

18th Legislative Assembly of the Northwest Territories

Standing Committee on Government Operations

Report on the Review of Bill 20:
Ombudsperson Act

Chair: Mr. Kieron Testart

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

REPORT ON THE REVIEW OF BILL 20: OMBUDSPERSON ACT

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS
REPORT ON THE REVIEW OF BILL 20: OMBUDSPERSON ACT

INTRODUCTION

Bill 20, sponsored by the Minister Responsible for Public Engagement and Transparency, provides for the appointment of an Ombudsperson as an officer of the Legislative Assembly of the Northwest Territories. The bill establishes the mandate of the Ombudsperson to investigate complaints about the administrative fairness of Government of the Northwest Territories' practices, in order to promote fair, reasonable and equitable government administration.

Some of the key matters addressed by the Bill include:

- Requiring that the Commissioner, on the recommendation of the Legislative Assembly, appoint an Ombudsperson;
- Conferring powers and duties on the Ombudsperson for the purpose of fulfilling their mandate;
- Setting out which GNWT departments, boards and agencies, collectively referred to in the bill as "authorities," will be subject to the Ombudsperson's jurisdiction;
- Setting out how members of the public may make complaints to the Ombudsperson; and
- Setting out how investigations are to be conducted by the Ombudsperson.

Bill 20 received second reading in the Legislative Assembly on June 1, 2018, and was referred to the Standing Committee on Government Operations ("the Committee") for review. The Committee is pleased to report on its review of *Bill 20: Ombudsperson Act*.

A NOTE ABOUT THE TITLE "OMBUDSPERSON"

For many years, the word "Ombudsman" has been commonly used in English-speaking countries to describe the role of the person who oversees the administrative fairness of government practices. However, because the term is not gender neutral, its use has become increasingly less acceptable. In an effort to arrive at the most appropriate and workable title for the Northwest Territories'

Ombudsperson, Committee considered titles used in other Canadian jurisdictions.

Six of ten provinces and territories still use the term “Ombudsman.” Each of the remaining four jurisdictions use a different title. In Newfoundland and Labrador, the person is called the “Citizen’s Representative,” and in Quebec the “Public Protector.” Only one Canadian jurisdiction, British Columbia, uses the term “Ombudsperson,” as proposed in Bill 20.

Committee supports the use of a gender neutral title, but Members find the term “Ombudsperson” awkward and difficult to pronounce. For that reason, Committee decided to follow the lead of New Brunswick which, in 2017, changed their legislation so that the title of their Ombudsman is now, simply, the “Ombud.”

Committee proposed this change during the clause by clause review of Bill 20, covered in more detail later in this report. The Honourable Louis Sebert, Minister Responsible for Public Engagement and Transparency concurred with the Committee’s motion to amend the title of the Bill. While Bill 20 has not yet received assent, we anticipate this change will be adopted. For this reason, we have opted to use the term Ombud for the remainder of this report, except where another term is used in a direct quote.

BACKGROUND

Together with Nunavut and Prince Edward Island, the Northwest Territories is one of only three Canadian jurisdictions without an Office of the Ombud to which members of the public may direct complaints about the fairness of their treatment by government.

The idea of creating an Ombud office in the Northwest Territories has been raised from time-to-time in the Legislative Assembly dating, at least, as far back as the 12th Assembly. In March 2013, a motion was passed in the Legislative Assembly, referring the proposal to establish an Ombud office in the Northwest Territories to the Standing Committee on Government Operations for research, analysis and review.¹ That direction from the House culminated in a *Report on Establishing an Office of the Ombudsman for the Northwest Territories*, which was tabled in the Assembly just over a year later, in June 2014.

Building on the foundation set by this report, some Members of the 18th Legislative Assembly advocated to include Ombud legislation in the Government of the Northwest Territories Mandate. As a result, the Mandate contains commitment 5.3.11 to “develop legislation within two years to establish an independent parliamentary office of the ombudsman.”

¹ Hansard, Motion 12-17(4), March 14, 2013, p. 2647.

The introduction of Bill 20 in the House, albeit a little behind schedule, fulfills the GNWT's commitment to bring forward this legislation. Committee thanks the Minister Responsible for Public Engagement, the Honourable Louis Sebert, and his Cabinet colleagues, for fulfilling this important promise.

THE PUBLIC REVIEW OF BILL 20

To commence its consultation on Bill 20, the Committee wrote to invite input from a broad array of over eighty stakeholders, potential interest groups and organizations in the Northwest Territories such as municipal governments, Chambers of Commerce, non-governmental organizations and professional societies. Committee also wrote to Indigenous governments in the NWT to seek their input and, in particular, to canvass their interest in accessing the services of the Ombud on a cost-sharing basis, in a manner similar to that provided for in the *Yukon Ombudsman Act*. This proposal is discussed in greater detail later in this report and with respect to Motion 7.

The Committee held seven public hearings on Bill 20 in Inuvik, Norman Wells, Fort Resolution, Hay River, Behchokò, Ndilo and Yellowknife. As well, Committee received eight written submissions, from the Yellowknife Chamber of Commerce, the Tłı̄chq̄ Government, the Kátł'odeeche First Nation, former Member of the Legislative Assembly (MLA) Ms. Wendy Bisaro, Mr. Colin Baile, the NWT Seniors' Society, the NWT Branch of the Canadian Bar Association and the City of Yellowknife. All submissions received by the Committee are appended to this report.

The Committee would like to thank the communities who welcomed us on our travels and everyone who provided input on Bill 20.

WHAT WE HEARD

Support for a Northwest Territories Ombud

The Committee heard a great deal of support for the establishment of an Ombud in the Northwest Territories. Many people commented that this is something they have long waited for.

- Mr. Colin Baile said, "It was in the early 1990's I first addressed, before a Committee of this house, the need for then Ombudsman legislation...As this Committee is aware, we are one or only two jurisdictions without such legislation...Ombudsperson legislation, at its core, is not intended to reprimand government, but rather to assist individuals with resolving

disputes they may have with government and how they have been treated during that interaction...[B]y using a restorative approach... individuals can have their faith restored in the public sector and Government can be assisted in providing and promoting fair, accountable and transparent services.”

- The Northwest Territories Branch of the Canadian Bar Association said, “The establishment of an Ombudsperson for the Northwest Territories is a welcome development. The office will provide residents of the Northwest Territories an important means of having concerns with government fairly investigated and addressed.”
- Ms. Wendy Bisaro, a former MLA and advocate for the establishment of an Ombudsperson in the Northwest Territories told the Committee, “It has long been a belief of mine that the NWT needs an ombudsman. That legislation has finally come forward suggests that the benefits of an ombudsman for our Territory have been recognized, thankfully.”
- Ms. Georgina Franki of Behchokò said, “It has been a long time coming. As a northerner and Indigenous woman, we need help with someone to speak on behalf of some who can’t speak.”
- Mr. Todd McCauley of Norman Wells said this “is a major step forward and needed in the NWT.”

This does not mean to suggest that Committee did not hear dissenting voices. However, they were in a very small minority.

- Ms. Jane Groenewegen, also a former MLA, expressed the view that the NWT is highly governed and there is easy access to Members of the Legislative Assembly, Ministers, plus a Conflict of Interest Commissioner, a Languages Commissioner, a Human Rights Commissioner, a Rental Officer, and an Employment Standards Officer. She said that the Legislative Assembly’s library is full of statutory officers’ reports with recommendations that have not been acted on.

Questions on the Role of the Ombud

Committee encountered a lot of curiosity about how the Ombud’s Office works and heard a lot of questions. The following is an example of some of the questions raised during the public consultation meetings on Bill 20:

- How long will it take for the Ombud to Act on complaints?

- Where will the Ombud be based?
- Will there just be one person, or will the Ombud have staff?
- How will we ensure good “bang for the buck” in establishing an Ombud?
- Will the Ombud visit each community quarterly?
- Who establishes the Ombud’s priorities?
- Will the Ombud deal with issues like nepotism?
- Who pays the Ombud’s salary and does the performance reviews?
- Can the Ombud make recommendations to change legislation?
- How does this proposed legislation compare with Ombud legislation in other provinces and territories?
- What is the role of the Ombud with respect to Indigenous governments?

The level of interest and the very insightful questions from residents across the Northwest Territories suggest that a well-developed and targeted public awareness campaign must accompany the opening of the Ombud’s office in the Northwest Territories, so that people are aware of the Ombud’s role and purpose and the assistance they can expect to receive when they contact the Ombud. Accordingly, the Committee makes the following recommendation:

Recommendation 1

The Standing Committee on Government Operations recommends that the Minister of Responsible for Public Engagement and Transparency work closely with the Office of the Clerk of the Legislative Assembly and the newly appointed Ombud, to ensure the timely development and launch of a robust public awareness campaign to support the opening of the Office of the Ombud and increase residents’ understanding of services the office provides, and how to access them.

The Ombud and MLAs – Distinguishing Between Their Roles

In his presentation at the Yellowknife public hearing, Mr. David Wasylciw talked about giving more consideration to the distinction between MLAs and the Ombud.

As well, in response to the Committee’s public hearing in Hay River on Bill 20, the Hay River Hub published an October 9, 2018 editorial titled “GNWT doesn’t need an ombudsperson.” The writer argues that “one of the main reasons there’s an ombudsperson in other jurisdictions is the size and complexity of their governments and the remoteness of their politicians from the people.” The article suggests that, because of our small population, NWT residents have greater access to territorial politicians and can “take [their] complaint right to the top of the territorial government.”

