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MISSION STATEMENT

We are committed to publishing the highest quality of scholarly and professional articles submitted for publication. We will publish articles by and about ombuds that provide insights into and understanding of our institutional role, practice, and contributions. Manuscripts and materials submitted will be peer-reviewed. We use a collaborative approach to publishing, in which prospective authors receive constructive critiques from reviewers in an effort to increase the quality of the content of *The Journal*. Our main purpose is to enhance understanding of the art and practice of academic ombudsing.



LETTER FROM THE EDITOR

Dear Friends and Colleagues,

It is with pleasure that we present the 2016 edition of our online Journal.

Our contributors this year include Bruce MacAllister, Caroline Adams, Paul Herfs, Natalie Sharpe, Valerie Kube and Henok Elias. The subjects they've written on reflect some of the broad gamut encompassed by our field; the challenges of gaining broader recognition of our standards of professional practice, the relevance of legal training to ombuds practice, a comparative international perspective on evolving ombuds programs, and more. We hope you find their discussions illuminating, provocative and apt to your professional circumstances.

The Journal maintains its interactive design. As such, articles are open to comments in order to encourage discussion. It is our hope that this year's contributions will encourage productive dialogue, deepen understanding and support and improve our practices as ombuds.

Finally, we encourage your continued participation, both through Journal contributions and through commentary on articles and case studies.

James Laflin, Editor, on behalf of The Editorial Board of the California Caucus of College and University Ombuds

The salvation of the human world lies nowhere else than in the human heart, in the human power to reflect, in human modesty, and in human responsibility. -- Vaclav Havel



OMBUDSING AT CANADIAN UNIVERSITIES THROUGH THE EYES OF A DUTCH OMBUDSMAN

Paul Herfs

Utrecht University

The Netherlands

The ombudsman of Utrecht University in the Netherlands made a study trip to Canada in the spring of 2016. He visited 12 universities in order to gather best practices at the offices of Canadian ombudspersons. The major principles namely independence, impartiality and confidentiality were described. Also the funding of the offices of the ombudspersons and the target groups of ombudspersons are drawn. After having spoken with Canadian ombudspersons comparisons were made between the work of Canadian and Dutch ombudspersons. It appeared that there are more differences than similarities. An important similarity is that in both countries governments are not proactively advancing the value of ombudswork for students, staff and faculty by recommending that ombudspersons be established on all campuses.

OMBUDS: DEGREE REQUIRED?

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Many ombuds positions require advanced degrees, yet organizations differ as to which degrees they require. Some positions require a law degree, while some practitioners dispute the need for an ombuds to have a JD. This article explores the relationship, advantages and disadvantages of a legal education for ombuds practice based on one former attorney's experience. It then discusses the overall advantages of advanced courses of study in general for an ombuds. Finally, encourages the ombuds community to share the strengths of our collective perspectives.



OMBUDSING AT CANADIAN UNIVERSITIES THROUGH THE EYES OF A DUTCH OMBUDSMAN

Paul Herfs

The Netherlands

“I do not put faith in institutions, but in individuals all over the world who think clearly, feel nobly and act rightly. They are the channels of moral truth.”¹

Rabindranath Tagore

¹ This maxim was found on a memorial stone near the Ombuds office of the University of British Columbia.



Introduction

In the spring of 2016 the ombudsman at Utrecht University in the Netherlands made a study trip to Canada. He made a comparison between ombudsing² at universities in Canada and the Netherlands³. His research found out that ombudsing in Higher Education in Canada is far ahead with regard to ombudsing at Dutch universities.

The board of Utrecht University made this extraordinary study trip possible⁴. Paul Herfs visited ombudspersons at 12 Canadian universities all through the country. He started in Montréal, in central Canada and ended his trip in Victoria on Vancouver Island at the western edge of the country some 3700 kilometers away. The aim of the study trip was to gather best practices at the offices of Canadian ombudspersons.

The data for this research among offices of the ombudsperson were collected at the following Canadian universities. The year for the establishment of each of these offices is added for historical context.

² In this article we will use the word “ombudsing” in describing the work of the ombudsperson. The majority of the ombudspersons I visited did not use the title ombudsman or ombuds. Therefore I will use the title “ombudsperson” in this article.

³ Higher Education in the Netherlands is organized in two major streams. There are 34 Universities of Applied Sciences (in total 445,000 students) and 14 (research) Universities (in total 260,000 students).

⁴ The author thanks the Board of Utrecht University for their permission to make this study trip possible and the confidence in their ombudsman.



