

Ontario Lieutenant Governor explains Responsible Government

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MARK BLINCH/REUTERS Lt.-Gov. David Onley, seen in the Ontario legislature with Premier Dalton McGuinty, clarified the confusion over last October's prorogation decision in a rare interview with the Toronto Star. He pointed out that the vice-regal does not have veto powers under Canada's constitution.

It's not easy being the vice-regal fall guy from on high. Just ask Lt.-Gov. David Onley.

Controversy comes with the territory once you occupy the vice-regal suite at Queen's Park. For Onley, it came one fine fall day last October:

The premier requested prorogation. The public dubbed it dictatorship.

Onley had to make the call — a straightforward call, though not quite as simple as the public imagines. Today, three months after Dalton McGuinty advised the lieutenant-governor to suspend the legislature — taking a timeout from political conflagration — many Ontarians are still apoplectic about prorogation.

The premier bore the brunt of the anger. But His Honour has also faced the fallout.

Perched on his motorized wheelchair in his ornate private office, Onley tells me it has been a bumpy ride in recent months. But that didn't stop him from wading into the controversy with unprecedented candour over the course of the next hour.

In a rare, on-the-record vice-regal interview about current political developments, the lieutenant-governor was keen to clarify the confusion over what happened — and didn't happen.

Onley's message is simple: he did his duty to defend the Constitution and its conventions (or customs), upholding the traditions of "responsible government" and the rule of law — without meddling in the political cut and thrust of the day because, quite simply, he can't.

"In practice, all you can do on your own initiative is advise and warn," Onley explains. "The premier, not the lieutenant-governor, is responsible for the decisions."

The lieutenant-governor seemingly wields supreme authority — theoretically lording it over the premier — yet in practical terms he or she lacks the power to use that highly constrained constitutional authority.

For all the public apoplexy, Onley is unapologetic: he did what he had to do, the only thing he could do, by granting prorogation as tradition dictates.

Tradition also dictates silence in the face of public criticism and political second-guessing. That, however, is a tradition he clearly wants to fine-tune:

We live, he muses, in a culture in which "the expectation of explanation is meeting up against the constitutional convention of the vice-regal office."

When social media meets Magna Carta, you never know what will go viral on a vice-regal representative — and get away from you. A lieutenant-governor may now encounter public criticism in the era of Twitter revolts and Facebook petitions.

All of which perhaps explains why Onley is now breaking with tradition to explain his actions — and inaction. He firmly believes people need to be part of the discussion.

"When it comes to constitutional matters, the convention is that no explanation is given. It's a decision that is rendered," Onley said in his private office on the second floor of the legislative building.

Dead silence leaves people guessing — and second-guessing — so Onley is grappling with constitutional conventions in an era of online conversations. Since last October's decision, His Honour has been deluged with barbed tweets, prompting him (even if only ironically) to seek solace from Shakespeare's *Hamlet*.

"It was just one of those things, you know — 'slings and arrows of outrageous fortune' — and you just end up taking it," he says gamely.

"I was really surprised at the number of emails and tweets that were insisting that I take action that was so far beyond what my constitutional authority is. And in fact, various suggestions were flat-out undemocratic.

"You would never want to have a vice-regal or any position above that of the elected officials, where a snap-of-a-fingers legislative agenda could be set."

Onley is offering a gentle reminder to Ontarians that they are Canadians, governed by a constitutional framework that doesn't provide him with a U.S.-style presidential veto.

"We had," he recalls, "a fair number of emails, 'Why didn't you veto this?'"

He had a ready riposte for that question: “Well, for the same reason that you don’t have your Miranda rights read to you. A little too much television here from south of the border.”

The public clamour didn’t cause him to doubt his decision — and no serious constitutional scholar has questioned his actions, however unpopular — but it did spark fresh thinking about how to bring the public along.

“It caused me to rethink, well, what is it that collectively the vice-regal offices are communicating to the general public? Because that’s important.

“I think one of the most fundamental things that people don’t understand is that under our system of government the premier ... is the chief constitutional adviser to the vice-regal representative. There never has been a case where prorogation has been denied.”

And *that* is the nub of it, the point that Onley keeps coming back to.

Whether in Ottawa or at Queen’s Park, the first minister is the unrivalled chief constitutional adviser to the Queen’s representative — not vice versa.

“They think that it’s the vice-regal who advises the premier or the prime minister on the constitution, when it’s the other way around and ... the elected official has the right and has the authority,” Onley observed.

“That’s just the way the system is. But most people think it’s the elected official going cap in hand seeking permission, which isn’t the case. It’s the other way around: it’s to advise that ‘these are the steps that I plan to take.’ ”

Did he advise on, warn against, or question the premier’s request for prorogation?

