



“Puffery vs. Public Interest”

**Speech to the Canadian Centre for
Ethics and Corporate Policy**

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**Albany Club, Toronto
December 5, 2007**

- 1 I'm honoured to be invited to speak to you today, since issues of ethical behaviour are near and dear to me. As a provincial ombudsman, these are issues I deal with constantly.
- 2 Although "ethics" isn't part of my job description *per se* as it is for an ethics commissioner, my job as Ombudsman allows me to cast a very wide net. I can investigate any behaviour of any provincial government body that I think is unreasonable, unjust, oppressive or, my favourite, just plain wrong. That covers a lot of bad behaviour – and the bad news is, there is no shortage of it out there in both the private and public sectors.
- 3 The good news is, there is a strong public expectation in this post-Enron, post-Gomery era, that powerful people and institutions will be held to account for their ethical violations, both in the public and the private sphere. Here in Ontario, the Ombudsman is the average citizen's most direct route to that kind of accountability. My office is much quicker to resolve issues than any court or public inquiry, and it's free.
- 4 There is only one catch – my recommendations aren't binding on the government and I have no tools of enforcement. But I do have one powerful weapon, and when it comes to ethics and accountability, it's the only one that matters: I have enormous powers of moral suasion – the ability to publicly move the government to do the right thing. It's a simple process and it works: We expose a grievous problem under a strong public spotlight and propose a sensible solution. In every major case to date, this has turned out to be an offer the government could not refuse. All of our recommendations have been accepted.
- 5 We hear a lot about poor ethics and broken promises on the part of politicians these days, and how this breeds cynicism in the electorate. But this is by no means a problem confined to politicians. My office has uncovered many cases of government ministries, boards and corporations making grandiose promises to the public that they not only can't keep, they don't even bother to try. They promise a level of service or a standard of conduct that they don't come close to delivering – forgetting about the public they are supposed to serve.

- 6 This kind of puffed-up promise, or “puffery,” as I call it, damages the public trust, fuels cynicism and generally gives public service and government a bad name.
- 7 I know many of you here today have an interest in corporate ethics, and the fact is, some of the worst practitioners of “puffery” that my office has come across are Crown corporations. You might think that a Crown corporation would be in an ideal position to combine the best practices of the business world with the altruistic goals of public service. But unfortunately, a few go exactly the opposite way – they combine the worst habits of money-grubbing private enterprise with the most hidebound government bureaucracy.
- 8 I’ve investigated two Ontario Crown corporations since I became Ombudsman in 2005, and both investigations were ones for the record books. The first was the Municipal Property Assessment Corporation, or MPAC.
- 9 MPAC, as most of you know, is the provincial Crown corporation responsible for assessing every piece of property in Ontario – literally trillions of dollars’ worth of real estate. Those assessments are then used by every municipality in the province as they apply their municipal tax rate. It’s a massive responsibility and MPAC is pretty puffed up about it. It displays its “puffery” right in its mission statement, describing itself as “the global leader in property assessment.”
- 10 Well, our investigation found that if anything, MPAC was a leader in arrogance. It behaved like a cutthroat corporation instead of a public servant. It zealously fought off taxpayers who dared to ask for information about their own properties.
- 11 When I decided to investigate MPAC, I knew it was something that a lot of Ontarians were deeply concerned about. But I must admit, even I never imagined that it would touch off a two-year tax freeze and a totally new tax system that is still under construction. Since my report came out in March 2006, more than a year and a half has gone by, a provincial election has come and gone, and the people of Ontario still don’t know exactly what their property assessment system is going to look like next year.
- 12 Just to remind you of how it all started, my office had received about 75 public complaints about MPAC when we launched our investigation in late 2005. People complained that it was impossible to challenge MPAC on an unfair

property assessment, because it was so secretive about its processes, and so insistent that it was always right. Within weeks of announcing our investigation, we had nearly 4,000 complaints from all over Ontario. Clearly, we had touched a nerve.