It is true that NWT residents do benefit from having political representatives who are accessible and approachable. It is also true that both MLAs and the Ombud can assist people who are having difficulty dealing with the territorial government. However, the tools at their disposal to provide this assistance are very different.

As regular MLAs, we can rely on our access to and relationship with our Cabinet colleagues to raise issues of concern. We must also, however, rely on the political will of our colleagues to provide assistance with constituency complaints. MLAs have found that it may take months, even years, to get some resolution for their constituents. MLAs also frequently encounter “confidentiality” as a reason why a Minister cannot discuss a constituent’s concern in sufficient detail for an MLA to broker a resolution.

The key distinction between an Ombud and an MLA, and one of the main reasons that other jurisdictions, including Yukon, have them, is that Ombuds have broad powers of investigation that MLAs do not. Upon receiving a complaint that the Ombud believes has merit, the Ombud may conduct an investigation. The tools at the Ombud’s disposal to do such an investigation are quite powerful.

Clause 26 of Bill 20 gives the Ombud the power to make inquiries, receive confidential information and to hold hearings. The Ombud has the authority to enter any premises occupied by a government authority, talk in private with anyone there; require a person to provide information and produce documents, whether or not that person is still a member or employee of the authority; and to take possession of documents or things and produce copies of them. The Ombud also has the power to summon people and require them to give evidence under oath, if the Ombud believes they have information relevant to an investigation. These powers allow the Ombud to investigate and attempt to resolve matters even where there is no political will to do so.

As well, because the Ombud has the power to undertake investigations on his or her own initiative, the Ombud is uniquely positioned to look into systemic problems where administrative fairness may need improvement. This type of analysis and investigation goes well beyond the mandate, and authority, of an MLA.

The Independence of the Ombud’s Office

In order to carry out such powers free from political influence, it is important that the Office of the Ombud be independent from the executive branch of government.

- The NWT Seniors’ Society noted that “the Act supports a term of five years for the Ombudsperson that exceeds the mandate of any Legislative Assembly. This helps to ensure the work of the Office is not unduly

influenced by the Legislative Assembly once appointed.” They further stressed that the provisions relating to suspension or removal of the Ombud should show that a substantive majority was in favour and not a simple majority. “This is to assure that the Ombudsperson is independent and cannot be removed at the whim of a few due to a decision that may be unpopular.”

- The NWT Branch of the Canadian Bar Association also noted that “the Ombudsperson should have independence through security of tenure.”
- Mr. Colin Baile objected to clause 17, which specifies that the Ombud’s jurisdiction does not extend to the Legislative Assembly and its Standing Committees. He argues that “To exclude the entire legislative branch of government, including members, management and staff is disrespectful of the Act’s intention and sends the message the Legislative Assembly and its staff are above such investigation.”

The Committee respectfully disagrees with this view. In Canadian jurisdictions, the Ombud functions as a statutory officer of the legislative branch of government, so that the office may have independence from the executive branch. While not all jurisdictions have a provision similar to clause 17, which is also found in Manitoba’s *Ombudsman Act*, this does not mean that the Legislative Assembly, its Committees, and staff in other jurisdictions are within the scope of their respective Ombuds. One must look to the definitions, schedules and provisions in each province or territory’s Ombud legislation to determine which departments, agencies and organizations of the public sector are subject to the Ombud’s oversight. Committee is aware of no Canadian province or territory that permits Ombud oversight of the legislative branch of government.

The Importance of Hiring the Right Person for the Job

Committee heard from a number of people that, in order for the Northwest Territories’ first Ombud to be effective, it is important that the right person be hired for the job.

- Mr. Colin Baile noted that “the Ombudsperson is most often the only or last means of resolving disputes with government agencies. The trust placed in the Ombudsperson by the public, and the statutory authority given that individual by the Legislative Assembly carries great responsibility and expectation.”
- Former MLA Ms. Jane Groenewegen said that the new Ombud should have a good understanding of the government and its processes and urged Committee, “don’t set the standard too low.”

- Mr. Eric Braathen expressed the view that the appointee should be a long-time northerner with extensive knowledge of the Government of the Northwest Territories.

Conditions of Employment for the Ombud

Clause 9 of Bill 20 provides that the Ombud is entitled to pay and benefits. Ms. Bisaro questioned what is meant by “benefits” and asked whether it included access to a pension plan. Mr. David Wasylciw expressed the opinion that the Ombud’s salary should be tied to the GNWT’s pay structure and made public in the Act.

The Office of the Clerk advised the Committee that none of the legislation establishing statutory officers makes any reference to employee benefits. This is intentional, so as not to create an employee-employer relationship with these independent offices. Committee further heard that not specifying the nature of the salary or benefits allows greater flexibility for the Speaker in tailoring a contract that best meets the needs of the incumbent. Committee is comfortable with this approach and, therefore, does not propose any amendments to Clause 9 of Bill 20.

Clause 10 provides that, with the approval of the Speaker, the Ombud may engage in outside employment. Both Mr. Baile and the NWT Chapter of the Canadian Bar Association questioned why the Act would allow the Ombud to do so when this is not allowed in other jurisdictions, and suggested that if outside employment is to be permitted, it should be done with the endorsement of the Conflict of Interest Commissioner.

Allowing one individual to potentially hold one or more offices with Ombud-like powers provides the Legislative Assembly’s Board of Management and/or the Office of the Speaker, with the greatest flexibility in how its statutory appointments are filled, and recognizes that in a remote jurisdiction, such as ours, it might not be advisable to exclude potentially qualified candidates by being overly restrictive.

Committee received input from the Office of the Clerk of the Legislative Assembly, advising that the Conflict Commissioner has jurisdiction over current and former Members of the Legislative Assembly only and that none of the other legislation for statutory officers requires the approval or endorsement of the Conflict Commissioner. Committee is satisfied that the matter of potential conflicts of interest can be adequately handled by the Speaker, acting on the advice of the Clerk and Law Clerk. As a result, Committee is not seeking any amendments to this provision in Bill 20.

Calls for the Inclusion of Municipalities

The Committee heard a number of calls for municipalities to be included under the Ombud's jurisdiction.

- The City of Yellowknife submitted that the Ombud's jurisdiction should be expanded to include municipalities, noting that "Our Council strongly supports accountability and transparency in local government and having municipalities bound by the *Ombudsperson Act* provides an impartial and independent review process to ensure the fairness of municipal processes, decisions and actions."
- The Yellowknife Chamber of Commerce noted, "We are excited to see Bill 20: the *Ombudsperson Act* moving forward, however, the Act is missing a key component...it fails to provide the Ombudsperson with jurisdiction over municipalities, something that exists in most other Canadian provinces/territories, including: Nova Scotia, New Brunswick, Ontario, Saskatchewan, Manitoba, British Columbia, Alberta and Yukon."
- The NWT Branch of the Canadian Bar Association stated, "The purposes of the Ombudsperson Act would be more fully served if the office's jurisdiction extended to acts or omissions of professional organizations and municipalities created under territorial legislation."

Committee considered two different approaches to this objective. The first option would be to include municipalities as "authorities" under the schedule to the Act. This would give the Ombud the same jurisdiction over municipalities as over GNWT departments, boards and agencies.

- Mr. Colin Baile expressed support for this approach, noting that "municipalities should be added as an authority in the schedule," and suggesting that if this was not possible on the coming into force date of the Act, then it should be "on a set schedule of one year hence."

Committee considered the potential workload for the Ombud under this approach. Committee also considered that there have long been calls for municipalities to be brought under the *Access to Information and Protection of Privacy (ATIPP) Act* and the concerns municipalities have raised about their capacity to manage this change.

Committee ultimately determined that fully including municipalities under the Ombud's jurisdiction at this time had too much potential to overwhelm the resources of the new Ombud office and could place onerous obligations on municipalities that already have limited capacity and will be dealing with upcoming changes to ATIPP legislation.

Committee opted for an approach that would allow municipalities to contract the services of the Ombud on a cost-recovery basis. This is reflected in Motion 7, below. Committee notes, for the record, that the full inclusion of municipalities under the Ombud's oversight is a logical next step and something that should be more fully considered once municipalities are included under ATIPP legislation.

The “Yukon Provision”

When the 17th Legislative Assembly's Standing Committee on Government Operations produced its June 2014 report on *Establishing an Office of the Ombudsman for the Northwest Territories*, the report indicated that Yukon's Ombudsman has the authority, on a cost-recovery basis, to investigate and report back to a Yukon First Nation Government on any matter referred by that government. Committee wrote to Indigenous Governments in the Northwest Territories to canvass their interest in having access to the NWT Ombud under similar conditions.

- Committee received correspondence from Mr. Peter Redvers, Director of Lands, Resources, and Negotiations with Kátł'odeeche First Nation indicating their support for this proposal.
- Committee also received a letter from Grand Chief George Mackenzie, Tłıchq̓ Government. Grand Chief Mackenzie noted, as Committee was aware, that the Tłıchq̓ Community Services Agency is listed in the schedule to Bill 20 and, hence, already under the jurisdiction of the Ombud. However, the Grand Chief pointed out, “the TCSA can have additional roles assigned or delegated to it by Tłıchq̓ Government. As such, it would be of advantage to know about any issues concerning how clients are being treated in their dealings with the TCSA.” Therefore, the Grand Chief noted, “Tłıchq̓ Government asks that consideration be given to formal notice to Tłıchq̓ Government of any investigations of TCSA by the Ombudsperson and the sharing of the Ombudsperson's report coming out of an investigation of the TCSA.”

