

**A PRACTITIONER'S GUIDE TO
EVALUATING OMBUDSMAN OFFICES**

Office of the ICANN Ombudsman
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I. Introduction

Ombudsman offices are a unique entity in a world of governments, corporations, colleges and universities, care facilities, and consumerism. Unlike the balance of work units in these various agencies, the office of the ombudsman operates with independence, and as an independent officer, may be resistant to evaluation by the organizations it oversees. Such evaluation may be seen to fetter the ombudsman's ability to fairly come to a resolution of issues raised by complainants; or likewise could be perceived as a threat to the existence of the office.

Historically, the evaluation of ombudsman offices has consisted of value for money audits, or by using case studies to demonstrate individual or systemic improvements to administration with the ombudsman as a catalyst for change. This is an evaluation program that is designed for ombudsman practitioners, by an ombudsman. It will provide ombudsmen with self evaluation tools they can use in-house.

This is a "how-to" guide for ombudsmen to evaluate their operations. It is based on the experiences of an office of the ombudsman, and academic research in the field. This is not a cookie cutter approach to evaluation. There are three broad classes of ombudsmen: classical or governmental; organizational; and executive or hybrid ombudsmen. Each of these types of ombudsmen has a different focus in terms of clientele, agencies they oversee, statutory or procedural establishment or powers, and out-reporting requirements. This "how-to" guide honours the fact that no two ombudsman operations are exactly alike. Practitioners may find that some parts of this evaluation guide don't apply to the work they do, or the environment they work in. The process of evaluation should fit the practitioner's circumstances, and not the other way around.

An important implication to emphasize from this research is the idea of using peer ombudsmen to help with each other's evaluation. For example, an ombudsman from one university may provide commentary on another university ombudsman's self-assessment using the "Fifty Questions for Self Evaluation" tool. The use of peer practitioners implies that a knowledgeable, independent third party is opining on the evaluation, and this increases the perception of veracity when out-reporting of the evaluation takes place. Peer evaluation also reduces cost, and provides a certain level of trust with respect to handling the confidential information which may be accessed by the peer evaluator.

II. Why Evaluate?

There are several reasons that ombudsmen would want to conduct evaluations of their offices:

Demonstrating Value

Evaluation processes help to demonstrate that the operation of the office provides value by not only economic savings, but also by improving systems, and enhancing the organization's reputational value.

Is it working?

With an evaluation strategy, the office can demonstrate that it is competently delivering its program and discharging its mandate.

What can be improved?

Evaluation tells us if there are issues, processes, connections, values, or orientations which could or should be improved.

What are the successes we can celebrate?

Through the evaluation process, we can underline those successes which both the office and agency can celebrate.

Ensuring service standards

Evaluation allows us to see whether the ombudsman is operating a professional program which meets industry standards.

Demonstrate integrity

By an open and transparent evaluation and reporting process, the integrity of both the office, and the assessment process, is demonstrated.

The ombudsman can use the evaluation process to document the need for changes to its mandate, budget, programs, or staffing levels.

In addition to these reasons, the host agency, government, or corporation may wish to evaluate the office of the ombudsman to consider the retention of the incumbent.

III. First Steps—Planning the Evaluation

An RMAF¹ provides Program Managers with a concise statement or road map to plan, monitor, evaluate and report on the results throughout the lifecycle of a program, policy or initiative.²

The RMAF is a tool to assist an entity in developing a long term evaluation strategy. By applying these principles and developing a “road map” for evaluation, the ombudsman may consider evaluation on an ongoing, mid-term, and long-term basis. The advantage of establishing an RMAF process for an ombudsman entity is that it allows the ombudsman and stakeholders to have meaningful and relevant evaluation criteria in mind for several years, as opposed to *ad hoc*, unplanned, or unfocused evaluations.

The review schedule and principles found in the RMAF may be equally applied to newly formed or existing ombudsman operations. This may mean that existing ombudsman operations will need to consider where they are in terms of age and development of the office and then apply mid-term or formative evaluation, or final or summative evaluation criteria.

An RMAF or evaluation plan should consider a multi-pronged, multi-faceted approach to truly reflect the complexity of ombudsman activities. A multi-pronged approach indicates that the evaluation information has come from a variety of sources. It would include the evaluation of criteria from various sources: the wider community; clients and complainants; the organization or state; the media; and internally. The multi-faceted approach will mean that the information is not gathered in one manner. A strong multi-faceted review would include a number of measurement tools such as: interviews; surveys; application of ISO standards; economic impacts; systems improvements; and media monitoring. With a more inclusive mix of stakeholders, and a broad set of indicators and tools involved in the evaluation process, the ombudsman or his organization will gain more accurate insights into performance, activities, and perceptions.

IV. Results Based Management Accountability Framework (RMAF)

The RMAF is a document which is created by an entity or its stakeholders, and which provides a long-term plan for the evaluation of the entity. The RMAF identifies evaluation questions and performance indicators on an ongoing, formative, and summative basis. By creating these questions, and then determining criteria which can be demonstrated by performance milestones, objectivity, credibility, and clarity are added to the evaluation process. An entity which has an RMAF may collect data which relates to the performance indicators over a period of time, and this will provide for an economical and standardized evaluation process.

The RMAF contains several sections, the most critical being the development of the basic evaluation questions, and criteria which they generate. This research is not dedicated to the analysis of RMAFs generally, but rather with the application of an RMAF model for use as a tool in the ombudsman evaluation process. Treasury Board Secretariat (TBS) documents,³ as an example, provide readily accessible documentation on the preparation of the RMAF. The intent

¹ Results Based Management Accountability Framework.

² Centre of Excellence for Evaluation, Results-based Management Directorate *Preparing and Using Results-based Management and Accountability Frameworks*, online: Treasury Board of Canada http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/guide/guide_e.pdf (accessed January 20, 2005) at 4.

³ *Ibid.*

of this research is to apply the RMAF framework in practice. The RMAF is divided into four principal areas:

- A profile of the office
- A logic model
- An evaluation strategy
- A reporting strategy

The Treasury Board RMAF is held out as a template only. The office of the ombudsman may operate in an environment where evaluation planning or accountability frameworks are suggested, implemented, or predetermined by the agency, organization, or government which the ombudsman oversees. It would be advisable for the ombudsman planning document to be presented in a similar language, look and feel, and format as the institution.

Ombudsman Office Profile

The profile is a narrative which provides definition and context for the existence and function of the office of the ombudsman. It should contain several components which provide the reader with a concise portrait of the operations.

- Origin and Rationale

The questions of when and why the office of the ombudsman was, or will be, instituted should be addressed. Precipitating events such as compliance with a court ruling, public concerns, democratic initiatives, etc. should be noted.

- Mandate and Objective

The two questions of where the ombudsman's mandate is established (statute, policy, bylaw, collective agreement, etc) and what the mandate is (internal, external, or executive) should be addressed.

- Governance Structure

This section should describe the linkage between the office of the ombudsman and the entity it oversees. It should describe the communication and reporting links between the ombudsman and the entity. If the office of the ombudsman is larger than a sole practitioner, then the RMAF should describe that structure. In both cases, the use of *organigrammes* or flowcharts may be useful.

