

Notes for Remarks

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***The Ombudsman as an Instrument of Change:
Empowering the People***

To the organizers of this Seminar, to those responsible for my being here, I thank you for your invitation and this opportunity for me to learn and to share. To those of you from Fortaleza, I thank you for your hospitality.

I am Ombudsman for the City of Toronto in the province of Ontario which, like Fortaleza, is a progressive modern city.

To make some comparisons:

Toronto has a population of 2.6-million within its city limits, and 5.5-million people living in the metropolitan region. Those numbers compare to Fortaleza's 3.4-million in the metropolitan region – a third bigger than the City's population that I serve.

Toronto's area is 630 square kilometers; Fortaleza's is 313 – just half the area. This means the population of Fortaleza is 3.7 times more dense than Toronto. We, in Toronto are very diverse: 49% were not born in Canada. They bring with them the richness of the world's cultures, religions and languages. 133,000 of Toronto's population speak Portuguese. Samba, salsa and soccer are the most popular Brazilian exports. In February when Fortaleza is having a heat wave at 40 degrees, Toronto is likely 20 below zero. Despite the differences between Toronto and Fortaleza, I sense a commonality of purpose amongst us.

We have come together to discuss the Ombudsman and the *Ouvidor* as instruments of change. We must, of course, understand that we are not only instruments of change, but also that all over the world, the role, function and operation of the Ombudsman is changing, and I suspect the *Ouvidoria* is also changing. I suspect that among you, there are many who either want more changes, or who are actively involved in making change happen in the role and function of your office. My talk today is directed at those who want to ensure that the *Ouvidor* is relevant for your people.

I am acutely conscious that you may regard me as an expert who has all the answers for all the problems which you face as *Ouvidores*. I do not. True, I have experience as an Ombudsman and in human rights – that I can and will share. But you are the experts about the benefits that an Ombudsman can offer Brazil, and everything I say must be examined carefully, by you, through your lens, in the light of your own knowledge, experience and realities. I may have some information and ideas, but you are the ones who have the answers. So with that caution, let's begin what I hope will be a fruitful dialogue.

If we scan the history of the world's cultures, we will see that almost all peoples worldwide have had some kind of instrument to mediate between governors and the governed. We will see that with the Swedish Ombudsman's origins two centuries ago, the idea spread slowly across the world, merging with similar concepts in other cultures. Indeed, your Seminar celebrates that anniversary. It is less known in the Ombudsman's world that Brazil had a similar concept, the *Ouvidor*, three centuries before the Swedish established their Ombudsman.

It should be humbling to know how Tomé de Sousa established the first “Listener General,” Pero Borges, who informed the King that the ability of Brazil to progress depended upon people being exempted from laws that had not taken into account the people. Such a maxim is no less relevant today than it was in 1549.

Noting that we are here in Brazil celebrating the 200th anniversary of the establishment of the Ombudsman in Sweden, it seems only fair that in 2049, Sweden will have a celebration of the 500th anniversary of the establishment of the Brazilian *Ouvidor*.

During the latter half of the 20th Century, following the attention to human rights and democratic government in the aftermath of World War II, there has been rapid growth of this concept, both in the form of Ombudsman in many parts of the world and the *Ouvidor* here in Brazil. For the Ombudsman, the grafting of the original Ombudsman concept onto legislatures rather than offices of Royal Rulers – and particularly to the Parliamentary system - has been a miracle of political architecture and engineering over the last five decades.

Brazil engaged in a similar grafting experiment, melding the 16th Century *Ouvidor* with modern government in the establishment of the *Ouvidoria* of Curitiba in 1989, positioning it as an intermediary between governors and governed, locating it with the agencies and ministries of government rather than the legislatures. Perhaps I am in error, but the theme of this conference seems to contain an unasked question: do you, the *Ouvidores*, feel it important to move your offices in the direction of the classical Swedish Ombudsman whose 200th anniversary we are celebrating with this Seminar? Or is your interest just one of alliance? The question is whether you are considering adopting portions of the classical Ombudsman’s role, taking on responsibility for being a facilitator of disputes, investigations, fact finding, drawing conclusions, making recommendations and advocating their implementation, or whether you have some other vision for the evolution of your role. In either case, it seems to me, you are pushing the limits of your mandate and for that I congratulate you.

