



Yukon
Ombudsman

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April 10, 2024

The Honourable Jeremy Harper
Speaker of the Yukon Legislative Assembly

Dear Mr. Speaker:

Re: Special Report of the Ombudsman
Our File: OMB-REP-2023-11-261

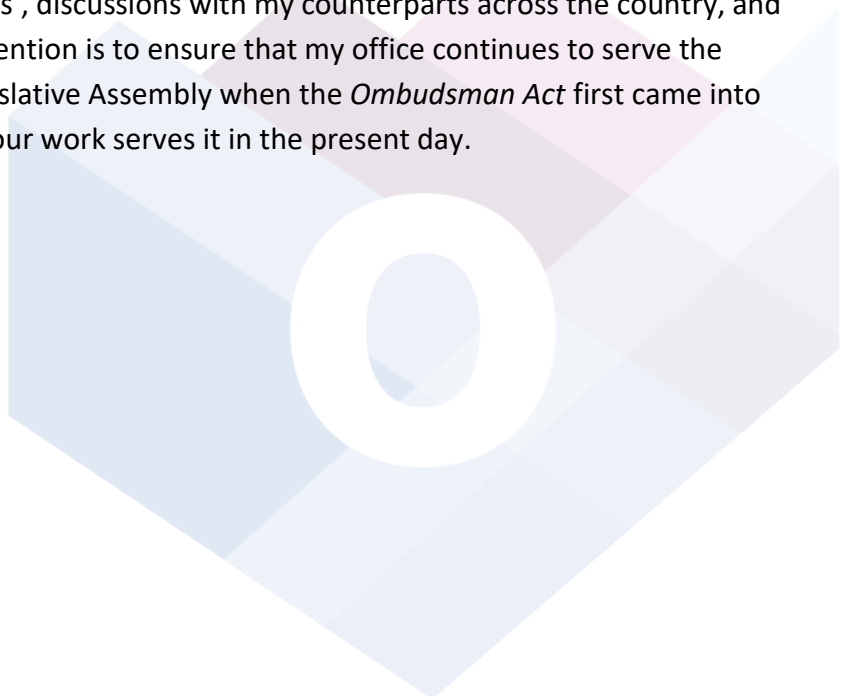
It is my duty and pleasure to submit the attached special report to the Legislative Assembly entitled, *Recommendations for Amendments to the Ombudsman Act*, pursuant to section 31 of the *Ombudsman Act*, being of the opinion that it is in the public interest to do so.

In preparing this list of recommendations, I have examined other territorial and provincial ombudsman legislation, especially that of British Columbia and Prince Edward Island, the latter being enacted in 2021. I have also relied broadly on ombudsman law and practice, administrative law, the European ombudsman 'Venice Principles', discussions with my counterparts across the country, and my own experience. In doing so, the intention is to ensure that my office continues to serve the public interest, as envisaged by the Legislative Assembly when the *Ombudsman Act* first came into effect and, in evolving since then, how our work serves it in the present day.

Yours sincerely,

Original Signed

Jason Pedlar, BA, MA
Ombudsman





Yukon
Ombudsman

SPECIAL REPORT

**Pursuant to section 31 of the
*Ombudsman Act***

File: OMB-REP-2023-11-261

**Recommendations for Amendments
to the *Ombudsman Act***

Jason Pedlar, Ombudsman

April 10, 2024

Summary

The *Ombudsman Act* came into effect on July 1, 1996. Its purpose, then as now, is to uphold administrative fairness, as affected by elected and non-elected officials in the performance of their normal roles and duties.

In the 28 years since its passage, the delivery of government programs and services has become ever more prevalent in our daily lives. In large measure, this is due to the complexities of an evolving society that bring with it the risk of greater exposure to injustice, insensitivity, and abuse of authority. Since the role of the Ombudsman is to investigate and report on the administrative decisions, recommendations, and omissions that affect citizens on a daily basis, it is important to update the *Ombudsman Act* from time to time. This helps to engender a general confidence that citizens who have the right, under the rule of law, to fair and just treatment in their interactions with public authorities, can always turn to the Ombudsman for remedial assistance in the event things go askew.

For these reasons, I have written this report (Special Report) in my role as the Ombudsman and made 18 recommendations for its revision.

I have also placed in the Appendix two references. The first is a line-by-line review of the *Ombudsman Act* in Excel format with suggested revisions that include these recommendations as well as additional ones. The second is a copy of the European Commission for Democracy through Law's *Principles on the Protection and Promotion of the Ombudsman Institution (The 'Venice Principles')* setting out 25 principles in support of the ombudsman's important role in democracy.

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Introduction

The Ombudsman's office builds relationships based on credibility and trust. In doing so, I adhere to the principles of administrative fairness and act in a manner that takes a collaborative approach in resolving a matter at hand. This serves the public interest and provides value to those entities under our authority because it does two things. Following a complaint and investigation, it corroborates an entity's work or provides constructive feedback that can be used to address the issue and prevent its repetition.

This has the significant benefit of improving the public's faith and confidence in that entity and, in turn, reminding it why acting fairly generally results in an acceptance of its decisions and actions. Simply put, people want to be treated with respect and public sector entities are expected to respond in kind. When this interface breaks, or is called into question, I intervene and try to repair it using the tools provided by the *Ombudsman Act*.

Statutes Cited

Ombudsman Act, RSY 2002, c.163. All section references in this Special Report are to the *Ombudsman Act*, unless otherwise stated.

Background

[1] The word 'ombudsman' is principally an old Scandinavian word meaning 'go between' or 'spokesperson'; essentially, the name given to a grievance procedure to guarantee citizens fair and equitable treatment under the law.

[2] In Yukon, the *Ombudsman Act* came into effect on July 1, 1996. It created an impartial, legislative-based mechanism that creates and enables the Ombudsman, in a capacity independent of government, to investigate complaints citizens have about the administrative activities of public sector entities that fall within the Ombudsman's jurisdiction. These include Yukon government departments, agencies, appointed boards and commissions, public corporations, schools, the university, hospitals, and professional bodies established by territorial legislation.

[3] Its purpose is to uphold administrative fairness, as affected by elected and non-elected officials while performing their normal roles and duties. To the extent that certain issues arise in this context, such as unwarranted delay, unreasonable decisions, inappropriate actions or omissions, or mistakes of law, the Ombudsman has broad powers to remedy them by

recommending, for example, the revisiting of a decision or action, the provision of reasons, or the reconsideration of a provision. Put simply, administrative fairness serves the public interest and it is the mandate of the Ombudsman to protect and promote it.

[4] In my view, the concept of administrative fairness remains relatively stable over time but the societal complexities surrounding it change. For example, ‘own motion’ authority allows the Ombudsman proactively to investigate a matter without having received a complaint. This power reduces barriers and delays in investigating concerns that come to their attention when, for a variety of reasons, citizens may not file a complaint. Yukon is the only jurisdiction where the Ombudsman does not have this authority.

[5] Similarly, there is a reasonable need, for example, to include municipalities under the Ombudsman’s jurisdiction. All levels of government and other public authorities should be subject to the oversight and impartiality provided by an Ombudsman in protecting and promoting fairness, transparency, and accountability. All jurisdictions, except Yukon, NT, PQ and NL, have this authority.

[6] Since the Ombudsman must always be able to meet the public interest for which the *Ombudsman Act* was initially established, I respectfully suggest that this legislation should be updated in keeping with the lessons learned and the experience gained by my office over the past 28 years.

Table of Comments and Recommendations

[7] The following table contains a list of the main issues that I believe require addressing by means of amendments to the *Ombudsman Act* and, as such, offer them for due consideration. A complete list of these and other issues can be found in the Appendix in a table entitled, ‘*Ombudsman Act* Line-by-Line Review’.

