

# Ombudsman Research Project

by  
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(Notes for a roundtable discussion at the annual meeting of the Canadian Political Science Association, York University, Toronto, Ontario, June 1, 2006)

The office of ombudsman received much attention when it was first introduced to Canada during the late 1960s and 1970s but has since received limited attention in scholarly periodicals and textbooks. This is despite the fact that the ombudsman has managed in its own functional way to emerge as a cornerstone of the modern administrative state in Canada, not only in the form of the classical (all-purpose) ombudsman but also in a number of other, more specialized ombudsman offices. As a consequence of this oversight in the literature, we know little about the ombudsman's actual performance; instead, its merits have largely been assumed without systematic, comparative, and empirical-based analysis.

Peculiarly, just as the ombudsman has become so widely accepted as a fixture in the administrative state, there have been indications in recent years of change in the ombudsman's role. This change has not been uni-directional. Occasionally, some annual reports have suggested declines in the frequency of complaints made to the ombudsman; at other times, ombudsman offices have become more pro-active by moving into new fields of activity. We are thus faced with a most fascinating research topic as to why such a firmly established institution should now be experiencing strains of legitimacy, and/or searching to redefine its role within the democratic administrative state. To answer this question, we need to move beyond the normative, prescriptive, and legalistic commentary that usually dominates discourse on the office of ombudsman in order to depict and assess empirically this institution's actual performance.

The following discussion will first outline the Ombudsman Research Project, then reflect back upon the introduction of the ombudsman idea to Canada, and finally raise methodological and normative questions for general discussion as to how best to assess the performance of the ombudsman. (For this panel discussion, the emphasis will be placed on the methodological and normative matters. Other members of this panel will no doubt touch upon the basics concerning the ombudsman idea, and these basics may also be covered in the pursuant discussion.)

## A. Background to the Ombudsman Research Project

Investigation of this research topic began with a conference paper<sup>1</sup> presented at

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<sup>1</sup>Stewart Hyson, "How did the Ombudsman Idea Pan-out? - The Performance of New Brunswick's Ombudsman," Paper presented at the Annual Meeting of the Atlantic Provinces Political Studies Association, at Memorial University, St. John's, Newfoundland and Labrador, September 26-28, 2003.

the Atlantic Provinces Political Studies Association (APPSA) annual meeting, held at Memorial University, in the fall of 2003, which was followed by another paper<sup>2</sup> presented at the Canadian Political Science Association's (CPSA) annual meeting at the University of Manitoba in 2004. Both papers focused on the case of the New Brunswick ombudsman. By this time, thoughts had begun to stir of expanding coverage to include other Canadian ombudsman offices for a comparative perspective. Personal involvement with another research team (of the Canadian executive<sup>3</sup>) brought direct awareness of research grants of up to \$10,000 offered by the Institute of Public Administration of Canada (IPAC) for research teams.<sup>4</sup>

It was at this stage that two long-time friends were contacted, and they expressed an interest to be part of the proposed ombudsman research team. I then put together the research proposal (including a suggested budget), which was accepted by IPAC in the spring of 2005. With the grant in place, several colleagues in other provinces were then contacted either to join the research team or to suggest other possible researchers. Gradually, during the summer of 2005, a person from each province and territory that has an ombudsman office had joined the research team. Team members include: Patrick Smith (Simon Fraser University); Lorna Stefanick (Athabasca University); Kirk Cameron (Gartner Lee, Yukon); Joseph Garcea (University of Saskatchewan); Ken Gibbons (University of Winnipeg); Gary Munro (Lakehead University); Isabelle Fortier (École nationale d'administration publique); Lori Turnbull (Dalhousie University); and Bradley Moss (Government, Newfoundland and Labrador). As well, Gregory Levine (University of Western Ontario), who has a well-established interest in this field of study, contacted me and also became a team member.

With both funding and team members in place, a "brain-storming" session was held in Toronto in mid-February 2006. Nine of the eleven team members got together to discuss some of their initial findings, and future research direction and themes. It was agreed that a key objective of this research project would be to achieve a balance; that is, team members would address core issue-questions that are common to all ten ombudsman offices, yet each researcher would also pursue matters unique to his or her case study. This balance is reflected in the "working outline" for each case study - as

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<sup>2</sup>Stewart Hyson, "The Institutionalisation of the Ombudsman Idea: The Case of New Brunswick's Ombudsman," Paper presented at the Annual Meeting of the Canadian Political Science Association, University of Manitoba, Winnipeg, Manitoba, June 3, 2004.