Let me tell you about the evolution of Ombudsman roles in Canada – and particularly the one in which I am involved. One of the new developments in Canada is the establishment of a “classical Ombudsman”¹ for the City of Toronto – I opened that office in April of this year. The term “classical Ombudsman” is usually defined as a Constitutionally created office or a quasi-constitutional law which establishes its permanence. The classical Ombudsman acts as an officer of a legislative body, and is independent of the organization being reviewed.

The Ombudsman’s appointment is confirmed by a “super majority” of the legislature through a process designed to prevent political interference. The Ombudsman’s length of office is a fixed term and removal is only as a result of legal wrongdoing by a super majority of the legislature. The classical Ombudsman has a fixed salary, and a budget under the Ombudsman’s control, sufficient to carry out the purposes of the law. The Ombudsman has the sole power to appoint and remove staff.

¹ <<http://www.usombudsman.org/documents/PDF/References/Essential.PDF>>

The classical Ombudsman has legal immunity from liability, and cannot be forced to give evidence in legal proceedings, nor can the Ombudsman's actions be reviewed by courts except for questions of jurisdiction. The classical Ombudsman has certain legal powers of investigation which are enforceable through the courts.

My position was established by the Legislature of the Province of Ontario through the *City of Toronto Act*, which required that Toronto appoint an Ombudsman and equip that office with the powers and independence of a statutory Ombudsman. I receive complaints from the people of the city, both residents and visitors, about decisions, actions and omissions of city officials. If I cannot help parties amicably resolve a situation, I may decide to investigate, make findings, draw conclusions and make recommendations that I think should be implemented by the City government.

In this regard, the Ombudsman's job is to seek administrative justice and promote fairness in public administration, and, in so doing, improve democratic governance. As we will see, my role extends into other areas included in the general subject of improving democratic governance.

So what's different about all that? The fact is that in Canada, the Office of Ombudsman is virtually unknown in municipalities. Montreal is the only other city which has a classical Ombudsman. What I am finding is what I should have known from my own personal experience: no order of government plays a more direct role in peoples' daily lives than municipalities.

City governments deal with local transportation, the water we drink, our garbage, our daily recreation. There are urgent issues of homelessness, urban renewal and youth recreation in Toronto. Elected representatives of our City Council are closer, more accessible, better known than one might find in other orders of government. Public servants are neighbours, and themselves part of "the public", it is our neighbours who make the city work as they plow snow, pick up trash, take applications, care for children, provide security.

Put these three factors together –

1. Close and frequent relationships between residents and city government,
2. Great diversity and density of people,
3. Heavy involvement of city government in people's daily lives

...and we find there is much room and frequent opportunity to make mistakes and for unequal treatment to occur – municipal issues hit close to home. This means also that in the urban context, there are more factors involved in determining how equity should be offered, to determine when inequity has taken place – I'll return later to the question of equity.

My message to the people of Toronto and its City Council, both of whom I serve, is that it is my hope, my expectation that with the assistance of an Ombudsman to resolve complaints and issues, the City of Toronto will be better administered and that all segments of the population, all communities, all neighbourhoods will feel that they have a voice, that their voice will be heard, and that they are empowered to participate in creating change.

Does that resonate with your own work? Your own aspirations? It is exciting for me to discover the differences that exist in the working roles of a municipal Ombudsman globally, and the greater frequency of human rights issues on the agenda. I believe that among you in this audience there are many people with considerable experience in a municipal setting, and I look forward to learning from you.

From all this recounting of change and evolution, we can see that as Ombudsman, as *Ouvidores*, we are not simply the latest incumbent in a time-hallowed institution. For both roles, true, we are part of historic institutions, but those platforms are moving under our feet, evolving from their very core as they adapt to the essential elements of modern democratic government.

We are both in evolving roles, operating without road maps. Society is making dramatic shifts in population and demographics, the effects of modern global communication on governance, is changing values and recognition of rights. In the case of Toronto, the structure of the city itself is in a state of evolution, with six cities and a metro government amalgamating eleven years ago. How the Ombudsman's office fits in with complex systems of committees, public corporations, authorities and boards remains elusive and vague.