This section may also describe the relationship, in terms of membership or accreditation, with professional bodies (United States Ombudsman Association, International Ombudsman Association, International Ombudsman Institute, Forum of Canadian Ombudsmen).

- Clients

The RMAF should concisely consider who the eventual users of the ombudsman's services may be.

- Delivery Approach

The RMAF should provide indications of how the program will be delivered, and how the ombudsman will engage the client group. This will vary based on the mandate of the ombudsman and the entity it oversees. An organization ombudsman in a single locale firm may rely on a face to face delivery; while Canada's newly created Federal Victims of Crime Ombudsman may use a number of delivery mechanisms, due to geography, mandate, and varying degrees of client literacy.

- Final Outcomes and Planned Results

This section should provide a linkage between the bottom line activity of the entity, and the outcomes provided by the ombudsman. Statements such as: "Ultimately, ICANN is working towards a stable, secure, and universal internet. In working towards that goal, the Office of the Ombudsman will assist ICANN by...",⁴ assist in this definition. The simple activity of creating this linkage may in and of itself, assist the ombudsman in the evaluation process. For example, an ombudsman may ask such questions as: Does our operation assist in creating a good workplace which produces an economical and useful product? Does our operation assist in the proliferation of democracy and the protection of rights?

The Logic Model

Logic Model—(also referred to as Results-based Logic Model) An illustration of the results chain or how the activities of a policy, program or initiative are expected to lead to the achievement of the final outcomes. Usually displayed as a flow chart.⁵

The Logic Model is a key component of the RMAF. It consists of a flow chart which *highlights* the following: ombudsman objectives; key functions; activities; outputs; immediate outcomes; intermediate outcomes; and final outcomes.⁶

These components may be determined by a review of the office's mandate, supporting structural documents, or by self-reflection. It is important that the final outcomes reflect those discussed in the previous section. The Logic Model is a graphic, and it is important to keep statements concise in order not to overwhelm the activity. Again, simply developing these statements in the logic model may provide a basis for an evaluative conclusion. The flow chart below is an example of a logic model that may be used by ombudsmen in developing a RMAF.

⁴ ICANN Office of the Ombudsman, *Results Based Management Accountability Framework* (2005), online: <http://www.icann.org/ombudsman/documents/rmaf-08feb05.pdf> (accessed January 28, 2007) at 4.

⁵ Treasury Board Secretariat, *Guide for the Development of Results-based Management and Accountability Frameworks* (2001), online: http://www.tbs-sct.gc.ca/eval/pubs/RMAF-CGRR/RMAF_Guide_e.pdf at 34. (accessed February 23, 2007).

⁶ *Supra* note 4 at 7.

The Evaluation Strategy

An evaluation strategy identifies a series of questions that can be asked in order to determine if the office of the ombudsman has been successful, the types of indicators used to measure success, and data requirements to support the indicators. The evaluation strategy supports the logic model and, like the latter, is a living document; if the logic model changes, so must the evaluation strategy.⁷

The evaluation strategy should highlight any factors which impact the office or the evaluation. These may include issues such as staffing shortages, database issues, or known gaps between client expectation–ombuds outcome–and satisfaction levels. The evaluation should also consider the availability of data, and data sources relevant to the criteria, and the costs to conduct the evaluations on a one-off or continuing basis.

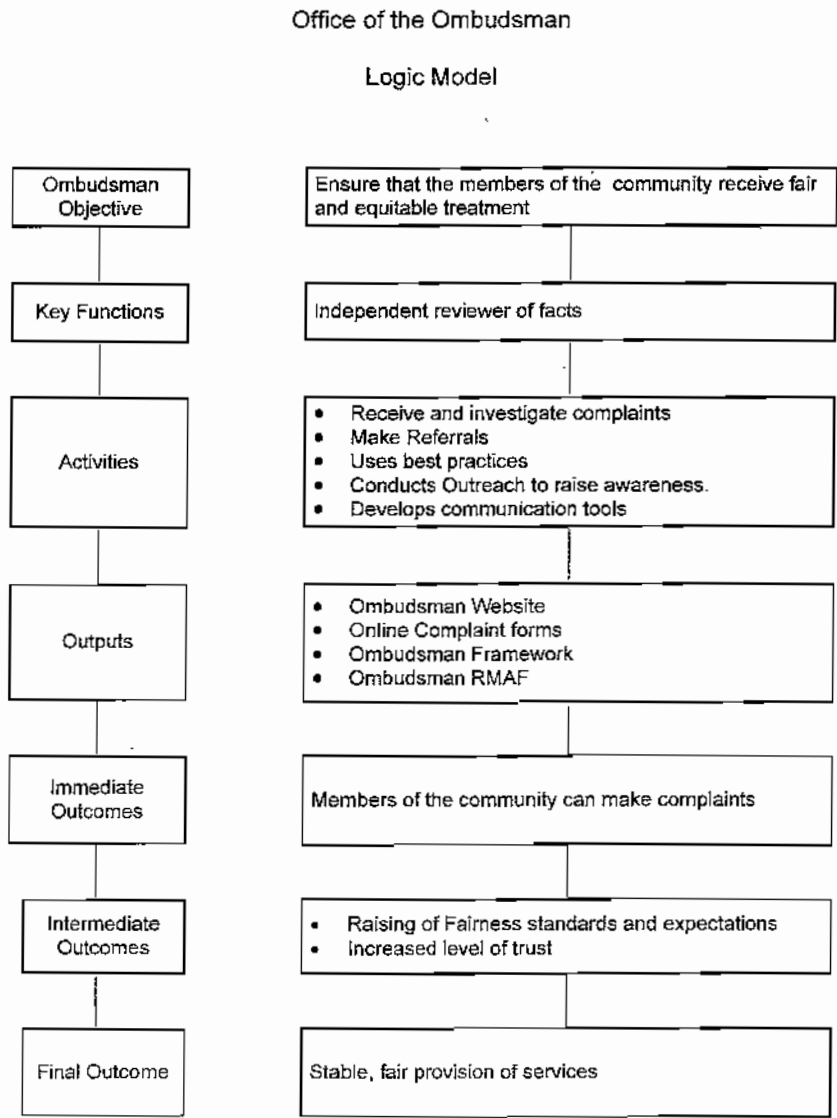


Figure – Sample Ombudsman Logic Model

⁷ *Ibid.* at 11.