<sup>3</sup>Luc Bernier, Keith Brownsey, and Michael Howlett, eds., *Executive Styles in Canada: Cabinet Decision-Making Structures and Practices at the Federal and Provincial Levels*, (Toronto: University of Toronto Press, 2005).

<sup>4</sup>For details in respect to grants available to research teams, see the web site of the Institute of Public Administration of Canada: <[www.ipac.ca](http://www.ipac.ca)>

drafted by Joseph Garcea at the February meeting - that emerged from our discussion (see Appendix 1). Also, by this time, it had been decided that the focus would be limited to the all-purpose ombudsman rather to also include the more specialized ombudsman offices.

Most members of the team are now presenting their papers for the first time either at this conference session and/or at a session of the IPAC annual meeting to be held in Charlottetown in August 2006. Final, revised drafts of all papers will be later submitted collectively to IPAC as stipulated by the conditions of the research grant.

For the purpose of this roundtable discussion, I am going to skip over section B because members of this audience are probably well aware of the ombudsman idea and how it came to Canada. Attention instead will be directed to the methodological questions and normative issues as to how best to assess the ombudsman's performance.

#### B. The Ombudsman Idea comes to Canada<sup>5</sup>

There is no need in this paper to examine in exhaustive detail the origins of the ombudsman concept in Sweden nor to trace how the idea spread around the world and came to Canada, because this account has been thoroughly covered elsewhere by numerous other scholars.<sup>6</sup> Suffice to say that, during the early and mid-1960s in Canada, there were several private members' bills and opposition parties' proposals to adopt the ombudsman idea, along with supportive academic works by scholars including professor Donald C. Rowat. The visit in 1964 of New Zealand's first ombudsman, Sir Guy Powles, which included an address to the Canadian Bar Association (CBA), was also instrumental in introducing the ombudsman idea to a most influential audience, removing any suspicions that the ombudsman idea was limited to Scandinavian countries and was thus unsuited to governments founded on the Westminster model. Finally, it cannot go without mentioning that the CBC television public affairs program, "Ombudsman", which first aired in 1974, was remarkably popular and did much to familiarize Canadians in these early years to the practice of complaining to an impartial person (albeit in this case in the form of a television host) who would listen to and investigate their grievances.<sup>7</sup> The province of Alberta passed the first legislation in Canada creating an office of ombudsman in January 1967 and then New Brunswick followed with its bill enacted in May 1967, with both ombudsman offices starting operations in the fall of 1967. By the early 1970s, most other provinces and several municipalities had taken similar legislative

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<sup>5</sup>Much of the contents of this section appeared in the previous APPSA and CPSA papers mentioned above.

<sup>6</sup>Donald C. Rowat, "The Ombudsmen in Sweden," in *The Ombudsman Plan: Essays on the Worldwide Spread of an Idea*, Revised Second Edition, edited by Donald C. Rowat (Lanham: University Press of America, 1985), p. 2.

<sup>7</sup>*Ibid.*, pp. 102-08.

action.<sup>8</sup>

Rather than outlining the chronological sequence of events, it is more appropriate at this juncture to reflect back on the essence of the arguments initially made forty years ago as to why the office of ombudsman should be established, since the inherent organizational logic of those arguments is still applicable.<sup>9</sup> What were the arguments being made at that time as to why this new institution should be adopted? What were the conditions or factors that necessitated the establishment of an ombudsman office? What were the hopes and expectations held by the advocates of this institution?

The federal government's 1977 study of the ombudsman probably stated the situation most succinctly when it observed that, although citizens had "gained access to a wide range of government services and support systems" with the growth of government over the decades following the Great Depression, they had "also become increasingly vulnerable to the decisions of civil servants."<sup>10</sup> In fact, professor Rowat observed in 1982 that some victims of administrative errors were resorting to extreme forms of protest in the absence of a more accessible and effective means by which to seek redress for their complaints.<sup>11</sup>

It was in this context then that the advocates of the ombudsman idea emphasized the institution's attributes. First, the fact that the ombudsman would be an independent

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<sup>8</sup>By this time, the idea was also being implemented in many other states around the world. Rowat, *The Ombudsman Plan*, especially pp. 67-148.