Rec #	Section	Comments and Recommendations
Expanded Oversight		
1	NEW	<p>‘Own motion’ power</p> <p>The Ombudsman can only investigate a complaint made by an individual or group of individuals affected in their personal capacity. The Ombudsman has no power to investigate such a matter on their own initiative. This power is especially important in circumstances in which the aggrieved party, because of such things as tender age, developmental disability, lack of freedom or other reason, may not be able to complain on their own behalf. Yukon is the only jurisdiction in Canada that does not have this ‘own motion’ power.</p> <p>Recommendation</p> <p>The Ombudsman should have the additional power to investigate a matter on their own motion. Venice Principle #16.</p>
2		<p>List of Authorities should be clarified and expanded</p> <p>Schedule A, setting out a list of specific and non-specific authorities, is part of the <i>Ombudsman Act</i>. If the Legislature wished from time to time to add a new authority, such as ‘municipalities’ or some other entity, it would have to propose, debate, and pass an amendment to that effect.</p>

		<p>If, however, Schedule A were taken out of the enactment and put into regulation, similar to the three parts found in Schedules 1 and 2 of the <i>Access to information and Protection of Privacy Act Regulations</i> (OIC 2021/025), then the Commissioner in Executive Council, with the appropriate regulation-making power, could pass a regulation that expressly sets out what entities fall within the jurisdiction of the Ombudsman. This would provide greater certainty and allow the Commissioner in Executive Council to revise the list as necessary.</p> <p>If this model were adopted, then a revised definition of ‘authority’ and new definitions, such as ‘ministerial body’ and ‘statutory body,’ would have to be contemplated.</p> <p>Recommendation</p> <p>The <i>Ombudsman Act</i> should be amended to delete Schedule A and allow for regulation-making power that, in addition to other things, allows the Commissioner in Executive Council set out a specific set of authorities in regulation.</p>
3	NEW	<p>Adding ‘municipalities’ as an authority</p> <p>The Ombudsman has no jurisdiction over municipalities. In the almost three decades since the <i>Ombudsman Act</i> first came into effect in 1996, Yukon municipalities have increasingly become important decision-makers in the lives of most Yukoners. In the eight jurisdictions across the country¹ that give their Ombudsman authority over municipalities, citizens have the ability to take their complaints to a neutral entity for</p>

¹ The eight are BC, AB, SK, MB, ON, NB, NS, and PE. NT is currently looking to its Legislature for ombudsman jurisdiction over municipalities. PQ has chosen to provide a municipal ombudsman for Montreal. NL has no municipal plans for its citizen’s representative.

		<p>resolution, as an office of last resort. Without this ability, they have nowhere else to turn for independent review of their local concerns about the fair application of municipal program and service delivery.</p> <p>In making ‘municipalities’ authorities for purposes of the <i>Ombudsman Act</i>, the Ombudsman would treat a municipal complaint in the same manner as any other complaint. That means the Ombudsman would conduct independent investigations of individual and systemic issues, and then make recommendations to improve municipal administration, service and accountability.</p> <p>Recommendation</p> <p>The Ombudsman should have jurisdiction over municipalities. Venice Principle #13.</p>
<p>Investigative Process</p>		
<p>4</p>	<p>NEW</p>	<p>Reprisal Protection</p> <p>The <i>Ombudsman Act</i> is silent on the matter of protecting from some type of reprisal measure a person who makes a complaint, acts as a witness or otherwise assists in an investigation.</p> <p>Recommendation</p> <p>A person who complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under the <i>Ombudsman Act</i> should, as a consequence, be protected against being discharged, suspended, expelled, intimidated, coerced, evicted, levied any pecuniary or other penalty, or otherwise being discriminated against. Venice Principle #24.</p>

5	NEW	<p>Reprisal measure offence</p> <p>There are four offences in section 32. If a ‘protection’ provision is added in or immediately following section 16 that prohibits a person from taking a reprisal measure against someone who complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under the <i>Ombudsman Act</i>, then taking such a reprisal measure should be an added offence.</p> <p>Recommendation</p> <p>A new (fifth) offence should be added making it a transgression to take a reprisal measure (as per the ‘protection’ provision) against a person. Venice Principle #24.</p>
6	15(3) REVISED	<p>Information relevance</p> <p>The Ombudsman can receive and obtain information from a person in a manner considered appropriate. The Ombudsman also has the discretion to conduct hearings. Since the role of the Ombudsman, in investigating a matter raised by a complaint, is to inquire after the truth, it must be left to the Ombudsman to decide the nature of informational relevancy.</p> <p>Based on past challenges in obtaining information from various authorities, the statutory language needs to be clarified so that it is expressly clear that only the Ombudsman can determine what information is required as part of their investigation.</p> <p>Subsection 17(1) of the NS <i>Ombudsman Act</i> states, for example, that when the Ombudsman requests a person to furnish information relating to a matter being investigated, the person “shall furnish that</p>

		<p>information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter...”</p> <p>Recommendation</p> <p>The Ombudsman should be able to receive and obtain information that, in the Ombudsman’s opinion, is relevant from the persons and in the manner considered appropriate, and in the Ombudsman's discretion may conduct hearings. Venice Principle #16.</p>
7	NEW	<p>Voluntary provision of information to Ombudsman</p> <p>In discharging their powers and duties, the Ombudsman can create their own processes, such as trying to resolve a problem by means of negotiation or other non-adversarial approaches, or by formal investigation. While it is definitely useful to have this type of flexibility, it is usually more advantageous and efficient to keep the resolution process as informal as possible.</p> <p>However, some authorities, in wanting to cooperate informally, are concerned about their legal ability to disclose information to the Ombudsman while participating in the ‘Informal Case Resolution’ process as opposed to formal investigation.</p> <p>It follows that authorities voluntarily willing to provide information when participating in this informal process should have protection for doing so.</p>

		<p>Recommendation</p> <p>An authority, on the Ombudsman’s request, may provide information within its custody or control to the Ombudsman where it is satisfied that this provision will assist the Ombudsman in meeting any of their powers and duties. Venice Principle #16.</p>
<p>8</p>	<p>19</p> <p>REVISED</p>	<p>Clarity re the application of other laws about disclosure and confidentiality</p> <p>Section 19 sets out what confidential information, document or thing the Ombudsman can and cannot compel depending on a rule of law, an enactment or, in the case of information about a complainant (and not third party information), that complainant’s consent.</p> <p>There may, however, be situations in which these subsections create confusion over what confidential information can be provided in an investigation, such as where someone does not have technological access to provide timely consent for the release of their information or the complaint is being made on behalf of an incapacitated person. Other examples include the need for third party information to determine if an authority acted reasonably.² Since recent court decisions have clarified when the Ombudsman can require an authority to produce confidential information, section 19 can follow the approach taken in NT, SK and PE to provide statutory certainty by codifying these findings while relying on existing Ombudsman powers to protect any confidential information received during an investigation.</p>

² NT Ombud “Recommendations for Amendments to the *Ombuds Act*” Special Report to the Legislative Assembly, January 2024 at 15.

		<p>Recommendation</p> <p>Section 19 of the <i>Ombudsman Act</i> should be revised in the manner of subsection 25(7) of both the SK and PE ombudsman legislation.</p>
9	22	<p>Investigation refused, discontinued or complaint not substantiated</p> <p>If the Ombudsman decides not to investigate or further investigate a complaint or decides at the conclusion of an investigation that the complaint is not substantiated, then they must notify the complainant and authority of that decision, inclusive of reasons, and may point out other recourses that may be available to the complaint.</p> <p>However, there may be instances where the Ombuds does not wish to share reasons, such as matters involving law enforcement or disclosures and reprisals under the <i>Public Interest Disclosure of Wrongdoing Act</i>. <i>Dagg v. Canada (Minister of Finance)</i> CanLII 358 (SCC), [1997] 2 SCR 403 at para 114, states that "generally speaking, ... in the absence of a specific statutory requirement, administrative decision makers have no duty to give reasons for their decisions provided that it does not "work and an unfairness on the [complaint and authority]."</p> <p>Recommendation</p> <p>The current section 22 should be revised in the easily understood format of section 22 of the BC <i>Ombudsperson Act</i> but omit any reference to "and the reasons for it" as set out in BC 22(1)(d).</p>

10	14 NEW	Additional refusal grounds The Ombudsman can refuse or cease to investigate a matter on seven grounds. The BC <i>Ombudsperson Act</i> includes these same ones but adds three others of a similar nature. Recommendation The Ombudsman should be able to refuse or cease to investigate a matter under section 15 based additionally on complaint abandonment, complaint withdrawal, and complaint settlement.
11	11 REVISED	Referred matters for investigation A municipality or a Yukon First Nation has the power to refer a matter to the Ombudsman for investigation and the Ombudsman, in turn, must investigate and report on it. If ‘municipalities’ are expressly added to the Ombudsman’s jurisdiction, then only Yukon First nations would have this ‘referral’ power. However, there may be situations under which an investigation could be inappropriate. Recommendation The Ombudsman should have a choice about whether to investigate a referred matter. Venice Principle #14.

