

Andre Marin: The Tom Marshall Award Speech
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I don't know Mr. Tom Marshall but I do know that I will have arrived when they name an award after me. I am realistic enough to understand that if an award is ever named after me it will not be for outstanding commitment to public service and service to the public, or for contributions to public policy and legislation, or for any similarly lofty achievement. The David Paciocco award would probably go annually to the Soo native of Italian origin who is not Phil Esposito and who has achieved modest success after leaving town. You must be very proud Mr. Marshall, to have such a prestigious award named in your honour. From all accounts your legacy has been hard earned, and is well deserved and I know it is a tremendous privilege for Andre Marin to be given this recognition by the Ontario Bar Association in your name.

My current honour – as modest as it is - is in having the privilege of introducing Andre Marin and regaling his accomplishments. I have also been asked to speak about any insight I may have into how he has achieved all of this so that I can identify any lessons that his remarkable career might have for the rest of us.

Andre probably needs little introduction given that he apparently has a better press agent than Brittany Spears – himself. He has managed to get on TV more recently than Michael Jackson, and he has not had to hang his children off of any balconies to achieve it. Still, I think I am well suited to put some detail on his public persona. I have known him since he was a boy's head sticking out of a man's suit. I have known and worked with Andre Marin for more some 20 years – which happens to be his entire professional career. I met him when, fresh from graduating first in his law school class, walked – no strutted - into the Ottawa Crown Attorney's office to take up his new job, as though he was in charge. Looking back, knowing him as I do now, the surprise wasn't in his brash self-confidence. The curiosity is that he didn't walk in and take over the boss's chair.

Although I had not had the privilege of teaching him, Andre knew me as a criminal law and evidence professor who had been seconded for two years to the Crown's office, and so he often sought me out for advice. I know it seems absurd now that I work for him, but I like to think that at that time Andre fancied me as something of *his* mentor. This may help explain why he lost almost all of his cases during his first three months as a prosecutor. I wish my short-lived mentorship could explain the courage, tenacity, creativity, and compassion that he would go on to demonstrate, but he is the sole author of those traits.

While it is an honour for Andre to win the award, and an honour for me to introduce him, I hope to persuade you, Mr. Marshall, that his receipt of this award honours you as well. I also hope to persuade every one here who is committed to public service that we can learn from his example. That, of course, is why we in this marvelous profession take the time to honour our more esteemed colleagues – so that we can reaffirm, aspire to and hopefully achieve the qualities that make them deserving.

What makes Andre deserving? Let's start with his work at the SIU. His short time as director of the SIU – only two years - changed that institution for the better. There had been a long practice of appointing senior prosecutors to that position. They managed the office with integrity and commitment, but as temporary custodians who resigned themselves to having to do their time. No-one really wanted the job. Prosecutors work with the police – they don't want to police the police. Not so for Andre Marin. He volunteered to go and he turned that Office on its head. The first thing he did was to get the lay of the land. Then he did what was then unexpected but we now know to be characteristic – he called a press conference. He promised the public in general and the Black community in particular - who had endured a sorry record of disturbing and poorly scrutinized police shootings – that an era of accountability had arrived. He sat there, only shortly past 30 years of age, promising change. His most brash promise was to promise that investigations, then taking more than a year to complete, would be done in 90 days, and he delivered. Under his watch the SIU went from an institution that was publicly

criticized as crippled by pro-police bias and incapable of rendering colour blind judgment, into the public enemy of the Metropolitan Toronto police union who, through the lens of its own self-interest, considered that Andre Marin was against them. He wasn't against them. He was in favour of the truth.

Then, historical events gave him a new adventure and more dragons to slay. In the wake of the Somalia crisis, the Government of Canada was being pressured to bring in effective civilian oversight of the military. The government of the day, trying to appease a chain of command who wanted none of it, rejected the call for an Inspector General with powers of compulsion and instead, decided to use an Ombudsman. You know what they say about Ombudsmen.