The Evaluation Questions

As an example, the ICANN Office of the Ombudsman Results Based Management Accountability Framework includes seven broad evaluation questions with fifteen performance indicators in four topic areas: relevance; management; program delivery; and cost effectiveness.⁸

Figure—ICANN Ombudsman Evaluation Questions and Performance Indicators

Relevance	
Is there an ongoing need for the office of the ombudsman?	# of people using ombudsman services (call centre, website, complaint form etc) # and type of complaints # and type of resolutions # and type of media mentions that focus on the office of the ombudsman % of complainants/community who agree there is a need for the ombudsman % of complainants/community who know of an alternative to resolving a complaint if ombudsman did not exist
Management	
Is the office of the ombudsman resources sufficient to carry out its mandate?	Activities and outputs completed as planned Perception that ombuds has sufficient resources Inventory and backlog of ombuds files
Program Delivery	
To what extent has the ombudsman established effective working relationships?	With Staff, Board, Supporting Agencies, Registries, Registrars, and the ICANN community in general
Is ICANN staff and Board dealing with identified issues in a timely manner?	# of cases requiring staff or board intervention
Has there been a change in behaviour on the part of ICANN or a complainant to avoid litigation?	# of cases resolved by ombudsman which could have gone to litigation
Cost effectiveness	
Has the ombudsman been cost effective in delivering the program?	Savings as a result of bulk airfare purchases, prudent purchasing of equipment, etc Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration
Are there cost effective alternatives?	Are there other models of executive ombudsman which ICANN could employ?

The nature and complexity of the ombudsman's operations will impact all portions of the evaluation questions and performance criteria. A small internal/organizational ombuds program with a limited number of clients may well have a very different set of questions and criteria than a classical ombudsman at a state or national level. These evaluation questions and criteria are included in a chart or graphic, and correlated with: the source of the data to analyze the criteria;

⁸ *Ibid.* at 13-14.

- *Standards for the Establishment and Operation of Ombuds Offices*, by the American Bar Association (ABA);¹⁰
- *Essential Characteristics of a Classical Ombudsman*, published by the United States Ombudsman Association (USOA);¹¹ and
- *Creating the Office of the Ombudsman*,¹² by Rick Russell, a solicitor, ombuds, and Alternative Dispute Resolution practitioner.

What Does the Literature Reveal?

There are a number of factors which should be discussed prior to the analysis of the criteria, standards, and emphasis found in the three noted documents. First, the USOA document is an iterative document, taking its genesis from a list developed in the ABA Standards.¹³ Gottehrer & Hostina,¹⁴ authors of the USOA document, have relied on the initial ABA Standards in their paper, and have defined and expanded upon the characteristics found in the ABA Standards.

These two documents are primarily focused on classical or governmental ombuds schemes. These are typically ombudsman appointed by a statutory authority such as a legislature, and whose mandates relate to the provision of governmental administration in a particular jurisdiction.

The Russell paper is written from the viewpoint of an “organizational ombudsman.” The ABA Standards define this type of ombuds as one who “ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies.”¹⁵

While Russell does concentrate on organizational ombudsmanship, his paper is extremely helpful as it well defines and illustrates criteria which can also be applicable for an executive ombudsman structure. While Russell does not comment on the principles of confidentiality and impartiality, he does explore principles of natural justice in some depth.

The Fifty Questions

1) Alignment

Is the office of the ombudsman aligned with the operations, goals, and principles of the organization it serves? *i.e.* if it is a high tech organization, do you use leading edge methodologies? Is the composition of the office of the ombudsman representative of the potential users? Does the office of the ombudsman reflect the goals of the organization: *i.e.* does your work increase academic achievement; patient care; employee retention, etc?

¹⁰ American Bar Association, *Standards for the Establishment and Operation of Ombuds Offices* (2004), online: <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006).

¹¹ United States Ombudsman Association, *History of the Public Sector Ombudsman* (2006), online: http://usoa.non-profitsites.biz/en/About_Us/history.cfm (accessed October 15, 2006).

¹² Rick Russell, *Creating the Office of the Ombudsman*, online: <http://www.agreeinc.com/ombudsman.html> (accessed January 27, 2007).

¹³ *Supra* note 10 at n. 12.

¹⁴ Gottehrer was Secretary of the USOA.

¹⁵ *Supra* note 10 at n. 20.

2) Autonomy—Arm's Length—Independent

Is the office of the ombudsman situated at “arm’s length” from the organization it serves?

3) Due Process—Natural Justice Principles Applied

Does your office apply the rules of natural justice and have procedures in place to ensure that you follow the principles of due process?

4) Sufficient Resources

Are the economic, staffing, support, and peer resources given to you enough to allow you to discharge your mandate?

5) Access to Information, Documents, Staff

Does your mandate enable to access resources in the organization?

6) Community Buy-in

Is there evidence that there is “buy-in” for the continuation of your office?

7) Clear Mandate

Does the charter document, bylaw, statute, or directive establishing your office make clear what your mandate and functions are?

8) Recourse—Moral Suasion—Public Criticism

Does your office have the ability to use the power of moral suasion to resolve issues? Does that include the power of public criticism through annual or special reports?

9) Accessibility (Promotion—Availability to the Community)

Is your office available to the community you wish to serve, and do you have appropriate tools to promote the office’s services to the community?

10) Power of Own Motion

Do you have the ability to begin an ombudsman process where you believe that there is an issue of unfairness, and where there may not have been a visitor or complainant?

11) Annual Report

Are you required to produce an annual report? Does it tell the story of what you really do for a living?

12) Established Terms of Reference (TOR)

Is there clarity in your contract, bylaws, mandate, institutional policies, and procedures to define your terms of reference? Can you identify when you are operating outside of your mandate?

13) Qualified—Knowledgeable Incumbent

Does the ombudsman have the knowledge, qualifications, and “street credibility” to get the job done?

14) Advisory Group

Is there a legislative committee, board governance group, or stakeholder committee that acts at an arm’s length from the ombudsman to provide group—not individual—advice on ombudsman operations?

15) Active Public Relations Campaign—Community Education

Does your outreach program meet the needs of your community?

16) Structural Autonomy and Accountability

Are there clear lines concerning your independent ability to do such things as hiring staff, purchasing needed equipment, selecting training, travel, etc?

17) Filing System

Do you have a separate and secure filing system?

18) Database

Do you keep appropriate statistical data?

19) Balanced Time Management

Does your role have multiple activities: meeting with visitors, investigations, administration, outreach, etc?, Is there balance in the time you can devote to each? *e.g.*, does the administrative function of running the office outweigh your ability to do outreach or intakes?

20) Reporting Relationship With Advisory And Budget Group

Is there a linkage between the organization, especially in terms of budget setting, approval, and updating, and your office?

21) Review of Start Up Policy–TOR

At some time after start up, have you reviewed your terms of reference to make sure that they are in synch with work you actually do, the work you are seen to do, and the work that the community wants from you? Is there conflict, and is there a need to revise the terms of reference?

22) Independence

Are you an independent officer of your organization? How can you demonstrate that? Are you seen to be independent?

23) Impartiality and Fairness

How does your office define fairness for its operations? Can you apply these principles and be seen to be impartial?

24) Credibility of the Review Process

While decisions and recommendations of the ombudsman are normally not subject to appeal or review, it is a testament to the whole body of the ombudsman's work if the review process undertaken would have credibility in the eyes of a third party. Is your review process credible?

25) Confidentiality

Does your office make public pronouncements on confidentiality? Are you seen to be a confidential resource? Does your office or organization have specified policies on confidentiality?