Recommendations and Resolution		
12	<p>23(2)</p> <p>NEW</p>	<p>Authority may reconsider decision</p> <p>The Ombudsman may make recommendations to an authority after the conclusion of an investigation. The types of recommendations are set out in a non-exhaustive list in subsection 23(2). However, on receiving such a recommendation, an authority may wish to rehear matter or reconsider the decision/recommendation it made in respect of that matter.</p> <p>Some jurisdictions address and scope this, such as that found in section 38 of the NT <i>Ombud Act</i> and section 21.1 of the AB <i>Ombudsman Act</i>.</p> <p>Recommendation</p> <p>On receiving a recommendation from the Ombudsman as per subsection 23(2), an authority should have the discretionary ability to rehear a matter or reconsider a decision/recommendation concerning it. This ability should not be restricted by any provision in any enactment that renders a decision/recommendation/omission final, prohibits an appeal in respect of them or disallows any procedural challenge to them.</p>
13	<p>23(2)</p> <p>NEW</p>	<p>Paying money to implement an Ombudsman recommendation</p> <p>Subsection 23(2) sets out a non-exhaustive list of recommendations that the Ombudsman can make to an authority. Although the list includes a ‘catch-all’ “any other steps be taken,” the list should include, for greater certainty, a pecuniary remedy under certain circumstances.</p>

		<p>Recommendation</p> <p>The Ombudsman should be able to recommend that an authority must pay money from its budget to implement a recommendation by the Ombudsman and the authority must comply even if it has no other power for doing so.</p>
14	NEW	<p>Authority apology</p> <p>Since the Ombudsman assists with the fair and expeditious resolution of complaints out of which comes recommendations designed to improve administrative unfairness, sometimes an apology is an appropriate bridge of reconciliation. However, authorities may be reticent to make such an apology because of various fears or misconceptions about their subsequent fault or liability exposure. Inclusion of this 'apology' provision would set aside this exposure.</p> <p>Recommendation</p> <p>The Ombudsman should be able to recommend that an authority makes an apology but such an apology is not an admission of fault or liability by the authority in the matter.</p>
Public Awareness and Advice		
15	NEW	<p>Public education and assistance</p> <p>Currently the <i>Ombudsman Act</i> is silent on 'outreach' to the public and other entities under its jurisdiction. In contrast, the <i>Access to Information and the Protection of Privacy Act</i> (section 112) and the <i>Health Information Privacy and Management Act</i> (section 92) expressly set out such duties. PE, which recently</p>

		<p>revised its <i>Ombudsperson Act</i>, included provisions giving its Ombudsperson the express power to engage in public education[subsection 14(6)] and to review certain matters requested by a person or body (section 15).</p> <p>That said, in the Ombudsman providing assistance to an <i>Ombudsman Act</i> authority, it is important that the authority cannot later assert that such assistance creates a bias in an Ombudsman investigation involving this authority. It is also important to ensure that the term ‘public’ includes those individuals whose access may be limited, such as residents in a health care facility, inmates, and wards.</p> <p>Recommendation</p> <p>The Ombudsman should have the power to inform the public, inclusive of resident in care, restricted persons and wards, about the <i>Ombudsman Act</i> and deliver educational programs to that effect. The Ombudsman should also be able to provide, at an authority’s request, reasonable assessment assistance concerning the exercise of its powers and duties under the legislation – such assistance not to be construed as creating a bias in a subsequent investigation. Venice Principle #12.</p>
Administration		
16	NEW	<p>Term temporary holdover</p> <p>If a successor is appointed after the Ombudsman’s term of office expires, then it is unclear what happens should there be a gap between the expiry and successor appointment. The subsection 2(6) language in the PE <i>Ombudsperson Act</i> allows the incumbent to continue in office until (a) a successor is appointed or (b) a six-month period has elapsed – which ever occurs first.</p>

		<p>Recommendation</p> <p>A holdover provision should be added after subsection 3(1).</p>
17	<p>5(2)</p> <p>REVISED</p>	<p>Resignation, removal, or suspension</p> <p>Subsection 5(2) does not require an express majority of the Legislative Assembly to recommend to the Commissioner in Executive Council the Ombudsman’s suspension or removal. Since it requires at least a two-thirds majority to appoint the Ombudsman, it should require the same majority to suspend or remove them.</p> <p>Recommendation</p> <p>This provision should be revised to make it clear that a recommendation by the Legislative Assembly to the Commissioner in Executive Counsel to suspend or remove the Ombudsman requires at least a two thirds majority of Legislative Assembly members, in addition to having the necessary cause or incapacity to do so. Venice Principle #11.</p>
18	<p>ENACT- MENT</p>	<p><i>Ombudsman Act name</i></p> <p>The term ‘Ombudsman’ is a Swedish term that means ‘citizen’s representative’ but, despite its gender-neutral origins, some do not perceive it as gender inclusive. While Yukon, AB, SK, MB, and ON still use the term, other jurisdictions have transposed it for reasons that include the appearance of not being associated with gender identity. BC and PE both use 'Ombudsperson', NL uses 'Citizen's Representative', and the NT uses 'Ombud'. The International Ombuds Association adopted the term ‘ombuds’ when it changed its name in 2021.</p>

		<p>Recommendation</p> <p>Law makers may wish to consult publicly on whether the title ‘Ombudsman’ should be revised to give the appearance of gender neutrality. One option would be to call the legislative title the ‘<i>Ombuds Act</i>’ and similarly the term ‘Ombudsman’ to ‘Ombuds’.</p>
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Conclusion

[8] The role of the Ombudsman is unique, special, and important because its purpose is to investigate and report on the decisions, recommendations, and omissions of elected and non-elected officials affecting citizens who have the right, under the rule of law, to expect fair and just treatment in their interactions with public authorities. To that end, the *Ombudsman Act* is the epitome of remedial legislation and is therefore given a broad, careful interpretation consistent with the Ombudsman's role in providing independent impartial oversight. This is designed to remind authorities that they are fully, consistently, and transparently accountable to the citizens they serve.

[9] With the ever-increasing involvement of government into the lives of its citizens, especially where this can result in greater exposure to injustice, insensitivity, and abuse of authority, it is important that the *Ombudsman Act* be updated from time to time. Given its importance to modern democracy, this would enable the Ombudsman to remain highly effective in an evolving and complex administrative environment.

Recommendations Summary

[10] We make the following 18 recommendations:

- 1) The Ombudsman should have the additional power to investigate a matter on their own motion. Venice Principle #16.
- 2) The *Ombudsman Act* should be amended to delete Schedule A and allow for regulation-making power that, in addition to other things, allows the Commissioner in Executive Council set out a specific set of authorities in regulation.
- 3) The Ombudsman should have jurisdiction over municipalities. Venice Principle #13.
- 4) A person who complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under the *Ombudsman Act* should, as a consequence, be protected against being discharged, suspended, expelled, intimidated, coerced, evicted, levied any pecuniary or other penalty, or otherwise being discriminated against. Venice Principle #24.

- 5) A new (fifth) offence should be added making it a transgression to take a reprisal measure (as per the 'protection' provision) against a person. Venice Principle #24.
- 6) The Ombudsman should be able to receive and obtain information that, in the Ombudsman's opinion, is relevant from the persons and in the manner considered appropriate, and in the Ombudsman's discretion may conduct hearings. Venice Principle #16.
- 7) An authority, on the Ombudsman's request, may provide information within its custody or control to the Ombudsman where it is satisfied that this provision will assist the Ombudsman in meeting any of their powers and duties. Venice Principle #16.
- 8) Section 19 of the *Ombudsman Act* should be revised in the manner of subsection 25(7) of both the SK and PE ombudsman legislation.
- 9) The current section 22 should be revised in the easily understood format of section 22 of the BC *Ombudsperson Act* but omit any reference to "and the reasons for it" as set out in BC 22(1)(d).
- 10) The Ombudsman should be able to refuse or cease to investigate a matter under section 15 based additionally on complaint abandonment, complaint withdrawal, and complaint settlement.
- 11) The Ombudsman should have a choice about whether to investigate a referred matter. Venice Principle #14.
- 12) The Ombudsman should be able to recommend that an authority makes an apology but such an apology is not an admission of fault or liability by the authority in the matter.
- 13) The Ombudsman should be able to recommend that an authority must pay money from its budget to implement a recommendation by the Ombudsman and the authority must comply even if it has no other power for doing so.
- 14) The Ombudsman should be able to recommend that an authority makes an apology but such an apology is not an admission of fault or liability by the authority in the matter.

- 15) The Ombudsman should have the power to inform the public, inclusive of resident in care, restricted persons and wards, about the *Ombudsman Act* and deliver educational programs to that effect. The Ombudsman should also be able to provide, at an authority's request, reasonable assessment assistance concerning the exercise of its powers and duties under the legislation – such assistance not to be construed as creating a bias in a subsequent investigation. Venice Principles #12.
- 16) A holdover provision should be added after subsection 3(1).
- 17) This provision should be revised to make it clear that a recommendation by the Legislative Assembly to the Commissioner in Executive Counsel to suspend or remove the Ombudsman requires at least a two thirds majority of Legislative Assembly members, in addition to having the necessary cause or incapacity to do so. Venice Principle #11.
- 18) Law makers may wish to consult publicly on whether the title 'Ombudsman' should be revised to give the appearance of gender neutrality. One option would be to call the legislative title the '*Ombuds Act*' and similarly the term 'Ombudsman' to 'Ombuds'.

