be.

Historical Context

To fully understand this role's potential for major organizations, one must understand the historical context in which the ombuds profession has developed. By *historical context*, I am not referring just to the evolution of the ombuds role from its roots in Scandinavia. That history is familiar to almost all ombuds (Howard 2010). Rather, I want to focus on the ombuds role in organizations and on my understanding of how society has changed and the pressures that have been placed on organizations.

Let's begin a hundred years ago, during the Progressive Era in the United States, and consider what Theodore Roosevelt and the Progressives had to deal with: political corruption brought about by the influence of big money, abusive business practices toward workers and labor, and the extraordinary concentration of business power and monopolistic practices. There is an analogy today in each of these areas. Some of the reforms that came out of the Progressive Era in response to these concerns were the direct election of US senators, a federal income tax, progressive labor reform, and new antitrust laws.

In addition, it was during that era that unions began to grow significantly and to serve as a counterbalance to the power of industrial organizations. But the high point of union membership in the United States was in 1954.¹ Union membership has been declining ever since. Currently union membership in the private sector is only about 7 percent of the workforce.² In fact, more than 25 percent of all workers are no longer full-time employees; they are part-time, contingent, or contract workers (Howard 2010, 99–100). This decline in union membership and increase in the percentage of workers who are not “full” employees has created an unbalanced relationship between organizations and workers.

It is unlikely that unions in the United States will reemerge as a counterbalancing force against business or government or large organizations in the immediate future. In addition to the decline of unions, we are now experiencing an unprecedented role for multinational corporations. Based on data that is now slightly more than ten years old, approximately 80 percent of the world's industrial output is produced by the 1,000 largest corporations in the world (Howard 2010, 105). Similarly, of the one hundred largest economies in the world surveyed in 2003, fifty-three were corporations—another indication of a significant concentration of business power (Howard 2010, 82–83). This concentration of economic power would surely be even greater today. In addition, most of these large corporations are also not only multinational but also multicultural organizations. There are similar trends in academic institutions. In the university context, a significant number of universities have populations of more than 25,000 students, and American colleges have an unprecedented global focus and numbers of international students (Howard 2010, 82–83, 102–04). These changes present large organizations with challenges that are exacerbated by the increasing use of technology. There also are other demographic changes, including more gender diversity in the workforce and in organizational leadership (Howard 2010, 92–93, 95–97).

When we look at how our society has responded to these challenges, it has often been through law and regulation. For example, consider the Dodd-Frank legislation,³ Title VII,⁴ and the Sarbanes-Oxley Act of 2002.⁵ But I think, in many ways, law is a clumsy tool to deal with these issues, because it does not operate on the front line. Let's take three examples.

First, in order to protect people from retaliation, the law has tended to create a cause of action for retaliation. Unfortunately, the law cannot really protect people from retaliation. It only gives a person a cause of action to bring a retaliation claim. If a person has been retaliated against, he or she has the right to bring a lawsuit to claim that they suffered retaliation because, for example, that person was a whistle-blower. But at this point, that person has already lost, because in our system of law, he or she has become the adversary and the whole force of the organization is pitted against him or her.

Second, there are many whistle-blower laws in the United States offering bounties to a whistle-blower who prevails on his or her claim, but these laws are not responsive to the dilemma faced by real people when they are considering whether to become whistle-blowers. A person has to decide that he or she is going to be a whistle-blower without clear assurance that the claim will succeed or that the government will make a recovery on which a bounty will be paid. Even if the government ultimately determines that the whistle-blower is entitled to a bounty, the whistle-blower won't receive that bounty until several years down the road (Howard 2010, 147–57; Kesselheim et al. 2010). And what happens to these people in the meantime? It is often a very difficult time for them—personally, professionally, and financially—and most will never receive a bounty (Howard 2010).

Third, although there is a plethora of governmental legislation and regulation in an attempt to protect whistle-blowers from retaliation, so much of what whistle-blowers experience—and what organizational ombuds must deal with in the workplace or other areas where they operate—is what I would call interactions that can be retaliatory but are “below the radar.” It is in this space that laws and regulations are particularly ineffective, and it is this space where we most need a solution to help people and organizations. There is a limit to how effective laws and regulation can be in addressing “below the radar” retaliation, which can be quite chilling to experience.

So who is going to be on the front line to deal with these issues? Who is going to deliver value to large organizations and the people in them, to provide assistance in the face of how the organizations have evolved globally, the economic pressure on them, and the limitations of laws and regulations? It does not suffice to say this is a role that unions previously played—a role that has expanded with the growth and complexity of society—but unions cannot fill the role today. I believe organizational ombudsmen are ideally suited to fill that role.

ROLE OF THE ORGANIZATIONAL OMBUDSMAN

In contemplating the function that can be served by filling this role, my goal is to challenge readers to think in larger terms. In particular, I urge readers to consider two other points that I think should be the essential characteristics of whatever mechanism is designed to fit in that space.

The first is the concept of checks and balances, which was one of the most fundamental principles in the design of the US government. In our private entities, businesses, foundations, universities, or any other type of organization that has a linear, top-down decision making model, however, a similar concept of checks and balances is rare. These organizations operate based on a pyramidal structure, with management decisions made at the top. Yet, when an organization has 10,000 or 20,000 or 100,000-plus employees and workers, inevitably there will be organizational blockages, conflict, and misconduct.

There is no question of whether an organization's systems will fail on occasion; it is only a question of when and where. And the key systems design question is: How does one surface issues that are blocked? How do we remove those blockages? That is where I think ombuds come in. We can't have dual drivers of the enterprise, but we can have an information flow to the top outside of the standard channels—and a mechanism to help an organization know where blockages are and how to deal with issues that have gotten stuck, thereby preventing them from surfacing.

My second observation is that there are many formal reporting structures as a result of pressures from the law, as well as legislative and regulatory requirements. Indeed, I think there are so many laws and regulations from so many levels of government and other sources that the average person, including a reasonably experienced lawyer like me, often does not know where to go to raise an issue or how to address a concern. In a multicultural/multinational world, we should be asking ourselves what the sources of organizational information are—and how someone accesses information without triggering all of the investigational machinery that might then be used against him or her. A *confidential* source of information is therefore crucial.

In trying to answer these questions, my analysis suggests that modern large organizations need a mechanism that can help to provide checks and balances by serving as an informal and confidential source of information and advice on options for surfacing issues and concerns. In my opinion, that is where the organizational ombudsman comes in. I believe this is an important role and that, as a result, every major organization should have an organizational ombuds. Although this will be a challenging undertaking to make a reality, I believe that seeing the development of the role for ombuds in this historical context should inspire us all.

Current Challenges Facing IOA

SMALL SIZE

My first observation is that IOA is too small. The organization has grown gradually and now has almost 800 members. The IOA puts on a great conference, but if the goal is ombuds ubiquity, this pace and approach will not get the profession where it wants to be quickly enough. In a 2011 survey of Fortune 1000 companies, following up on a 1997 survey, only 14 percent of those companies had ombuds (Stipanowich and Lamare 2014). That 14 percent included anything that called itself an ombuds program, whether or not it operated in accordance with the IOA Standards of Practice. That number also represents a 40 percent increase in the utilization of ombuds programs over 1997, when the corresponding number was 10 percent (Stipanowich and Lamare 2014). Nevertheless, even a 14 percent penetration level is not enough to serve as a launching point for where the profession wants to go. Although there is more widespread acceptance of the ombuds concept today in colleges and universities, the role is far from universal even in that setting.

The small size of IOA means the organization does not have the money to accomplish its goals. For this reason, I would challenge IOA to think big: have a vision of where it can be and a belief that it can do something, even though the way is unclear. If IOA really does believe that an ombuds program is a function that should be in every major organization, IOA will need to become much bigger than it is today.

OVERRELIANCE ON VOLUNTEERS

I believe that IOA is too dependent on its members for volunteer help in almost every aspect of what it does. One could not find a more dedicated and capable group of people. For example, those who

have served as president of IOA have done so on essentially a full-time basis despite the fact that each one also had a very demanding day job. However, I have observed burnout in these leaders after a year or two in this dual role. I believe this burnout is unnecessary, because there should be a way to enable volunteers to serve as leaders without having it take all of their time. To do that, however, requires both staff and IOA volunteers to assist with follow-through on policy decisions, as well as retaining people with specialized knowledge or skills, such as lawyers or management consultants, so that not everything has to be accomplished solely through the use of volunteers. To move to the next level, where IOA can achieve its mission, IOA will require staff and specialized assistance from outside its member base. I applaud IOA's current efforts to move in this direction, but this takes money, which reinforces my first point: IOA needs to have a larger footprint and thus a bigger revenue base to accomplish its mission.

LEADERSHIP TURNOVER

A related concern is turnover on the IOA's board of directors. This suggests that there is not enough continuity for long-term policy decisions. IOA is experiencing a generational transition, and that is good. But it takes more than a year or two of board service to understand the role fully and to participate knowledgeably. More continuity in leadership—longer terms, with less demanding workloads that are focused more on policy, with staff assisting with implementation—would be helpful.

INSULARITY

IOA has been too insular and has not done enough outreach to organizations such as the American Bar Association, the National Association of College and University Attorneys, the Association of Corporate Counsel, and similar groups. Yet these are constituencies that have the power to help influence the creation of ombuds offices. Being too insular is problematic and impedes the IOA's ability to accomplish its mission. IOA's focus has been too internally focused, with much debate about who should be a member rather than how to get more members. This insular focus has been limiting.

A related concern is that many ombuds are too insular within their organizations. Most ombuds have been asked repeatedly to do more with less and must still serve the visitors who call every day. Yet I think it's important that ombuds consider how others in their organizations view them. It is often hard for others to know what ombuds do, because most of the time ombuds operate confidentially (or "from behind a curtain," so to speak). So what ombuds do and how they do it is often not well understood by others in their organizations, and many ombuds have not found a good way to share the value of their role with others. Addressing this problem should be a high priority, because ombuds are largely powerless in their organizations. Having others understand and appreciate the role of organizational ombuds is critical to their long-term success.

The ombuds function requires one to be independent and neutral, but at the same time, it raises the question of how ombuds get support when they need it themselves. I think ombuds need both external and internal support. Although ombuds need support from others in their organizations, they also need IOA to help protect their role and function, as well as supply them with information that they cannot get on their own. To combine these two concepts, IOA should be a source of information to organizational ombuds on how to foster greater buy-in from the senior leaders of their organizations.

PUBLIC POLICY AND DEFICIENCIES IN IOA'S DECISION-MAKING PROCESSES

In my view, IOA's apparent reluctance to engage with the larger world is related to—or perhaps a consequence of—an internal decision-making process that is ill-suited to the demands of the larger world. Of course, all of these observations are interrelated. With more members, staff support, and continuity, maybe this would not be the case. However, I believe that the current IOA decision-making process needs improvement. IOA members in general have fabulous ombuds skills, but those skills may not—and sometimes do not—translate into effective organizational decision making for IOA in the hurly-burly of public policy formulation. I believe that, in order to realize IOA's vision (an ombuds in every major organization), the association will need to claim a place at the table in the larger public debate. That includes drafting legislation and formulating policy. Accordingly, IOA should find a better way to make decisions in the often fast-paced and imperfect world of public policy formulation that is unfamiliar to many ombuds. Not only will such an effort take time and money, it will require more flexible and responsive decision making.

As many are aware, I was one of the people involved in efforts going back many years to draft legislation in Texas that would help protect ombudsman communications as privileged. It was a very disappointing experience because decisions needed to be made about how to respond to various situations, and sometimes we could not get decisions made in a timely fashion—not because of any bad motives or ill will on the part of anyone in IOA, but because people responsible for making those decisions were working in a context that required a decision-making style with which they were inexperienced and uncomfortable. My observation is that, when we were faced with what were, in my opinion, “sneak attacks” and untruths, the extended debate among IOA participants over how to respond resulted in missing the opportunity to respond altogether. Thus, I believe that if IOA is going to venture into the larger world of public policy, a better decision-making process will be necessary.

LOW LEVEL OF IOA MEMBERSHIP BENEFITS

IOA is not yet giving its members benefits that a professional association should offer. Specifically, the organization needs to improve its external support for its members. What does it do for its members that they can't do for themselves? There is little time for solo ombuds and those in very small practice groups to consider or tackle the larger questions confronting the profession. As such, IOA should take the lead in dealing with issues that many of its members face but that individual members may be powerless to address. For example, IOA should be helping its members deal with the “Dear Colleague” letter from Catherine E. Lhamon, the assistant secretary for civil rights at the US Department of Education's Office for Civil Rights.⁶ Because IOA did not take the lead in developing a response, everyone was left to his or her own devices. Many US college and university ombuds programs still do not have access to counsel, so they were forced to deal with internal lawyers at their institutions on this issue from a distinctly disadvantageous position. Where was the IOA white paper? Where was the engagement with the Office for Civil Rights? I'm not talking about having IOA members necessarily present their cases themselves. IOA needs to employ knowledgeable and professional help to develop strategy and respond in these situations.

LITTLE SUPPORT FOR OMBUDSMAN OFFICES

IOA should provide more external support to urge those who create ombuds offices to comply with best practices in setting up new programs. Many programs are created by people who are not familiar with what an organizational ombuds program is and who may want to accomplish some other purpose. Help in trying to get programs to conform to the more standard structures that support the core principles that IOA has articulated would make a great deal of sense. Those two

factors—ombuds’ powerlessness in their own organizations and the idiosyncratic nature of many of the programs—have increased the vulnerability of individual ombuds, which can lead to erosion and depreciation of even good ombuds programs over time. There are many reasons why this happens, some of which have nothing to do with whether or not an ombuds is doing a good job. For example, whenever there is a regime change in senior administration or senior management, an ombuds program is at risk. Ombuds should always remember that their role is not a source of revenue; it is an expense item. There is jealousy and competition from other functions that believe they should be able to do what ombuds do. In the face of this constant pressure and the failure of many ombuds to have internal protectors, it is hard for programs to resist the forces of erosion and devaluation. Addressing this issue will require both IOA and individual ombuds to develop ways to help others understand the value added by the ombuds office.

LACK OF DATA AND THE ABILITY TO USE IT

Ombuds often don’t understand how best to collect and present statistical data (aka “speak data”). Yet everyone to whom an ombuds reports—and the whole context in which most ombuds operate—is increasingly data driven. All of the people with whom ombuds interface look at data on every other function in the organization. Management of every kind, in every organization, is data driven. So when ombuds are presenting trend reports or annual reports, or communicating the return on investment in the ombuds office, ombuds need to be able to “speak data.” This means knowing how to collect and analyze data to support observations or conclusions that help to demonstrate the effectiveness of an ombuds program.

An issue related to “speaking data” is the question of accountability. I do not know of any other function in any organization that is not subject to routine or periodic audits or reviews and then held accountable. And so my question is: How are ombuds held accountable? Collectively, the ombuds profession has not addressed this issue or developed recommendations for the audit, review, and assessment of ombuds offices. I think developing standards and practices under which third-party audits may occur will help to both improve practices and demonstrate greater credibility internally.

Where We Go from Here

In light of the sometimes-harsh observations I have made about IOA and individual ombuds practices, I would like to offer some suggestions about how both practitioners and IOA can move forward and achieve their strategic vision of an ombuds program in every major organization. Knowing where you want to go is not enough; there needs to be both planning and execution to achieve this goal.

GROW MEMBERSHIP AND REVENUE

It is crucial that IOA focus on growing membership and revenue. I would urge the association not to fight over who is a member or the types of membership categories. Having a “bigger tent” philosophy, working with partnerships, working with corporate sponsors, and finding models from other successful member-driven organizations can help IOA increase revenue.

IMPROVE SUPPORT MECHANISMS AND RESTRUCTURE CERTIFICATION

It is important that IOA find a way to provide more external support mechanisms for individual practices. One suggestion is to separate the certification of people from the certification or accreditation of programs. Evaluating ombuds for personal certification should be based on skills, knowledge, and experience. Accrediting programs should be based on whether a program complies with important

programmatic features. The goals of the larger profession will be better served by having an objective external program assessment that could bolster efforts by ombuds to align operations with the key principles that support the best practices of organizational ombuds.

IMPROVE IOA GOVERNANCE

IOA should consider revising its governance and decision-making process to create longer terms for board members, and to demand that they focus more on policy than operations. Having staff to help implement and follow through with decision making should result in a more manageable load for board members as well as less turnover. This will also help IOA expand its outreach efforts to both its members and the larger world. For members, IOA should be the support that helps ombuds do collectively what they cannot do for themselves individually. IOA's development of standard reporting categories was exactly that sort of effort. I would urge IOA to hold more conferences, develop rebuttal packages for members to supply to their noncompliant organizations, create informational packages for companies that might consider an ombuds program, and distribute updates and "hot topic" bulletins to members.

SUPPORT RESEARCH

IOA and ombuds would benefit greatly from finding a collective way to sponsor research on many of the pressing issues facing the profession. A host of dispute-resolution programs at universities may welcome the chance to have topics for either master's or doctoral dissertations. Sponsoring that sort of primary research or getting grants to sponsor that primary research could be very valuable. Linkages that could come out of these endeavors could also be important. In a similar vein, institutions of higher learning should be offering more education about ombuds. I am aware of a few university courses, but there are far too few of them. Every law school that prides itself on having a dispute-resolution program should be offering a course on ombuds. This is a missed opportunity in terms of outreach to the academic world.

One of the topics most in need of additional research is the development of better ways to demonstrate the value that ombuds programs bring to organizations. This is a common challenge faced by all non-revenue-producing functions that help organizations avoid costs. Nevertheless, IOA needs to do more to gather data about how an organization's ombuds program creates a measurable benefit, thereby allowing ombuds to provide the type of data analysis that many senior managers desire.

Developing subject-matter linkages and outreach to other sectors is also important. For example, what is being done to reach out to the health-care world? Every major hospital or hospital network in the United States—and the world—is a prime target for an organizational ombuds program, and yet there is a great resistance in the health-care industry. So what is the strategic plan to address that sector? How do ombuds and IOA reach out to government? I think part of that outreach could involve assembling focus groups, including focus groups of senior executives. It might be helpful to have them tell us what they know—or what they think they need to know—and what would matter most to them about ombuds programs. Finding a way to be engaged with what happens in Washington, DC, also remains very important, as is engagement with what is happening around the world. Trying to address public policy from the perspective of the larger world is valuable.

ENGAGE IN PROGRAM EVALUATION

The IOA must develop a mechanism for external validation of what ombuds do, in order to enhance ombuds' credibility in their organizations and in the larger world. Without compromising confidentiality, routine evaluations would be helpful in providing senior leaders with data for benchmarking. Also, having a third-party audit-management letter, as is common with other types of audits, would help to identify ways to improve or issues to address. It is no longer realistic for the profession not to have a way to hold ombuds accountable for their work.

PURSUE LEGAL SUPPORT

Privilege cannot be the sole support for ombudsman confidentiality. Although I do not think that a claim of privilege should be overlooked where the law of the applicable jurisdiction and the facts can support it (meaning, the way in which a program has been established, documented, and operated), we should not overlook other bases on which to support a claim of confidentiality. There are ways to legally support a claim of confidentiality that may not be quite as strong or as all-encompassing as recognition of a testimonial privilege, but which are easier to assert and more likely to receive judicial approval. For example, offices can include language (in charters, brochures, and elsewhere) explaining that users of the office will abide by the principles on which the program was based. Those principles would include not calling the ombuds to testify with respect to confidential communications. Likewise, it should be a priority for IOA to help ombuds obtain access to lawyers. Speaking of lawyers, it is clear that practitioners would benefit if more lawyers were knowledgeable and able to represent ombuds. The knowledge involved in representing this strange structure known as an organizational ombuds is quite nuanced and often requires a breadth of experience. Proactively educating counsel about ombuds work and ombuds legal issues is critical, as is enabling ombuds programs to obtain independent counsel to advise them.