<sup>9</sup>Gerald E. Caiden, ed., *International Handbook of the Ombudsman: v.1. Evolution and Present Function* (Westport, Connecticut: Greenwood Press, 1983); Gerald E. Caiden, ed., *International Handbook of the Ombudsman: v.2. Country Surveys* (Westport, Connecticut: Greenwood Press, 1983); Canada, Committee on the Concept of the Ombudsman, *Report* (Ottawa, July 1977); Roy Gregory and Philip Giddings, eds., *Righting Wrongs: The Ombudsman in Six Continents*, International Institute of Administrative Sciences, Vol. 13 (Amsterdam, The Netherlands: IOS Press, 2000); Donald C. Rowat, *The Ombudsman*, 2nd edition (Toronto: University of Toronto Press, 1968); Donald C. Rowat, "The Ombudsman," in *Bureaucracy in Canadian Government*, edited by W. D. K. Kernaghan (Toronto: Methuen Publications, 1969), pp. 166-75; Donald C. Rowat, ed., *The Ombudsman Plan: Essays on the Worldwide Spread of an Idea*, Revised Second Edition (Lanham: University Press of America, 1985); G. B. Sharma, "The Office of the Ombudsman in Nova Scotia Province: A Conceptual Empirical Analysis," *Indian Journal of Public Administration* Vol. 24, no. 4 (October-December 1978), pp. 1100-29; Frank Stacey, *Ombudsmen Compared* (Oxford: Oxford University Press, 1978).

<sup>10</sup>Canada, Committee on the Concept of the Ombudsman, p. 5.

<sup>11</sup>Rowat, "A Public Complaints Commission," *Policy Options* Vol. 3, no. 2 (March/April 1982), p. 33.

officer of the legislature, rather than being part of the public service subject to the executive chain of command, meant that the institution would have greater impartiality in operation. The office would consequently possess legitimacy in the eyes of the general public to deal with allegations of administrative unfairness or wrong-doing. Actually, this notion of an officer of the legislature with “official independence” is a well-established practice in Canada<sup>12</sup> which is found with similar institutions including the Auditor General, Chief Electoral Officer, and Commissioner of Official Languages.<sup>13</sup> A second attribute that was stressed back in the 1960s was that the ombudsman would be able to handle a wider range of complaints, including those about bad manners and questions about the exercise of administrative discretion, rather than being limited to issues concerning illegal behaviour or malfeasance which had traditionally been dealt with through the judicial system.

Initially, there was worry that the ombudsman would challenge the legislature’s administrative oversight function, to which advocates of the ombudsman idea replied that the ombudsman would be a complement, not a challenger, because of its broader accessibility especially to those citizens hesitant for partisan reasons to approach their local MP. Furthermore, it was maintained that, through its annual report to Parliament, the ombudsman office would be like a research arm directing law-makers to key trouble spots deserving parliamentary attention (not unlike the Auditor General). Finally, it was stressed that the ombudsman office would not infringe upon the constitutional principle of parliamentary sovereignty nor the Crown’s right to govern. After all, when an administrative wrong was found to have occurred, the ombudsman would not be able to order remedial action but would have to rely upon persuasion (and/or, if necessary, the power of publicity through its annual report) to obtain corrective action.

Perhaps the strongest reasons for adopting the office of ombudsman, however, related to how this particular institution conducts its investigation of complaints. First, the ombudsman is able to weed-out complaints about matters falling outside the government’s jurisdiction. This task is of critical importance in a federation like Canada where it is not uncommon for citizens to be uncertain as to which government has jurisdiction over the matter of complaint. In a similar fashion, many complaints arise from simple misunderstandings, and, in these cases, the ombudsman can offer clarification and redirection. Third, in respect to legitimate complaints, the office of ombudsman has the advantage of being able to conduct its investigation quickly. Usually, within a few days of having received a complaint, the ombudsman is able to start by requesting the public servant who made the decision in dispute for an explanation of the decision, which may be followed by an examination of the file documents and possibly even the initiation of a more formal investigation.

