

“Fairness: A New Frontier”

Canadian Council of Parliamentary Ombudsman (CCPO) podcast

Participants: Colette Langlois, NWT Ombud; Wendy Bisaro, MLA for Frame Lake, from 2007 to 2015

Colette: The Northwest Territories Ombud opened its doors in November, 2019. Like other parliamentary ombudsmen, our mandate is to speak up for fair decisions, fair processes, and fair services in government administration. When the NWT office opened, this was decades after most other Canadian provinces and territories had established their ombudsman offices, many in the 1960s and 1970s. Calls to create an ombudsman in the NWT started at least as far back as the early 1990s. The topic of this episode of The Making it Fair podcast is how did we get here? What took so long? And, where are we now? My name is Colette Langlois, and I was appointed as the NWT's first Ombud in April of 2019. I am joined today by Wendy Bisaro, who served as the MLA for Frame Lake, a Yellowknife constituency, from 2007 to 2015. One of the issues she championed throughout her time in office was the need for the NWT to have an ombudsman. On October 1st, 2015, she tabled a draft Ombudsman Act in the Legislative Assembly, which was, for the most part, the same act the Assembly eventually passed in 2018. Welcome, Wendy. Thank you for joining me today.

Wendy: Thank you. Good to be here.

Colette: Good. So, it's great to see you.

Wendy: Yeah, Good to see you too.

Colette: I've been reflecting a lot on, you know, the story – at least the part I know – about how we came to have an ombud office in the NWT, and I was thinking, the first time I heard the word "ombudsman," I can remember, I think it was in grade six, and a teacher mentioned that there was something called an ombudsman, and it was a person who would just sit there and take complaints all day. And, I think we all thought that was a big joke, and laughed, [Wendy chuckles] and I was thinking, and I don't think I ever encountered that term again until it started to be something that people were talking about in the Legislative Assembly, which was many, many years later. And, I'm curious, when did the idea of an ombudsman – when did that first get on your radar?

Wendy: Hmm, that's a good question. I've been trying to, sort of – there was no "aha moment" for me. I certainly had been aware of ombudspersons, you know, across Canada, and I felt that it was a worthy office and that it performed a really good job and good service to people, in general. And, I think, as a member of the Legislative Assembly, I encountered people bringing problems to my office, and many of them needed some kind of adjudication of some sort, or they had found fault with the way that they were treated by the government, by another person, any number of different things. And, in many cases, there was nothing we could do. In some cases, there were appeal systems, appeal boards and so on, and people could appeal to that. But, if they didn't agree with the decision of the appeal board that was final, and they had absolutely no recourse and nowhere to go. So, in some cases, I or my office would take the issue to a minister of whatever department was involved but, you know, I felt that there were a lot of situations where people deserved to be heard where they weren't being heard, or where, you know, they've perceived an injustice – I may have agreed or not, but they still needed an opportunity to be heard, and to have somebody hear them out and make a decision either in their favour or not. So, you know, it sort of was a gradual thing, I think. And then, I did run into a situation; it had to do with insurance. I don't remember the actual situation, but I discovered that there was an ombudsperson or ombudsman for insurance, and I don't know if my office went there, or if I referred the person there, and they followed it through and they did get some recourse, I think. So, you know, those sort of situations led me to believe that this was something that, you know, I felt that the Territory should have, and I knew well, that there were other ombudspersons. I started sort of thinking, you know, that this was something that we needed to have in the Territories and sort of mentally sort of pushed it from there. So, you know from your time at the Legislative Assembly that we have committees and committees have various and sundry jobs, so I started talking to my colleagues in Committee and saying that we needed to have an act for an ombudsman. And, it took some time, but the Committee agreed and I believe we had a motion – I can't remember quite when – but I believe we put a motion on the floor and, as you also know, motions can be passed on the Assembly floor, but there is no requirement, as a result of that motion, that the government has to act on it. So, you know, that sort of ... We follow through from that and, as a committee, the Committee itself became quite – I don't know what the word is –but they were very strong in wanting to follow this through. So, at one point, we brought the Ombudsman for Ontario up and had a public meeting. That was sort of an educational thing, but that was also to see what kind of interest there was in the community, and there was quite a bit of interest, so that just sort of spurred us on, and we carried on from there.