REVISIT THE IOA CODE OF ETHICS AND STANDARDS OF PRACTICE

It may be time to revisit whether the IOA Code of Ethics and Standards of Practice still adequately serve IOA's purposes today. A related inquiry should explore the interplay between the language used in these documents and other professional or ethical obligations that might apply to social workers, mental-health professionals, medical providers, attorneys, or other mandatory reporters on topics such as reporting incidents involving risk of harm to children or where there is an imminent threat of harm. Other professions have their own ethical guides and constraints. Understanding how those professions have dealt with these vexing issues could help IOA better evaluate its own principles and determine whether to revise them. For example, I have said before that one of the points I take issue with in the Standards of Practice is provision 3.1, which says an ombuds should not breach confidence except where there appears to be an imminent threat of serious harm *and where there is no other reasonable option*.⁷ I have long thought that the phrase "and where there is no other reasonable option" should be deleted, because it creates fertile ground for a factual discovery battle of what reasonable steps an ombuds did or should have taken that would invalidate any confidentiality.

Conclusion

I remain an ardent supporter of IOA's goal of ombuds ubiquity. I believe the institutions in our society need this function, and I'm willing to help IOA get there. IOA needs to get bigger and stronger in order to grow this profession because of the need for it in large organizations all over the world. This is true especially because the profession of an organizational ombuds is relatively new, and it is operating in uncharted waters with significant forces arrayed against it. IOA faces formidable challenges, but with an action plan based on where the association is and where it wants to be, I think the ombudsman profession can make great progress.

NOTES

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Moving Forward with Research in the Organizational Ombuds Profession

SHEREEN BINGHAM

ABSTRACT

This paper offers a perspective on the place of research in the organizational ombuds profession. It begins by examining the disparity that exists between repeated calls for research on organizational ombudstry and the scarcity of published, empirical research in the area. It then considers the historical evolution and obstacles that have deterred our development as an evidence-based profession. Finally, it discusses ideas for moving forward with research in the field and encourages critical reflection as integral to that process.

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KEYWORDS

ombuds, empirical research, practice paradigm, evidence-based practice

Introduction

Research is widely viewed as essential to the robust development and credibility of a profession. In recent decades, professional and academic leaders in fields as diverse as health and human services, education, public services, and business management have increasingly encouraged professionals to produce research to help identify strategies and interventions that best attain desired outcomes (Rynes et al. 2014). Some have even suggested that integrating empirical evidence into practice and policy decisions is becoming “an interdisciplinary professional standard” (Rynes et al. 2014, 305). However, fields vary in the extent to which they have produced bodies of research evidence that are substantial, relevant, and credible enough to be applied usefully in practice (Saini 2008).

Like other fields, the organizational ombuds¹ profession has been conducting and encouraging research on our profession for many years. Ombudstry caucuses and associations began forming in the 1970s (Levine-Finley and Carter 2010), and we have surveys of ombuds practitioners on record dating back at least to 1982 (Rowe 1987). The International Ombudsman Association (IOA), which formed through a merger of two associations in 2005,² has adopted an increasingly holistic approach to promoting ombuds research. The IOA strategic plans in 2008 and 2013 have asserted the value of research, the *Journal of the International Ombudsman Association (JIOA)* was created in 2008 in part to publish research (Lincoln 2008, 2011), the IOA published a research agenda in the *Journal* in 2009, and the board approved an IOA Research and Assessment Committee for development in 2014. Yet these advances have taken us only a few small steps toward becoming a profession that is

“evidence based.”³ Ten years after the IOA’s formation and seven years since the organization framed a formal research agenda, it seems time for us to reflect critically on our progress as researchers and how to proceed from here.

This paper offers a perspective on the place of research in the organizational ombuds profession, with hope of supporting critical reflection. As a longtime university professor and relatively new member of the ombudsry community, I offer my view with awareness that I have much to learn. First, I begin by examining the disparity between our repeated calls for research on ombuds work and the actual research production. This entails reviewing ways in which the ombuds profession has been promoting research and showing that the output of organizational ombuds research has been sparse. Second, I consider factors that have deterred the production of research on ombuds practices in particular; I interpret the history of the field to illuminate why we have not yet produced more research, contrast our history with the rise of the evidence-based practice movement within other professions,³ and identify current hurdles to conducting research on our own. Finally, I share ideas for moving forward with research in ways that might help overcome our hurdles as well as sidestep some of the obstacles many other professions are struggling to surmount.

Where Is All the Ombuds Research?

ENCOURAGING WORDS

The current IOA strategic plan acknowledges the importance of research and asserts its potential to help advance the organizational ombuds profession. One can infer from the document that our profession recognizes the potential of research to: (a) contribute to the professional development and excellence of ombuds practitioners, (b) help increase “the understanding, visibility and development of Organizational Ombudsman roles and offices,” and (c) “support and influence policy-making” relevant to the profession.⁴

IOA’s promotion of research is also expressed through its professional Journal. Since *JIOA*’s inception in 2008, its editors and authors have been advocates for ombuds research. Alan Lincoln, the Journal’s founder and first editor, wrote in the inaugural issue that *JIOA* would “focus on research and issues for and about the ombuds profession ...” (Lincoln 2008, 6; see also Sebok 2014). In that first issue, the Journal published the IOA Universal Reporting Categories, which a special task force developed through research to help ombuds consistently track the issues we address and, in doing so, produce evidence that can inform professional practice and policy decisions (Dale et al. 2008).

In the years since, *JIOA* has continued to push research forward. In 2009, the Journal published a research agenda that the IOA board of directors had solicited. The agenda identified about thirty research questions organized under the topics of “the ombuds professional,” “the ombuds profession,” and “ombuds practices” (Lincoln, Rowe, and Sebok 2009). Two years later, under the editorship of David Miller, *JIOA* asked Lincoln to write an educational overview of the research process in which he defined basic terms and methods for conducting research, and aimed to inspire inexperienced researchers to conduct studies addressing questions in the IOA research agenda (Lincoln 2011). In that same issue, Miller (2011, 6) described research as “a crucial part of building an enduring professional foundation,” suggesting that studies may be used to identify repeatable ombuds practices we can critically evaluate and develop. Likewise, current *JIOA* coeditor Howard Gadlin wrote in the Journal in 2010 that “It is time to develop collaborative relationships with [academic] researchers . . . who can independently examine and assess the work that we do, the way that we do it and the impact that we have” (Gadlin 2010, 27).

MEAGER RESEARCH PRODUCTION

Despite the encouragement and advocacy for research within the ombuds profession, a number of scholars have noted that—although there is ample research on related alternative dispute resolution (ADR) practices such as mediation—very little empirical research on organizational ombudstry has been published (Harrison 2004; Lincoln 2011; Smith 2014; Witzler 2014).⁵ To assess the accuracy of this observation, I conducted two informal tests.

First, I ran an online search for scholarly (peer-reviewed) articles in major academic library databases for the period between 1965 and 2014, using the search term “ombudsman (and related words).”⁶ This search resulted in 1,556 articles with my search term in the title, abstract, or list of key terms. The list included nearly all the articles published in *JIOA*.⁷ *Negotiation Journal* and *Conflict Resolution Quarterly* also contributed heavily to the list, having published several articles by IOA members, including special issues on ombudstry in 2000 and 2014. To determine the number of empirical research studies present in these results, I further limited the search to include only articles designated as “empirical studies” (including quantitative and qualitative research), resulting in eighty-four articles. Perusal of these articles revealed that, in more than half of them, *ombudsman* is a peripheral topic rather than a central focus of the research. This suggests that, in the last fifty years, only about forty scholarly empirical research studies focusing specifically on ombuds professionals and practices have been published and indexed in the databases I searched. Of those, most were studies of “executive” (statutorily created) or “advocate” ombuds who receive complaints from—and serve advocacy functions for—vulnerable groups such as individuals in long-term care and nursing facilities (Adock 2013). The list includes fewer than a dozen empirical research studies that focus specifically on organizational ombuds; many of the studies came from university professor Tyler R. Harrison and his colleagues (see Harrison et al. 2013). These search results support the observation that published empirical research on organizational ombuds professional practices is scarce.

Surprisingly, even though the initial 1,556 scholarly articles included numerous *JIOA* publications, the short list of eighty-four research studies did not include any.⁸ This discovery led me to examine the twelve issues of *JIOA* published between 2008 and 2014 to determine the number and types of articles that appeared. In conducting this second test, I defined “empirical research” leniently: including any article in which the author described gathering empirical data (surveys, interviews, etc.) and analyzing it in some manner to address an explicitly stated or implied research question or hypothesis. I did not include articles in which authors only summarized and critiqued previous scholarly literature or quoted interviewees without analysing what was said. There were ninety-five articles in all, excluding two messages from the IOA president as well as the Journal’s special “Creative Issue” published in 2013. Based on my inclusion/exclusion criteria, there were eighteen research studies (19 percent of the total) including several in the Journal’s most recent issue.

Reasons for the Scarcity of Ombuds Research

This section reviews the history of our field to consider why one cannot find more published research on ombuds practices. It begins by reviewing how we developed into a profession with practices that are based on the authority of expertise and tradition. I compare our history to that of another profession, social work, which over time has become more reliant on empirical research evidence as a basis for defining legitimate practice. I also consider emerging signs that the ombuds profession may be ready to follow a similar path of change. Second, the section introduces the process of “evidence-based practice” and considers challenges that hinder professions from becoming

evidence-based, as well as some ways other fields are addressing these challenges. Finally, it discusses obstacles that I believe ombuds will need to overcome if we wish to move toward becoming an evidence-based profession.

AN AUTHORITY-BASED PROFESSION

Ombuds history. The literature offers rich accounts of the history of the organizational ombuds role (Adock 2013; Gadlin 2000; Howard 2010; Levine-Finley and Carter 2010; Rowe 1995; Shelton 2000). Here I briefly review that history to suggest how ombuds expertise became the basis for defining legitimate ombuds practice, minimizing the importance of empirical research as a potential resource.

One of the striking features of ombuds history in the United States is that, during the early years, pioneer practitioners had to figure out for themselves—with little or no preparation—what they should be trying to accomplish and how they should be doing it (Levine-Finley and Carter 2010). Government ombuds offices in the 1960s were modeled on the “classical” approach, imported from Sweden, which had to be modified to befit the needs of universities, corporations, and other public and private organizations during the social turmoil and public unrest of the late 1960s and 1970s (Adock 2013; Howard 2010). It was not until the 1980s that most business, educational, and certain government agency ombuds were using forms of practice that came to be called the “organizational” ombuds model (Howard 2010). These ombuds were influenced by the rise of the ADR movement, among other forces, which shaped their practices related to confidentiality, investigation, neutrality, and judgment (Gadlin 2000).

These pioneer organizational ombuds often were acting in isolation and without shared understanding of what ombudsmanship entails, drawing upon their previous training and personal characteristics to invent and improvise their roles (Gadlin 2000; Levine-Finley and Carter 2010). However, as ombuds grew in number, they began to discover each other, connect informally as colleagues and mentors, share knowledge and experience, form professional associations, and write about (and teach each other) ways to handle issues and cases. These developments transitioned the budding profession into an era of striving to develop shared ethical codes and standards of practice. A major driving force of this period was developing a consensual definition of the ombuds role and consistency in practices in order to advance the profession (Levine-Finley and Carter 2010).

Once there were standards of practice in place that IOA endorsed, a shift in emphasis apparently occurred: from creating standards to enforcing them. Today, IOA has established membership categories and certification procedures that afford lower status to ombuds who do not or cannot declare full compliance with the IOA Standards of Practice (SOPs). Many ombuds perceive efforts to monitor and regulate ombuds practices as necessary to advance the field, particularly during a period in which our profession is still defining and distinguishing itself (Brubaker et al. 2014) and still grappling with others’ misunderstandings of the ombuds role and services (Gadlin 2000; Harrison 2007; Harrison et al. 2013).

Comparing professions. Other professions have similar periods of development in their history. Social work scholars Okpych and Yu, for example, describe the “practice paradigms” that have characterized their profession in the past century. The term *practice paradigm*, adapted from Thomas Kuhn’s concept of the scientific paradigm, refers to the fundamental ways in which members of a profession think about and understand “what defines legitimate practice” (Okpych and Yu 2014, 7). Okpych and Yu suggest that a practice paradigm “based on the authority of expert consensus and tradition”

arose within social work in the 1930s. During this era, social workers translated knowledge from casework into formal methods of practice, and they understood legitimate social work to entail “using expert-generated techniques that required formal training and credentialing.”¹² However, researchers conducted few systematic research to assess the impact of these practices.¹³

In the 1960s and 1970s, however, social work experienced an “ostensible effectiveness crisis.” Several studies failed to find positive effects of social work interventions, sending “a shock wave through the field.” The social work profession was growing rapidly, government spending on social welfare had expanded, schools of social work were proliferating, and the knowledge and resources needed to support high-quality research in the field were modestly increasing. However, the political climate bred accusations that those in the field were wasting resources on social programming, creating “an intensified atmosphere of accountability” and heightened attention to effectiveness within the profession (Okpych and Yu 2014, 14). Social workers also had role definition concerns as they faced greater competition from other human services professionals. When faced with these challenges—increased accountability and competition, a strengthening capacity for research, and avid calls for evidence of effectiveness—those in the field initiated a new foundation for defining legitimate practice in social work. This new practice paradigm would assess the effectiveness of interventions based on empirical research evidence (Okpych and Yu 2014).

Ready for change. The ombuds profession is experiencing some currents similar to those that pushed social work beyond “the authority of expert consensus” as the basis for defining legitimate practice and toward a new practice paradigm. In an insightful analysis of trends in the field, Susan Kee-Young Park (Brubaker et al. 2014) highlights developments that I believe signal the ombuds profession’s readiness for significant change. For example, the IOA Standards of Practice, a pivotal achievement, have aided practitioners, grounded the profession, and may ultimately provide a rationale for achieving legal recognition of ombuds’ confidential communication with visitors (Sebok 2012, 40). However, IOA members engage in ongoing discussion about whether the SOPs need to be revised (Gadlin 2011, 2012; Noack 2014; Sebok 2011; Sen 2011; Ulrich 2013), whether they accurately represent and effectively guide current practices at the majority of our institutions, and whether enforcing them through IOA membership and certification restrictions is necessary or even appropriate (Brubaker et al. 2014).

These discussions have been occurring in the context of change and uncertainty in the social, organizational, and legal environment. The ombuds profession is growing rapidly and becoming more diverse, including an influx of practitioners with graduate degrees in conflict resolution (Brubaker et al. 2014) who may be more prepared to conduct research in the field. In university settings, recent interpretations of federal laws have produced new threats to ombuds confidentiality, necessitating efforts by some practitioners to defend their role within their institutions (Joyce 2014). Such changes foster uncertainty since “no state recognizes the concept of ombudsman privilege wholly as advocated [by IOA]” (Adock 2013, 16). In recent years, difficult economic times also have made some ombuds offices vulnerable to budget cuts and elimination, intensifying the aspiration to assess ombuds’ value and effectiveness (Newcomb 2010). Several *JIOA* articles have suggested strategies to assess and communicate ombuds’ usefulness and value (Biala 2013; Park 2008; O’Connor 2014; Rowe 2010; Schenck and Zinsser 2014), and a trickle of studies evaluating ombuds effectiveness or success have appeared in the literature (Bombin 2014; Harrison 2004; Newcomb 2010; Waxman 2011; see Harrison 2004 for a summary and critique of studies published before 1995).

In short, when reviewing the history and current state of the organizational ombuds profession and comparing it to the experience of another field with a relevant and longer history, it appears that we are approaching the fringes of a possible practice paradigm shift—a change in our thinking about what we do and our grounds for defining legitimate practice. Further movement toward such change would not expunge “the authority of expert consensus” (Okpych and Yu 2014) as a foundation for our field, but rather would displace it as the sole basis for determining what constitutes legitimate practice. Since its inception, IOA has acknowledged the potential of empirical research to support and advance the profession. In a recent *JIOA* editorial titled “Moving into Empiricism,” Miller (2014, 5) wrote: “The Organizational Ombudsman profession is increasingly embracing empirical techniques in furthering our understanding of who we are, how we work and what we may achieve.” The practice paradigm on the horizon for our profession may be one in which definitions of legitimate practice are grounded in empirical research evidence. If so, we should strive to acquire more knowledge of the path ahead so we will be better prepared to overcome any challenges along the way.

AN EVIDENCE-BASED PROFESSION

The “evidence-based practice” (EBP) movement, which was adapted from the medical profession (Sackett et al. 1996, 2000), calls upon practitioners to integrate three elements as a basis for assessing a case and deciding how to proceed in the circumstances at hand: (1) professional expertise, (2) the preferences and values of the individual receiving services, and (3) the best available research evidence (Gambrell 1999; Mullen and Streiner 2004). Using this approach, ombuds would draw upon their knowledge, skills, experience, and the IOA Standards of Practice; and combine these sources of professional expertise with the values, needs and expectations of the visitor; and consider rigorously produced research evidence to make practice and policy decisions.⁹

Though the ombuds profession may transition to an era that produces more empirical research evidence—and places greater value on that evidence—we have no assurance that this shift will occur. Nor can it happen quickly. According to Okpych and Yu (2014), after more than forty years of amassing a large body of evidence supported by rigorous research methods, social work still has not fully achieved its ambition of becoming an empirically grounded profession. In fields such as social work and nursing, which have long embraced the ideal that practice decisions should be evidence-based, it appears that most professionals do not yet consistently draw upon existing research evidence in making practice decisions (Melnik and Newhouse 2014; Wike et al. 2014).

Many authors have written about this phenomenon, analyzed the reasons progress with EBP has been slow (see Mullen and Streiner 2004; Wike et al. 2014), and suggested research approaches that may facilitate progress (Jaynes 2014). The problem appears due, in part, to practitioners’ misunderstandings of how research evidence should be used. Practitioners also have voiced practical concerns, including the perception that there are not enough high-quality research studies on which to make evidence-based decisions, and they have described having neither the time nor the necessary training and skills to critically interpret and judge the quality of the evidence that does exist. Practitioners also express concerns that the available evidence is not always useful due to a mismatch between the contexts and participants often represented in academic research versus the situations and people encountered by practitioners in actual practice (Mullen and Streiner 2004; Wike et al. 2014).

Helpful developments within the evidence-based practice movement include two applied-research approaches that address some of the concerns about EBP that practitioners have expressed. With

origins in the 1950s, “action research” has recently re-emerged in professional fields such as health care, social work, and education (Huang 2010). Action research engages practitioners themselves in studying and influencing processes of change that affect them (Sullivan, Hegney, and Francis 2013). Professionals conduct research on their own practices, enabling them to gain knowledge about their interventions and develop practical solutions to the challenges they face (Miller 2011). In educational settings, for example, professionals such as teachers, school counselors, or principals might “gather information about how their particular schools operate, how they teach, and how well their students learn” while conducting action research (Miller 2011, 5). With this knowledge, they can then enact positive interventions in the school environment and on their students’ outcomes.

A second response to concerns about the EBP movement is the advent of practice-based research, which involves collaboration between professionals and academic researchers. This approach starts with the information needs of the practitioners (Jaynes 2014) and assures that “the conduct of research and the generation of knowledge [occur] within natural practice settings” (Jaynes 2014, 226). This method increases the applicability of the empirical evidence that results from the research.

The ombuds profession can learn from the concerns about EBP expressed by professionals in other fields and from the research innovations that other fields have implemented in response. Such information can help us proceed with research in ways that attempt to circumvent problems others have identified. Yet, because professions differ, ombuds are likely to encounter unique obstacles and concerns needing responses tailored to our own circumstances. If we determine where we want to go and are aware of the challenges we may encounter along the way, I believe ombuds will be well prepared to weigh options and choose a productive path.

OBSTACLES TO OMBUDS RESEARCH

Although ombuds professionals are arguably well positioned to conduct research on ombuds practices, some obstacles hinder us from doing so. One of these is a shortage of time and money. Ombuds have heavy workloads, and producing high-quality research is time-consuming and demanding. Although gathering anonymous aggregate data about visitors and the types of issues they bring to the ombuds office is not uncommon, ombuds seldom are expected to conduct and publish empirical research. Nor is funding for research expenses a common item in the ombuds office budget.

