

## Notes for Remarks

by Fiona Crean  
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### ***The Role of the Ombudsman in City Government***

It is a privilege to talk with you about the role of an ombudsman. I think that as lawyers to government, you are uniquely situated to influence public policy, advise your clients and litigate on their behalf. Your responsibility is weighty when it comes to issues of fairness, equity and social justice. But you have the opportunity, indeed the obligation, to provide guidance to a myriad of clients that can assist leaders make bold shifts in their approaches and behaviours on these issues.

I welcome the opportunity to ensure that the concept of Ombudsman is firmly embedded in the constellation of your thoughts about administrative justice. I also want to be sure you understand that the Ombudsman concept has the potential to go beyond issues of administrative justice and can be seen as an instrument meaningfully connecting “the people”, especially those who are vulnerable, marginalized, and not well positioned to deal with powerful and often impersonal institutions.

In September 2008 I was appointed by a legally required 2/3 majority of City Council as the City’s first Ombudsman. My legislation appoints me for a 5 year term renewable once. I can only be terminated for cause and that must be through a 2/3 majority of City Council. These provisions allow me to make adverse findings without fear of reprisal.

I took up the post in mid-November.

I am what is known as a “classical” or legislative Ombudsman, that is, a person independent of government who is an Officer of City Council. My function is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of City government, its agencies, boards, and commissions.

I receive complaints from affected persons, and I can act on my own motion. I can conduct systemic investigations, particularly when they are in the public interest. I may also have issues referred to me by City Council which I can investigate and make recommendations about.

We are squarely in the middle. My role is neither as an advocate for the complainant nor as an apologist for government but rather as a champion for administrative fairness. We are an alternative to the courts and adjudicative bodies who render decisions and issue rulings.

Ombudsmen consider the hallmarks of their work to include independence, flexibility, confidentiality, impartiality and accessibility. Our approaches are those of moral suasion, reasoned argument, common sense and the capacity to make recommendations.

Some would say the latter is toothless in its ability to render change. In my view, while it is important for an ombudsman to make clear what the consequences of our findings should be, it is for the governing body to decide what action to take about those

consequences. My job is to assist City Council in ensuring good governance, not to manage the organization or act as a legislator.

I am an Ombudsman who is 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. These are significant statistics, since it means that the chances are that a person with a complaint was dealing with a city public servant of a very different cultural background, with differing expectations of what should have happened, and what now should happen to end the dispute.

As you know so well, no level of government plays a more direct role in peoples' daily lives than that of a municipality. This means, I expect, that we are going to find a new variety of ombudsmanship emerging here in Toronto as compared to provincial Ombudsman offices across Canada. Already there are unique and interesting challenges to my role and how I might approach them.

There are many opportunities that the Ombudsman can offer to improve the quality of administration and governance. The evolution of dispute resolution over the years in Canada has ended up with courts being granted a tightly-held near-monopoly in the resolution of disputes. It's so simple: in the civil system, one litigant becomes a winner, the other a loser. In the criminal system, you are guilty or you are not guilty. Justice almost becomes a bystander in this process.

An Ombudsman on the other hand can allow the parties at issue to retain control of the process and to craft a solution which is mutually acceptable and which all parties take responsibility for successfully implementing.

The Ombudsman is interested in fairness, always with a focus on the public interest. But fairness cannot be approached with a lens of equality. Fairness must be examined in light of the inclusive notion of equity where people and groups are actually treated differently according to their specific circumstances and contexts in order to give them access to equitable results. It is important to intend to be fair in treatment but we must provide greater emphasis on the effects or impact of that treatment in evaluating fairness.

As Ombudsman, I am interested in assisting the public service throughout to develop efficient complaint handling mechanisms in which complaints are seen as opportunities to correct deficiencies, to improve service. We are well positioned to help the parties see both sides of an issue, and together explore available options.

If resolution doesn't happen, we can move into a formal investigation with powers to subpoena documents, enter premises and compel witnesses. I use these powers carefully, sparingly and with the respect they deserve.

Sometimes the parties are unable to resolve the issue. There may be a variety of reasons for this including regulation changes beyond the public servant's authority.

It is at that juncture, that if I have made findings of fact, I will issue recommendations, and press for implementation until those recommendations are accepted. I have a responsibility, I believe, to present recommendations in a constructive and non-threatening manner. I also know that my responsibility is to be practical, and to understand the full implications of any particular recommended course of action.

Most public servants recognize the practical benefits of fixing a problem before it becomes big. Most, I have found, are dedicated to delivering the best possible quality of administration.

By the end of September my office had topped 600 complaints. There is undoubtedly a pent up demand and we know in an organization as large and complex as this that things go wrong. At the same time, the public has a right to quality service in a timely and accessible way.

The litmus test for individuals about the value of a service is how well things work when a problem arises. Because things do go wrong. Plain and simple. People understand that. What they don't understand is why it seems difficult to fix them. That's why we say to public servants, when our office calls - cooperate. Be straight forward, don't duck, don't try to defend. Just set out the facts, the policies, be helpful.

We are not in the business of "gotcha". We are in the business of fair administration for all the residents of and visitors to this city. At the same time, the number of complaints we have does not suggest that Toronto is necessarily badly administered.

To quote an Austrian colleague, Viktor Pickl,<sup>1</sup> an ombudsman can influence public opinion from suspicion and a perception of maladministration to a clear understanding of complaint reduction in the following way:

"...only one in ten investigations actually faulted the administration...But in the other nine cases, the Ombudsman is still doing something. He explains to complainants why the official action was correct, even if it was misunderstood and a sense of injustice lingers. It is as important to remove lingering doubt as it is to correct wrongdoing. In all investigations, the Ombudsman is reducing friction between citizens and government."

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<sup>1</sup> Viktor J Pickl, "Investigating Complaints: A Comment", ed., *International Handbook of the Ombudsman: Evolution and Present Function* (1983)

It was the Supreme Court of Canada who said some 25 years ago that an ombudsman's

“impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.”<sup>2</sup>

With the assistance of an Ombudsman to resolve complaints and issues, the City will be better administered and over time residents will feel they have a voice, that their voice will be heard. And that surely is a good building block for the transparency and accountability of City government?

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<sup>2</sup> B.C. Development Corp. v. Friedman (1984) 2 S.C.R.at 460.