

Notes for Remarks

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***The City of Toronto Act, Five Years Later:
Has it Met Expectations***

A Panel Discussion

On this eminent panel, I am the only person who in my official capacity is actually a creature of the *City of Toronto Act*, and I am now being asked to comment on the question as to whether I have met its expectations.

On top of that, I see members of the audience who are far more qualified than I on this topic – nothing like a bit of intimidation! But I confess I welcome the opportunity to talk to you about the role of the Ombudsman in arriving at an evaluation of the *City of Toronto Act* as the result of our experience to date.

Let's look at the nature of 21st century city government. As is the case of most municipal governments, the City of Toronto has a monopoly on public services – a resident has nowhere else to go when the quality of service is not up to standard.

Second, much more so than is the case of federal and provincial governments, in city government, the services provided to the public affect the lives of the people in very fundamental ways – the water we drink, the parks we play in, the daycares our children go to, the roads we travel on. These services are fundamental to urban living and an integral part of our daily lives.

Third, the resident, the public, is paying out of their own pockets for the services being provided, and the public has the right to have value given for money spent.

The public expects and demands not only good service, but it demands accountability – the duty to explain and justify actions. It calls for the duty to act impartially without bias and to do so as trustees on behalf of all citizens. And the public demands these things far more from city government than it does for the provincial and federal governments.

The dilemma we have is that the attributes of good service and a high degree of democracy are not easily combined. As Václav Havel noted, the first principle of democracy is the sovereign power of the people.¹ But for the people to exercise their sovereignty there must be the instrument of “democratic government”. This means the need to select officials who are charged with the responsibility of doing the actual governing.

Political philosophers from John Locke, Mills, and Jean-Jacques Rousseau have struggled with this question of how to move from the exercise of pure democracy to democratic government which meets the needs of the people on the ground. The *City of Toronto Act* is only a recent manifestation of putting those old philosophical debates to the test. Others have arrived at different configurations.

There are countries in the world in which the leader of the government alone appoints the head of state; appoints one whole house of the legislature; allows only persons he has certified to be candidates for the office; appoints the judges of the higher courts; appoints the members of tribunals; appoints the members of Cabinet; appoints the heads of the various departments of the government. Imagine a country where one person has that power.

¹ *Vaclav Havel: A Political Tragedy in Six Acts*, by John Keane, Basic Books, 2001, p. 195.

Well, Canada is among those countries. The powers I have just listed are the powers of the Prime Minister. And yet we accept that as “democratic” because we think we have sufficient checks and balances.

By the way, did you know, we have no federal Ombudsman of general jurisdiction? We are one of only three western countries that have no national ombudsman – Switzerland and the US being the other two.

Five years ago, the *City of Toronto Act* became the statutory means through which the people of Toronto would enjoy the best mix of democracy and good public service. The so called strong mayor system became a new reality where, for example, the Mayor could choose most of his Executive Committee and Chairs of City Council's legislative committees.

We can argue about whether that power is a good or a bad thing but I think the drafters of the *City of Toronto Act* found a better balance here than we have federally.

When the Joint Province-City Task Force reported in 2005, it said:

A modernized *City of Toronto Act* requires new – or strengthened – measures to promote transparency and accountability... To ensure high standards of professionalism and ethics, Toronto requires strong oversight functions. The Task Force therefore recommends that the new Act require (not simply allow) the City to have an empowered and independent integrity commissioner, ombudsman, auditor general, and a lobbyist registry.²

This has resulted in the strongest accountability scheme, certainly in Canada, if not North America.

The legislation is very serious about having empowered and independent accountability officers who act on behalf of the public. The assumption was that the people and their government alike would ensure that these officers be independent.

While we call the Ombudsman an Officer of Parliament, the Legislature or City Council, the reality is that an ombudsman is an “Officer of the People”, an office of last resort that promotes fair administration. A public conscience - that wee voice that must not be ignored.

The Toronto Ombudsman can also protect the whistleblower. My office provides that specific special assignment, again, as “An Officer of the People”.

The *City of Toronto Act* has created an Ombudsman with all the essential powers of a legislative ombudsman as that office is known internationally.³ For example,

- The Ombudsman acts as an officer of the legislative body and is independent of City Government.

² http://www.toronto.ca/david_miller/pdf/toact_finalreport111405.pdf

³ <http://www.usombudsman.org/documents/PDF/References/Essential.PDF>

- The Ombudsman is appointed through a process designed to prevent political appointments and requires a super-majority of City Council.
- There is a fixed term of office that outlives any one political administration and there is only room for one reappointment.
- Removal is only for cause and requires a super-majority of City Council.
- The Ombudsman has the sole power to appoint and remove staff.

The Task Force seemed to assume (since it did not state explicitly), that the City of Toronto government offered the essential environment in which an Ombudsman could act effectively. Experience is telling me that, generally, this assessment was correct. There is however one area in which there may be doubt and it does not rest with the legislation.

Part of independence means having sufficient finances, money which, in my view, is an investment because of the savings and good governance which are derived from strong systems of accountability.

The assumption was – and is – that the people and their government would ensure that the offices were fed properly in order to properly fulfill the mandates. The realization of that assumption remains unfulfilled.

Ensuring the Accountability Officers are as independent and strong as possible will go a long way towards serving the public well and appropriately protecting elected officials, administration and public servants alike.

Never has the fear and distrust of government been higher. The public's anger is palpable – certainly my office experiences that daily. But the current anti-government ideology and private sector panacea for curing all ills is both short sighted and simplistic.

Government is both a necessary and important part of citizens' lives if we are to have a healthy democracy. And in that mix, public service is a noble calling – a calling to act without bias, with a high degree of ethics and with the public good top of mind on a daily basis.

Experience is telling me is that in municipal government – even a government as large as Toronto – the space between legislator and public servant is not adequately buffered. In fact, the space is razor thin and I would argue in significant jeopardy for public servants and good governance in general.

In the federal and provincial governments, the principle of “ministerial responsibility” is at play. There is a Deputy Minister responsible for running the shop. There is a *Public Service Act*⁴ that ensures a non-partisan, professional, ethical and competent public service. That Act is designed to ensure the public service is effective “in serving the public, the government, and the Legislature.”

⁴ *Public Service of Ontario Act*, <http://canlii.ca/s/26h>

It protects public servants from reprisals when they disclose wrongdoing and sets the standard for their duties and obligations.

I believe the promise of the *City of Toronto Act* would be better realized if we were to have a *Public Service Act* to fill this important vacuum in city government.

So we started this Forum with a question: “Has the Act met expectations?”

Well, we should never be satisfied. Democracy is always a work-in-progress, a dynamic and continuous process, not a finished product.

We should always be seeking greater balance, and to assist in that perpetual quest, accountability officers can support that goal of good governance. I leave you with another question. What would any modern government be like if there were no accountability officers? Can you imagine the City of Toronto without an effective, properly-resourced Ombudsman or Integrity Commissioner?

Let's not even try.