Similarly, many ombuds have not acquired the knowledge and skills needed to conduct rigorous empirical research. Unlike professions such as social work or nursing, ombudsmanship does not have an academic discipline and major. Ombuds come from a variety of disciplines, and there may be little common ground in their education and expectations for scholarship. This condition may evolve as graduates of conflict resolution and related programs continue to enter the profession. Meanwhile, we do not have cadres of scholars and graduate students busily conducting and publishing research in the area of ombudsmanship.

An additional challenge for ombuds research involves ethical concerns that can inhibit the ability to solicit participants and obtain sufficient data to address research questions. One of these concerns occurs when the same individuals are asked to participate in multiple studies. Although the organizational ombuds profession is growing, it is still relatively small; as we conduct more research, the risk of causing research fatigue among participants increases. This phenomenon may help explain why some ombuds surveys have obtained response rates below 50 percent, which some methodol-

ogists define as minimally adequate (Baxter and Babbie 2004) because of the potential for response bias when response rates are lower.¹⁰ Small, purposeful samples are suitable for most qualitative inquiry, which seeks to provide rich descriptions and deep understanding of a phenomenon within a specific context (Creswell 2013; for an example, see Levine-Finley and Carter 2010). However, for surveys in which results are to be generalized to the ombuds profession, low response rates increase the risk that the nonrespondents differ from the respondents in important ways. Researchers need to demonstrate that a sample is representative of the population from which it was drawn before they will accept and generalize the results with confidence (Abu-Bader, 2011).¹¹

An additional ethical concern that deters research participation and data collection relates to ombuds confidentiality as a standard of practice. Because an organizational ombud's communication with visitors is normally confidential, researchers may have difficulty obtaining approval to observe ombuds' interactions with visitors in natural practice settings. Many ombuds feel it is also improper to disclose information about their interactions or interventions for the purposes of research. Some may perceive such disclosure as a violation of the SOPs and the visitors' trust, even when identities remain anonymous. A related concern involves maintaining the well-being of visitors and the integrity of their relationship with the ombuds. People come to the ombuds office for help, and gathering research data could increase their distress. Requesting a visitor's participation in research may also be viewed by some ombuds as introducing inappropriate pressure into the professional relationship.

Beyond the ethical concerns about participating in research, there may be reluctance within the profession to become a focus of study. Ombuds are not accustomed to having their practices closely scrutinized by outsiders (Gadlin 2010), and even highly experienced ombuds may be uneasy about what research might reveal.

Beneath these other obstacles is this fundamental challenge: the ombuds professional culture historically has not regarded research as normal and necessary. In contrast to academic culture, ombuds only sporadically turn to research for generating knowledge about our practices. When individual ombuds struggle with a difficult case, our custom has been to seek mentoring and draw on the spoken and written expertise of colleagues and the SOPs. We have not habitually turned to the empirical research literature, which is still too sparse to be confidently used to inform practice decisions. Likewise, when ombuds collectively face a problem or concern, the norm has been to address it through discussion and group decision making. As the professional community continues to become larger and more diverse, however, this practice may be losing the capacity to be sufficiently egalitarian and inclusive. This change may create a greater incentive to develop processes that integrate research methods and empirical research evidence into policy and practice decisions.

Increasing Organizational Ombuds Research

Here I offer four suggestions that may help us move forward with research in the organizational ombuds profession: (1) focusing on our crucial questions, (2) framing our questions theoretically, (3) conducting research in practice settings, and (4) supporting ombuds researchers.

SEEK ANSWERS TO OUR CRUCIAL QUESTIONS

A starting place for becoming an empirically based profession is to revisit our research agenda. The IOA research agenda provides a general framework that is helpful in showing a wide spectrum of possibilities for research. Our next step is to narrow our inquiry to focus on more specific questions

that are crucial to the profession. For example, one category on the agenda is “ombuds practices,” where we find the broad question “What strategies work?” This question is so open-ended that the prospective researcher is unlikely to know where to begin.

To initiate the process of focusing our topic, Creswell (2013) offers advice to qualitative researchers that I believe is useful for researchers using other approaches as well. He suggests we begin by reflecting on ourselves and what we bring to the research project. Who are we, what is our history, what are our ethics and political predispositions, and how do we perceive ourselves and others? What philosophical assumptions do we bring to the research endeavor, and what theories guide our understanding of the topic at hand?

With self-understanding as a backdrop, we are prepared to consider what we want and need to know in relation to our topic. We must determine the specific purpose of the study, our research questions, and the study’s rationale—why the research needs to be done (Creswell 2013). The research purpose may arise from a practical issue or problem, a theory, a deficiency in the literature, or other sources. Reviewing the relevant scholarly literature is helpful, at this stage, to learn what is known about the topic and identify any deficiencies or gaps in existing knowledge. We can ask what unresolved professional puzzles keep us awake at night, or what urgent or crucial problems are being discussed in the field. Sebok (2011), for example, identified dissonance within one of the IOA standards of practice related to neutrality (SOP 2.2).¹² As described by Miller (2011, 5), Sebok asked at a meeting, “How do we reconcile Ombudsman neutrality with being ‘advocates for fair and equitably administered processes’?” Questions such as this one enliven the IOA research agenda by narrowing the focus to a specific problem or concern. Instead of asking “What strategies work?” our research question may become “What strategies can organizational ombuds use to effectively reconcile ombuds neutrality with advocacy for fair processes?”¹³

Once we have articulated what we want and need to know, we can turn to research design: choosing a research approach and methods for gathering and analyzing data that will enable us to answer our research questions (Creswell 2013). For example, in our study of SOP 2.2, we could use a qualitative approach and interview ombuds about their strategies for successfully (and unsuccessfully) negotiating neutrality and advocacy for fair processes in specific ombuds cases—without asking them to disclose information that would reveal a visitor’s or organization’s identity. Our analysis of the interview transcripts could identify themes in the ombuds’ responses that describe their experiences with this issue and what strategies have been most useful in different circumstances, resulting in empirical evidence that might help inform practice decisions.¹⁴

Alternatively, in a quantitative study of SOP 2.2, we could develop written or videotaped scenarios of ombuds interactions based on typical cases in which the ombuds needs to advocate for a fair process while maintaining neutrality (for example, an institutional process affecting visitors could be depicted as unfair). Several scenarios could portray the ombuds using different communicative approaches, and the study participants (sampled from a population of interest) could rate the approaches on measures of neutrality and advocacy. Another option for creating scenarios is to train individuals to serve as “simulated visitors” (Park 2008, 24) to present their issues to ombuds who are participants in the study. The simulated sessions could be videotaped to enable the researcher and other study participants to rate the ombuds’ communication. The results could identify the messages that are perceived to effectively maintain neutrality while advocating for fair processes.

THEORETICAL FRAMING

The incisive and often quoted assertion “Nothing is so practical as a good theory” (Lewin 1945) points to the value of theory to guide researchers in their study of the crucial questions of a field. Theoretical frameworks and perspectives provide unique lenses or points of view that can reframe our key issues and refocus attention on aspects of our questions that were not previously in view. As a result, theory can do much to spur researcher insight and creativity, and foster useful research on ombuds practices.¹⁵ The value of theory to explain and inform ombuds work has been demonstrated in a number of *JIOA* publications (for example, Bloch 2010; Hasson 2009; Moore 2014; Ulrich 2013). Theories from numerous disciplines—conflict resolution, communication, psychology, counseling, management, sociology, and many others—can also provide inspiring ground for the study of ombuds practices, stimulating and framing our research questions.

Relational dialectics theory (Baxter and Montgomery 1996), for example, can be used to frame our question about reconciling neutrality and advocacy for fair processes. This theory from the field of communication views interpersonal experience as inherently contradictory. Dialectics refer to the interplay of contradictory pushes and pulls in our interpersonal relationships: the dynamic tension between opposites, such as the desire for both autonomy *and* connection or both openness *and* privacy. The theory sheds light on how people struggle to make sense of experience, and how we continually manage and negotiate oppositional poles. When applied to ombudry, relational dialectics theory helps us reframe the process of assisting a visitor as one in which it is normal to negotiate dialectical tensions such as the one between neutrality and advocacy. The theory encourages us to ask what the two poles mean to us, how ombuds experience the tension and communicatively manage it, and with what consequences.¹⁶

CONDUCT STUDIES IN PRACTICE SETTINGS

An important lesson from the EBP movement is that research should be conducted in contexts and with participants similar to the ones professionals encounter in practice. This helps ensure that the findings of research are applicable in practice settings. Ombuds can conduct action research, discussed earlier, in which we study our own practices. Additionally, we can welcome academic researchers from outside our offices and profession to conduct practice-based research, producing findings that are relevant and useful.

Studies in which researchers observe and evaluate actual ombuds interactions with visitors through one-way mirrors, although controversial, may be particularly instructive to our work. Some of this research could focus on whether and how ombuds enact the SOPs during sessions, and to what effect. In a study of ombuds neutrality, for example, the researcher could observe interactions between ombuds and visitors during initial sessions, and rate ombuds’ statements on scales measuring neutrality. Researchers might also record sessions with visitors, allowing a researcher to do a detailed analysis of how the ombuds maintains or deviates from neutrality during different parts of a session.

Researchers could also examine variables such as types of visitors and issues, which might affect the neutrality ratings of ombuds’ communication. For example, researchers could assess visitors and ombuds on identity variables (such as gender and ethnicity), and examine how the types of visitors and visitors’ issues, as well as the identity match between ombuds and visitors, might influence ombuds neutrality. Visitors also could rate ombuds neutrality post-session, including short-term and

long-term outcome variables such as trust in the office, willingness to recommend it to others, and perceived effectiveness.

As discussed earlier, significant concerns regarding confidentiality, as well as nervousness about what research might reveal, pose potential obstacles to studies of ombuds work. However, confidentiality concerns are likely to be resolvable and should not become “an excuse for shielding ourselves from critical examination” (Gadlin 2010, 26). Each academic researcher is required to obtain approval from his or her institutional review board (IRB) before asking people to participate in research. An IRB’s mission is to ensure ethical protection of the rights and welfare of human research participants. This typically includes requirements that ombuds would insist upon, such as informed consent for research participation, participants’ confidentiality and privacy and their right to withdraw at any time, the removal of any identity markers from data that must be securely stored, and timely destruction of data when research is complete.

SUPPORT FOR OMBUDS RESEARCHERS

A number of strategies could be used to promote ombuds research and offer sustenance to those who conduct it. Approaches that are tailored to support and encourage individuals who have different levels of research expertise may be helpful. For independent researchers who are already experienced and knowledgeable, the profession could offer competitive grants as well as significant time at conferences and with computer technology to speak to the profession about their work. We also could develop procedures to help researchers obtain representative samples of study participants without overburdening any particular group of professionals. Such efforts could be made alongside calls for research by our professional Journals. *JIOA* could expand communication within and outside the profession to encourage submission of research articles, and perhaps strive to publish a certain number of rigorously conducted empirical studies each year.

Individuals with little research experience can receive IOA support through opportunities to become educated about research methods at our conferences and meetings. IOA could also develop workshops and short courses to train ombuds in how to be discerning consumers of research, enabling them to determine what research evidence is credible to be used as a basis for practice decisions and how it can be incorporated. Eventually, academic minors or graduate certificates in ombudstry might be designed within disciplines such as conflict resolution and communication, with research methods as part of the required curriculum.

One way the profession could assist researchers at all levels of expertise is by encouraging research collaboration. This could start with an IOA survey identifying ombuds’ concerns about obstacles to research, as well as specific problems and issues we believe need to be studied. IOA could also promote the formation of independent research teams, composed of individuals with complementary knowledge and skills, to conduct ongoing ombuds research. These teams could be multidisciplinary and could include academic researchers who are not ombuds themselves, working closely with practitioners who might not otherwise have the time and training needed to conduct research. Ultimately, a combination of approaches and strategies will likely be necessary to promote a significant increase in the amount of research on ombuds practices, both within the profession and in related academic fields.

Conclusion

The organizational ombuds profession appears to be nearing a crossroads. We have an opportunity to think critically about the future and what kind of profession we want to become. Reviewing the history and goals of other professions is helpful, yet the uniqueness of our profession calls for a path created from our own history, mission, character, ethics, challenges, and aspirations. We need courage not only to speak out about concerns (Joyce 2014), but also to ask ourselves difficult questions. I believe one of those questions is whether we are content to advance further as a profession without a substantial body of empirical research evidence to inform and support our work. A second and equally compelling question is whether we are willing to do what it takes to produce such a body of research evidence. These questions should not be answered hastily because moving forward with research will require the profession to change.

Ombuds tend to view the critical analysis of our profession as involving processes of self-reflection and communication with colleagues. In contrast, there has been a tendency to envision empirical research primarily as a tool for gathering information about ourselves that is validating; we have been less likely to consider empirical research as a tool that can facilitate our critical thinking and improvement. Yet a foundation for critical analysis of practices may be one of the most valuable resources a body of research evidence can offer a profession. Producing such research requires practitioners to open themselves up to scrutiny with awareness that the findings may not always show what they hoped for or expected. If the ombuds profession aspires to begin grounding our practice and policy decisions in empirical research evidence, there is a third question we must have the courage to ask: Are we ready and willing to benefit from what the research will provide?

NOTES

1. The International Ombudsman Association uses the word “ombudsman” to refer to the ombuds role but explicitly welcomes authors’ use of alternative terms. I use “ombuds” and “ombudsry,” because I believe in the power of language to shape meaning and am more concerned about the effects of such language choices than their origin or intent. Research across disciplines suggests that using the “male generic” form (for example, *mankind*, *congressman*) tends to conjure primarily male images in people’s minds.
2. The two primary associations that merged were The Ombudsman Association (TOA) and the University and College Ombuds Association (UCOA).
3. Evidence-based practice (EBP) involves professionals in a process of incorporating research evidence into their practice decisions, rather than relying only on professional expertise and the values and concerns of those receiving service. I elaborate on EBP later in the paper.
4. “IOA Strategic Plan 2013,” International Ombudsman Association, April 2013, http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA-SP-Approved-Oct2013.pdf
5. However, research from a number of other fields such as mediation, psychology, organizational development, and counseling has potential relevance to ombuds practices.
6. The searched databases included Academic Search Complete, PsycINFO, Communication Source, Public Administration Abstracts, and Business Source Complete.
7. Unpublished articles and articles published in journals that have been discontinued or renamed were not included in the available databases. For example, excluded journals included the *Journal of Health and Human Resources Administration*, which published many articles by Mary Rowe and other prolific ombuds authors. However, journals originating outside the United States were included, such as *Infancia & Aprendizaje (Journal for the Study of Education and Development)* and *Scandinavian Journal of Caring Sciences*.
8. At the time of this search, in early 2015, all issues of *JIOA* except the second issue of volume 7 had been added to the library databases.
9. Ombuds also need to respect the limits imposed by their institutions when making practice decisions. In the EBP model, skillful adaptation to one’s institution would be considered an element of “ombuds expertise.”
10. Response bias occurs when the survey respondents are different from the nonrespondents in ways that might cause the results to be skewed.
11. A sample’s representativeness can be established through probability-sampling methods or statistical techniques that compare the characteristics of the sample with those of the population to which generalization will be made.
12. IOA Standard of Practice 2.2 states, “The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.”

13. The definition or assessment of "effectiveness" would depend on the research approach and the methods used for gathering and analyzing data.
14. The qualitative researcher also could interview other groups and stakeholders within the institution to explore their experiences with the ombuds' strategies and the effectiveness of those strategies.
15. Research may also be used to refine theories and even to generate new theories on ombuds practices, as illustrated in research using the grounded theory approach (for example, see Witzler 2014).
16. Relational dialectics theory would also be a useful framework for studying the paradoxical nature of conflict and how ombuds help visitors integrate polarities such as competition/cooperation, optimism/realism, and avoidance/engagement (Mayer 2015).

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Blueprint for Success: Designing a Proactive Organizational Ombudsman Program

JOHN S. BARKAT

ABSTRACT

Organizational ombudsman programs are increasingly recognized as a hallmark and best practice of highly effective organizations. This article expands on a 2002 white paper that has been used as a guiding and benchmarking document for ombudsmen and the study of integrated dispute resolution systems. It outlines basic features of the organizational ombudsman role, including its key standards of impartiality, confidentiality, independence, and informality, as well as the three main functions of problem identification and assistance, organizational critical self-analysis, and promotion of conflict competence. The article further elaborates on the hallmarks and practices contributing to the effectiveness of ombudsman programs that not only identify systemic issues and root causes of problems, but also act as catalysts for change to improve the workplace through use of “smart power” and proactive engagement. Integration of these elements into ombudsman programs facilitates a proactive and engaged model of practice that can contribute to more efficient, productive, and collaborative organizations.

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their own engaged and proactive practice, and through contribution in editing this manuscript. Some of these concepts were further articulated through two keynote presentations to the International Ombudsman Association (IOA) in 2011 and 2012, when the author proposed that the existing professional standards of practice were compatible with—and could support—an engaged and proactive model of practice. Ideas from colleagues and the ensuing professional discussion following these presentations are also reflected herein.

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KEYWORDS

Ombudsman, organizational change, mediation, conflict competence, soft power, smart power, systemic issues, root cause, change agent, collaboration, proactive engagement.

When organizations experience crisis situations, it often becomes clear that the seeds of disarray began with a series of “small” mistakes: ethical improprieties, poor business practices, minor legal or professional infractions, or escalating personal conflicts. Yet most of these antecedents to corporate meltdown were visible to employees who felt powerless because they did not find a safe place to share concerns or resolve issues before they escalated. Many successful organizations of the 21st century, however, are taking proactive steps to foster organizational resilience and are recognizing that, by listening to employee concerns and providing safe venues where they can raise issues, organizations can increase their overall effectiveness, productivity, and long-term sustainability. A key function that serves as a confidential employee resource and early-warning tracking for problematic trends is an ombudsman program.¹ Indeed, a recent edition of *Just Resolutions e-News*, an American Bar Association newsletter about dispute resolution, focused on the role of the organizational ombudsman, highlighting its emergence as a viable and critical role for organizational health.² Likewise, reflecting on the post-Enron era, the *Wall Street Journal* highlighted the timeliness and value of establishing corporate ombudsman offices.³

It is notable that this model is being accepted not only by government and nonprofit entities (such as the United Nations, the International Labour Office, and the National Institutes of Health), but also among organizations for which profit is the primary business goal (such as the Coca-Cola Company, Shell Oil Company, and Mars Inc.). In fact, Mars Inc. recently was rated twenty-two on the list of the world’s best multinational workplaces.⁴ In her keynote address to celebrate that placement, CEO Victoria Mars, herself the former corporate ombudsman, credits the company’s active ombudsman program as one of the reasons why it has had such success.⁵ Such examples suggest that creating an organizational ombudsman program makes good business sense.

The concept of an ombudsman is understood in a variety of ways.⁶ To many, the ombudsman serves as a corporate conscience, constantly pushing and prodding an organization toward fairness and good practices. To others, the ombudsman represents the true scales of justice, weighing both sides of disputes and helping to facilitate solutions that are acceptable for all. Others view the ombudsman as a complaint handler. Still others see the ombudsman as an internal consultant who provides valuable feedback for management. Though each of these characterizations is accurate, it is possible to more clearly define and understand the function. Defining and understanding the focus, purpose, and scope of practice of an ombudsman can consequently inform the design of an organizational ombudsman program. This paper’s focus is to assist in the design of effective programs, as well as highlight a model of engaged practice that can add value to the organization and its stakeholders. It contains guidance for practice, as well as benchmarks for establishing new programs.