Onley won’t go into detail. But he does offer an oblique hint that the discussion was wide-ranging, despite a public suggestion by McGuinty that no questions were asked. Indeed, the premier committed a surprising breach of protocol, on TVO’s *The Agenda* with Steve Paikin, by claiming the lieutenant-governor never asked any questions. Asked about that comment, Onley was circumspect but, in a circumlocutious way, revealing:

“Here’s my conundrum. I’m duty-bound not to divulge the contents of the conversation. But what I would say is that any lieutenant-governor, in any circumstance, meeting with any premier would make sure that all the areas were covered. And whether it’s characterized as conversational or whether it’s characterized as specific questions is almost too fine a point.”

Adding to the controversy, McGuinty sought a remarkably open-ended prorogation when he met with Onley in mid-October. The lieutenant-governor had been alerted in advance by McGuinty’s office that the request was coming, and was fully prepared to grant it — but he didn’t know the full story.

Only when McGuinty walked into his office did the premier disclose he also was about to announce his resignation after nine years in office. That would set off a Liberal leadership race — and a period of uncertainty before power was handed off in the new year to a successor, who would only then advise the lieutenant-governor on when to recall the legislature.

“We were 99 per cent sure he was going to request prorogation, but the announcement of his resignation ... was a surprise to me, as it was to everyone,” Onley recalled.

Did his thinking change when McGuinty made clear that prorogation would lack a precise recall date? Ontario's practice is ambiguous. The Standing Orders of the legislature call for a specific date, but the Legislative Assembly Act doesn't — and past practice has been inconsistent.

“Not at all,” Onley says. “To add in the ... pending retirement at the same time only guarantees that it will be an even longer chapter. No, not at all, because again it goes back to the constitutional reality that ... no prorogation has ever been denied. You have to have a really, really compelling reason.”

Only a “nefarious individual” who was trying to subvert democracy could be overruled by “in a heartbeat,” he says. “But it would have to be something fundamental — and something that's ‘politically controversial’ doesn't fit that category. Doesn't even come close.”

Despite majoring in political science at the University of Toronto, Onley doesn't purport to be a constitutional scholar. He does, however, draw upon a council of eminent advisers who meet regularly in anticipation of major decisions of the kind that McGuinty thrust upon him last October.

He also benefits from an annual meeting with his federal and provincial counterparts, who have analyzed the prorogation question in detail since Prime Minister Stephen Harper sparked an uproar by invoking it in 2008 to stave off defeat in a minority Parliament.

Are we doomed to more prorogation outcries? It is, after all, a legitimate part of the constitutional tool box available to first ministers, though it is usually used to reset the legislative agenda rather than suspend debate as in more recent times.

That's not up to the lieutenant-governor.

“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,” Onley says.

In fact, the NDP has proposed new rules, both in Ottawa and at Queen's Park, to require public debate in the House prior to prorogation and to set a firm date for recall. Onley smiles when I ask about the NDP proposal, but notes it's not his call.

“Well, that's the Legislative Assembly Act,” he chuckles. “If people feel it should just be an administrative tool, then the language needs to be specified.”

He is also aware of the public outcry that greeted the plan from Liberal leadership candidate Sandra Pupatello to delay the recall of the legislature until even late March so that she could call a byelection to win a seat:

“I noted with interest that there was an immediate response,” he says obliquely. “So we'll see what unfolds.”

In the months to come, he could once again be the man — or crown — caught in the middle as the rival parties joust for power, looking to the lieutenant-governor to break the deadlock in a minority legislature.

(Harper tapped him for the post more than five years ago and asked him to stay on until mid-2013, but it is common to renew a lieutenant-governor's appointment during minority legislatures rather than break in a new vice-regal representative in a time of flux.)

How would he decide on the next government if there is a close outcome?

By following constitutional convention: “What are the seat totals? What are the percentages? What is the mood of the public? But, first and foremost, which party or coalition of parties can have the confidence of the House? And that’s your starting point.

“In the meantime, you watch and you observe. And, frankly, read a lot of constitutional essays.”

And how would he explain any future decision in the era of social media?

“If there was any explanation made, would it be email and Twitter? Yes, it probably would,” he says, laughing. “With a link to it.”

Meantime, when not dealing with the rough and tumble of politics, the lieutenant-governor has other things on his mind — more about which in a future column.

***Martin Regg Cohn’s** provincial affairs column appears Tuesday, Thursday and Sunday. mcohn@thestar.ca, twitter.com/reggcohn.*