

9th Biennial CAROA Conference, Bonaire

Keynote Address

Mr Peter Tyndall IOI President

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It's a great pleasure for me to be here today at the opening of your conference. It's an excellent agenda with many opportunities for learning and discussion. As with all of these occasions, it's an opportunity for us to come together and learn from each other, sharing the best practice we have developed and our successes in addressing the challenges we face.

I speak to you today as President of the International Ombudsman Institute. The IOI is the only global Ombudsman organisation. We have almost 190 members in more than 90 countries worldwide. The IOI will celebrate its 40th anniversary next year but the institution of Ombudsman as we currently know it dates back more than 200 years to its foundation in Sweden in 1809. The purpose of that Office, which remains just as relevant today, was to safeguard the rights of citizens by establishing a supervisory agency independent of the executive branch.

The classical Ombudsman model developed following the direction set by Denmark whose Office dates to 1955. This model is primarily concerned with maladministration, and is of course the basis for most of your Offices in CAROA.

As you know, the IOI headquarters are in Vienna. The Secretariat is provided by the Austrian Ombudsman Office and funded by the Austrian Parliament. I am delighted to see our General Secretary, Günther Kräuter here with us today.

IOI membership fees are devoted to providing services for members. These include training, research, small regional grants, conferences on current challenges and best practice papers. The training provided by the IOI has included courses run by Queen Margaret University and this training has recently been provided in Spanish in Latin America and will shortly be delivered here. I'm glad that the IOI has been able to support the delivery of this training following the conference, as we need to continuously develop our skills and improve the way we deliver our services.

IOI small grants have also included support for the Northern Ireland Ombudsman's Human Rights toolkit which I commend to you.

IOI voting membership is open to all public service Ombudsman offices. This includes specialist offices such as those dealing with complaints about the Police or armed forces as well as the general public service ombudsman schemes. There are strict criteria for full voting membership, especially regarding independence.

The IOI will shortly be introducing tiered membership fees to be more accessible to smaller offices. The IOI works to support offices under threat and has actively intervened in support of members, for example, in Poland, and I will say more about this later.

The IOI is also committed to developing Best Practice Papers. The first in the current series sets out best practice in establishing and reforming Ombudsman schemes. It seeks to supplement the Bylaws by addressing how to ensure that the scheme developed or reformed can fully comply with them and reflect best practice.

There are two new papers planned. The first is about own initiative investigation. It will address topics such as how to choose the subject of the investigation, resourcing, investigation techniques and maximising impact.

The other paper is about being effective in achieving systemic change. We have started with some simple research and I will refer to that later. Every Ombudsman will talk about the dual functions of the Office – resolving injustices suffered by individuals and improving services. However, how sure are we that the changes we recommend to service providers are implemented, and if they are implemented, that they have secured the desired outcome – that the injustice suffered by our complainant is not being suffered by subsequent users of the service. This paper will address how you can be sure that your changes happen and deliver the outcome you envisaged.

Coming now to yourselves. The Ombudsman community in CAROA has often punched above its weight. Arlene Brock was a highly active IOI Board member and became an IOI life member. Your current Regional President has also served with distinction on the IOI Board and will prove very hard to replace. She has performed as Ombudsman with great courage and distinction and I am pleased to have the opportunity to acknowledge her contribution today.

Being an Ombudsman is a unique privilege. It is one of the few positions where you can make a real difference for ordinary people, both in resolving individual grievances and in improving services for others. The nature of public services Ombudsman institutions varies across the world, and the background of the Ombudsman also varies. In some instances, only a lawyer is eligible. In other cases, a person with experience of public service is required. Ireland had a tradition of appointing journalists. Other countries appoint politicians. Ultimately, it doesn't matter what your background is, it's the qualities that you bring that are most important.

Most office holders have a strong sense of justice. They believe in levelling the playing field between the might of Government and the relative powerlessness of the individual. They have a personal passion for fairness.

They understand that the role is an objective one. They must weigh the evidence in a fair-minded way and reach well balanced conclusions.

Once it has been proved that an individual has suffered an injustice, they are unswerving in their commitment to putting things right for the person and making sure that the failing doesn't happen again. It is often said that the role of the Ombudsman is not to be an advocate. When determining whether something has gone wrong, this is indeed the case. However, having concluded that an injustice has occurred, then a good Ombudsman will advocate determinedly for an acceptable resolution.