Special Report

[11] As per section 31, I am providing this Special Report to the Speaker of the Yukon Legislative Assembly.

Respectfully,

Original Signed

Jason Pedlar, BA, MA
Ombudsman

Appendix 1

Line by Line review of the Ombudsman Act

OMBUDSMAN ACT Line-by-Line Review			
Date	Revised 10 April 2024		
Title		Recommendations	Comment
NEW	Title of Act and Role	The legislative title could be changed to the ' <i>Ombuds Act</i> ' and similarly the term 'Ombudsman' to ' <i>Ombuds</i> '.	The term Ombudsman is a Swedish term that means “citizen’s representative”. Despite the translated name’s gender-neutral origins, it may not be perceived as gender inclusive. When the legislation came into effect in 1996, it used the Scandinavian term 'Ombudsman' to identify it. Other jurisdictions, such as SK, MB, ON and NS, also use this term for their legislation. The term is still current but other jurisdictions have changed it to be more inclusive. BC and PE both use 'Ombudsperson', NL uses 'Citizen's Representative' and the NT uses 'Ombud'. The International Ombuds Association adopted the term “ombuds” in 2021 changing it’s name. The International Ombudsman Institute, of which we are a member, still retains the name Ombudsman.
Section	Heading		
PART 1	INTERPRETATION	This part and heading should be added. [BC <i>Ombudsperson Act</i>]	Clarity and layout improvement.

1	Definitions	<p>These provisions should be added.</p> <p>""authority' means (a) a ministerial body, (b) a statutory body prescribed as an authority, or (c) an entity prescribed as an authority but does not include..."</p> <p>""ministerial body 'means (a) the office of a minister responsible for a department, (b) the department over which the minister responsible presides, and (c) each statutory body prescribed as a program or activity of the ministerial body;"</p> <p>""ombudsman' means the Ombudsman appointed pursuant to [section 2] and includes an acting Ombudsman appointed pursuant to subsection 5(3);"</p> <p>""statutory body' means a board, commission, council, committee, corporation, foundation or other body (a) that is established or incorporated under an Act, and (b) all the members, directors or officers of which are appointed by the Commissioner in Executive Council or a minister;"</p>	Clarity of various defined terms from ATIPPA 1 and PE <i>Ombudsperson Act</i> 1(i) if the authorities listed in Schedule A are moved into regulation.
PART 2	OFFICE AND APPOINTMENT OF OMBUDSMAN	<p>This part and heading should be added.</p> <p>[BC <i>Ombudsperson Act</i>]</p>	Clarity and layout improvement.

2	Appointment of an Ombudsman	<p>This provision should be deleted and replaced with</p> <p>"On the recommendation of the Legislative Assembly made by at least two-thirds of the members of the Legislative Assembly, the Commissioner in Executive Council shall appoint as an officer of the Legislative Assembly an Ombudsman to exercise the powers and perform the duties assigned to the Ombudsman under this Act.</p> <p>[BC 2(1)]</p>	Clarity. This provisions aligns with Venice Principle #6.
3(1)	Term of office	<p>This provision should be deleted and replaced with</p> <p>"(1) The Ombudsman must be appointed for a term of seven years and may be reappointed in the manner provided in section 2 for further seven year terms.</p> <p>[Based on BC 3(1) and (2)]</p>	It is best practice to ensure that the term of the Ombudsman is longer than the mandate of the appointing body. This aligns with Venice Principle #10.
NEW		<p>This provision should be added.</p> <p>"Despite [subsection (1)], the Ombudsman continues to hold office after the Ombudsman's term of office expires until a successor is appointed or a period of six months has expired, whichever occurs first."</p> <p>[PE 2(6)]</p>	<p>If a successor is appointed after the Ombudsman's term of office expires, then it is unclear what happens should there be a gap between the expiry and successor appointment. The subsection 2(6) language in the PE <i>Ombudsperson Act</i> allows the incumbent to continue in office until (a) a successor is appointed or (b) a six-month period has elapsed – which ever occurs first.</p> <p>This provides clarity in the event that an Ombudsman is not yet appointed/reappointed at the end of a term and provides authority to have the current Ombudsman continue in their capacity until their successor or appointment is confirmed. This is also a common model and utilized in other jurisdictions in Canada.</p>
3(2)		<p>(2) The Ombudsman must not hold another office or engage in other employment."</p>	Provision (2) reflects the fact that the Ombudsman is no longer a part-time position in Yukon. In addition, as based on their broad mandate and jurisdiction, it would be inappropriate for the Ombudsman to engage in other employment. This aligns with Venice Principle #9.
3(3)			
4(1)	Remuneration	No recommendations provided though consideration should be given.	Consideration should be given to the appropriate model for determining the salary of the Ombudsman. This aligns with Venice principle #3.

4(2)			
NEW	Ombudsman Benefits	No recommendations provided though consideration should be given.	Consideration should be given to whether benefits should be provided to the Ombudsman instead of payment in lieu of. This would align with most other jurisdictions. This aligns with Venice Principle #3.
NEW	Ombudsman Pension	No recommendations provided though consideration should be given.	The consideration is whether a pension plan should be provided to the Ombudsman instead of payment in lieu of. This would align with most other jurisdictions. This aligns with Venice Principle #3.
5(1)	Resignation, removal, or suspension		
5(2)		This provision should be revised in part (in blue text). "On the recommendation of the Legislative Assembly, made by at least two-thirds of the members of the Legislative Assembly and based on cause or incapacity, the Commissioner in Executive Counsel shall, in accordance with the recommendation..."	Subsection 5(2) does not require an express majority of the Legislative Assembly to recommend to the Commissioner in Executive Council the Ombudsman's suspension or removal. Since it requires at least a two-thirds majority to appoint the Ombudsman, it should require the same majority to suspend or remove them. This aligns with Venice Principle #11.
5(2)(a)			
5(2)(b)			
5(3)			
5(3)(a)			
5(3)(b)			
5(3)(c)			
5(3)(d)			
5(3)(e)			
5(3)(f)			
5(3)(g)			
5(4)			
6	Commissioner in Executive Council may appoint acting Ombudsman		
6(1)			
6(1)(a)			
6(1)(b)			
6(1)(c)			
6(1)(d)			

6(2)			
6(2)(a)			
6(2)(b)			
6(2)(c)			
6(2)(d)			
6(2)(e)			
	Staff	No recommendations provided though consideration should be given.	Consideration should be given to whether a pension plan should be provided to the Ombudsman staff instead of payment in lieu of. This would be in keeping with most other jurisdictions and aligns with Venice Principle #3. Similarly, additional consideration is whether reciprocity mechanisms could be created to allow for secondments between Ombudsman staff and YG employees. Not having a pension can be a barrier to recruitment of qualified candidates.
7(a)			
7(b)			
8	Premises and supplies		
		This provision should be added. "The Ombudsman determines the premises and equipment and supplies for the efficient operation of the office of the Ombudsman."	To reflect the current practice, the Act should clarify that the Ombudsman is the sole determiner of the premises, equipment and supplies necessary for the efficient operation of its office for not only the Ombudsman mandate but that of the IPC and PIDC, subject to approved operating budgets. This aligns with Venice Principles #21 and #22.
NEW			
9(1)	Financing of Operations		
9(2)			
9(3)			
9(3)(a)			
9(3)(b)			
9(4)			
	POWERS AND DUTIES	This part and heading should be added. [BC Ombudsperson Act]	Clarity and layout improvement.
PART 3			

10(1)	Confidentiality		
10(2)			
10(3)			
10(4)			
10(5)			
10(6)			
10(6)(a)			
10(6)(b)			
10(6)(c)			
11(1)	Powers and duties of the Ombudsman in matters of administration	<p>This provision should be revised in part (in blue text).</p> <p>"It is the function and duty of the Ombudsman to investigate on a complaint or on their own motion any decision or recommendation made, including a recommendation made to a Minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in their or its personal capacity, in or by any authority, or by any officer, employee, or member thereof in the exercise of any power or function conferred on them by any enactment."</p>	<p>The Ombudsman can only investigate a complaint made by an individual or group of individuals affected in their personal capacity. The Ombudsman has no power to investigate such a matter on their own initiative. This power is especially important in circumstances in which the aggrieved party, because of such things as tender age, developmental disability, lack of freedom or other reason, may not be able to complain on their own behalf. The Yukon Ombudsman is the only jurisdiction in Canada that does not have 'own-initiative' (<i>i.e.</i>, own motion) power. Remedying this aligns with Venice Principle #16.</p>
11(2)		<p>This provision should be revised in part (in blue text).</p> <p>"The Ombudsman, with respect to a matter of administration, may investigate on a complaint or on their own motion, may investigate -- (a-c below) -- by an authority that aggrieves or may aggrieve a person."</p> <p>[Based on BC 10(1)]</p>	<p>This aligns with Venice Principle #16.</p>
11(2)(a)			
11(2)(b)			
11(2)(c)			
11(3)			
11(3)(a)			
11(3)(b)			
11(3)(c)			
11(4)			

