

Notes for Remarks

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The People/Ombudsman Partnership: Making It Work

Good afternoon! Boa tarde! Thank you for the invitation to participate on this panel; thank you for your warm welcome I look forward to sharing with you and learning from you.

Some of you here today also shared with me the remarkable experience of Fortaleza a few months ago, and I do not want to bore you with a repetition of my remarks on that occasion. On the other hand, for those of you who were not at Fortaleza, including my colleagues from other countries who are present today, I want to share my thinking about Ombudsman and *Ouvidor* before I begin my remarks.

I do not regard the word Ombudsman and *Ouvidor* to be synonymous. While there are some similarities between the two offices, there are also some striking differences. Neither do I regard the Ombudsman as the goal to which an *Ouvidor* should strive. I believe the ombudsman and the *Ouvidor* to each have its own inherent value.

The validity of the *Ouvidor* is derived from Brazil's history, today's reality, its peoples, and their many cultures. The task of *Ouvidores*, I believe, is to ensure that the *Ouvidor* is relevant for your people, relevant to your own struggle in holding powerful governments accountable.

We have much to learn from each other in fulfilling our respective roles. You are the experts about the benefits 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 and experience.

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 – or sought to have – some kind of instrument to mediate between governors and the governed. We know that with the Swedish Ombudsman's origins two centuries ago, the idea spread slowly across the world, taking root where it was seen as useful and relevant. I learned at Fortaleza that Brazil began development of the concept of *Ouvidor* three centuries before the Swedish came up with the Ombudsman. During the latter half of the 20th Century, there has been both rapid growth and evolution of both concepts.

The grafting of the original Ombudsman concept on to 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 modern grafting experiment, melding the 16th Century *Ouvidor* with contemporary government when the *Ouvidoria* of Curitiba was established in 1989, positioning it as the intermediary between governing and governed, but placing it with agencies and ministries of government rather than the legislatures. Perhaps you are considering adopting portions of the Ombudsman's role into the work of an *Ouvidor*, perhaps not.

Either way, this conference is one more indication that you are pushing the limits of your mandate, and for that I congratulate you. So today when I speak of "Ombudsman", please feel free to substitute the word "*Ouvidor*" and if what I say is relevant, feel free to take it and use it – make it yours.

So enough said about that, and I return to my topic.

I have been asked to speak about the potential of a partnership between people and Ombudsman to assist the people in holding their governments accountable, to assist in the protection of human rights; to assist in improving the quality of public service. I first thought of this in the historical context. We know that from the 16th through the 19th Centuries, Brazil was a colony of Portugal, and we also know the people of Brazil chose independence – they chose to be governed by a government accountable to them.

In the 20th Century whenever governments were no longer accountable to the people, the people of Brazil engaged in further struggles to restore democracy and accountability, and you succeeded. This conference can be seen against the background of the larger panorama in which the people of Brazil continue to seek equitable sharing of resources, a greater realization of democracy, and honest accountable government.

This Brazilian panorama can also be seen against a still larger backdrop. When we speak of these epic struggles, could we not substitute the name of most countries of the world for “Brazil” – and say the same thing? The Canadian political agenda, for example, has many of these same issues: equitable sharing of resources, enhanced democracy, accountable government. It is inevitable – historically, in every country, these persistent day-after-day struggles are necessary to maintain the dynamic equilibrium between governments and governed. In retrospect, I am thinking I jumped too quickly when I agreed to speak about the relationship between people and Ombudsman and Ouvidores as a “partnership”.

Of course I agree there is and must be a positive working relationship. But upon reflection, I think the place of the Ombudsman is not shoulder-to-shoulder with the people as a partner. Rather, I think, the place of the Ombudsman is to stand at that balance point, that place of equilibrium between the needs of governments to govern, and the demand of the people to hold governments accountable to them, to ensure the scales of power never tip against the interests of the people.

I also suggest the view of an Ombudsman-people “partnership” implies a monolithic view of “the people”, rather than seeing “the people” as a composite of many cultures and religions, as groups with varying degrees of wealth and poverty, of power and powerlessness, each its own constellation moving in a larger universe. In this regard, each person, each group, has the right to be treated equitably - having respect shown to their special needs - rather than to be swallowed up in some abstract determination of equal treatment.

The Ombudsman/Ouvidor concept has the potential to go beyond issues of administrative justice – to function as an instrument meaningfully finding that balance for everyone, especially those who are vulnerable, marginalized, not well positioned to deal with powerful and often bureaucratic and impersonal institutions. I want to come back to that thought in a moment to shed further light on the concept of “equity”.

Let me pause for a moment to share the perspective I bring to this topic. In April of this year, for the first time, the City of Toronto has a “legislative Ombudsman”, a person who is independent of government and who reports to the law-making body which represents the people. The position was established by the Ontario Legislature through the *City of Toronto Act 2006*.

