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Date: February 14, 2023

Standing Committee on
Government Operations

NORTHWEST TERRITORIES LEGISLATIVE ASSEMBLY

Report on Bill 61: *An Act to Amend the Ombud Act*

19th Northwest Territories Legislative Assembly

Deputy Chair: Ms. Frieda Martselos

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February 14, 2023

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its *Report on Bill 61: An Act to Amend the Ombud Act*, and commends it to the House.

Ms. Frieda Martselos
Deputy Chair, Standing Committee on Government Operations

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STANDING COMMITTEE ON GOVERNMENT OPERATIONS

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INTRODUCTION

Bill 61*: An Act to Amend the Ombud Act*[1] (Bill 61) received second reading on November 2, 2022 and was referred to the Standing Committee on Government Operations (Committee) for review.

Bill 61 is a private member's bill, sponsored by the Member for Yellowknife North, to amend the *Ombud Act* (Act). Many of the proposed changes derive from recommendations in the Ombud's 2019-20 Annual Report[2] and in Committee's Review of that annual report.[3] Specifically, Bill 61:

- Allows residents to make complaints about a wider range of public bodies;
- Allows the Ombud to investigate complaints going back further in time, to 1999;
- Allows the Ombud to provide more notice of investigations to Indigenous organizations; and
- Clarifies the Ombud's mandate.

This report outlines key events leading up to the introduction of Bill 61; describes Committee's engagement with stakeholders; and summarizes stakeholders' positions and Committee's decisions on key issues.

COMMITTEE WELCOMES IMPROVEMENTS TO *OMBUD ACT* DURING 19TH ASSEMBLY

In October 2020, the Speaker tabled the Ombud's first-ever Annual Report, for 2019-20. The Ombud's report made 14 recommendations for legislative changes to the *Act.* The recommendations were informed by:

- The Ombud's review of legislation in other jurisdictions;
- The advice she received from other Ombuds and legal professionals; and
- The issues that arose when responding to individual complaints in her first year in the role.

The Ombud made her recommendations "*with the intent of ensuring that my office is fully enabled to fulfill the purpose and vision with which the Legislative Assembly created it.*"[4]

Committee endorsed many of the Ombud's recommendations in our subsequent Review Report. That report was tabled in May 2021 and discussed in Committee of the Whole. The Legislative Assembly ultimately adopted seven (7) motions that recommended changes to the *Act.*[5]

At the time, Members hoped the Government of the Northwest Territories (GNWT) would put forward amending legislation in the remaining two years of the 19th Assembly.[6] In this regard, the GNWT's November 2021 response[7] was disappointing. The GNWT declined to pursue any legislative changes in the life of the 19th Assembly, agreeing only to consider Committee's recommendations in the context of a "future review".

In June 2022, Committee followed-up on the GNWT's response in a meeting with the Government House Leader. Committee wanted to learn more about the GNWT's position and, more importantly, make one more appeal for changes to the *Act* in the 19th Assembly. Shortly before, the Government House Leader and Committee had collaborated successfully to incorporate recommendations from the Languages Commissioner, another statutory officer, into legislation in the life of the 19th Assembly. Committee had hoped for a similar process and outcome for the Ombud. Ultimately, the Government maintained its position and declined to make changes.

Committee is dissatisfied that efforts to craft recommendations that would improve government operations – which were endorsed as motions in the Legislative Assembly – are disregarded without meaningful and timely action. Our disappointment grows greater when our recommendations build on recommendations from our statutory officers. The statutory officers provide great expertise and effort in their work yet, in some instances, their recommendations have gone unmet with legislative changes for up to 20 years.

Committee therefore welcomes Bill 61. In particular, Committee commends the Member for Yellowknife North for bringing forward these changes on his own initiative. The changes will improve the ability of the Ombud to carry out her mandate for the people of the Northwest Territories.

COMMITTEE CONSIDERED INPUT FROM PRIVATE MEMBER, OMBUD, MINISTER, STATUTORY OFFICERS, AND THE PUBLIC

Committee sought public feedback on Bill 61 with a public notice and targeted engagement letters to key stakeholders. Committee received written submissions from:

- The Member for Yellowknife North
- The Ombud
- The Minister of Justice

- The NWT Human Rights Commission and the Human Rights Adjudication Panel
- The Equal Pay Commissioner
- The Languages Commissioner
- The Integrity Commissioner
- One (1) member of the public

All written submissions are included in an Appendix to this report.

Committee also held a public review of Bill 61 on December 9, 2022.[8] At that meeting, Committee received oral comments from the Member for Yellowknife North and the Ombud. Committee also met with the NWT Human Rights Commission and the Human Rights Adjudication Panel to hear their concerns on January 16, 2023.

Committee extends our sincere gratitude to everyone who contributed their thoughts, concerns, and advocacy for the review of Bill 61. The engagement in the review process demonstrated a strong commitment to protecting and reinforcing our territory's institutions and governance. The input helped us to understand the benefits of the proposed changes and put forward amendments to further strengthen the bill.

COMMITTEE AGREED TO MOST CHANGES AS DRAFTED

Allowing complaints about more public offices

Bill 61 would mean residents could make complaints to the Ombud about a wider range of public bodies, including housing associations and the Human Rights Commission. In verbal testimony, the Ombud indicated that she has had to turn down complaints because certain public offices are outside her mandate. For example: While the Ombud can investigate a public housing complaint from a tenant in Inuvik, where the Local Housing Organization (LHO) is defined as an "authority", she cannot investigate the same complaint if it came from Fort McPherson (Teetł'it Zheh), where the LHO is defined as an "association."[9]

The legislative changes would add other public organizations to the mandate of the Ombud that are currently excluded, such as: the Chief Rental Officer; the Assessment Appeals Tribunal; the Social Assistance Appeal Board; and Staffing Appeals Officers. According to the Ombud, other Canadian legislation does not typically exclude these types of offices from an Ombud's mandate.[10] Committee requested a jurisdictional scan from the sponsoring member, who provided one. The scan confirms the Ombud's assertion.

Committee previously recommended this change in 2021.[11] Committee continues to support this change and hopes that Northerners' complaints are treated the same way in

each community and as they would be in other provinces and territories.

Investigating matters as early as 1999

Bill 61 would allow the Ombud to investigate complaints into matters that have come up since April 1, 1999. Right now, the Ombud can only investigate complaints into matters that have come up since January 1, 2016.

The Ombud has reported that the temporal restriction on her authority has prevented her from looking into a small number of cases. She has conveyed that complainants have found the cut-off "*arbitrary and unfair*"[12] and "*hard to accept*."[13] The Committee agrees that the Ombud should not have to refuse complaints from 2015 while being able to investigate complaints from 2016.

