



OMBUDSPERSON
BRITISH COLUMBIA

A Bid for Fairness Report

Canadian Council of Parliamentary Ombudsman (CCPO) Podcast

Participants: Lindsay Hunt (presenter), and B.C. Ombudsperson Jay Chalke.

Lindsay: Welcome to *Making It Fair*. A podcast brought to you by the Canadian Council of Parliamentary Ombudsman. I'm Lindsay Hunt, and I'm joining you from the un-ceded traditional territories of the Lekwungen speaking peoples in British Columbia, Canada.

This podcast is all about fairness and public administration. We'll dive deep into why fairness matters, and find out how Ombudsman with special expertise in holding governments and public bodies to account can make things that are wrong, right.

I'm new to this Ombuds world. I've spent my career as an educator and an artist working with historically excluded populations, such as street and justice involved young people, and people with disabilities. I've seen the frustration, lack of trust and transparency, exclusion, and barriers people often experience when they interact with government and public sector organizations. And now that I work with an Ombuds office, I still see a lot of these things, but I also see that often there can be a fairness fix. Change can be made, and this podcast will tell you how by sharing some stories that we hope to illustrate the work that offices like ours do, and how fairness matters.

We'll start with the story of one of our investigations involving a vulnerable older woman who lost her home after a series of mistakes made by a local government, as well as inaction. So, to take us through the case, I'm joined by B.C. Ombudsman Jay Chalke. Hi Jay.

Jay: Hi Lindsay.

Lindsay: So, Jay take us back to the beginning of this case. What can you tell us about this woman, and what the concerns initially were?

Jay: So, we learned about the circumstances of a homeowner in the City of Penticton, who in this report we call Ms. Wilson, when her sister who we call, Ms. Allan, came to us with the initial complaint. Ms. Allan told us that her sister had been living with her mom for many years, and when their mom died, Ms. Wilson inherited the house. As you can appreciate, there's some details of our investigations that we have to keep confidential to maintain the privacy of the people who come to us. But, what I can tell you is Ms. Wilson was obviously experiencing

challenges managing her affairs, and that meeting the obligations of home ownership, including paying taxes, was obviously very challenging for her. We learned through our investigation that for three years she did not pay her property taxes, even though she owned her home outright and had the money to pay. So, after three years she was in a situation where she owed about \$10,000 in outstanding property taxes.

Lindsay: Thanks, obviously a number of concerns pop up with a story like this. I'm wondering, you as the Ombudsperson, what were some of your initial concerns for this case?

Jay: We definitely had concerns, and as we investigated the case raised a number of questions for us. So what happened in Ms. Wilson's case, because she did not pay property taxes ultimately her house was sold in what's known as a municipal tax sale auction, which in British Columbia is a statutory process set out in B.C. law that allows municipalities to collect unpaid taxes that are located in a local municipality by selling properties two years after those taxes are first due. In Ms. Wilson's case, her house was sold by the City of Penticton for \$150,000 at the auction at the time when the fair market value of her house was assessed at \$420,000 by the provincial assessment authority called B.C. Assessment. When the sale was completed one year later, Ms. Wilson was evicted and lost approximately \$270,000 of equity in her home. So, after a disturbing chain of events, to say the least. We had a number of concerns initially; particularly around what steps were taken by the City to let Ms. Wilson know that her house was being sold. But the big picture for us is that too often processes that governments follow assume that everybody is capable of protecting their own financial interests, but we know that assumption is not correct. Many people need help for a variety of reasons whether it be mental illness, developmental disabilities, acquired brain injuries, or diseases of aging, such as dementia. In this case, really I think, illustrated that the law and public authorities have to take a variety of human circumstances into account.

Lindsay: Wow. Yeah, definitely a disturbing chain of events for sure. I'm wondering if you could tell me about when your team dug further into this, what did you find?

Jay: Well, through the process the City had sent a number of notices to Ms. Wilson. And in that correspondence, we determined that the City had made a number of errors, including incorrect deadlines, inaccurate references to the applicable statute. The correspondence in our view also just didn't have sufficient information about what the consequences would be to Ms. Wilson if she failed to pay that tax debt. We did determine that the City did call Ms. Wilson on one occasion, but beyond that did not taken what we thought were necessary steps to find out if she needed more help in addressing the property tax sale that she owed. She did say in that one conversation that she would deal with it, and then when she didn't, in my view, that was a big red flag that the City government should have at that point done more.

Lindsay: So yeah, clearly lots of mistakes being made, but let's break this down a little bit more. Let's talk more about the mistakes the City made on the notices to Ms. Wilson. And people may think people make small errors like this all the time, what's the big deal? What do you have to say to that?

Jay: So, in our report, we reproduced the various notices that the City sent to Ms. Wilson, and we highlight the mistakes in those notices that we determined had occurred. And some people may think, the various errors are minor, but when you're dealing with something where that the

consequences are so large, there's a common legal principle that the bigger the consequences, the less tolerant of errors that can be made. There's just simply less tolerance of those sorts of mistakes. So, our expectation is that those processes were scrupulously accurate, and that was not the case here.

Lindsay: So, what about the fact that the City didn't really make much of an effort to let Ms. Wilson know that her house was going to be sold. What do you think should have happened?

Jay: Well, I don't think it's incumbent on a City government in that situation to make sophisticated determinations about the capacity of every one of the residents in their community. That doesn't need to happen. The good news is that in the province we have public authorities, the local health authority, and a provincial entity known as the Public Guardian and Trustee who are responsible for looking into concerns that someone may need help in managing their affairs. So, all they need is a phone call. A phone call from the City, in this case, to tell them that Ms. Wilson is someone that might need some help, and then it was their job and have the authority under provincial law to look into whether or not someone in Ms. Wilson's circumstances needs some help.