Clause 42 of Bill 20 provides that the Legislative Assembly may make general rules to guide the Ombud in the exercise of the duties of the Office. It further provides that the Ombud must establish certain policies and procedures and may establish others. Committee feels that the request by Tłıchq̓ Government is best addressed thorough the establishment of rules and procedures guiding the Ombud's Office. Accordingly, Committee makes the following recommendation:

Recommendation 2

The Standing Committee on Government Operations recommends that the Minister of Responsible for Public Engagement and Transparency work closely with the Office of the Clerk of the Legislative Assembly and the newly appointed Ombud, to ensure that appropriate procedures are established to advise Tłıchq Government of any investigations by the Ombud of the Tłıchq Community Services Agency and for the provision of the Ombud's report to Tłıchq Government.

Motion 7, which amends Bill 20 to allow municipalities to refer matters to the Ombud for consideration on a cost-recovery basis, also allows for Indigenous governments in the Northwest Territories to do the same. The motion further provides that, in such instances, the provisions in Bill 20 requiring the Ombud to report to the GNWT and setting out how the GNWT must respond, do not apply. Instead, the Ombud's report will go directly and only to the government or municipality that first referred the matter.

Call for a Mandatory Review Provision

Some Northwest Territories statutes contain provisions requiring a mandatory review of the legislation at set intervals of time, usually every five or ten years.

- Ms. Wendy Bisaro suggested that Bill 20 “is missing a clause requiring a review of the Act every 10 years.”

The merit of including such a provision in legislation is that it sends a public message about the importance of keeping the legislation up-to-date and suitable for current circumstances. Unfortunately, such provisions can tie an Assembly to an expensive and time-consuming review, when one may not be necessary and there are other, more pressing, legislative priorities. Given that the Legislative Assembly has the prerogative, at any time, to review and amend its legislation, such a provision is not strictly necessary. For these reasons, Committee did not adopt this suggestion.

WHAT WE DID

In addition to the general themes identified above, the Committee was fortunate to receive detailed input on a number specific clauses contained in Bill 20. Committee addressed many of these issues raised by stakeholders in motions to amend Bill 20.

Clause by Clause Review

The clause-by-clause review of Bill 20 was held on was held on October 25, 2018. The Committee thanks the Honourable Louis Sebert, Minister Responsible for Public Engagement and Transparency, and members of his staff, for their appearance before the Committee.

At this meeting, the Committee moved nineteen separate motions to amend Bill 20. These motions, and the purpose of each, are identified below.

Minister Sebert concurred with all but three of the Committee's motions. The motions for which there was no concurrence are also identified below.

Motion 1: To amend the English version of Bill 20 to change the word "Ombudsperson" to "Ombud" wherever it appears in the bill.

This makes "Ombud" the official title of the position.

Motion 2: To amend clause 6(3) of Bill 20 specify that any suspension of the Ombud occurring when the Legislative Assembly is not in session will only remain in effect until the conclusion of next sitting of the Legislative Assembly.

As pointed out by the NWT Branch of the Canadian Bar Association, "the Commissioner, on recommendation of the Board of Management, should not be able to suspend the Ombudsperson without accountability to the Legislative Assembly." This amendment allows the Assembly to deal with the suspension at the next sitting, and is consistent with Ombud legislation in other jurisdictions such as Manitoba and Ontario.

Motion 3: To amend subclause 7(3) to change "Speaker" to "Board of Management."

Clause 7(3) provides for the appointment of an Acting Ombud, due to the resignation or absence of the incumbent Ombud. Committee received input from Ms. Bisaro suggesting that any appointments should be done only by the Legislative Assembly, and by the NWT Seniors' Society suggesting that any decision be made by way of a "supermajority" of votes, meaning a majority that is larger than fifty percent plus one.

The Legislative Assembly votes on appointments, such as the Ombud, Acting Ombud or Special Ombud, according to the Rules of the Legislative Assembly, which require a simple majority. Consequently, it would be outside the scope of

Bill 20 for the Committee to seek an amendment requiring a supermajority vote. Committee feels, however, that appointment by the Board of Management, rather than the Speaker alone, would require consideration of a number of viewpoints, rather than just one. That is the rationale for this amendment to the bill.

Committee notes that input on this provision was received from the Office of the Clerk of the Legislative Assembly, which has an interest in this legislation because it is responsible for the management of the Legislative Assembly's statutory officers. The Office of the Clerk indicated a preference for subclause 7(3), as originally drafted, for consistency with other statutory officer legislation and to allow the Speaker alone to appoint an acting Ombud when it is a matter of urgency. Given that acting and special appointments for the Languages Commissioner and Equal Pay Commissioner are made on the recommendation of the Board of Management, while others like the Information and Privacy Commissioner are made by the Speaker, and to be responsive to public concerns about the independence of the Ombud, Committee decided to proceed with Motion 3.

Motion 4: To amend subclause 8(1) to change "Speaker" to "Board of Management."

Subclause 8(1) provides for the appointment of a Special Ombud. The rationale for this motion is the same as for Motion 3.

Motion 5: To amend subclause 15(1), which sets out the mandate of the Ombud.

Committee found this important clause densely worded and difficult to understand. Almost all Ombud legislation across Canada has a similar clause, and Committee had seen examples in which the Ombud's mandate was more clearly communicated. Committee proposed a motion to improve the readability of the clause. Committee also wanted the mandate clause to contain a specific reference to policy. Committee holds the view that it is fully within the Ombud's mandate to consider and make recommendations on the application of GNWT policy. The reference was meant to add clarity by making this explicit. Minister Sebert did not concur and the motion was defeated.

Motion 6: To amend Bill 20 by deleting subclause 16(2).

Subclause 16(2) provides for the Executive Council (Cabinet) to refer matters relating to the administration of an authority to the Ombud for investigation and

report. Committee propose to delete this provision. In so doing, Committee's intention is not to be mean-spirited. Cabinet has considerable resources at its disposal for investigating administrative concerns within government, including the Internal Audit Bureau in the Department of Finance. Given that the resources of the Ombud will not be unlimited, Committee feels that those resources are, as a first priority, best used assisting people of the Northwest Territories with their concerns. Committee also notes that under Clause 16(1), the Legislative Assembly may refer a matter to the Ombud, which means that any Member, including Ministers, may move a motion asking the Assembly to refer a matter to the Ombud.

Motion 7: To amend Bill 20 by adding two new provisions after subclause 16(2).

This motion introduces a provision that allows municipalities or Indigenous governments to refer matters to the Ombud on a cost-recovery basis and to receive the Ombud's report directly.

Motion 8: To amend subclause 17(2).

Paragraph 17(1)(d) provides that the Ombud may not investigate a matter where the complainant has an existing right of appeal, until after that appeal has been exercised. Subclause 17(2) provides for an exception to this rule where the Ombud determines that it would be unreasonable to expect the complainant to pursue the avenue of appeal. The amendment proposed by Committee gives the Ombud broader discretion in making this determination with respect to past actions by the complainant.

Motion 9: To amend subclause 17(3) which provides that the Ombud cannot investigate conduct occurring before the coming into force date of the Act.

Committee feels strongly that this temporal restriction on the Ombud's jurisdiction is overly restrictive and inconsistent with public expectation. Committee is concerned that, if the Ombud cannot investigate any conduct occurring prior to the start of the Office, then they are unlikely to address many complaints during their first year of operation. This would likely frustrate both potential complainants and the Ombud, and set the wrong tone for this new service.

Committee discussed with the Minister the possibility of making the Ombud's jurisdiction retroactive to a specific date, but the Minister was not in a position to make such a determination without Cabinet approval.

Committee thus moved a motion to delete this subclause entirely. The Minister did not concur and the motion was defeated.

Motion 10: To amend subclause 22(1) to allow the Ombud to discontinue acting on a matter where the complainant has abandoned the complaint.

Motion 11: To amend Bill 20 by deleting clause 23 and substituting new language.

Clause 23 provides that the Ombud cannot investigate any matter that falls under the jurisdiction of another statutory officer with Ombud-like powers. The amendment was proposed for clarity, to identify precisely which statutory officers are referred to.

Motion 12: To amend clause 24 by adding a new provision after subclause 24(5).

Subclause 24(5) provides that if the Ombud finds evidence of any breach of duty or misconduct on the part of any officer or employee of an authority, the Ombud must refer the matter to the administrative head of the authority. As drafted, the Bill did not specify to whom the Ombud must refer the matter if the administrative head of the authority is the subject of the misconduct or breach of duty. The amendment proposed by Committee authorizes the Ombud to refer the matter further up the chain of command.

Motion 13: To amend clause 32 to specify that the Ombud must notify the complainant and the authority of the Ombud's decision and reasons for it *in writing*.

Motion 14: To amend subclause 33(1) to require the Ombud to report the findings of an investigation to *the Minister* as well as the head of the authority.

Motion 15: To amend subclause 37(1).