11(4)(a)			
11(4)(b)			
11(5)		<p>This provision should be revised in part (in blue text).</p> <p>"A Yukon First Nation government may at any time refer a matter to the Ombudsman for investigation and the Ombudsman may -- (a-b) -- but sections 23 to 26 do not apply in respect of an investigation or report made under this subsection."</p>	<p>If a revised <i>Ombudsman Act</i> includes express jurisdiction over 'municipalities' (see Schedule A comments below), then delete the phrase "municipality" in this provision. With this change, 11(5) would only be Yukon First Nation centric. In addition, the Ombudsman should have the choice to investigate because there may be situations where an investigation is not appropriate. This aligns with Venice Principles #13 and #14.</p>
11(5)(a)		Delete " the municipality or. "	If the term 'municipalities' is expressly prescribed as an 'authority', then delete " the municipality or. "
11(5)(b)			

NEW	Additional duties of Ombudsman	<p>This provision should be added.</p> <p>"(1) In this section, 'public' includes the definitions in section 13(3) of a 'resident in care' and a 'restricted person'.</p> <p>(2) In addition to the Ombudsman's other duties under this act, the Ombudsman may perform the following duties:</p> <p>(a) inform the public about this Act;</p> <p>(b) deliver educational programs, as necessary, for the purposes of informing</p> <p style="padding-left: 40px;">(i) the public of their rights, and limits on those rights, under this Act;</p> <p style="padding-left: 40px;">(ii) authorities on their obligations under the Act; and</p> <p>(c) provide, on request of an authority, reasonable assistance to evaluate the authority's programs and services, or procedures used, and provide any recommendations, if the Ombudsman considers it necessary to do so, to the authority in respect of the authority's exercise of its powers or performance of its duties under this Act."</p> <p>[Adapted from ATIPPA 112 -- also see NT 15(5)]</p> <p>The following should also be added.</p> <p>"(3) Any reasonable assistance that the Ombudsman may provide to the authority in [subsection (1)] shall not create a bias in a subsequent investigation."</p>	<p>Clarity around specific groups to ensure that they are captured under the Ombudsman mandate.</p> <p>Currently the <i>Ombudsman Act</i> is silent on 'outreach' to the public and other entities under its jurisdiction. In contrast, ATIPPA (section 112) and the <i>Health Information Privacy and Management Act</i> (section 92) expressly set out such duties. PE, which recently established its <i>Ombudsperson Act</i>, included provisions giving its Ombudsperson the express power to engage in public education[subsection 14(6)] and to review certain matters requested by a person or body (section 15).</p> <p>In providing assistance to an <i>Ombudsman Act</i> authority, it is important that the authority cannot later assert that such assistance creates a bias in an Ombudsman investigation involving this authority. It is also important to ensure that the term 'public' includes those individuals whose access may be limited, such as residents in a health care facility, inmates, and wards.</p> <p>This aligns with Venice Principles #12-13, #15-19, and #23-24.</p>
PART 4	JURISDICTION AND PROCEDURES	<p>This part and heading should be added.</p> <p>[BC <i>Ombudsperson Act</i>]</p>	Clarity and layout improvement.
12(1)	Jurisdiction of Ombudsman		
12(1)(a)			
12(1)(b)			
12(2)			
12(3)			

13(1)	Complaint to Ombudsman		
13(2)			
13(2)(a)		Delete.	
13(2)(b)			
13(2)(c)		<p>The phrase [in 13(2)] that immediately follows 13(2)(c) should be revised in part (in blue text).</p> <p>"The Ombudsman may require that that the complaint be made in writing if the Ombudsman considers it necessary."</p>	

13(3)		<p>This provision should be deleted and replaced with</p> <p>"(1) In this section</p> <p>(a) "person in charge" means the person who:</p> <p>(i) is in charge of an institution where a restricted person is in custody on a charge for an offence or after conviction for an offence;</p> <p>(ii) has custody of a restricted person; or</p> <p>(iii) is in charge of a hospital or health care facility in which a resident in care is located and from which the resident in care is receiving services;</p> <p>b) "resident in care" means a person who is located in a hospital or health care facility and who is receiving services from the hospital or health care facility;</p> <p>(c) "restricted person" means a person who is:</p> <p>(i) in custody on a charge for an offence or after conviction for an offence; or</p> <p>(ii) in the custody of another person for any reason.</p> <p>(2) Despite any enactment, if a letter is written by or on behalf of a restricted person, a resident in care and is addressed to the Ombudsman, the person in charge shall forward the letter, unopened, to the Ombudsman.</p> <p>(3) Every institution where restricted persons are in custody or confined or, as the case may be, every hospital or health care facility in which residents in care are located and from which residents in care are receiving services, shall</p> <p>(a) establish procedures and provide means that permit each restricted person or resident in care to communicate in private with the Ombudsman; and</p> <p>(b) inform each restricted person in the institution or resident in care in the hospital or health care facility of:</p> <p>(i) the right of the restricted person and resident in care to communicate in private with the Ombudsman;</p> <p>(ii) the services provided by the Ombudsman; and</p> <p>(iii) how to communicate with the Ombudsman and the contact information for the Ombudsman."</p> <p>[Based on PE 20 and SK 20]</p>	<p>Access to the Ombudsman, including communication confidence, is very important, no matter who a person is or where they might find themselves. This section, as currently worded, is difficult for a layperson to comprehend. Since clarity is critical to fairness, it is not immediately clear what subsection 13(3) is trying to set out. By revising this long and complicated provision into a plain language format such as that used by PE and SK ombudsman legislation [20], it follows that it is more easily understood for purposes of Ombudsman access and confidentiality. This aligns with Venice Principle #16.</p>
14	Refusal to investigate		
14(a)			
14(b)			
14(c)			
14(d)			
14(e)			
14(f)			

NEW		<p>This provision should be added.</p> <p>"the complainant has abandoned the complaint (i) by failing to advise the Ombudsman of a current address or telephone number at which the Ombudsman can contact the complainant, or (ii) by failing to respond after a reasonable number of attempts by the Ombudsman to contact the complainant in writing or verbally;"</p> <p>[BC 13(g)]</p>	<p>The Ombudsman can refuse or cease to investigate a matter on seven grounds. The BC <i>Ombudsperson Act</i> includes these same ones but adds three others of a similar nature. This emulates those additional grounds.</p>
NEW		<p>This provision should be added.</p> <p>"the complaint is withdrawn by the complainant by notice to the Ombudsman; or"</p> <p>[BC 13(h)]</p>	<p>The Ombudsman can refuse or cease to investigate a matter on seven grounds. The BC <i>Ombudsperson Act</i> includes these same ones but adds three others of a similar nature. This emulates those additional grounds.</p>
NEW		<p>This provision should be added.</p> <p>"the complaint is settled under [section 15]."</p> <p>[BC 13(i)]</p>	<p>The Ombudsman can refuse or cease to investigate a matter on seven grounds. The BC <i>Ombudsperson Act</i> includes these same ones but adds three others of a similar nature. This emulates those additional grounds.</p>
15(1)	Ombudsman to notify authority		
15(2)		<p>This provision should be added.</p> <p>"The Ombudsman may take whatever action during or after an investigation that, in the Ombudsman's opinion, is appropriate in an attempt to settle the complaint, or for any other purpose."</p>	<p>This aligns with Venice Principle #16.</p>
15(3)			