The Minister of Justice expressed concern at the potential for an "*overwhelming number of requests*." The Ombud, by contrast, does not share this concern, saying that the legislation gives her many ways to turn down complaints.[14] Committee is satisfied with the Ombud's explanation and believes any increase in complaints will be manageable.

One member of the public also expressed support for the change. They noted that the Ombud's current restriction to reference information predating 2016 may distort the outcome of an investigation. Committee believes this change will help the Ombud make better, more informed recommendations.

Committee previously recommended this change in 2021 and continues to support this change.[15] Committee finds the April 1, 1999, date appropriate as it is the date on which the modern Northwest Territories came into being. Committee further notes that this new date more closely aligns with the standard in Yukon. Yukon's *Ombudsman Act* links the temporal restriction with the law's coming into force date,[16] which was July 1, 1996.[17]

Committee is pleased that the Ombud will be able to investigate complaints that pre-date 2016, and that she can consider all relevant information going further back in time.

Providing more notice requirements

Bill 61 would allow the Ombud to provide more notice of investigations, including to Indigenous organizations, where the public body being investigated is created from an agreement between the Government of the Northwest Territories and an Indigenous Government.

These changes are consistent with two previous Committee recommendations.[18] Committee believes these changes will better serve complainants and the authorities subject to a complaint.

COMMITTEE AMENDED TWO CLAUSES

Clarifying the Ombud's mandate

Clause 3 of Bill 61 updates section 15(1) of the *Act*, which defines the Ombud's mandate. The goal of the clause is to provide clearer wording. The existing wording for the mandate is awkward and was the subject of considerable debate when the *Act* was first debated in the Legislative Assembly. The new, proposed wording is similar to that of a previous Committee recommendation, which itself was based on a motion from the then-Committee Chair in the 18th Assembly.[19]

Originally, clause 3 of Bill 61 read:

> 3. Subsection 15(1) is repealed, and the following is substituted:
>
> 15.(1) The mandate of the Ombud is to investigate any decision or recommendation made, or any act done or omitted to be done by an authority or by officers, employees or members of an authority in the exercise of their powers or duties, that
> (a) relates to a matter of administration or the implementation of a policy; and
> (b) aggrieves or may aggrieve any person or body of persons in their personal capacity.

However, the Ombud was concerned with the phrase "*or the implementation of a policy*." She cautioned that specifically identifying one category type of matter of administration could lead to a narrower reading of the Ombud's mandate in the future.

The Minister of Justice was concerned with the same phrase, for a different reason. The Minister thought the wording could be interpreted as expanding the Ombud's mandate beyond matters of administration, to the potential impact on public policy decision making.

Committee therefore agreed to and passed a motion to amend clause 3. The amendment effectively dropped the problematic phrase from the clause. The Member for Yellowknife North concurred. Committee believes this deletion addresses the risk for confusion and ensures that the Ombud's mandate to investigate "*a matter of administration*" remains intentionally broad.

Investigating matters within mandates of other statutory officers

Section 23 of the current *Act* prevents the Ombud from investigating complaints that are within the mandate of certain statutory officers, unless that officer agrees. The current *Act* applies this restriction to six (6) offices:

- The Languages Commissioner;
- The Information and Privacy Commissioner;

- The Integrity Commissioner;
- The Chief Electoral Officer;
- The Director of Human Rights; and
- The Equal Pay Commissioner.

Clause 6 of Bill 61, as originally drafted, would have continued to exclude three statutory officers from the Ombud's jurisdiction: the Information and Privacy Commissioner, the Integrity Commissioner, and the Chief Electoral Officer. But the bill would have added the three other officers to the Ombud's jurisdiction: The Languages Commissioner, the Human Rights Commission, and the Equal Pay Commissioner.

All three statutory officers affected by the potential change expressed concern about overlapping jurisdiction with undesirable implications. The Minister of Justice voiced similar concerns and recommended more consultation with the three affected statutory officers.

Committee reviewed and sought to resolve these concerns. Committee wanted to ensure guardrails to ensure that the Ombud cannot override decisions of the Human Rights Commission or Adjudication Panel.

Committee consulted the Law Clerk on a couple of approaches to amend clause 6. Committee ultimately settled on a cautious approach that would maintain the exclusion on all six statutory officers covered in the existing *Act*. Committee also decided to expressly exclude the Human Rights Commission and the Adjudication Panel from the Ombud's jurisdiction.

Committee agreed to and passed a motion with such an amendment at the clause-by-clause review. The Member for Yellowknife North concurred.

COMMITTEE CONSIDERED THREE RECOMMENDATIONS FROM OMBUD

In her written submission, the Ombud offered three suggestions to further amend Bill 61:

1. Clarify and make more inclusive the definition of "administrative head";
2. Remove the phrase "the implementation of a policy" from the Ombud's mandate; and
3. Remove the phrase "and any administrative policies of the Clerk" from subsection 42(2).

Committee agreed to and passed an amendment that addresses the Ombud's second

suggestion. Committee did not consider the Ombud's first and third suggestions, as these were out of scope for Bill 61. Committee believes there's merit to reviewing both outstanding suggestions in the context of a fuller review of the *Ombud Act*. Committee has previously recommended that the Government of the Northwest Territories conduct a holistic review of the *Ombud Act* within the first two years of the 20th Assembly.[20]

COMMITTEE RECOMMENDS BROADER REVIEW OF STATUTORY BODIES' JURISDICTION

Committee believes the issue whether, how, and to what extent the Ombud can investigate other statutory officers of the Assembly merits further study, as part of a broader review. Committee notes that inconsistencies may exist between these statutory officers' jurisdiction – for example, while the Languages Commissioner may investigate a complaint against the Ombud, the converse is not allowed, at least not without the agreement of the Languages Commissioner.

The Standing Committee on Government Operations therefore recommends:

Recommendation 1: That the Government of the Northwest Territories, in consultation with the Board of Management, lead a holistic review to examine and clarify the jurisdiction of each statutory officer of the Assembly to investigate:

(a) Other statutory officers of the Assembly;
(b) Public bodies that exercise statutory authority on behalf of the Executive; and
(c) Public bodies that provide statutory advisory services to the Executive.

The review should identify areas of over- and under-lapping jurisdiction and make recommendations to address discrepancies based on best practices.

Recommendation 2: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a response to this report within 120 days.

CONCLUSION

On January 25, 2023, Committee held a clause-by-clause review.[21] Committee passed a motion to report Bill 61, as amended, to the Legislative Assembly as ready for consideration in Committee of the Whole.

This concludes the Standing Committee on Government Operations' review of Bill 61.

