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GOVERNMENT ACCOUNTABILITY  
A LEGISLATIVE ACTION PAPER ON  
ACCESS TO GOVERNMENT

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## **Introduction**

The introduction of a private member's bill on Access to Information in the winter 1991 session of the Legislative Assembly prompted considerable discussion about the accessibility of the processes of government in the Northwest Territories. This same interest was reflected in the public debates which took place during the territorial election, and in the recent selection of the Government Leader and cabinet.

This paper proposes a bill which would go beyond a purely Access to Information model to include elements found in Ombudsman legislation in other jurisdictions. The proposed legislation would be designed uniquely for the people of the Northwest Territories.

## **What Government Accountability Functions Does An Ombudsman Perform?**

The role of an Ombudsman is to make sure that government works for people. When people feel that they have been unfairly treated by government, or when they don't understand how or why a decision affecting them has been made, they can complain to the Ombudsman.

The Ombudsman inquires with the government department or agency responsible for the action. Often it is possible to resolve the problem informally, or make a referral to get the person started through the appropriate channels. Where necessary, a full-fledged investigation is conducted, and a finding is made as to whether the government has acted appropriately or not.

Communication is a big part of the Ombudsman's job. Many problems can be resolved by having someone explain the concern of the individual citizen to the government office. Other times, the individual needs to have a better explanation of the government action. An Ombudsman keeps the government bureaucracy accountable to the individual members of the public it serves.



Ombudsman legislation generally provides that the office holder is appointed by or with the approval of the legislature and reports at least annually to the legislature.

The Annual Report of the Ontario Ombudsman says,

The Ombudsman is not an advocate for the public nor a defender of the bureaucracy nor a perpetual critic of government. Her work is to bring objective scrutiny to bear on the administration of government to determine that the high standards expected by the people of Ontario are applied fairly, consistently, and evenly.

All jurisdictions in Canada except the N.W.T., the Yukon Territory, P.E.I. and the federal government have ombudsman legislation.

### **What is Access to Information and Privacy Legislation?**

The purpose of Access to Information legislation is to ensure that members of the public can get the information they need to scrutinize fully the actions of the government, either as it affects an individual or as it affects the public broadly. There are normally exceptions aimed at protecting certain overriding public interests such as security and law enforcement. Another important exception is privacy: protection from public access to personal information which the government holds about individuals, while at the same time providing to those individuals access to the personal information which the government holds about them.

Access legislation creates a positive obligation requiring government to provide all information which does not fall under one of the statutory exceptions. It also provides for mechanisms for requesting information and for responding to requests.

All jurisdictions in Canada except the N.W.T., P.E.I., Alberta, B.C. and Saskatchewan (bill passed but not proclaimed), have Access to Information legislation.





### **Relationship Between Ombudsman and Access to Information Legislation**

The common link between Access to Information and Ombudsman legislation is that both are intended to make big government more accountable to the individual and to the public generally.

Access to Information legislation allows people to request information from government. The information may be about the individual requesting, or about any area of government activity. The requester needs to be able to describe the information which is desired. Once the information is provided, the recipient needs to know how to interpret it and what to do with it.

The ombudsman provides assistance to the individual to solve a problem encountered in dealing with government. This may involve getting information and providing it to the person, but it may also involve requesting action, explaining steps which can be taken, and so on.

Ombudsman and Access to Information legislation are not mutually exclusive. Many jurisdictions have both. Generally, Ombudsman legislation has come first, but this has not been the case everywhere.

Although both can provide help to individuals and to corporations or organizations, the experience has been that ombudsman services are used more by individuals than are access to information provisions.

Most requests for access to information come from businesses, with a smaller number coming from private citizens, while the reverse is true for complaints to ombudsmen.

### **Designing a Model for the Northwest Territories**

Clearly there is support in the N.W.T. for access to information legislation. This legislation might be even more useful to northerners if ombudsman legislation were put forward at the same time. This could be in two separate bills, or in a combined bill.



In a combined bill, the "access" component would give people the right to obtain information from government, while the "ombudsman" portion would ensure that citizens obtain help in solving problems in their dealings with the government. Such a bill might have a title which reflected the full range of functions, such as, "Access to Government".

