In my first year as an ombudsperson, it was with great interest that I observed a difference between ombuds practice in Canada and the U.S. While attending my first U.S. ombuds conference, I was surprised by how little I heard about the concept of “fairness” in the discourse and in the central function of conflict management and resolution in ombuds work. And while the IOA Standards of Practice identify that ombuds are “advocates for fairness,” subsequent discussions confirmed a profound difference in ombuds practice between our neighbouring states.

Fairness, or the principle of procedural fairness, is the bedrock of ombuds practice in Canada. While effective conflict engagement forms a significant part of our work as well, Canadian ombuds practice is firmly founded on and delivered through a fairness lens. Administrative law, therefore, provides the broader framework for ombuds practice in Canada that includes procedural fairness and its constituent elements, such as the fundamental rights to be heard and to have an unbiased decision-maker.

In Canadian jurisprudence, fairness is defined as being flexible and context-specific, its precise content determined by some key factors to be considered in each case. This “shape-shifter” characteristic of fairness provides an opportunity for ombuds to advance fairness in a way that is consistent with the institutional context or system in which we work. It also helps to humanize bureaucracy and promote rules, processes, and outcomes that support the diversity and multiplicity of contexts, experiences, and perspectives in the communities in which we serve. It gives ombuds a legal foundation on which to advance an understanding of fairness that does not mean sameness but encourages a case-specific consideration of the facts that supports consistency not rigidity. It provides ombuds with the opportunity and responsibility to ensure that fairness is informed by cultural difference, and diverse and varied lived experiences and identities.

At the University of British Columbia, our office has developed and cultivate an approach to fairness that is informed by the concepts of mutual accountability, community, and compassion. We believe that this approach reflects the university’s values and strategic commitments: to enhance student learning and research excellence; to promote intercultural understanding; to build an outstanding work environment; and to deepen Indigenous and community engagement. And while fairness is critical in individual cases, an equally important function for our office is to foster an institutional culture and capacity for fairness by helping the university be accountable to its promises, by identifying gaps, and by making recommendations for positive change at the systemic level.

It is with this broader understanding and application of fairness that the concept of campus ecology can be so useful. It suggests that behaviour is a function of the individual and the environment, in that the individual impacts the environment and the environment impacts the individual. By applying an ecological approach to ombuds services, we can use fairness to shift or at least broaden the focus from fixing the individual to also examining the environment - the
policies, practices and processes, and decisions - in which the individual has experienced their challenges.

While the legal construct of fairness ensures fair rules, processes, and outcomes, research shows that fairness is also a basic human need, like food, shelter, and human connection that our brains treat like a survival issue. When we feel fairly treated, the reward systems in our brain light up; when we feel unfairly treated conflict, disengagement, distrust, and frustration arise. How many times have we heard the refrain “it’s not fair!” in consultations, mediations, and other formal adjudicative contexts? Fairness can therefore be an effective principle to support constructive conflict engagement by helping to build and sustain respect, trust, and resilience at both the individual and institutional levels.

Our behaviour, perceptions, and attitudes are inextricably linked to the environments in which we learn, work, and live. As we look at the ecology of conflict, we can use fairness to help individuals navigate conflict and move constructively forward. Fairness can be used to proactively cultivate environments in which both individual and institution can become more resilient to conflict and engage with it in a way that contributes to more respectful and inclusive spaces.

As mediators, arbitrators, lawyers, and ombuds, we are part of a community of professionals who support problem solving. How we each do that, what tools we employ, and how fairness plays a part will continue to differ from case to case, practitioner to practitioner. Exchanges across disciplines and states on these issues will help us grow and evolve in our respective practices.

Shirley Nakata is UBC Vancouver’s first Ombudsperson for Students. Shirley was called to the B.C. Bar in 1989 after obtaining a Bachelor of Arts degree followed by her LL.B. from the University of British Columbia. She practiced law at Russell & DuMoulin (now Fasken Martineau) before moving to the Canadian Human Rights Commission where she worked as a Human Rights Officer. From 1996 to 2009, she was the Director of Professional Conduct at the British Columbia College of Teachers, where she gained extensive experience in investigations and the conduct of hearings and expertise in the area of administrative law. She has been a frequent presenter on administrative law and professional regulatory issues in a variety of venues. Shirley has been a board member of the B.C. Council of Administrative Tribunals and member of the Canadian Institute for the Administration of Justice. She is a member of the Association of Canadian College and University Ombudspersons, the Forum of Canadian Ombudsmen and the NorthWest Ombuds Group.