Subclause 37(1) provides that where an authority fails to take appropriate action in response to a recommendation of the Ombud, the Ombud may submit a report to the Premier and subsequently to the Legislative Assembly. The amendment proposed by Committee would have changed the provision to require that, where the Ombud reports to the Premier, a report must also be submitted to the Legislative Assembly, which is the body that the Ombud ultimately reports to.

The Minister did not concur and the motion was defeated.

Motion 16: To amend subclause 39(3).

This subclause specifies that the Ombud cannot be compelled to give evidence in proceedings of a judicial nature. The Committee's motion proposed, for clarity, that this prohibition on compellability be extended to include proceedings of an administrative or quasi-judicial nature, as well.

Motion 17: To amend the schedule to Bill 20 by deleting item 5.

This motion corrects a drafting oversight which included another statutory office, the Human Rights Commission, under the Ombud's jurisdiction. The Human Rights Commission is deleted from the schedule.

Motion 18: To amend the English version of the title of Bill 20 from "Ombudsperson Act" to "Ombud Act."

CONCLUSION

The Review of Bill 20 is the culmination of work by the Standing Committee on Government Operations spanning two Assemblies. The Standing Committee wishes to again thank the Government of the Northwest Territories for fulfilling their Mandate commitment to bring this legislation forward. The Committee also thanks everyone involved in the review of this Bill for their assistance and input.

Following the clause-by-clause review, a motion was carried to report *Bill 20: Ombud Act*, as amended and reprinted, as ready for consideration in Committee of the Whole.

This concludes the Standing Committee's review.

APPENDIX 1

SUBMISSIONS

Bill 20: Ombudsperson Act

Monday September 17th, 2018 at 6:00pm in Committee Room A – Legislative Assembly

Fundamentally, the Yellowknife Chamber of Commerce has long held the belief that the Government of the Northwest Territories should have transparency and open government policies that are consistent with or exceed that of other Canadian jurisdictions.

In a written submission, made as part of the community consultations for the creation of an Open Government Policy – the Yellowknife Chamber of Commerce made requests for the following:

1. The establishment of an Office of the Ombudsperson, to be appointed by the legislature and completely independent of the executive;
2. The creation of a lobbyist registry that is publicly accessible online. A typical lobbyist registry applies to Ministers, regular MLAs and senior bureaucrats and includes meetings, phone calls and emails; and
3. The creation of a Whistleblower Protection Act.

We are excited to see Bill 20: The *Ombudsperson Act* moving forward, however, the *Act* is missing a key component:

The *Act* fails to provide the Ombudsperson with jurisdiction over municipalities – something that exists in most other Canadian provinces/territories, including:

- Nova Scotia
- New Brunswick
- Ontario
- Saskatchewan
- Manitoba
- British Columbia
- Alberta and
- Yukon

The Ombudsperson for British Columbia has had jurisdiction over municipalities since 1995 and other provincial governments have made amendments in response to the high volume of complaints received. For example, in 2015/2016, “504 files were opened related to complaints about municipalities and regional districts” in British Columbia. In Ontario, 1,656 complaints were made – which incentivized the government to amend their legislation in 2016. Alberta reported that they were receiving a significant number



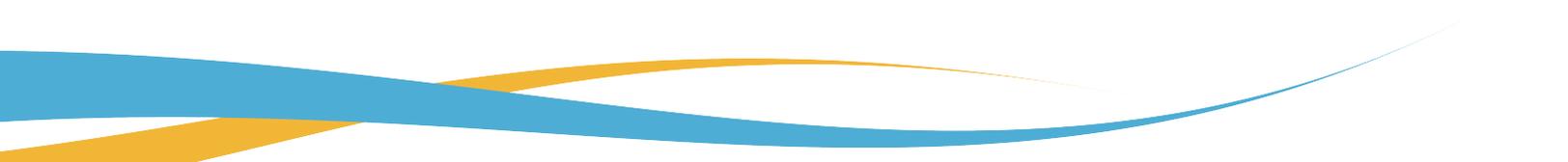
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of complaints before the Ombudsperson was given jurisdiction over municipalities, which occurred on April 1, 2018.

We urge the Government of the Northwest Territories to get this right this first time – and ensure that the Ombudsperson Act follows Canadian best practices, has the same authority as other Canadian provinces and territories.

Creating a culture of open government and accountability is an important issue for the Yellowknife business community. We sincerely hope to see a recommendation that would provide our Ombudsperson with jurisdiction to investigate complaints received at the municipal level.

Thank you,



The Honourable Louis Sebert
Minister of Justice
Minister of Lands
Responsible for the NWT Power Corporation
Responsible for Public Engagement and Transparency

Re: Open Government Public Engagement and Transparency

Dear Minister Sebert,

Thank you for the opportunity to provide input as part of your engagement for the development of an Open Government Policy.

The Yellowknife Chamber of Commerce represents 358 Yellowknife businesses, and we have received a substantial amount of feedback from our membership on this important issue. Fundamentally, we believe that the Government of the Northwest Territories should have transparency and open government policies that are consistent with other Canadian jurisdictions.

The Board of Directors of the Yellowknife Chamber of Commerce would like to formally request that Members of the 18th Legislative Assembly:

- Establish an Office of the Ombudsman for the Northwest Territories, to be appointed by the legislature and completely independent of the executive as per the recommendations outlined in the *Establishing an Office of the Ombudsman for the Northwest Territories* report, tabled document 103-17(5), tabled on June 4, 2014. An Office of the Ombudsman exists in nine provinces and the Yukon.
- Investigate the best way to implement a lobbyist registry that is publicly accessible via the internet, as per Motion 35-17(5) on February 19th, 2015. The Response to Motion, tabled document 269-17(5), tabled on June 3, 2015 explains the current model of reporting which only requires Ministers to report on meetings with lobbyists. This is not sufficient. A typical lobbyist registry applies to Ministers, regular MLAs and senior bureaucrats and includes meetings, phone calls and emails, as per typical lobbyist registries in Canada. Comprehensive lobbyist registries exist in nine provinces.
- Create a policy where minutes are kept for public consultations and working groups and published online.

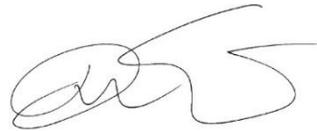
- Establish a standalone Whistleblower Protection Act.
- Release detailed reports on awarded government contracts, including sole sourcing, that include the vendor selection process, the value of the contract and the name of the vendor who was awarded the contract. We are also interested in reports that measure the effectiveness of BIP.

Open government and transparency are important issues for the Yellowknife business community and we are pleased to provide you with our recommendations. We look forward to receiving a response outlining the intent and proposed timelines for the Government of the Northwest Territories to implement these measures.

Respectfully,



Renée Comeau
President



Deneen Everett
Executive Director





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Submissions on Bill – 20
Before the Standing Committee on Government Operations
September 17, 2018
By Colin Baile

I wish to thank the Standing Committee on Government Operations for the opportunity to provide my comments on Bill-20, the *Ombudsperson Act*. It was in the early 1990's I first addressed, before a committee of this house, the need for then Ombudsman legislation. In the intervening 25 years, I've had a moment or two to further reflect on this jurisdiction's need for such legislation.

As this Committee is aware, we are one or only two jurisdictions without such legislation.

I wish to speak to nine sections of the proposed Act, for which I encourage reconsideration. Before I do so, I would like to speak briefly to the intended scheme of Ombudsperson legislation.

Ombudsperson legislation, at its core, is not intended to reprimand government, but rather to assist individuals with resolving disputes they may have with government and how they have been treated during that interaction. To my mind, this can best be achieved by using a restorative approach rather than an adjudicative one. In doing so, individuals can have their faith restored in the public sector and Government can be assisted in providing and promoting fair, accountable, and transparent services to the public. It is not enough for the Ombudsperson to find fault and recommend changes.

While collaborative and informal dispute resolution is contemplated in the proposed Act, it will fall to the Ombudsperson to determine how best to resolve complaints. To this end, the introduction of a 'Purpose' section in the Act would help guide stakeholders and the Ombudsperson in using less determinative processes and more collaborative or restorative processes whenever possible. Examples of a 'Purpose' section can be found in both the *Workers' Compensation Act* and *Human Rights Act*.

As demonstrated by other jurisdictions, the Ombudsperson is most often the only or last means of resolving disputes with government agencies. The trust placed in the Ombudsperson by the public, and the statutory authority given that individual by the Legislative Assembly carries great responsibility and expectation.

During this Committee's deliberations I encourage you to place yourself simultaneously in the shoes of three individuals; Firstly, the individual who feels they have been wrongly treated by the actions or decisions of a government official. You feel powerlessness, your life has been adversely impacted and you have nowhere to seek assistance or readdress. Secondly, place yourself in the shoes of a government employee. You are following the procedures and rules you have been instructed to follow. You had no choice but to make the decision you did.

Now, place yourself in the shoes of the Ombudsperson. What authorities, tools, processes, skills and experience should you have available to help these individuals because in the end, it is your job to help them both AND to leave the government program a fairer, more accountable, and more transparent program for all.