26) Independence—Established by Higher Jurisdiction

Is your office established by a bylaw, policy, or statute through the organization's higher jurisdiction?

27) Independence—Separate From the Organization it Reviews

Is your office seen to be separate and independent?

28) Independence—Appointed by Super Majority

Is the ombudsman appointed (or removed) by a super-majority of the organization's board, senate, or legislature?

29) Independence—Long Fixed Term—Reappointment Possible

Is your appointment of a fixed term, usually exceeding the length of time that the supermajority is in office?

30) Independence—For Cause Removal by Supermajority

Does the organization have the ability to remove the ombudsman for cause, by only a super-majority vote of the body that appointed the ombudsman?

31) Independence—High Fixed Salary

Is the salary of the ombudsman at a fixed level, and relevance of a senior member of the organization?

32) Independence—Appropriate Budget—Accountability of Spending

Is your budget allocation sufficient to meet the requirements of the work? Is the office of the ombudsman accountable for its spending? Does the office receive sufficient reporting from the budget office?

33) Independence—Sole Authority to Hire Staff

Does the Office have the sole authority to select its staff members?

34) Independence—Someone Can Always Exercise the Ombudsman Role

If the ombudsman is unable to act in the role due to vacation, sick leave, etc, is some other person able to receive and act on complaints, or make recommendations?

35) Independence—Decisions Not Reviewable

Are decisions or recommendations made by the ombudsman reviewable by some other entity?

36) Impartiality and Fairness—Qualifications

Is the incumbent qualified for the post of ombudsman, and does he/she have requisite knowledge of the particular organization?

37) Impartiality and Fairness—No Conflict of Interest in Activities

Is the ombudsman prevented from undertaking any activity which may tend to cause a real or perceived conflict of interest?

38) Impartiality and Fairness—Direct Access to Ombudsman—No Fee Required

Are members of the community who wish to make complaints required to obtain any permission from another agent, or is any fee be charged to lodge a complaint?

39) Impartiality and Fairness—Power of Recommendations and Public Criticism

Does your office have authority in its terms of reference to make public its recommendations or criticism of the organization?

40) Impartiality and Fairness—Required to Consult on Adverse Findings

If your office makes findings or recommendations which are critical of individuals or structures, are you required to consult with the affected parties prior to reporting?

41) Impartiality and Fairness—Ombudsman is an Advocate for Fairness, Not The Parties

Is your office seen to be, or does your office have policies or make pronouncements, as being an advocate for the fairness of a process, as opposed to an advocate for one of the parties in a dispute?

42) Credible Review—Broad Jurisdiction

Is the jurisdiction of your office defined, and do you act in a manner not to limit the jurisdiction of issues which may be handled by your office?

43) Credible Review—No Parties Exempt From Complaining

Is your mandate established such that your jurisdiction applies equitably to all parties? Does your office accept third party complaints, or complaints from persons not affected by the subject matter of the complaint?

44) Credible Review—Organization Not Permitted to Impede

In conducting ombudsmanship, does the organization have the authority, or is seen to have the ability to require the ombudsman to take direction from the organization?

45) Credible Review—Ombudsman Cannot Make Binding Orders

Is the ombudsman in a proper position where he may make recommendations, but not binding orders?

46) Confidentiality—Ombudsman Has Power to Decide Level of Information to be Disclosed

Is the ombudsman able to determine what information, personal identification, etc. is required in handling or a reporting on a complaint?

47) Confidentiality—Ombudsman Will Resist Testifying

Is the office either protected by statute from providing evidence in court based on the ombudsman's work, or if not, is it the office's public policy to resist testifying?

48) Broad Range of Enquiry Available

Does the office have the capacity to determine what form of enquiry it will use, and can it determine if events are related to individual circumstances or are systemic in nature?

49) Discretionary Power to Refuse Complaints and to Publicize

Does the ombudsman have the ability to refuse to act on issues? May the ombudsman refuse to publicize or report on issues if he feels there is an underlying reason, such as public interest, not to?

50) Identify Complaint Patterns And Trends

Does your office look at the data base, and does it report on trends found, even if these are not jurisdictional, but may be of interest to the organization?

VI. Using International Standards

The International Organization for Standardization (ISO) is a network of the national standards institutes of 157 countries. The ISO develops international technical standards for industry, businesses, and governmental bodies. These international standards are adopted the national standards bodies of the member states (*i.e.* American Standards Association (ASA) or Standards Australia) to provide for the continuity of standards in manufacturing, etc. on a local level.¹⁶

The ISO has developed two international standards which are relevant to ombudsman operations: ISO 10002 Quality management—Customer satisfaction—Guidelines for complaints handling in organizations; and ISO 10003 Quality management—Customer satisfaction—Guidelines for dispute resolution external to organizations.¹⁷

ISO 10002

ISO 10002 Quality management—Customer satisfaction—Guidelines for complaints handling in organizations was promulgated as an international standard in July 2004. This standard provides guidance for the design and implementation of an effective and efficient complaints-handling process for all types of commercial or non-commercial activities, including those related to electronic commerce.¹⁸

¹⁶ International Organization for Standardization, Overview of the ISO System, online: <http://www.iso.org/iso/en/aboutiso/introduction/index.html#two> (accessed March 25, 2007).

¹⁷ Both standards are available for purchase through the ISO website: <http://www.iso.org/iso/en/CatalogueListPage.CatalogueList>.

¹⁸ International Organization for Standardization, *Quality management — Customer satisfaction — Guidelines for complaints handling in organizations, Standard ISO 10002* (Geneva, 2004) at vi.

The standard has a number of key areas:

- provide a complainant with access to an open and responsive complaints-handling process;
- enhance the ability of the organization to resolve complaints in a consistent, systematic, and responsive manner, to the satisfaction of the complainant and the organization,
- enhance the ability of an organization to identify trends and eliminate causes of complaints, and improve the organization's operations,
- help an organization create a customer-focused approach to resolving complaints, and encourage personnel to improve their skills in working with customers, and
- provide a basis for continual review and analysis of the complaints-handling process, the resolution of complaints, and process improvements made.¹⁹

The standard provides the first attempt at developing comprehensive, yet generic standards, on a bullet form, or checklist basis. The standards are meant to be applied to any organization which takes complaints from the public, from the corner grocer, to international organizations. Thus the generic nature of the standard may, at times, appear to be somewhat imprecise and vague. For example, in consideration of an evaluation process, standard 8.3 simply states, "There should be regular action taken to determine the levels of satisfaction of complainants with the complaint handling process. This may take the form of random surveys of complainants and other techniques."²⁰ This standard contains a number of helpful appendices, with model definitions, flowcharts, and complaint forms.

ISO 10002 is essentially a road map for the handling of complaints internal to an organization. As such, it has usefulness for both organizational and executive ombudsman programs.