The concept of an ombudsman is particularly attractive for the Northwest Territories. The government bureaucracy is largely modelled on southern institutions, and therefore it is based on cultural norms foreign to many northerners. For many people, there is a sense of isolation because of the great distances from government offices, and because of literacy levels which are inadequate to allow ready understanding of written information from a government which does not function in all respects in all of the Official Languages of the Territories.

While the Government of the Northwest Territories is not "Big Government" compared to other Governments in Canada, it is a massive bureaucracy relative to the size of the population.

### **Components of Proposed Legislation**

To the extent that legislative models from elsewhere provide guidance or assistance, care must be taken to examine the generally advisory role of ombudsman legislation and the often mandatory powers available to Access to Information Commissioners. Bearing this in mind, the following components might be contained in an Access to Government (combined ombudsman/access to information) bill.

**General right of access to government information.** This would be an expressly stated right of every citizen of the Northwest Territories, subject only to appropriate restrictions such as personal privacy, law enforcement, and cabinet confidence. This right to receive information should be an enforceable right.



**Independence.** The ombudsman must be independent of Government in order to be able to scrutinize government actions objectively. The ombudsman would be appointed for a fixed term, and would report directly to the Legislative Assembly. The capacity to report directly to the Assembly is very important, because where a department does not comply with the recommendation of the ombudsman, this will be made public and scrutinized by members of the Legislative Assembly.

**Broad Powers to obtain information.** The ombudsman requires broad powers of investigation. The legislation would need to grant the ombudsman access to virtually all government information, with the exception of cabinet documents and certain other privileged information. In the ombudsman role, there may even be an entitlement to review information which could not be released under the "access" provisions, and use the benefit of that information in assisting the individual.

The authority to compel production of information must accompany the entitlement to this information.

**Streamlined Process for making requests.** Procedures should be as simple as possible. The aim is to find out what help the citizen needs and to provide it, rather than require strict compliance with formal procedures.

**Jurisdiction.** The legislation would need to identify what entities are "government" within the meaning of the Act. Aside from departments of the Government of the Northwest Territories, consideration needs to be given to what other agencies, boards, and government corporations would fall under the Act.

**Source of requests and complaints.** Complaints and requests could be received from members of the public, M.L.A.s, and Ministers. For example, an M.L.A. could ask the ombudsman for assistance in resolving the concern of a constituent. The ombudsman should also have the power to initiate an investigation about a matter even if a complaint is not actually received.



**User fee.** Generally, there should be no user fee for either the ombudsman or access to information services. Some jurisdictions, however, have provisions in their access to information legislation permitting a fee to be charged where the request is estimated to require a significant commitment of public resources or major photocopying costs. Full cost recovery is not achieved, but the requester is made aware of the magnitude of the request, and unreasonable requests may be discouraged.

### How an Access to Government Office Could Work

There would need to be an ombudsman and at least one support staff, probably based in Yellowknife, to handle complaints, do investigations, make recommendations, and report to the Legislative Assembly.

For an ombudsman to be effective in the N.W.T., though, it would be essential that there be a territories-wide network for feeding inquiries in. In practical terms, it would not be reasonable to have staff in each region, let alone each community. It would be best to start on a modest scale, and then allow levels of demand for services help to determine what size of staff is required in the future.

Government Liaison Officers could be trained to receive complaints at the community level and pass them on to the ombudsman. This is not ideal. A more direct separation between the ombudsman and the government bureaucracy would be preferable, but a workable compromise could be found.

Most investigations could probably be done from Yellowknife, but contract investigators could be retained to serve when some regional presence was required. These contract positions might be similar in some ways to the contract liquor inspectors who work in communities where the level of activity does not warrant even a part time employee.





A direct referral system for telephone inquiries from individuals who did not speak English should be established. Telephone arrangements could be set up to permit interpreters from the Language Bureau to be added as a third party to the call, so that immediate interpretation could be provided.

Quite possibly, such a system could be set up in concert with the Languages Commissioner, who will have similar requirements.

Extensive publicity and public information about the Access to Government office and its functions would be necessary to ensure full access by those whose need is the greatest.

### **Relationship to Official Languages Commissioner**

The role of the Official Languages Commissioner under the Official Languages Act is similar in many ways to that of an ombudsman, but is limited to scrutiny of government compliance with that piece of legislation.