Submissions on Bill – 20
Before the Standing Committee on Government Operations
September 17, 2018
By Colin Baile

Issue #	Section of Bill 20	Comments & Recommendations
1	10. (1) The Ombudsperson <u>may</u> , with the prior approval of the <u>Speaker</u> , hold another public office or carry on a trade, business or profession.	<ul style="list-style-type: none"> • The majority of jurisdictions disallow the Ombudsperson to hold another office or engage in other business. • Reason is two fold, 1. To ensure full commitment to the duties, and 2. To reduce possible conflicts • The Draft Act included approval of the LA and Conflict of interest Commissioner to undertake outside activities. <p>1. The Ombudsperson should not hold other offices.</p> <p>2. If outside business is permitted, it should be with the approval of the Conflict of Interest Commissioner, who is better positioned to evaluate appropriateness and potential conflict.</p>
2	15. (1) The mandate of the Ombudsperson is to investigate any decision or recommendation made, or any act done or omitted to be done by an authority, with respect to a <u>matter of administration</u> , that aggrieves, or may aggrieve, any person or body of persons in their personal capacity, or by any officer, employee or member of any authority in the exercise of any power or duty conferred on that officer, employee or member by any enactment.	<ul style="list-style-type: none"> • The term ‘matter of administration’ could lead to misunderstanding and/or a jurisdictional challenge. The term is not defined in the Act. • While some jurisdictions use this term, other jurisdictions use phrases such as ‘in the course of the administration of the public body’. <p>1. Remove the term ‘with respect to a matter of administration’. This broadens the jurisdiction of the Ombudsman to include all decisions, recommendations, and acts undertaken by an authority.</p>
3	17. (1) The Ombudsperson <u>shall not</u> investigate any decision, recommendation, act, order or omission <u>(a) of the Legislative Assembly, a Standing Committee, the Commissioner in Executive Council, the Executive Council or a committee of the Executive Council;</u>	<ul style="list-style-type: none"> • Only Manitoba has this provision. • The <i>draft Act</i> did not include this provision and in fact considered the Ombudsperson’s action where an alleged breach or misconduct involves a Minister. • Ontario specifically allows investigation of ‘a member of the assembly. • Where such investigations are allowed, provision can be made to protect the proceedings and deliberations of the legislative Assembly • Alberta Act: <p>19(1) When the Minister of Justice and Solicitor General certifies that the giving of any information or the answering of any question or the production of any document, paper or thing might involve the disclosure of</p> <p>(a) <u>the deliberations of the Executive Council</u>, or</p> <p>(b) <u>proceedings of the Executive Council or a committee of it</u> relating to matters of a secret or confidential nature and would be injurious to the public interest, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of the certificate to the Legislature.</p> <ul style="list-style-type: none"> • To exclude the entire legislative branch of government, including members, management, and staff is disrespectful of the Act’s intention and sends the message the Legislative Assembly and its staff are above such investigation. • The Legislative Assembly is bound by human rights legislation;

		<p>should this not extend to Ombudsperson legislation?</p> <ol style="list-style-type: none"> 1. The deliberations and proceedings of the Executive Council can be protected while extending the public's trust in the Ombudsperson's process, to the entire GNWT. 2. Minimally, members and staff of the Legislative Assembly, as individuals, should not be exempt from Ombudsperson investigation.
4	<p>17. (1) The Ombudsperson shall not investigate any decision, recommendation, act, order or omission (d) under an Act where there is a right of appeal or objection, or a right to apply for a judicial review, until after that right of appeal, objection or application has been exercised in the particular case.</p>	<ul style="list-style-type: none"> • This section disallows investigation where, under any Act, there is a right of appeal. • <u>Missing</u> from the proposed section is a qualifier as to time. • ALL other jurisdictions allow for Ombudsperson investigation AFTER the time to appeal has expired. • The draft Act included this provision. • The Present wording gives the Ombudsperson jurisdiction only where the right of appeal has been exercised. <ol style="list-style-type: none"> 1. Include "...or until after the time prescribed for the exercise of that right has expired", not just "appeal...has been exercised".
5	<p>23. The Ombudsperson shall not investigate any matter that falls within the mandate of another <u>commission or commissioner</u> established by an Act, unless that commission or commissioner agrees.</p>	<ul style="list-style-type: none"> • "Commission and Commissioner" are not defined in the Act. This could lead to a jurisdictional challenge as several government organizations contain these terms in their name. e.g. <i>Workers' Safety and Compensation Commission</i> • The Draft Act specified the intended agencies, e.g. <i>Languages Commissioner</i>; Bill-20 does not. <ol style="list-style-type: none"> 1. The term "Commission or Commissioner" should be replaced with "<i>Statutory Officers of the Legislative Assembly</i>" or name the specific Commissions/Commissioners.
6	<p>39(3) Neither the Ombudsperson or any employee of the Ombudsperson, or any person engaged by the Ombudsperson under a contract for professional services is competent or compellable to give evidence in any court or in <u>any proceeding of a judicial nature</u> with respect to anything coming to that person's knowledge in the exercise or performance of that person's powers and duties under this Act.</p>	<ul style="list-style-type: none"> • The phrase "<i>Any proceeding of a judicial nature</i>" refers to the Courts. • It is possible a party to a matter before an adjudicative administrative tribunal may seek to compel the Ombudsperson to give evidence. <ol style="list-style-type: none"> 1. This section should be expanded to include proceedings before adjudicative administrative tribunals by using a phrase such as '<i>any proceeding of a judicial or administrative adjudicative nature</i>'.

Omissions

7	<p style="text-align: center;">Municipalities</p> <p>15. (1) The mandate of the Ombudsperson is to investigate any decision or recommendation made, or any act done or omitted to be done by an <u>authority</u>,</p> <p>1. In this Act, "authority" means a body specified in the Schedule</p>	<ul style="list-style-type: none"> • Alberta, British Columbia, Manitoba, Ontario as well as most other jurisdictions include municipalities and local government within the Ombudsperson's jurisdiction. • Residents' interaction with local governments can have immediate and impactful consequences. This is most apparent in our communities where individuals may feel there is nowhere for them to go with concerns about their interactions with local hamlet, town or city officials. <p>1. <i>Municipalities should be added as an authority in the schedule (Hamlets Act, Cities, Towns and Villages Act)</i></p> <p>2. <i>If not with the coming into force of this Act, than on a set schedule of one year hence.</i></p>
8	<p style="text-align: center;">Abandonment of Complaint</p> <p>22. (1) The Ombudsperson may refuse to investigate or cease investigating a complaint if...</p>	<ul style="list-style-type: none"> • Section 22(1) allows the Ombudsperson to refuse or cease investigating a complaint. There are seven circumstances allowing for such action. • Not included is the circumstance where a complainant abandons his or her complaint. • Several jurisdictions have included abandonment as a ground to cease an investigation. • British Columbia's Act includes: <p>13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:</p> <p>(g) <u>the complainant has abandoned the complaint</u></p> <p>(i) by failing to advise the Ombudsperson of a current address or telephone number at which the Ombudsperson can contact him or her, or</p> <p>(ii) by failing to respond after a reasonable number of attempts by the Ombudsperson to contact him or her in writing or verbally;</p> <p><i>Abandonment of complaint should be included in section 22(1)</i></p>
9	<p>17(3) The Ombudsperson shall not investigate <u>conduct</u> occurring before the commencement of this Act.</p>	<ul style="list-style-type: none"> • This is the only contextual use of "conduct" in the Act. • It would be best to use consistent language. <p>1. <i>Replace "conduct" with "any decision, recommendation, act, order or omission done by an authority".</i></p>

Bill 20 – Ombudsperson Act

Issue #	Bill 20 - section	Draft Act Tabled Doc 322-17(5) (Tabled October 1, 2015)	British Columbia Ombudsperson Act, RSBC 1996, c340 (May 31, 2018)	Alberta Ombudsman Act, RSA 2000, c 0-8 (April 1, 2018)	Ontario Ombudsman Act, RSO 1990, c 0.6 (December 14, 2017)	Manitoba Ombudsman Act, CCSM c 045 (March 15, 2018)
1	10. (1) The Ombudsperson <u>may</u> , with the prior approval of the Speaker, hold another public office or carry on a trade, business or profession.	<p>5(3) The Ombudsman <u>must not</u> hold another office. <small>[AB 3(1); BC 3(2); MB 3(2); ON 5(1); YT 3(2)]</small></p> <p>5(5) The Ombudsman may, with the prior approval of the Legislative Assembly and endorsement by the Conflict of Interest Commissioner, engage in another occupation for reward outside the duties of the office of the Ombudsman. <small>[YT 3(3)] [Note: Most provincial statutes prohibit the Ombudsman from other employment. For reference, see the sections of the various provincial statutes annotated above under 5(3).]</small></p>	3(2) The Ombudsperson <u>must not</u> hold another office or engage in other employment.	3(1) The Ombudsman <u>may not</u> be a member of the Legislative Assembly and <u>shall not</u> hold any office of trust or profit, other than the office as Ombudsman, or engage in any occupation for reward outside the duties of that office.	5. (1) The Ombudsman shall devote himself or herself exclusively to the duties of the Ombudsman's office and <u>shall not</u> hold any other office under the Crown or engage in any other employment.	3(2) The Ombudsman <u>shall not</u> hold any other public office or carry on any trade, business, or profession.

