

Standing Committee on
Government Operations



Report on the Review of the 2020-2021 Annual Report of the Ombud

19th Northwest Territories Legislative Assembly

Chair: Mr. Rylund Johnson

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October 18, 2022

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Government Operations is pleased to provide its *Report on the Review of the 2020-2021 Annual Report of the Ombud* and commends it to the House.



Mr. Rylund Johnson
Chair, Standing Committee on Government Operations

STANDING COMMITTEE ON GOVERNMENT OPERATIONS
REPORT ON THE REVIEW OF THE 2020-2021 ANNUAL REPORT OF THE
OMBUD

INTRODUCTION

The Standing Committee on Government Operations (Committee) has reviewed the 2020-2021 Annual Report of the Ombud.¹

The *Ombud Act* requires the Ombud to prepare an annual report. The report includes information on the number of inquiries and complaints received. It can also include recommendations. The Speaker tables the report in the Legislative Assembly. Once tabled, Committee reviews the report.

As part of the review the Ombud, Ms. Colette Langlois, appeared before Committee on February 11, 2022.² Committee commends her user-friendly approach in her annual report. The strong visuals, plain language, and ample statistics provided an excellent template to understand the Ombud's activities.

Committee's report follows up on previous recommendations from the Ombud and from Committee to improve the *Ombud Act (Act)* – work that the Government of the Northwest Territories (GNWT) has declined to pursue in the life of the 19th Assembly.

Committee also makes two (2) substantive recommendations in this report:

- First, that the GNWT review and amend the *Ombud Act* by Fall 2025; and
- Second, that the Speaker amend the *Rules of the Northwest Territories Assembly* to allow annual reports of statutory officers to be made available to the public sooner.

Committee is pleased to submit this report to the Legislative Assembly and looks forward to its earnest consideration.

GNWT DECLINED TO IMPROVE *OMBUD ACT* DURING 19TH ASSEMBLY

¹ Available at: https://www.ntassembly.ca/sites/assembly/files/td_480-192_0.pdf.

² Available at: <https://www.youtube.com/watch?v=UQysJ1Sha0w>. The Legislative Assembly uploads video recordings of public meetings and other special events to its Youtube channel.

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*.³ 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.⁵ 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*.⁶

At the time, Members hoped the GNWT would put forward amending legislation in the remaining two years of the 19th Assembly.⁷ In this regard, the GNWT's November 2021 response⁸ was disappointing. The GNWT agreed to consider certain recommendations, but only in the context of a "future review". On other recommendations, the GNWT expressed caution or reluctance for future consideration.

The GNWT ultimately declined to pursue any legislative changes in the life of the 19th Assembly, determining that the timing would be "more appropriate" in the 20th Assembly. However, the GNWT has not committed to pursue changes in the 20th Assembly, either.

PREVIOUS RECOMMENDATIONS STILL STAND, SOME ARE HIGH PRIORITY

At her February 2021 appearance before Committee, the Ombud confirmed that the outstanding recommendations in her first 2019-20 Annual Report are still relevant. She reported that "*the recommendations really haven't changed*" and that she would "*certainly*

³ Available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf.

⁴ Available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf#page=39.

⁵ 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.

⁶ 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>.

⁷ 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>.

⁸ Available at: https://www.ntassembly.ca/sites/assembly/files/td_451-192.pdf.

repeat them before the end of [her] mandate to ensure they are still on the record.”⁹

Committee believes it is important to reiterate the Ombud’s recommendations, as long as they remain unimplemented, before the end of her mandate. Her recommendations¹⁰ for changing the *Ombud Act* are:

1. Broaden the definition of “authorities” to include territorial government offices that are excluded from the current schedule.
2. Include the authorities created under the *Human Rights Act* in the schedule.
3. Remove references to “judicial review” in section 17.
4. Amend subsection 17(2) to remove the requirement that the Ombud consider whether a complainant’s failure to exercise a right of appeal or objection was “unreasonable” before accepting a complaint.
5. Replace subsection 17(3) with a provision that authorizes the Ombud to investigate matters that occurred before the coming into force of the *Act*, without any limitation period.
6. Remove the reference to the Director of Human Rights from section 23.
7. Amend subparagraph 22(1)(g)(i) so that it applies before an investigation as well as during the course of the investigation.
8. Amend paragraph 22(2)(a) to remove the requirement for the Ombud to notify the authority any time the Ombud refuses to investigate a complaint.
9. Replace section 29 with a provision similar to subsection 25(7) of the *Ombudsman Act* (Saskatchewan) to remove potential barriers to investigating some complaints where complainants cannot provide written consent to disclosure of their information, or where third party information is required.
10. Amend the *Act* to include a new provision ensuring that authorities are permitted to provide information to the Ombud voluntarily.
11. Amend the *Act* to include a new provision preventing the disclosure of information originating from the Office of the Ombud.
12. Remove the requirement for the Ombud’s policies and procedures to comply with administrative policies of the Clerk.
13. Replace the term “authority” with a term that would be more recognizable to members of the public.
14. Revise subsection 15(1) for clarity.

In her remarks, the Ombud placed the highest priority on recommendations dealing with her jurisdiction to investigate complaints. This topic corresponds to recommendations #1 through #6. The Ombud’s jurisdictional recommendations are important because they impact the public and whether they can make a complaint.

The Ombud described several ways the *Act*, as it is written now, prevents the public from

⁹ Available at: <https://www.youtube.com/watch?v=UQysJ1Sha0w>.

¹⁰ For more detailed information, consult the Ombud’s 2019-20 Annual Report. Available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf.

making complaints and why this is problematic:

1. **Housing associations.** The *Act* allows the Ombud to investigate Housing Authorities but not Housing Associations. In practice, this means the Ombud can investigate a public housing complaint from a tenant Yellowknife (Sòmbak'è) but not the same complaint from a tenant in Fort McPherson (Teet'it Zheh) or in the other 10 communities where the Local Housing Organization is defined as an association.¹¹ The jurisdictional restriction on investigating Housing Associations raises an equity of access issue. Residents in certain, generally smaller communities are unable to request investigations and pursue remedies to matters related to their Local Housing Association. Committee wants to see this equity of access issue resolved as soon as possible.
2. **NWT Rental Office.** The Ombud reported that she has heard concerns about the NWT Rental Office – but she cannot substantiate those concerns because the *Act* leaves out the NWT Rental Office from her jurisdiction. A number of other offices also fall outside of her jurisdiction: the Assessment Appeals Tribunal, the Social Assistance Appeal Board, and the Staffing Appeals Officers, among others. The Ombud indicated that the NWT's *Ombud Act* “is an outlier, in terms of legislation, across Canada. Everyone else has a broader provision.”¹² This means that NWT residents have less scope seek administrative fairness in government administration and services compared with other Canadians. Committee wants to see Northerners' complaints treated the same way as they would be in other provinces and territories.
3. **Temporal jurisdiction.** The *Act* restricts the Ombud from investigating matters that occurred before January 1, 2016. This restriction has, in practice, prevented the Ombud from launching investigations into some complaints. The Ombud has reported that complainants found the cut-off “arbitrary and unfair”¹³ and “hard to accept.”¹⁴ This means that complainants who may have experienced a historical unfairness cannot access a remedy through the Ombud's office. Committee wants to ensure that all substantiated complaints from Northerners are investigated, regardless of when the matter occurred.

RECOMMENDATIONS

¹¹ The eleven (11) communities where the Local Housing Organization (LHO) is an association are:
- Aklavik, Déljne, Fort Good Hope (Rádey|ljkóé), Fort McPherson (Teet'it Zheh), Fort Providence (Zhahti Kúé), Paulatuk, Sachs Harbour (Ikaahuk), Tsiigehtchic, Tuktoyaktuk, Tulit'a, and Ulukhaktok.

