

MAXIMIZING THE ROLE OF OMBUDS INSTITUTIONS WITHIN ETHICAL AND LEGAL BOUNDARIES

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Morals & Ethics

Ethics and morals are very closely related concepts that share common traits and may sometimes be used interchangeably. However, the most important difference is the realm in which each is constructed: ethics are constructed by society. They are rules of conduct that apply in certain situations and uphold values that are considered important in specific contexts.ⁱ Ethics may develop and adapt to societal changes; morals, on the other hand, have a more personal and individual character. They may be applied differently depending on the situation or person one is confronted with.

Ethics will guide a society by expressing its communal values or upholding standard behaviour that is considered appropriate. However, one may be confronted with moments in which personal moral values conflict with norms of ethics, a sensitive situation in which one must choose which values to uphold. Despite codes of ethics having a guiding purpose, these are not always binding and thus remain subject to the law. Law is usually a more basic requirement that is expected from all members of society, whereas ethical codes are a more precise set of rules of conduct that, though not legally binding, prescribe expected behaviours in specific contexts such as institutions (military, companies, etc.) or groups (societies, professions, etc.). Thus, in general, ethical codes are more precise than the law. Because ethical requirements may conflict with the law, the existence of ethical boards becomes very important in institutions where ethical rules are taken very seriously. Though there may not be legal consequences to every breach of ethical rules, many institutions apply fines or penalties to offenders.

Ethics	Morality
<ul style="list-style-type: none">Principles of conduct based on valuesChange depending on society, culture, group or professionAre consistent but may also develop over time	<ul style="list-style-type: none">Individual and personal principles, beliefs and conduct habit on which one basis their interpretation of right and wrongFlexible, may be applied differently depending on the situation

Morals & Ethics in the Armed Forces

Morality and ethics are crucial for the armed forces' accomplishment of their duties. In that sense, mental and moral strength of military personnel are as important as physical endurance. Ethics allow the military to pursue their duties in accordance to the law and guide personnel in their behaviour.

In the military, ethics will reflect key institutional values such as respect, honour and loyalty. These should be upheld during peace, but are especially important in times of war, and in guiding the military in the use of force. Bribery, corruption and sexual harassment are some examples of problems that arise from a weak ethical conduct. However, one may be confronted with challenging moments where upholding ethical standards can be in contradiction with morals and beliefs. But what does one do when confronted with opposing values? One common mistake is thinking that it is ethically incorrect, or a betrayal to point out maladministration or human rights abuses in the military due to an ethical need to be loyalty. Instead, it would be a lack of integrity not to report such breach. Overcoming such an ethical conundrum can be done by balancing the competing interests. It is also useful to have an ethical code that supports and is in line with the legal framework and, when possible, give a clear outline of procedures when ethical dilemmas arise.ⁱⁱ

In order to avoid ethical problems, it is important that guidelines be clear enough in describing acceptable and expected behaviour in duty. Ethical problems in military institutions may arise when ethics codes do not exist, or do not give the space for individual personnel to balance between their interests and rights, and the values that should be respected. In addition, one should be legally protected in a way that allows for ethical behaviour. That is, ethical codes should be in line with legal requirements.

Many military institutions have a code of ethics or conduct. Though codes may apply to specific branches, sometimes a code may apply to the whole Ministry of Defence, in other cases there may even be several document serving as ethical guiding codes. The Canadian Forces for example have a Code of Values and Ethicsⁱⁱⁱ that applies to both the Armed Forces and the entire Department of National Defence. This code outlines the primary institutional values^{iv} (integrity, loyalty, courage, stewardship, and excellence) that underlie the Ethical

Principles^v (respect the dignity of all persons; serve Canada before self; obey and support lawful authority) and thus guide expected behaviour.

In addition to individual ethical responsibility, the armed forces themselves, as an institution have ethical responsibilities. To the populace, they have an ethical responsibility to provide security and defend its territory. Similarly, there is an ethical responsibility to care for its own personnel. This 'duty of care' extends to personnel in service, such as those participating in international missions, as well as those personnel that have concluded their service and become veterans.

Role of Ombuds Institutions in the Morals & Ethics debate

Though it is the military's task to create a comprehensive ethical code guiding military action, ombuds institutions play an important role in reinforcing the importance of having such a code, and help ensuring it is respected and applied correctly. This can be done through multiple ways:

Role of investigations: ombuds institutions ensure a sense of accountability in the military, by also protecting ethical and legal standards. Ethically problematic behaviour such as coercion and intimidation are examples of recurrent problems in the armed forces, but ensuring accountability, through investigation, can help prevent recurrence.

Through reporting: reporting can be an important tool especially for revealing systematic ethical problems present in the military institutions. Policy advice and recommendations are a key practice of ombuds institutions that can help advance the respect for ethical standards.^{vi} This is especially important when systematic ethical problems reveal a dissonance between legal requirements and ethical expectation. Ombuds institutions are in an ideal position to detect such conflicts, and facilitate addressing the issue.

Ombuds institutions as a player in bringing military ethics in line with public ethics: because institutional change may be a lengthy process, ombuds institutions can also play a role in accelerating the integration of public ethics into the military ethical codes by advocating change. As social values evolve, such as the acceptance and inclusion of women or LGBT personnel, it is important that ombuds institutions advocate for the full integration of such values in the military. This also means that other values such as the integration of equal rights amongst religious and racial or ethnic groups should also be advocated by ombuds institutions. Ombuds institutions play a role in raising awareness to the armed forces about their responsibility to ensure that personnel are taken care of. This duty of care of personnel extends to providing for both their physical^{vii} and psychological well-being.

However, to be able to ensure that ethical standards are upheld in the armed forces, it is important that the ombuds institution itself be able to uphold ethical principles such as independence, confidentiality (not disclose information without permission to do so), and neutrality throughout its activities.^{viii}

Questions for discussion:

1. In your country, are there codes of ethics or morals for all armed forces personnel?
2. What is the correct approach to when laws and ethics contradict one another? What is the correct approach for when one's moral contradict with the armed forces' professed ethical values?
3. How can ombuds institutions play a role in resolving some of these moral, ethical and legal contradictions?
4. How has your institution handled complaints that raise ethical questions? Has your institutions developed any innovative ways to better address ethical issues?
5. Has your office been confronted with handling complaints into new territories/realms where there is insufficient guidance/legislation? How does your institution proceed in these situations?

ⁱ In that sense, cultural codes may also be the guiding values when an ethical code is not present.

ⁱⁱ Ex. : Canada. Department of National Defence and Canadian Forces. Code of Values and Ethics. Government of Canada, 2012, p.18

ⁱⁱⁱ *Ibid*

^{iv} *Ibid*, pp.10-11, Table 2

^v *Ibid*. p.9, Table 1

^{vi} "Playing Cards." Centre for Military Ethics. <http://militaryethics.uk/en/playing-cards>.

^{vii} Norton-Taylor, Richard. "Ministry of Defence Has Legal Duty of Care to Soldiers in Combat, Court Hears." The Guardian, Guardian News and Media, 25 June 2012, www.theguardian.com/uk/2012/jun/25/ministry-of-defence-duty-of-care.

^{viii} International Ombuds Association, 'IOA Code of Ethics' (18 May 2011)

http://www.ombudsassociation.org/IOA_Main/media/SiteFiles/Code_Ethics_1-07.pdf