Colette: Yeah. I was reviewing the Hansard from that time, and one thing I noticed is, I think, the first time you raised the issue of an ombudsman in the assembly was shortly after you were elected, so you were really working on this out of the gate. And, just shortly before the end of the second assembly that you sort of, then, was when you tabled the legislation, so this took up your time, like, through your full eight years in office.

Wendy: It wasn't something that I guess was a flaming torch, but it always there, and it was something that I felt that we needed in the Territory so, yeah, I don't know how many statements I made about the need for ombudsman or even just the need for a better system of recourse for people who felt that they were, you know, treated unfairly or unjustly or whatever. So, yeah, government works very slowly.

Colette: Mm. I think I want to go back to some of the gaps and missing pieces that you were talking about that you were finding when you were dealing with constituents that you weren't able to help them with, because a lot of what you said really resonates with the experience I've had since we opened the doors. One of the, I think, most valuable services we do is actually listening to people.

Wendy: Mm-hmm.

Colette: We'll listen to their story from beginning to end and I think, often, when people go with government, especially if it's a fairly complex issue, and there might be maybe two or three departments involved in whatever the solution is that they need, but they don't realize that. To them, it's just government. Another gap is just helping people navigate, and it's really –

Wendy: Absolutely.

Colette: – as well. Like, where do you go to deal with this? You're not getting help from these people because you actually need to be talking to those people, and here's some things that will –

Wendy: And, that's a lot of the work of an MLA's office.

Colette: Yeah.

Wendy: And that was, you know, something that, because people couldn't be referred where they needed to go, in my estimation, they were hitting brick walls, you know? That was another sort of indicator that the need was there. And, yeah, one of the reasons that people turn to their MLA and citizens in the Northwest Territories have a much better access to their MLA than probably anywhere in southern Canada. The other territories are probably much the same, but so many people will come to their MLA with a grievance of some sort, and MLAs have great access to the minister of whatever this particular problem is. So, you know, one of the things that I ran into – this was at committee level, but one of the things I ran into from certain members was they said, "Well, we don't need an ombudsman, because that's what an MLA does," and that was probably the biggest stumbling block, I guess, of getting people to come around because MLAs take great pride in the fact that they represent their people. We have a really small constituency compared to pretty much – well, certainly southern Canada – not so much in northern Canada – and, you know, the feeling is that you represent your constituents, and you're going to do work for them. But, as an MLA, it can be really cumbersome and, you know, going to a minister is not necessarily the best way to solve a problem because, as you say, not everything is probably heard, and if there's different departments involved, then a minister is not going to, you know, reach out to the other departments to solve the problem, so ...

Colette: And again, I think that is really consistent with what I've experienced. I think it's very complimentary, what the MLAs offices do and what we do. We do sometimes get files referred to us from constituency assistants or from the MLAs offices.

Wendy: Good to hear.

Colette: I'm all for whatever is the most expedient way for the person to get help. So, if that's through the MLA's office, I think that's great. There are always going to be some people who just aren't comfortable talking to their MLA, and it could be just some personal thing or some impression they have of the role, or the office, or the individual, so this does give them an impartial place to go with the ombudsman because we are outside of government and some people see MLAs as part of that government system.

Wendy: Absolutely.

Colette: So, you know, it does address that for people, where there might be, for whatever reason, a trust issue with MLAs. I also think one of the rules of ombuds that the courts have talked about is shining a light into the dark corners –

Colette and Wendy: – of our bureaucracy.

Colette: [chuckling] You've heard that quote before.

Wendy: Yeah.

Colette: And, you know, I've seen that in some of the issues we've addressed. They are just so complex and so technical, and there are so many people that have to be talked to, to figure out what's going on, and they're often not really things that would be very exciting for the public to hear about. You know, "It's a database that's out of date and needs to be updated," or, you know, "It's the way they're handling their record keeping that's causing problems down the road," and I just can't imagine that that's something that would ever get – you know, that anybody would ever have the time to weed through. And, you know, we do get through some of those and take our light into those dark corners and sweep things up. So –

Wendy: Yeah.

Colette: I think that's definitely one of the areas where we're able to complement the MLAs where –

Wendy: Yeah, I think so too.

Colette: And, I did get this too, reading through the Hansard that there was some feeling that, you know, "MLAs do this. People have access to us." What do you think swayed people to support the motion, and eventually the bill?