The Ombudsman’s function is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of the City, its agencies, boards, and commissions. I take complaints from affected persons, and I can act on my own initiative when I believe an investigation will serve the public interest. I may also have issues referred to me by City Council which I can investigate and make recommendations about.

I am Ombudsman for the 6th largest government in Canada – and act as an intermediary for a richly diverse public of which half were born outside Canada, a public of which a third at home speak one or more of 140 languages other than English or French. The City of Toronto has 36% of all immigrants living in Ontario, 20% of all immigrants living in Canada. Those are significant statistics for an Ombudsman, 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, and with differing expectations of what should have happened, and what now should happen to end the dispute.

If I am a partner, then I am a partner to hundreds of publics, likely hundreds of very different views as to what constitutes “good government” in Toronto. For the Ombudsman, as well as the Ouidor, fairness is a fundamental concept of “good government”. When I say fairness, I mean this in three ways: substantive fairness, procedural fairness, and equitable fairness.

Substantive fairness: is the substance, the outcome, of the decision fair? Was power in decision-making fairly distributed? Was there legal authority to make the decision? Was the decision based on all available information? Was irrelevant information excluded? Was the decision-maker biased?

Procedural fairness: Was the process, the procedure fair? Were the rules created to give impartial results? Were the rules known? Were the rules enforced? Were favouritism and discrimination present? Was the complainant able to present his/her point of view? Was the decision-making process applied to everyone?

There is also equitable fairness, as compared to equal treatment. For example, persons who operate at a disadvantage in society do not feel much comfort when they are told they are being treated equally with everyone else. It was Anatole France who in 1894 said with considerable sarcasm: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

Equitable treatment is an important element to a progressive democratic society. When people feel government treat them unfairly, or ignore their disadvantaged circumstances, when they can find no remedy to unfairness, the alternatives they turn to are demonstrations, blockades, riots and worse.

As I see it, my task is not to be a partner with the public, but rather to use my mandate to work towards eliminating the inherent power imbalance between members of the public and powerful government in dealing with disputes, and to assist in reaching constructive reconciliation. If I am to be successful in that task, there are various aspects of the Ombudsman's role which are quite difficult to reconcile with a role as partner.

The Ombudsman can help the parties see each other's point of view for the first time, and from there to work together to explore available options for resolution. I can't do that if either side sees me as partner to the other. I must serve fairness and justice to the public servant as well as to the public.

Then again there is the role of the Ombudsman as objective investigator, as determiner of fact. My investigation will not be seen or accepted as objective if the complainant sees me as a defender of government, or the public servant sees me as an advocate working in the complainant's interest.

When it comes time for me to act as a creative resource and facilitator - again, I cannot be "a partner". Rather my task is to provide an opportunity for both the complainant and the public servant to have the satisfaction of being successful in crafting a mutually-satisfactory solution to the acknowledged problem. I want the public, the public servant, and government to see the Ombudsman's work as improving the quality of governance.

I am not there "to take sides" from the outset, although once wrongdoing has been established, there is no doubt that I have an expectation that a remedy will be provided, that corrective measures will be taken. I want officials to see me as offering a service rather than being a threat. I want officials to see the Ombudsman as a creative resource that they can use to improve their way of doing business.

Just as important, every segment of the people will feel that they have a voice, will feel that their voice will be heard, and will feel that they are empowered to participate in creating change, that they have a place at the table where decisions are made which affect their lives. Each will say, "I went to the Ombudsman or Ouvidor and they heard what I had to say – they understood."

"Because I didn't accept unfairness, because I defended my rights, the Ombudsman or Ouvidor helped me to make changes in the way government works – and because of my complaint, others are now served better. " That is one of those "unanticipated results" which are can be derived from the work of an Ombudsman or Ouvidor – a sense of empowerment of people to participate in creating change, to have better government.

Now that feeling of empowerment can be enhanced through one aspect of the Ombudsman's work in which working with the people as partner is not only appropriate, but is also essential.

There are three prominent interlocked issues involved. How can you use your position as Ouidor or Ombudsman to increase the capacity of the organization you oversee to accommodate diversity? Second, how can you help to make the organization you oversee more accessible to the people it serves? Third, how as Ombudsman/Ouidor can you act to increase the ability of the organization you oversee or work with to offer equity?

The first step in using your office to achieve these goals is to reach out to every segment of society who has a right to our services. Once you have established working communications, once you have trust and confidence, once you are showing that you can be useful, you and each of your partners will be able to assist the organizations you oversee to improve their own accessibility.

Let's start with accommodation of diversity. Rate your own office on your own scale from one to ten, make your own list of what constitutes diversity in your company, region or jurisdiction. For me in Toronto, accommodating diversity means creating access and equitable treatment for youth and children who live on the street, persons who are homeless, people who have deep roots in Canada and those who arrived last week, indigenous peoples who too often are regarded as not having rights of any kind, persons whose minds are causing them distress, persons who have physical or emotional disabilities, persons who are poor, persons without formal education, persons of religions, cultures, ethnicities which are not a part of the so-called 'mainstream'.