- Those who take on Ombudsmen know that a bad one can make a case drag out for years; they believe a good one can make the case last even longer.
- They believe that an ideal candidate, when interviewed for an Ombudsman's job answers when asked "What does institutional responsibility mean to you?" "What do you want it to mean?"
- I have seen the question posed, "What do you call an independent, impartial and honest person at an Ombudsman's conference?" The answer is "An intruder."

Under the pressure of the Chain of Command, the Canadian Government did not want an intruder Ombudsman. They defeated their own expectation when they appointed Andre Marin. Without a mandate or the office, holding nothing more than what was at the time a cosmetic title and a salary far less than he could have been earning in private practice, Andre went about to single-handedly create a real Ombudsman DND/CF. In the face of virulent political resistance he relentlessly negotiated a meaningful mandate. While they fought him on his investigative powers they made a fatal error – they agreed that he could report publicly. You can't win a press battle with Andre Marin. Having a press battle with Andre is like mud-wrestling a pig. After a while you begin to realize he enjoys it.

Over the next seven years Andre used his public voice to establish to shame the government into settling with families who lost loved ones in training accidents, and helped expose and gain compensation for chemical agent testing on soldiers during World War II. Most importantly, he did more than anyone else to make it culturally intolerable to speak in military circles of shell-shock and cowardice instead of about post-traumatic stress disorder, and personal sacrifice.

Most recently Andre Marin, this agent of change, transformed the Office of the Ombudsman Ontario from a valuable institution that brokered settlements for aggrieved individuals, into a formidable machine that is a catalyst for changing public policy and government institutions. Thanks to Andre Marin, my property taxes are lower, and my chances of winning a lottery are greatly improved

Yet his legacy, which is still being built, is in helping others in far more profound ways.

- Thanks to Andre Marin, 68 families in Ontario recovered custody of their special-needs children from the CAS, and have been spared the indignity of pretending they are unfit to parents; as painful and paradoxical as it sounds, these parents, who could not afford to pay the medical expenses for their own children, had to lie and say they were unfit parents so that those children could become wards of the Province who would then pay for the treatment they needed.
- Andre Marin's work has streamlined the recovery of child support so desperately needed by mothers trying to care for children abandoned by delinquent Dads.
- His work has helped turn a highly bureaucratic, overly systematized and veritably broke Criminal Injuries Compensation Board into a well funded and more compassionate institution.
- His efforts have put new drugs into the mouths and veins of the ill, so they can have hope, after unimaginative, rule-bound and officious thinking had left them to die without a chance.

It is not hyperbole to say that his work has saved lives. Any doubt about it is removed by the current state of **infant screening** in this Province. When Andre Marin tackled that issue, Ontario had infant screening practices that were bested by third-world countries. We screened for only one metabolic disorder when medical science had the wherewithal to identify more than two dozen diseases with simple tests – many of which are easily treatable if recognized, sometimes by diet alone. Children, in this Province, were languishing and dying when a pin prick and a pitre dish could have saved them. Anguished efforts by aggrieved parents and political jockeying had produced nothing for decades. It was Andre Marin's report, "The Right to be Impatient," that marshaled the moral case to fix things. It produced that rare commodity – government embarrassment – by unleashing a groundswell of truly righteous indignation, and now we test for 27 ailments. Because of the work of Andre Marin, there could be dozens of infants sleeping comfortably as we speak, instead of writhing in pain and slowly dying.

Andre's work, and the work of the excellent staff he inspires, has bettered the lives for many of our poor, our victimized, our abandoned, and our sick – our most vulnerable citizens. That is why I suggest that selection of Andre Marin for the Tom Marshall Award honours not only him, but the award itself.

So what can we learn from Andre Marin and his brilliant public service career? What does he have and what has he done that we should all try to emulate?

First, Andre has something all public servants should have - **an almost pathological intolerance for abuse of power**. Andre Marin hates it when misfeasance or malfeasance hides behind power or authority. That, of course, explains his drive to be effective in the SIU, and as an Ombudsman, but this trait revealed itself from the earliest reaches of his career. In his short time as a prosecutor, if a person of power was charged with an offence, Andre would manipulate his way into the prosecution seat, and he did it at a sage in his career when he should have been carrying someone else's briefcase. He prosecuted

a priest for sexual assault at a time when no-one believed priests could do such a thing, and he took on a gaggle of politicians and bag men.

