



**Government of the Northwest Territories Response to Committee Report 13-19(2):
Report on the Review of the 2019-2020 Northwest Territories Ombud Annual Report**

Background

The Standing Committee on Government Operations (the “Committee”) conducted a review of the *2019/2020 Annual Report of the Northwest Territories Ombud*. The report summarizing the Committee’s review was tabled in the Legislative Assembly on May 28, 2021. It included eight recommendations.

The following is the Government of the Northwest Territories’ (GNWT) response to the recommendations contained in Committee Report 13-19(2), *Report on the Review of the 2019-2020 Northwest Territories Ombud Annual Report*.

The GNWT thanks the Committee for its recommendations to amend the *Ombud Act* (the “Act”). The GNWT is continuously striving to improve how it administers public services and the work of the Ombud is an invaluable part of this process.

The GNWT has reviewed the Committee’s recommendations and has determined that consideration of amending the Act would be more appropriate during the 20th Legislative Assembly. The Act is still relatively new and sufficient time is required to allow for the development of an amending bill. 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.

The recommendations from the Committee along with the GNWT’s corresponding responses are outlined below.

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*.”

GNWT Response:

The Schedule of the Act was drafted to be consistent with the public sector bodies listed in Schedules A, B and C of the *Financial Administration Act*. The GNWT agrees to undertake policy analysis to determine whether Housing Associations should be expressly included in the list of authorities under the Act and will closely review the Yukon’s *Ombudsman Act* to determine what other amendments to

the Schedule may be appropriate. Section 23 will need to be noted when considering any potential amendments to the Schedule. This section currently states:

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

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.”

GNWT Response:

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.

However, 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.

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.”

GNWT Response:

Section 23 of the 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 from section 23 would potentially open the door for the Ombud to be able to investigate matters that fall under the NWT Human Rights Act. This raises complex issues that could be problematic and would require careful consideration, as well as consultation with that independent statutory office, before any amendments are considered.

The GNWT agrees that “Conflict of Interest Commissioner” should be updated to “Integrity Commissioner” in section 23 of the Act to reflect the change in the position title that has occurred since the Act has gone into force.

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.”

GNWT Response:

Subsection 22(2) of the Act states:

- “(2) If the Ombud refuses to investigate or ceases investigating a complaint, the Ombud shall, as soon as is reasonable, notify
- (a) both the complainant and the authority of the decision and the reasons for the decision; and
 - (b) if applicable, the complainant of any other recourse that may be available.”

Section 24 also states that the Ombud shall notify the administrative head of the affected authority and any other person the Ombud considers appropriate before investigating any matter.

The GNWT recognizes that it is appropriate for the Ombud to notify both the complainant and the authority when an investigation has been ceased. The GNWT also 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). 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.

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.”

GNWT Response:

The GNWT understands this recommendation relates to a concern about the possibility of confidential documents originating with the Office of the Ombud being released by authorities in

response to *Access to Information and Protection of Privacy Act* requests. The GNWT will consider these recommendation further, along with other applicable legislation and current best practices in other jurisdictions, to determine the best way to ensure the Act is clear as to how documents coming from the Office of the Ombud are to be treated by authorities.

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 Tłıchq 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).”

GNWT Response:

Sections 24(1) and 33(1) of the *Ombud Act* set out the requirements for the Ombud to provide notification of an investigation and its outcome to the administrative head of an authority. The GNWT agrees that it may be appropriate in the case of the Tłıchq Community Services Agency, currently listed as an authority under the Act, for the Tłıchq Government to be notified in the event that a complaint is filed against the Tłıchq 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 Tłıchq 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.

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.

GNWT Response:

While the wording in 15(1) could be improved for clarity and readability, as noted by the Ombud in her annual report, the GNWT would have to give careful consideration to the wording proposed by the Committee. As Committee was advised by the GNWT in the course of its review of Bill 20 in the 18th Legislative Assembly, the legislated mandates of Ombuds across Canada are described similarly to the Ombud for the NWT, the meaning of “a matter of administration” being intentionally broad and well understood by those in the field, including the NWT Ombud.

The GNWT believes the proposed insertion of the phrase “or implementation of a policy” likely would create confusion as to the Ombud’s role and potentially impact the scope of the Ombud’s jurisdiction (for example, beyond matters of administration, the potential impact on public policy decision

making). However, in the course of a future review of the Act it may be determined that consideration should be given to re-characterizing the mandate of the Ombud.

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.”

GNWT Response:

The GNWT is pleased to provide this response to the Standing Committee on Government Operations.