

Politicians cannot do the work of independent officers of the Legislature

By Paul Dubé

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A recent column by Deb Hutton, published by *Queen's Park Briefing* on January 18, raised provocative questions about the role and usefulness of independent officers of the Legislature.

Responding to an earlier column in which John Milloy, the former Liberal minister, argued that the Ford government was wrong to cut three of these watchdogs, Ms. Hutton, the former adviser to Premier Mike Harris, argued for even more to be eliminated.

In keeping with my role as an apolitical, independent overseer of the Ontario public sector, I come not to praise or condemn these partisans for their political opinions, but to bury the misconceptions exposed by that debate.

An important part of the Ombudsman's job is to shine a light on things that are wrong and resolve issues before they fester and grow. So Ms. Hutton's disturbing and erroneous suggestion that the work of independent officers can and should be done by politicians must be responded to.

Her premise is that MPPs and their committees can bring the same level of accountability to government as independent offices like mine do, rendering us unnecessary.

This mischaracterization of the roles, functions and benefits of such officers is a misleading foundation for the proposition that the accountability and transparency mechanisms to which politicians and bureaucrats are subjected are unnecessary. Nothing could not be further from the truth.

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 in navigating the vast bureaucracy.

Based on what we regularly hear from hundreds of Ontarians, I am convinced that, if asked, they would opt for more oversight of public sector bodies, not less. They would certainly object to the suggestion that all one has to do to correct the injustices caused by poor government service or bureaucratic insensitivity is to bring them to the attention of a politician.

Justice Dickson's words are no less true today, and warrant quoting at length. He wrote:

"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.”

It is not the role of MPPs or their committees, established along party lines, to investigate complaints impartially and provide feedback to the bureaucracy on how to improve processes. Elected officials have an essential role, but they have neither the resources nor expertise to deal with high volumes of public complaints, or to look into systemic issues that require in-depth, credible and confidential investigation. That is the purview of the Ombudsman.

In addition to performing functions that MPPs cannot, the Ombudsman often assists them in serving their constituents. For more than 43 years, MPPs of all political stripes have turned to my office for assistance in getting the complaints of their constituents addressed when all other avenues have failed. Many MPPs have also alerted us to broad systemic issues that only an independent investigative office like ours is equipped to handle.

The role of the Ombudsman is to enhance governance by promoting transparency, accountability, and fairness. Every year, our office helps more than 21,000 Ontarians resolve their bureaucratic problems efficiently (63% within two weeks). We intervene as a last resort, meaning that the people we help have been unable to obtain the answers or fairness to which they were entitled elsewhere.

Not only would it be impossible for MPPs or even ministers to provide that level of service to the public, it is unrealistic in the extreme to suggest that politicians would bring public attention to the mismanagement or maladministration occurring under their watch. Those in power often prefer not to hear inconvenient truths about how government programs are inadequate or unfair, and anyone speaking those truths - even from within a governing political party - may do so at their peril.

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.

Mr. Milloy touched on this somewhat, when he said of officers of the Legislature: “Opposition parties love them and governments often find them a pain in their backside.” But with all due respect to politicians on all sides, our work is not really about them. It’s about finding solutions that improve the way public services are delivered. What many do not realize are the vast benefits to all Ontarians that result from our investigations and recommendations.

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 screening of newborn babies for preventable diseases, 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 – another area outside the realm of MPPs.

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

affirm 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 ensure processes function as they should.

Rather than eroding the ombudsman role, many democracies are broadening it to safeguard respect for human rights – in particular, the rights of children and prisoners. Our office already does work in this area – for example, recommending reforms to the segregation of inmates in provincial jails – and will soon assume responsibilities of the Child Advocate and French Language Services Commissioner.

Even as Ms. Hutton argues for a reduced role for offices such as ours, we hear from many Ontarians who would like to see us do more to police provincial politicians – who are not and have never been within our jurisdiction. The Ombudsman does not oversee the “executive branch” of government (the Premier and Cabinet) or challenge the policies enacted by it. Like other officers of the Legislature, we respect the role of MPPS and the boundaries of our jurisdiction, as frustrating as that may be for citizens who dislike certain policies.

Like democracy itself, our unique and valuable role in promoting good governance can be complicated, often misunderstood, and for some, perhaps sometimes inconvenient. But it is a vital feature of that democracy, and ultimately in the best interests of the people.

-This guest column is by Ontario Ombudsman Paul Dubé. He began his five-year term on April 1, 2016.