- 13 These people weren't just complaining because they didn't like their property assessments. They were also upset about the way MPAC treated them. When we looked deeper into the corporation, we could see why. It had developed the culture of a private entrepreneur under siege, battering down the hatches against any assault from the outside. It had completely lost sight of its role as a public servant.
- 14 Now, I'm not going to get into the intricate details of property tax assessment, or we'll be here until dinnertime, but I'll just tell you briefly about the three major problems we found with MPAC's practices. First, there was a complete lack of transparency and openness. MPAC acted as though ordinary people had no right to its data. It seemed to fear if people knew more about how their property was assessed, they would be more likely to find something wrong.
- 15 But we found many cases where MPAC's information was wrong. It made it hard for property owners to see their personal property reports, or compare them to other properties, or look at the general municipal tax rolls. It didn't even tell people they had a right to this information, much less help them get it. Essentially, MPAC held all the cards, and it held them as close as possible to its chest.
- 16 The second problem we found was MPAC's blatant disrespect of the property market system – the value system on which all of its assessments are supposed to be built. MPAC tended to stick to its own formula for evaluating a property's value, regardless of the actual sale price of the property. It was as if MPAC believed it was more powerful than market forces.
- 17 The third problem was how MPAC ignored the decisions of its appeal body, the Assessment Review Board, or ARB. We found an astonishing number of cases where homeowners went to the ARB and won a reduction in their assessment – and then MPAC jacked it right back up again, as if the appeal never happened. This indicated that MPAC saw itself as above the law.

- 18 Once we exposed all these problems and reported our findings publicly, MPAC and the government immediately committed to change, and they assure me they've been very busy during the tax freeze. MPAC now has new brochures that actually urge people to report any inaccuracies in their assessments. It has a place on its website where you can easily compare your assessment to others, and it even says, "If an error has been made, we will correct it." It is now carrying forward 95% of appeal board decisions, and it no longer ambushes property owners at appeal hearings with a bunch of exclusive property data that only MPAC has access to.
- 19 Most of these changes haven't even been publicly announced by MPAC. We haven't seen much puffery from them since our investigation, although I couldn't help noticing how it described the events of the past year in its last annual report. The chair of MPAC wrote that they had spent the last year focused on "improving service" and added: "In his report last March, the Ontario Ombudsman provided *additional impetus* for the Board to move further and faster with *planned improvements*."
- 20 Now, I'm not here to speculate on whether or not these improvements may have been "planned" before I recommended them. The important thing is, they are under way and we're keeping close tabs on the progress.
- 21 There's still one big issue outstanding, and it's in the government's hands. Right now, if your property assessment is inaccurate, the onus is on you, the taxpayer, to *prove* that it's inaccurate. This seems to me to be patently unfair. I recommended that the onus should be on MPAC to prove its assessments are accurate, not the other way round. That's how it is in some other provinces. The premier is on record as saying the government accepted all of my recommendations, including this one, but we're still waiting to hear exactly what will happen once the freeze is lifted next year.
- 22 The one thing I know for sure is that property tax assessment in Ontario will be quite different from what it was in 2005. It will be fairer, more transparent and more accountable, thanks partly to the co-operation of MPAC and the government – but mainly thanks to all the citizens of Ontario who had the courage to complain that something was rotten in the system.

- 23** What the story of MPAC demonstrates is the need for strong and continuing oversight of public bodies, including Crown corporations. Problems like MPAC's don't get solved overnight. They don't end with the publication of a tough report and a few officials promising to do better. Without someone to hold them publicly accountable, those promises could just lead to more puffery. That's why we always keep tabs on the organizations we investigate and require them to report back to us on their progress until they have implemented all of the recommendations. The public and government know we're watching and keeping track.
- 24** Unfortunately, as I mentioned at the outset, the story of MPAC isn't unique. We found surprisingly similar problems in the other Crown corporation we investigated, the Ontario Lottery and Gaming Corporation, or the OLG. Just like MPAC, the OLG puffed itself up as a "world leader in lottery security" – when in fact it was anything but.
- 25** As many of you will remember, this investigation began just over a year ago with a report by the CBC-TV program *the fifth estate*. The report indicated that lottery ticket retailers in Ontario were winning more than their fair share of prizes.
- 26** The CBC story featured an elderly man named Bob Edmonds, who won the lottery but didn't know it. He didn't know it because when he took his ticket to his local retailer to be checked, she told him it wasn't a winner. Then she pocketed the ticket and claimed the \$250,000 prize for herself. Mr. Edmonds found about this when he saw her smiling face in the newspaper. But when he complained to the OLG, no one listened to him. Instead, the OLG fought Mr. Edmonds in court – and actually ended up spending more than half a million dollars to battle him over a quarter-million-dollar prize.
- 27** One day after the CBC's story broke, I announced I was investigating the OLG, because it was clear to me that this was an issue of major public concern. These were serious allegations being levelled against a government organization responsible for billions of dollars in revenue – money that the government puts into hospitals, schools and other important public works. My thinking was that if Ontarians could not trust their government-run lottery system, they would stop buying tickets, and all those projects funded by lottery revenue could be at risk.