16(1)	<p>Power to obtain information to be replaced by "Ombudsman's investigative powers"</p>	<p>This provision should be revised in part (in blue text).</p> <p>"The Ombudsman may receive and obtain information <i>that, in the Ombudsman's opinion is relevant</i>, from the persons and in the manner considered appropriate, and in the <i>Ombudsman's</i> discretion may conduct hearings."</p>	<p>The Ombudsman can receive and obtain information from a person in a manner considered appropriate. The Ombudsman also has the discretion to conduct hearings. Since the role of the Ombudsman, in investigating a matter raised by a complaint, is to inquire after the truth, it must be left to the Ombudsman to decide the nature of informational relevancy.</p> <p>Based on past challenges in obtaining information from various authorities, the statutory language needs to be clarified so that it is expressly clear that only the Ombudsman can determine what information is required as part of their investigation. Subsection 17(1) of the <i>NS Ombudsman Act</i> states, for example, that when the Ombudsman requests a person to furnish information relating to a matter being investigated, the person "shall furnish that information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter...". This aligns with Venice Principle #16.</p>
16(2)			
16(2)(a)			
16(2)(b)			
16(2)(c)			
16(2)(d)			
16(2)(e)			
NEW		<p>This provision should be added.</p> <p>"The oath referred to in subsection (2) is to be administered by the Ombudsman."</p> <p>[NS 17(3)]</p>	<p>The Ombudsman may receive and accept an oath or otherwise required by law. Since the need for swearing in witnesses is integral to inquiring after the truth during an investigation, it is not entirely clear if the Ombudsman may administer that oath to that effect. Therefore, the Ombudsman should be able to administer an oath in respect of their investigation. This aligns with Venice Principle #16.</p>
16(3)			

NEW	<p>Protection</p>	<p>This provision should be added.</p> <p>"A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act."</p>	<p>The <i>Ombudsman Act</i> is silent on the matter of protecting from some type of reprisal measure a person who makes a complaint, acts as a witness or otherwise assists in an investigation. Reprisal protection aligns with Vencie Principle #24.</p>
17	<p>Opportunity to make representation</p>		
18	<p>Executive Council proceedings to be replaced by "Minister of Justice may restrict investigative powers"</p> <p>Of the three situations set out in section 18, only two involve Executive Council deliberations and proceedings.</p> <p>[BC 18]</p>	<p>This provision should be revised in part (in blue text).</p> <p>"If the Attorney General certifies that..."</p> <p>[BC 18(1)]</p>	<p>The Minister of Justice is the legal member of the Executive Council and is responsible for justice policy development, including the development of new programs and services for Yukoners. The Attorney General provides legal services to the Yukon Government. Since 'certification' is a legal action, it must be performed by the Attorney General.</p>
18(a)			
18(b)			
18(c)			

19(1)	<p>Application of other laws respecting disclosure</p>	<p>This provision should be revised in part (in blue text).</p> <p>"Subject to [section 18], a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply with respect to any investigation by or proceedings before the Ombudsman;"</p> <p>[Based on PE 25(7)(a) and SK 25(7)(a)]</p>	<p>Section 19 sets out what confidential information, document or thing the Ombudsman can and cannot compel depending on a rule of law, an enactment or, in the case of information about a complainant (and not third party information), that complainant's consent. There may, however, be situations in which these subsections create confusion over what confidential information can be provided in an investigation, such as where someone does not have technological access to provide timely consent for the release of their information, the complaint is being made on behalf of an incapacitated person, or there is a need for third party information to determine if an authority acted reasonably. Recent court decisions have clarified when the Ombudsman can require an authority to produce confidential information. {RE: <i>The Yukon Ombudsman</i>, 2023 YKSC 26, <i>Nova Scotia Office of the Ombudsman v. Attorney General of Nova Scotia (Department of Health and Wellness and Minister of Health and Wellness)</i> [2019] CA 475210 (NSCA)}.</p> <p>As such, section 19 should be revised in the manner of PE and SK ombudsman legislation [25(7)(a-c)] to provide statutory certainty by codifying these findings while relying on existing Ombudsman powers to protect and be accountable for any confidential information received during an investigation.</p> <p>The revision in 19(1) aligns with Venice Principle #16.</p>
19(2)		<p>This provision should be deleted and replaced with</p> <p>"a provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall not apply with respect to an investigation by the Ombudsman; and"</p> <p>[Based on PE 25(7)(b) and SK 25(7)(b)]</p>	<p>Provision clarity. This aligns with above case law, PE and SK ombudsman legislation [25(7)(b)], and Venice Principle #16.</p>

19(3)		<p>This provision</p> <p>"no person who is required by the Ombudsman to furnish any information or to produce any document or thing or who is summoned by the Ombudsman to give evidence shall refuse to furnish the information, produce the document or thing or to answer questions on the ground of a provision of an Act referred to in [subsection 19(3)]."</p> <p>[Based on PE 25(7)(c) and SK 25(7)(c)]</p>	<p>Provision clarity. This aligns with above case law, PE and SK ombudsman legislation [25(7)(c)], and Venice Principle #16.</p>
19(4)		Delete.	If above revisions made to 19(1-3), then 19(4) not needed.
NEW		<p>This provision should be added.</p> <p>"If the Ombudsman is investigating a matter referred to the Ombudsman under [subsection 11(4)], despite any other enactment, the Ombudsman may exercise any power under [section 16] in order to investigate and report on any matter referred to the Ombudsman under [subsection 11(4)]."</p> <p>BC 19(5)(b)]</p>	<p>Clarity in respect of how the Ombudsman can investigate and report on a matter referred by the Legislative Assembly or one of its committees.</p>
20(1)	Privileged information		
20(2)			
21(1)	Witness and information expenses		
21(2)			

22	<p>If complaint not substantiated to be replaced by "If investigation is refused or discontinued, or complaint is not substantiated"</p> <p>(For clarity)</p>	<p>This provision should be deleted and replaced with</p> <p>"(1) If the Ombudsman decides not to investigate a complaint under section 14, the Ombudsman must, as soon as reasonable</p> <p>(a) record the decision in writing, and</p> <p>(b) notify the complainant of that decision.</p> <p>(2) If the Ombudsman decides</p> <p>(a) to cease an investigation, or</p> <p>(b) at the conclusion of an investigation, that the complaint has not been substantiated,</p> <p>the Ombudsman must, as soon as reasonable</p> <p>(c) record the decision in writing, and</p> <p>(d) notify both the complainant and authority of that decision.</p> <p>(3) The Ombudsman may indicate with the notification under subsections (1) or (2) any other recourse that may be available to the complainant."</p> <p>[Based on BC 22]</p>	<p>If the Ombudsman decides not to investigate or further investigate a complaint or decides at the conclusion of an investigation that the complaint is not substantiated, then they must notify the complainant and authority of that decision, inclusive of reasons, and may point out other recourses that may be available to the complaint.</p> <p>However, there may be instances where the Ombudsman does not wish to share reasons, such as in law enforcement matters, or PIDWA investigations. <i>Dagg v. Canada (Minister of Finance)</i> [1997] 2 SCR 403 at para 114, states that "generally speaking, ... in the absence of a specific statutory requirement, administrative decision makers have no duty to give reasons for their decisions provided that it does not "work and an unfairness on the [complainant and authority]."</p>
23(1)	<p>Procedure after investigation</p>	<p>This provision should be revised in part (in blue text).</p> <p>"If after completing an investigation, the Ombudsman believes that [(a) ... (c)], the Ombudsman shall report the Ombudsman's opinion and the reasons for it to the authority to which the recommendation is being made and may make the recommendation the Ombudsman considers appropriate."</p>	<p>The suggested revision is to make it clearer that the Ombudsman can make a recommendation to more than one authority (<i>i.e.</i>, an appropriate authority). There may be situations in which an authority, although the principle authority in the subject matter of an investigation, may not have the power to act on an Ombudsman recommendation. This aligns with Venice Principle #17.</p>
23(1)(a)			
23(1)(a)(i)			
23(1)(a)(ii)			
23(1)(a)(iii)			
23(1)(a)(iv)			
23(1)(a)(v)			
23(1)(a)(vi)			
23(1)(b)(i)			
23(1)(b)(ii)			
23(1)(b)(iii)			
23(1)(c)			

23(2)			
23(2)(a)			
23(2)(b)			
23(2)(c)			
23(2)(d)			
23(2)(e)			
23(2)(f)			
23(2)(g)			
NEW		<p>This provision should be added.</p> <p>"the authority should pay money to implement a recommendation by the Ombudsman;"</p>	<p>Subsection 23(2) sets out a non-exhaustive list of recommendations that the Ombudsman can make to an authority. Although the list includes a 'catch-all' "any other steps be taken," the list should include, for greater certainty, a pecuniary remedy under certain circumstances.</p>
NEW		<p>This provision should be added.</p> <p>'the authority should make an apology;"</p>	<p>Since the Ombudsman assists with the fair and expeditious resolution of complaints out of which comes recommendations designed to improve administrative unfairness, sometimes an apology is an appropriate bridge of reconciliation. However, authorities may be reticent to make such an apology because of various fears or misconceptions about their subsequent exposure and legal liability. Inclusion of this 'apology' provision would set aside this exposure. This aligns with Venice Principles #12 and #17.</p>
23(2)(h)			
NEW		<p>This provision should be added.</p> <p>"If the Ombudsman makes a recommendation in [subsection (2)] that an authority should pay money to implement a recommendation by the Ombudsman, the authority shall have the power under this Act to fulfill such a recommendation even if the authority has no other power for doing so."</p>	<p>If the Ombudsman is able to make a recommendation that an authority pay money as part of a complaint resolution, then the authority needs an appropriate authority to do so.</p>

