

Notes for Remarks

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Democracy, Equity and Access in Uncertain Times: Ombudsman as a Bridge

It's wonderful to be among friends and among people who have worked so very hard to make this city a better place for us all.

It's hard to believe that the Urban Alliance is celebrating its 36th year and yet its work is nowhere near completion. In fact these days, that work may be more important than ever.

These are polarized times in which we live with great divides across economic class, ethnicity, gender, disability, religion and ideology. We face enormous challenges: that of keeping our powerful governments accountable to the people; that of ensuring equity is offered in services provided by all public institutions; and the challenge of ensuring our public services remain as relevant and accessible to the most marginalized among us, to those who have no place at the table. These challenges are fundamental to protecting the quality of our democracy and the values which we cherish as Canadians.

Democracy isn't just about elections. We know that democracy is about an independent judiciary, a free press, the right to associate, freedom of religion, dissent and expression, and so on. But it is also about due process, accountable and transparent local government. It is about how government treats its residents and citizens.

These are fragile times.

And the conversation I want to have with you this evening is how you, the public, and I, as Ombudsman, can work together to keep our government accountable in the protection and enhancement of our democracy.

Canada's building blocks – in the image of John A Macdonald - were all in place long before anyone thought about the value of difference, the value of diversity. Institutions created in a past era – with the attitudes, world view, personnel which reflect those times – largely remain intact. Power, privilege, attitudes, prejudice and the so called “mainstream” function to create policies, practices and processes that often alienate, exclude and discriminate against those of us who are not “in power”, those of us “without influence”, those of us unable to exercise our rights in ways that will be heard or acted on.

Some would say that our governments and institutions are already so democratic that the independent review offered by police commissions, Ombudsman and the like is really not all that necessary. It might be appropriate to characterize that as sanctimonious but certainly it is self-serving.

We all must be very alert in these times of change and transition. In the haste to restructure in the name of balanced budgets, it is possible that the system of accountability which we have in place, and of which the institution of Ombudsman is a part, may be overlooked.

Unless care is taken to preserve the public's right to independent investigation of complaints in any new structure, that right will be lost. The only recourse will be the courts -- if you have the money and the time to sustain such an action. But making complaints is much more than just a right – it is an opportunity for ordinary people to shape the way governments provide services.

This is an important aspect of accountability – responding to complaints. So that's the first challenge -- keeping accountability up front wherever there is change.

Unfortunately, all too often, serving the public today is seen as a bottom line dollars and cents equation. This puts us squarely at a crossroads. Never has the challenge to provide equitable service been greater and the resources less.

I am increasingly impatient with those who believe that because we are in a time of fiscal restraint, we cannot afford to keep governments and institutions accountable, not only to the public at large, but to the public they serve.

The rights of every person in this room are in jeopardy if we permit anyone to plead fiscal imperatives as an excuse for not behaving justly, fairly, and equitably or as an excuse to restrict the right to have complaints reviewed independently.

This does not mean that we should ignore our fiscal responsibilities, but it does mean that when change is made – what the City is currently describing as service restructuring and efficiencies – the imperative for equitable service must remain central.

Equity cannot be put off to another day. Every time you hear about a service change or program efficiency, ask yourself:

- How will this change affect the rights of all people to be served equitably?
- How will this change affect those who are most vulnerable and least able to defend their interests?
- If I, as a resident ever have a complaint about this matter, where is my assurance that it will have an independent investigation?

If you are not satisfied with the answer, you are hearing a clarion call for action -- your action -- our action.

Governments shape laws, set policies, provide services. It is one thing to advertise equity, and something quite different to create the space for equity to become meaningful.

It is one thing to defend and advance one's own human rights, and another to create a culture in which everyone's rights are protected and advanced.

It is difficult work to engage in the understanding of competing interests, finding compromise, accommodating others and working together to resolve differences in the views and lived experiences of others.

Public service is most accessible to those who can navigate the established processes, who fill out the forms correctly. Public service favours those with education, those who can meet the bureaucracy on its own terms. It also should not surprise us that marginalized communities have greater difficulty in gaining access and receiving equitable treatment.

As Ombudsman, I see the impact of government on real people. In particular, I can see where institutions, policies, practices, and attitudes which were commonplace in past decades impact on today's communities. There may be unfortunate gaps where policies have not kept pace with shifts in family structure, income patterns, or demographic characteristics of the population.

Municipal government has a responsibility to provide services that are accessible, fair and equitable to all of its communities.

Our role in that equation is to provide a 'check and balance' – to even the playing field between citizens and their government. The ombudsman concept involves the public, on the one hand – and the public service on the other hand. We are squarely in the middle – impartial – with no vested interest in the outcome of a complaint except that the public was treated fairly by the City's civil service.