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<sup>12</sup>Robert MacGregor Dawson, *The Principle of Official Independence* (London: P. S. King & Son Ltd., 1922).

<sup>13</sup>Paul G. Thomas, “The Past, Present and Future of Officers of Parliament,” *Canadian Public Administration* Vol. 46, no.3 (Fall 2003), pp. 287-314.

Moreover, the office of ombudsman in many jurisdictions possesses the authority to initiate an enquiry, rather than having to wait for a complaint to be officially lodged by a citizen. The fact that the ombudsman conducts its investigations outside the public spotlight, with access in camera to officials and documents, not only ensures quickness but also avoids unnecessary embarrassment of officials which is often the case when allegations are made public. Another advantage often cited in the 1960s was that the cost of the investigation would be borne by the office of ombudsman, and not by the citizen lodging the complaint, which would facilitate greater accessibility than would otherwise be the case. On the other hand, critics argued that the practice of the ombudsman bearing the full cost of investigating complaints would encourage a greater number of trivial complaints.

Such then was the discourse that led to the adoption of the ombudsman in Canada. But, how did the idea pan out? This is what the Ombudsman Research Project is all about, assessing the performance of the ombudsman over the years - not just the statutory law establishing the ombudsman office, or the legal mandate, or a few select cases, but the grand portrait of the ombudsman's place within the administrative state. Attention in the following section is directed to the methodological issues encountered when assessing the ombudsman's performance.

### C. Theoretical Perspective: Pitfalls in Assessing the Office of Ombudsman

This theoretical discussion will refine the research question, identify the organizational imperatives, and outline the concept of institutionalization as research tools to assess the performance of the ombudsman.

#### *(1) Why the ombudsman? (Defining the Research Question):*

Other than having an interest in the ombudsman because we are either public administration educators and/or have another direct interest in the office of ombudsman, there is a special reason for this research project at this particular time. The year 2007 - by which time this project will be completed - will be the fortieth anniversary of the institution's presence in Canada. An anniversary is as good a time as any, if not the best occasion, to reflect upon an institution's performance, and to offer critical assessment.

Research interest was also piqued by indications of change in the ombudsman's role, as was mentioned in the introduction. Originally, as in the cases of the APPSA paper of 2003 and the CPSA paper of 2004, the focus was on the decline in the ombudsman's caseload in the province of New Brunswick. The then New Brunswick ombudsman, Ellen King, had speculated that the decline was attributable to "the [wider] availability of information on government organizations through web-sites; the accessibility to many government programs through Service New Brunswick; the establishment of informal and formal complaint mechanisms within some departments; and the impact of case law."<sup>14</sup> Implicit in this comment were two explanations: (1) improvements in

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<sup>14</sup>New Brunswick, Office of the Ombudsman, *Annual Report 2001-2002* (Fredericton,

administrative procedure; and (2) adaptation of new information and communication technology (ICT). The former is consistent with the suggestion made by Nathalie Des Rosiers that, by improving the procedures of governance, “a good ombudsman is one who is trying to put himself or herself out of a job.”<sup>15</sup> In other words, so this position went, the ombudsman has been successful over the years in removing many of the root causes of administrative errors so that fewer complaints are arising. This is certainly a positive interpretation, but is it a valid explanation supported by the evidence? Other than a few prominent cases that are sometimes highlighted in ombudsman’s annual reports, there is no systematic assessment of how the public service has been improved in direct response to the ombudsman’s efforts. Indeed, improvements in administration may just as easily be attributed to changes in professional education or internal training and standards. At best, the suggestion that the decline in the number of complaints is due to the ombudsman’s efforts to improve administration is an interesting hypothesis in need of testing.

The second explanation is equally positive in nature, namely that the advent of the personal computer and Internet has made it easier for citizens to be pro-active in taking their own complaints directly to the administrators rather than going through the ombudsman. A fascinating theory, but is it valid? Admittedly, optimistic comments about the democratic potential of ICTs have been the rage since the advent of the cyber-age. More sober reflection as well as experience with other political institutions, however, have exposed digital gaps within society and other limitations in the use of ICTs.<sup>16</sup> Thus, in respect to the suggestion that citizens are resorting to their personal computers to click on government web-sites rather than going through the intermediary of the ombudsman, it is once again an interesting hypothesis in need of analysis.