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2	15. (1) The mandate of the Ombudsperson is to investigate any decision or recommendation made, or any act done or omitted to be done by an authority, with respect to a <u>matter of administration</u> , that aggrieves, or may aggrieve, any person or body of persons in their personal capacity, or by any officer, employee or member of any authority in the exercise of any power or duty conferred on that officer, employee or member by any enactment.	14 (1) It is the function and duty of the Ombudsman, with respect to a <u>matter of administration</u> , on a complaint or on the Ombudsman's own initiative, to investigate (a) a decision or recommendation made, (b) an act done or omitted, or (c) a procedure used, that aggrieves or may aggrieve a person or body of persons, in or by any department or authority or by any officer, employee or member of any department or authority in the exercise of any power or the performance of any function conferred on the officer, employee or member by any enactment. [AB 12(1) & (2); BC 10(1); MB 15; ON 14(1) & (2); SK 14; YT 11(1) & (2); ATIPP 49.2.(1)]	10(1) The Ombudsperson, with respect to a <u>matter of administration</u> , on a complaint or on the Ombudsperson's own initiative, may investigate (a) a decision or recommendation made, (b) an act done or omitted, or (c) a procedure used by an authority that aggrieves or may aggrieve a person.	12(1) Subject to subsection (2.1), it is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in the person's or its personal capacity, in or by any department, agency, professional organization or municipality, or by any officer, employee or member of any department or agency in the exercise of any power or the performance of any function conferred on the officer, employee or member by any enactment.	14. (1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity.	15 The Ombudsman may, on a written complaint or on his own initiative, investigate (a) any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a <u>matter of administration</u> in or by any department or agency of the government, or by any officer, employee or member thereof, whereby any person is or may be aggrieved; or (b) any decision or recommendation made, including any recommendation made to a council, or any act done or omitted, relating to a matter of administration in or by any municipality or by any officer or employee of a municipality, whereby any person is or may be aggrieved.

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3	17. (1) The Ombudsperson shall not investigate any decision, recommendation, act, order or omission (a) of the Legislative Assembly, a Standing Committee, the Commissioner in Executive Council, the Executive Council or a committee of the Executive Council.	21(5) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or authority, the Ombudsman shall refer the matter to the Deputy Head of the department or authority, as the case may be. Where the breach or misconduct potentially involves the Minister or the Deputy Head, the matter is referred to the Premier or to the Secretary to Cabinet accordingly. [AB 16(4); MB 29(2), ON 18(6); SK 22(6) & (7)]	N/A	N/A	***14(2) The Ombudsman may make any such investigation on a complaint made to him or her by any person affected or by any member of the Assembly to whom a complaint is made by any person affected, or of the Ombudsman's own motion.	18 Nothing in this Act authorizes the Ombudsman to investigate (a) any decision, recommendation, act, order or omission of the Legislature, the assembly, the Lieutenant Governor, a committee of the assembly, the Lieutenant Governor in Council, the Executive Council, or a committee of the Executive Council;

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4	17. (1) The Ombudsperson shall not investigate any decision, recommendation, act, order or omission (d) under an Act where there is a right of appeal or objection, or a right to apply for a judicial review, until after that right of appeal, objection or application has been exercised in the particular case.	16 (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission (a) in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under any Act, until after that right of appeal, objection or application has been exercised <u>or until after the time limit for the exercise of that right has expired</u> , or (b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding. [AB 13(1); BC 11(1); MB 18; ON 14(4); SK 17 & 18(1); YT 12(1)]	11 (1) This Act does not authorize the Ombudsperson to investigate a decision, recommendation, act or omission (a) in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under an enactment, until after that right of appeal, objection or application has been exercised <u>or until after the time limit for the exercise of that right has expired</u> ,	13(1) Nothing in this Act authorizes the Ombudsman to investigate (a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case <u>or until after the time prescribed for the exercise of that right has expired</u> ,	14(4) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission, (a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, <u>or until after any time for the exercise of that right has expired</u> ;	18 Nothing in this Act authorizes the Ombudsman to investigate (d) any decision, recommendation, act or omission in respect of which there is, under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or tribunal constituted by or under an Act of the Legislature, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the tribunal or court, but in that <u>case investigation shall not commence until after the time prescribed for the exercise of that right to appeal, object or apply, has expired</u> .

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5	23. The Ombudsperson shall not investigate any matter that falls within the mandate of another commission or commissioner established by an Act, unless that commission or commissioner agrees.	20 (1) Where the Ombudsman receives a complaint, the subject of which falls within the mandate of another Commissioner or Commission duly established by territorial enactment, the Ombudsman must refer that complaint, in writing, to the appropriate Commission or Commissioner for furtherance and notify the complainant of the referral. (2) <u>Other Commissions or Commissioners include, but are not limited to, the Northwest Territories Human Rights Commission, the Information and Privacy Commissioner of the Northwest Territories, the Languages Commissioner of the Northwest Territories and the Equal Pay Commissioner of the Northwest Territories.</u>	N/A	N/A	14(4.2) Nothing in this Act empowers the Ombudsman to investigate a complaint respecting any decision, recommendation, act or omission that is within the jurisdiction of the <u>municipal Ombudsman for the City of Toronto.</u> 14(4.4) Subsection (4.3) applies with necessary modifications in respect of a matter that is within the jurisdiction of, (a) an Integrity Commissioner, registrar or Auditor General appointed under Part V.1 of the <u>Municipal Act, 2001</u> ; or (b) an Integrity Commissioner, registrar or Auditor General appointed under Part V of the <u>City of Toronto Act, 2006</u>	N/A

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6	39(3) Neither the Ombudsperson or any employee of the Ombudsperson, or any person engaged by the Ombudsperson under a contract for professional services is competent or compellable to give evidence in any court or in <u>any proceeding of a judicial nature</u> with respect to anything coming to that person's knowledge in the exercise or performance of that person's powers and duties under this Act.	N/A	N/A	23(3) Notwithstanding <u>section 20</u> or any oath taken under <u>section 9</u> or <u>10</u> but subject to subsection (4), (a) the Ombudsman or a former Ombudsman, or (b) any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman, is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his or her knowledge in the course of the administration of this Act.	24(2) The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act.	N/A



CITY OF YELLOWKNIFE
OFFICE OF THE MAYOR

October 5, 2018

The Honourable Kieron Testart
Chair, Standing Committee on Government Operations
Legislative Assembly of the Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9

Dear Mr. Chair,

RE: Bill 20 – *Ombudsperson Act*

The City of Yellowknife appreciates the opportunity to provide feedback to the Standing Committee on Government Operations (SCOGO) regarding Bill 20, the *Ombudsperson Act*. The proposed act provides for the appointment of an Ombudsperson as an officer of the Legislature. This Bill establishes the mandate of the Ombudsperson, which will be to investigate complaints about the administrative fairness of government practices to promote fair, reasonable, and equitable government administration.

As it is currently written, the *Ombudsperson Act* does not apply to municipalities. It is the City's submission that the Ombudsperson's jurisdiction should be expanded to include municipalities so that the office can act on complaints about municipalities and if warranted, initiate investigations into unfair treatment about municipal decisions and decision-making process. Our Council strongly supports accountability and transparency in local government and having municipalities bound by the *Ombudsperson Act* provides an impartial and independent review process to ensure the fairness of municipal processes, decisions and actions.

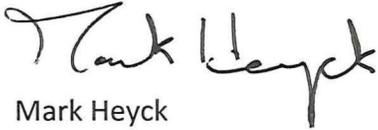
The City proposes that the Ombudsperson, once in place, could be the office of last resort – a recourse for those who have exhausted existing avenues of complaint, not a replacement for local accountability mechanisms. It is our expectation that the process for complaints about a municipality would be similar to the process the Ombudsperson's office uses for dealing with territorial complaints. At the conclusion of the investigation, recommendations would be made to the administrative head of the municipality and the complainant would be notified. Additionally, the Ombudsperson could choose to notify the Minister of Municipal and Community Affairs of recommendations in relation to an investigation involving a municipality.

Since the Report on Establishing an Office of the Ombudsman for the Northwest Territories was presented to SCOGO on June 4, 2014 (Tabled Document 103-17(5)), three additional provinces have expanded their ombudsperson legislation to include municipalities. In 2017, the Government of Alberta passed final amendments to the *Municipal Government Act* and the *Ombudsman Act* that came into effect on April 1, 2018 to include municipalities. In addition, Ontario (2016) and Saskatchewan

(2015) expanded the jurisdiction of the Ombudsperson to provide for review of complaints about the administrative actions and decisions of municipalities.

As such, we strongly encourage you to consider amending the *Ombudsperson Act* so that it applies to municipalities as well as the Government of the Northwest Territories.

Sincerely,



Mark Heyck
Mayor

DM #533387





October 2, 2018

BY EMAIL

Legislative Assembly – Standing Committee on Government Operations
P.O. Box 1320
Yellowknife, Northwest Territories X1A 2L9

Attention: Kieron Testart

Dear: Mr. Testart

Re: *Bill 20: Ombudsperson Act*

I am writing on behalf the Administrative Law Section of the Canadian Bar Association, Northwest Territories Branch. The Canadian Bar Association is the voice of Canada's legal community, representing some 36,000 legal professionals across Canada, and is dedicated to supporting the rule of law and improving the administration of justice in Canada.

The Administrative Law Section, Northwest Territories Branch, is pleased to offer this written submission regarding *Bill 20: Ombudsperson Act*.