A good starting point for understanding the role of an organizational ombudsman is clearly defining what it is *not*. In a foundational article published in the *Negotiation Journal*, National Institutes of Health Ombudsman Howard Gadlin offers an interesting and detailed analysis of some of the differences between the “classical” and “organizational” ombudsman models.⁷ However, for our purposes—focusing solely on the organizational ombudsman model—a few simple distinctions will help the reader understand some key differences. In most countries, the classical ombudsman role is generally established by legislation to serve a country, state, or city, and serves as a complaint- or conflict-handling resource who can formally investigate and issue findings about particular cases. The position’s confidentiality privileges are generally articulated by statute. The organizational ombudsman, on the other hand, is generally established by an organization to serve as a “designated neutral” and an informal channel of resolution for a given constituency. Thus, the organizational

ombudsman would neither conduct formal investigations, nor issue formal findings. Although both models have their place in the field of conflict resolution, the model that has been expanding most rapidly is the organizational ombudsman model.

The organizational ombudsman model fits into the structure of a well-designed conflict management system. Any well-designed system has, as foundational elements, both formal and informal systems. Formal systems include human resources (HR), ethics, legal, management, grievance panels, hearing panels, judicial boards, formal complaint-handling structures, etc. On the other hand, informal conflict management systems include the organizational ombudsman program, confidential hotlines, or voluntary mediation programs. Any organization that provides for only one system (formal or informal) is not optimal and may actually engender more conflict than it resolves. Yet an organization that balances its formal and informal complaint and conflict resolution processes has the basic tools to learn and grow from disputes.

As part of the informal system, the organizational ombudsman should function as an internal specialist whose role rests on four foundational cornerstones, as specified by the International Ombudsman Association (IOA): informality, impartiality, confidentiality, and independence.⁸ Supported by these cornerstones, the ombudsman provides three vital functions: problem identification and assistance, organizational critical self-analysis, and promotion of conflict competence.

Four Foundational Cornerstones: Impartiality, Confidentiality, Independence, Informality

The first cornerstone is *impartiality*. The notion that customers or employees will turn to an intraorganizational resource to share personal or potentially controversial conflicts, harassment, or discrimination is a bit unrealistic without this cornerstone. For example, although many employees turn to human resources for assistance with information on medical benefits, job orientation, or transfers, many are acutely aware that, in the final analysis, HR ultimately represents management. When a company announces a layoff, the HR department implements the layoff strategies and management decisions. Thus, employees may hesitate to share serious concerns with HR in the same way they may hesitate to share concerns with others in the organization's management structure.⁹ In contrast, employees may find it more comfortable to approach the "designated neutral" ombudsman, who does not stand in the shoes of management, unions, staff, or administration, and who serves to provide unbiased feedback, honest evaluation, and the unfettered ability to listen objectively.

As a designated neutral, the ombudsman officially represents no one and represents everyone—including the organization—equally. The ombudsman does not advocate for the employee or for management, but rather for fair treatment and fair processes. Thus, the ombudsman serves as an independent internal consultant to the organization. As such, care must be taken to ensure the ombudsman generally has no additional roles within the organization.¹⁰ Such a structure could be viewed as a compromise of that impartiality—and potentially the office's confidentiality.¹¹ In the absence of an independent internal resource, employees frustrated with a lack of options may turn to formal dispute systems within the organization, external advocates, or legal counsel, each of which can lead to greater costs (in multiple forms), both for the employee and for the organization.

The second cornerstone is *confidentiality*.¹² This foundational element is critical to the success of the organizational ombudsman. Without the cloak of confidentiality, the inquirer to the ombudsman is

not likely to share fully or trust openly. Because of confidentiality and the open sharing that thereby results, an ombudsman can understand issues in more detail, expose motives more readily, and explore solutions that will likely be longer lasting and more effective for all.

Consider a common concern that an inquirer takes to an ombudsman: sexual harassment. In these cases, the inquirer—generally (but not always) a woman—may have experienced trauma due to uninvited propositions or barely veiled threats. However, balanced with the trauma may be her desire to retain employment and, in many cases, handle the situation in the most low-key fashion possible. Yet, managers in many organizations are required to report and investigate allegations of sexual harassment—both for the protection of the inquirer and other potential targets in the organization, and also because the organization has been legally “put on notice” when a manager becomes aware of such allegations. Regrettably, many of these investigations propel the incident to the forefront of the organization and create visibility that the woman did not desire. Furthermore, although there is generally an attempt to treat the situations delicately when handled by most formal mechanisms, she is often forced to provide evidence, retell her story repeatedly, and face cross-examination by those defending the alleged offender. Because these cases ultimately involve a wider circle of participants over a longer period of time (including involvement of peer panels and quasi-judicial boards), word inevitably spills out into the organization. This can polarize members of the organization into camps: those who support the alleged victim and those who support the alleged offender. This common unfolding of the process can essentially victimize the woman twice. There may ultimately be justice—but at what cost?

Because many people recognize that formal means of justice often carry such a price, they are sometimes reluctant to use these approaches. The alternative is that many issues remain submerged and go unidentified, which may contribute to the festering and escalation of problems over time. In these cases, the issues generally reemerge—often years later—bigger and more venomous than they began, causing even greater damage and incurring even greater cost to both the organization and the individuals involved. However, when a company establishes a confidential resource such as an organizational ombudsman program, employees may find a safe harbor where they can bring issues forward and seek assistance in evaluating options. The ombudsman can identify specific issues while protecting the anonymity of the source, can report on aggregated trends, and can frame, focus, and channel concerns to appropriate institutional stakeholders who can initiate the appropriate action or remedy.

The third cornerstone is *independence*. Years ago, when I worked with a South African colleague to help establish an ombudsman office, she insistently (and rightly) demanded that the ombudsman office report directly to the top officer. According to her, “The dog must have teeth!” This vivid expression accurately identifies one of the key components of a well-designed ombudsman program: that it report to the top and carry with it the full backing and support of upper management.

In the performance of its duties, such as searching for root causes of problematic processes and procedures, and handling of sensitive issues, the ombudsman office must be able to move unimpeded by the politics of the organization as much as possible. Thus, an ombudsman ideally reports directly to the organization’s governing board of directors while having access to top management. If structured this way (reporting to the board), the ombudsman can be free to work without fear of direct retaliation from someone to whom he or she reports—even if an allegation arises against the

office of the CEO. Furthermore, it allows the ombudsman to more freely deal with issues surrounding people who may have been appointed by, and report to the CEO.

It is quite problematic to have the ombudsman report to someone below the level of CEO or president. If there are people positioned between the ombudsman program and the CEO in the structure of the organization, the ombudsman is less likely to be able to influence change at the highest level. A deficiency in the reporting structure may also diminish trust in the ombudsman's services by potential users, if they perceive that leaders do not value direct access and communication with the ombudsman. Even if the ombudsman administratively reports to someone other than the CEO, he or she needs to have direct and unfiltered access to the CEO and the board.

The final cornerstone is *informality*. A key role of the ombudsman, as noted, is to serve as an informal trusted resource that can assist with resolution through various means, such as shuttle diplomacy and mediation. One defining criterion of informality is that it allows the inquirer to remain actively in control of both the process and the decision making about outcomes. The ombudsman partners collaboratively with those seeking assistance in a way that supports and empowers them to evaluate options, and to then select a course of action best suited to their situation and needs. In this capacity, the ombudsman, unlike formal channels, does not make conclusive reports, determinative findings, or arbitral decisions on grievance matters. Although there is a place for those roles in various formal grievance or resolution channels, the ombudsman serves as a counterbalance for such approaches and functions. By resolving issues informally, parties have greater control and flexibility in framing the issues and crafting resolutions, while also learning about and working with organizational needs and requirements.

These cornerstones do not mean that the ombudsman cannot work and/or contribute alongside others who have such formal or compliance roles. Indeed, close cooperation and exchange between such actors in the organization is useful—and sometimes essential—in facilitating lasting and effective resolutions. However, in reality, most organizations are reactive. They react to perceived or real risks, or to lost litigations and resulting sanctions. In response, they initiate new compliance, oversight, and formal grievance structures. The ombudsman therefore becomes an important—but often missing—informal role to balance these formal structures.

Three Vital Functions: Problem Identification and Assistance, Organizational Critical Self-Analysis, Promotion of Conflict Competence

Problem identification and assistance is the function most commonly associated with an ombudsman program. In this capacity, an ombudsman is available to employees and/or constituents to provide information, to hear concerns or complaints, to direct concerns to appropriate internal resources, to help mediate interpersonal conflicts (directly or through shuttle diplomacy), to assist in untangling tough problems, to propose or brainstorm possible solutions, to coach visitors on how to strategically navigate turbulent conflicts, or to simply communicate information upward in the organization. These functions are often the first priority for many ombudsman programs and are how the ombudsman office gathers its data, becomes aware of issues, and handles cases.

Organizational critical self-analysis pertains to what the ombudsman does with the institutional knowledge he or she gathers. Although the ombudsman clearly maintains confidentiality by not attaching or revealing the names of inquirers to their concerns, the program does collect and report aggregated data so the organization can critically evaluate and improve its practices. Data may include general information on types of cases seen, analysis of emerging issues, or recommendations of general areas of practice or policy that management should address. Because the information comes under the cloak of confidentiality and directly from various employees, it is firsthand and fairly accurate; however, data often comes from a small percentage of the much larger system.¹³ Despite the small sample size, this information often represents issues or concerns shared by others, and can prove valuable to the organization in analyzing potential areas for improvement and in examining interventions or changes in management practice.

Promotion of conflict competence is the third vital function of the ombudsman. Generally, “conflict competence” refers to a person’s awareness of, attitude toward, and ability to constructively handle conflict. The better equipped a person is to deal with difficult situations, the easier it will be to prevent, mitigate, and address conflict, thus improving the work environment. Individual conflict competence varies—not only in degree of competency, but in the specific behaviors, tactics, and skills used to demonstrate competency, as well as the comfort levels with each of these elements. Simply, conflict competence looks different for different people. Many strong organizational ombudsman programs use the expertise available to conduct or coordinate efforts to educate, train, or coach employees and management on how to work together more collaboratively with their differences and, thus, promote conflict competence.

It is common for ombudsman programs to conduct ongoing negotiation and mediation training for support and mid-level staff, to arrange intensive weekend retreats in managerial negotiation for directors and senior managers, or to provide an executive seminar series for executive and upper-level management. In this way, the ombudsman program seeks to instill a common language on the topic of conflict and collaboration for all members of the organization. This, too, can help the organization in its external relationships with vendors and customers, as collaborative skills become the norm in all types of business interactions.

The Ombudsman as an Effective Catalyst for Change: “Smart Power,” Proactive Engagement, Enabling Principles

If the ombudsman program only served the three vital functions, it would be useful for any organization. However, the usefulness of the role can extend further. By the common practice of identifying systemic root-cause factors, the ombudsman office can use its unique position to not only draw attention to these issues, but to ensure that they are carried to appropriate decision-making bodies for consideration and action. In this process, the ombudsman can shepherd the issues through the organization while providing useful feedback to the organization so it can consider possible remedies and reforms. While not beholden to a particular solution, the ombudsman is committed to ensuring that the organization considers issues fairly. This process builds on the useful but challenging role of an ombudsman as a catalyst for change. The ombudsman’s ability to stimulate beneficial systemic change and improve the organizational environment can be increased through the use of “smart power,” proactive engagement, and enabling principles.

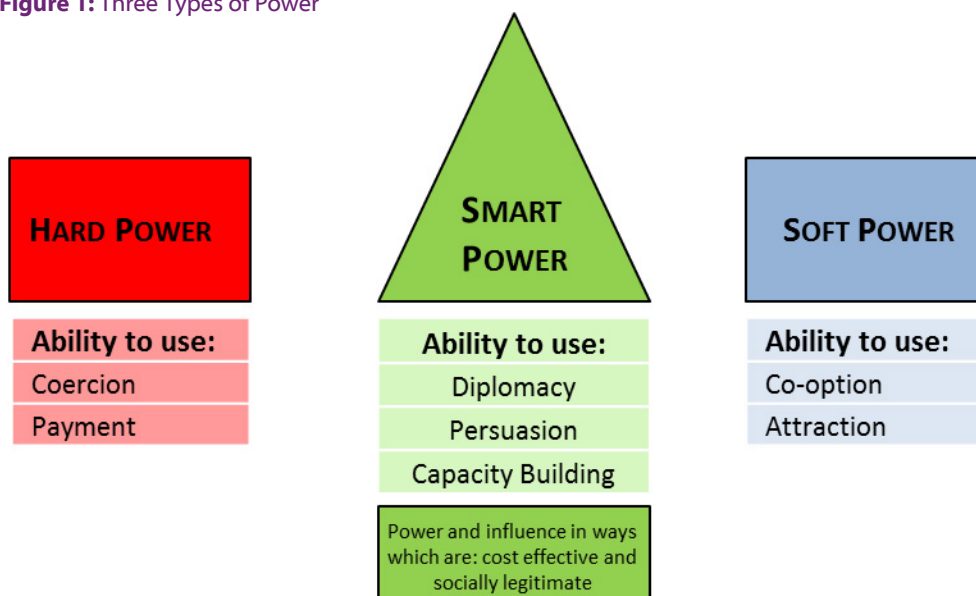
Creating change does not come easily. Whether in political contexts or in organizations, the process of change is rarely predictable or linear. The ombudsman role is designed to help organizations embody fair process. Ombudsmen can have some power in this regard, but all too often, ombudsmen avoid or reject the concept of wielding power. In so doing, the ombudsman limits his or her ability to effect change.

Joseph Nye is a political scientist at Harvard University who has written about the notion of power in political contexts. As illustrated in figure 1, he differentiates between three different types of power. Nye describes what we typically think of as power as “hard power,” which is power through force or other types of coercion or payment: essentially the power to pressure, threaten, or leverage. He then contrasts it to “soft power:” the power to change things by attraction or co-opting—essentially the power to persuade through charisma, communication, and other such means. However, he recently noted the need for a preferred strategy called “smart power.” Smart power uses elements of both hard and soft power as contextually and situationally appropriate. He notes that this power combines skills from soft power (vision, emotional intelligence, and communication) with the “hard power” ability to use organizational capacity and political skill. To essentially combine these skills, he adds a sixth one that he calls “contextual intelligence,” which speaks to the knowledge of when to use the others.¹⁴

As it relates to the ombudsman, smart power is particularly relevant in the exploration of options and the movement of systemic change through the organization.

Ombudsman programs are in a unique position of power within an organization. They are privy to insights that allow them to identify trends in conflict and communications, and to pinpoint areas of organizational design, processes, and culture that could be improved. Furthermore, they are positioned within the organizational architecture to not only communicate with all levels of employees, but also influence systemic change.

Figure 1: Three Types of Power



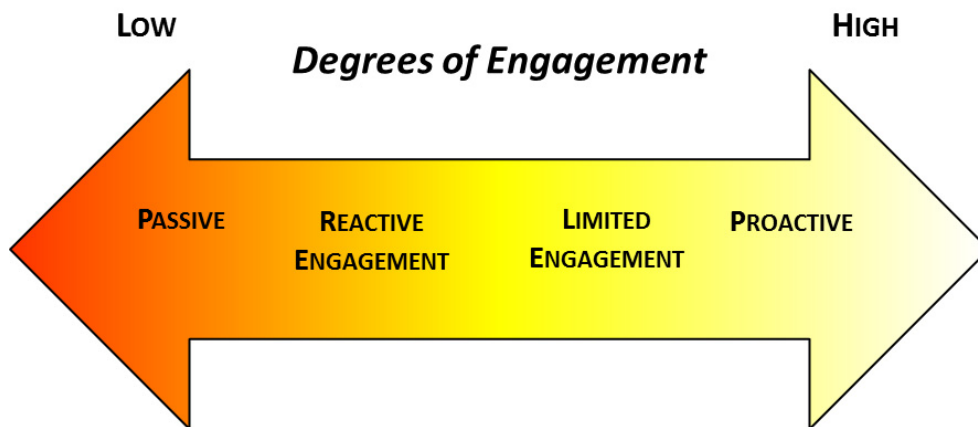
However, many dispute-resolution practitioners disown most vestiges of power. Power is almost a bad word—something one dare not whisper in the back corridors of alternative dispute resolution conferences. But the role is clearly intended to influence the organization, and awareness of the role's influence would help the practitioner use it responsibly and strategically to increase the function's effectiveness. An ombudsman influences for fair process, fair policies, and an environment that recognizes and embodies the corporate values. It seeks to influence for transparency, clarity, and honesty in communications, and participation and consideration of the views of people who are affected by managerial decisions. An additional perspective is that the influence an ombudsman has and uses through his or her function (that is, nonaligned, non-management, non-decision-making) helps redefine the traditional perceptions and uses of power in an organization, and helps bring focus to underlying values such as fairness and equity. An organizational ombudsman is influential and therefore has power.

By embracing the power to influence, and exercising “smart power,” an ombudsman moves beyond impartial observer and can passionately engage the organization at all levels. To do so, it is essential that an ombudsman becomes experimental and takes risks in how he or she engages in one's organization. Such engagement necessitates a move from a more passive role to a more proactive one.

The move from passive ombudsing to proactive engagement has four stages. These stages are shown in Figure 2.

In the first stage, the ombudsman is *passive*: focusing on casework, but not necessarily making the connection between casework and the larger system or on enhancing conflict competence. Putting this positively, the sole focus is on working with the individual seeking help. The downside is that, although the passive ombudsman may be able to resolve individual cases and improve individual situations, the larger organizational system continues to function as it would have, had there been no ombudsman.

Figure 2: Degrees of Engagement



In the second stage, the ombudsman is *reactive*. The ombudsman may work not only with individuals, but may also begin to work with teams and groups. At this stage, work may explore conflict coaching at the individual level and, more broadly, provide written tip sheets to guide others on how to resolve issues collaboratively. The ombudsman may also draft a periodical report that identifies issues based on the cases seen.

The *limited engagement* phase is where the conflict-resolution role and the cases handled provide the data for the systemic issues identified. In this scenario, the ombudsman may issue a report that goes further than simply identifying issues or problems; it may include recommendations on types of changes that the organization might explore to address the problems. At this phase, the ombudsman may also actively provide training to various constituencies in the organization to enhance their collaborative skills.

Finally, in the *proactive* phase, there may be an even greater emphasis on the systemic nature of an ombudsman's work than there is on case handling. Not only would recommendations be made, but the ombudsman would sit and engage side by side, in an informal role with staff and management, to help shape a path to improve the organizational culture. He or she would also serve as a communications and conflict coach for senior management, and provide assistance during major change or crises. Furthermore, the ombudsman would remain vigilant about ripple effects and help the organization consider unintended consequences that may come about as a result of such changes. In this stage, initiatives move beyond only providing the occasional training to one that actively works with other areas in the organization, such as internal training units, to foster an organizational emphasis in conflict competence. The ombudsman can further work with human resources employees to include conflict competency in both hiring criteria and as a measure in the performance-appraisal process. It is important to note, here, the relationship between the organization and the ombudsman. Although the ombudsman serves as a catalyst of change (an agent to reframe issues), the change agent itself is the organization.

It may be helpful to illustrate this spectrum by taking a look at how a given scenario might play out in practice, by contrasting the passive and proactive engagement methods. Imagine that a staff member approaches an ombudsman with a situation where he or she is facing relational challenges with a supervisor and an impending performance appraisal where the discussion may be difficult. The passive process might see the ombudsman listening and laying out various options, such as (a) living with the situation as is or (b) interventions such as writing a note to the supervisor, communicating directly, and/or evaluating various options of how to proceed through the difficult appraisal discussion. In the end, the staff member leaves to select and pursue the option of his or her choice.

At the other end of the scale, proactive engagement, the ombudsman may indeed begin with the same approach. However, in session, he or she may provide some coaching to the staff member on how to navigate a difficult discussion and subsequently conduct role playing to reinforce the skill in a practice session before the staff member raises it with his or her boss. Additionally, the practitioner may reflect on the case by conducting a root-cause analysis and probe for underlying causal factors beyond those involving the two individuals (staff and manager). In so doing, and in conjunction with data from other cases, the ombudsman may discover that the process of performance appraisal has several problems, including the fact that both midpoint and year-end reviews are not regularly completed and often managers are reluctant to provide honest developmental feedback—either due to a fear of being the target of a staff-filed grievance or because they feel the process is too time-

consuming. The ombudsman may further verify that, although the performance-management tool was intended to be developmental, the company uses the tool as a mechanism to determine which staff to retain because of a period of downsizing. This has created a climate in which staff regularly fight to challenge any review that notes developmental areas—to the point where they grieve or litigate such reviews, claiming harassment by managers.