These categories have two characteristics in common – they are likely to come into contact with government more than the average person, and they are likely to be the least equipped to defend their interests and rights with government. But if we don't go to their turf, they are not likely to find us. If we do not have their confidence, they are not likely to trust our services. If we are to be true to our calling, we need to be sure we serve all people in all their diversity, and we have to figure out how to do that.

Government is often geared up to deal with the "average person", the middle class educated person; They tend to tolerate only so much difference, and those who don't fit the rules, who do not conform to the established processes are likely to find themselves at a disadvantage. We must ask ourselves: how much of that is also true of us?

I am sure each of you can make your own list of people who need your services, and yet are underrepresented among your complainants; frankly, if you are not doing strategic outreach, it is likely that those most in need of your services are the least likely to know about you and therefore are not being served by you. That is why we need to "reach out", to make sure all aspects of our communities and demographics have access to the service we offer. With persistence, with good will, with a willingness to learn, we will find that there are partners there who will work with us to bring equity into our own offices,

partners who will help us to provide better access to everyone.

Once we are in a position to offer our own services to all segments of our population, we will be better positioned and better experienced to assist the organizations we oversee to make similar changes, helping them to be more inclusive, practicing equity in the way they do business. Working with us in this task will be our new partners.

We can step back for a moment to see the broader picture of what is happening here. Today all kinds of persons and groups are coming forward to demand what you and I take for granted as our birthright: simply that each one of us be respected for our inherent worth as a human being, simply that we are able to exercise and enjoy our fundamental and universal human rights collectively and individually, simply that we be able to share our gifts as productive members of society, and certainly we expect that we will be able to influence decisions which have significant impact on our lives.

Now let's look at the other end of the telescope: This is what you expect, and generally, what you have. To what degree is that true of all human beings who live in your city, your region, your country?

I can say that for Canada, not only did we historically deny people who were "different" the exercise of their rights, but society also denied the opportunity for diverse peoples to contribute their full potential. There is such potential for new ideas, contacts, talents, philosophies, and knowledge offered to us when diversity has a voice. But – don't take diversity's gifts for granted. We cannot expect simply to say we welcome diversity - we must accommodate it; we cannot declare ourselves to "be open" to diversity without expecting that as well, the very core of our institutions must change, and that we as individuals must change, sometimes also to the core.

And we have a lot of catching up to do. We must change; we must transform our institutions because for most of us, diversity was never contemplated in the design of the society in which we now live. We must do this because unless there is room for diversity to be expressed in every aspect of our society, unless we legitimize diversity in our institutions, we cannot expect to realize the benefits of diversity. To the contrary, we can expect confrontation and conflict as the natural forces of the human spirit to cause people to create space for themselves where no space has been opened up for them.

If all of us are to take ownership of our future, responsibility for our success, each of us need to feel that our institutions are responsive to us, that they respect our dignity as human beings regardless of our circumstance, regardless of our socio-economic identity. Let's go through another little checklist. How many of you make judgment calls on the basis of cultural stereotypes picked up over time, including those which we acquired in childhood and of which we are only vaguely aware?

I join you in raising my hand.

How many of us have been conditioned by education, by family, by work and religion to have particular ways of viewing the world? All of us free of racism? Elitism? Sexism? I didn't think so. That's all right – we are all just giving recognition that we must begin on this personal and organizational journey from wherever we are, headed for the inclusive, just society which we want for our children and our grandchildren.

But if we don't begin today, when will we begin? I suggest now is a good time.

So with that self-examination in mind, turn now once again to equity. In determining if a decision or policy is equitable, it doesn't matter whether it appears on the surface not to discriminate. It doesn't matter if it seems fair.

The question is whether its actual effect is to discriminate against a particular group of people who are somehow different than the general population. The intent of the practice or policy is of no consequence; the effect of the practice or policy is what is at issue. Equity arises from positive action rather than simply the absence of discrimination. Equity means finding ways to reach out to those who do not come forward. Equity means offering accommodation rather than waiting for it to be demanded.

Accommodating diversity must run through every thread in the fabric rather than being a catchy design or slogan. We must seek out opportunities to interact, to speak to each other's hearts, to facilitate communication between those who seem to be having difficulty hearing and those who are having difficulty in being heard. And once we start, it is particularly important that we ensure that the changes we have made remain firmly in place, lest they be treated as a fad which should be permitted to go out of style. We need to embed accessibility and equity at the systemic level, as fundamental aspects of what government is, what it does.

My time is up. Ouidores, Ombudsman - as I told you at the outset, I did not have many answers for you. I hope, however, I have left you with many questions that will lead you to further exploration as you make your own role more relevant to the people you serve. You can make your own summary of my remarks – think of whatever I said that means something to you. Then take it - it's yours. Use it as you will.

Thank you for your attention. I will treasure your hospitality long after this event is over.
Obrigada!