My office pays particular attention to those who are vulnerable or marginalized to ensure the playing field is evened - and access to City services is equitable.

For those who may not be all that sure about what it is that an ombudsman actually does, we investigate the public's complaints about the administration of city government, including most of its agencies, boards and commissions. We are an office of last resort for residents to turn to when all else has failed. Our services are offered at no cost, and are completely confidential. I am an officer of City Council independent from the public service.

When I investigate, I look at three aspects of fairness: substantive, procedural and equitable. Substantive fairness - concerns the fairness of the decision itself. Decision-making is a process that actually begins at the first point of contact with the public.

From clarifying the issues to gathering data and assessing the facts, the person is building the information that will influence their decision.

- Was there legal authority to make the decision?
- Was the decision based on relevant information?
- Was the decision maker unbiased?

Procedural fairness - concerns how the decision was made, the steps to follow before, during and after a decision is made.

- Was the resident given enough information?
- Was she given an opportunity to make her case?
- Did the decision maker give reasons?

Equitable fairness has to do with how we treat parties. It explicitly takes into account the person's social location. That means factors such as education, literacy level, ethnicity, creed, culture, language, geographic location, family status, gender, sexual orientation, socio-economic status and disability.

- Was the process inclusive?
- Were issues such as power or marginalization considered?
- Was the agency approachable?

Where there is disagreement about the facts, we have powers to investigate – those of seizing documents, entering premises and compelling witnesses.

For our investigations, we focus on systemic inquiries. It is those investigations that result in the fix for thousands of residents, rather than dealing with the same issue again and again at the individual level. Not only does the systemic investigation eliminate future complaints and improve the quality of service for all residents, including those less likely to complain, but it has the potential to save large amounts of money and resources.

Let's put some faces to our investigations.

Municipal Licensing and Standards inspected a tree on a senior's property at a neighbour's request and issued an order requiring its destruction.

The order was difficult to understand, vaguely worded – and the owner was a senior with dementia. As the case raised broader issues about how the City treats people with dementia and diminished capacity, I decided to investigate the complaint on my own initiative.

Over a period of nine months, the owner's son had attempted to negotiate with the City on his mother's behalf but got nowhere. The City misapplied a bylaw in cutting down the tree when there was a cheaper alternative – and then charged the owner thousands of dollars for it.

I found that the City failed at every turn to deliver the level of service residents are entitled to expect. The City made no attempts to adapt their procedures for someone whom they knew was unable to understand the consequences of the order, let alone defend or negotiate on her own behalf.

I made recommendations designed to improve communication and public service generally and specifically intended to meet the needs of residents with dementia and diminished capacity. The City acknowledged the need to address the range of systemic issues identified immediately.

At an individual level, an apology was given to the resident and her son, a reversal of all levies charged for the removal of the tree and a replacement of the tree.

Then there is the case of Mr. M. Parks staff banned him from all Toronto-run parks and community centres for one year, saying Mr. M had abused their staff. After the year, he asked for the ban to be lifted. Tensions continued and city staff responded by imposing an indefinite ban.

My investigation revealed that the indefinite ban was based mostly on historical interactions that staff had had with Mr. M. In effect, he was being doubly punished. I found that a lifetime ban was excessive and unjust.

We also found that staff had not kept proper documentation about the allegations nor had they given Mr. M an opportunity to respond to the allegations. Procedural fairness requires that an affected person be told of the consequences of a decision. The person also has the right to respond to a decision-maker and the right to an unbiased decision. The affected person must be told of any pending ban, the reasons for the ban and the person must have the opportunity to respond before the ban takes effect. The period of the ban must be limited, clearly communicated and proportionate to the safety concerns.

Or there is the case of a tenant of Toronto Community Housing who was served with an eviction notice. We investigated, and found Toronto Housing had failed to investigate the allegations that had led to the notice being issued, and that it had not properly communicated with the tenant about them.

That is what I do as the Ombudsman for the City of Toronto. So in concluding my remarks before we open up this forum, I want to leave us with a challenge. We are in a better position to achieve equity for ourselves if our advocacy for improvements is not limited to our own particular interests.

If seniors advocate only for fairness in pensions, if women's groups seek only employment opportunities for themselves, if different racial groups seek to oppose only that kind of discrimination which affects them, we will remain divided as a society. Any achievements will be tentative and easily swallowed up by other events.

What we all must seek is an equitable society, a society which provides equity to us all. If that is achieved, our individual interests will also be improved. Advocacy for ourselves involves getting a bigger share of the pie. Advocacy for an equitable society means making the pie bigger.