As a result, the ombudsman may draft feedback for the human resources department, noting several areas of concern shared by both staff and managers regarding the performance-appraisal process. He or she may also request that the company form a committee to review the process and that the ombudsman serve on the committee in an informal (nonvoting) capacity. The ombudsman may also review the number of appraisal-related cases grieved or litigated and, when noting an increase, consult with senior management to review the risk register for the company to see if the issue could be more closely monitored. The ombudsman may suggest that management explore a risk-mitigation strategy. The ombudsman may work with the training unit to encourage development of—and to contribute to—a workshop on difficult conversations in the appraisal process.

The ombudsman would then also be present when the human resources department proposes process revisions to senior-management committees on which the ombudsman participated, in order to provide feedback on any new reformulations based upon the cases seen and the problems related to the issue. The ombudsman notes the issue as a systemic issue in his or her annual report and gives a briefing: first, to the committee of the board of directors that reviews risk management, and, second, to the committee that reviews audit and HR issues (and to which the ombudsman regularly reports).

In each of the proactive and engaged steps taken by the ombudsman in this example, the role is to influence which issues are on the table and to ensure that they are framed, discussed, and acted upon in ways that focus on the real underlying problems, are transparent, and include involvement by all those affected by the process and any resulting changes.

The ways in which ombudsman programs can use influence and “smart power” to enable change are considerable. They urge flexibility in processes; they urge for fairness of rules; they seek to improve situations without blame; they point out the underlying interests when parties become intractable; they promote procedural justice; they urge examination of solutions that might be different, novel, creative, or undervalued; and they seek to encourage input of all parties engaged in issues. All of these things resonate fully with the core cornerstone principles. An ombudsman can influence passionately and proactively and still be well grounded within the role.

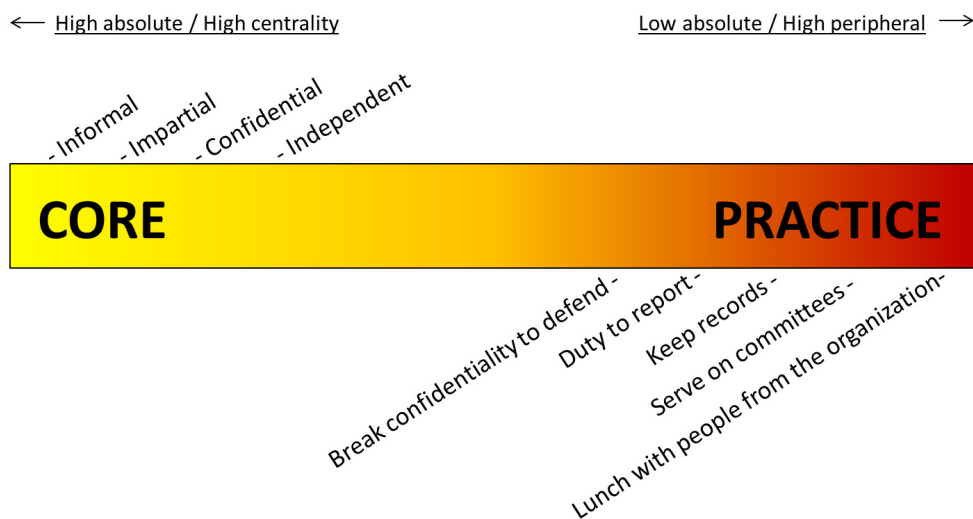
In order to exercise “smart power” or transition into a proactive role, an ombudsman must regard the guiding principles as *enabling principles*, not inhibiting principles. One who views these principles as inhibiting may consider the principles as “either/or” or “all or nothing” absolutes. This absolute way of approaching work might look something like this:

Table 1. Absolute “either/or” perspective**Principles**

Impartial	vs.	Partial, advocate
Confidential	vs.	Source of disclosure
Independent	vs.	Embedded
Informal	vs.	Formal

The danger in thinking of the principles in absolute terms could be to apply them too rigidly or literally, which can be limiting. The principles, which are to inform one’s practice, end up becoming the goal: to serve the principles. The risk is that an ombudsman could begin to look for reasons why he or she could *not* do things. And, with each demurral and withdrawal, the ombudsman becomes less relevant to the organization, loses opportunities for engagement, and is less effective at the portion of the role designed to serve and to improve one of the key constituencies: the organization. Ombudsman programs operate in a multitude of locations internationally, and within organizational settings which are multicultural and diverse. The ombudsman must, therefore, be allowed the space to observe professional standards with a practice that offers flexibility and that functions effectively. Instead of instilling an ombudsman with caution and fear, the principles should inform his or her practice and give the ombudsman courage to engage the organization where he or she works. The principles should allow an ombudsman to think about all the ways in which he or she can engage, rather than all the ways in which he or she cannot.

Instead of viewing principles and practices as absolutes, one might find value in viewing them all as important, but nevertheless with relative weight compared to each other, with some being more critical to the “essence” of what makes an organizational ombudsman. From that point, one can examine the relative weight of each principle and its effect on one’s practice. This framework helps an ombudsman re-imagine the principles and practices. The framework still considers the principles as core, but allows one to prioritize them according to what may be more central to the role in relation to the others. Likewise, the framework also recognizes that, although the practices stem from the core, they are not as central as the principles and, thus, can also be prioritized according to the needs of the role. This idea is shown in Figure 3.

Figure 3: Prioritizing principles and practices

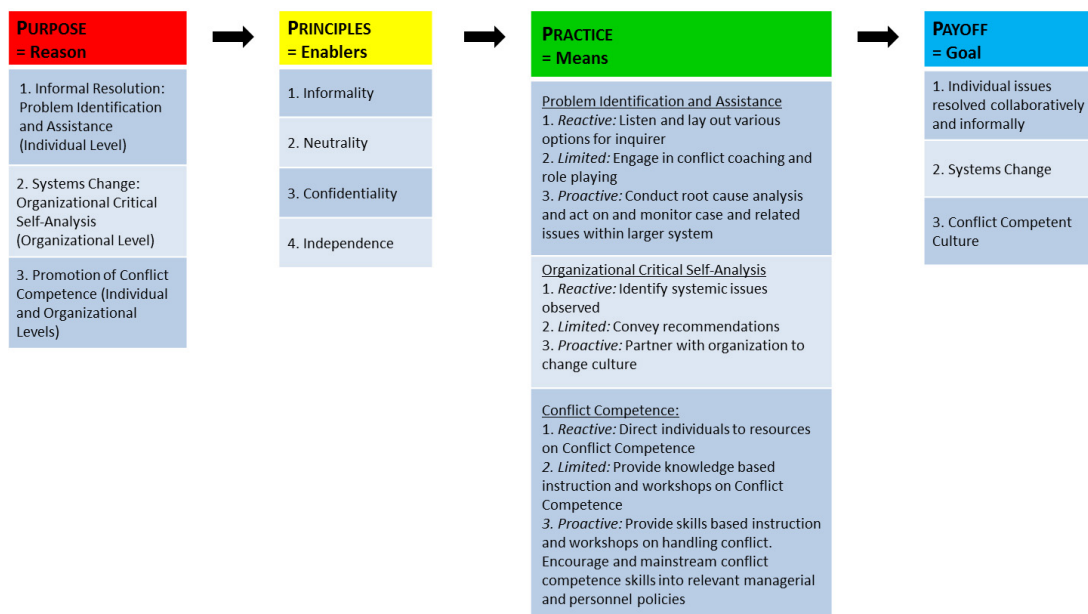
One way an ombudsman might evaluate the weight of each principle is by assessing how well one could still perform the key functions of the role, if the principle were limited in some way. For example, I propose that informality might emerge as more central than the other principles, in defining one's practice, because if the role were to become a formal grievance channel and arbitrate, for example, the ombudsman loses its unique distinction; it is hard to imagine how any of its other functions could remain credible. However, confidentiality—also a very important principle—needn't be absolute and allows for more latitude. For example, many ombudsman practitioners have exceptions to confidentiality, based on state regulations or other laws. Nevertheless, if this is clarified up front in their charter or terms of reference, as well as in communications with the constituents, they can still perform most of the key functions of the role very well.

The principles may be weighed differently, but they are all foundational. On the other hand, practices should have flexibility. For example, part of the ombudsman role is promoting positive organizational change. Yet ombudsman practices have traditionally also evolved toward absolutes, such as not serving on committees or never having lunch with people in the organization. Although there is a certain degree of importance ascribed to being viewed as impartial, there are, nevertheless, ways to accomplish this without having to isolate oneself. Successful organizational change means that the ombudsman office must first identify systemic issues and subsequently work with key decision makers to explain the impacts of systemic issues in a manner that is understandable and can lead to action. Therefore, providing impartial and independent input on committees or having lunch with key decision makers can be important ways for the ombudsman to influence the organization. However, adherence to maintaining confidentiality of the inquirer—even to defend the ombudsman practitioner or program—may be a practice that is more core and central.

An ombudsman should remain vigilant about what practices he or she needs to be effective in the role, which is about more than protecting the four principles.

TOWARD A PROACTIVE AND ENGAGED OMBUDSMAN MODEL

A well-designed and proactive ombudsman office incorporates all elements discussed above into a model in which the ombudsman is actively engaged with the organization. As shown in the model in Figure 4, there are three areas of focus: problem identification and assistance, organizational critical self-analysis, and the promotion of conflict competence. To help carry out this unique role, the IOA has articulated four enabling principles to guide the ombudsman along the way. These principles should inform the practice and give courage to engage the organizations in which one works. If the ombudsman is able to engage the organization, then the practice becomes the means to achieving the purpose—informed and emboldened by the principles. The result (or payoff) is that, through proactive work on informal resolution, an ombudsman can help resolve individual issues collaboratively and informally, identify areas for improvement within the greater system, and contribute to a culture in which employees are skilled and competent in handling conflicts that arise in a global and diverse workplace. By working to improve the environment of an organization, an ombudsman is able to influence change in its systems, policies, procedures, and culture.

Figure 4: Proactive and engaged organizational ombudsman model

Considerations in Setting Up the Program: Common Mistakes

The planning process of establishing an ombudsman program is critical (see table 2). If done poorly, the result will be either (a) a token office that is not respected or taken seriously or (b) an office that is viewed as another arm of organizational management. If planned well, the office can fully carry out the functions described above by being planted firmly on the cornerstones of the profession.

Table 2. Stages to establishing a strong ombudsman program

STAGES

Before setting up

Create good buzz: open dialogue on integrated systems and informal resolution approaches, collaborative resolution.

Get buy-in of management, stakeholders, staff, and unions.

Set boundaries: clarify what the ombudsman program is and isn't, and whom it serves.

Separate oil and water: ensure program is completely removed—and has different reporting lines from—HR, grievance, EEO, or other compliance functions.

Learn from others: get outside professional assistance on best practices for structure and establishment; don't blindly copy models.

The devil is in the details: create charter and job description consistent with standards of practice for profession, set initial budget, plan for short- and long-term growth, determine evaluation criteria.

Balance the scales: establish working group to explore improvement of formal systems.

Table 2. (cont.) Stages to establishing a strong ombudsman program**Setup**

- Involve constituency in the hiring process, where possible.
- Space wars: determine appropriate office space.
- Spread the word: publicize program, posters, public forums and trainings.
- Statement of support: distribute public statement of support and confidentiality from the CEO.

After setup

- Forge partnerships with key internal formal and informal players.
- Generate periodic data on issues and comparative data to highlight trends, issues, or problems.
- Continually evaluate client satisfaction with the program.
- Educate community on how to prevent recurring conflicts from becoming destructive.

To explore the “best practices” of setting up an ombudsman program, let us look at common mistakes. These are outlined in Table 3.

Table 3. Common mistakes in setting up an ombudsman program

Common mistakes	Negative impact	Best practices & options
Not reporting to top management	Not viewed as operating independently or impartially, potentially beholden to many others	Report to (or at least have access to) board of directors Report to independent committee composed of representatives of organization If above not possible, then report to CEO/chairman/president (or equivalent, in government)
Confidentiality not supported	Reduced trust Office viewed as management If management doesn't articulate support, it can appear they might want access to information collected by ombudsman	Publicize confidentiality Don't keep records that attach names of inquirers Have management issue strong public (written) support to confidentiality and pledge to protect office from testifying
Ombudsman does not participate in any managerial/administrative processes	Loses opportunity to provide information and understanding of issues that can be helpful in any change process	Participate in policy formation as nonvoting member Serve as “ex officio” on committees

Position not professionalized	<p>Hire internal person without specialized knowledge or training in conflict-resolution field</p> <p>Due to lack of expertise, position responds to influence of management's expectation of the role</p> <p>Hiring for a set term encourages political appointments over professional ombudsman</p>	<p>Hire ombudsman and expert ombudsman who demonstrate core competencies and relevant professional experience</p> <p>Send any internal hires to extensive training in ombudsmanship, organizational development, negotiation, and mediation; ensure he/she operates according to standards of practice</p>
Not adequately funded	<p>Unable to pursue professional development to improve program</p> <p>Hampered in ability to meet with inquirers at various locations</p> <p>Role as collaborative educator restricted by not being able to contract out for training</p> <p>Cannot sponsor educational training initiatives based on issues observed</p> <p>Scarce resources and threat of cuts can be used to influence impartiality</p> <p>If shared budget, ombudsman becomes a "party" to budget battles with other program(s), jeopardizing impartiality and independence</p>	<p>Fund to allow for ombudsman discretion in training & education</p> <p>Allow ombudsman full control of budget</p> <p>Do not mix budget with other functional areas</p> <p>Allow for supplemental budget to hire external mediators or subcontractors as needed</p>
Inadequate staffing	<p>Assuming one or two people can handle all informal complaints or issues in larger organizations</p> <p>Imbalance between formal resources (people who handle grievances, legal department, HR) and informal</p> <p>Inability to accept all cases or follow through appropriately, resulting in high dissatisfaction with program</p>	<p>Ombudsman staff proportional to constituency or to other comparable offices (1 Ombudsman per 1,800–3,000 employees), depending on the type of organization</p> <p>Supplement ombuds full-time staff with subcontractors who could mediate, assist with group facilitations, provide reports, train, etc.</p> <p>Include lines for rotating fellowships from outside the organization</p> <p>Involve graduate or postdoctoral interns</p>
Imbalanced or not well-designed resolution channels	<p>Ombudsman can be sole "informal channel," creating excessive usage</p> <p>If formal channels not functioning well, then all issues rerouted to ombudsman program, creating unreasonable expectations</p>	<p>Must have strong formal and informal systems</p> <p>Must allow many "open doors" to encourage people to bring concerns forward early</p>

Independent counsel not provided	<p>Doesn't reinforce office independence; viewed as another arm of management</p> <p>Appears to show conflict of interest (independence and impartiality), if represented by same legal counsel as organization</p>	<p>Provide external legal counsel for setup phase, ongoing consultation, and subpoena defense</p> <p>Helps in protection/evaluation of issues, which may become litigious, while maintaining confidentiality from organization</p>
Lack of community buy-in before setup	<p>Appears forced "top down" by management</p> <p>Lack of understanding of role/function</p>	<p>Create open forum information sessions</p> <p>Bring in outside ombudsman consultants to educate organization</p> <p>Conduct needs analysis of problem areas requiring attention</p>
Outsource the function	<p>Lack of knowledge of internal politics and unspoken norms</p> <p>Unable to interact side by side with management on a daily basis</p> <p>Easy to minimize recommendations of consultant and/or terminate services, if recommendations are uncomfortable</p>	<p>Hire ombudsman practitioners as full-time employees</p> <p>Maximize independence of ombudsman's role</p> <p>Ombudsman should have unfettered, regular access to top management and board to influence as catalyst for change</p>
Links with management lines or compliance functions	<p>Office is linked (or reports similarly) to a compliance function (such as EEO, audit, inspector general, legal program, HR), creating the appearance of conflict of interest and lack of independence for ombudsman program</p>	<p>Report to top (board, for example)</p> <p>When possible, establish independent reporting lines (not through legal, EEO, HR, grievance, etc.)</p>
Copy models from similar organizations without improving	<p>Assumes that a similar business type has a well-functioning ombudsman program or grievance structure</p> <p>Many times, similar organizations are struggling to "fix" their own programs due to lack of foresight and planning</p>	<p>Look at other models for good practices, but don't replicate entire model; every organization is different, even if in a similar industry</p> <p>Seek out structures from other sectors (government, corporate, academia) where great innovations may be taking place</p>
Principles as goals instead of guidelines	<p>Ombudsman looks for reasons why he/she cannot do things</p> <p>Ombudsman becomes less relevant to the organization, loses opportunities for engagement, and is less effective in improving the organization</p>	<p>View the principles as important, but with relative weight compared to each other and on one's practice</p> <p>Prioritize principles according to what is more central to the role in relation to the others</p>

Although many of these have been mentioned in passing and are included in Table 3, a few are worth highlighting.

DOES NOT REPORT TO THE TOP

I addressed this element briefly in the discussion of independence, but it bears some elaboration here. Clearly, as noted, the “best practice” would involve having an ombudsman program report directly to the board. I must stress that, because the ombudsman program is meant to be impartial, it does not have any direct policy-making ability. Thus, it is important that the program have referent power from the key power holder in the organization. Most organizations recognize this fact by not only having the program report to the top, but also by ranking and/or paying the individuals who serve in an ombudsman role at rates comparable to other top executives who report directly to the chief officer (or to chief compliance officers or auditors who report to the board). It is also critical to the program’s success that top management publicly articulate support for, and confidence in, the ombudsman program.

DOES NOT PARTICIPATE IN MANAGERIAL/ADMINISTRATIVE PROCESSES

The ombudsman, by having a finger on the pulse of the organization, can provide input to those who form corporate policy. By virtue of the ombudsman hearing issues firsthand from all parts of the organization, he or she is in a privileged position to compile and to add value to these data so the organization can improve for the benefit of all. By isolating oneself and failing to interact with (or participate in) committees and groups concerning organizational change, the ombudsman loses the opportunity to provide information and understand issues, which can be helpful in any change process. Thus, the ombudsman should be actively involved, in his or her impartial and independent role, with groups and entities that create policy or seek to improve the organization’s work environment. The ombudsman can participate on these committees or with these entities as an organizational stakeholder. However, when the ombudsman participates in these ways, he or she should take care not to approve new or revised policy, or to make other final management decisions for the organization. The ombudsman is there to provide information so that managers can make better decisions. Likewise, although the ombudsman engages with decision-making entities, he or she should also meet with staff members to ensure that they have an opportunity for input in decisions and organizational changes that will affect them.

POSITION IS NOT PROFESSIONALIZED

When the organizational ombudsman model first became popular in the 1960s, there were few practitioners. In the role’s infancy, organizations assumed that an ombudsman would be someone internal who was a good problem solver and was generally well respected.¹⁵ There was virtually no pool of professional practitioners to draw on, and every organization had its ombudsman function differently. As a result, many developed shortsighted practices such as requiring the ombudsman to be a retiring employee or other individual who was given a fixed and limited term, after which he or she could not continue working for the organization—even as the ombudsman.¹⁶ Such a practice overlooked the importance of continuity and often resulted in ejecting strong and skilled practitioners, at the end of their contracts, in favor of those with less skill and experience.

Since then, the ombudsman role has been professionalized. The professional associations that represent ombudsmen (such as the IOA) have aggressively identified best practices and articulated these in their standards of practice, codes of ethics, and best practices. Thus, for organizations that adhere to these standards, there are certain commonalities and consistencies of practice and function. Additionally, in recent years, the IOA has established a professional certification program for practitioners that establishes knowledge of practice and adherence to standards of practice.