Besides these two positive interpretations for the apparent decline in complaints to the ombudsman, there are alternative “spins” akin to the notion of the democratic deficit. This notion is often used to refer to the public’s disillusionment with the traditional institutions and processes of representative-democratic governance, and has been receiving considerable attention in recent years especially in respect to the input side of politics. For example, there is the University of British Columbia Press’s series of “democratic audit” books; in addition, several governments, including the province of

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New Brunswick: Office of the Ombudsman, 2003), p. 6.

<sup>15</sup>Nathalie Des Rosiers, “Balance and Values - The Many Roles of an Ombudsman,” Speech delivered at the Annual Conference of the Forum of Canadian Ombudsman, in Ottawa, on April 1, 2003, p. 7. To be found at the web-site of the Law Commission of Canada, Online. Accessed May 20, 2004.  
<[www.loc.gc.ca/en/pc/speeches/sp20030401.asp](http://www.loc.gc.ca/en/pc/speeches/sp20030401.asp)>

<sup>16</sup>See especially Darin Barney, *Communication Technology* (Vancouver, B.C.: UBC Press, 2005).

New Brunswick through its Commission on Legislative Democracy,<sup>17</sup> are reviewing (and pursuing) different possibilities for electoral and legislative reform. Possibly, for comparable reasons, the public's disillusionment with government has also been manifested on the output side of government with citizens less willing to go to the ombudsman, or simply being ignorant or unaware of the ombudsman's role.

Such was the situation originally behind the conference papers of 2003 and 2004, and the initiation of the Ombudsman Research Project. But, while the initial rationale for this research study may still be valid, the parameters of research are no longer restricted to the matter of decline in the ombudsman's caseload. In fact, some of the team members at the February 2006 meeting noted either upswings in the number of complaints or that their ombudsman was becoming more pro-active. For example, in his latest annual report for 2004-2005, the New Brunswick ombudsman noted a dramatic increase of 88% over the previous year of complaints falling within his jurisdiction, and he was most sharply (and unusually) critical of the government's tardiness in cooperating with his office.<sup>18</sup> In addition, there are occasional calls still to be heard today for the federal government to establish an all-purpose ombudsman as a step in addressing the democratic deficit.<sup>19</sup> As well, the Forum of Canadian Ombudsman recommended the establishment of a federal ombudsman in its report to the Gomery commission.<sup>20</sup> The research question concerning the apparent changing role of the ombudsman is thus more complicated than it had originally been assumed.

*(2) Ombudsman as an enigma (coming to grips with the ombudsman's multifaceted roles):*

At first glance, the ombudsman idea is deceptively simple and appealing. It comes across as a straight-forward idea - a citizen's defender, a public watchdog, somebody to take on the administrative state with all its "red-tape", in order to protect the average citizen. But, as is often the case, to use the old cliché, "the devil is in the details." Grasping the ombudsman idea is not helped by the fact that the moniker is now popularly - and inaccurately - used in other forums. For instance, the term ombudsman is used by

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<sup>17</sup>New Brunswick, Commission on Legislative Democracy, Online. Accessed May 18, 2004.

<<http://www.gnb.ca/cnb/promos/Leg-Dem/index-e.asp>>

<sup>18</sup>New Brunswick, Office of the Ombudsman, *Annual Report 2004/2005* (Fredericton, New Brunswick: Office of the Ombudsman, 2006), pp. 5,6.

<sup>19</sup>Donald C. Rowat, "Federal Ombudsman Would Reduce Democratic Deficit," *Policy Options* Vol. 25, no. 5 (May 2004), pp. 46-47.

<sup>20</sup>Letter to Commissioner John H. Gomery, Commission of Inquiry into the Sponsorship Program and Advertising Activities, dated 28 October 2005. Forum of Canadian Ombudsman, Online. Accessed November 18, 2005. <[www.ombudsmanforum.ca](http://www.ombudsmanforum.ca)>



numerous public sector organizations for their service desks to handle clientele complaints; in a similar fashion, private sector corporations, as well as some business sectors and professional associations, have adopted ombudsman-like structures in order to improve corporate governance.<sup>21</sup> Despite this misappropriation of the label, we are focusing on the classical (all-purpose) ombudsman office as it was adopted in Canada. As such, the ombudsman is an independent officer of the legislature appointed to handle impartially citizen complaints in respect to decisions made by public servants. (The ombudsman idea was elaborated in the previous section.) Even by focusing on the classical model, we can identify the complexity of the subject matter.