Table 1: Universities visited and years the Ombuds Offices were founded

University	Foundation year Ombuds Office
Université de Montréal in Montréal	1988
McGill University in Montréal	1987
Concordia Université in Montréal	1971
Laval Université in Quebec City	1981
University of Ottawa in Ottawa	2010
University of Toronto in Toronto	1976
Ryerson University in Toronto	1997
MacMaster University in Hamilton	1980
University of Alberta in Edmonton	1972
University of Calgary in Calgary	2010
University of British Columbia in Vancouver	2009
University of Victoria on Vancouver Island	1978

There is no legal obligation at the federal level, the provincial level, or by the university itself to appoint an ombudsperson. Nevertheless about 25% of all universities appointed ombudspersons. Student demands laid the basis of the appointment of an ombudsperson. In 1965, students at Simon Fraser University in Vancouver appointed the first ombudsperson on a Canadian (and North American) university campus. Today the Simon Fraser ombudsperson operates as: “..... an advocate for fairness in general for the benefit of all students and the university community as a whole. The community is committed to the fair and just treatment of each and every member of the University.”⁵

⁵ <http://www.sfu.ca/ombudsperson.html>



Cornerstones of practice of the ombudsperson

Ombudspersons operate according to three core principles: independence, impartiality and confidentiality. What is the significance of these conditions?

1. Confidentiality: all information the ombudsperson receives from a person who brings a concern or complaint forward will not be shared with third parties unless permission from that person was given to do so. The fact that somebody visited an ombudsperson is also protected information.
2. Impartiality; the information the ombudsperson receives will be regarded with the utmost objectivity. The ombudsperson is not an advocate for the individual bringing forward the complaint. The ombudsperson is also not an advocate or apologist for the institution.
3. Independence; the ombudsperson operates independently of all other administrative structures within the university.

Most ombudspersons are members of the Association of Canadian College and University Ombudspersons (ACCUO/AOUCC) and of the Forum of Canadian Ombudsman⁶ (FCO). ACCUO members subscribe to “Standards of Practice”⁷ and the FCO members subscribe to “Ethical Principles for Ombuds”⁸. The Standards of Practice describe not only the above mentioned principles but also provide information on functions and responsibilities of the ombudsperson. For instance on intervention policies (access to information pertaining a particular case; conflict resolution including shuttle diplomacy and mediation; investigation), recommendations to the appropriate authorities, submitting an annual report, submitting special reports, etc.

⁶ The Forum of Canadian Ombudsman is a multi-sector organization with ombudspersons in the public, private, education and non-profit sectors.

⁷ http://www.uwo.ca/ombuds/accuo_aoucc/english/SoP.pdf. Visited on 15 August 2016.

⁸ http://www.ombudsmanforum.ca/en/?page_id=157/. Visited on 15 August 2016.



On the ACCUO site, information can be found on how to set up an ombudspersons office, standard clauses for terms of reference, information on the fairness guide, etc.

In 2015 the 50th anniversary of the establishment of the first ombudspersons role in Canada was celebrated. In the Newsletter of the Forum of Canadian Ombudsman Nora Farrell (President of FCO and Ombudsperson Ryerson University) and Lorne Sossin (Dean Osgoode Hall Law School, York University) stated⁹: “Ombudspersons exist because we all know that, even with best of intentions, an unhindered bureaucracy can lead to unfair treatment of citizens, residents, taxpayers and customers. An ombudsman may not be the first place people turn to solve their problems, but it is the invaluable last resort for those who feel they have nowhere left to turn.”

Funding of the Office of the Ombudsperson

At most universities the ombuds offices are funded by the student unions and the board of the university. Democratization played a decisive role on the starting point of offices of the ombudsperson. At Concordia University in Montreal a computer riot¹⁰ in 1969 was the immediate cause for the creation of the Ombuds Office. “The Ombuds office was established in 1971 to resolve problems not settled through existing university channels, or those which simply don’t fit existing procedures.”¹¹ At most universities, except for management and confidential staff, every student, every staff member and faculty are automatically members of a union. Canadian university communities are therefore very much unionized. The extent of unionization gives more (Canada) or less (Netherlands) power in dealing with the university administration. In most Canadian universities the student unions played a key role in lobbying for the establishment of Ombuds offices. As a

⁹ N. Farrell & L. Sossin (2015): *Fifty years of fighting for fairness*. Newsletter Forum of Canadian Ombudsman. http://www.ombudsmanforum.ca/en/?page_id=3524. Visited on 15 August 2016.

¹⁰ The events leading up to the riot began in the spring of 1968, in which six West Indian students accused their biology teacher, Perry Anderson, of racism after they suspected unfair grading.