Wendy: I'm not sure. I think having the Ontario Ombudsman come was a really positive thing. He was very personable, and the public event that we held was pretty well attended. And, I can't remember if he met with us as MLAs. He must have, I would presume, but I think people initially thought that an ombudsman would take over the job of an MLA, and would reduce the job of an MLA. And so, I think, you know, in conversation and just talking about the issue, I think people finally realize that, "No, this is –" and especially with the information from the Ontario Ombudsman, people realize that, "No, this is not taking away anything that you're

doing. This is going to make it better for your constituents." So, I think it was probably just over time that people maybe got worn down. I'm not sure. [both laugh]

Colette: Yeah. And, I should just maybe clarify, so it was former Ontario Ombudsman, I believe, André Marin, who –

Wendy: Yes.

Colette: – met with you. Yes.

Wendy: Yeah, yeah, that's right.

Colette: Another thing that you mentioned is people feeling the need to be heard, and I talked about listening, but something one of my colleagues brings up – or former colleagues – would often bring up in talking about ombudsman work is that there's the piece where the person didn't get the decision or the program or the benefit they wanted, and people can often come around to accepting that, you know? They may be disappointed, but they accept that.

Wendy: Yeah.

Colette: In those situations, there's also often a piece where they were made to feel small.

Wendy: Mm.

Colette: You know, they felt stupid for asking a question, or they were treated like troublesome troublemakers, or an annoyance, and that's something that seems to stick with people a lot longer. And, one of the gaps I've seen – you talked about the appeal processes and review processes some people brought up that are available – in my experience, any of those processes, whether it's an appeal, whether it's the courts, they don't really address that kind of emotional hurt that people feel.

Wendy: No.

Colette: And that's something, you know, that I hope our office helps people with, as well. You know, even if it's just a validation that what happened shouldn't have happened, and we can't make a binding order to you, we can't make them hire you, we can't make them, you know, give you this grant that you applied for, but yeah, what happened was wrong. So that's actually quite a huge gap I see that ombudsmen –

Wendy: I think so. And, I think, you know, a couple of the issues that came to my office were really sort of clinically handled by the Appeal Board, or Appeal Tribunal, or whatever it was and, yeah, most people were feeling injured and that they had been unfairly and unjustly treated, and they wanted somebody to hear them, for sure. But, they also wanted some recourse, and there wasn't any, you know? All of those systems at the end said, "Our decision is final," and there's nothing. And, you know, you can go to a minister and ask a minister, but the minister is going to say, "Well, these are the rules," you know? "The decision is final and I can't do anything", whereas an ombudsperson, ombudsman can, you know, hear it out and, like you say, say to the person, "I'm sorry, but their decision is actually the right one. It may be

they didn't treat you very nicely in doing it, but you're going to have to accept it," and that, I think, is a really big part of what an ombudsperson office should be, and I'm glad to hear that that's your focus because, in what I was trying to do, was to get an office where people could go and feel heard and feel "comforted," but not necessarily always get what they want because sometimes you can't. Sometimes, the rules are the rules, so, yeah. I think that that sort of spurred me, as well, is seeing people as hurt as they were and knowing that there was nothing that we could do for them.

Colette: There's a few issues that come up with these appeal processes. I mean, one is them not addressing that feeling of being hurt, but sometimes what I find the issue is that, often, the authority and appeal body has to review a situation is quite limited.

Wendy: Mm-hmm.

Colette: Like, there's very specific things, so it's often not so much the person will experience it as, "They denied my appeal." What the appeal board is actually saying is, "We don't have the authority to review this."

Wendy: To change it, yeah.

Colette: So, there are a lot of gaps in the content of what can be –

Wendy: Yeah, and that's something that your office can do, right?

Colette: Yeah, exactly.

Wendy: They have a broad range of things that you can go and talk about and ask about. Yeah.

Colette: Yeah. I think sometimes people are disappointed we're not an appeal of an appeal. [both laugh]

Wendy: Yeah.

Colette: You know, what we can look at is what happened around the appeal, and, you know, are there maybe issues that didn't get addressed by the appeal that we can move on?

Wendy: Yeah. Yeah.

Colette: I'm curious about were there any – did you encounter any arguments against having an ombudsman, or any kind of resistance to the idea, you know, outside of the MLA group, just in the general public and people you were interacting with?