APPENDIX: Submissions

A. Equal Pay Commissioner
B. Human Rights Commissioner
C. Integrity Commissioner
D. Ombuds and Complaints Examples
E. Ombud Jurisdiction over Authorities
F. Minister of Justice Response Letter
G. Languages Commissioner
H. Stakeholder Response Email Support
I. Ombud Response

ENDNOTES:

[1] Bill 61 is available at: https://www.ntassembly.ca/sites/assembly/files/bill_61_1.pdf.
[2] The Ombud's 2019-20 Annual Report is available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf.
[3] Committee's Report on the Review of the Ombud's 2019-20 Annual Report is available at: https://www.ntassembly.ca/sites/assembly/files/2021-05-27_-_cr_13-192_report_on_the_review_of_the_2019-20_ombud_annual_report.pdf.
[4] Available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf#page=39.
[5] For more information on the Legislative Assembly's discussion, see the Hansard for June 1, 2021. Available at https://www.ntassembly.ca/sites/assembly/files/hn210601.pdf#page=32.
[6] For more information, see Members' remarks on Committee Report 13-19(2). Available at: https://www.ntassembly.ca/sites/assembly/files/hn210601.pdf#page=35.
[7] The Government's response to Committee's recommendations is available at: https://www.ntassembly.ca/sites/assembly/files/td_451-192.pdf.
[8] Video of the December 9th, 2022, public review of Bill 61 is available at: https://www.youtube.com/watch?v=dApUF-ALbJY. The Legislative Assembly uploads video recordings of public meetings and other special events to its Youtube channel.
[9] There are eleven (11) communities where the Local Housing Organization (LHO) is defined as an "association", and currently falls outside of the mandate of the Ombud: Aklavik, Délı̨ne, Fort Good Hope (Rádeyı̨lı̨kóé), Fort McPherson (Teetł'it Zheh), Fort Providence (Zhahti Kų́ę́), Paulatuk, Sachs Harbour (Ikaahuk), Tsiigehtchic, Tuktoyaktuk, Tulít'a, and Ulukhaktok.
[10] Available in the Ombud's 2019-20 Annual Report: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf#page=40.
[11] See recommendation #1 of Committee's *Report on the Review of the 2019-20 Northwest Territories Ombud Annual Report*. Available at: https://www.ntassembly.ca/sites/assembly/files/2021-05-27_-_cr_13-192_report_on_the_review_of_the_2019-20_ombud_annual_report.pdf#page=6.
[12]Available in the Ombud's 2019-20 Annual Report: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf#page=44.
[13] Available in Committee's review of the Ombud's 2020-21 Annual Report: https://www.youtube.com/watch?v=UQysJ1Sha0w.
[14] Available in Committee's review of the Ombud's 2020-21 Annual Report:

https://www.youtube.com/watch?v=UQysJ1Sha0w.
[15] See recommendation #2 of Committee's *Report on the Review of the 2019-20 Northwest Territories Ombud Annual Report*. Available at: https://www.ntassembly.ca/sites/assembly/files/2021-05-27_-_cr_13-192_report_on_the_review_of_the_2019-20_ombud_annual_report.pdf#page=7.
[16] See section 12(2) of Yukon's *Ombudsman Act*. Available at: https://laws.yukon.ca/cms/images/LEGISLATION/PRINCIPAL/2002/2002-0163/2002-0163.pdf#page=12.
[17] See the Yukon Ombudsman's webpage: https://www.yukonombudsman.ca/yukon-ombudsman/for-authorities/ombudsman-act#:~:text=The%20Yukon's%20Ombudsman%20Act%20came,to%20investigate%20and%20make%20recommendations.
[18] See recommendations #4 and #6 of Committee's *Report on the Review of the 2019-20 Northwest Territories Ombud Annual Report*. Available at: https://www.ntassembly.ca/sites/assembly/files/2021-05-27_-_cr_13-192_report_on_the_review_of_the_2019-20_ombud_annual_report.pdf.
[19] See recommendation #7 of Committee's *Report on the Review of the 2019-20 Northwest Territories Ombud Annual Report*. Available at: https://www.ntassembly.ca/sites/assembly/files/2021-05-27_-_cr_13-192_report_on_the_review_of_the_2019-20_ombud_annual_report.pdf#page=11.
[20] See recommendation #1 of Committee's *Report on the Review of the 2020-21 Northwest Territories Ombud Annual Report.* Available at: https://www.ntassembly.ca/sites/assembly/files/cr_34-192_-_scogo_report_on_the_review_of_the_2020-2021_annual_report_of_the_ombud.pdf#page=8.
[21] Video of the January 25th, 2022, clause-by-clause review of Bill 61 is available at: https://www.youtube.com/live/br8lQ7t_q34?feature=share.

Appendix A

Bronwyn Watters
Equal Pay Commissioner

By e-mail

January 6, 2022

Ms. Frieda Martselos
Deputy Chair
Standing Committee on Government Operations

Bill 61: *An Act to Amend the Ombud Act*: Proposed Changes

Thank you for the materials you sent on the above matter and your invitation to provide comments regarding Bill 61 (the draft Bill).

A review of the draft Bill did raise some significant concerns. As Equal Pay Commissioner, my concerns relate primarily to the impact of the proposed amendments on the Equal Pay Commission. However, as a former member of the Human Rights Commission, I have concerns relating to this Commission as well.

The most significant issue regarding the draft Bill is the amendment to Section 23 of the *Ombud Act*, which expands the mandate of the Ombud to include the Languages Commissioner, the Director of Human Rights and the Equal Pay Commissioner. It is interesting to note that this amendment extends the Ombud's jurisdiction to several Officers of the Legislative Assembly despite the Ombud having no jurisdiction to "investigate any decision, recommendation, act, order or omission" of the Legislative Assembly (*Ombud Act*, Section 17).

However, the most significant concern regarding this change is that it would create the real potential for conflict between the mandates of the Ombud and those of the relevant Commission. This would be extremely problematic and result in confusion for all parties, as well as the risk of complainants "shopping around" in the hope of obtaining a more favourable outcome. The immediate impact on the Equal Pay Commission is, at this stage, negligible as no complaints have yet been received by the Commission. (The one complaint that was received proved to be an issue of Job Classification rather than Equal Pay.) However, the potential is very real, and the immediate impact on the Human Rights Commission could be significant.

Another concern, related to the issue of competing mandates is that of the potential for violation of the right to privacy, particularly that of the respondent(s), in either an Equal Pay or Human Rights complaint, should their information be accessed by the Ombud without their express permission.

Should the Ombud's jurisdiction be extended as proposed, the issue of training arises. While probably most significant in Human Rights investigations, where the training taken by staff and Commission members has been extensive and is ongoing, it also applies to Equal Pay where

knowledge of Equal Pay/Pay Equity issues and legislation in Canada, as well as understanding of job evaluation and classification, are required.

