

Standing Committee on
Government Operations



Report on the Review of the 2019-20 Northwest Territories Ombud Annual Report

19th Northwest Territories Legislative Assembly

Chair: Mrs. Frieda Martselos

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**STANDING COMMITTEE ON
GOVERNMENT OPERATIONS**

**REPORT ON THE REVIEW OF THE
2019-2020 NORTHWEST TERRITORIES
OMBUD ANNUAL REPORT**

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

REPORT ON THE REVIEW OF THE 2019-2020 NORTHWEST TERRITORIES OMBUD ANNUAL REPORT

INTRODUCTION

The Standing Committee on Government Operations (Committee) has reviewed the 2019-2020 Annual Report of the Northwest Territories Ombud (Ombud). The Committee thanks Ms. Colette Langlois, Northwest Territories Ombud, for her appearance before the Committee on December 9, 2020.

ABOUT THE OMBUD

The Ombud is a statutory officer of the NWT Legislative Assembly under the *Ombud Act* (Act). The Ombud investigates complaints from people who feel they have been treated unfairly by territorial authorities. The Ombud's role is to find fair solutions and improve the delivery of government services.

The *Ombud Act* requires the Ombud to prepare annual reports on the activities of the Ombud's office. This includes the number of inquiries and complaints received. The Speaker tables the report in the Legislative Assembly. Once tabled, Committee reviews the report.

The 2019-2020 annual report is the first report since the appointment of the Northwest Territories' first Ombud in April 2019. In her report, the Ombud highlights the activities of setting up a new Ombud office in Hay River, informs on investigations and public outreach, and makes recommendations.

In this review, Committee discusses and responds to the Ombud's recommendations.

JURISDICTIONAL ISSUES

The Ombud recommends expanding the current schedule of authorities over which the Ombud has the power to investigate. The Ombud specifically draws the Committee's attention to the wording found in Yukon's *Ombudsman Act*. In a previous discussion with the Ombud, it was noted that while she has the power to investigate housing authorities, this does not include housing associations. The Committee looked at other Ombud legislation in other jurisdictions, Committee agrees that the NWT Ombud should have the power to look into more authorities.

Therefore, the Committee recommends:

Recommendation 1

The Standing Committee on Government Operations recommends that the definition of "authorities" and the Schedule be amended to use language similar to that found in the *Ombudsman Act (Yukon)*, and that a further subclause expressly include Housing Associations, as established under the *Societies Act*.

The Ombud recommends that the Human Rights Commission and its agencies should fall under her jurisdiction to investigate complaints. The Law Clerk advised that the wording proposed in recommendation 1 would include the Human Rights Commission. No further action is needed to advance this recommendation.

The Ombud recommends that the reference to "judicial review" be removed from section 17 of the *Act*. She considers the term confusing in the current context. Her concern is that this section could be interpreted to mean that the Ombud always must wait 30 days before being allowed to investigate; and that any administrative decision, action, or omission is subject to a potential judicial review. The other is to remove from section 17(2) of the *Act*. This section allows the Ombud to use her discretion to investigate, if she finds it unreasonable to expect the complainant to pursue any of the other available options.

The Committee sought the advice of the Law Clerk. The Law Clerk advised that the Ombud is considered an office of last resort, and this section is likely to prevent the Ombud from investigating where other avenues of appeal have not been used. However, section 17(2) provides the Ombud the ability to waive this requirement, if in

her judgement it would be unreasonable. The Committee feels that it is important for the Ombud to have this discretion, even if it would be rarely used.

The Ombud states that she was unable to look into a small number of cases because they predate the beginning of the Ombud's authority on January 1, 2016. The Committee agrees that the Ombud shouldn't have to decline complaints from 6 years ago, while being able to investigate complaints from 5 years ago. The Committee discussed how to address this, and was advised by the Law Clerk that the *Act* should specify a date on which the Ombud's powers begin.

The Committee finds that April 1, 1999, is an appropriate date as it is also the date on which the modern Northwest Territories came into being. Further, the Committee also identifies the need for a provision allowing the Ombud to investigate fully any complaint that may have files prior to that date.

Consequently, the Committee recommends:

Recommendation 2

The Standing Committee on Government Operations recommends that section 17(3) be amended to April 1, 1999, and further that a new subclause be included that notwithstanding the temporal restriction, if a complaint has records prior to this date, the Ombud has the discretion to investigate the complaint in full.

The Ombud's sixth recommendation is to remove the restriction to investigate the Director of the Human Rights Commission under section 23. The Committee agrees.

Recommendation 3

The Standing Committee on Government Operations recommends that section 23 be amended to remove the reference to the Director of Human Rights, and further that the reference to the Conflict of Interest Commissioner be amended to Integrity Commissioner.

PROCEDURAL ISSUES

In the 2019-2020 annual report, the Ombud makes several recommendations to address procedural issues around the Ombud's jurisdiction to investigate complaints.

Currently, the Ombud is allowed to stop investigating a complaint if an alternate remedy or appeal is available. The Ombud recommends broadening this authority so that it applies also before an investigation begins. Making this change would allow the Ombud to refuse to start an investigation, if she becomes aware of an adequate alternate remedy or right of appeal.

The Committee had the Law Clerk review this recommendation. Because the Ombud is an office of last resort, a complainant must use all other remedies available before going to the Ombud. As noted earlier in this report, the Ombud has the discretion to investigate if she determines that it would be unreasonable for a complainant to use those remedies. The Committee notes that such a decision is proactive, and it is unlikely that there would be a case where the Ombud would not know about available remedies prior to opening an investigation.