Brenda Danet astutely observed in 1978 that the task of assessing the performance of the ombudsman is made especially difficult by its nebulous goals.<sup>22</sup> Examination of any ombudsman's legislative history and statutory mandate reveals just how nebulous these goals can be. Such goals as making the bureaucracy more humane, or reducing the public's sense of alienation, or preventing administrative abuse, or making administration more just, are remarkably difficult to operationalize and measure. At the same time, these criteria are highly subjective in nature so that what is perceived as humane, just, or alienating varies with the individual. The exercise of discretion by an administrator comes with a lot of leeway, and, if the decision is negative, one citizen may react by complaining to the ombudsman while another citizen may simply shrug-off the decision as one of life's experiences. In other words, what constitutes administrative wrong-doing is in part a matter of individual perception. This situation of nebulous goals and individuality does not prevent a researcher from analyzing the role of an ombudsman but necessitates being cognizant of the potential limitations of one's research findings.

Besides the nebulous goals, we are faced with two contrasting organizational imperatives inherent with the ombudsman office. On the one hand, the ombudsman is expected to be accessible and responsive politically to the public in terms of responding to citizen complaints. Yet, paradoxically, the ombudsman's investigations must be conducted in camera in order to ensure confidentiality and privacy. Tugged in two different directions in this fashion, the ombudsman's effort to find the right balance is a difficult if not impossible task. More specifically, in respect to the more public or broadly "political" side, there are at least three types of ombudsman activities: investigating citizen complaints of alleged administrative wrong-doings; monitoring the administrative state and also recommending administrative (and sometimes legislative) reforms; and educating the public as to the availability of the ombudsman's services, and, at the same time, making these services more readily accessible to the public (via the Internet, for example). Yet, when it comes to how the ombudsman conducts investigations, it is tempting to use the term "quasi-judicial": although the ombudsman lacks the formality

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<sup>21</sup> Donald C. Rowat, "The New Private-Sector Ombudsmen," *Policy Options* Vol. 24, no. 10 (November 2003): 46-48.

<sup>22</sup> Brenda Danet, "Toward a Method to Evaluate the Ombudsman Role," *Administration & Society* Vol. 10, no. 3 (November 1978), pp. 340-42.

and final decision-making authority of the judicial court, it does emphasize fairness and equity in investigative procedures and follows codes of administrative law.

As suggested above, it is a delicate balance not easily achieved. To be too assertive in an effort to serve democratically the public interest, risks being drawn into partisan politics, which in turn may lessen the government's willingness to respond favourably to the ombudsman's recommendations. But by striving to foster a closer, more harmonious working relationship with public servants, the ombudsman may become too sympathetic of administrative rationale so that the public loses confidence in the ombudsman's role as citizen protector. At the same time, to get back to the subject of this paper, this dichotomy of organizational imperatives makes it difficult for the researcher to cast judgement on the performance of a particular ombudsman.

(3) *How does the concept of "institutionalization" help to explain the role of the ombudsman?*

Given our research question and the ombudsman's organizational imperatives, the concept of "institutionalization" is most appropriate as an explanatory model. Why? Institutionalization pertains to the functional relationship between an organization and its environment.<sup>23</sup> Larry Hill has referred to institutionalization as "a process that occurs over time in which the organization creates authority relationships vis-à-vis the environmental actors."<sup>24</sup> We see this relationship centered around the ombudsman's intermediary position between citizens and the public bureaucracy in the handling of citizen complaints about administrative decisions. The stage consists of three key players - the citizen, the ombudsman, and the administrator - and the operative link is the complaint. Complaints from citizens to the ombudsman and the processing of those complaints represent societal grooves that have emerged on the output side of government, revealing the ombudsman's institutional role within the administrative state. So we need to probe empirically these grooves in order to establish the ombudsman's performance record over time. To maintain its legitimacy, the ombudsman must demonstrate an ability to defend and exercise its mandated responsibilities, as well as to be able to adapt to changing