The Ombudsman needs to be an excellent communicator and a negotiator. If the outcomes are hard to come by, they rely on these skills to secure them.

Every Ombudsman should have this skill set. However, the environment in which you work will determine how you do your job.

Working, as many of you do, in small countries places a particular focus on the individual. Your work can be big news in a small place. The pressures which go with this are also unique. The former Gibraltar Ombudsman, Mario Hook, would describe being approached with complaints in the supermarket or on the beach. This is not an everyday occurrence even in a relatively small country like Ireland.

Although Ombudsman offices in larger countries such as the UK do find that senior public service managers work within a relatively closed environment, the reality is that many complaints are characterised by a greater distance between the point of service delivery and the centre, and can be dealt with more easily on their facts without personality intruding. This is equally so because of the size of the Ombudsman's Office.

I'm currently doing some work for the IOI developing the paper on effectiveness in securing change. This is prompted by the fact that we all look to improve public services, but don't always feel confident that changes which we recommend are put in place in a sustainable fashion and that they achieve the desired outcomes. I want to reflect for a moment on how this impacts particularly on the smaller Ombudsman Office.

One of the realities most of us have faced is that demand has increased while resources have not necessarily kept pace. We've all had to get better at doing more with less.

For the bigger offices, this often entails ensuring that processes are as simple as possible, with two stages being increasingly the norm, to reduce the number of people working on a complaint. I've heard it characterised as deciding what the complaint is and whether it is for us firstly, and resolving it secondly. Increasingly IT is used to receive complaints to allow the staff to focus on investigation and resolution.

One example of this approach which might interest you here is used by the Traffic Penalty Tribunal in the UK. They are, if you like, the Ombudsman for parking tickets! They previously had a system of adjudication using the phone where the complainant and the local authority issuing the ticket joined a conference call with the adjudicator. There was a three way discussion, and the adjudicator subsequently issued a decision.

More recently, they have developed an on line system which is much like adjudication via WhatsApp. Each party puts its case in a three way online conversation, attaching evidence such as photographs, and an online decision is issued. The immediacy and interactivity of this approach might work well in a small office context, although it is evidently most suited to simpler cases. It is likely to provide a more accessible approach for the social media generation, who have come to expect that they can do everything online, and find filling paper forms and even talking to people alien and burdensome!

One example the Tribunal uses refers to a case where a complainant's car was with the garage for servicing, and it received a parking ticket when they parked it illegally. Surprisingly, the law in the UK states that it is the car owner, and not the garage which is responsible for the fine. In this instance, the council agreed a 50% reduction during the online interaction.

This is an excellent example of the next point I want to make. Informal resolution has been one of the other key responses to finding greater efficiency. Whereas the traditional Ombudsman model might be construed as a lengthy investigation followed by a comprehensive report, the reality for most offices these days is that we seek to achieve an outcome more swiftly and without the need for a lengthy consideration of the complaint.

Often, a simple phone call or email from the Ombudsman's Office can unlock the problem. Whether it is a failure to respond to correspondence, or a failure to provide a service or grant to which the individual is entitled, a straightforward intervention can bring about the desired outcome. You need to be sure that in doing so, you don't miss out on identifying systemic problems and that the learning is not lost. My Office, for instance, issues regular casebooks which include summaries of resolved cases as well as those which have been more formally considered. The former Irish Pensions Ombudsman, Paul Kenny, said that he considered each formal investigation to be a failure, because it was evidence that the powers of persuasion had failed.

This brings us back to the qualities of the Ombudsman working in a smaller country context. Relationships are critical. Where possible you need to be able to deal directly with those in charge of delivering public services, whether they are public officials or politicians. You need to strike a fine balance between good communications and independence. It's important to remember that on occasions you will publicly disagree, while avoiding any personalisation of that disagreement.

A call from the Ombudsman to a senior official can often find a way forward on a case that has become entrenched.

When cases cannot be resolved, then the quality of the investigation is key to securing an appropriate outcome. The relevant evidence should be carefully weighed. You need to avoid any suggestion of pre-judgement. The findings should be based on the evidence, and the recommendations should be clearly linked to the findings.