<p>NEW</p>	<p>Apology by authority</p>	<p>This provision should be added.</p> <p>"(1) In this section, (a) 'apology' means an expression of sympathy or regret, a statement that one is sorry or any other words or actions indicating contrition or commiseration, whether or not the words or actions admit or imply an admission of fault in connection with the matter to which the words or actions relate; (b) 'court' includes a tribunal, an arbitrator and any other person who is acting in a judicial or quasi-judicial capacity. (2) An apology made by or on behalf of [an authority] in connection with any matter (a) does not constitute an express or implied admission of fault or liability by the [authority] in connection with that matter, and (b) must not be taken into account in any determination of fault or liability in connection with that matter. (3) Despite any other enactment, evidence of an apology made by or on behalf of [an authority] in connection with any matter is not admissible in any court as evidence of the fault or liability of the person in connection with that matter."</p> <p>[Based on BC <i>Apology Act</i>]</p>	<p>This aligns with Venice Principles #12 and #17.</p>
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NEW	Authority may reconsider decision	<p>This provision should be added.</p> <p>"(1) On receiving a recommendation under [subsection 23(2)], an authority may</p> <p>(a) rehear a matter or reconsider a decision or recommendation made by the authority or an officer, employee or member of the authority; and</p> <p>(b) quash, confirm or vary that decision or recommendation or any part of it.</p> <p>(2) If a matter is reheard or reconsidered under [subsection (1)], the provisions of the enactment governing the original hearing or decision or recommendation apply to the rehearing or reconsideration.</p> <p>(3) This section applies notwithstanding any provision in any Act to the effect that</p> <p>(a) any decision, recommendation, act or omission is final;</p> <p>(b) no appeal lies in respect of any decision, recommendation, act or omission; or</p> <p>(c) no proceeding or decision of the person or authority whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question."</p> <p>[NT 38 and similar to AB 21.1]</p>	<p>The Ombudsman may make recommendations to an authority after the conclusion of an investigation. The types of recommendations are set out in a non-exhaustive list in subsection 23(2). However, on receiving such a recommendation, an authority may wish to rehear matter or reconsider the decision/recommendation it made in respect of that matter. Some jurisdictions address and scope this, such as that found in section 38 of the NT <i>Ombud Act</i> and section 21.1 of the AB <i>Ombudsman Act</i> .</p> <p>In short, this enables an authority to revisit a matter with the benefit of hindsight where it may not have explicit authority to do so under its governing legislation.</p>
24(1)	Authority to notify Ombudsman of steps taken		
24(2)			
25(1)	Report of Ombudsman if no suitable action taken		
25(2)			
26(1)	Complainant to be informed		
26(2)			
27	No hearing as of right		
28	Ombudsman not subject to review		
29(1)	Proceedings privileged		
29(1)(a)			

29(1)(b)			
PART 5	GENERAL	This part and heading should be added. [BC <i>Ombudsperson Act</i>]	Clarity and layout improvement.
30(1)	Delegation of powers		
30(1)(a)			
30(1)(b)		Delete. [Based on ATIPPA 111(1)(g)]	The Ombudsman should be able to delegate all authority except the ability to delegate authority with limits and conditions as considered appropriate by the Ombudsman similar to ATIPPA and PIDWA. This for example, provides necessary authority for the Deputy Ombudsman or Director to act on behalf the Ombudsman in their absence and in circumstances where the Ombudsman may declare a conflict of interest.
30(1)(c)		Delete. [Based on ATIPPA 111(1)(g)]	Same rationale as line 183. The Ombudsman should be able to delegate to an Ombudsman employee the power to require production or disclosure under 19(1) because that employee would be acting under the Ombudsman's authority.
30(2)			
30(3)			
30(4)			
30(5)			
31(1)	Annual and special reports		
31(2)			

	Voluntary provision of information to Ombudsman	<p>This provision should be added.</p> <p>"At the request of the Ombudsman, an authority may provide information in its possession, custody or control respecting any person who is receiving services from or dealing with a department or agency of the Yukon government, [a publicly funded health entity or a municipal entity] to the Ombudsman if it is satisfied that providing the information will assist the Ombudsman in fulfilling any of the Ombudsman's duties or in exercising any of the Ombudsman's powers pursuant to this Act."</p> <p>[SK section 34]</p>	<p>In discharging their powers and duties, the Ombudsman can create their own processes, such as trying to resolve a problem by means of negotiation or other non-adversarial approaches, or by formal investigation. While it is definitely useful to have this type of flexibility, it is usually more advantageous and efficient to keep the resolution process as informal as possible. However, some authorities, in wanting to cooperate informally, are concerned about their legal ability to disclose information to the Ombudsman while participating in a less formal process. It follows that authorities voluntarily willing to provide information when participating in this informal process should have protection for doing so.</p>
NEW			
32(1)	Offences		
32(1)(a)			
32(1)(b)			
32(1)(c)			
32(1)(d)			
		<p>This provision should be added.</p> <p>"...contravenes section XX [NEW section number after 16(3) Protection]."</p>	<p>There are four offences in section 32. If a 'protection' provision is added in or immediately following section 16 that prohibits a person from taking a reprisal measure against someone who complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under the <i>Ombudsman Act</i>, then taking such a reprisal measure should be an added offence. This aligns with Vencie Principle #24.</p>
NEW			
		<p>This provision should be revised in part (in blue text).</p> <p>"A person who contravenes subsection (1) commits an offence and is liable, on summary conviction, to a fine not exceeding \$5000, to imprisonment for a term of not more than six months or to both."</p> <p>[PE 35(2)]</p>	<p>The penalty for committing an offence in section 32 is a possible fine of up to \$5000. PE is the most recent jurisdiction to revise its <i>Ombudsperson Act</i> (2021) and, in its subsection 35(2), sets out a penalty that includes a monetary fine, imprisonment or both. The Yukon penalty on summary conviction should be a fine not exceeding \$5000, imprisonment for a term of not more than six months or both.</p>
32(2)			
33	Other remedies		
33(a)			

33(b)			
	Rules	<p>This provision should be revised in part (in blue text).</p> <p>"On its own initiative, or on the recommendation of the Commissioner in Executive Council, the Legislative Assembly..."</p> <p>[PE 33(1)]</p>	Clarity.
34(1)			
34(2)			
	Regulations	<p>These provisions should be added.</p> <p>"The Commissioner in Executive Council may make regulations"</p> <p>"for the purpose of the definition 'authority', prescribing (a) for greater certainty, each ministerial body that is an authority, (b) a statutory body as a public body, or (c) an entity as an authority,"</p> <p>"for the purpose of the definition 'ministerial body', prescribing a statutory body as a program or activity of a ministerial body,"</p> <p>[Based on ATIPPA 125(1)(iv) and (vi)]</p>	<p>The <i>Ombudsman Act</i> is silent on the power to make regulations. If Schedule A containing a list of authorities subject to the Ombudsman's jurisdiction were taken out of the enactment and put into regulation similar to the three parts found in Schedules 1 and 2 of the <i>Access to information and Protection of Privacy Act Regulations</i> (OIC 2021/025), then this power would be required. As such, there would be no schedule at the end of the <i>Ombudsman Act</i>. In addition, this model would make it expressly clear what entities fall within the jurisdiction of the Ombudsman and allow the Commissioner in Executive Council to revise the list as necessary. In doing so, it would require a revised definition of 'authority' and new definitions, such as 'ministerial body' and 'statutory body'.</p>
NEW			
SCHEDULE A AUTHORITIES		Delete.	If Schedule A is taken out of the enactment and put into regulation as we recommend, this would be deleted.