ISO 10003

ISO 10003 Quality management–Customer satisfaction–Guidelines for dispute resolution external to organizations differs from the preceding standard on two levels. First, at the time of writing, it was a draft standard, still in the process of being agreed to, and adopted by the member standards bodies. ISO 10002 is an adopted standard. Secondly, ISO 10003 provides guidance for the handling of complaints when they are not resolved internally. This standard will have the following goals when implemented:

- provide flexible dispute resolution that, in comparison with court-based processes, can be less expensive, easier and quicker, especially in disputes across borders;
- help to enhance customer satisfaction and loyalty;
- provide a benchmark against which individuals and organizations can evaluate claims by organizations and providers that they operate in an effective, efficient and fair manner;
- help to inform potential users of dispute resolution about the conditions of access, cost, and the legal consequences;
- enhance the ability of an organization to identify and eliminate causes of disputes;

¹⁹ *Ibid.*

²⁰ *Ibid.*

- improve the way complaints and disputes are handled in the organization;
- provide additional information that can contribute to improvement of the organization's processes and products;
- improve the organization's reputation or avoid damage to it;
- improve domestic and international competitiveness; and
- provide confidence of fair and consistent treatment of disputes throughout the global marketplace.²¹

ISO 10003 is constructed in a manner similar to ISO 10002, and it is also generic in nature. Interestingly, the standard provides an appendix on "guidance on fairness." This appendix provides information on how to achieve fairness or natural justice, but these concepts are not defined.

ISO 10003 was published in draft form in July 2006. Due to the nature of the standards, it would primarily apply to classical or executive ombudsman programs.

ISO 10002 and 10003 Applied to the Office of the Ombudsman

These ISO standards may be used by individual ombudsmen practitioners to help either evaluate or benchmark operations and activities. The evaluation or benchmarking process may take place through one of three mechanisms: self evaluation; peer evaluation; or evaluation by an ISO approved standards evaluator. Each form of standards comparison has its advantages and disadvantages.

Evaluation Method	Advantages	Disadvantages
Self Evaluation	Low cost; may be done over time, or at a single window of time; practitioner is knowledgeable about the operation—evaluation may be done quickly; protects confidentiality	May be seen as insular or lacking in independent credibility; may not be able to use comparators; practitioners' lack of evaluation experience
Peer Evaluation	Cost effective; outsider review promotes independent results; promotes collegial relationships; reciprocal evaluations by participants encourages development of best practices	Finding a colleague with a similar ombudsman operation; peers may lack or have disparate evaluation skills; may be seen as a <i>quid pro quo</i> arrangement
ISO Approved Evaluator	Likely completed quickly, and with professional reporting; credibility of third party review; "bragging rights" over meeting ISO standards	May have contractor costs

²¹ International Organization for Standardization, *Quality management — Customer satisfaction — Guidelines for dispute resolution external to organizations, Draft Standard ISO 10003* (Geneva, 2006) at vi-vii.

Finding the ISO Standards and ISO Certified Evaluators

The two ISO standards noted above (10002 and 10003) may be found on the ISO website at the following web addresses:

<http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=35539&ICS1=3&ICS2=120&ICS3=10>

and

<http://www.iso.org/iso/en/CatalogueDetailPage.CatalogueDetail?CSNUMBER=38449&scopelists=PROGRAMME>

The standards are available for purchase at a cost of CHF 65-100 Swiss Francs. There is a strict copyright and use policy attached to the purchase of the standards, which restricts copying, printing, or file sharing. ISO evaluators may be found by verifying the roster found on the appropriate national standards institute website, or by contacting the appropriate body.

VII. Statistical Comparisons

Figures often beguile me, particularly when I have the arranging of them myself; in which case the remark attributed to Disraeli would often apply with justice and force: "There are three kinds of lies: lies, damned lies and statistics."²²

It is evident that an ombudsman practitioner may be able to benchmark activity and develop an evaluation of productivity based on a statistical comparison of activities, budgets, and resources between one office and another. It is important to bear in mind that these comparisons are based on a snapshot of activity. It is neither a predictor of future comparisons nor of intake volumes. These will, of course, be dictated by issues handled by the agency and by community response.

In conducting a statistical comparison, the ombudsman should keep some general guidelines in mind:

- ✓ No two ombudsmen operations are exactly the same. Qualifiers such as the method of gathering and maintaining statistics; historic age of the operation; reputation of the incumbent; outreach activities; legal frameworks; and frequency of reporting all impact on the veracity of the comparisons.
- ✓ No two ombudsman complaints are exactly the same. A review and report on an unfair governmental system may take years of investigation and reporting, and the attention of multiple staff members. A referral to an outside source may be repeated often, and at the front line of the organization. Both of these file activities would have a similar statistical weighting – a file closed by the ombudsman. A cautionary note is for the ombudsman to attempt to have the most rational comparisons possible.
- ✓ Ombudsmen should compare their operations with similar operations. These would include operations of similar classification (classical to classical; organizational to

²² Mark Twain, *Autobiography of Mark Twain*, online: <http://www.twainquotes.com/Statistics.html> (accessed October 1, 2006).

organizational); size (of the client audience and resources) and mandate (university to university, bank to bank).

- ✓ Complaint volumes may be tied to outreach activities and topical events. The presence or absence of which may increase or reduce activity.
- ✓ Comparisons can be made on a number of lines:²³
 - Raw numbers of staff, complaints, and resources
 - Files per staff member
 - Cost per file
 - Cost per file per staff member

VIII. Surveying Clients

Client surveys can be helpful in the overall evaluation of an ombudsman's operations and activities. Clients, after all, are the reason that entities create ombudsman functions, and their opinions and feedback are therefore important to consider. "Clients" is a generic term, which indicates the group of persons who access an ombudsman's office seeking to redress unfairness. This group will vary depending on the type of ombudsman operation. Classical ombudsmen will deal with citizens as whole; executive ombudsmen will deal with members of a particular community who access services from some sort of entity; and organizational ombudsmen will deal with clients who are members of the internal population of an entity, such as employees, students, patients, etc.

The manner, frequency, depth, and amount of surveying that an ombudsman will wish to do with her clients is very contextual. It will vary with the type of ombudsman, the geographic proximity, the willingness of the client group to participate, resources, and perceptions of risk of attribution.

Surveys may be conducted in a number of ways. The method engaging the client group to solicit feedback is limited only by the imagination and perseverance of the ombudsman practitioner. Clients may be solicited to participate in online surveys²⁴ by email; clients may be given calling cards with an online address; contracts can be established with research firms for telephone sampling; clients may be given mail-in forms following office visits; the whole community (including clients and non clients) may be surveyed, survey invitations or forms may be give with receipts, pay stubs, tax bills, annual reviews, or the sale of products.

A key behind successful surveying is for the practitioner to have a good understanding of the questions: "Why survey? What information or feedback do we hope to gain? How will this information add to an overall understanding of what the office does?" In essence, the ombudsman has to have some clear objective in mind in order to be able to craft relevant, reasonable, and understandable questions.²⁵ In crafting the survey, the ombudsman must also bear in mind the language of use, general literacy level, and cultural biases which may influence the responses from clients. Generally, the survey is simple and user friendly the survey, there will be a greater likelihood of obtaining accurate and meaningful results.