Furthermore, these associations have identified relevant skill sets—such as experience in mediation, understanding of group dynamics, training in organizational development, and expertise in collaborative negotiation—that can contribute to success in the role and to the broader organization. For example, IOA has designed a comprehensive training program that explores basic skills such as ombudsman conflict management and ombudsman case handling in its Foundations of Organizational Ombudsman Practice course; its advanced training courses explore systemic interventions and organizational diagnosis. Today, there is an understanding that the ombudsman is a specialist in a role that is increasingly professionalized, requiring certain demonstrable competencies. Ombudsmen can hone their relevant skills by interacting with specialists who have common experience and expertise in organizational ombudsmanship in spite of differences in background of sector, organization type, or business purpose. Thus, hiring practices have moved toward seeking skilled professionals and specialists, especially from outside the organization, to develop and to direct ombudsman programs.¹⁷ And, with increasing recognition that conflict competence is a critical managerial skill, organizations have benefited from having ombudsman practitioners subsequently serve in other roles in the organization.

NOT ADEQUATELY FUNDED

When I taught management classes to graduate MBA students I would often pose this question: where does an organization most clearly articulate its priorities? Inevitably, most students recited common answers such as its mission statement, corporate vision, or other articulated management principles. Rarely did they name the place where I believe an organization most accurately identifies its priorities: the budget. By its allocation of resources, an organization articulates where it is putting its support and in what proportions. Thus, an organization that claims to “put its employees first” may not actually do so in practice if there is little or no funding allocated for job training, continuing professional development, or comprehensive benefit plans.

The organizational ombudsman is an easy office to publicly support. After all, who would not want to offer employees a safe place to go to resolve employment concerns? However, it is easy for management to do this in a token fashion by appointing an ombudsman in title and then not providing further support in budget or staffing. To do so is a disservice to the entire organization: employees do not fully receive the promised resource, and management loses a valuable source of critical feedback. Further, the organization does not get consistent early-warning signals of underlying problems. An ombudsman program must also have a sufficient allocation to be able to operate independently, without relying on other areas to function effectively.

Well-designed offices should have budgetary support that allows for subcontracted assistance for particular cases. For example, an ombudsman may become aware of an employee who does not feel safe after harassment and may need temporary use of an emergency cell phone. Or perhaps a manager who is facing an uprising from staff needs external coaching to resolve a particular type of issue. Other examples of budgetary considerations include: expenses for regular travel to various organizational sites, meeting and hospitality budget, support for a separate toll-free hotline, regular professional development for ombudsman staff, and maintenance of a resource library of books or videos to assist managers and employees with tough issues (such as handling concerns of discrimination or communicating better with one's supervisor).

INADEQUATELY STAFFED

Most organizations staff human resources offices quite well. In fact, they are likely to have many subprograms within HR. Similarly, a well-designed ombudsman program provides a number of practitioners, especially in mid- to large-sized organizations. Having an adequately staffed ombudsman office benefits the organization itself. Not only are conflict-resolution practitioners more likely to truly “hear” cases, develop them, and follow them through to resolution, but several analyses have revealed that the cost savings provided to an organization by having an effective ombudsman program pays for the function, at a minimum, and most likely saves in indirect costs.¹⁸

The composition of those practitioners ideally mirrors the mix of faces within the organization in terms of gender, ethnicity, age, and language. In this way, employees can seek out the ombudsman with whom they feel most comfortable. Many well-designed programs (such as at the United Nations or the National Institutes of Health) not only have multiple professionals and support staff, but also offer additional staffing support. For example, organizations such as Baker Hughes and American Express provide for a conflict specialist who does not serve as an ombudsman but serves as a professional staff member who takes the aggregated data and creates value-added reports. Other organizations provide for specialists within the ombudsman area who are dedicated to training or other efforts of the function.

ORGANIZATION DOES NOT PROVIDE ADEQUATE BALANCE OF RESOLUTION CHANNELS

Comprehensive systems allow for multiple entry points. This includes the need for an adequate array of formal grievance mechanisms; it can also include employee assistance programs (internal or external) or equal opportunity functions.

However, not all complementary mechanisms need to involve hiring employees or creating programs. An organization can show its commitment to mediating employee disputes by supplying impartial, external professionals prior to litigation. It can set up toll-free hotlines to provide assistance or information for employees. Or it can create town hall forums in which employees may share concerns and identify solutions to common problems.

Having multiple points of entry into a conflict-management system encourages direct, collaborative methods for resolving problems. When a system skews heavily toward formal systems, the organization sends a message that formal methods are the preferred path of resolution, which discourages less formal channels of resolution. Furthermore, many organizations are now recognizing that a “zero barriers” approach to conflict-management systems is preferable to the “zero-tolerance” approach.¹⁹ In a typical zero-tolerance approach, the organization has no tolerance for specific designated acts or speech within an organization. As a result, the actions or speech trigger a formal and indiscriminate response, which can discourage employees from reporting such issues. Thus, many issues that might easily have been resolved through informal methods of conflict resolution either go unreported and unresolved, or escalate beyond what was necessary for an effective resolution.

However, the “zero barriers” approach attempts to provide as few barriers as possible that would keep people from using resolution channels. It recognizes that an organization that provides many points of entry into resolution channels—formal and informal—will result in more issues surfacing (and consequently more resolved issues).

INDEPENDENT LEGAL COUNSEL NOT PROVIDED

The organizational ombudsman explains to every inquirer that, in the role of organizational ombudsman, he or she will protect confidentiality and resist any participation in formal processes such as testifying. Yet, occasionally, the ombudsman program—because of its intimate knowledge of particular difficulties within an organization—will be named as a witness in a formal grievance or litigation.

Although it is the organization's responsibility to protect the ombudsman program from testifying in these forums, many organizations use their existing legal programs to assist the ombudsman program. Ideally, the ombudsman program receives external legal counsel to protect its independence and its obligations to practice without advocating for a "side." This approach reinforces the fact that the organization truly supports the independence of the office and avoids conflicts of interest if the ombudsman office has knowledge of confidential inquirers about which the organization would like to know. Furthermore, the dedicated legal counsel can support the ombudsman program in issues of proper setup and operating procedures, by reviewing the charter or terms of reference and communications to the organization, and by offering ongoing support for assistance on legal issues that, if shared with the organization's counsel, might reveal sensitive/confidential cases or identities.

FUNCTION OUTSOURCED

Corporations and other organizations commonly outsource various functions as part of their efforts to control costs. For many programs, this can be a viable way to save costs and retain the equivalent function. However, the uniqueness of an organizational ombudsman program is that it is indeed an internal "designated neutral"—one that is part of the organization in which it works. This is critical for several reasons. First, part of the ombudsman's role is guiding employees on the formal and informal bureaucracy. Although an outsider can learn the formal structures, the internal politics and unspoken norms are nearly impossible to ascertain from the outside looking in. An ombudsman must be placed so that he or she can have knowledge about the systems, people, and culture of the organization.

Also, most corporations recognize that consultants, in their role as change agents, are often today's "flavor of the month," and therefore use their input when it is of interest, and end their contracts when it is not. It is still a much harder process for an organization to dismiss an employee rather than a temporary consultant. By being placed in the organization, the ombudsman has the ability to work side by side on a daily basis with managers and employees and to serve as the institutional memory, reminding management of issues they must address. An organization that uses an outsourced ombudsman may not recognize the role and value of the function, and may be viewed by employees as only paying lip service to the role's importance.

Small organizations may be the exception. However, even in this circumstance, the organization and its outsourced ombudsman would do well not to function (or label) the role as ombudsman, but to work as a conflict resolution consultant. This distinguishes the limitations inherent in an external outsourced function from that of an internal—yet impartial—ombudsman.

When an organization decides it must outsource the ombudsman function, it should ensure that it enables the individual to become familiar with the organization, to have access to all internal decision makers and stakeholders, and to have enough contractual protection against retaliation by the organization or its members.

Conclusion

The organizational ombudsman program is rapidly becoming an essential and critical function in government, education, corporations, nonprofits, and nongovernmental organizations (NGOs). However, for every office that is well designed and planned, there are other examples of shortsighted planning and insufficiently supported programs. Fortunately, most offices established in accordance with generally accepted international standards and practices, and with solid management support behind them, will have a good foundation. If they are able to add the elements of a proactive and engaged ombudsman program, they will not only be well designed but will also be able to demonstrate their value to the organization and its employees, and affect the work culture and overall effectiveness.

Looking forward, organizations are facing new challenges in the form of an increasingly global and diverse workforce, increasingly litigious environments, less job certainty and employee loyalty, and increasing pressures in balancing both work and family. It is appropriate, then, that organizations are focusing on how to handle conflict and implement appropriate systemic changes in the workplace by revisiting the proven model of an ombudsman to meet these new challenges. This trend represents the willingness of organizations to operate in ways that are more transparent and responsive in order to develop strategies that strive for self-improvement, fair treatment of people, and, ultimately, improvement of whatever bottom line is used to measure the organization's success. With careful planning, the proactive and engaged organizational ombudsman program can prove to be a key element in the successful organization.

NOTES

1. Ombudsman is a term used for the first Ombudsman office established in the early 1800's. Today, many organizations use variations of the term such as Ombuds, Ombudsperson or Ombuds officer. This article uses most of these variations with the understanding that they refer to the same function.
2. American Bar Association, "American Bar Association E-News: Ombuds edition." *Just Resolutions E-News*.
3. Kris Maher, "The Jungle: Focus on Recruiting, Pay and Getting Ahead: Budding Career." *The Wall Street Journal*, March 12, 2002, B12.
4. Great Place to Work Institute, *Great Place to Work*, accessed 2015, <http://www.greatplacetowork.com/best-companies/worlds-best-multinationals/the-list>.
5. Victoria B. Mars, "Victoria B. Mars Keynote Speech- 2014 Great Place to Work Conference" (2014) <https://www.youtube.com/watch?v=beyEvllqbto>.
6. Note, too, that the concept of Ombudsman, mediator, or designated neutral is one that is common in many different countries, religions, and groups throughout the world. The role is paralleled in early rabbinical courts, in many Asian cultures' use of designated elder advisors and shuttle mediators, and in the Latin American matriarchal model of the third party who untangles disputes. John Paul Lederach, *Preparing for peace: conflict transformation across cultures* (Syracuse, NY: Syracuse University Press, 1995).

Dispute resolution is also increasingly incorporated into contemporary business models, such as eBay, which uses online dispute resolution to resolve conflicts from and between customers. Jaap van den Herik and Daniel Dimov, "Towards Crowdsourced Online Dispute Resolution." *Journal of International Commercial Law and Technology* (2012).
7. Howard Gadlin, "The Ombudsman: What's in a Name?" *Negotiation Journal* (Plenum Publishing) 37-48.
8. "IOA Standards of Practice." *International Ombudsman Association*, accessed 2015, https://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA_Standards_of_Practice_Oct09.pdf.
9. This is not intended to demean the role of Human Resources or the fact that HR professionals seek to represent employee concerns. Rather, it is simply to stress that many employees misunderstand the role of HR and this misperception causes employees to feel frustrated. Furthermore, HR professionals sometimes feel frustrated by not being able to please employees. It is the view of the author that HR functions are critical to corporate and organizational health and indeed are first cousins, so to speak, of Ombudsman programs. In many organizations, the Ombudsman and HR practitioners become close and supportive collaborators who understand and work together to build upon their complementary roles. For an excellent article about the roles of Ombudsman and HR, refer to the Williams and Redmond article, "Organizational Ombudsman Program: A Governance and Trust Strategy" in *Restoring Trust: HR's Role in Corporate Governance*.
10. In some instances, such as universities, an Ombudsman who is also a faculty member may continue to teach a course while serving as Ombudsman. In organizations which have several individuals serving in the Ombudsman role, it could be possible to mitigate a second role by having another Ombudsman handle issues arising from the second, collateral function.

11. To ensure full confidentiality and freedom from having information about visitors used in formal procedures or litigation, an Ombudsman does not accept notice on behalf of the organization in which they work. Dual roles jeopardize the Ombudsman's claim to confidentiality and create uncertainty about when an Ombudsman is, and is not, an agent of notice.
12. As mentioned, confidentiality is often statutorily articulated for the classical Ombudsman in most countries. Confidentiality for the organizational Ombudsman in many countries may more often be supported by common law. Also, in many organizations employees are explicitly made aware of the confidentiality of using the Ombudsman program during new staff orientations or in employee manuals and other materials. According to employment law of some countries, this might constitute an implied contract (between employer and employees), which in some countries may also serve as legal support for confidentiality.
13. A frequently used benchmark is for an Ombudsman office to see a least 2-3% of the eligible population.
14. Joseph S. Nye Jr., "Soft Power, Hard Power and Leadership." (2006).
15. Mary P. Rowe, "The Ombudsman's Role in a Dispute Resolution System." *Negotiation Journal* (1991) 353-362.
16. The practice of term limits stems from pure classical Ombudsman models which often investigate and may issue conclusory findings on a case-by-case basis. However, the organizational Ombudsman does not issue such reports or conclusory findings as a result of a formal investigation. For organizational Ombudsman programs operating as an *informal* resource, term limits do not make sense and, if used, are often renewable and can allow for re-hiring in a different role. The prevailing practice to not impose such limits is supported in an international survey of organizational Ombudsman programs. International Ombudsman Association. 2012. *Results of the 2010 Compensation and Ombudsman Practice Survey*.
17. Thus, also, the outdated practice of hiring retiring senior executives or faculty is now considered somewhat questionable. The fact that most offices now hire specialists recognizes the particular skill set and competencies needed and also recognizes that there are reputable university programs in negotiation, conflict resolution and organizational development which—in addition to specific Ombudsman training courses—help equip such specialists. Furthermore, there is the potential of the perception of conflict of interest inherent in hiring someone who has served as part of an administrative team or faculty who might now be required to sit in the role of an impartial party in disputes involving former managers or colleagues or in cases where their own prior input in organizational governance decisions could be challenging where he or she is the sole Ombudsman.
18. J.T. Ziegenfuss and Mary Rowe, "Organizational Ombudsman: A Special Issue." *Journal of Health & Human Resources Administration* (1993).
19. Mary Rowe and C. Bendersky, "Workplace Justice, Zero Tolerance and Zero Barriers: Getting People to Come Forward in Conflict Management Systems." in *Negotiations and Change, From the Workplace to Society*, (Cornell University Press, 1999).

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Leveraging Technology in the Ombudsman Field: Current Practice and Future Possibilities

DANIEL RAINEY AND FRANK FOWLIE

ABSTRACT

This article looks at the possible uses of technology to augment ombudsman practices. The increased use of technology in society impacts the way in which clients may wish to communicate with ombudsmen, and the authors argue that it is incumbent on ombudsman practitioners to stay relevant by the use of technology.

KEYWORDS

ombudsman, online dispute resolution, technology, ODR, software, hardware

Where Is the Ombudsman Office of the Future Headed?

In a March 2011 post on the “Crystal Ball” section of the IOA website¹, members discuss several issues related to technology, including privacy, e-discovery, and confidentiality. These are some of the same issues that have come to the fore in discussions about online dispute resolution (ODR) technology and dispute resolution generally, all of which have implications for practice and ethics for ombudsmen and other dispute resolution practitioners (Rainey 2014). Other technological developments have affected (and will affect) the ethics of the profession, but none of the game-changing technology that may be applied to dispute resolution in the future seems to be a general topic of discussion among current ombudsman practitioners. The risks and downsides are discussed at length; the opportunities seem largely ignored.

We have been asked to survey current practice to comment on the use of technology to enhance the work of ombudsman offices, and to look ahead to where the practice of the ombudsman may be headed, given the rapid advance of ODR tools being developed for use in general dispute resolution. Predicting the future is risky. In fact, more than one person has said “Gee—I wish I hadn’t said that,” after “the future” has demonstrated the flaws in her or his vision. The risks notwithstanding, we feel confident in predicting that ODR technology will feature prominently in ombudsman practice in the near and distant future. If the emerging generations of the workforce and the public who use ombudsman offices can bank online, buy airline and concert tickets online, and meet future spouses online, then why, they will surely ask, can’t they contact and/or work with an ombudsman online?

What Is the Current State of Technology?

Most ombudsman offices do not currently rely on information and communication technology (ICT) to carry out their missions. We can cite examples of ombudsman offices that blend current practice and the use of ICT later in this essay, but that is not the status quo for most ombudsman offices. In this discussion of the future of ombudsman practice, we will use *ODR* as a shorthand reference for the array of hardware and software available to ombudsmen and others in the business of conflict engagement. The term *ODR* dates from the mid-1990s and the development of e-commerce with its attendant virtual disputes, and is connected to the concept of the “fourth party,” a reference to the active role that ODR technology plays in conflict engagement systems that use ICT to conduct all or part of their work.²

In an essay on the use of technology by ombudsmen, Fowlie argues that there are two basic ways ICT interacts with ombudsman offices through ODR technology:

There are two basic branches of ODR, both based on the role of technology. The first branch may be called “Technology Based.” Technology-based ODR refers to those systems where technology plays an active role in conducting the dispute resolution. These would include blind bidding systems, or e-commerce systems such as those developed and employed by eBay.

The second branch of ODR consists of technology-assisted solutions. Technology-assisted ODR refers to the use of technology to augment alternative dispute resolution (ADR) processes that exist independently of the technology. (Fowlie 2012, 325–40)

Technology-based ODR can fundamentally affect the way ombudsmen do business. Technology-assisted ODR takes human-based functions and actions that currently exist in ombudsman offices and uses ICT to fulfill those functions or engage in those actions.

TECHNOLOGY-ASSISTED OMBUDSMAN WORK

Following are examples of how the ombudsman offices of three organizations are using ODR technology: the Internet Corporation for Assigned Names and Numbers (ICANN), the U.S. Army Medical Command (MEDCOM), and the U.S. National Mediation Board (NMB).³

The ICANN Ombudsman’s Office was established in November 2004.⁴ Creating an ombudsman office for ICANN was challenging and was not possible using only current non-technology-assisted practices. The ICANN Ombudsman is an executive ombudsman, serving inside the ICANN organization, but the office receives complaints from stakeholders outside the organization.

Fowlie notes that:

By definition, participants in ICANN are online users, as the role of the organization is to administer the Domain Name System (DNS), which is the addressing backbone of the Internet. Disputes that occur within ICANN may be either in the real world, or online in nature. A unique element of the ICANN Office of the Ombudsman is that it serves, literally, a global community. ICANN stakeholders come from every nation in the world and span all 24 time zones. As the ICANN Office of the Ombudsman is a sole practitioner office, it would be impossible to be operational 24 hours a day to communicate synchronously with

complainants. However, using an online case management and communication system (CMS) complainants, the organization, and the ombudsman may engage in asynchronous communication. Asynchronous communication may be described as parties sharing communications that are not direct and real-time. For example, a complainant in Asia may use the CMS to initiate a complaint while the Ombudsman is sleeping in North America; the Ombudsman may then respond to the complainant after office hours have closed in Asia.

The CMS also allows for the collection and analysis of data for statistical reporting. During the case intake process, information such as the country location and category of complaint are recorded. In closing the complaint, the Ombudsman designates the resolution type, and confirms the complaint category. These statistical records help to identify complaint trends that may assist in providing early intervention on systemic issues. (Fowlie 2012, 51)

The ability to collect and aggregate data, particularly in offices with a large volume of casework, introduces some interesting issues of ethics, including issues related to privacy and “data ownership” (Rainey 2015).

The Army Medical Command’s ombudsman office is a mixed executive/organizational ombudsman office, serving patients, medical staff, patient families, and the public.⁵

In 2007, the Army Medical Command was faced with a set of challenges that called for upgrading and repairing physical plants and for establishing ways to elicit and respond to input from the soldiers, families, and medical staff concerned about the care given to returning veterans. Part of the ultimate solution was the creation of an ombudsman’s office.

On February 18, 2007, the *Washington Post* began publishing a series of articles about the deteriorating conditions at the Walter Reed Army Medical Center in Washington, DC, a federal facility that housed many of the wounded soldiers returning from Iraq and Afghanistan.⁶ Consultation between the leaders at MEDCOM and a group of dispute resolution practitioners, working pro bono, led to the creation of an organizational ombudsman office, using standard best practices to serve the MEDCOM community.⁷ Ultimately, the office that the MEDCOM community created serves as an example of mainstream current practice. But some of the challenges faced in setting up the office illustrate the need to take advantage of “future possibilities.”

