

# **Fifty Questions for Self Evaluation©**

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## INTRODUCTION

In this portion of the ongoing Office of the Ombudsman evaluation, I will focus on a review of the literature. The goal of the review will be to determine if there are resources which would enable the Office of the Ombudsman to:

- find evaluation criteria;
- have logical standards in mind during the evaluation;
- And to determine, by preponderance in the literature, which criteria and standards are most likely to be critical in the conduct of Ombudsmanship.

This research provides Ombudsman practitioners with 50 self evaluation questions which may assist in providing an analysis of the Ombudsman program.

These 50 questions are not a cookie cutter for each and every Ombudsman institution. For example, Organizational Ombudsmen might find that questions relating to out reporting may not apply. Ombudsmen may find that due to their particular circumstances that they can be satisfied with responding to less than 50 questions.

This review will be focused on providing an evaluation of the structure and operations of the Office of the Ombudsman, as opposed to an evaluation of the complaints, investigations, and alternative dispute resolution processes used by the Ombudsman in dealing with the community.

A second step in the process will be to have a knowledgeable and qualified analyst<sup>1</sup> conduct a review of the findings of the Office of the Ombudsman in this evaluation, and provide fact checking and commentary. This analytical review may be used to provide the ICANN Board of Directors with an independent voice about Ombudsman functions.

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<sup>1</sup> In this case, Mr. John Zinsser

## **.1 Finding the literature**

I have conducted an extensive review of the literature in an attempt to find documents which would provide information on criteria, standards, and emphasis regarding the operation of Ombudsman Offices.

My searching has revealed that there exists no documentation specific for these purposes. In fact, The Human Resource Planning Society has indicated that, “Methods for measuring the effectiveness of the Ombudsman office ... do not exist.”<sup>2</sup>

There are small a number of documents which have been identified. The three “seminal” works, on which I rely during the course of this evaluation, are:

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

## **.2 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

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<sup>2</sup> Williams, Randy et al, 2003, **Organizational Ombudsman Program: A Governance and Trust Strategy**, The Human Resource Planning Society p8

USOA document is an iterative document, taking its genesis from a list developed in the ABA Standards<sup>3</sup>. Gottehrer et al<sup>4</sup>, 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, “ordinarily addresses problems presented by members, employees, or contractors of an entity concerning its actions or policies.”<sup>5</sup>

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.

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<sup>3</sup> American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) Footnote 12

<sup>4</sup> Gottehrer was Secretary of the USOA

<sup>5</sup> American Bar Association, 2004, **Standards for the Establishment and Operation of Ombuds Offices**, <http://www.abanet.org/adminlaw/ombuds/115.pdf> (accessed October 30, 2006) p20

## **Alignment**

Is the Office of the Ombudsman aligned with the operations, goals, 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?

## **Autonomy - Arm's length - Independent**

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

## **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?

## **Sufficient Resources**

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

## **Access to Information, documents, staff**

Does your mandate enable to access resources in the organization?

## **Community buy-in**

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

## **Clear mandate**

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

## **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?

## **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?

### **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?

### **Annual Report**

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

### **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?

### **Qualified - Knowledgeable Incumbent**

Does the Ombudsman have the knowledge, qualifications, and "street credibility" to get the job done?

### **Advisory group**

Is there a legislative committee, board governance group, stakeholder committee, that acts at an arm's length from the Ombudsman to provide group – not individual- advice on Ombudsman operations?

### **Active Public Relations Campaign - community education**

Does your outreach program meet the needs of your community?

### **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?

### **Filing system**

Do you have a separate and secure filing system?

### **Data base**

Do you keep appropriate statistical data?

### **Balanced time management**

Does your role have multiple activities: meeting with visitors, investigations, administration, outreach etc?, and 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?

### **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?

### **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?

### **Independence**

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

### **Impartiality and fairness**

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

### **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?

### **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?



### **Independence - established by higher jurisdiction**

Is your Office established by a bylaw, policy, or statute through the organizations higher jurisdiction?

### **Independence - separate from the organization it reviews**

Is your Office seen to be separate and independent?

### **Independence - appointed by super majority**

Is the Ombudsman appointed (or removed) by a super-majority of the organizations board, senate, or legislature?

### **Independence - long fixed term - reappointment possible**

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

### **Independence - for cause removal by supermajority**

Does the organization have the ability to remove the Ombudsman for cause, but only a supermajority vote of the body that appointed the Ombudsman?

### **Independence - high fixed salary**

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

### **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?

### **Independence - sole authority to hire staff**

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

### **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 to make recommendations?

### **Independence - decisions not reviewable**

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

### **Impartiality and fairness - Qualifications**

Is the incumbent qualified for the post of Ombudsman, and do they have requisite knowledge of the particular organization?

### **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?

### **Impartiality and Fairness - direct access to Ombuds 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?

### **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?

### **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?

### **Impartiality and fairness Ombuds 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?

### **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?

### **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?

### **Credible review - organization not permitted to impede**

In conducting Ombudsmanship, does the organization have the authority, or be seen to have the ability to require the Ombudsman to take direction from the organization?

### **Credible review - Ombuds cannot make binding orders**

Is the Ombudsman in properly positioned where he may make recommendations, but not binding orders?

### **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?

### **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?

### **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?

### **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?

### **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?