In formulating survey questions, ombudsmen are urged to reflect on the evaluation

²³ For an example, see www.icannombudsman.org/.

²⁴ As an example, see <http://www.surveymonkey.com/>.

²⁵ An example of a client survey may be found at <http://www.icann.org/ombudsman/documents/client-survey-aug06.pdf>.

question developed as part of the Results Based Management Accountability Framework (RMAF). There should be a relationship between the evaluation questions developed in the RMAF and the survey questions posed to clients. “If the survey questions don’t assist in responding to the evaluation questions, then why are you asking the survey questions?”

Without limiting the types of questions an ombudsman may wish to address, and while bearing in mind that the context, goals, evaluation expertise, and resources available for individual practitioners, ombudsmen may wish to survey clients on the following types of questions or themes:

- *Manner of accessing the ombudsman*—This will help to determine your key points of contact, and areas where outreach may assist in raising awareness.
 - How did the client learn of the ombudsman?
 - Personal referral
 - Previous visit
 - Website
 - Staff Referral
 - Media article
 - Google or internet search
 - Word of mouth
 - Government representative
 - Others?
- *Ease of finding the ombudsman*—This question helps to determine if your contact information is being accessed in the right places
 - Was it easy to find out how to contact the ombudsman?
- *How long ago did the contact with the office of the ombudsman take place?* – Provides some context for the currency of issues?
- *Language use*—If your office offers services in more than one language, you may want to understand the languages used, qualitative questions about the level and satisfaction of service delivered or documents available. You may also wish to design questions to consider time delays due to translation if a second language (or more) is used.
- *Jurisdiction*—Surveying is an important way to validate statistics found in a case management system (if one is used). You may formulate questions to determine why clients contacted your office, and to design the question so that you can determine if the issues were inside your jurisdiction or not.
- *Client satisfaction and expectations*—Ombudsmen may design qualitative questions which measure such components of ombudsman operations as: confidentiality; timeliness; professional manner; respect; explaining the ombudsman’s jurisdiction; in providing an appropriate referral; in updating or corresponding with a client; and overall

satisfaction. Baseline may be established using the correspondents' expectations of service (the scale ranged from: "not at all"; to "expectations met"; to "better than I expected"), or through numerical scaling (*i.e.* on a scale of 1 to 10, please tell us...). Correspondents should also be permitted to reply "N/A" or not applicable.

- *Client's Option*—There are two key questions that can be asked in surveys to help an ombudsman understand his/her impact:
 - If you did not have the option to correspond with the ombudsman about your issue, where would you have gone to get help? and
 - After the ombudsman corresponded with you at the end of his work, what did you do?

For example, clients may have indicated in responding to the first question that they would have filed a lawsuit if the ombudsman was not available. If they did not indicate in responding to the second question that they had filed a law suit, then it may be fair to say that the presence of the ombudsman helps to reduce litigation.

- *Results*—Questions designed to help understand, from the client's point of view, what happened as a result of interacting with the ombudsman:
 - What was the result of your communication with the ombudsman?

Possible answers may include: Other (narrative open responses); "ombudsman took action and the issue was resolved"; "the ombudsman declined to investigate"; "I was referred to someone else"; "the complaint was investigated"; "I received self-help information"; and "I withdrew my complaint."

- If you received a referral or self-help information from the ombudsman, did it assist you in resolving the matter?

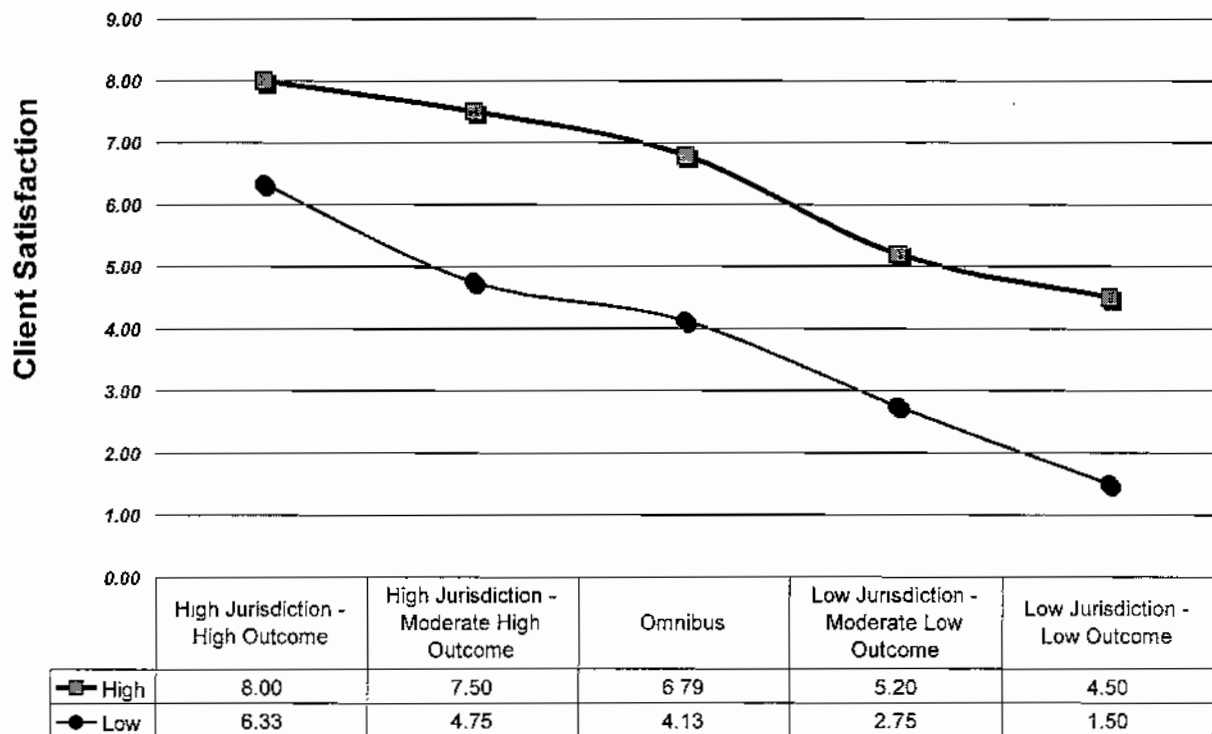
The results of this question may be correlated with the answers from the previous one indicating "I was referred to someone else." This question helps to determine whether the referrals provided are helpful.

- *Tools and Documentation*—The survey may provide insight as to what documentation (*i.e.* Annual Report) or what communication tools (*i.e.* website, blog, brochures) the clients accessed, and what opinions they have on these.
- *Recommendation*—This question is a barometer of overall satisfaction. Obviously, if clients indicate that they would recommend others to come to the office of the ombudsman, it is a sign of client satisfaction.
 - Would you recommend the office of the ombudsman to someone else who had an (your agency, entity, company, etc.) related issue to resolve?

- *Demographics*—Consistent with law and policy, and in consideration of the nature of the office, the ombudsman may wish to gather information about the demographic make-up of clients.