First, the community served by the office is scattered all over the world. This is more and more a feature of organizations that might benefit from the work of an ombudsman’s office. For example, at a recent American Bar Association meeting, the ombudsman from pharmaceutical company Pfizer spoke of the growth of his office, a growth largely driven by the need to serve corporate members in multiple countries.⁸ Second, the MEDCOM ombudsman’s office exists in a strongly hierarchical organization in which contacts to report problems or to seek help may be potentially viewed as weaknesses—and could affect the status or career of an individual who may have information that the ombudsman, and the organization, may desperately want to know. In short, it is likely in many organizations that, for reasons of dispersal and culture, members of the community will approach ombudsmen only if there is a way to contact the ombudsman without having to go to a physical office and/or if there is a way to contact the ombudsman that is truly anonymous.

To address these issues, MEDCOM launched its ombudsman office with a very strong web presence, including a portal that allowed contact with the ombudsman's office from anywhere at any time. It also included, as part of the portal, the ability to leave information for the ombudsman anonymously by using a secure message area that the community member could access without entering any demographic or individual data. At its inception, the office had physical locations at ten posts in the United States and Italy. Currently, the office is staffed in thirty locations in the United States and around the world.

The National Mediation Board's ombudsman office, a more traditional organizational ombudsman office, does not serve an all-online community, but it relies on ODR technology similar to that in place at ICANN and MEDCOM to offer access and case management for employees, contractors, and members of the public. Access to the ombudsmen at the NMB may be through in-person contact in the NMB offices in Washington, DC, by phone or e-mail directly to the ombudsmen, or through an online portal that allows contact via text messages that may be left either with or without attribution.

It is essential for NMB employees to be able to contact the NMB remotely. The agency's mediators are on the road about three weeks each month, traveling to the parties with whom the agency works, who are scattered across the United States. The combination of direct attributed contact and anonymous contact offers the public and NMB's employees access twenty-four hours a day, seven days a week. In addition to ease of access, use of the NMB online contact and case-management portal allows mediators to track trends and manage cases.

These three examples of mixed current/future practice offices, and the technical adjuncts they employ—case management, asynchronous communication, and trend identification—all assist and augment the human-based activity in handling complaints.

Fowlie notes, however, that:

The ombudsman process is still driven by the *human-based* activities of investigating; developing questions, options, and recommendations; and communicating findings and reports. (2012, 51)

TECHNOLOGY-BASED OMBUDSMAN WORK

In addition to relying on technology-assisted ODR, future ombudsman practice is likely to be affected by the rise in "technology-based" solutions for a broad range of dispute resolution endeavors. Early technology-based systems have tended to rely on straightforward decision trees and algorithm-driven systems, such as the blind-bidding system used by Cybersettle for insurance subrogation.⁹ Online retailer eBay, an early developer and user of algorithm-driven systems, reportedly handles 60 million disputes per year, using human intervention in only 10 percent of those cases (Rogers 2013). The explosion of e-commerce has created an online community that experiences disputes at a rate at least equal to those who operate in the offline world, with needs that do not parallel those of the traditional commercial enterprise. Those involved in e-commerce have had to develop ODR solutions because traditional face-to-face solutions cannot reach those who have disputes in cyberspace.

Even though current ODR systems are simple, by some standards, the impact can be significant. For example, anecdotal discussion of dispute resolution systems, including ombudsman offices, indicates that many who make contact are not seeking mediation or some other direct intervention. Rather, they are seeking *information*. Using technology-based systems to point individuals toward the body of information they seek fulfills those individuals' needs, and it helps ensure that the practitioner is interacting with those who actually want and need direct contact. It is almost inevitable that most ombudsman offices will employ algorithm-driven, technology-based systems, especially those that serve large organizations with a large number of contacts. It is very likely that the use of much more sophisticated technology-based systems, including systems using the developments emerging from the field of natural-language research, will affect the ways ombudsmen practice in the future.

Very broadly stated, there are two main branches of natural-language research. One branch is concerned with the ability of machines—computers of one kind or another—to “hear” and understand the spoken or written language that human beings use with each other. A practical use of this research is the development of programs such as Dragon, which allows you to “tell” your computer what to do with voice commands.¹⁰ The other branch is concerned with a machine's ability to “read” and understand vast amounts of text or voice communication and analyze the content. This research is being used to develop ways of telling false (positive and negative) reviews from genuine reviews on web commerce sites, and it is being used to determine whether there is anger, agreement, etc., in a given mass of text or voice communication.¹¹

In the near future, dispute resolvers, including ombudsmen, could use advanced speech analytics and natural-language research to look for aggressive or attacking language to help them make sense out of a mass of communication from large numbers of individuals. Advanced ODR technology also offers interesting possibilities as an adjunct to coaching. It is also conceivable that a technology-based evaluation tool will be able to scan a proposed message, either written or spoken, to give one party guidance on how that message may be perceived by another party.

As with any application of information and communication technology, there are two parts to the technology employed by ODR systems and ombudsman using ODR: hardware and software. It is important to consider these separately. *Hardware* refers to the machinery ombudsmen or clients use (for example, laptops, tablets, iPads, or smartphones); *software* refers to the computer programming used to conduct the ODR processes. The availability and use of hardware affects the reach and complexity of the program using ODR technology. In North America, for example, computers and tablets traditionally have been the main source of computer-based activity, but mobile devices are increasingly taking over the hardware market. A February 2014 CNN report indicated that:

Americans used smartphone and tablet apps more than PCs to access the Internet last month—the first time that has ever happened.¹²

Europe is also seeing a similar pattern of shifting use from static devices (desktops and laptops) to mobile devices.¹³ In Africa and Asia, smartphone use is far more common than use of laptops and desktops.¹⁴ For designers of ODR programs in general, and for ombudsmen in particular, the continuing shift to mobile devices as a way to connect to the Internet—and therefore to services offered by conflict engagement practitioners—means that mobile apps and mobile-friendly methods of data and information entry and access are key to reaching potential clients.

One cannot predict what hardware will be in front of us in five or ten years, except to say that it will likely be cheaper and more powerful than today's. As we will note later, the type of hardware available to the constituents of an ombudsman office—and the access to that hardware—figure into the evaluation of whether to use ODR technology, what it may be used for, and how to integrate it into an ombudsman system.

The software for both static and mobile devices is continually improving, and there is a global tendency for developers to create their own programs or software and make those available to wide audiences. For specific target audiences, developers now commonly use a “hack-a-thon” to develop applications that address specific issues or problems. For example, a recent hack-a-thon in Austin, Texas, took client service issues put forward by Legal Aid and, over a weekend, developed online approaches specifically responding to those issues.¹⁵

Ten years ago we did not have the term “app” (a small, specialized program downloaded onto mobile devices) in our common language. Today it is almost axiomatic to say “There’s an app for that.” As we will note in detail later, the broad array of software available to the ombudsman makes it possible for ombudsman offices to use ODR software that is self-contained and designed to fulfill all of the functions common to dispute resolution systems, and it is possible to join independently produced apps and programs to target specific functions. For example, the NMB ombudsman office uses a basic website as an entry portal where potential clients can see contact information, privacy and confidentiality statements, and the charter of the ombudsman office; links take the user to a separate secure program where here or she can leave information, either with attribution or anonymously. Neither the website nor the secure communication program was designed with ombudsmen or dispute resolution in mind; however, they easily handle several functions that must be fulfilled by the ombudsman office. Thus, a key issue for ombudsmen who wish to use technology to improve their practice is to decide what kind of ODR software to use. The speed at which both software and supported hardware are changing and improving, along with falling cost factors, will help ombudsmen decide which type of software or platform is most appropriate for their practices.

Why Should Ombudsmen Embrace ODR Technology?

First, ombudsmen should embrace ODR technology because, as we have noted earlier in this essay, their clients will expect the same level of access to ombudsman services that they have to other services. Although it may be considered a cliché, the age of potential contacts for ombudsman offices seems to make a difference. Younger clients seem to show a higher preference for interacting online with friends, strangers, and service providers than older individuals.¹⁶ Although this too may seem clichéd, these clients and the generations to come after them will be the clients who seek ombudsman services.

Second, ombudsmen should embrace ODR technology because it offers efficiencies in current practice and adds new capabilities without radically changing the nature of the work. The advantages of technology-assisted work should be obvious. Using the three examples from earlier in this article, the ability to make contact regardless of time zone or geography, to accommodate disabilities with remote contact and communication, and to engage in case tracking and management are clearly advantageous to the “traditional” ombudsman office.

Technology-assisted ODR is scalable to the needs, finances, and technical competencies of dispute resolution programs. Web portals and online survey forms can simplify and speed up intake, information gathering, and scheduling. Online discussion and document-sharing apps can enable asynchronous communication for ombudsman offices spread over large geographic areas. Document-sharing and single-text editing programs can make producing settlement agreements easier and more transparent. For each of the functions of the typical ombudsman office, there *is* an app for that. And there is a client base willing and eager to use the app.

On the surface, it would appear that most ombudsman offices would have little need for technology-based ODR. However, in those instances where a significant percentage of contacts are seeking assistance that can be provided through access to information, documents, forms, or other static items, technology-based ODR can play an important role in conflict engagement practice. For example, a recent conflict engagement design project concluded a case-flow analysis with the following note:

If the normal case flow is approximately 200 cases per month, and if 80% of those cases actually now result in direct contact from . . . staff, it is reasonable to assume that . . . staff “touch” at least 160 cases per month. If one further assumes that 50% of those “touched” cases result in a simple furnishing of forms or other very basic information, it is reasonable to assume that the number of cases requiring personal interaction with a . . . staff member could be cut by 50% per month without reducing the number of overall cases and without compromising the nature of the information pushed to the clients.¹⁷

Neither technology-assisted nor technology-based work takes the place of human contact, but rather uses technology to improve the efficacy of human-based processes.

Third, ombudsmen should embrace ODR technology because it puts some important issues up front. Most ombudsmen are already using some technology in their practice, even if that technology is limited to smartphones, laptop computers, and e-mail. Intentional and thoughtful integration of ODR technology into an ombudsman practice would not just offer the advantages we have outlined, it would also ensure that ombudsmen were carefully considering the impact of the technology—some of which they are already using—on issues such as confidentiality and privacy. Since the advent of desktop computers (before they were connected to the Internet), technology has changed the definition of and availability of records, personal information, and information that both the ombudsman and client would like to keep confidential. Thoughtfully integrating technology into a practice helps the ombudsman and any other dispute resolution professional directly address these issues with clients or parties, and forces the development of policies and procedures to adapt to the digital environment.

What Should the Ombudsman Consider When Adopting ODR Technology?

Fowlie argues that ombudsmen may wish to consider a number of criteria when planning to implement ODR or when considering the scalability of their ODR programs. The following criteria will inform ombudsmen about the technology they will need to conduct a successful ODR-assisted or ODR-based practice (Fowlie 2012, 54–56):

- Geography
- Legislative requirements
- Case-management users and complaint volume
- Literacy and language
- Internet connectivity
- Time zones
- Service requirements
- Client or audience characteristics
- Synchronous and asynchronous usage

To that previous list we add two factors: (1) perceptions of safety and the need for anonymity, and (2) the sociocultural context.

A powerful incentive to use any conflict engagement program, including ombudsman offices, is the degree to which the potential client feels safe. Safety can be defined in many ways by different client groups, but at base the potential client's perception of the risk involved in contacting the ombudsman will factor into the decision of whether to trust the ombudsman. Some clients will have no second thoughts about walking into a physical office in front of everyone. Some will balk at walking into an office but will use a phone to contact the ombudsman remotely. Some may stay away unless there is a way to offer information anonymously. It is possible, theoretically, to set up "comment boxes" where potential clients can drop information—but even then he or she may fear being seen by others as the "drop" is made. For some potential clients, true anonymity may be the key to initiating contact.

From 2004 through 2010, the University of Massachusetts, Amherst and the National Mediation Board conducted research to see whether the use of process modeling could support conflict-engagement practice.¹⁸ Among the conclusions from the research were that the use of ODR technology did not diminish the participants' feeling that their concerns were "heard" by the third party and the other party in the dispute, and that using an anonymous system increased the amount of input from participants. One good way to craft a truly anonymous portal into an ombudsman office, and to craft an anonymous portal that is familiar to and trusted by an internet-friendly population, is to use ODR technology.

Ombudsmen wishing to implement ODR systems should also consider the general sociocultural context in which they operate. There will be differences in communication and culture between "high-context" and "low-context" societies.¹⁹ This will help inform the ombudsman of the potential for success. The ODR system must be designed to accommodate the cultural requirements of the client group (Fowlie 2012, 56).

For example, several assumptions attend the North American model of mediation that informs much third-party practice, including ombudsman work, for those trained in North America or Europe. There are assumptions about the need for issue identification (which can be seen as attaching blame in some cultures) and assumptions about having the “decision maker” involved in the resolution process (which can be problematic for collectivist cultures). Using ODR technology may in some cases be a better fit for non-Western populations than traditional face-to-face practice.²⁰

Ombudsmen might have to modify their practices to accommodate ODR in a number of ways by:

- Creating an appropriate case-management and correspondence system. This could be a purpose-built ODR system or could simply be an existing e-mail program.
- Housing the system on a separate secure server, independent of other applications within the organization, business, or government. Ombudsmen are also increasingly using secure “cloud” environments for conflict engagement work.
- Being proactive in providing a website that promotes the ombudsman function and links to the complaint-intake case-management system. The website should contain a reasonable amount of self-help information to educate, inform, and assist potential clients.
- Having native-language translators available for complainants. Community resources may be available to assist. Translators must be covered by either privacy laws or nondisclosure agreements, to keep the correspondence they review private and confidential.
- Being prepared to develop effectiveness measures for using ODR.
- Developing a sense of self and their own culture, as they work with online documents to conduct dispute resolution. In this case, *culture* refers especially to how people develop a sociocultural context to the manner in which they resolve disputes. A practitioner needs to be particularly aware of his or her own culture, while working with clients or institutions that are different from them in the high-context/low-context scale. In ODR scenarios, ombudsmen must be prepared to allow each correspondent to display his or her own conflict culture, without the ombudsman forcing complainants to adopt the ombudsman’s conflict culture.
- Allotting time and energy to working with complainants who have low general or computer-literacy skills. The same skills used in active listening may be applied to “active writing.”
- Practicing writing skills that will assist in developing a “trust” environment (Ebner 2012, 215–48).
- Being aware that correspondents may tend to stray from core issues and processes with the written word. Much of the process will involve focusing on these core issues and using the many tools in the ombudsman toolbox to develop options and possible outcomes.

Conclusion

Our basic prediction for the future of ombudsman practice parallels the trend in ADR and conflict engagement in general. As online dispute resolution leader Colin Rule argues:

We now routinely use computers for many of our most intimate communications, largely because smartphones and tablets have become so convenient, portable, and easy to operate. . . . These developments will inevitably affect the practice of dispute resolution. Technology is changing not only the way we communicate; it is altering the way we disagree and the way we resolve our disputes. . . . ODR is no longer a novelty—it is arguably the future of ADR. (Rule 2015)

We echo the prediction about the future of ODR in the field of ADR generally, and specifically suggest that ODR is no longer a novelty in ombudsman work; it arguably will hold a central place in ombudsman practice.

Finally, we suggest that anxiety over the “dehumanization” of the ombudsman practice is misplaced. ODR technology does not destroy the process. As ICT has become more and more a central part of everyone’s private and professional lives, there has been a tendency to see the integration of technology as destroying something rather than building something. We think that the following observation made by Rainie and Wellman is accurate and should give comfort to those who engage in a profession based on people connecting with people.

We wonder about the folks who keep moaning that the internet is killing society. They sound just like those who worried generations ago that TV or automobiles would kill sociability, or sixteenth-century fears that the printing press would lead to information overload. While ‘oy vey-ism’—crying “the sky is falling,” makes for good headlines—it isn’t true. The evidence in our work is that none of these technologies are isolated—or isolating— systems. They are being incorporated into people’s social lives much like their predecessors were. People are not hooked on gadgets—they are hooked on each other. When they go on the internet, they are not isolating themselves. (2012, 330-35)

NOTES

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18. The research was carried out under and was supported by funds from the National Science Foundation under grant no. IIS-0429297.
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Online Dispute Resolution and Ombuds: Bringing Technology to the Table

COLIN RULE AND INDU SEN

ABSTRACT

People in industrialized countries now conduct most of their professional and personal communication using technology. Whether Skyping home from a business trip to tell the kids good night, conducting a twenty-person conference call with teams around the world, or wading through the endless stream of e-mails from coworkers, technology is almost unavoidable in modern life. Some of the capabilities that technology enables border on the miraculous, like the newfound ability to reach anyone around the world with just a few swipes on a tablet. As a result, many now work more closely with teams on the other side of the planet than teams across the hallway. But, of course, people are just as complicated via computer-mediated communication as they are via face-to-face communication, so technology doesn't erase conflict. Disputes and misunderstandings occur with or without technology, but the proliferation of technology introduces new wrinkles in the fabric of workplace conflicts. Ombudsmen are increasingly called upon

to respond to disputes arising in these new contexts, and it's simply not feasible to jump on a plane to handle all of them in person. Virtual "visitors" to an ombudsman's office and other stakeholders now speak the language of technology, and they increasingly expect to use technology to help resolve workplace disputes. As a result, ombudsmen are also called upon to be more versatile with their toolbox to ensure that they can provide support in the ways that are most helpful to their constituents. In this article, the authors, one a practicing ombuds and the other an online dispute practitioner, discuss how technology is changing the work of ombudsmen, offering both challenges and opportunities, and share some lessons learned and new capabilities gleaned from the field of online dispute resolution (ODR).

KEYWORDS

online dispute resolution, ODR, technology, communication, negotiation, virtual, conflict resolution, computer-mediated communication, mediation

Technology is transforming the way in which people live and work. Individuals all over the world now communicate effortlessly with each other via powerful computers they carry in pockets all the time, wirelessly connected to the Internet (which, by habit, are still called "phones"). These devices have eliminated a lot of the geographic barriers that previously constrained interpersonal communication, and, as a result, daily working relationships now stretch around the globe and cross multiple time zones. But people are just as complicated on either side of an Internet connection as they are face-to-face, because computers don't erase all the things that make humans complex and emotional. Disputes can still arise between coworkers even if those coworkers have never met each other in person; technology now enables those disputes to transcend time and space. If the services

of ombudsmen are to stay relevant in this newly wired world, and tackle the phenomenon of conflict in cyberspace, ombudsmen must learn how to leverage technology to transcend time and space in a similar fashion.

Ombudsmen are in the communication business. The reality, for many ombudsmen, is that they already work across offices; time zones; countries and regions; administrative field, and other types of organizational operations—and with populations that have diverse communication needs and styles. Although they may not be able to meet every single need, to be effective they must be able to diagnose root causes of conflict and miscommunication, then identify what can facilitate communication in a given situation. It is an important time to ask where technology falls in the scope of the organizational ombudsman's work, including whether ombudsmen are aware of—and can make (better) use of—the technological tools that can improve dispute resolution processes, reach, and services. These questions also highlight the reality and impact of technology on workplace communication. As advocates for improved methods of communication and conflict resolution within their organizations, and as communication channels themselves, ombudsmen must develop a greater understanding of how technology can positively affect conflict resolution.

Communication, Relationships, and Technology

When a dispute arises between two individuals or within a group, the first thing that comes to mind for most ombuds is communicating with the person who raised the concern, carefully evaluating options, including whether it may be possible to have the parties sit down and work out the problem through direct communication. It is safe to say that most people who gravitate toward ombudsman work are people who are good at facilitating this kind of in-person interaction. As such, the idea of using technology to convene a discussion can at first seem impersonal and strange. Common questions may include: How can we be effective in our role if we can't see the parties or read the emotions in the room? How will I earn trust from the person without the intimacy of an in-person meeting? Won't technology make facilitating the conversation more difficult, or serve to dehumanize the interaction between the parties? How can I ensure that the parties remain engaged with the process? How will I be able to ensure confidentiality? How can I be sure that technology will not become an additional hurdle to overcome?