Toronto has the 5th largest government in Canada with a public service of over 52,000 employees and 45 legislators on the Council – Could Sweden have possibly contemplated these circumstances in 1809? Even in the generation of our immediate predecessors, the ever-changing terrain we operate in could not have been anticipated. In Canada, for example, we are noting that the people we serve are more demanding about the quality of service they receive from government.

They are slowly redefining what it means to be a citizen, moving far beyond the usual role of voting and accepting the results as the government to be endured until the next election. Increasingly, people want to participate, to be heard, to ensure the tyranny of the majority does not trample the rights of minorities, the rights of the individual, the right to be different. We see an increased interest internationally in ethical government, not just fair administration, but administration conducted to the highest ethical standards. This means acceptance of personal responsibility to set out the foundation, the context, on which ethics rest. It means a greater realignment of reality and truth, and a lesser reliance on ideology as the guide to problem solving.

This explicit incorporation of ethics in the democratic mix can be the impulse to rebuild, to clean out decay. Agreement on ethics can be a bedrock upon which principled

foundations are built. This can happen when the people take up their responsibility to participate in developing the ethical context for our societies. We see, both in Brazil and in Canada, that the people are demanding more efficient management of government affairs, greater transparency and honesty of corporate directors, executives and senior officials of government. They expect internal controls will act effectively against maladministration, against corruption, against abuse, irrational behaviour, and against any lack of respect for the people who are being served. Both Ombudsman and *Ouvidores* are well-positioned to encourage these dialogues.

Participation of people in the intimate details of government has been facilitated by new electronic technologies and increasing technological literacy. Governments no longer have monopolies on the circulation of information, on access to the media. In fact, in many instances, governments have become less important, less relevant to the day-to-day life of the people. Virtual organizations arise, do their work, and disappear – they are based in the Internet, not within the political boundaries of a piece of geography.

Citizenship, *cidadania* has gone on-line with new and powerful tools for democratic participation. The vote remains the instrument of representative democracy, while the Internet has become the facilitator of participatory democracy. The effect is evolutionary: a dramatic change in the manner in which political and social power is organized and used the icon of this change being Barack Obama's Blackberry. All this change impacts the way Ombudsman and *Ouvidores* do their work. The question is whether we will be among those who facilitate change, or whether we will be overtaken, maybe run over by it. It is certain that the equation balancing relationships between the citizenry and governments has changed dramatically, even the relationship between various sectors of society.

This means new concepts of citizenship, new responsibilities, changes in the way governments “do business”. People are no longer waiting to be told about decisions which affect their lives. They want to know how those decisions are made, and the reasons behind them. Rather than being discouraged or overwhelmed by this cauldron of change, we can see there is much potential for the Ombudsman and the *Ouvidor* to become an effective balancing point between the governed and the government, to become a developer of a culture of human rights, to improve the quality of democracy enjoyed by the people, to ensure that all peoples, including those most vulnerable, are receiving equitable treatment from powerful institutions of impersonal government. I believe that with our help, we will see the Ombudsman and *Ouvidor* concept thrive and go far beyond the more traditional issues of administrative justice which have characterized our roles in the past, even the recent past, going far beyond the role of the 16th Century *Ouvidor* or the Ombudsman of 1809.

Anyone who struggles to maintain the status quo is at great risk of becoming irrelevant. I used the term “equitable treatment”, and I would like to be clear about what I mean. Equity is an important change we must incorporate into our work. It used to be that democracies sought to treat all of the people as “equals”, treating them in the same way. This ideology did not take into account cultural or socio - economic realities.

At least in Canada, “equal treatment” is often determined by, and based on, the characteristics associated with persons who are Christian, male, white, literate, heterosexual, middle-class, able-bodied speakers of English and French who operate well within the norms of what is considered to be “Canadian culture”.

Thus, if equal treatment is provided to everyone, equal treatment will result in unfairness and injustice to anyone who is different from those who set out the standard for equality. Equitable treatment, on the other hand, takes into account our differences. It explicitly looks at individual circumstances and acknowledges that we are not all at the same starting place. If in our work we can apply principles of equity, we can do a great deal to level uneven playing fields which provide advantage to some and disadvantage others.