Andre's critics – and every effective advocate has them – said that he was a publicity hound who took these cases on for their notoriety. They were only half right. Andre is a publicity hound who took these cases on because he hates abuse of power.

I will come back to the publicity hound stuff in a minute, but here is the instant point. I believe that a key for all of us in being better public service lawyer or public servants is to carry the same animosity for abuse of power that Andre carries. We may not be Ombudsman whose task it is to take on abuse of power by others, but if we have that animosity for misusing authority – either through malfeasance or sloth – we will refuse to tolerate it in ourselves. We will use the power we all have as lawyers in positions of trust, in the public interest and to the best of our ability, at all times.

Yet even that alone will not make us just lawyers. There are two other lessons from Andre's kit that are required. First, you follow his example and never, ever abstract what you are doing. You are not making decisions about a case, or an assignment or a legal or bureaucratic task. You are making decisions about people. When Andre was investigating the tragic case of Christopher D'Orsay, a boy who needed public funding to pay for the experimental drug an American researcher was using to save the boy's life, Andre was not asking, what will it do to the rules or the procedures if we fund this case? What kind of precedent will it set? He was thinking about a dying boy who could be helped but who was losing his struggle because of bureaucracy and rule-slavery and line item obsession. He was thinking of the face behind the case. Every decision that those of us in power make – from the most mundane to the most profound – touches or affects someone. We can learn from Andre Marin's career that if we want to be lawyers committed to social justice, we can never let any file or task become a case or an abstraction. It is always about people.

Yet there is one more step in becoming just lawyers. Do as he does and recognize that as important as rules are, they are dumb. Every rule exists for a reason or purpose. Yet our imagination and our lexicon prevent us from developing rules that are not over-inclusive or under-inclusive. When rules produce patent injustice, it is the rule that should give and its underlying purpose that should be honoured. Andre's career has been a fight against rule-slavery and bureaucratic indolence. Respect your authority and the rules that guide it, not by reading them like Talibanistic decrees, but by applying them with good sense and a commitment to the art of the possible. If we do that, we will be just lawyers.

I know I cannot promise all of us will achieve the success he has achieved. He has a wisdom that we can all aspire to and work towards. He has had to. He has achieved all of this without the authority to make anyone do anything. I have always said to Andre that his greatest strength as an Ombudsman is that he cannot compel others to act. He requires moral suasion to get those with power to do his calling. What better way to achieve social justice than to have others do something because it is right and not because you can make them? What decisions can possibly be more enduring. What solutions can possibly be more effective? There is only one way to persuade people to do what is right – you have to speak the truth. You have to have the courage to speak it bluntly and candidly. You cannot couch it because of fear, or institutional conventions that call for euphemization and lily-livered language of deference. You don't compromise your principles. You cannot cringe because you might offend your paymaster. You tell it like it is and you explain your positions with clarity and conviction, the way Andre does. If you are right, you can only be disregarded if you can be silenced. And this is where Andre the press agent comes in.

Abuse, poor judgment and indolence grow and thrive in dark corners. They cannot endure the sanitizing light of day. Andre Marin knows that the right audience to speak the truth to about public service misdeeds and inefficiencies is the public that is supposed to be served.

Andre loves the camera and the mike and the headlines. He loves the press. And he is the master of the sound-bite. That is how he galvanizes support. If Andre did not like standing in front of microphones, the truth he needs to achieve social justice would wilt and die. I like to see his face on the news for I know that when this is happening, he is spreading the truth, and publicly challenging those who would abuse or misuse power to ignore it. We should all have the readiness to stand up and do that.

Andre Marin is a man who wants to be counted and we are all better for it. What a great way to honour him for it by giving him this tremendous reward. Congratulations Andre.