This clause is to allow the Ombud to close an investigation if it is found during the investigation that an available remedy wasn't pursued and should have been. The Committee feels that this clause should remain as it is.

In recommendation 8 the Ombud suggests to remove requirement of notification. She notes that the wording of clause 22(2) may be interpreted to require notification to an authority whenever the Ombud refuses to investigate a complaint. The Ombud noted that this would be time-consuming and generally inappropriate, as many issues are resolved before needing to contact an authority in the first place. The Committee agrees, and therefore recommends:

Recommendation 4

The Standing Committee on Government Operations recommends that section 22(2) be amended to only require notice to an authority of a refusal to investigate in the event that notice had already been provided to that authority that an investigation will take place under section 24.

The Ombud's ninth recommendation proposes to remove potential barriers to investigating complaints where written consent to disclose personal information is required under other legislation. The Ombud highlights the wording in Saskatchewan's *Ombudsman Act* as an example of what could address this potential barrier. The Law Clerk advised that the Saskatchewan act gives their Ombud extremely broad powers to compel information, and would allow child and family services information to be released without consent.

The Committee has concerns about information being released without consent, and is not prepared to make a recommendation at this time. The Committee invites the Ombud to provide additional information in the next annual report for consideration on this issue.

The next recommendation of the Ombud deals with public servants providing information to the Ombud voluntarily. The Ombud states:

Section 30 of the Act provides that no person is liable for prosecution for an offence for complying with a requirement of the Ombud. While this protects authorities and public servants who are required to provide information in the course of an investigation, it would not protect authorities and public servants who are requested to provide information in the course of an early resolution process.

The Ombud flags that on a few occasions, a formal investigation was started where an informal process may have resolved the issue to ensure that section 30 applied.

The Committee asked the Law Clerk for advice. The legal advice provided to Committee indicates that section 30 is not limited to formal investigations. Section 15(4) of the *Act* says the Ombud may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches. Section 30 protects public servants from liability when complying with any requirement of the Ombud under this *Act*. The Committee interprets this to mean any formal or informal process as initiated by the Ombud.

The Committee invites the Ombud to report on this area again if the early resolution process is being hindered by public servants being reluctant to comply with requests for information prior to the formal investigation stage.

ADMINISTRATIVE ISSUES

The Ombud has flagged a potential gap, where information provided by the Ombud to a department or agency as part of an investigation could be disclosed by that department. The Ombud has recommended that any information originating with the Office of the Ombud must be kept confidential.

The Committee agrees that information from the Ombud should remain confidential, and therefore recommends:

Recommendation 5

The Standing Committee on Government Operations recommends that section 25 be amended to specifically impose an obligation on anyone receiving confidential information from the Office of the Ombud to maintain the privacy of that information, notwithstanding any other legislation.

The Ombud's twelfth recommendation centres on the requirement for the Ombud to follow administrative policies of the Clerk when making policies and procedures for handling the complaints received in the Ombud Office. The Ombud stated that this requirement is inconsistent with the independence of her office.

The Committee reviewed the Hansard debate on the *Ombud Act*, and notes that this section was included to address concerns raised by the Tłıchq̓ Government that they should be notified in the event of any investigation involving the Tłıchq̓ Community Services Agency. The House passed a motion calling on the Office of the Clerk to work with the Ombud to establish appropriate procedures to advise the Tłıchq̓ Government in the event of an investigation into the Tłıchq̓ Community Services Agency.

The Committee appreciates the Ombud's concerns over the wording of the clause, and therefore recommends:

Recommendation 6

The Standing Committee on Government Operations recommends that clause 24(1) be amended to explicitly provide for notice to be provided to the Tłıchq̓ Government, or any equivalent agency established by an Indigenous Government. Further, that section 33(1) be amended to include a reference to, where applicable, the Indigenous Government referenced in section 24(1).

The Ombud next recommended that the term "authority" be changed to something more recognizable to the public. The Committee notes that legal terminology is often not in plain language, however there are usually specific reasons for the use of specific terms.

The Committee encourages the Ombud to continue her commendable public education efforts on the role of her office and which departments and agencies her office can investigate.

The Ombud's final recommendation is to address the awkward wording in clause 15(1). The Committee notes that this clause was the source of considerable debate when the *Act* was being debated, with all parties acknowledging that the wording was problematic. However, no agreement could be reached on how best to fix it.

The Committee carefully reviewed each motion that was introduced in the 18th Assembly, and has decided that the motion moved by the then-Committee Chair is the preferable one, and therefore makes the following recommendation:

Recommendation 7

The Standing Committee on Government Operations recommends that clause 15(1) be amended to read:

15.(1) The mandate of the Ombud is to investigate any decision, recommendation made, or any act done or omitted, by an authority or by any officer, employee or member of an authority in the exercise of any power or duty conferred on that person or body by any enactment, that

(a) relates to a matter or administration or the implementation of a policy; and

(b) aggrieves or may aggrieve any person or body of persons in the person's or its personal capacity.

CONCLUSION

This concludes the *Standing Committee on Government Operations Report on the Review of the NWT Ombud 2019-2020 Annual Report*.

Recommendation 8

The Standing Committee on Government Operations recommends that the GNWT provide a response to the recommendations contained in this report within 120 days.