I was also somewhat surprised by the amendment to Subsection 17(3), allowing the Ombud to "investigate any decision, recommendation, act, order or omission" as far back as April 1, 1999. This is certainly in stark contrast to the Yukon, whose *Ombudsman Act* specifies, in Section12(2) that "The Ombudsman may not investigate conduct occurring before the commencement of this Act." It is unclear why this retroactive application of legislation is desirable or appropriate.

While my major concerns regarding amendments to the *Ombud Act* proposed in Bill 61 are outlined above, I would also like to clarify that I believe accountability is important and that it would be appropriate for the Ombud to have oversight over strictly administrative issues, such as ensuring timely completion of investigations, responding to communications, etc. However, expanding the mandate into areas already covered, appropriately, by other legislation would be counter-productive, resulting in potential confusion and dysfunction.

Thank you again for the opportunity to respond to Bill 61. Please do not hesitate to contact me again should you have any questions or wish further follow-up.

Sincerely

Bronwyn Watters
Equal Pay Commissioner

NORTHWEST TERRITORIES HUMAN RIGHTS COMMISSION

Human Rights Adjudication Panel
Tribunal d'arbitrage des droits de la personne

January 11, 2022

Via Email

Frieda Martselos
Deputy Chair
Standing Committee on Government Operations

Submission – Bill 61: *An Act to Amend the Ombud Act*

Thank-you for the opportunity to review and provide our comments on Bill 61, an *Act to Amend the Ombud Act.*

At the outset of our submission, the NWT Human Rights Commission (the Commission) and the NWT Human Rights Adjudication Panel (the Panel) note that upon review of the Ombud's 2019-2020 Annual Report recommendations, the Chairs of both the Commission and the Panel along with the Executive Director of the Commission met with the Ombud on July 6, 2021 to inquire about the rationale supporting the recommendations and to raise concerns. In reviewing the proposed language of Bill 61 and the submissions of the Ombud and MLA Johnson during the public hearing of December 9, 2022, it appears the concerns previously raised by the Commission and the Panel have not been raised to the Standing Committee for consideration.

We are disappointed there was no consultation with either the Commission or the Panel as the Bill was drafted, given the direct impact Bill 61 may have on our jurisdiction. In fact, we were not aware of the existence of Bill 61 until after the public hearing on December 9, and only became aware of the Bill by chance.

The Commission and the Panel want to make clear, neither is generally opposed to an amendment of the *Ombud Act* that would allow the Ombud to investigate administrative fairness concerns raised by members of the public who engage in the human rights system in the NWT.

We are however concerned over the issue of proper and conflicting jurisdiction that may arise with the proposed amendments in Bill 61.

Amendments to the Schedule

We note the proposed amendment to the Schedule of the *Ombud Act* would expand the list of authorities that fall within the mandate of the Ombud to include all statutory officers of the Legislative Assembly; independent statutory officers who do not report any member

of Executive Counsel, but directly to the Legislative Assembly in the same manner as the Ombud's office.

Issues of administrative fairness can at times intersect with what the Commission and Panel would consider to be issues of procedural fairness and natural justice that give rise for grounds of appeal under the *Human Rights Act*. There must be a clear understanding of the difference between general administrative fairness concerns that would properly fall under the Ombud's mandate, such as the timely response to telephone or email inquiries from members of the public, versus those forming the basis for appeal of formal recommendations and decisions issued under the *Human Rights Act*. The latter would fall under section 17(1)(d) of the *Ombud Act* and must remain exclusively under the jurisdiction of the *Human Rights Act* and system. Section 17(2) of the *Ombud Act* reads:

> The Ombud 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.

However, section 17(2) of the *Ombud Act* further states:

> Notwithstanding paragraph (1)(d), the Ombud may investigate a decision, recommendation, act or omission in respect of which there is, under an Act, a right of appeal or objection, or a right to apply for a judicial review, if the Ombud is satisfied that in that particular case it would have been unreasonable to expect, or have expected, the complainant to have pursued that recourse, and the time for the exercise of that right to appeal, object or apply has expired.

The Commission and Panel are concerned that section 17(2) of the *Ombud Act* would allow for the discretion of the Ombud to undertake an investigation of a Commission or Panel statutory decision where the complainant or respondent have chosen not to pursue their right of appeal under the *Human Rights Act*. The Commission and Panel are not aware of the value that would be achieved to allow for the possibility of the Ombud reviewing and potentially determining the hearing process was unfair or contradicting the appeal decision of the quasi-judicial expert Panel on administrative or procedural fairness where the party has not exercised their right of appeal under the *Human* Rights Act. What can be foreseen in such a scenario is unnecessary confusion over proper and conflicting jurisdiction, the precedential nature of formal decisions issued under the *Human Rights Act*, and finality to the human rights complaint process.

One potential approach to alleviate this concern would be to include language in Bill 61 under section 17 clarifying that the Ombud shall not investigate any recommendation or

decision issued under sections 29(2.1), 41(3), 44(1), 46, 62, and 63 of the *Human Rights Act*.

Amendment to Section 23

Neither the plain language summary of Bill 61 nor the submissions during the December 9, 2022 public hearing reference in any substantive manner the proposed amendments to section 23 of the *Ombud Act*, which would result in the expansion of the Ombud to investigate human rights matters, in addition to pay equity and language right matters. This is a significant expansion of jurisdiction raising serious concerns of conflicting or concurrent jurisdiction for the Commission and the Panel.

At page 42 of the Ombud's 2019-20 annual report, it is noted that in practice, the Ombud Office always refers complainants with human rights concerns to the Commission. It further notes that at times, human rights issues may not be readily apparent and may only become evident after an investigation has commenced and further notes the Ombud currently under its legislation may make a finding that an act was "improperly discriminatory". The reason provided for the recommended expansion of jurisdiction to grant the Ombud authority to investigate human rights related matters is "it seems unfair to require an informed individual who does not want to make a human rights complaint to follow that process before considering a complaint to the Ombud" and "complainants should not be prevented from requesting intervention by the Ombud if they do not wish to pursue a human rights process."

Section 23 of the *Ombud Act* currently states:

> The Ombud shall not investigate any matter that falls within the mandate of the Languages Commissioner, the Information and Privacy Commissioner, the Integrity Commissioner, the Chief Electoral Officer, the Director of Human Rights or the Equal Pay Commissioner, unless that commissioner, director or officer agrees.