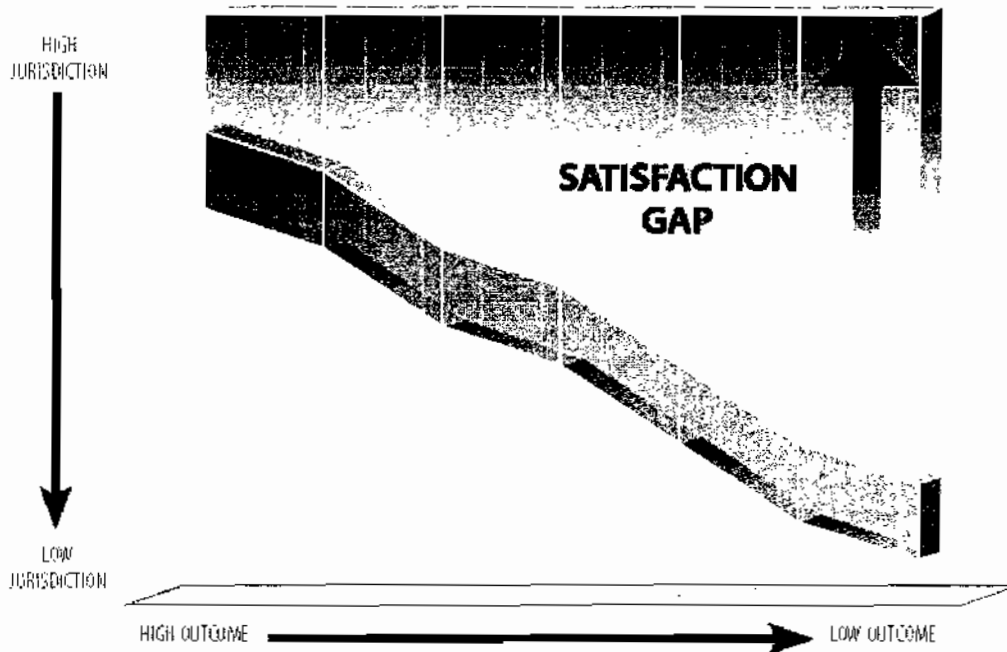
- *Open Ended Narrative*—Ombudsmen may wish to provide the opportunity for clients to express comments which may not otherwise have been solicited in the survey.

- Is there anything else you would like to add to assist our evaluation of the office of the ombudsman?



This chart illustrates client satisfaction based on meeting expectations as determined in a client survey. The High Jurisdiction–High Outcome (in jurisdiction act, decision, or inaction which was resolved) satisfaction range is higher and tighter than the Low Jurisdiction–Low Outcome (not a jurisdictional issue—complaint declined).

Figure - Satisfaction Gap



Based on survey results and the figure “Satisfaction based on Jurisdiction and Outcome”, this figure demonstrates a “satisfaction gap” that ombudsmen should be aware of. It appears that there is a direct relationship between the jurisdiction–outcome of a complaint, and a client’s satisfaction level. The satisfaction gap is the divergence between the client’s actual and potential levels of satisfaction at the end of an ombudsman process. Research would indicate that high jurisdiction–high outcome complaints would create higher levels of satisfaction than low jurisdiction–low outcome complaints. Therefore, when surveying client satisfaction, ombudsmen should be aware that a preponderance of low jurisdiction complaints or contacts likely decreases overall satisfaction levels.²⁶

So, the Survey is Complete, Now What?

An important factor in planning a survey as an evaluation tool is to consider the readability and usability of the results. If the results of the survey only create “So what?” responses then it might not have been the right type of survey, or the right questions to have posed. Using online tools such as Survey Monkey²⁷ is helpful, as they have online tabulation functions, which calculate results.

It may be a good idea to have the survey results verified by an outside party. This will, as with all other evaluation tools verified by a third party, add credibility to the results. This can be done in a cost effective manner by ombudsmen peers reviewing the work of others, and reciprocating in kind.

²⁶ ICANN Office of the Ombudsman, Annual Report, online: <http://www.icann.org/ombudsman/documents/annual-report-2007-english-26oct07.pdf>.

²⁷ See <http://www.surveymonkey.com/>.

IX. Annual Reports, Case Studies, Out-reporting, and Storytelling

An important consideration in the evaluation process is a communications or reporting strategy. The RMAF should include the genesis of a reporting strategy. The reporting or storytelling about evaluations will be dependent on a number of factors. As always, a primary factor is the “Why evaluate?” question.

If the evaluation is based on the ongoing analysis of evaluation questions and criteria developed in the RMAF, then it may be appropriate to include information on these ongoing assessments in the ombudsman’s Annual Report. The following is an excerpt from an annual report which does this reporting:

The Office of the Ombudsman Results Based Management Accountability Framework requires that I report on five performance indicators concerning four evaluation questions, and report to the Board on these on an annual basis.

1. Relevance—Is There an Ongoing Need for the Office of the Ombudsman?

The trend analysis for my Office is best documented through the various charts and graphs within the body of this report.

There are a number of indicators for the relevance of my Office. First is the volume of complaints received, and the variety of issues brought to my attention. This indicates to me that the community continues to see my Office as a credible resource in dealing with issues of dispute.

Secondly, the variety of sources of complaints: individual domain name holders; applicants for administrative benefits provided by ICANN; CCTLD managers; organizations; and board members, indicates to me that my Office is able to respond to a wide range of fairness based issues, and this wide acceptance of my Office is de facto recognition of its relevance.

Media analysis continues to evidence a positive reception of the Office in the community.

2. Are Resources Sufficient for the Office of the Ombudsman to Carry Out its Mandate?

During the year, the Adjunct Ombudsman, Mr. Herb Waye, assists my Office when I am either on vacation or sick leave by receiving and responding to correspondence from the community. Mr. Waye has also attended two ICANN meetings, as a volunteer, to assist me in the operation of a physical office location.

In FY 06-07 the budget resources provided by ICANN have been sufficient to meet the operational, administrative and outreach components of my mandate.

The One World Trust Report on ICANN Accountability and Transparency makes the following commentary on Ombudsman Resources:

The Ombudsman plays an important role within ICANN as an informal alternative dispute resolution mechanism. Since its formation, it has reduced the number of complaints handled through the formal complaint channels of the Reconsideration Committee. As the Ombudsman's office continues to reach out to the community and raises awareness of the function within the ICANN community, there is the distinct possibility that the number of complaints it has to handle will increase. The office's user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover. To ensure the continued effectiveness of the office, ICANN should continue to support the Ombudsman through the adjunct Ombudsman and also consider recruiting an additional full time member staff to provide administrative support to the office.

Recommendation 4.3: ICANN should consider strengthening the capacity of the Ombudsman's office by recruiting full time administrative support for the Ombudsman.

There will not be an increase in the Ombudsman staff complement in FY 07-08. In fact, the Board of Directors has instructed me that as of June 30, 2007, that I am to operate my Office without the assistance of the Adjunct Ombudsman. Herb, thank you for all of your good work.