¹¹ K. Robillard & J. Boncompain (2015): *35th history; Ombuds Office promoting fairness at Concordia University*.



result, there is a big difference between Canada and the Netherlands with regard to the role the unions play in both countries. In the Netherlands not even 10% of staff and faculty is unionized, while among students this number is even smaller.

Target groups of Canadian ombudspersons

Nearly all Ombuds Offices began as a service for students. Nevertheless, quite a number of the ombudspersons visited address complaints from staff and faculty as well. Ombudspersons who only respond to complaints from students include PhD candidates and postdoctoral fellows, which is not the case in the Netherlands. PhD-candidates and postdoctoral fellows in the Netherlands are seen as temporarily appointed faculty. Some Canadian Ombudspersons are able to work with post-doctoral fellows if they are not unionized. As noted earlier, most staff and faculty at Canadian universities are compulsorily unionized. In cases where a staff member or faculty member has issues with their employer, that are covered by a collective agreement, the ombudsperson will not be involved in any way. It is only in situations where union representatives, the employee, the Ombudsperson and the employer agree that the expertise of the ombudsperson can be sought.



In Table 2 the target groups of the ombudspersons of the visited universities are described.

Table 2: Target groups¹² of ombudspersons

University	Students	Staff	Faculty
Université de Montréal in Montréal	+	+	+
McGill University in Montréal	+ ¹³	-	-
Concordia Université in Montréal	+	+	+ ¹⁴
Laval Université in Quebec City	+	+	+
University of Ottawa in Ottawa	+	-	-
University of Toronto in Toronto	+	+	+
Ryerson University in Toronto	+	-	- ¹⁵
MacMaster University in Hamilton	+	+	+
University of Alberta in Edmonton	+	-	- ¹⁶
University of Calgary in Calgary	+	-	-
University of British Columbia in Vancouver	+	+	+
University of Victoria on Vancouver Island	+	-	-

¹² Some ombudspersons also accept complaints from applicants and alumnae.

¹³ McGill ombudsperson also assists post-doctoral fellows

¹⁴ Concordia's ombudsperson also deals with issues brought forward by alumna.

¹⁵ Ryerson's ombudsperson will discuss issues with staff and faculty if they ask for a meeting after having explained that this Office cannot look into their concerns.

¹⁶ University of Alberta ombudsperson assists post-doctoral fellows as well.



The fairness principle

All ombudspersons strive for fairness; it is the major principle underlying the work of ombudspersons at Canadian universities. Fairness however is not an exclusive principle for ombudspersons. Veronica Kube¹⁷ stated that: "... fairness is key to preserving the institution's academic reputation by upholding the integrity of publications, pursued research and issued degrees". In fact everything that happens under a university umbrella should be fair.

Fairness is operationalized in the so-called Fairness Triangle. In the fairness triangle¹⁸ three dimensions can be distinguished:

- A: a relational dimension; how the person is treated at every step
- B: a procedural dimension; the process used to make the decision
- C: a substantive dimension; the decision itself

The fairness triangle (adapted from the Ombudsman Saskatchewan fairness triangle) can be applied in cases of students, staff, faculty or administrators, whether you are making or being affected by a decision. Both decision-makers as persons who are confronted with a decision can make use of the fairness triangle.

The Ombudsperson from the University of Victoria, Martine Conway, explains in her annual report: "A person's experience of fairness or unfairness is made up of the sum in interactions between that person and the institution. It includes the way the person is treated at every step (relational fairness),

¹⁷ Kube, V. (2016): *Fairness in communication; a relational fairness guide*. Office of the Student Ombuds. University of Alberta.

¹⁸ Conway, M. (2016): *Fairness (for students, staff, faculty)*. Retrieved from: <http://uvicombudsperson.ca/guides/fairness/>.

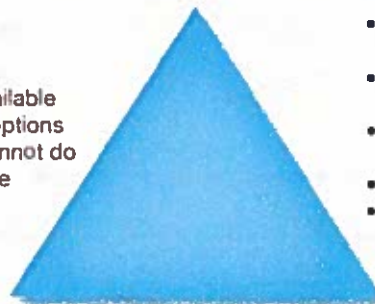


the process used to make decisions (procedural fairness) and the decisions themselves (substantive fairness).”¹⁹

THE FAIRNESS TRIANGLE

Elements of Relational Fairness

- Being approachable
- Listening
- Respecting confidentiality
- Being honest and forthright
- Making information clear and easily available
- Providing accessible problem-solving options
- Being clear about what you can and cannot do
- Offering an apology if a mistake is made



Elements of Substantive Fairness

- Having appropriate authority to make a decision
- Ensuring that decisions are based on relevant information
- ...are not unjust, oppressive or discriminatory
- ...are not wrong in fact or law
- ... are reasonable

Elements of Procedural Fairness

- Providing notice that a decision is to be made and sufficient information for an affected person to know what is required or what is at stake
- Providing an appropriate forum for an affected person to present his or her views and to be heard
- Being impartial and unbiased
- Making a decision in a reasonable time
- Providing clear and appropriate reasons for decisions

¹⁹ Ombudsperson (2013): *Annual Report*. University of Victoria. Volume 16; issue 1.