The Commission and Panel are not aware of the problem sought to be solved by this proposed expansion of jurisdiction but is concerned with the issues it could create. The Commission does not suffer a capacity issue to address human rights complaints related to administrative fairness issues in a timely manner through its early restorative dispute resolution process. On average, 60% of complaints currently reach binding resolution by agreement. The Director is not aware of any situation where the Ombud's office has contacted their office under section 23 to request agreement for the Ombud to investigate a human rights related matter, and thus has never denied such a request. Further, the Commission and Panel do not understand how it could be considered unfair that when a member of the public believes their human rights have been violated by a government authority and would like to pursue a resolution, they are to contact the statutory body

established by the Legislative Assembly and mandated to promote and protect the public interest and individual human rights within the NWT.

Allowing for such an expansion of jurisdiction will create unnecessary jurisdictional confusion, and raises a number of questions:

- Would such an amendment create concurrent jurisdiction over human rights matters involving administrative fairness applied by a government agency?
- Would the Commission or the Ombud be required to defer their complaint process if the complainant has already filed a complaint with the other statutory body?
- If not, is it fair for the respondent to be engaged in two different forums at the same time on the same human rights related matter?
- If the parties find resolution through the Ombud's process, has the complainant given up their inherit right to pursue their human rights protections under the *Human Rights Act*?
- Can a respondent rely on a resolution or a finding of no discrimination through the Ombud's process as grounds to seek the dismissal of the complainant's human rights complaint?
- Once a complainant has a finding from the Ombud determining an act was "improperly discriminatory", they may decide they would like to pursue a complaint with the Human Rights Commission either to compel compliance to take particular action or cease the discriminatory conduct, or to seek compensation related remedies afforded them under the *Human Rights Act*. Is the Commission or Panel bound by the findings of fact of the Ombud?
- If not, there is risk of having two statutory regimes coming to different determinations of fact on the same allegations of human rights violations. Is this fair to either party?

The Commission and Panel are concerned that unnecessary jurisdictional issues will arise should this amendment to section 23 be passed. This is especially so, as we are unclear of the degree of the problem, if any, proposed to be solved.

Amendment to section 17(2)

A further concern to the possible amendment to the Schedule and section 23 is the proposed amendment to increase the temporal jurisdiction of the Ombud to allow for investigations of decisions, recommendations, acts, orders, or omissions back to April 1, 1999. With regards to formal recommendations and decisions made under the *Human Rights Act*, the Legislative Assembly determined a 30-day appeal period was reasonable as it is in line with jurisdictions across the country and the principals of procedural fairness and natural justice. The Commission and Panel are concerned with the possible exercise of discretion of the Ombud under the current section 17(2) that would allow for an

investigation into Commission and Panel decisions with such an expansive timeline as it would not be in keeping with the rules of procedural fairness and natural justice.

Similarly, should the proposed amendments to section 23 pass as presented in Bill 61, the Commission and Panel are concerned about what amounts to the creation of a special category for human rights related matters involving administrative fairness by a government agency that would allow the individual to pursue the matter through the Ombud's office dating back to 1999. This would be in sharp contrast to the two-year timeline to file from the alleged contravention of one's human rights approved by the Legislative Assembly under the *Human Rights Act*. This two-year timeline is the longest period of time to file a human rights complaint in Canada. Allowing for such a lengthy temporal jurisdiction with regards to human rights related matters under the *Ombud Act* would not be in keeping with the principals of procedural fairness and natural justice.

Thank-you again for your consideration of the Commission and Panel's submission on Bill 61. As previously communicated to the Committee Clerk, we would also welcome an opportunity to meet with Standing Committee to discuss the bill and the concerns raised in our submission.

Charles Dent
Chairperson, NWT Human Rights Commission

Sheldon Toner
Chairperson, NWT Human Rights Adjudication Panel

Nicole MacNeil
Executive Director, NWT Human Rights Commission

Appendix C

NORTHWEST TERRITORIES
LEGISLATIVE ASSEMBLY
TERRITOIRES DU NORD-OUEST
ASSEMBLÉE LÉGISLATIVE

WWW.ASSEMBLY.GOV.NT.CA
WWW.ASSEMBLY.GOV.NT.CA/FR

22 November 2022

Frieda Martselos, MLA
Deputy Chair
Standing Committee on Government Operations
NWT Legislative Assembly

Dear Ms. Martselos:

Re: Bill 61: An Act to Amend the Ombud Act: Proposed Changes

Thank you for your letter dated November 18, 2022 asking for any comments or concerns that I might have about the proposed amendment.

I have reviewed the proposed amendment, and do not have any concerns.

Yours sincerely,

DAVID PHILLIP JONES, Q.C.
Integrity Commissioner

David Phillip Jones, Q.C., Integrity Commissioner
300 Noble Building, 8540 - 109 Street N.W ., Edmonton, Alberta, Canada, T6G 1E6
Tel: (780) 433-9000 Fax: (780) 433-9780

Ombuds and Complaints re: Human Rights Commissions

The following is a sample of publicly reported complaints about human rights commissions to provincial/territorial ombuds. [1]

Alberta:

2020: Alberta Ombudsman completed an investigation into a complaint involving issues of timeliness (it took 6 years to get the decision; and interest on the award was charged back to the date of the offence). The Commission was already putting changes in place to address the issue, so other than finding unfairness occurred, the Ombudsman has concluded the best way forward for now is to allow the commission's reforms to continue: https://www.ombudsman.ab.ca/waiting-for-fairness/

2008: The Alberta Ombudsman completed an investigation into a complaint about a decision by the Human Rights Commission and found that the decision was administratively fair but did not address one of the citizen's grounds of appeal and recommended reconsideration. The Ombudsman sought a declaration from the court confirming their jurisdiction to investigate and make recommendations to the Commission, and was successful [decision available on CanLII: *Alberta (Ombudsman*) v. *Alberta (Human Rights and Citizenship Commission),* 2008 ABQB 168 and includes commentary on the purpose of ombuds legislation; case summary with commentary here: https://ablawg.ca/2008/04/21/ombudsman-may-review-and-make-recommendations-regarding-decisions-of-chief-commissioner-of-the-human-rights-and-citizenship-commission/]

Ontario:

2020: The Ontario Ombudsperson informally resolved a complaint from a man whose application to have his issue heard by the Human Rights Tribunal of Ontario was dismissed on the grounds that he hadn't filed a response to them as requested. He had email evidence to show he had sent the result but couldn't reach anyone at the Tribunal to resolve it. The Ontario Ombudsperson contacted the Tribunal and they acknowledged the email had been missed in error and reopened his file.

2019: The Ontario Ombudsperson informally resolved a complaint from a woman who had been pursuing her case at the Human Rights Tribunal of Ontario for several years and learned that the adjudicator assigned to her case was no longer able to continue. The prospect of having to restart the entire hearing process from the beginning was especially troubling for her, as she was already dealing with post-traumatic stress disorder related to the matter. She tried

[1] As in the NWT, most inquiries and complaints to provincial/territorial ombuds are resolved informally and details are not reported. For example, the BC Ombudsperson's 2021-2022 annual report indicates it received 54 enquires and complaints about the Human Rights Tribunal that year but does not provide more specific details.

to resolve her concerns directly with the tribunal, but received conflicting responses about the available options. After the Ontario Ombudsperson made inquiries, the tribunal determined that the original adjudicator would be able to finish the hearing after all.

