

Notes for Remarks

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***The Role of the Ombudsman:
Enhancing Human Rights and Strengthening Government
Accountability***

Thank you for the privilege and honour of meeting with you. I am tasked today with providing you some perspectives on the role of an ombudsman as it pertains to the public service.

You are all of course familiar with the concept of Ombudsman. In Sri Lanka, for some time now you have had specialized ombudsman offices in areas such as banking and insurance but no Ombudsman of general jurisdiction. The Lokayukta in India has a rich tradition in many states and the Vigilance Commissioner is an important institution.

On the other hand, some 44 years later, legislation for the creation of the Lokpal, a national ombudsman has yet to become reality. Canadians may be interested to learn that the question of a national Ombudsman in India continues to be a hot topic right to this very day. But before Canadians feel any sense of superiority in this matter, I remind them that Canada neither has a national Ombudsman – nor is there any ongoing debate about establishing one despite 30 years of effort.

I am the Ombudsman of the City of Toronto, a city of 2.6 million, one that would be the 13th largest if it were in India.

As Ombudsman I act as an intermediary for a richly diverse public making up one of the most multicultural cities in the world. Half of Toronto's people were born outside Canada, a third at home speak one or more of 140 languages other than English or French. Half of Toronto's people are under 25 years of age, half have lived in Canada less than 15 years.

These are significant statistics, since it means that the chances are that a person with a complaint was dealing with a public servant of a very different cultural background, with differing expectations of what should have happened, and what should happen to end the dispute, many different views as to what constitutes "good government" in Toronto.

Just a very few years ago, Toronto did not have an Ombudsman. Actually, I am the first person to hold that office. My real job is to use my role to assist in building stronger democracy, to keep government accountable, fair, to ensure that government serves all the people, and particularly those who are vulnerable and marginalized.

Yes, the fundamental purpose of the Ombudsman is to resolve complaints and issues brought by citizens who feel they have been treated unfairly or unjustly by government agencies. Complaints may range from dealing with delays by a public servant to serious violations. By resolving these issues, the Ombudsman calls attention to failures of political will, failures to administer in a fair manner, or just simple glitches.

The Ombudsman helps expose abuse of power, bias, corruption and inefficiency as well as more simple failures such as a lack of courtesy or responsiveness to a citizen.

Access to an Ombudsman cannot be a privilege accorded principally to the middle class or to the well-educated who know how to present themselves, who know how the system works, and who have enough confidence in themselves to have the courage to pursue a complaint.

The reality is that we are not all at the same starting place and the most marginalized among us are often the very people that have more contact with government. And the sad truth is, they are also more likely to have problems with government, and are less likely to know of the Ombudsman and therefore to have access to those services.

The imperative of providing accessible service must be seen as a clear priority, not a frill or luxury. That means that every time there is a structural change, a new program or service, we must ask: How will this change affect the rights of all members of society to be served equitably? How will this change affect those who are most vulnerable and least able to defend their interests?

The Ombudsman must be pro-active and ensure that access is real, effective, and working for all citizens regardless of class, ethnicity, socio-economic status or other factors that may contribute to marginalization.

But before I go too far here, I want to tell you I am cautious in saying too much about my office lest you think I am urging you to copy it, to use it as a model. I hope that doesn't happen. I believe you would do a great disservice to your country, to your people, to pack in your luggage the Canadian model of an Ombudsman, and unpack it and use it in India or Sri Lanka. What works in Canada may be totally inappropriate where you are. Each country, each people, must configure its own Ombudsman institution according to its own traditions and realities.

In Canada, for instance, our Ombudsman deal with maladministration and our Human Rights Commissions are separate entities. In Namibia, the Ombudsman deals with maladministration and human rights together. In Peru, the Ombudsman deals with both in addition to corruption. To each their own!

The usual configuration of a true Ombudsman, gives the holder of the office these attributes:

- a high degree of independence exemplified by a long term of office and appointment and removal only by a super-majority of the legislature;
- the autonomy to hire staff and administer the office;
- protection from political interference;
- a legislated or constitutional mandate which removes the Ombudsman from the control even of the legislative body – in my case, the City Council of Toronto –
- independence from the City government.

We can undertake an investigation and to do that, we may enter premises, seize documents and compel witnesses. I can make reports public by tabling them with the

governing body. On the other hand, there is a key characteristic which at first glance appears to be a weakness, but in reality, is of great value. The Ombudsman does not have the power to enforce recommendations.

And that is because it is the job of the public service to manage and it is the task of the governing body to govern. My role is to shine a light where things have gone wrong. This means the end responsibility remains with the government elected by the people.

As an Ombudsman, I can also recommend changes in laws or regulations. I can start an investigation on my own initiative - I do not have to wait for a complaint to be made. I can undertake “systemic investigations” to examine situations where barriers for citizens may exist or where the problem seems to go beyond just one department or agency.

One such example last year was that of an elderly woman whose tree was cut down in her garden. She was charged her \$5,000 for the removal of the wood asserting the tree was dead. The citizen had Alzheimer's, could not possibly have understood the violation order – neither could we for that matter, it was so poorly written – and the tree was not in fact dead. We pursued individual remedies but more importantly, we discovered the City had no framework or policy concerning service to residents with diminished capacity. That has now been rectified and a guide to providing equitable service to individuals of all abilities is now in place.

True, an Ombudsman has a legislated mandate and should operate strictly within it. At the same time, however, the Ombudsman must ensure that the office is relevant to the people being served – all of them – in a manner which acknowledges, appreciates, and respects their diversity.

To summarize why a government must have an independent properly resourced Ombudsman office, is simply to say that the bigger and more complex government becomes, the more an independent intermediary is needed. Things go wrong in large complex organizations, whether it is an individual error or systemic issues embedded in old policy where demographics and the citizenry's needs have changed.

Having an Ombudsman is an essential pillar of good government. It is easily adapted. Where a country wants to deal with a recent history of rights violations, the concept of an Ombudsman making recommendations to government has often seemed appropriate to the delicate situations in which many countries found themselves.

In fact, the increasing application of the Ombudsman to human rights issues in turn has caused long-established Ombudsman to re-examine their own roles and to understand that the foundation of many issues of administrative fairness are often human rights issues.

The objective is not political embarrassment, but rather improvement of government administration. The objective is not to weaken government, but rather to strengthen its

ability to act fairly and justly – to respect all of its citizens.

Whether that happens in Hong Kong or Copenhagen, in Tanzania or Sri Lanka, the objective and the approach are the same. That is what makes it possible for Ombudsmen to remain united in one worldwide community while encouraging a wide range of diverse application to our local realities.

Democracy is always a work-in-progress. It does not permit anything to be taken for granted. Democracy is inherently fragile, constantly at risk. We must all be vigilant and vigilant always. To state it more broadly, one of the measures of the quality of democracy is whether a government is willing to submit itself to independent review of complaints regarding its administration. We all need to have the courage to answer the question:

Will we shape our institutions to the reality faced by the people we serve – or will we leave them sedately clothed in imported robes?

So your task, as I see it, is to configure these basic attributes to fit the situation in which you are operating. Every Ombudsman has to be a custom fit. Thank you for your attention.