I quote to you from a report done for the Ontario Ombudsman, Roberta Jamieson some years ago:²

“Equity is always the product of positive action, not simply the absence of discrimination. Equity means finding ways to reach out to those who do not come forward . . . to offer accommodation rather than waiting for complaint.”

Evolving from “equal treatment” to “equitable treatment” is, in my opinion, an area in which Ombudsman and *Ouvidores* must demonstrate leadership. With that review of some of the changes in our roles, let’s take a moment to examine the question of the Ombudsman as “an instrument of change”. I am very cautious about thinking of the Ombudsman in these terms because I find myself asking; “An instrument for whose use?” Change for what? In what direction? By whose decision? With what results?

I worry about our credibility as objective intermediaries, as unbiased and independent decision makers, if we are seen as having our own personal agendas, or perhaps advancing agendas of government which might be controversial among the people. At the same time, I am enthusiastic about the Ombudsman and the *Ouvidor* being instruments of change when the change is one which is determined and managed by a broad consensus of the people involved.

I am enthusiastic about the Ombudsman and the *Ouvidor* concept each being fully developed to be an instrument that meaningfully connects “the people” - especially vulnerable and marginalized peoples - on their own terms - with powerful institutions including governments. I am less comfortable with the second line of our theme for this Seminar: “fortelecimiento da Cidadania”, strengthening of citizenship. I wanted to be sure I correctly understood the term, *cidadania*, and I found it as one of the five founding principles in the Brazilian Constitution of 1988.

I found it as one of the objectives of the Brazilian education system, indicating to me that “citizenship”, *cidadania*, was intended to mean something people are taught to do. This may be difficulty in translation, a question of semantics, so let me be explicit about the way I am interpreting “Fortelecimiento da Cidadania” - For me it means

² *The International Ombudsman Yearbook: 1998* by Linda C. Reif, International Ombudsman Institute.

“Empowerment of the People”. Can that be at least our working arrangement for today? If so, that leads me to a second very important question: who are “the people”? “The People” is not just a political abstraction. It describes the lives of women, men, children, elders - their hopes, their dreams.

My indigenous friends would also remind me it includes the next seven generations of children who represent our future. We all must be very conscious, then, of “who is the public”. “Who are the people we serve?” If democracy is a system where the power to govern is vested in the people, then we must ask whether we are including everyone in our definition of who we serve.

People who are poor? *Faveleros*? Indigenous peoples? People of all races, colours, genders, ages, abilities? People who have no voice? Who are involved in the sex trade? Transgendered, gay, lesbian? People in prison? People with disabilities? The people who most need assistance in dealing with authorities, the people who are most likely to be victimized by abuse of power, prejudice and neglect, the ones who most need to be listened to, to be heard by *ouvidores* and served by Ombudsman, are the ones who have the least voice, the greatest difficulty in being heard. They have no place at the table of power and privilege.

This comprehensive definition of the people we serve is not just a demographic exercise - understanding the full reality of the people we serve will change the very nature of the work we do. It will fundamentally change the way we work. Let me tell you a bit about my reality in Toronto. The people of Toronto are, as I have mentioned, exceedingly diverse. Half of the public were born outside Canada, a third use one or more of 140 languages other than English in their homes. This means that the chances are that a person with a complaint has been dealing with a public servant of a very different cultural background, with differing expectations of what happened, what should have happened, and what now should happen to end the dispute.

For a person living in the world of the voiceless, dealing with the world of power and an authority can be a humiliating and frustrating experience. This reality has significant implications for the setting of “fairness standards” standards for equitable service against which we are going to measure the performance of government. For me, knowing what those parameters are would have been easier a century ago when Toronto was largely a homogeneous patriarchal British English-speaking Christian place, comfortable with long-established indisputable rules, set in a time where change occurred, if at all, quite slowly and deliberately. In those days, everyone just knew what the ethical standard was – there was little to discuss.