Saskatchewan:

2017: Saskatchewan conducted an own motion inquiry into six different administrative tribunals in Saskatchewan; the Human Rights Commission was one of them. The basic issue was timeliness, and the investigation focused on the structures in place that support and/or hinder the work of administrative tribunals to render timely decisions: https://ombudsman.sk.ca/app/uploads/2017/08/hearing-back-en.pdf

Nova Scotia:

2014: The Ombudsman completed an own motion investigation into the Nova Scotia Human Rights Commission. Details are not available online but the summary says that the report noted several issues and made recommendations including the establishment of a committee to review the approach to human rights services; review, revision, and development of policy; ensuring the education division of the NSHRC is appropriately resourced; review of the restorative approach to case management; and the development and implementation of a quality assurance system: https://ombudsman.novascotia.ca/resources/case-studies/own-motion-nova-scotia-human-rights-commission

Yukon:

2022: The Ombudsman received a complaint about the Human Rights Commission they intended to investigate (details of complaint not available); the Human Rights Commission challenged the Ombudsman's jurisdiction partly using the argument that they are appointed by the Legislative Assembly, however the court provided an "opinion" (not a declaration) that the Ombudsman has jurisdiction over the Commission as they are "public officers": [decision available on CanLii: *Yukon Ombudsman v Yukon Human Rights Commission*, 2022 YKSC 16; mainly technical discussion of statutory interpretation, with little comment on purpose or principles of ombuds legislation]

Ombud Jurisdiction over Authorities Does legislation include similar provisions to Yukon's Schedule A, Section 12? ("Members appointed by Act or Minister…. ") ?	
SHORT ANSWER:	Yes, all provinces but Ontario have something similar in their legislation, though there are some differences in phrasing, and sometimes it is included as part of the definition section for one of the terms used in the jurisdiction provision, rather than as a separate schedule. While Ontario does not have it expressly in their legislation, the courts have read a similar definition into the meaning of the word "board" as used in the legislation.
British Columbia *Ombudperson Act*, RSBC 1996, Chapter 340.	Yes –similar provision in schedule to Yukon. Jurisdiction over authorities, which is defined in section 2 of Schedule 1 as: 2 A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are, (a) appointed by an Act, minister, the Lieutenant Governor in Council, (b) in the discharge of their duties, public officers or servants of the government, or (c) responsible to the government.
Alberta *Ombudsman Act*, RSA 2000, Chapter O-8.	Yes, similar provision. Section 12(1) provides jurisdiction over "agencies" as defined as per the definition in section 1 of the Financial Administration Act, excluding certain listed exceptions (university boards, provincial health boards, and a couple more). Section 1 of the Alberta FAA says that a provincial agency includes a provincial corporation or a provincial committee, and a committee means, "….an unincorporated board, commission, council, or other body that is not a department or part of a department, all or a majority of whose members are appointed or designated, either by their personal names or by their names of office, by an Act of the Legislature or regulations under an Act of the Legislature, by an order of the Lieutenant Governor in Council or of a Minister of the Crown or by any combination of those methods."

Yukon *Ombudsman Act*, RSY 2002, c. 163.	Yes. Schedule A, Section 2: A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the board or board of directors of which are, a) appointed by an Act, Minister or the Commissioner in Executive Council; b) in the discharge of their duties, public officers or servants of the Yukon; or c) responsible to the Government of the Yukon.
Saskatchewan *The Ombudsman Act, 2012*, Chapter O-3.2.	Yes, similar provision. Under section 14(2)(a)(i), has authority to investigate agencies or board members of agencies. And under section 1, “agency of the government” is defined as: any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which: (i) are appointed by an Act or by an order of the Lieutenant Governor in Council; or (ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown; (b) “board member” means a member of the board of management, or board of directors, of: (i) an agency of the government; or (ii) a publicly-funded health entity;
Manitoba *Ombudsman Act*, C.C.S.M. c. O45.	Yes, similar provision. Section 15(2), jurisdiction over agencies of the government, which is defined in section 1 as: "**agency of the government**" means any board, commission, association, or other body of persons, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which, (a) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or (b) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown; (« organisme gouvernemental »)

Ontario *Ombudsman Act*, R.S.O. 1990, c.O.6.	Not expressly included, but the courts have read a similar definition into the terms used in the Act. The Ontario Act provides for jurisdiction over "…any act done or omitted in the course of the administration of a public sector body"; definition of public sector body includes "governmental organization" which, under definition section 1(a), "…means a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof." "Commission", "board" and "agency" are not defined in the Act. But in *Re Ombudsman of Ontario* and *Health Disciplines Board of Ontario et al*, 1979 CanLII 1763(ON CA), the Ontario Court of Appeal held that, "It is my opinion that the Health Disciplines Board is a "board" as defined in s. 1(a) because: (1) it is established by a provincial statute; (2) its members are appointed by the Lieutenant-Governor in Council, and (3) it discharges a provincially-assumed regulatory responsibility, in the course of which it is required to apply provincial law. "
Quebec *Public Protector Act*, CQLR c.P-32.	Yes, if the person's staff are appointed in accordance with *Public Service Act*. Their Act provides jurisdiction over public bodies; and sections 14 and 15 provide, **14.** For the purposes of this Act, a public body is (1) a department; (2) any body, other than the Conseil exécutif and the Conseil du trésor, whose staff is appointed in accordance with the Public Service Act (chapter F-3.1.1). **15.** For the purposes of this Act, the following are held to be public bodies: (1) every person, except the Chief Electoral Officer and the Ethics Commissioner, designated by the National Assembly to hold an office accountable to it, where the law provides that the person's staff is appointed in accordance with the Public Service Act (chapter F-3.1.1);
New Brunswick *Ombudsman Act*, RSNB 1973, c.O-5.	Yes. Jurisdiction over authorities (section 12) and authorities defined in section as authorities which are listed in Schedule A. Schedule A, section 2 provides: A person, corporation, commission, board, bureau or other body that is, or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are (a) appointed by an Act, Minister or the Lieutenant-Governor in Council, (b) in the discharge of their duties, public officers or servants of the Province, or (c) responsible to the Province

