

African Ombudsman Research Centre

Facilitated discussion on the concept of the Ombudsman: How the Ombudsman institution can enhance government institutions by making them more responsible and responsive to the needs of the citizens.

Good morning, afternoon, or evening wherever you may be.

My name is Paul Dubé and I am the Ombudsman for Canada's largest province, the Province of Ontario.

It is a distinct honour for me to join you today for this discussion, and a special pleasure to collaborate in this discussion with my good friend Victoria Pearman.

The question I have been asked to address specifically is the following:

Q. How can the institution of the Ombudsman be a democracy-protection institution central to the achievement of democratic governance?

Established in Sweden more than 200 years ago, the term Ombudsman means "people's representative" and the role is to speak truth to power – and to the people.

In a 1984 Supreme Court of Canada decision, Justice Brian Dickson eloquently summed up the factors which "led to the rise of the institution of the Ombudsman." He cited the burgeoning size and complexity of government, and the resulting difficulties people have navigating the bureaucracy of government departments and agencies.

What Justice Dickson said with authority in 1984 is no less true today:

The traditional controls over the implementation and administration of governmental policies and programs—namely, the legislature, the executive and the courts—are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies is such that they are naturally unable to give careful attention to the workings of the entire bureaucracy. Moreover, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue... The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices.

I have long defined my responsibility as an Ombudsman in a manner that speaks directly to the question I am commenting on today, by saying that the role of the Ombudsman is to *enhance governance by promoting transparency, accountability, fairness, and a respect for the rights of citizens.*

I submit to you that in the execution of that mandate, the Ombudsman institution plays a fundamental role in protecting democracy by enhancing governance through the promotion of transparency, accountability, fairness, and a respect for rights.

For a democracy to function properly, it requires political legitimacy. It requires that citizens accept authority and governance by the system or regime. The term *legitimacy* is often positively interpreted as the normative status conferred by a governed people upon their governors' institutions, offices, and actions, based upon the belief that their government's actions are appropriate uses of power by a legally constituted government.

Many people think that the legitimacy of government depends on how it is perceived by its citizens.

Amanda Greene, lecturer in political philosophy, University College London, says that if we look closer, it is clear that not just any positive perception will do.

"There must be positive perceptions of government along three distinct dimensions. Firstly, the dimension of competence: government must be seen as capable and effective in carrying out its activities. Secondly, the dimension of fairness: government must be seen as treating all people equally and impartially, without favoritism or discrimination. And thirdly, the dimension of human concern and personal connectedness: government must be seen to be sincerely caring about each person's welfare."

And that, as I like to say, is where the Ombudsman comes in.

Competence

I often say that the focus of my roles as Ombudsman is not “naming, blaming, and shaming’ government or public sector agencies. It’s finding solutions that improve the way public services are delivered. As an organization that oversees more than 1000 public sector bodies and receives over 26,000 contacts, complaints, and enquiries per year, my office is uniquely positioned to gather information about what is working well in government and what is not. By leveraging our privileged relationship with the citizenry and the information that affords, we can help government and public sector agencies improve their service to, and treatment of, citizens. In concrete terms, that means meeting several times per year with government ministries and agencies responsible for corrections, social services and benefits, transportation, children and youth in care, French language services, and more, to share trends and complaints statistics but most importantly, inform them of the impact on citizens of certain policies, decisions, and administrative actions.

By proactively sharing information gathered through dealing with complainants – without compromising their confidentiality – the Ombudsman can provide government agencies the opportunity to improve their processes and procedures in a discrete and timely manner...certainly more rapidly than a full investigation process. A thorough and credible investigation is of course required from time to time and the evidence-based recommendations for corrective action provide public organizations with best practices that not only benefit citizens, but the public servants that administer them. Overall, the vast

benefits to all Ontarians that result from our investigations and recommendations enhance the competence of government and its ability to serve its citizens.

Along with the thousands of individual complaints we resolve, our extensive systemic investigations and resulting recommendations have prompted widespread government reforms, benefiting millions of Ontarians through improved services, reduction of waste, and even saving lives. Some of these changes include enhanced de-escalation training for police, improved newborn screening, better access to drug funding, overhauls of lottery ticket retailing and property tax assessment, and more supports for adults with developmental disabilities. Our office also handles thousands of complaints about municipalities and school boards, promoting accountability and transparency at the local government level.

Fairness

I think it is beyond dispute that many species, including human beings, are hard-wired for fairness. Some fascinating experiments have proved that hypothesis. An observation that many have made about human nature is that if people feel a body or regime will not treat them fairly, they will not fully engage with it. They will not accept its decisions. They will not comply with its rules. In other words, they will not recognize its legitimacy.

I certainly made that observation as Taxpayers' Ombudsman when I saw taxpayers who felt unfairly treated by the Canada Revenue Agency disputing decisions, filing appeals, engaging in litigation, and even refusing to comply with rules. All because the lack of fairness they perceived eroded the agency's legitimacy in their eyes.

For extreme examples of what perceptions of unfairness can motivate people to do, just look at the protests of *les gilets jaune* in France or the storming of the US Capital.

By promoting fairness and helping government agencies enhance the level of fairness in their interactions with citizens, the Ombudsman contributes directly to better governance, and indirectly to the protection of democracy.

Citizen welfare

Remember, we do not advocate for the complainant or against the government, or vice-versa. We advocate only for fairness, and for better governance. Yes, we expose bureaucratic snafus, but we also highlight bureaucratic successes. We can validate processes that are working well, just as we can improve them through recommendations. Ministers and public sector leaders routinely welcome our work as a way to break logjams and address longstanding problems, or to validate processes that work well.

Rather than eroding the ombudsman role, many liberal democracies are broadening it to ensure respect for human rights and in particular, the rights of children and prisoners. The vital work of the Ombudsman institution therefore, in enhancing governance by promoting fairness, transparency, accountability, and a respect for the rights of citizens, makes government more responsive to the needs of citizens.

The resulting legitimacy – and perception of legitimacy – in my respectful submission, is fundamental to preserving and protecting democracy.