In the phase of orientation the ombudsperson will give advice on how to proceed. Martine Conway²⁰ gives the following examples of fairness tips:

- Inquire (rather than accuse) by asking relevant and clarifying questions → relational fairness
- Provide clear information, explore extenuating circumstances → relational fairness
- Consult with other services if needed → procedural fairness
- Identify the relevant policy or procedures → procedural fairness
- Is the decision based on complete and accurate information? → substantive fairness
- Is there a legal or equity principle to apply? → substantive fairness

Some Canadian Ombudspersons provide training to students, staff and faculty on how to resolve disputes constructively and on how to make decisions fairly.

Background and training of the ombudsperson

Most ombudspersons hold (at least) a master degree. Sometimes ombudspersons have a law degree, but the diversity in academic degrees (e.g. psychology, liberal arts, English, etc.) is great. For most ombudspersons it is not their first job. They have relevant working experiences in higher education or in other sectors of the civil society. Academic training, knowledge about the ins and outs of university politics and working experiences are relevant for the work of ombudspersons. Many ombudspersons are trained mediators also.

Beginning in 2013, the Forum of Canadian Ombudsman, the national umbrella organization for Ombuds in Canada and the Osgoode Hall Law School of York University Toronto offers an

²⁰ ACCUO/AOUCC (2015): *Fairness is everyone's concern; a sampling of practices and resources on cultivating fairness.* Produced in recognition of the 50th anniversary of the first ombudsman in a Canadian post-secondary institution.



intensive certificate program called “Essentials for Ombuds”²¹. The curriculum contains e.g. the guiding principles of ombudsing (independence, impartiality, confidentiality), early resolution techniques, dealing with difficult complainants, fundamental values (respect, fairness), information gathering and assessment, strategic analysis, presentation to appropriate stakeholders, writing of annual or special reports, etc. The Ombudsperson from Ryerson University is the Program Director (and the President of the Forum of Canadian Ombudsman) and other University Ombudspersons have made presentations for the program. The language of instruction for this program is English. For those ombudspersons who prefer French as the language of instruction, a second partnership has been developed by the Forum of Canadian Ombudsman with the University of Sherbrooke in Montreal to offer a French version of ‘Essentials for Ombuds beginning in 2016.

Prior to the availability of this certificate program various Ombuds courses and workshops were offered by FCO and ACCUO. In addition, ACCUO and FCO have co-hosted a national conference every two years for many years which provides specialized training for Ombudspersons working in a wide variety of settings.

In the Netherlands no training for ombudspersons exists. In 2014 Sytske Teppema and Paul Herfs made the first step by filling that gap through writing a handbook for Ombudspersons who work for staff and faculty.²²

Similarities and differences in ombudsing in Canada and the Netherlands

On the basis of the interviews held with Canadian ombudspersons a comparison of the work of ombudspersons in Canada with ombudswork in the Netherlands was made.

In Table 3 the similarities between ombudspersons in Canada and the Netherlands are described.

²¹ Osgoode Hall Law School (2016): *Essentials for Ombuds; A joint program of the Forum of Canadian Ombudsman and Osgoode Professional Development*. York University Toronto.

²² Teppema, S. and Herfs, P.G.P. (2014): *Handboek Ombudsman Personeel Hoger Onderwijs*. Brave New Books.



Table 3: Similarities between ombudspersons in Canada and the Netherlands

Canada and the Netherlands
No provincial nor federal legal obligation for universities to appoint an ombudsperson
A minority of universities have ombudspersons
Some ombudspersons work with students and staff & faculty
Some ombudspersons work with students only
No governmental actions to propagate Ombuds offices at universities
Some ombudspersons hold solitary positions
Ombudspersons are working in accordance with terms of reference
Ombudspersons may address complaints from PhDs who perceive relational problems with supervisors
Sometimes individual or a series of unacceptable incidents are the catalyst for the founding of the office of the ombudsperson

Because of the fact that the name of the position of the ombudsperson in higher education institutions is used in both countries one might expect that the work and the conditions of the work of ombudspersons in Canada and the Netherlands would be quite equal. It appears however that there are more differences than similarities.