So, in my view, what the City should have done was pick up the phone and call the health authority. That's their job to identify vulnerable people, and they and the Public Guardian and Trustee would have figured out if Ms. Wilson needed some help. She was about to potentially going to lose her life savings embodied in the equity she had in her house, and that was, as I said, a big red flag, and they should've done more.

Lindsay: Thanks, well, I mean you've gone into a little bit about what you think should've happened. I'm wondering if you could go a little further down that road. After the investigation, what were your key recommendations?

Jay: So, we had six recommendations in the report. Five of them were directed to the Ministry of Municipal Affairs. They're responsible for the legal scheme that empowers every municipality in the province to conduct tax sales. We made five recommendations to that Ministry. That included developing plain language template letters for tax sales, proposing amendments to the *Local Government Act* to acquire municipalities to provide adequate notice to property owners. Studying the issue of linking minimum bids if a property does go to tax sale auction; linking those minimum bids at the auction to property values, rather than linked, as they are currently, to the amount of taxes owing. In this case, she owed about \$10,000 and that was the minimum bid for a house that was assessed at \$420,000. And, in addition, issuing some best practices guidelines to municipalities about how to protect vulnerable people whose home is at risk of tax sale. So, the ministry accepted all the recommendations made to it. Those kinds of things aren't going to happen overnight, but we set out a timeline about our expectations when those things will occur, mostly over the next year. So, we'll be watching and monitoring to make sure that the Ministry lives up to its commitments. The report also made one recommendation to the City of Penticton, and that was that they compensate Ms. Wilson in the amount of about \$140,000, which represented one half of her lost equity. At the time we released the report, the City rejected that recommendation, but within a week they revisited that rejection and agreed to compensate Ms. Wilson as we suggested.

Lindsay: So, you made this investigation then public, and I'm wondering what some of the fallout was of this investigation. What happened when you made it public?

Jay: So, our report received considerable media attention, and it touched a chord obviously with lots of people. And as I said, originally the City of Penticton declined to compensate Ms. Wilson, and within a week it had changed their mind, and reversed its position.

NEWS CLIP

News Anchor: *The City of Penticton has moved to reimburse a vulnerable woman who lost her home. This comes after B.C. Ombudsperson released a report claiming that Ms. Wilson was unable to pay her tax bill, due to personal challenges. Her home was then sold in a tax sale auction by the City of Penticton, and she was evicted. The motion to reimburse Ms. Wilson over \$140,000, half of her loss of home equity, was passed by a vote 5-1.*

City of Penticton Council Member: *We want to put it behind us. We don't want this to continue a week, or month after month. If this is it, we did what we thought was right to do today. Even though this council didn't have to do it, they did.*

Jay: I think this demonstrates something that the Supreme Court of Canada said over 30 years ago about our Office, the work of our Office, and that was that when we are publicly reporting, part of that importance was to marshal public opinion behind appropriate causes. And I think to the degree that public opinion, in turn, influenced the City government in Penticton to reverse its position. I think that's great example of how our reporting can marshal that public opinion.

Lindsay: And, I mean some big, big changes, big, big things happened to make this right because of the investigation, and there are people involved, including Ms. Wilson's family. So, I'm wondering what was their response.

Jay: Well, I think it's been a very difficult experience for them as one can only imagine, and a very sad episode. Compensation doesn't put someone back into their lifelong house, but at the point in which we were contacted was the only possible remedy at that point in time. So, it's certainly a good outcome, but it would definitely have been better if this didn't happen in the first place.

Lindsay: Yeah, certainly. I'm wondering what your biggest takeaways are from this case?

Jay: Well Lindsay, I think I have three. The first is that all is recognized, even practices that have always been done this way, as people say, even those practices should be examined. Even things that have existed for a long time, and maybe especially things that have existed for a long time, need to be examined to determine whether they're fair. So, I think not being afraid to look at things that people just assume that's just the way it is.

Secondly, I think that this case demonstrates that public services have to accommodate what we know to be the case, with respect to individuals across the province who need help. It's not enough to say that we're going to assume that every single person is capable and can protect their own interest. We can't have an 80-20 kind-of rule and say well it's good enough for 80% so

therefore it's good enough for everybody. The law has to, and public authorities have to, take into account the wide variety of human circumstance, and make sure that they're fair for every person.

And then, thirdly, really the reaction to our report and as a result the City of Penticton changing its perspective on providing compensation shows that public opinion can be effective in leveraging change. And so, when we issue a report that really can serve to marshal that public opinion that the Supreme Court of Canada talked about, and that it can really have an effect. It made us feel that our public reporting had real value in helping bring about justice for someone.

Lindsay: Thanks Jay, and thank you so much for walking us through this particular story about Ms. Wilson. I think it's hopeful that that change can happen, and certainly the lesson of not making assumptions right, of what people's needs are when they're engaging with public service.

So I'd just like to say, thanks to the audience for listening to *Making It Fair*, and to find out more about this particular investigation, which is called **A Bid For Fairness**, you can visit www.bcombudsperson.ca/.

If Fairness matters to you, we encourage you to **like**, **subscribe**, and **share** our podcast, and also watch for our next episode, which is coming soon. Thanks everyone. Thanks Jay.

Jay: Thanks Lindsay.