Wendy: From the general public? No. You know, people in general, the feedback I got was, "Yes, this is something that we need and keep doing it," so I was good to go.

Colette: Yeah. Yeah, I think, you know, since – because, you know, obviously, the decision was made, by the time I came along. I was handed a piece of legislation that said, "Go make an office," so I did. And, I have to say, you know, I've had a pretty positive response from the bureaucracy. I wasn't sure if I'd get a lot of defensiveness or a lot of, you know, "What are you doing?"

Wendy: Right.

Colette: Or, where I do sometimes get some discomfort and I don't want to generalize with professional groups, but I find some lawyers seem uncomfortable with it, and I think it seems to them that it's just way too broad, the guardrails are off, you know, if they're used to working in an adversarial process, and with certain rules. It's not all lawyers, I mean, especially the ones that have done a lot of work in mediation and alternate dispute resolution really get it and welcome it, and I've actually had private lawyers referring clients to us because they knew they were in a fight with the government that, you know, suing the government probably was going to cost them a lot of money and not necessarily going to ...

Wendy: Well, and that's one of the things too that, when we would talk about, you know, what an ombudsperson or ombudsman can do. People would say, "Well, you can go to your member, or you can, you know, go through this appeal process or whatever." But, the only recourse, eventually, was to go to the courts, and many of the people – I would say the majority of the people – that feel themselves aggrieved are unable to afford to go to court, and I would say, in general, the general public doesn't have the money to take an issue to court. And, it's scary and it's costly. And so, at that point, people would pretty much sort of shrug their shoulders and throw their hands up and say, "Well, there's nothing I can do at this point," but they would go away, really quite cranky. So, you know, it's interesting that lawyers would be a little concerned, but I could sort of see it because they work in a very, sort of, within a sort of fairly rigid set of rules and regulations and so on. So yeah, the Ombudsman can do lots of things that lawyers can't, so that's good.

Colette: Mm. Yeah, I think for some of the people I've talked to, it was just they had a hard time visualizing how it would work, right? Because, it's just so different from those adversarial processes where, you know, the procedure is much clearer, and it's not even just about the subject matters that we deal with. It's also just about creating a friendlier process that's completely free.

Wendy: Mm. Yeah.

Colette: You know, other than the cost of my office, it doesn't cost anybody, you know, the complainant or the department.

Wendy: Yeah. For a public service, I think it's an economical one.

Colette: Yeah.

Wendy: In terms of me. now, as a resident of the Territory, I think it's well worth the money.

Colette: Mm. So, just kind of looking forward to the future, I want to ask you, you know, what aspirations would you still have for the office? Or, what would you still like to see happen?

Wendy: Mm. I would hope that the office is going to continue, that it's going to become entrenched, like many other sort of arm's-length offices that exist in the Territories, and I would hope that – I think you've been doing outreach – I would hope that that would continue and that every resident in the Territory eventually knows that there is an ombudsman and an office that they can go to to have their issue heard. I also hope that the public service, the bureaucracy, recognizes that it is making their job easier, and it can't be easy for any of them to have to deal with somebody who is really upset about, either how they've been treated, or what the decision was on something that they questioned. And, nobody – well, I shouldn't say nobody likes confrontation. Some people do – but, in general, people don't like confrontation, and it's certainly not something that you want to be part of your job.

Colette: Thank you again, for –

Wendy: Thank you.

Colette: – for joining me today. This was really nice to see you again.

Wendy: Yeah.

Colette: It's been a long time since we worked together at the Assembly and, you know, this is the culmination of eight years of work, on your part, to get this ombudsman office created, so –

Wendy: And, I had a lot of help from the staff at the Assembly, that's for sure. I did not write that act myself. So, yeah, there was a lot of support. When we finally got to the point where we were going to push hard, and it got to the point where the minister who was responsible wasn't going to do anything, and I had asked and asked and asked, and it was like, "Well, if you're not going to bring forward and an act, because there's always a huge list of legislation that need doing, that's fine," and got supportive committee and committee wrote the act, and then I was able to table it. So, that was kind of my last act of sort of saying, "Here you go. Do it." And, it took another three years, but it did get done, which is grand.

Colette: Yeah, yeah. All right. Well, thank you. Thank you very much, Wendy for doing this.

Wendy: Thank you.