Nova Scotia *Ombudsman Act*, R.S. Chapter 327, s.1	Yes, similar provision. Under section 11, has jurisdiction over government departments; and in section 2, definition of government department includes an agency, and an agency is defined in section 2 as follows: In this Act, (a) "agency" means an agency, board, commission, foundation or corporation established under an enactment that (i) is appointed by the Governor in Council, a member of the Executive Council or the Province, or (ii) is supported by or directs the expenditure of public funds of the Province and is designated by the Governor in Council.
PEI *Ombudsperson Act*, RSPEI 1988, c.O-14.1	Yes, similar provision. Under section 14(2)(a)(i), has authority to investigate agencies or board members of agencies. And under section 1, "agency of the government" is defined as: "agency of the government" means a board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which, (i) are appointed by an Act or by an order of the Lieutenant Governor in Council, or (ii) if not so appointed, in the discharge of their duties are public officers or servants of the Government, or for the proper discharge of their duties are, directly or indirectly, responsible to the Government; (b) "board member" means a member of the board of management, or board of directors, of (i) an agency of the government, or (ii) a publicly-funded health entity
Newfoundland *Citizen's Represesntative Act*, SNL 2011, c.C-14.1	Yes. Section 16, has jurisdiction over a department or agency; and agency is defined in section 1 as including all listed in the Schedule. The Schedule to the Act includes, "A corporation, commission or board the majority of the members of which, or the majority of the members of the board of directors of which are appointed by the Lieutenant-Governor in Council."

Government of
Northwest Territories

THIS IS PUBLIC INFORMATION

January 05, 2023

FRIEDA MARTSELOS
DEPUTY CHAIR
STANDING COMMITTEE ON GOVERNMENT OPERATIONS

Bill 61: *An Act to Amend the Ombud Act:* Proposed Changes

Thank you for your letter dated November 18, 2022 regarding Bill 61: *An Act to Amend the Ombud Act.*

As noted previously to Committee, the Government of the Northwest Territories (GNWT) believes consideration for amending the *Ombud Act* would be more appropriate during the 20th Legislative Assembly, given the Act is still relatively new. As the Ombud continues to implement the Act, it is expected that further insights will be gained as to what is working well and where improvements can be made. In addition, given existing resources and focus on current legislative priorities for the 19th Assembly, the Department of Justice, who administers the *Ombud Act*, has not been able to undertake the policy analysis that is necessary to fully understand the impacts of many of the proposed amendments in Bill 61.

Noting the concerns above, the GNWT would like to share the following comments on several of the proposed amendments which it has undertaken some initial analysis of:

1. Amendments to subsection 15(1)-Mandate of the Ombud

The GNWT is concerned that the proposed insertion of the phrase "or the implementation of a policy" would likely create confusion as to the Ombud's role and impact the scope of the Ombud's jurisdiction (for example, beyond matters of administration, the potential impact on public policy decision making).

The legislated mandates of Ombuds across Canada are described similarly to the Ombud for the NWT, with the meaning of "a matter of administration" being intentionally broad and well understood by those in the field. Adjusting the mandate would require careful consideration before changes could be advanced.

.../2

P.O. Box 1320, Yellowknife NT X1A 2L9 www.gov.nt.ca C. P. 1320, Yellowknife NT X1A 2L9

2. Amendments to subsection 17(3)-Changing the Temporal Jurisdiction from 2016 to 1999

A reasonable and fair time limit must balance potential benefits to the public interest and the challenges of conducting meaningful investigations after significant time has passed. Allowing investigations to occur for matters dating back to 1999 could result in an overwhelming number of requests. When Bill 20: *Ombudsperson Act* was initially drafted, the temporal jurisdiction of the Ombud did not extend before the commencement of the Act, which was consistent with similar legislation in other jurisdictions at the time. The temporal jurisdiction in the Bill was amended in response to feedback from the Committee so that it was extended towards the beginning of the 18th Legislative Assembly, specifically January 1, 2016.

Temporal limitations on jurisdiction are important for a number of reasons, including that they can:

- assist to limit frivolous complaints;
- help avoid situations arising where laws and policies have changed over time and the public interest is no longer served by investigating these further; and
- help support a fair process where timelines for the commencement of actions in relation to when the cause of action arose are taken into consideration (investigations can become ineffective the further back they go where witnesses may not be able to recall information or details of events, and expectations or requirements of organizations to maintain relevant information and documents have changed over time and can create significant challenges).

The GNWT agrees that it may be appropriate in the course of a future review of the Act to review best practices for temporal jurisdiction in other jurisdictions to determine if there have been any significant changes in this area.

3. Repeal and replacement of subsection 22(2)-Notification of Decision not to Investigate

The Department recognizes that there may be situations where it may not be appropriate for the authority to be notified of a complaint that is not proceeding, if an investigation has not already commenced (for example, when there is another review or appeal process that needs to be followed). The Department also recognizes it is important for both the complainant and authority to be notified if the Ombud refuses to investigate or ceases an investigation after the complainant has already been given notice under subsection 24(1).

Some matters are easily resolved before a formal investigation has to be commenced and it is important to ensure that the complaints process is fair and transparent for both parties.

The GNWT agrees it would be worthwhile considering this recommendation further along with best practices across Canada in the course of a future review of the Act to determine if the recommended amendment to subsection 22(2) should be proposed.

4. Repeal and replacement of subsection 23-Removing the Director of Human Rights, the Equal Pay Commissioner, and the Languages Commissioner

Section 23 of the *Ombud Act* precludes the Ombud from investigating complaints that are within the mandate of the Languages Commissioner, the Information and Privacy Commissioner, the Conflict of Interest Commissioner, the Chief Electoral Officer, and the Director of Human Rights or Equal Pay Commissioner, unless that commissioner, director or officer agrees.

The Committee's recommendation to remove the Director of Human Rights, Equal Pay Commissioner and the Languages Commissioner from section 23 could potentially raise complex issues that could be problematic and would require careful consideration. As well, consultation with all three bodies should be undertaken before any amendments are considered. It is not clear if the intention of the bill is for the Ombud to have the ability to respond to and investigate complaints that are made *about* these specific bodies. There appears to be potential for the Ombud's investigation powers to overlap with these bodies, which should be avoided.

5. Amend clause 24(1) to explicitly provide for notice to be provided to the Tłı̨chǫ Government, or any equivalent agency established by an Indigenous Government

The GNWT agrees that it may be appropriate in the case of the Tłı̨chǫ Community Services Agency, currently listed as an authority under the Act, for the Tłı̨chǫ Government to be notified in the event that a complaint is filed against the Tłı̨chǫ Community Services Agency and be informed of the Ombud's findings. This recommendation likely also would be considered in the course of a future review of the Act, after engagement with Tłı̨chǫ Government officials on the issue. It may also be beneficial to consider how other agencies established by an Indigenous Government may fit into subsections 24(1) and 33(1), if appropriate.

