

Onley provides a needed education

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Ottawa Citizen February 27, 2013 7:03 PM

Last week's Speech from the Throne officially ended Dalton McGuinty's prorogation of the Ontario legislature that began when he announced his resignation on Oct. 15, 2012.

In an interview with Steve Paikin from Oct. 23, McGuinty had explained that the prorogation provided a "cooling off period" from an overly partisan environment, and that he had decided to "blow the whistle" because the legislature was no longer functioning "in the public interest." But in that interview, McGuinty divulged too much and needlessly dragged the lieutenant-governor into a political debate; in so doing, he undermined David C. Onley's position by commenting that Onley had asked "no questions" about the prorogation. Normally, the first minister refuses to discuss the contents of his consultations with the governor; McGuinty should have followed suit.

In fairness, McGuinty later explained that only the premier makes and takes responsibility for the political decision to prorogue. McGuinty may have prorogued in order to postpone embarrassing debates on the cancellation of gas plants and accommodate the Liberal leadership election and the mid-parliamentary change of government; his critics have found his official explanations wanting, but this is a political matter, not a constitutional one.

Responsible government, the bedrock of Canada's and Ontario's system of government, means that ministers of the Crown take responsibility for all acts of the Crown; this includes government bills, supply bills, and all executive policy decisions — as well as requests to prorogue. Accordingly, the lieutenant-governor acts on and in accordance with ministerial advice.

As such, it is incumbent on government ministers to defend the political neutrality of the lieutenant-governor by assuming the political responsibility for their executive decisions, because the lieutenant-governor cannot advocate on behalf of himself without undermining his ministers. Based on McGuinty's description of his consultations with Onley, a major Toronto daily unflatteringly referred to the lieutenant-governor as "pliant and incurious." This assessment presumes a political expectation that the lieutenant-governor makes the political decision to prorogue and exercises political judgment on the matter. But the lieutenant-governor does not possess the discretion to reject advice to prorogue.

Following intense fallout from the media and the public's misunderstanding of his position, Onley gave an interview with the Toronto Star on Jan. 13 where he stated, "The premier, not the lieutenant-governor, is responsible for the decisions." Drawing on Bagehot's famous trio of rights, he added that all the lieutenant-governor may do on his "own initiative is advise and warn" ministers. But Onley did not explain the rationale behind the decision to prorogue. Instead, he explained the basis on which all of his decisions are made when being advised by the government. Only McGuinty has thus far explained the rationale behind his own decision to prorogue.

In the same interview, Onley explained, "something 'politically controversial' doesn't fit that category" of the exceptional circumstances on which he could ever refuse a premier's advice, since rejecting such advice would amount to a dismissal. In sum, McGuinty had every right to advise and receive prorogation. Onley affirmed, "It's up to the politicians to work out the political process, the political decision-making that is behind prorogation — and the fallout after prorogation."

While the media may not have been aware of these principles, the lieutenant-governor's office has since tried to fill this knowledge gap by clarifying the public's expectations of his role.

Through a series of informative and accessible press releases and backgrounders on the transition between the McGuinty and Wynne governments, the lieutenant-governor's media strategy has helped correct some misconceptions of his constitutional role, while still maintaining the confidentiality of his consultations with the premier. This information contributed greatly to accurate media reporting of these constitutional events.

In his address which followed the swearing-in of Ontario's 25th ministry last week, Onley spoke briefly to his new government, enunciating the principles of responsible government. He explained to his new advisers that they "will advise (him) on the exercise of (his) constitutional duties and legal authorities" and that they are and remain "accountable for that advice to this Assembly — and through the MPPs — to the people of Ontario."

The tradition of strict silence on the part of the governor has not always served the office well, particularly in an intense media environment where constitutional conventions are not well understood and where expectations on where to find information have shifted. But conventions evolve, and Ontario's lieutenant-governor has risen to the challenge, establishing a new model of viceregal accessibility in Ontario while faithfully explaining and reinforcing that in our system of government, ministers of the Crown take responsibility for all acts of the Crown.

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