

Notes for Remarks

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What does the Public Interest Mean for Statutory Bodies?
An Ombudsman's Perspective

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In government, two of the elements most resistant to change are combined. I refer to human behaviour and bureaucratic institutions. We can change laws, apply new rules, bring in new people, redesign organization charts – but we cannot be assured our reality will change.

Auditors General are great in bringing these facts of life to our attention in explaining the gap between what we say we will do and what we actually do.

Let's remember former Auditor General Denis Desautels' audit of the HRDC fiasco when he warned the problems he found extended far beyond "a breakdown in controls" and were instead rooted in the behaviour and culture of the department. The answer he said was the building of a "strong base of ethics and values". This is particularly important, he said, when decisions are based on "judgment calls".

Obviously, the constant debate is the state and price of democracy. As Professor Lok Sang Ho would have it, governments have two things to do: promote the common good and balance the interests of diverse groups.

If we assume that government is responsible for serving the people, then public policy must be designed to serve the public interest. The whistleblower is seen as serving the public by calling attention to an uncorrected wrong.

Encouragement of whistle blowing provides balance between the power of a superior officer's conduct and the voice from below which says, "That's wrong. That's unfair. That's unacceptable. That must be remedied."

But if a whistleblower is to have assurances of immunity from recriminations, he or she must have assurances of protection. And thus, the grafting onto the democratic system of an ombudsman with that specific special assignment as an Officer of the People.

The Ombudsman is an alternative to the courts. It is to be distinguished from that legal process. Why is this distinction so important?

Because we are a forum that is more flexible, without cost, absent from long delays and at the end of the day, we are not a court room where the battleground of litigation creates winners and losers.

We ferret out maladministration. Ombuds rely on moral suasion and doing the right thing. Our job is to reset the dial on procedural, substantive and equitable fairness – to make sure that government administration is serving the public interest and doing so fairly and equitably.

Donald Savoie recently said that "government is about many things, but promoting human dignity is central to its purpose."

I think of my purpose in much the same way although I am not within the public service administration. While we call the Ombudsman an Officer of Parliament or in my case, an Officer of City Council, the reality is that the Ombudsman is an Officer of the People - a public conscience. That wee voice that cannot be ignored.

But how do I make actual determinations in specific issues on a day-by-day basis? What is my reference point? Which public interest am I serving? Is it situational? Can I actually define it?

Well I start from the premise of accountability. What am I accountable for? To whom? Why? When? How?

Accountability – the requirement to explain and accept responsibility for carrying out an assigned mandate in light of agreed upon expectations.

The application of accountability involves three elements:

- Taking into consideration the public trust in the exercise of responsibilities
- Providing detailed information showing how responsibilities have been carried out and what outcomes have been achieved
- Accepting responsibility for outcomes, including problems created or not corrected

The role of public interest for an ombudsman is also about substantive justice. And so the perfect example of that is our investigation into the eviction of seniors in public housing for non-payment of arrears.

It was not about recognizing eviction as a one off problem. It was a systemic issue. In reporting publicly on this matter, I had the public interest central in my thinking.

- It was about holding the Toronto Community Housing Corporation accountable for its actions
- It was about promoting substantive justice
- It was about raising the public policy issue around the eviction of our most vulnerable citizens
- And it was about the social and financial implications of having seniors living on the street, occupying shelters and ultimately our hospitals

And yes I wanted to help shape public debate on this matter. On the other hand, I don't report publicly on individual failings of departments when something has gone wrong for a citizen.

That is about rectifying errors and ensuring it doesn't happen again. It serves no public interest to have a matter such as a fence dispute publicly debated except to embarrass a few officials.

It is not the Ombudsman's role to name and shame. In fact that is why you see individual names removed from all public reports. My legislation is remedial. It's about education and the improvement of public administration. It is not about winners and losers.

In many ways I boil public interest as it pertains to statutory bodies down to a common sense litmus test of questions:

- Is there a systemic issue involved?
- Why should the public know about this? How will it help?
- Whose interests are being served?
- Will there be a systemic improvement?

But there is no blanket rule. We put every case through the lens of these questions.

In 2012, I reported on the public appointments system at the City of Toronto. There were political risks inherent in going to City Council on this issue but the evidence regarding procedural unfairness obligated me to report publicly.

And really it was for Council to decide on whether it intended to uphold its own Public Appointments Policy or go to some variation such as Chicago and have politicians make their own citizen appointments.

I had no say in that but it was a matter of public interest that the issue be debated.

Result:

Council upheld its policy and voted to strengthen the administration's process by providing additional resources.

Another investigation looked into insurance claims administered by the public service through an insurance company addressing claims such as damage to cars from potholes, slip and fall accidents on icy sidewalks, falling tree limbs and so on.

In this case, the evidence showed that claims were routinely denied as a result of a "thorough investigation" where none had taken place. The public interest issue here was obvious. The truth of it is that both civil servants and elected officials have privilege and power relative to many citizens.

Policies, practices and processes of government can often alienate, exclude and discriminate against those of us who are not “in power”, those of us “without influence”, those of us not at the table, those of us unable to exercise our rights in ways that will be heard or acted on.

While the role of government is to serve the people, we need to be constantly vigilant that public policy is doing just that....

And keeping the public interest uppermost in our minds is one of my primary goals in serving as ombuds.