

**Testimony of the Ombudsman before the
Standing Committee on Procedure, Privileges and Legislative Officers
Legislative Assembly of New Brunswick
November 12, 2015**

The Office of the Ombudsman in New Brunswick is the second oldest provincial Ombudsman's Office in the country. We missed being the first by a matter of only a few weeks. This model has been in place for 48 years. I am the seventh person to have the job. The office has as its lifeblood the notion that an independent office uses its judgment, above all else, to ensure that citizens are treated fairly and that it does so to the best of its professional judgment, with the understanding that this reflects society's overall commitment to that value of equity or fairness.

In that regard, I do not think that the work is always very well understood, but it is important work. The great majority of the work that we do is done through the model of the Ombudsman, quietly and privately, in collaboration with government. Citizens come to us with their complaints, and we seek to find out the truth of the matter and to intervene on their behalf if we feel that they have not been treated fairly.

The Ombudsman of New Brunswick, like Ombudsmen everywhere—and the role has evolved over time—has very strong power to investigate government documents and understand why government did what it did. The corresponding fact is that the Ombudsman has no power whatsoever to order anything. At the end of the day, the Ombudsman makes a recommendation, and the government accepts the recommendation or does not. That is it.

My background is as a lawyer and a civil servant. For many years, I worked under the mantra that my role was to fearlessly advise and faithfully implement. One of those was always more popular than the other, and there were times when my insistence on fearlessly advising made me unpopular and caused me not to get invited back to certain meetings. I accept that. The people who make the decisions—the elected people—have the right to choose what advice they will listen to and what advice they will not listen to.

Above all else, I want it to be understood, since we have very little time here, that if anything I say is interpreted by anyone as a lack of respect for elected members, that is never my intention. I fully appreciate and respect that governments have to make difficult decisions. My role is to try to fearlessly advise them, to try to appeal to their better angels. Sometimes they have to make difficult decisions, and that is the end of it.

Most of the time, our work is never made public. We guard the integrity of the government, we guard the identity of the complainant, and we seek to mediate between the two. The people who come to us often arrive in a state where their relationship with the government is almost completely destroyed. They have had a complete breakdown of their trust in government agencies, and they do not believe what the department is telling them. They do not believe that the government is listening. Our role is to listen, to review what they have said independently, and then to report.

Our effectiveness depends on the credibility of our independence and depends on our professionalism in that regard. As a result, it is something we are very jealous in guarding. Without that, we are not really doing anything other people could not do. Bureaucrats inside the system could also intervene on behalf of people. Political staff could also take that place. Part of the role, as any MLA understands, is having citizens come to you and say: I am having a hard time. I need help here. You will then intervene on their behalf.

The difference is that when we, as an independent agency, tell people that we have reviewed this and we feel that, in this case, they were fairly treated, that has credibility because we do not have an agenda to defend a government or to tear a government down. We are not a spokesperson for government.

In the same way, often to the disappointment of complainants, we are not an advocate for them either. We take the complaint, do our own independent analysis, and then make a decision. A very common response, after we have done our investigation is that the complainant says: That was not what I asked you to do. We will say: That may be true, but our mandate is not to be your advocate. Our mandate is to take your complaint and test it against the standards and best practices of Ombudsmen everywhere in terms of what is equitable and what is fair.

The reality is that our success rate is very good. I take the view, after many years in the civil service, that, in most cases, people are doing the best they can. If they have lost sight of best practices, it is not because they wanted to. It is because of other pressures that caused them to take a shortcut or to overlook something. In the vast majority of cases, when we deal with government and government agencies, we get a good result. That is the majority of our work. That is the lifeblood of our work.

That is the part of the iceberg that is below the surface. There will always be a part of the iceberg that is above the surface. That is where we have failed to convince those in power to do what we feel is best. When that occurs, we have an obligation to report that to the Legislative Assembly. Basically, we appeal to you and say: We do not think this is going to change. What do you think? You are the people with the power to change it.

I have believed that we should always seek to keep a positive outlook as much as possible, and I have guided the office as best I could, but there are always those few that get through. I can think of three times when I have spoken publicly and it has been seen as critical. That is part of the gig too. It is one of my least favourite parts of the gig, but in order for the office to have independence and integrity, that happens.

Once, I put forward the point that having a water classification system that never classifies a watershed is perhaps not the most effective way of protecting the environment. Also, I once suggested to members of the Assembly that having a conflict of interest system that dead-ends as soon as someone does not reoffer for office is probably not up to the modern standard of

what that should look like. I made a public presentation regarding the future of WorkSafeNB, suggesting that a fairer balance might be achieved if we were to put less emphasis on protecting the bottom line of businesses and more on protecting injured workers.

