

# Public Comment Submitted by Bruce MacAllister

Submitted on Mon, 2016-10-24 15:29

**Subject: Pending Ombuds Program Recommendations**

In quickly reviewing the report and its recommendations, I am left with the sense that the focus and recommendations are articulated from the ombudsperson's perspective. As a practicing ombudsman with many years involvement in the profession, one of my concerns is that there is a tendency for ombuds to focus on the practice challenges as THEY see them, rather than focusing on the potential advantages of an ombuds program as a high level administrator could see them, IF given appropriate information. To me, it seems this report focuses on the former set of challenges rather than the latter set of opportunities.

The many standards that already exist out there (IOA, USOA, ABA) do a good job of articulating the standards and the rationale for them. But, in my view, the profession has not paid adequate attention to explaining first and foremost what the advantages of the ombuds risk management model are, and has skipped over that to focus on how to competently implement a program, accepting as a given that administrators necessarily buy into the concept.

Thus, I feel that there are a number of important points to make about the ombuds risk management approach as a CONCEPT, before even focusing on the standards of practice. While there are other advantages and issues that should be brought into focus, here are two examples of topics that I believe the federal administrative community might like to consider as a part of embracing the advantages of the ombuds concept.

First, while serving as a quasi-federal ombuds for over ten years (i.e. an ombuds for a government owned, contractor operated federal facility — Los Alamos National Laboratory), I had the opportunity to study two important issues as a part of serving as the program director.

The first issue was the cost benefit of the ombuds program compared with litigating. I was able to compare two virtually identical cases that involved over 40 protected class minority male middle managers who were displaced from their jobs during similar large scale restructuring. Both challenged their removal as pretextual and discriminatory. One worked through our ombuds office and involved extensive facilitated discussions, it did take some time (three years!) but ultimately was resolved for a settlement cost to LANL of \$17,500. The other started with ombuds but discussions broke down. The person filed a law suit for the same issues.

After five years, the case was still pending after LANL filed an appeal after losing and dealing with a jury award of \$400,000.00 and attorneys fees (to the point of the appeal) of \$639,130.40. So the comparison was essentially that the ombuds solved the case for \$17,500 while the legal process did NOT resolve the case and cost to the point of the first jury verdict was over a million dollars. That amount would have funded our relatively large ombuds office for nearly four years. (I provided a comparison table to Mary Rowe, as a member of the project team.)

The second issue was the impact on assault and harassment survivors. LANL, like most Institutions feared that offering a confidential reporting channel would result in unresolved harassment and assault cases. Because I had an agreement with HR to advise me of their formal sexual harassment complaints, and could compare that to those who had come to ombuds first to get comfortable with what to expect, etc., we found that, to the contrary, harassment reporting increased by 20 - 30% depending on the particular year.

While there were cases that came to ombuds and did not formally report, there were ZERO cases that came to ombuds that were unresolved. And, unlike the formal process, not a single harassment survivor who worked with ombuds initially, or exclusively, every filed a lawsuit against the Laboratory.

It seems that if the ACUS report is to appeal to federal administrators beyond those already familiar with the ombuds concept, collecting and sharing data that show that ombuds programs are substantively effective and provide real legal and cost benefits are important elements.

Perhaps I missed something in my initial read, but it seems that there is an opportunity to educate on the resulting benefits of embracing the ombuds approach as a key risk management tool as much as on the importance of the SoP constructs of the ombuds model.