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<sup>23</sup>Keith Archer, Roger Gibbins, Rainer Knopff, Heather MacIvor, and Leslie A. Pal, *Parameters of Power: Canada's Political Institutions*, Third Edition (Scarborough, Ontario: Nelson, Thompson Canada Limited, 2002), pp. 12-19; Michael M. Atkinson, "Public Policy and the New Institutionalism," in *Governing Canada: Institutions and Public Policy*, edited by Michael M. Atkinson (Toronto: Harcourt Brace Jovanovich Canada Inc., 1993), pp. 17-45; Larry B. Hill, "Institutionalization, the Ombudsman, and Bureaucracy," *American Political Science Review* Vol. 68, no. 3 (September 1974), pp. 1075-85; Samuel P. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968), pp.12-32; and Nelson W. Polsby, "The Institutionalization of the U.S. House of Representatives," *American Political Science Review* Vol. 62, no. 1 (March 1968), pp. 144-68.

<sup>24</sup>Hill, "Institutionalization, the Ombudsman, and Bureaucracy," pp. 1075-76.

circumstances and, if necessary, to move into new spheres of administrative activities.

To elaborate this scenario, we need to recall (from section B above) that the ombudsman idea is inherently based on the democratic ideal of citizen involvement and control of the administrative state. The act of complaining to the ombudsman may be viewed as a form of political participation intended to ensure democratic accountability. Contacting an ombudsman, of course, is quite different from most other forms of political participation such as voting or lobbying that are oriented mainly to the input side of government. Rather than trying to shape the development and content of public policy through the democratic-representative process, a citizen who resorts to the ombudsman is reacting to the administrative decisions made during the implementation stage of the policy process.<sup>25</sup> Complaining is also a very demanding form of participation in terms of time, effort, self-confidence, and determination in large part because it normally relies upon an individual citizen stepping forward alone to initiate contact with the ombudsman. By its very nature, complaining to the ombudsman office tends to be a more specific, immediate, and personal form of political participation; and, as noted by Miewald and Comer, unlike voting which tends to be “supportive” and “affirmative” in nature, resorting to an ombudsman “is attempting to rectify a situation perceived to be a problem.”<sup>26</sup>

Actually, this is as good a time as any to point out that many so-called complaints sent to the ombudsman may be better described as “contacts” whereby a citizen is: seeking information or clarification, or has not yet exercised other complaint-handling mechanisms, or has raised a subject outside the ombudsman’s jurisdiction. In fact, an ombudsman office devotes much of its time as a “traffic director” or “clearing-house”, and only a portion of its resources are directed at the handling of complaints. The classification of the different types of contacts is an inevitable task that faces everybody who studies the ombudsman. In addition, by recognizing the contacting of the ombudsman as a form of political participation, it is possible to draw upon the broad literature on political participation to explain why some people rather than others are more likely to contact the ombudsman. Notions such as socio-economic status, regionalism political efficacy, gender, and a host of other independent variables may be employed. For example, in their study, Miewald and Comer did just this by asking the questions, “what sort of person is likely to complain?” and “what effect does complaining have on the attitude of the citizen toward government?”<sup>27</sup>

It needs to be hastily added, however, that our interest in complaints does not start and end with the making of the complaint. We are also interested with the ombudsman’s

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<sup>25</sup>Larry B. Hill, “The Citizen Participation-Representation Roles of American Ombudsmen,” *Administration & Society* Vol. 13, no. 4 (February 1982), pp. 405-33.

<sup>26</sup>Robert D. Miewald and John C. Comer, “Complaining as Participation: The Case of the Ombudsman,” *Administration and Society* Vol. 17, no. 4 (February 1986), p. 486.

<sup>27</sup>*Ibid.*, p. 482.

handling of the complaint, the administrator's response, and the general results of the complaint-handling process. More precisely, in order to assess the ombudsman's performance, it is fundamental to discern patterns as to the sources of complaints (i.e., who complains?); the target areas (i.e., which government departments or programmes?); and the results (i.e. what does the ombudsman decide and what are the consequences of the decisions? ). In addition, questions need to be asked as to whether the ombudsman is an efficient and effective complaint-handling mechanism? If not, then what reforms can be introduced, and what can be learned from other ombudsman offices? Are the ombudsman procedures too formal and legalistic, and its decisions too sympathetic to administrative rationale? To what extent should the ombudsman be engaged in remedial activities or preventive (and even public education) activities? Is the ombudsman restricted only to responding to citizen complaints or can the ombudsman take the initiative in starting an enquiry? Is the ombudsman accessible to all citizens or are there barriers to accessibility? How can it be made more accessible? Does the ombudsman require additional powers? To what extent does the personality or style of the current officeholder shape the role of the ombudsman? What is the relationship between the ombudsman and the elected members of the legislature and the executive, as well as the mass media? These and related questions draw attention to the connection between citizens and the administrative state through the office of ombudsman in terms of the concept of institutionalization.