Canada’s building blocks were all cast in the image of colonizers and carefully cemented into place long before anyone thought about the values gained from recognizing diversity. Canada is paying a heavy price today for the failure of that colonial history to incorporate indigenous peoples and their contributions into the development of Canada. Today, there is much to discuss about what Canada should

become - about the place of indigenous peoples in our land and our future. My guess is that in today's Brazil, the situation is much the same.

I assume you know of Brazil's national legend of *Iracema* and Martim, the indigenous maiden and the colonizing gentleman? It is so beautifully memorialized here in Fortaleza, the birthplace of its author. *Iracema* is the story of any country with colonial roots, trying to build on both colonial and indigenous strengths while at the same time shaking itself free of colonial errors. I think we have a choice of seeing *Iracema* as a story of what might have been, or as a story of what might still be possible.

Now all of this leads me up to the delicate question I raised at the outset of this presentation, and one which I promised to return to later, not because it is the last of my priorities, but because it is both postscript and prologue. I have read a translation of the paper of our distinguished colleague, Dr. Elias de Oliveira, in which he says he is tired of trying to explain to the international Ombudsman community what is an Ombudsman in Brazil and how it works. He says he is tired of rebutting the criticism that in Brazil, the Ombudsman is located within the public administration, and has, as he puts it, but "a precarious condition of functional independence". Our colleague further finds it hard to explain why Brazil, despite its federal system, does not have a federal Ombudsman, and that piece of information gave me the idea of how I - from my Canadian experience - can approach you from your Brazilian experience.

Canada is also a federal system and like Brazil, Canada does not have a federal Ombudsman. I do not know where you want to go with regard to this absence of a federal Ombudsman, but I can tell you that in Canada, we have been pushing hard, for many years, to have such a position established. However -- in my opinion, defining what is and is not a deficiency for Brazil certainly is not a prerogative of the International Ombudsman Community. Brazil is a democratic country, so that is for the people of Brazil to decide.

You are well positioned to take leadership in whatever reconfiguring, redesign, reshaping that you wish to do in your system of *Ouvidores*. It seems that in the evolution of the *Ouvidor*, Brazil found some inspiration in the Ombudsman, but instead of imitating something foreign, you ignored its academic theories and borrowed from it only those elements considered culturally appropriate.

Dr. Elias de Oliveira concluded that: "So clear is the distinction between the Ombudsman and the *Ouvidor*, that they definitely can not be regarded as equal institutions." I agree – the term *Ouvidor* and Ombudsman are not precisely synonymous. It is clear to me, however, that we have enough commonalities that we are allies, each with potential to offer support to the other. You are officials interested in the advancement of democracy in Brazil, and I suggest it is up to you to decide if you want the system of *Ouvidores* to become more Ombudsman-like – or not, for you to decide what changes you would like to see, and how and when you want to adapt the classical Ombudsman role to Brazil, if at all.

So I encourage you to take the position of our colleague Dr. Elias de Oliveira: No more trying to defend your system from the suggestion it is inferior to “the real Ombudsman”, but rather to value it as something developed in Brazil by Brazilians for Brazilians. I encourage you to take the position that you do not want the *Ouvidor* to become an institution that fails to reach the most vulnerable peoples, to become an institution that risks becoming overly bureaucratic, inaccessible or irrelevant. I encourage you because that is the position I am taking in the development of the Ombudsman of Toronto.

I too am inspired by the principles of the classical Ombudsman, but I am developing it within the institution of a Canadian municipal Ombudsman, giving it its own personality, evolving according to the diversity of the people I serve, and making it a model of delivery that is simple, flexible, non-bureaucratic, and accessible.

For both of us, there is the critical question: Do we just go with the flow of things, taking change as it comes? Or do we decide what changes we would like to see, and work to convince decision-makers and public alike that the changes we are advocating are desirable for increasing the level of democracy which our people deserve? I suggest we need to be the architects of our future. With the theme of this seminar in mind, “The Ombudsman as an instrument of change”, let me present for your consideration four tools that can serve as powerful instruments of change.

These are tools which are not unknown, but are not commonly given prominence. I believe they can be adapted to serve the work of the *Ouvidor*. If these tools go beyond the powers you have, consider whether seeking these powers would be a strategic move. The first tool is the systemic approach to issues. There are those matters which affect significant numbers or specific groups of people who may be disadvantaged by certain policies or laws.