Appendix 2

**The European Commission for Democracy through Law's
*Principles on the Protection and Promotion of the Ombudsman
Institution (The 'Venice Principles')***



Strasbourg, 3 May 2019

CDL-AD(2019)005

Opinion No. 897 / 2017

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

PRINCIPLES

**ON THE PROTECTION AND PROMOTION
OF THE OMBUDSMAN INSTITUTION
("THE VENICE PRINCIPLES")**

**Adopted by the Venice Commission
at its 118th Plenary Session
(Venice, 15-16 March 2019)**

**Endorsed by the Committee of Ministers
at the 1345th Meeting of the Ministers' Deputies
(Strasbourg, 2 May 2019)**

on the basis of comments by

**Ms Lydie ERR (Member, Luxembourg)
Mr Jan HELGESEN (Member, Norway)
Mr Johan HIRSCHFELDT (Substitute Member, Sweden)
Mr Jørgen Steen SØRENSEN (Member, Denmark)
Mr Igli TOTOZANI (Expert, Albania)**

**PRINCIPLES
ON THE PROTECTION AND PROMOTION
OF THE OMBUDSMAN INSTITUTION
(The Venice Principles)**

***The European Commission for Democracy through Law
("the Venice Commission")***

Noting that there are presently Ombudsman Institutions in more than 140 States, at the national, regional or local level, with different competences;

Recognising that these Institutions have adapted into the legal and political system of the respective States;

Noting that the core principles of the Ombudsman Institution, including independence, objectivity, transparency, fairness and impartiality, may be achieved through a variety of different models;

Emphasising that the Ombudsman is an important element in a State based on democracy, the rule of law, the respect for human rights and fundamental freedoms and good administration;

Emphasising that long-standing constitutional traditions and a mature constitutional and democratic political culture constitute an enabling element to the democratic and legal functioning of the Ombudsman Institution;

Emphasising that the Ombudsman plays an important role in protecting Human Rights Defenders;

Emphasising the importance of national and international co-operation of Ombudsman Institutions and similar institutions;

Recalling that the Ombudsman is an institution taking action independently against maladministration and alleged violations of human rights and fundamental freedoms affecting individuals or legal persons;

Stressing that the right to complain to the Ombudsman is an addition to the right of access to justice through the courts;

Stating that governments and parliaments must accept criticism in a transparent system accountable to the people;

Focusing on the commitment of the Ombudsman to call upon parliaments and governments to respect and promote human rights and fundamental freedoms, such a role being of utmost importance especially during periods of hardship and conflicts in society;

Expressing serious concern with the fact that the Ombudsman Institution is at times under different forms of attacks and threats, such as physical or mental coercion, legal actions threatening immunity, suppression reprisal, budgetary cuts and a limitation of its mandate;

Recalling that the Venice Commission, on different occasions, has worked extensively on the role of the Ombudsman;

Referring to the Recommendations of the Committee of Ministers of the Council of Europe R (85) 13 on the institution of the Ombudsman, R (97)14 on the establishment of independent national institutions for the promotion and protection of human rights, R (2000)10 on codes of conduct for public officials, CM/Rec(2007)7 on good administration, CM/Rec(2014)7 on the protection of whistle-blowers and CM/Rec(2016)3 on human rights and business; to the Recommendations of the Parliamentary Assembly of the Council of Europe 757 (1975) and 1615 (2003) and in particular its Resolution 1959 (2013); as well as to Recommendations 61(1999), 159 (2004), 309(2011) and Resolution 327 (2011) of the Congress of Local and Regional Authorities of the Council of Europe; to ECRI General Policy Recommendation No. 2: Equality bodies to combat racism and intolerance at national level, adopted on 7 December 2017;

Referring to United Nations General Assembly Resolution 48/134 on the principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) of 20 December 1993, Resolution 69/168 of 18 December 2014 and Resolution 72/186 of 19 December 2017 on the role of the Ombudsman, mediator and other national human rights institutions in the promotion and protection of human rights, Resolution 72/181 of 19 December 2017 on National institutions for the promotion and protection of human rights, the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 18 December 2002, the Convention on the Rights of Persons with Disabilities adopted by the General Assembly on 13 December 2006;

After having consulted the United Nations Human Rights Office of the High Commissioner, the UN Special Rapporteur on the situation of human rights defenders, the Council of Europe Commissioner for Human Rights and the Steering Committee for Human Rights of the Council of Europe (CDDH), the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the European Union Agency for Fundamental Rights, the European Ombudsman of the European Union, the International Ombudsman Institute (IOI), the Association of Mediterranean Ombudsmen (AOM), the Association of Ombudsman and Mediators of the Francophonie (AOMF), the Federation of Ibero-American Ombudsman (FIO), the European Network of National Human Rights Institutions (ENNHRI);

has, at its 118th Plenary Session (15-16 March 2019), adopted these Principles on the Protection and Promotion of the Ombudsman Institution (“the Venice Principles”)

1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms. While there is no standardised model across Council of Europe Member States, the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence.
2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level.
3. The Ombudsman Institution shall be given an appropriately high rank, also reflected in the remuneration of the Ombudsman and in the retirement compensation.

4. The choice of a single or plural Ombudsman model depends on the State organisation, its particularities and needs. The Ombudsman Institution may be organised at different levels and with different competences.

5. States shall adopt models that fully comply with these Principles, strengthen the institution and enhance the level of protection and promotion of human rights and fundamental freedoms in the country.

6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution.

The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

7. The procedure for selection of candidates shall include a public call and be public, transparent, merit based, objective, and provided for by the law.

8. The criteria for being appointed Ombudsman shall be sufficiently broad as to encourage a wide range of suitable candidates. The essential criteria are high moral character, integrity and appropriate professional expertise and experience, including in the field of human rights and fundamental freedoms.

9. The Ombudsman shall not, during his or her term of office, engage in political, administrative or professional activities incompatible with his or her independence or impartiality. The Ombudsman and his or her staff shall be bound by self-regulatory codes of ethics.

10. The term of office of the Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.

11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of office", "misbehaviour" or "misconduct", which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament- shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms.

13. The institutional competence of the Ombudsman shall cover public administration at all levels.

The mandate of the Ombudsman shall cover all general interest and public services provided to the public, whether delivered by the State, by the municipalities, by State bodies or by private entities.

The competence of the Ombudsman relating to the judiciary shall be confined to ensuring procedural efficiency and administrative functioning of that system.

14. The Ombudsman shall not be given nor follow any instruction from any authorities.

15. Any individual or legal person, including NGOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint.

16. The Ombudsman shall have discretionary power, on his or her own initiative or as a result of a complaint, to investigate cases with due regard to available administrative remedies. The Ombudsman shall be entitled to request the co-operation of any individuals or organisations who may be able to assist in his or her investigations. The Ombudsman shall have a legally enforceable right to unrestricted access to all relevant documents, databases and materials, including those which might otherwise be legally privileged or confidential. This includes the right to unhindered access to buildings, institutions and persons, including those deprived of their liberty.

The Ombudsman shall have the power to interview or demand written explanations of officials and authorities and shall, furthermore, give particular attention and protection to whistle-blowers within the public sector.

17. The Ombudsman shall have the power to address individual recommendations to any bodies or institutions within the competence of the Institution. The Ombudsman shall have the legally enforceable right to demand that officials and authorities respond within a reasonable time set by the Ombudsman.

18. In the framework of the monitoring of the implementation at the national level of ratified international instruments relating to human rights and fundamental freedoms and of the harmonization of national legislation with these instruments, the Ombudsman shall have the power to present, in public, recommendations to Parliament or the Executive, including to amend legislation or to adopt new legislation.

19. Following an investigation, the Ombudsman shall preferably have the power to challenge the constitutionality of laws and regulations or general administrative acts.

The Ombudsman shall preferably be entitled to intervene before relevant adjudicatory bodies and courts.

The official filing of a request to the Ombudsman may have suspensive effect on time-limits to apply to the court, according to the law.

20. The Ombudsman shall report to Parliament on the activities of the Institution at least once a year. In this report, the Ombudsman may inform Parliament on lack of compliance by the public administration. The Ombudsman shall also report on specific issues, as the Ombudsman sees appropriate. The Ombudsman's reports shall be made public. They shall be duly taken into account by the authorities.

This applies also to reports to be given by the Ombudsman appointed by the Executive.

21. Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.

22. The Ombudsman Institution shall have sufficient staff and appropriate structural flexibility. The Institution may include one or more deputies, appointed by the Ombudsman. The Ombudsman shall be able to recruit his or her staff.

23. The Ombudsman, the deputies and the decision-making staff shall be immune from legal process in respect of activities and words, spoken or written, carried out in their official capacity for the Institution (functional immunity). Such functional immunity shall apply also after the Ombudsman, the deputies or the decision-making staff-member leave the Institution.

24. States shall refrain from taking any action aiming at or resulting in the suppression of the Ombudsman Institution or in any hurdles to its effective functioning, and shall effectively protect it from any such threats.

25. These principles shall be read, interpreted and used in order to consolidate and strengthen the Institution of the Ombudsman. Taking into consideration the various types, systems and legal status of Ombudsman Institutions and their staff members, states are encouraged to undertake all necessary actions including constitutional and legislative adjustments so as to provide proper conditions that strengthen and develop the Ombudsman Institutions and their capacity, independence and impartiality in the spirit and in line with the Venice Principles and thus ensure their proper, timely and effective implementation.