At a minimum, coordination of the two offices would be essential. Rather than establishing a second system for receiving enquiries in all languages, the ombudsman should use the same method employed by the Official Languages Commissioner. If the Official Languages Commissioner and the Access to Government Commissioner are to be separate, it would be a good idea to exclude Official Languages Act matters from the purview of the Access to Government, so as to avoid duplication. The preferable approach would be to formally combine the two offices.



### What's in a Name?

Throughout this paper the term "ombudsman" has been used. This is a matter of convenience, since it is a recognized title. The term does not mean the same thing everywhere in the world that it is used. This means that even if the N.W.T. legislation is unique in Canada, the term "ombudsman" could still be used.

At the same time, it is not essential that the term "ombudsman" be used for the office created in the Northwest Territories. It is the power given to the office in the legislation, not the name, that defines the role. The first ombudsman office was in Sweden, and the term "ombudsman" is a Swedish word which was adopted in other jurisdictions as the office was copied. An unfortunate aspect of the word is that it is not in the gender neutral language which is used throughout N.W.T. legislation, and because it comes from another language it cannot be adapted readily to a gender neutral form.

In Newfoundland as in Great Britain, the position is called the "Parliamentary Commissioner". There are other possible names: "mediator"; "access commissioner"; "access to government commissioner"; "public friend"; and "people's helper" would all be descriptive of the intended role. If a new name is chosen it should be one that can be sensibly translated into aboriginal languages.

### Summary of Proposal

It is proposed that an Access to Government bill be developed to create a comprehensive process for ensuring that the people of the Northwest Territories have open access to their Government.

The proposed bill would be designed specifically to meet the needs of the people of the Northwest Territories. It would draw upon both access to information legislation, and ombudsman legislation, in other jurisdictions. The following elements would be included:



- A general right of access to Government information, (with appropriate privacy restrictions built in);
- An access to government officer with broad powers to obtain information, investigate complaints and assist people in their dealings with the government;
- A streamlined process for making requests either for information about the government, or for explanation or scrutiny of government actions;
- Procedures which would permit enquiries to be made in any of the Official Languages of the Northwest Territories;
- Direct linkage with the Official Languages Commissioner or, preferably, a combination of the two offices; and
- A requirement that the access to government officer report directly to the Legislative Assembly.



## ESTIMATED COSTS OF ACCESS TO GOVERNMENT BILL

### SALARIES AND BENEFITS

Access to Govt Commissioner (one position)	Salary	\$80,000	
	Benefits	8,400	
	Housing Allow.	5,400	
Support Staff (one position)	Salary	\$30,000	
	Benefits	3,150	
	Housing Allow.	5,400	
<b>TOTAL</b>			<b>\$132,350</b>

### O & M COSTS (of Access to Government Office)

Office space		\$13,500	
furniture/computer/fax machine <sup>1</sup>		15,000	
photocopying		5,000	
fax costs (\$300/month)		3,600	
telephone (\$500/month)		6,000	
travel to regions (7 x \$1500)		10,500	
contracts (6 x \$5000)		30,000	
office supplies		9,000	
training package for GLOs and contract investigators <sup>2</sup>		7,000	
public information campaign		15,000	
Annual Report (production and translation)		4,000	
Independent legal advice		15,000	
<b>TOTAL</b>			<b>\$133,600</b>

### COSTS TO OTHER DEPARTMENTS

Staff time in compiling requested information <sup>3</sup>			
11 depts. x \$6000		\$66,000	
LESS Revenue from fees for large information requests		(7,000)	
<b>TOTAL</b>			<b>\$ 59,000</b>

**TOTAL COSTS** **\$324,950**

#### FOOTNOTES:

- 1 The furniture equipment costs would be in the initial year only.
- 2 The training costs would be reduced after the first year, after the first set of training materials had been prepared, but there would continue to be annual costs for updating and distributing.
- 3 Staff time in other Departments is a very rough estimate. The only experience this government has is with the 'access' provisions under the Environmental Rights Act passed earlier this year. The estimate is intended to take into account the fact that some information would be provided to the public as part of the general activity of government, with or without the new legislation.