You need to be clear as to whether the cause of the failing is systemic, and to evidence this. If you are making recommendations to address systemic failings, you need to ensure that these are achievable. Your recommendations should include a requirement to notify you when the action has been taken, and you may also wish to require the body in your jurisdiction to confirm that the measures taken have proved effective in tackling the problem. Before making recommendations, you may wish to give the body an opportunity to put forward its suggestions for the best way of tackling the underlying problem. That ownership of the actions can be helpful in securing compliance.

However, most Ombudsman offices will reach a point where a body in jurisdiction either disagrees with their findings, or refuses to implement their recommendations. This is when the mettle of the Ombudsman is really tested.

Ombudsman Offices doing their jobs will inevitably on occasions disagree with their governments. One of my predecessors as IOI President, former New Zealand Ombudsman Beverley Wakem, often talked about the Ombudsman's role in "speaking truth to power".

The Ombudsman must be seen to stand publicly by the recommendations. The Parliament should be engaged and the Ombudsman's right of access is normally enshrined in their founding legislation. However, on occasions, Parliaments will not hold the Government to account. This happened in Ireland on one occasion and the incoming Government made changes to the Committee arrangements to reduce the possibility of a recurrence.

It is vital that at this stage the Ombudsman has good contact with the media. You need to be able to present your case powerfully. The ability to engage the media and to use it to highlight the failure to respect decisions of your Office is essential. The two Irish Ombudsman Office holders who were former journalists were both highly active in response to Government failures. The first Ombudsman, Michael Mills, faced major cuts to his budget by a Government which did not like being criticised. He went to the media, and received significant public support. The Government made substantial concessions in response.

The second instance relates to the only case in the 31 years of the Office where the recommendations have been rejected, and were not accepted following subsequent engagement. The Government refused to refer the case to a Committee in the first instance. Following very public pressure from the Ombudsman, this decision was reversed and the Committee considered the Ombudsman's report. It decided not to recommend implementation of the recommendations, and they stand unimplemented to this day.

However, the level of criticism the Government faced makes it less likely that such a situation will happen again.

One other option which can be considered in extremis is the use of the IOI. I would like to give an example of an investigation that was undertaken by an Ombudsman, in this instance, the then Ombudsman for Slovakia Dr Jana Dubovcová, using own-initiative powers. In this instance, the matter investigated was the decision to place Roma children, without intellectual disabilities, into schools for children with special needs. The Ombudsman concluded that the decision was not taken on educational grounds, but in fact constituted racial discrimination.

The Ombudsman sought to lay this report before the Parliament, the National Council of Slovakia. The Council refused to discuss the report, prompting an intervention from the IOI. Ultimately, the report was discussed.

The Polish Ombudsman, Dr Adam Bodnar, also experienced pushback from his Government who sought to undermine the work of his Office. His Office is to the fore in protecting rights in Poland, which are in danger of being eroded by the populist right wing Government there. In response, his budget was severely cut. The Government also sought to undermine the Constitutional Court, and proceeded despite heavy international criticism.

The IOI in response established a Commission of Inquiry to go to Warsaw and speak with the Government, the judiciary, NGOs and other significant players to establish the facts and as a show of solidarity. The IOI also worked with other key international partners to maximise our impact and to support theirs. A report was published and launched at a press conference. It received considerable publicity and hopefully helped to resist further erosion of the capacity of the Ombudsman's Office.

Subsequently, the IOI prepared new guidelines setting out the range of measures which can be taken to support colleagues under threat, ranging from letters to Parliaments to practical support on the ground.

The former Public Protector in South Africa brought the case against President Zuma regarding the use of state money to finance improvements to his private property which led to international coverage. The pressure on her included death threats.

For most of us, such extreme outcomes are very unlikely. However, we must be prepared individually to fight for the rights of those we serve and to preserve the dignity and effectiveness of our Offices. These offices are personal. The Ombudsman sets the tone and the culture of the organisation. As I said in my opening remarks, it is privilege to hold these posts, but with that privilege comes responsibility. Our passionate commitment to fairness must be embodied in our work. We each must make sure that through our actions and our stewardship we hand on our offices to our successors in good health, as Nilda is doing. Securing justice and fairness for those who depend on public services in our communities is our job, and our personal authority is what allows us to do it. Our strength comes from our casebook, from the work of our offices and from our founding legislation, but above all, it derives from our own commitment to delivering fairness and better services for all.