In Table 4 the differences between the positions of ombudspersons in Canada and the Netherlands are described.

Table 4: Differences between ombudspersons in Canada and the Netherlands

Canada	The Netherlands
Training for ombudspersons is available	No training for ombudspersons is available
All ombudspersons work with students	Not all ombudspersons work with students
Ombudspersons are not merely working with staff & faculty	Some ombudspersons work with staff & faculty only
Some ombudspersons combine Ombuds work with work as faculty	Ombudspersons do not combine their Ombuds work with scientific/academic work
An active network (ACCUO) between ombudspersons exists ²³	Only a very small network (VOHO) is available
Ombuds office consists of more than one person	Ombuds office has just one staff member: the ombudsperson
Ombudspersons are perceived as assets for the university community	Ombudspersons are not yet considered as assets (except by the universities who appointed an ombudsperson)
Ombudspersons are “visible” (advertising and outreach is a regular activity)	Ombudspersons are “not visible” (hardly any publicity)
A longstanding tradition in Ombuds work	No tradition in Ombuds work with the exception of a few universities
Ombudspersons make use of a theoretical framework	Work of Ombudspersons lacks theoretical framework

²³ ACCUO/AOUCC (2015): *Fairness is everyone’s concern; a sampling of practices and resources on cultivating fairness*. Produced in recognition of the 50th anniversary of the first ombudsman in a Canadian post-secondary institution.



Position structurally independent of administrative board; often funding from both the student union(s) and university	Position: reports to the administrative board; funding by university only
Ombudspersons are expected to bring forward contentious matters and systemic concerns so that the university can address them. Their position is safe	Incidents that have been addressed by the ombudsperson might be the basis of dismissal of the ombudsperson
Awareness of the importance of safety planning and resources for the ombudsperson office (e.g. duress/panic/safety buttons are standard, motion sensors)	No awareness on the vulnerability of ombudspersons in their contact with dangerous people

Conclusions

Ombuds work in Canada lies ahead of ombudsing in the Netherlands. Only a few universities in the Netherlands have decided to appoint ombudspersons. Some ombudspersons are working with students, some are working with staff and faculty only and some work with students, staff and faculty. Due to the fact that the number of Dutch Ombudspersons lacks critical mass, the possibilities to professionalize Ombuds work in the Netherlands are limited. All university positions in the Netherlands are described by the Hay Group²⁴. However, the position of the ombudsperson is not described in the university standard work on job descriptions.

The position of ombudspersons in both countries are different. Because of the prevalence of funding by two parties the independence of the position of Canadian ombudspersons is stronger than those of the Dutch ombudspersons. Last year for instance a few Dutch ombudspersons were removed from service by their boards because of displeasing activities. At Canadian universities that

²⁴ Annex to the Collective Labour Agreement of the Dutch universities (2014): *Funcctie Ordeningsysteem*. http://www.vsnw.nl/funcctie_ordeningsysteem_ufo.html. Visited on September 21, 2016.



would have been very unlikely. Legal protection of ombudspersons exercising their duties is very important.

It is remarkable that in both countries governments are not proactively advancing the value of Ombuds work for students, staff and faculty by recommending that Ombudspersons be established on all campuses. One would expect that the number of individuals that make use of ombudspersons services in Canada and the Netherlands should be quite convincing for governmental legislation of ombudspersons. At Dutch universities the need for ombudspersons working with staff and faculty is especially large as only a small minority of university personnel is unionized. If problems arise one cannot fall back on any support. University personnel in Canada can fall back on support from either faculty or staff unions.

As long as legislation to appoint ombudspersons in higher education institutions is lacking students, staff and faculty of those HE institutions where no ombudsperson is available are in a detrimental position. Legislation on ombudspersons often remains behind because of the fact that universities (and or unions) can decide themselves if they want to appoint ombudspersons. Boards of universities where ombudspersons are lacking fear to appoint ombudspersons as they are sometimes perceived as threatening to the institution. That opinion however is outdated. Proof of the high value of ombudspersons in higher education institutions can be found on those universities where ombudspersons do their important work in early dispute resolution, training on fairness, as well as fact finding on individual and systemic issues and trends analysis.

Note of Thanks

I thank my Canadian colleagues for their support and very hearty welcome. It made my trip to Canada enormously valuable and agreeable. At last I wish to thank Kristen Robillard. She was the former Ombudsperson at Concordia University in Montréal and the former president of ACCUO/AOUCC. My plan to visit Canadian colleagues has been made possible with help from Kristen Robillard. Also, I want to express my great appreciation to Martine Conway, Nora Farrell and Kristen Robillard for their valuable comments on the draft version of this article.