.../4

The Department would like to reiterate that it has not had the opportunity to undertake a fulsome analysis of the proposed changes contained in the private members bill, and would stress that these comments reflect a cursory review only. Again, given current resources and the legislative initiatives planned for the remainder of the 19th Assembly, the Department does not support advancing amendments to the *Ombud Act* at this time.

Please let me know if you have any questions regarding this feedback.

R.J. Simpson
Minister, Justice

c. Members of the Legislative Assembly
Principal Secretary
Secretary to Cabinet/Deputy Minister, Executive and Indigenous Affairs
Deputy Minister, Justice
Clerk, Standing Committee on Government Operations
Advisor, Standing Committee on Government Operations
Committee Members, Standing Committee on Government Operations

Appendix G

Languages Commissioner of the Northwest Territories

Commissaire aux langues des Territoires du Nord-Ouest

January 13, 2023

Standing Committee on Government Operations
Legislative Assembly

Bill 61, *An Act to Amend the Ombud Act*

Thank you for the opportunity to comment on Bill 61 ("Bill"), *An Act to Amend the Ombud Act* ("Act").

The Office of the Languages Commissioner would like to have it on record that there is lack of support for the amendment to section 23 of the *Ombud Act* in which the Office of the Languages Commissioner is not protected from investigation of the Ombud.

- Referral of complaint

With the removal of the Official Languages Commissioner, Director of Human Rights and the Equal Pay Commissioner from Section 23 these statutory offices lose their ability to complete their mandates without review and consequence of another statutory office.

There is no clarity as to why this amendment is occurring as three statutory offices are removed, while the remaining three are untouched. The lack of reasoning or explanation has one wondering what is the significance of the offices that can cause such an imbalance of appearance with this change.

The Office of the Languages Commissioner and other offices are independent offices and this removal from section 23 removes this independence. This amendment permits the Ombuds Office to override the recommendations put forward by these Offices; which were made to enhance the services of the GNWT for the benefit of all NWT residents.

This change also under minds the public perception of the Offices that are removed, the Office of the Languages Commissioner has been working to enhance the duties and responsibilities of her office; this amendment ensures that the Languages Commissioner's role is one that will continue to be viewed with limited powers.

Thank you once again for the opportunity to provide comments on Bill 61.

Please feel free to reach out if clarification is required on anything in this document.

Sincerely,

Brenda Gauthier

Brenda M. Gauthier MEd, BSW
Languages Commissioner for the Northwest Territories

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Appendix H

From: Cynthia James
To: Nigel Wodrich; Daniel Aviugana
Subject: FW: Bill 61: An Act to Amend the Ombud Act
Date: January 9, 2023 12:02:28 PM
Importance: High

Hi Daniel,

Please distribute to the SC and cc staff, and place in appropriate file.

Mahsi,

Cynthia

From: Dennis Nelner <dnelner@hotmail.com>
Sent: January 9, 2023 11:36 AM
To: DST_LEG_Committees <committees@ntassembly.ca>
Subject: Bill 61: An Act to Amend the Ombud Act
Importance: High

My Submission

I SUPPORT the proposed changes on several points however the main reason I support amending the Act is:

The Ombuds can perform the duties of the Office in a fair and impartial manner especially when investigating cases containing vital information prior to Jan 2016 that may influence the judgement or decision.

thank you for your time
Dennis Nelner
Fort Simpson, NT.

Appendix I

Northwest Territories
Ombud
We speak up for fairness

December 2, 2022

HONOURABLE FRIEDA MARTSELOS
DEPUTY CHAIR
STANDING COMMITTEE ON GOVERNMENT OPERATIONS

VIA EMAIL

CONFIDENTIAL

Dear Deputy Chair Martselos:

Bill 61

Thank you for the opportunity to comment on Bill 61, *An Act to Amend the Ombud Act.*

I am pleased to express my support for this Bill and would like to thank MLA Johnson for bringing it forward. The Bill implements several of the recommendations from the Ombud's 2019-2020 annual report, and will allow the office to better serve the public, particularly by expanding the territorial public services that we can help people with, and by allowing us to look into matters that took place before 2016, going back to 1999.

I would like to offer the following specific comments and suggestions for amendments to the Bill:

1. Definition of "administrative head"

   It is important to be able to clearly determine who is the administrative head is for any authority that falls under the Act. For example, the administrative head is the person the Ombud must notify of an investigation, and along with the Minister, is the person who receives the Ombud's reports.

   The definition of "administrative head" in the current Act includes only Deputy Ministers and Chief Executive Officers. If an authority has neither, the responsible Minister must identify the administrative head.

   While it has only been necessary to make a few requests to Ministers to designate administrative heads up to now, this could come up more often with the increase in the number of authorities under the Act. This could in turn lead to delays in following up on some complaints while awaiting responses from Ministers.

.../2

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A more inclusive definition could help to avoid this by, for example, adding the term “executive head,” which would bring in executive directors and other administrative heads with different titles. Similar wording is used in Saskatchewan and PEI ombud legislation.

2. Ombud’s mandate

   The proposed subsection 15(1) in Clause 3 is much clearer than the wording in the current Act.

   As part of its existing mandate to investigate matters of administration, the office regularly considers implementation of policies. For example, we frequently look at questions such as whether a policy is in compliance with the law, whether a policy is inherently unfair (e.g., too vague, contradicts itself, fetters discretion, or is unjust or oppressive), whether a policy was followed in a particular case or group of cases, and whether a policy is communicated clearly enough to the public. I am therefore not sure of the intent of the added wording “the implementation of a policy” in proposed paragraph 15(1)(a). I am also concerned that including specific mention of one matter of administration could lead to a narrower reading of the overall mandate in future.

3. Policies and procedures

   The Ombud’s 2019-2020 annual report recommended removing from ss. 42(2) of the Act the requirement for the Ombud’s policies and procedures to comply with administrative policies of the Clerk. On its face, this provision threatens the independence of the office. Real and perceived independence is a fundamental principle for ombuds institutions within Canada and around the world. There is no provision like ss. 42(2) in any other NWT independent statutory officer legislation, or any other Canadian legislative ombuds legislation.

   The Standing Committee on Government Operations’ May 28, 2021 report on the Ombud’s 2019-2020 annual report advised that the intent of ss. 42(2) as worded was to ensure appropriate notification of the Tłı̨chǫ Government of any investigation into the Tłı̨chǫ Community Services Agency. As Bill 61 addresses this matter, I would recommend an additional clause in Bill 61 to remove the wording “and any administrative policies of the Clerk” from ss. 42(2).

Thank you again for the opportunity to provide my comments on Bill 61. I look forward to appearing before the Committee in person on December 9.

Wishing you well,

Colette Langlois
Ombud

c: MLA Yellowknife North