The establishment of an Ombudsperson for the Northwest Territories is a welcome development. The office will provide residents of the Northwest Territories an important means of having concerns with government fairly investigated and addressed. Measures to ensure the office is truly independent and adequately supported, will no doubt lead to recommendations of the Ombudsperson in the public interest.

The Administrative Law Section offers the following specific comments for consideration by the Standing Committee reviewing *Bill 20: Ombudsperson Act*:

- Subsection 4(2) – While the eligibility criteria exclude members of the Legislative Assembly and members of public service from serving as Ombudsperson, there are no other eligibility or qualifications required in the Act. It would seem that some knowledge of or experience in administrative law would be beneficial.
- Subsection 5(1) – The Ombudsperson should have independence through security of tenure. The appointment provision need not qualify the appointment is for good behaviour when removal and suspension are addressed specifically in section 6.
- Subsection 6(3) – The Commissioner, on recommendation of the Board of Management, should not be able to suspend the Ombudsperson without accountability to the Legislative Assembly. Suspensions under this provision should only apply until the next session of the Legislative Assembly, as in other jurisdictions. *Ombudsman Act*, RSA 2000, c O-8, s 6 (2); *Ombudsman Act*, CCSM c O45, s 6 (1)

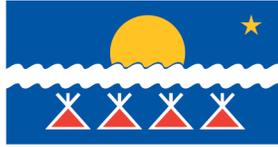
- Subsection 10(1) – Other jurisdictions do not allow the ombudsperson to hold any other offices. If outside business is to be permitted, the approval should come from the Legislative Assembly, as opposed to the Speaker, with endorsement of the Conflict of Interest Commissioner who can independently and expertly assess potential conflicts of interest. *Ombudsman Act*, RSA 2000, c O-8, s 3 (1)
- Subsection 15(1) – The purposes of the Ombudsperson Act would be more fully served if the office’s jurisdiction extended to acts or omissions of professional organizations and municipalities created under territorial legislation. Professional organizations and municipalities do not currently appear in the schedule of authorities covered by the Act. *Ombudsman Act*, RSA 2000, c O-8, s 12 (1).
- Subsection 39(3) – The provision should be expanded to be ensure the Ombudsperson, and employees or contractors of the office, are not compellable in quasi-judicial as well as judicial proceedings.

In addition to these substantive items, section members identified other wording and editorial issues we expect will be addressed during editing of the legislation draft. Please do not hesitate to contact our section with any questions or concerns, and thank you for considering this submission.

Yours truly,



 For: Cynthia Levy
Vice-chair



Tłıchǫ Government

Box 412, Behchokǫ, NT X0E 0Y0 • Tel: (867) 392-6381 • Fax: (867) 392-6389 • www.tlicho.ca

September 25, 2018

Legislative Assembly of the Northwest Territories
Standing Committee on Government Operations
P.O Box 1320
Yellowknife, NWT X1A 2L9

Att'n: Mr. Kieron Testart, Chair

Dear Sir:

Re: Bill 20 – Ombudsperson Act

Thank you for your letter of August 30, 2018 concerning your Committee's review of this Bill.

You wanted to know if Tłıchǫ Government would be interested in an amendment to Bill 20 that would enable "Indigenous governments" to use the services of the Ombudsperson, with some listed qualifications to such an investigation. I can inform you that Tłıchǫ Government is not interested in such an amendment.

Bill 20 proposes to include the Tłıchǫ Community Services Agency (TCSA) as one of the authorities, listed in the Schedule to Bill 20, which would be subject to the oversight of the Ombudsperson. You asked for any input Tłıchǫ Government might have on this aspect of the proposed legislation.

Here is our input: TCSA is run under territorial legislation, as per s. 3.1 of the tri-party Intergovernmental Services Agreement (ISA). TCSA personnel are GNWT employees and members of the territorial public service. That said, TCSA can have additional roles assigned or delegated to it by Tłıchǫ Government (ISA: s. 3.2(c)). As such, it would be of advantage to know about any issues concerning how clients are being treated in their dealings with the TCSA. As such, Tłıchǫ Government asks that consideration be given to formal notice to Tłıchǫ Government of any investigations of TCSA by the Ombudsperson and the sharing of the Ombudsperson's report coming out of an investigation of the TCSA.

In Tłıchǫ Unity,

Grand Chief George Mackenzie
Tłıchǫ Government

cc. Shaleen Woodward, Deputy Secretary, Indigenous and Intergovernmental Affairs, GNWT



NWT Seniors' Society

Presentation to Public Hearing on Bill 20 – Ombudsperson Act

NWT Seniors' Society

17th September 2018

Thank you for this opportunity to present the views of the NWT Seniors' Organization that represents the interest of the 8000 older adults in the NWT. We are pleased to address you about this initiative that will provide another venue for older adults to assert their rights and seek fair and just rulings on administration of programs.

According to associations of Ombudsperson, an Ombudsperson Act should be assessed using four criteria. These are independence, impartiality and fairness, credibility of the review process and confidentiality.¹ The NWTSS has reviewed the proposed Bill 20 – Ombudsperson Act and will make comments to support clauses that affirm these criteria or challenge clauses that do not.

General Comments

To begin, all references to the Legislative Assembly should be clarified to confirm that a substantive or supermajority is in favour of appointment or suspension. The decision to use a supermajority would help to assure the independence of the Office and show broad support for any action related to the Office of the Ombudsperson. Use of a supermajority also confirms impartiality of appointment.

Secondly, the Act stipulates that the Ombudsperson does not make binding orders. There is some controversy on this issue, but after some investigation on our part, we determined that this is appropriate. While the Ombudsperson has extensive powers to obtain information and investigate acts, the fact that it does not make binding orders relieves the need for an option to take a decision of the Ombudsperson to a court of appeal. This ensures the efforts of the Ombudsperson are not diverted to cover litigation. Instead, the Ombudsperson relies on moral persuasion, the credibility of its review and the fact that government agencies are more likely to act effectively if they are persuaded rather than forced. However, the Act and the GNWT must affirm the importance of the recommendations of the Office of the Ombudsperson.

Review of Act

4. Appointment of Ombudsperson: It is appropriate that the Legislative Assembly provide a recommendation for the appointment. The appointment process should also

¹ <http://www.usombudsman.org/essential-characteristics-of-a-classical-ombudsman/>

enumerate qualifications for choosing a well-qualified and broadly supported candidate that is sensitive to Indigenous issues. It should also state that a substantive majority approved of the recommendation as mentioned above.

5. Term of office: The Act supports a term of five years for the Ombudsperson that exceeds the mandate of any Legislative Assembly. This helps to ensure the work of the Office is not unduly influenced by the Legislative Assembly once appointed. Section (2) allows for re-appointment which is also helps to support the stability of the Office.

6.(2). Suspension or removal for cause or incapacity: Any measure for removal should show that a substantive majority was in favour and not a simple majority. This is to assure that the Ombudsperson is independent and cannot be removed at the whim of a few due to a decision that may be unpopular.

7. (1&2) Same recommendation to use a supermajority is suggested for these sections.

7.(3) Acting Ombudsperson and 8. (1) Special Ombudsperson: These clauses leave the appointment of an acting or special Ombudsperson up to the Commissioner and the Speaker. This could create a situation of undue influence. NWTSS would recommend that the clause be modified to include “on recommendation of the Legislative Assembly”.

9. Remuneration and expenses: This clause indicates the remuneration will be determined by the Board of Management. It is important that the rate of pay recognize that the Ombudsperson will investigate and make recommendations to the highest officials of the government and is paid according to this level of responsibility. The salary should be fixed so it cannot be reduced while the ombudsperson is in office, preventing any form of punishment for actions taken, that is, unless all government officials' salaries are reduced.

10. 1) Other employment: This clause allows the Ombudsperson to hold another public office or carry on a trade, business or profession. The NWTSS does not agree with this clause. Outside income or job requirements could be used to influence the work of the Ombudsperson and should be prohibited as it could decrease both the independence and impartiality of the Ombudsperson. The possibility of assigning an Ombudsperson from another jurisdiction initially is possible but eventually, this office will require that the Ombudsperson be available on a full-time basis.

10. (2) Ineligibility: This clause does not permit the Ombudsperson to be nominated for election. It is appropriate that the Ombudsperson be independent and not appear to serve the agenda of the Legislative Assembly or government leaders.

11. Not a member of the public service: This is an appropriate clause as it assures the impartiality of the Office.

12. Ombudsperson employees: It is essential that the Ombudsperson has the sole power to appoint and remove staff as the work is sensitive and the Ombudsperson must have confidence in the staff.

13. Oath of office: Ombudsperson: This clause starts to establish the importance of confidentiality.

14. Submission of financial estimates: It is important that the Office of the Ombudsperson be funded at a level sufficient to carry out the mandate of the Act and provide thorough investigations. This is further supported in the ability to the Ombudsperson to submit a special request to the Board of Management if the amounts provided is inadequate.

15. (1) Mandate: This clause states that the Ombudsperson is to “investigate any decision or recommendation made, or any act done or omitted to be done by an authority, with respect to a matter of administration”. It appears to imply that the work covers only what exists in the policies and not the nature of the policy itself. In the process of reviewing a complaint, the Ombudsperson may arrive at conclusions that a policy should be reviewed to solve problems or prevent them from happening again. The Act should allow this.