This raises the methodological question as to how best to study the complaint-handling process. Access to those who file complaints to an ombudsman and to their files is usually restricted by privacy requirements, while the complaint-handling process itself is confidential in nature.<sup>28</sup> Although limited in terms of scope of coverage, administrative law studies can insightfully show how ombudsman offices have interpreted their legislative mandates.<sup>29</sup> Use of survey data can reveal patterns of participation but the data are problematic since the vast majority of the general public have never approached an ombudsman, and, consequently, the sample's responses are often general in content or are in response to hypothetical situations.<sup>30</sup> Empirical data drawn from ombudsman

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<sup>28</sup>Larry Hill was most fortunate to have had access to the files of the New Zealand ombudsman for his 1974 study of citizen complaints; see Hill, "Institutionalization, the Ombudsman, and Bureaucracy," pp. 1075-85.

<sup>29</sup>Gregory J. Levine, "Administrative Justice and the Ombudsman - Concepts and Codes in British Columbia and Ontario," *Canadian Journal of Administrative Law & Practice* Vol. 17 (November 2004), pp. 239-.

<sup>30</sup>Surveys of the general population have been used; for example, see the studies by Karl A. Friedmann, *Complaining: Comparative Aspects of Complaint Behavior and Attitudes Toward Complaining in Canada and Britain* (Beverly Hills, California: Sage Publications, Inc., 1974); "Controlling Bureaucracy: Attitudes in the Alberta Public Service Towards the Ombudsman," *Canadian Public Administration* Vol. 19, no. 1 (Spring 1976), pp. 51-87; and "The Public and the Ombudsman: Perceptions and

annual reports identify major patterns of behaviour that define the ombudsman's

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Attitudes in Britain and in Alberta," *Canadian Journal of Political Science* Vol. 10, no.3 (September 1977), pp. 497-525.

## Appendix 1

### Ombudsman's Office (Working Outline)

#### 1. Introduction

- 1.1 Objective of Paper
- 1.2 Central Theme(s) of Paper
- 1.3 Organization of Paper

#### 2. Genesis

- 2.1 The Genesis of Ombudsman's Office
- 2.2 Factors that Resulted in Creation of Ombudsman's Office

#### 3. Mandate & Functions (Initial and Evolving)

- 3.1 Initial Mandate & Changes to Mandate
- 3.2 Initial Functions and Changes (Addition/Deletion/Modification) Functions

#### 4. Staffing and Funding

- 4.1 Initial Number, Nature, and Location of Staff
- 4.2 Changes in Number, Nature and Location of Staff Over time.

#### 5. Number and Nature of Cases Over Time

- 5.1 Number of Cases (Trend Over time)
- 5.2 Nature of Cases (Trend Over time)

#### 6. Assessment of the Ombudsman's Office

- 6.1 Is the ombudsman an efficient and effective complaints handling mechanism?
- 6.2 Are the ombudsman procedures too formal and legalistic, and its decisions too sympathetic to administrative rationale?
- 6.3 Is the institution accessible to all citizens, or are there barriers to accessibility?
- 6.4 Does the ombudsman require additional powers or resources?
- 6.5 What are we to make of recent evidence suggesting a decline/increase in the number of complaints made to the ombudsman?

#### 7. Conclusion

institutional role, but tend to be limited by their general or aggregate nature; in addition, the ombudsman's classification of data often has varied over the years and may not be exactly compatible with the researcher's clarification scheme. There are thus strengths and weaknesses with each method, which suggests the need for the researcher to follow an eclectic path to assess the performance of the ombudsman.

This paper has been designed specifically for this roundtable, not so much as to present new insights as to raise items for discussion.

### **ENDNOTES**