3. Cost Effectiveness—Actual or Potential Improvements, Efficiencies, or Cost Savings in ICANN Program Delivery or Administration? Are There Other Models of Executive Ombudsmanship Which ICANN Could Employ?

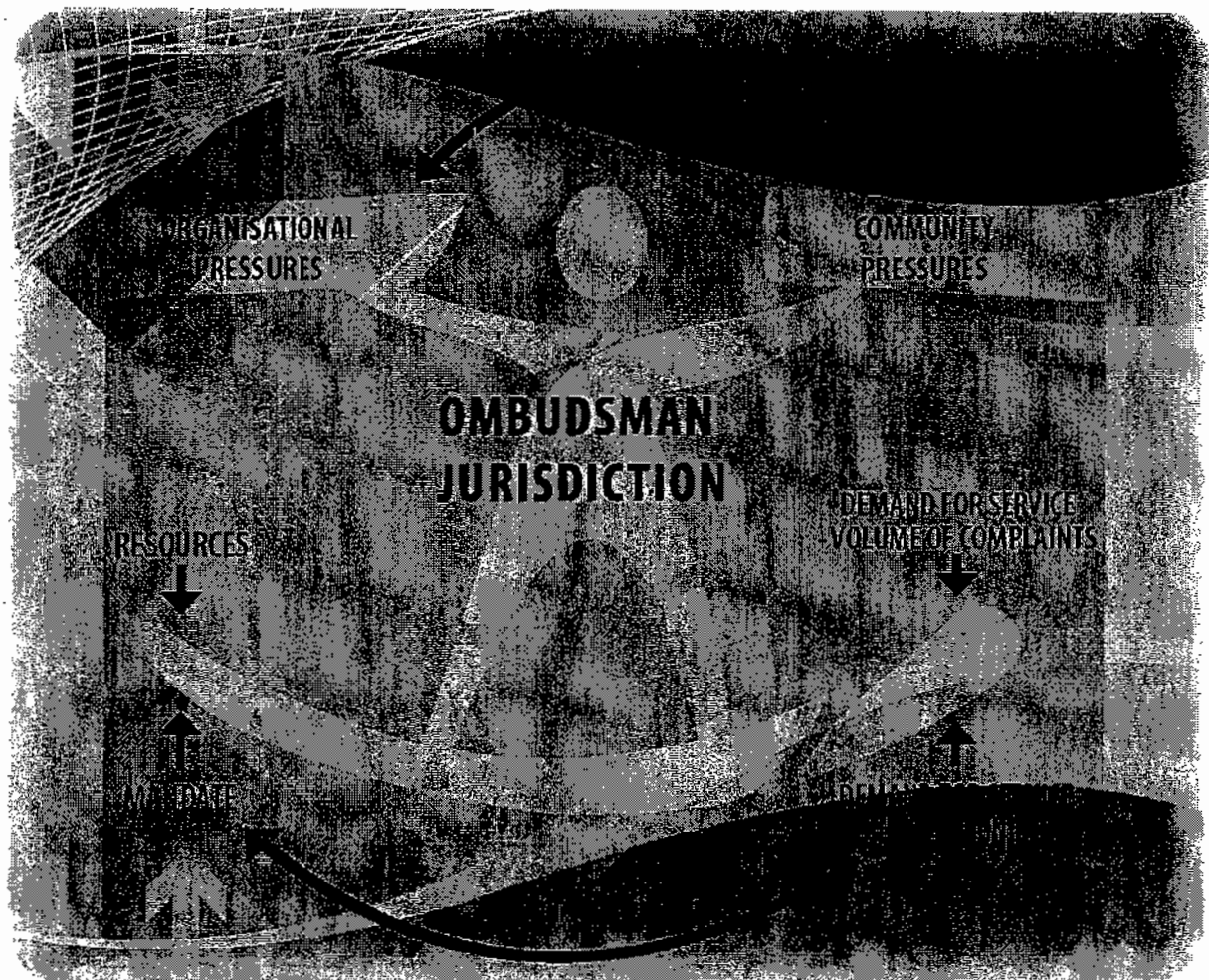
The Office of the Ombudsman has acted on complaints, made referrals, provided self help information, and has made recommendations as part of the alternative dispute resolution (ADR) processes. These steps, in the long run, provide for a more efficient overall operation by having a professional ADR service which allows the staff, supporting organizations, and the Board to focus on their core work, rather than dispute resolution. The numbers of requests for reconsideration has dropped. The recommendations made by the Office of the Ombudsman provide for the lowering of conflict temperature and the improvement of services or processes.

The flexibility of the Office to respond to issues, language, culture, and a range of conflict styles, combined with a wide spectrum view of conflict resolution means that the Office offers responsive, timely, and relevant solutions, at an early time frame, and reduces antagonistic relationships between the parties. I cannot imagine a more efficient manner of delivering this service to the organization and the community.²⁸

Summaries of formative and summative evaluations may also be material for annual reports. These are also examples of out-reporting, along with client surveys, etc, which may logically be placed in the public or community view on an ombudsman web page. Other types of evaluations, such as ones conducted to determine retention of the incumbent, may be considered to be private in nature, and only circulated to those persons making decisions about retention.

²⁸ *Supra*, note 26 at 10-11.

Figure-Factors Impacting Ombudsman Performance



This figure shows pressures which impact ombudsman operations. The figure centers on the ombudsman jurisdiction, which is established by statute, appointment, policy, or corporate or municipal bylaw. Community pressures which may impact the ombudsman's operations include the volume of complaints, or the demands for service, made upon the ombudsman, and the complaints' jurisdiction. Likewise, the ombudsman is impacted by the organization which determines the ombudsman's mandate and provides the resources to fulfill that mandate. In a balanced ombudsman system, the resources allocated will be sufficient to meet the demands for service, and the ombudsman's mandate will clearly determine the scope of issues in the ombudsman's jurisdiction. The balance can be shifted by one of the factors coming unbalanced from the rest; *i.e.* a surge in demands for service without increased resources or consistent demands for service in an area where the ombudsman does not have jurisdiction.²⁹

²⁹ *Ibid.*

X. Conclusion

The ombudsman represents the best intentions of governments, corporations, or agencies to deal with conflict. The ombudsman institution allows individuals to use an independent and confidential officer to resolve complaints in a non-adversarial environment, without fee. There are several types of ombudsmen, with peculiarities relating to their jurisdiction, mandate, and powers.

Ombudsmen have done a magnificent job in demonstrating value with the resolution of individual and systemic complaints; subsequent improvements to government, corporate, or agency operations; and economic savings by mitigating litigation costs. “Likewise, the ombudsman role is notably strengthened by the systemic assessment of its effectiveness and services through a program of rigorous evaluation.”³⁰ Using a selection of evaluation tools, ombudsmen may develop individual evaluation frameworks which will strengthen their capacity to fulfill their roles.

³⁰ Barbara Male, *Assessing Ombudsman Performance: Two Cases Studies in North America* (Doctoral Dissertation, University of Southern California, UMI Dissertation Services, Ann Arbor, MI 1999) at 348.

XI. Further Reading on Ombudsman Evaluation

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