15.(2) Commencing investigation: While most investigations will arise from complaints, the authority to self- initiate an investigation when the Ombudsperson has information warranting an investigation even without a complaint is valuable and important.

15.(3) Powers paramount: This clause rightfully allows the Ombudsperson to exercise powers or duties despite provisions in other Acts.

15.(5) Public education: This office will have a duty to help the public understand the scope and limitation of its work, specifically the need to go through any existing appeal processes prior to an investigation by the Ombudsperson and the fact it does not make binder orders.

16.(1)(2) Referral by Legislative Assembly: The creation of an Ombudsperson office will be a great tool for the legislative assembly and executive to resolve matters that require investigation and an outside objective evaluation.

17. Jurisdiction of Ombudsperson: This clause follows the common practice of not giving the Ombudsperson jurisdiction over those who appoint them, namely elected officials or over judges. It also affirms the need to use any existing right to appeal prior to the involvement of the Ombudsperson unless it would be “unreasonable to expect the complainant to pursue that recourse”.

18. (1) Confidentiality: Confidentiality may be important for the complainant and the right to confidentiality should be protected.

18. (2) Disclosure by Ombudsperson: The Ombudsperson should not have to investigate if disclosure is necessary to “establish grounds for conclusion” when the complainant requests confidentiality. This should be specified in the Act.

20. (3) Complaint in writing: This clause should consider not only that a complaint in writing is warranted but that the complainant is able to perform this task. Low literacy levels or other issues may prevent the possibility of a written submission.

21. Definition of “restricted complainant”: This clause confirms the possibility of restricted complainant being able to make a complaint without interference. This is important to older adults in the NWT who are in residential care.

22. Refusal to investigate: It is appropriate that the Ombudsperson have the right to not investigate after careful consideration but is required to explain this decision to complainant and authority.

24. (4) Requested consultation: This clause requires that the Ombudsperson consult with Minister “before forming a final opinion”. This is acceptable as long as no undue influence is attempted.

26. Power to obtain information and hold hearings: This is an appropriate clause that establishes the right of the Ombudsperson to gather all the information required to carry out a thorough investigation. It adds credibility to the review process. It might be important to state the amount of time that must be provided to the administrative head before entering any premise.

27. (2) (b) Opportunity to make representations: This clause provides a fair and democratic opportunity for an authority to present their side of the event and should help to make the existence of an Ombudsperson more acceptable to the public service.

28. Minister of Justice may restrict investigative powers: This is a sensitive clause that aims to protect the work of the Executive Council but could provide too much authority to the Minister of Justice. The reporting of the actions of the Minister to the Legislative Assembly provides some measure of control as does the ability of the Ombudsperson to apply to the Supreme Court for determination if action by Minister was justified.

30. Protection for compliance: This clause is essential as it offers protection for anyone who carries out the recommendations of the Ombudsperson. This also points to the high level of authority of the Office.

33. Report after investigation: This clause appropriately names the numbers of ways a decision may be wrong and provides a wide scope for the Ombudsperson. It also provides a thorough list of recommendations the Ombudsperson can make. Several of these recommendations clearly go beyond the administration of a policy as previously discussed.

37. Report if no suitable action taken: Clauses 34 to 36 explain the various steps the Ombudsperson can take if the recommendations are not addressed. Clause 37 indicates the Ombudsperson may “submit a report to the Premier, and subsequently may submit a report to the Legislative Assembly”. As this is the final level of action to be taken, it would be more appropriate to have both the Premier and the Legislative Assembly advised of non-action by an authority. The Legislative Assembly is the body that appointed the Ombudsperson and affirms the level of authority of the Office.

38. Authority may reconsider decision: This clause is somewhat unclear. It should be clarified to indicate that the decision in question is one that the authority had taken prior to the recommendation of the Ombudsperson.

39. (2) Limitation of liability: The protection of Ombudsperson and staff supports the independence of the Office and the credibility of the review process.

43. Annual report: The preparation of an annual report will strengthen the accountability of the Office and maintain a relationship with the Legislative Assembly.

The NWT Seniors’ Support the approval of the Ombudsperson Act and has offered these suggestions to build a stronger act that will serve the needs of older adults and the general public of the NWT. Thank you for your attention to our recommendations.

Respectfully submitted

Wendy Bisaro
On behalf of NWT Seniors’ Society

It has long been a belief of mine that the NWT needs an ombudsman. That legislation has finally come forward suggests that the benefits of an ombudsman for our Territory have been recognized, thankfully.

As an elected MLA, I began talking about and pushing for a bill like this in May 2008. I made statements, asked questions.

I brought up the need repeatedly in my 8 years in this institution – at least once a year. But, to no avail.

In October of 2014 Regular Members presented and passed a motion to establish an Ombudsman office. In my remarks to that motion I said:

“We’ve been talking about the need for an ombudsman office for years now. There are references to it in Hansard from 1992. There was a proposal for an office as far back as 1993, and a report tabled in this House made recommendations to establish an ombudsman office. But we have had, unfortunately, no concrete action to establish an office to date. The office is needed. The need is evident. Our territory has grown and we have grown up. Part of being grown up and being a grown up is recognizing the need to help our friends and neighbours.”

In 2015 as I reached end of my term in the 17th Assembly, with no Ombudsman legislation in sight, I tabled a draft Act for the gov’t’s edification.

It has taken another 3 years to see a piece of legislation tabled and now being considered, but I am very grateful we are finally in this position. 1992 to 2018

Bill 20 is essentially the document that was tabled in 2015 – something which is gratifying to me and no doubt, gratifying for the research staff who did so much work on that original draft Act.

However, I, of course, have a few concerns and questions about some of the language in some of the clauses in Bill 20, and want to identify for you some language which is missing, so I will go through my points for you.

- The Act does not specify that the Ombudsperson must be a Canadian citizen. Any reason why not? seems a small thing but an important one I believe.

- There are inconsistencies in clauses where references are made to Speaker, Legislative Assembly, Board of Management, and Premier in one case.
- | | | |
|-----------|---------------------------------|------|
| - 7. (1) | Leg Assembly | GOOD |
| - 7. (3) | Speaker – why not Leg Assembly | ?? |
| - 8. (1) | Speaker – why not Assembly | ?? |
| - 10. (1) | Speaker – why not BOM, Assembly | ?? |

You will hopefully get the sense that I believe the Assembly should be making these recommendations or approvals. It can be easily done via their regularly scheduled Caucus meetings.

- In clause 9. – what does “benefits” mean? The Ombudsperson is not going to be a member of the public service – an appropriate thing – but needs to be well compensated for his/her work, and that includes benefits. Will the Ombudsperson be able to have an adequate pension plan? able to access Superannuation? NEBS? What sort of benefits are intended here? Will they be covered in regulations? If yes, what is intended to be in regs?
- In clause 15. (1) and (3) – there is no reference to investigating any authority’s process or procedure, or even policy. But “practice, procedure” are mentioned in clause 33. (2) (f) and often are the result of a policy decision.
- In clause 16. (1) and (2) – it allows for referral to the Ombudsperson by Leg Assembly, a Standing Committee, or Executive Council – why not also allow for referrals from municipal or Aboriginal governments?
From the draft Act tabled in 2015:

“A Northwest Territories Aboriginal or municipal government may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall
(a) subject to being able to recover the costs of the investigation from the Aboriginal or municipal government, investigate the matter referred; and
(b) report back as the Ombudsman thinks fit,
but sections **XX to XX** do not apply in respect of an investigation or report made under this subsection.”

- In clause 17. (3) – why restrict investigations of conduct occurring prior to Act coming into force? I understand going back forever can be problematic ... maybe limit investigations to one or two years prior to the Act coming into force.
- In clause 18. (2) – can disclosure be forced for court or other judicial matter?

- In clause 20. (3) – I note it reads “may” require complaint in writing, not must. I can understand that in certain instances a written complaint may not be possible. Although GNWT Government Service officers could be used in those situations. So, if a complaint is made verbally or other means, what steps will be taken to record the complaint to ensure an accurate record of a non-written complaint exists?
- In clause 32. – notification to complainant – should it not be in writing? There needs to be a record of who was notified and the context of the notification.
- In clause 33. (1) – why is notification only to the department head? Shouldn't the Minister also be advised? It is contrary to clause 35. (1) where it read that the report must go to both department head and Minister. There is a need here for transparency that can be averted if the department head's "boss" is not advised of what has transpired.
- In clause 37. (1) – the reference is to Premier – first and only time, I think – to receive a report from the Ombudsperson. Any report to the Premier should also go to the Assembly, or a Standing Committee of the Assembly. This again provides for a certain transparency, but confidentially, when an authority has not followed the Ombudsperson's recommendations.
- The Act is missing a clause requiring a review of the Act every 10 years. Over time, the world changes and the Acts governing our Statutory Offices need to be reviewed to see if they still suit the “new world” so to speak. From the draft Act tabled in 2015:

“The Legislative Assembly, or a committee of the Legislative Assembly designated or established by it, shall review the provisions and operation of this Act at the tenth anniversary of the date of its coming into force and subsequently at the next session following each successive tenth anniversary of that date.”

Thank you so much for the opportunity to comment on this Bill. Thank you for encouraging(?) forcing(?) the 18th Assembly and Executive to get this legislation written.

I am happy to answer any questions you may have.

Wendy Bisaro
873-3101