In each of those cases, I am sure the media thought I was the greatest guy in the world because I gave them something to write about, and each of those cases was a result of our failing to convince those in power to use other means to take action. I could sit here and say now, just over a year later, that there is still no watershed classified. Several months later, there is still no change in the *Conflict of Interest Act*, and there are no changes to WorkSafeNB.

Do you know what? That is fine. You and the people in your Assembly have the right to decide. I know you have people putting pressure on you from all sides, and you have the right to make those decisions. My role is to advise you as fearlessly as possible. If, at the end of the day, you do not choose to take action, that is your prerogative, and I respect that. I understand the demands that are put on you from all sides, and I understand that you, unlike me, have to balance these demands against the province's means and that sort of thing.

I will just say quickly that if I were to give some advice to the committee, I would start with asking the committee to perhaps meet quarterly for a full day. If it turns out, after some time, that there is nothing left to talk about with regard to our work, then I apologize. We can cut the meeting short, and I will buy everyone a drink to apologize.

There are a number of things in our office, a number of initiatives, on which we would like the guidance of the committee. I do not for one minute think that we are above criticism or critique of our work. I would welcome that input from the members. We are not just here to serve the public. We are here as officers of the Legislative Assembly, and you are the Members of the Legislative Assembly. We want what we do to be relevant to your work, because we understand that, at the end of the day, you are the decision makers. If I cannot influence you, then I cannot do my best for the people of New Brunswick.

With regard to there being a Conflict of Interest Commissioner, I would say—and I say this with complete respect—that it is not best practice to leave that post vacant for as long as it has been vacant. There may be a complaint out there today about conflict of interest. The person has no place to place that complaint, and the evidence in that complaint may become stale or lost. If you need someone to do that job in the interim, that is an easy matter of a phone call to our office to say: Could you take this on in the interim until we find someone? My first suggestion to you, if you made that call, would be to say that Norman Bossé, Q.C., is a person with direct experience in this field through his role in the Barristers' Society of New Brunswick. He would be an excellent choice for an interim commissioner. If you want to put it in the Ombudsman's Office, we would do that on an interim basis. It would be far better than leaving this post vacant.

I say this again, with respect: Leaving the post vacant sends a signal about how seriously you take that role, and it is not a signal I think you really want to send.

I would also say, in light of the events on Tuesday, that the committee should consider whether or not this is a proper place for an evaluation of the future of the offices rather than the committee that is focused solely on the budget of those offices. I say that with the understanding that many of the same people are on both committees. However, if I were to make a suggestion, that is one thing that I would suggest, that you transfer that to this committee. I would also suggest that you be flexible about the timeline. When you create a consultation process with a very short timeline, you may send mixed signals about how sincere that consultation process is.

My final appeal, if I can make one, is that members of the Assembly show great care in their public comments about our roles as legislative officers. I understand that when a microphone is put in your face and you are asked a question, you give a response that may not have been completely thought through. However, without the credibility and independence of our offices, we really provide very little value to the system. If a comment can, in any way, be misconstrued as drawing that into question, it may have been an offhand statement to you, but it is like an axe blow to the tree of the work that we do. It really undercuts our capacity to achieve good results for the people of the province.

On the budgetary side, I will very quickly say that, in the past, the Legislative Assembly has made decisions to create certain other offices and take roles away from the old Ombudsman Office. That is, again, well within your purview. Some years ago, the decision was made to split off the Office of the Child and Youth Advocate, and I think that decision was made for a very understandable reason, which was to give it the profile of a separate office. The budget was split 50-50 in order to give the Child and Youth Advocate the resources it needed to do its important work. However, the complaints between our offices do not split 50-50. They split 85-15. In the years since, we have been under extreme pressure to do our work with the thousands of complaints we receive each year compared with what we used to do.

One result of this has been the almost complete destruction of our capacity to do special reports. The people that come to us are people at the margins of society for whom we are a last resort, and we cannot fail to give them the best help possible. These are people in poverty, on assistance, who are incarcerated, with addiction problems, health problems, or mental health problems. We do not discuss these things publicly. They are women asking for milk supplements for children with special needs. They are people in wheelchairs. They are prisoners asking for spiritual counseling. We have an obligation, above all, to them, but, without the resources, when we serve them, we have lost the capacity to do special reports. Special reports represent, in some ways, the big gains that our office is sometimes able to achieve, where the changes we suggest can have a big impact on the effectiveness and efficiency of government going forward. However, that has badly atrophied due to the present situation.

Those are my comments for now.

Je m'excuse encore : Alors que j'arrive à la fin du temps qui m'est accordé, je me rends compte

que je n'ai même pas dit une seule phrase en français de tout mon exposé. Je m'en excuse. I look forward to the ongoing contact with the committee, and I am very open to discussions about how we can better serve you and New Brunswickers. I will hopefully continue to advise fearlessly, and I will also seek to take your input very much into consideration in our work going forward. We recognize the duty not only to the people of the province but also to the people in this room. Thank you.