¹² Available at: <https://www.youtube.com/watch?v=UQysJ1Sha0w>.

¹³ Available at: https://www.ntassembly.ca/sites/assembly/files/td_178-192.pdf#page=44.

¹⁴ Available at: <https://www.youtube.com/watch?v=UQysJ1Sha0w>.

Committee finds that the Ombud’s recommendations to amend the *Ombud Act* are well-researched and align with statutory standards elsewhere. The recommendations have merit and should be considered for implementation with the shortest delay.

The Standing Committee on Government Operations therefore recommends:

Recommendation 1: That the Government of the Northwest Territories, in consultation with the Standing Committee on Government Operations and within the first two years of the 20th Assembly, review each of the Ombud’s recommendations in her 2019-20 Annual Report in the context of a holistic review of the *Ombud Act* and amend the *Act* accordingly.

Committee also encourages the Ombud to convey the continued relevance of outstanding recommendations in each annual report.

Release annual reports sooner

It’s important for the annual reports of statutory officers, like the Ombud, to be released in a timely manner. Timely release allows for any problems identified by statutory officers, and recommendations to fix them, to be addressed sooner. Committee’s review process is also more relevant when annual reports are provided shortly after the year’s end. Ultimately, timely release enhances the effectiveness of Committee’s oversight of government.

The Ombud’s annual report is not currently released to Committee or the public in a timely manner. The Ombud’s first two annual reports, for 2019-20 and 2020-21, were released only once they were tabled in the Legislative Assembly. Tabling occurred in the Fall session of the Assembly – six to eight months after the fiscal year-end in March.

Table 1: Key dates in releasing the Ombud annual reports

Annual Report	Fiscal year-end	Deadline to submit to Speaker	Tabling date	Delay
2019-20	March 31	July 1	October 15	6 months 15 days
2020-21	March 31	July 1	November 24	7 months 24 days

The delay is not the result of slowness on the Ombud’s part. The *Act* requires the Ombud to prepare and submit her annual report to the Speaker “no later than July 1.”¹⁵

¹⁵ See subsection 43(1) of the *Ombud Act*. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/ombud/ombud.a.pdf#page=23>.

The Speaker must then table the report “*as soon as is reasonably practicable*.”¹⁶ Tabling a document has the effect of making it available to the public. Historically, the Speaker only tables a document during Session, the period of time when the Legislative Assembly holds its meetings. In most years, the next instance after July 1 when Session is held is in the Fall. This implies a period of three to five months during which the annual report is complete but not available for Committee or the public to review.

The annual reports of other statutory officers, such as the Information and Privacy Commissioner and the Languages Commissioner, are also typically available to Committee and the public in the Fall Session.

Committee wants to see the annual reports of statutory officers, and of all public entities more generally, released in a timelier fashion.

The Standing Committee on Government Operations therefore recommends:

Recommendation 2: That the Speaker of the Northwest Territories, in consultation with the Standing Committee on Rules and Procedures and before the end of the 19th Assembly, review and amend the *Rules of the Northwest Territories Legislative Assembly* to allow annual reports of statutory officers to be released publicly once they are received, and before they are tabled.

This rule change should, in effect, allow the Speaker to make available to Committee and to the public the Ombud’s annual report upon receipt or shortly thereafter.

CONCLUSION

This concludes the Standing Committee on Government Operations’ *Report on the Review of the 2020-2021 Annual Report of the Ombud*. Committee looks forward to the Government’s response to these recommendations.

Recommendation 3: The Standing Committee on Government Operations recommends that the Government of the Northwest Territories provide a response to this report within 120 days.

¹⁶ See subsection 43(2) of the *Ombud Act*. Available at: <https://www.justice.gov.nt.ca/en/files/legislation/ombud/ombud.a.pdf#page=23>.