In other words, this issue didn't just affect lottery players and retailers, it affected everyone in the province.

- 28** About 400 people came forward with complaints about the OLG after our investigation was announced. We looked closely at what the corporation had done to protect the public from theft and fraud, and examined lottery security systems in other jurisdictions across Canada and around the world. We found some behaviour that was highly unethical, to put it mildly.
- 29** We discovered that, just before Mr. Edmonds came on the scene, another man had been cheated out of his winnings by a retailer and had to take the OLG to court. The court ruled that the OLG had a “duty of care” to protect the public. But the OLG ignored the court judgment. We also found it was repeatedly turning a blind eye to retailers who were winning big lottery prizes in very suspicious circumstances.
- 30** Prizes of anywhere from \$50,000 to \$12 million dollars were being paid out by the OLG to retailers who came forward with winning tickets, even when the OLG had good reason to suspect that these retailers were *not* the rightful owner of the tickets. The attitude of the OLG brass seemed to be that it was better to just pay up and not draw public attention to the problem. This attitude was summed up in an internal e-mail that we found from the now-departed CEO that said: “Sometimes you hold your nose.”
- 31** The real root of the OLG's problem was that, just like MPAC, it had stopped seeing itself as a public servant. It behaved like a profit-driven private corporation, fixated on its slick marketing machine and its \$2-billion revenue stream. It forgot that it was supposed to be a custodian of public dollars and public trust. It also had a major conflict of interest – it depended on retailers as its front-line salespeople, but it was expected to police them at the same time.
- 32** The OLG didn't want to offend its retailers by subjecting them to tough questions or criminal record checks. If you complained about a retailer's behaviour, the OLG's attitude was, “Why bother us? It's between you and the retailer.” And its system of investigating retailers who were claiming big prizes was almost laughable – OLG staff would actually coach them to give the “right” answers about where the ticket was purchased, and when.

- 33** My solution was to recommend that an independent body take over the policing of the lottery system. This body would be responsible for implementing strict new controls such as registration of retailers, zero tolerance of fraud, and random integrity tests using “secret shoppers” to make sure security procedures are being followed.
- 34** The OLG initially balked at these changes, but ultimately it and the government agreed to all of my recommendations, and a lot has been done since my report came out in March. There is new management in place and “insider wins” are being carefully investigated. You’ve probably seen the OLG’s marketing campaigns reminding players to sign their names on their tickets so no one else can claim them, and to verify whether they’ve won by using the new ticket-checking machines instead of just taking the retailer’s word for it. But the real test will be whether or not there has been a culture change within the corporation, shifting the priority from profits back to protection of the public. The OLG still has some issues to deal with, including some ongoing police investigations. But it committed to report to me on its progress every three months, and so far has kept its promise.
- 35** The good news in all of this is that although both these corporations were exhibiting some of the worst behaviour our office has ever seen in its 32 years of existence, they are now recommitted to providing quality public service. In both cases, consumer complaints were loud and clear and people in power took notice. In fact, millions of people took notice. These stories were rightly treated as scandals and received huge public attention, and the bosses who were held accountable responded quickly and dramatically.
- 36** When people hear these kinds of administrative horror stories, they often ask me what makes good public institutions go bad. I have a one-word answer: Complacency. Sure, some public servants may be corrupted by greed or selfishness, but complacency is the eighth deadly sin, and it is by far the most common. When public servants buy into their own puffery and become enclosed in their own perfect little non-competitive world, they start to become blind to the needs of the people they’re there to serve. And if they get away with it, it just spreads throughout the office culture and gets worse.
- 37** I like to think of these stories as both a wake-up call and a challenge. Even though they give us a glimpse of a few public servants at their worst, I still



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believe strongly that we can put the “serve” back in public service. I’m proud to be a public servant myself. I know that, for every arrogant bureaucrat who treats the public like an annoyance, or thinks that that all you can do is “hold your nose,” there are many more who want to do the right thing and blow the whistle. I know this because I’ve seen the way good public servants have responded to our investigations and the wonderful difference that we’ve been able to make in thousands of people’s lives just by exposing these problems. The key for all of us is, never allow yourself to get complacent.

38 Thank you for your attention today.