In Canada, for example, there are circumstances where fundamental racial inequality persists. Although a particular agency may assert its employment is open to people of all races, the facts are that the number of employees of a particular race is far less than the proportion of that race in the general population. Promotion within the agency for people of colour does not seem to occur much. Investigating such complaints on an individual basis is not likely to reveal the problem, or point to a solution. A systemic investigation might show, however, that senior officials hold certain stereotypes about that race and their ability to do certain kinds of work or to become managers.

The application and promotion system may rely on recommendations made by existing employees. News of vacancies may be spread by word of mouth within their own networks, largely maintaining the status quo. The system of recruiting may not reach the communities or the homes of that race of people. The recruiting materials may illustrate a white-only workplace, suggesting this is not a place where other races are welcome. Hiring panels may reflect only one ethnic identity; the interview questions may lead to biased conclusions or may rely upon “inside” knowledge. The hiring criteria may favour or disadvantage one group over another. In such a case, taking a systemic approach to

complaints is more likely to lead to an entire program of change in correcting the inequity.

A second tool that is available to an Ombudsman is the ability to initiate my own investigation in the absence of an actual complainant. Getting at the roots of a general problem through this approach can be of critical use. Here, organizations with expertise may be involved in seeking solutions. Civil society, non-governmental organizations, advocacy groups may be asked for their opinions. By having the power to determine the positioning of the issue, the Ombudsman may be able to delve deeper into root causes and discover fundamental answers.

The third tool is that of engaging in a strategy of communication to encourage legislatures and decision-makers to use the approach of the Ombudsman - to engage the public in discussions which can benefit from the Ombudsman's impartiality, independence and integrity. Legislators may be more willing to legislate important changes when they have the benefit of an Ombudsman's report - an impartial investigation with answers - where they will not be accused of partisanship or promoting self-interests.

The fourth tool for your consideration and one I am sure is already available to the *Ouvidor* – that of demonstrating to vulnerable groups that their opinions are valued, that they have a place at your table, that they can have their complaints successfully addressed. Making sure marginalized groups receive communications that they are able to communicate in their own language and style, providing access to someone who listens, understands and cares can give a sense of empowerment, of hope.

This means reaching out, eliminating barriers within our own systems and approaches, being visible in communities, demonstrating we are actually listening and hearing, that we understand hidden meanings – This is the classic role of the *Ouvidor*, is it not? We should not underestimate the importance of listening with connection – listening to understand the speaker's perspectives.

You may have heard of the experiments in industrial psychology which were done some eight decades ago in the Western Electric factories known as the Hawthorn plants. The objective was to determine the optimal conditions for workers which would result in the greatest productivity. Interviews determined what the workers wanted. They asked for better lights. The lights were provided, and productivity went up. They wanted longer rest periods. That was provided, and productivity went up. After a time, the investigators wanted to see what would happen if the more favourable environment was taken away. The better lights were removed. The rest periods went back to their old level, and the workers were asked how they felt. Productivity went up! What the scientists finally determined was that it was not the lights, not the longer rest periods, not the improved conditions which had made the difference, but rather that the workers were more productive because someone was listening to them, someone valued their opinion, someone was treating them with respect.

The Ombudsman and the *Ouvidor* are both well situated to relieve alienation, to extend the reach of democratic practice, to develop social awareness, to develop community spirit, to mitigate mistrust of government -- All these are factors which have a negative impact on citizenship and the capacity of all peoples to participate in democratic government. Our involvement with vulnerable groups can have a remarkable effect in combating resignation, socio-economic disparity and exclusion from decision-making. If we are actively removing bottlenecks for action, insisting on accountability, helping government set priorities and correct policy, surely, the igniting of "good citizenship" by empowering the people can set into motion a dynamic which may change a people's destiny for generations to come?

These four tools can serve as instruments of change for the greater empowerment of people so they can better enjoy the rights and obligations of citizenship. And so I leave these thoughts with you. Use them as you see fit. I am learning from you new approaches which I want to incorporate in my work, and I thank you for that.

I am eager to participate in our shared search for better government, better democracy, and our use of ancient institutions to build a better future for us all.

I appreciate your attention. Thank you.