Twenty years ago, professional dispute resolvers were quite skeptical about using technology. The sense was that technology only enabled sterile, antiseptic communication, stripped of real honesty and emotion. Many people argued that online apologies, in particular, were not as effective as face-to-face apologies because of the lack of nonverbal communication. The oft-expressed concern was that overly simplistic software solutions would trivialize disputes and suggest that disputants could just click their way out of any issues they encountered. As such, dispute-resolution professionals were very slow to adopt technology into their practices, and many insisted that face-to-face communication was the only real way to conduct conflict-resolution procedures.¹

Over the past ten years, however, technology has “humanized.” The tools used to interact with each other in the realm of computer-mediated communication have become far more intuitive and easy to use, while at the same time becoming more powerful. Devices like smartphones and tablets have made interaction as simple as pointing one's finger, which for many seems more natural and human than typing on a keyboard. Computers now play pleasing sounds and show pictures and video in stunning clarity and color. Technology has gotten much better at connecting with people,

and helping to connect people with people. In response, people have started connecting more with technology to facilitate communication and relationships in contexts from family to the workplace. Though it does not replace the need for in-person communication and nurturing, technology is adapting to evolving human needs and interests, making communication available and accessible where it may not have been in the past.

As a result, the times (and our culture) are changing rapidly. The purpose of this piece is not to judge whether such changes are “good” or “bad,” but rather to recognize that they are happening. Computer-mediated communication is now used in ways that would have seemed inconceivable a decade ago. Not only is videoconferencing used to say good night to kids when parents are on a business trip, some even text message spouses when that spouse is in the next room instead of just walking over to ask a question. Members of the younger generation, in particular, have become reliant on technology in almost every area of their lives. Not only do they use technology throughout their workdays, they’ve become comfortable using it in many of their most intimate personal relationships. As such, when a dispute arises, many people now expect to be able to use the same kinds of tools to address issues quickly and effectively. Technology is built into our daily lives so thoroughly that, for many people, *not* using computer-mediated communication to address a workplace dispute would seem weird. Yet many mediators and ombudsmen remain skeptical.

Hesitation Versus Reality of Needs

Within the field of conflict resolution, there is still hesitation about integrating technology into informal dispute and conflict resolution processes. Often online dispute resolution, or ODR, is presented in a manner that suggests there is a bright line between online dispute resolution and face-to-face dispute resolution, and that a dispute-resolution process has to be either one or the other. But that distinction is something of a false dichotomy. In reality, many of us switch back and forth between online and face-to-face communication all the time. It does not feel strange to speak with someone face-to-face, then look down to send him or her a calendar invitation from one’s phone, then have him or her accept the invitation and send back a document while getting into a taxicab—all within the space of a few minutes. This is true within the workplace as well. Staff may choose to send e-mails to a coworker in the next cube—partially out of convenience, but also out of courtesy to not interrupt a coworker in the middle of a task he or she is focused upon. It may also be important to have a record of that communication (something that is not created with a phone call or in person). These approaches have become so common that they are not even noticed anymore.

Dispute resolution processes are not necessarily so different. Organizational ombudsmen may follow a policy of not creating records that identify the person who brings a concern, but in a truly party-empowered process, perhaps the parties to a dispute can decide themselves that they want to handle some of the issues over e-mail or via text, other issues over the phone or conference call, and other issues at an in-person meeting. In practice, an ombudsperson may initially engage with the parties over e-mail to coordinate a meeting, then shift to phone, then engage face-to-face, before shifting back to phone for follow-up and using an online feedback form for receiving feedback on the services of her office. Our parties balance between these different forms of communication every day in their working lives, and they will expect that their neutrals will be similarly comfortable moving between these different communication types. There is no need decide whether to handle dispute resolution work online or offline, because parties are already comfortable using both. In fact, individuals are already learning to sort their interactions into different communication chan-

nels based on the nature of the relationship in question. As ombudsmen work in more global and fast-paced organizational environments with diverse sets of constituents, they encounter different communication styles, relationships, comfort zones, preferences, available tools, and other practical needs. It begs the question of what tools can be provided to enhance communication for regular ombudsman practice, as well as tailoring to specific needs and preferences, and how technology can support such efforts. For example, how can technology facilitate communication in setting up and conducting a meeting with someone who has a hearing impairment and lives on another continent?

What ODR Can Offer Practitioners

Many lessons about how to effectively marry technology and conflict resolution come out of the field of ODR. When ODR first began about 15 years ago, many providers just replicated face-to-face processes in software. But those of us who experimented with those software tools quickly realized that some face-to-face dispute-resolution processes work well online, but others do not translate at all. The discovery of software algorithms opened up exciting new possibilities to assist parties in resolving their disputes. Ethan Katsh, a professor from the University of Massachusetts, Amherst who is widely regarded as the “father” of ODR, described these possibilities in his book *Online Dispute Resolution*, labeling them the “fourth party,” where technology earns a seat at the table alongside the human neutral (the third party) and the disputants.² This idea of technology as a fourth party has become a foundational concept in the practice of ODR.

The fourth party can assist parties in a variety of ways as they move toward resolution. For example, a fourth party can provide information and set expectations for the parties in an impartial way that a third party cannot. Software algorithms can also enable a variety of different types of communication, from text-based asynchronous conversations (such as e-mail) to text-based synchronous conversations (such as chat). Software can also enable audio and video conversations via tools such as Skype and Google Hangouts. These tools can enable participation from individuals anywhere in the world, saving them the time and expense of travel, and increasing the participation and engagement of disputants. Fourth-party tools can offer online joint-document editing (such as Google Docs), where parties can collaboratively author documents, or online “wizards” that help parties explore their options or provide early resolution for issues—sometimes before the complainant even informs the respondent about their concerns. Software tools can quickly address simple misunderstandings before they escalate or offer a library of creative possibilities to help parties craft their ideal solutions. Every year technology gets more powerful and more intuitive, making the fourth party an increasingly helpful presence at the negotiating table. There is little doubt that more advances are just around the corner.

Technology as a Tool for Facilitated Processes: Asynchronous Communication

One of ODR’s greatest capabilities is its ability to enable text-based asynchronous processes, such as in mediation processes, to accommodate the needs of certain types of conflicts and dispute-resolution processes. Asynchronous communications such as e-mail open up some exciting possibilities in conflict resolution. Let’s consider the arena of negotiation. In an asynchronous dispute-resolution process, technology is a tool that gives access to the process to parties; they can participate from different locations and at different times, rather than participating in real-time interactions. For instance, in a mediation process, sessions are often held jointly with both parties sitting at the same

table. If the neutral wants to have a private conversation with one of the parties, the neutral needs to pause the joint session and begin a caucus session, sending the other party out of the room for a certain period of time. There are often sensitivities around how much time the mediator spends in caucus with one party versus the other party. If the mediator sends Party A out into the hallway and talks to Party B for twenty minutes, and then switches parties and speaks to Party A for only five minutes, that can create concerns in both parties. Is the mediator showing favoritism to one side versus the other? Is the mediator putting more pressure on one side to ease his or her demands versus the other side?

In contrast, in an online asynchronous process, three conversations can take place at the same time. One conversation is a joint discussion between both parties and the mediator; the second conversation is private conversation between Party A and the mediator; the third conversation is private conversation between Party B and the mediator. The parties can post messages into each conversation at any time. This ability is sometimes referred to as “concurrent caucusing.” It may be that Party A is not interested in having extensive private conversations with the mediator and does not post very much in his or her private caucus conversation. Party B, on the other hand, may want to post lots of messages in the private conversation, perhaps because he or she has never been in a dispute resolution process before and has many more questions about what is going on. Because Party A and Party B have equal access to the mediator, they have no concerns about asymmetries in the amount of time the mediator spends with each of them in caucus conversations. However, the mediator is free to spend as much time as is required for the effective administration of the resolution process with each party in their private channels.

Another benefit of concurrent caucusing is the ability to get private feedback from the parties, even when it appears the conversation in the joint discussion is going well. In face-to-face dispute resolution processes, the mediator is often reluctant to caucus with the parties while progress is being made because of the risk that such a caucus would slow down or derail the joint problem solving that is occurring. However, one of the parties may have misgivings or concerns as the process moves quickly toward a proposed resolution, and the lack of a private communication channel may make it difficult for that party to raise those concerns. An asynchronous conversation with concurrent discussions enables the mediator to check in with the parties even when the joint conversation is going well, which may enable the mediator to be more aware of concerns that may potentially derail a resolution or interfere with further adherence to an eventual agreement.

Asynchronous communication is not only helpful to parties; it can also benefit conflict resolution practitioners. One of these new capabilities is to enable the mediator to dynamically reframe negotiation communication between the parties. In some of the face-to-face mediations the authors have conducted, emotions run high and parties have made comments that were intentionally hurtful, which served to significantly complicate the conversation and undermine trust. When such an incendiary comment is made in an asynchronous communication environment, the neutral can see the comment prior to the other party viewing it and discuss it with the party who originally posted it, in order to learn more about what the poster is aiming to achieve. For instance, a neutral may put an angrily worded post into a comment “holding bin,” which creates a window of time in which the mediator might ask the poster how he or she feels this comment will be received by the other party, and whether he or she feels it will help move the process toward a mutually satisfactory solution. Upon reflection, the party may decide that redrafting the comment is advisable because it might have a negative impact on the negotiation. This type of precommunication reframing is only

possible in an asynchronous interaction because, in a face-to-face interaction, a comment uttered by one party is heard by the other party as soon as the comment leaves the first party's lips. Then the neutral is put into a difficult situation where it is impossible to "unring" the bell that has just been "rung" by the provocative comment.

ODR in Ombuds Work

New capabilities make ODR a very useful option for ombuds to use in dispute-resolution processes. Workplace environments have struggled with the challenge of resolving disputes for decades. Part of this is because confronting conflict can be very unpleasant. For instance, people in some cultures find it quite embarrassing to admit to having a dispute, and those in other cultures may find it difficult to have direct face-to-face communication with someone of a different status. Resolution processes that rely exclusively upon face-to-face communication can sometimes find themselves "stuck" or ineffective in contexts like these. In the first example (embarrassment), if an ombudsperson approaches an individual in a situation like this and asks that person about the existence of a conflict, the party will often deny it. The person may feel that experiencing a conflict is shameful and an indication of selfishness or personal weakness. However, even if the party refuses to acknowledge the existence of a conflict, it still may exist—and potentially worsen over time. Online communication channels can sometimes provide a way for the matter to be addressed without requiring an embarrassing face-to-face confrontation. The change of communication type afforded by online dispute-resolution mechanisms can help the parties get a bit of distance from the disagreement, which can create space to brainstorm effective ways to resolve it. The parties engaged in the online communication may in fact act like nothing is going on, in their face-to-face interactions, but the online channel enables them to communicate openly and brainstorm solutions. One cannot assume that the optimal informal conflict-resolution process is always direct face-to-face communication, once one knows about cultural considerations and the different needs of those who contact an ombuds office.

Asynchronous communication can be beneficial when an ombudsman is working within an organization populated by individuals who speak different languages and dialects. Disputes possibly arising from cultural miscommunications or language difficulties may require a process that supports and helps the ombudsman bridge the resulting communication challenges. Face-to-face interaction, particularly if the process is conducted in a second or third language for one of the parties, can be complicated by misunderstandings and inaccurate translations. Text-based asynchronous communication can enable the parties to be more reflective and thoughtful in the messages they exchange, which can moderate the potential for further misunderstandings because they have an opportunity to review and edit their messages before sharing them with the other side. Asynchronous communication can also enable the parties to do research in the midst of the negotiation, potentially empowering them with important data that can help achieve a more robust and fair resolution. It can also enable the parties to consult with other experts or supporters to ensure that they are fully informed of applicable rights and are equipped with accurate information instead of presumptions and guesses. Asynchronous communication can also be prioritized against other obligations, because it does not require immediate response to every message. In this way, asynchronous interaction can help parties be at their best in a resolution process, which leads to better resolutions.

Online dispute resolution can also alter the ombudsperson's access to information within their organization. Online communication can be anonymous, and anonymity can be a powerful tool in getting people to be honest about their perspectives; anonymity can drive trust in an environment

where there may be a lack of perceived or actual safety in speaking up. In the face-to-face context, anonymity is often infeasible if not impossible. For instance, an ombuds might create an online form to collect concerns and feedback anonymously, enabling the ombudsperson to further research specific areas or provide supporting information for making recommendations gathered through these channels. As ombuds practitioners understand well, for situations where individuals may be afraid of retaliation or stigmatization, an anonymous forum can give them a way to share information that they want to share without fear. In many ways, ombuds serve as that forum, but an online tool overseen by the ombuds office can enhance this ability and be instrumental in allowing such information to surface.

ODR tools can also be used creatively in raising awareness about an ombuds program and conducting outreach to constituents. Ombuds offices typically make outreach efforts to ensure that those who have access to the office know about the program, the people involved in the program, how the office can help, how to contact the office, etc. Most ombuds offices already use websites to provide such information; some also take advantage of online intake and calendaring tools. It is a natural next step to extend these tools to make the information more accessible. In addition, since many ombuds offices also provide training and education, there are opportunities to think about how ODR can help support these efforts through online forums, boards, webinar sessions, virtual town halls, etc.

Online dispute resolution can also be very helpful in the reporting-upward context. Ombudsman programs typically collect data to share a picture of the types of issues received and feedback the organization should be aware of, and many use a case-management system. ODR tools can make the collection and management of data, monitoring of issues, and follow-up of reports transparent and thoroughly documented. It is plausible for an ombuds office to have a tool for an ODR system that not only assists with the resolution process, but also supports the larger case-management system, assists with the awareness and outreach efforts of the program, and automatically generates reports (including trend analyses and red flags), sharing them with appropriate audiences. In this way, ODR tools can become a partner for an ombuds office and its staff; they can even help improve coordination, the sharing of updated information, communication, and discussions between ombudsmen in a common office.

Downsides to Technology in Dispute Resolution

It must also be noted that integrating technology is not always a good thing, when it comes to dispute-resolution processes. Sometimes the lack of nonverbal communication can make engagement between the parties more complicated, or perpetuate misconceptions and misunderstandings. In some disputes, one party may be much more comfortable with technology than the other party; as a result, the use of technology may perpetuate power imbalances. For example, if one party is able to type much faster than the other party, and the dispute is being resolved in an asynchronous, text-based chat-type environment, the faster typist may have a significant advantage and may leverage that advantage by getting in two or three words for every word that the other party types. Or, if one party has a powerful computer with a fast internet connection and the other party is relying on an older computer with a slow dial-up connection, it can also generate imbalances between the parties. Equal access to the right tools for the process can affect actual or perceived fairness in a process. Of course, it is important to remember that conflict can signal a rupture in a relationship, and technology may not play a role in helping to soothe and heal the harms caused by that rupture. The authors do

not advocate the integration of technology into every dispute-resolution process. Instead, they urge ombudsmen to incorporate these tools and techniques into their toolbox of approaches, so that the tools can be appropriately deployed in situations where they can add value to the process—but avoided in situations where they are likely to be a distraction or further complicate matters.

Questions Ombudsmen May Have as They Incorporate Helpful ODR Tools

Ombudsmen may have several questions when incorporating technology into their practices. One of them focuses on confidentiality and record keeping. If, for example, an office adheres to the IOA Standards of Practice and Code of Ethics, an ombudsman does not keep records that contain identifying information on behalf of the organization (see standard 3.5).³ However, tools and services such as encryption, deleting identifying records, using independent third-party services, and other security measures may help address this question. An online tool does not necessarily create or keep identifying records, but the ombuds profession many need to consider this issue. Many ombudsmen are already using tools such as company or external e-mail systems, Skype, Doodle, and SurveyMonkey, because they help them reach the right audience and have become indispensable in today's world—especially to those who have a dispersed constituency. However, confidentiality and security are issues that should be addressed, because many of these tools are not confidential. Some concerns are also due to the “unknown” about how technology affects confidentiality, which is a reason for ombudsmen to become more familiar with ODR tools. Much of this also depends on the agreement between the ombuds program and the organization, and the level of independence a program has around confidentiality.

Another question involves informality. Because an ombudsman is an informal resource, would using online dispute resolution make the process more formal or less formal? We think that it does not, if it is clearly for the purposes of informal dispute resolution. ODR can be used to facilitate both formal and informal processes without changing their character. It supports the facilitator as a “fourth party” and helps a practitioner use methods of communication that are already familiar to their constituents, when appropriate.

Ombudsmen likely have several questions about using technology in their practices, but a final question worth mentioning here is practitioners' fear of incorporating something new (and perhaps some self-doubt about their abilities to pursue, learn, and use new technology in their practices). Focusing on providing safe in-person places for visitors is invaluable; however, ombuds also need to find ways to reach those who may not be able to engage in in-person sessions. Therefore, the question this begs of practitioners is how to build ODR awareness and skills—or technology, more broadly. Technology cannot replace ombudsmen, but it can enhance their ability to reach others. The authors encourage others to learn what would be possible—not only for their offices and their practices, but also for themselves as practitioners who can be equipped with a new set of skills.

Conclusion

New technologies often stimulate skepticism about their acceptability and worry about what will be lost if that technology catches on. In the 1980s, when banks were beginning to roll out automated teller machines (ATMs) for their customers, a common argument against the ATMs was that people wanted to have personal relationships with their bankers. The trust generated by shaking

someone's hand and looking into his or her eyes could never be established with a faceless machine just distributing cash. Think about your own experience, though. When was the last time you went inside a bank to withdraw money from your account? Do you miss the experience of standing in line and speaking to a teller in person? In modern times it is unusual for individuals to go inside a bank branch to take care of simple tasks regarding their bank accounts, but they will see a teller if they need to deal with complex problems beyond the capabilities of machines. In the last few years, ATMs have become even more powerful and flexible: taking stacks of checks all at once, scanning and reading them, and rarely making mistakes. Bank customers now trust the machines and, in many cases, prefer them to people for simple interactions. The tellers instead focus on the exceptional processes—the tasks that require deliberation and advice. Banks have transferred administrative tasks to the ATMs (who are kind of like the “fourth parties” of banking). These changes are good for consumers and good for the banks.

A similar change is coming to the practice of dispute resolution. Ombuds play an indispensable role in connecting and supporting people in their organizations, and the heart of that will always be face-to-face interaction. But technology is getting better at handling the administrative burdens of conflict resolution. Visitors to an ombuds office increasingly expect to be able to raise a concern or make a complaint at any hour of the day or night because they recognize the software is always there, continuously available, in a way that humans simply cannot be. As it improves, software will help ombudsmen provide relevant information to parties, improve responsiveness, expand transparency and accessibility, and provide continuous process improvement. It will also enable us to focus our efforts on the cases that most require a human touch, instead of spreading ourselves thinly over many cases that shouldn't demand equal measures of our attention. It will help ombudsmen reach more people and help more people reach the services of an ombudsman.

The increased sophistication of our technology tools will continue to transform the role of the ombudsperson, especially as the expectations of our parties change along with society's wider transformation. Ombudsmen should continuously educate themselves about newly available technology tools so their practices can evolve with the times. If done right, this expansion of technology will help to make us more effective in our organizations, and keep us relevant—no matter what new technologies emerge in the future and what role they play in creating or resolving workplace conflicts.

NOTES

1. Colin Rule, “Technology and the Future of Dispute Resolution,” *Dispute Resolution Magazine* 21 (2), http://www.americanbar.org/publications/dispute_resolution_magazine/2015/winter/technology-and-the-future-of-dispute-resolution.html.
2. Ethan Katsh and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (San Francisco: Jossey-Bass, 2001).
3. “IOA Standards of Practice,” International Ombudsman Association, accessed June 3, 2015, http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/IOA_Standards_of_Practice_Oct09.pdf.

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