Office of the Citizens' Representative
Province of Newfoundland and Labrador

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May 12, 2023

The Hon. Robert Fowler
3rd Floor, Gosling Building
285 Duckworth Street
St. John's, NL A1C 1G9

Dear Mr. Fowler:

RE: Review of Statutory Offices of the House of Assembly

Thank you for your letter of April 12. Congratulations on your appointment as Consultant for this review. I appreciate the opportunity to participate.

As the Citizens' Representative for Newfoundland and Labrador I carry out the duties normally assigned to a "classical" or "parliamentary" Ombudsman. A parliamentary Ombudsman is an official who is generally appointed to investigate acts, errors, omissions and decisions of public authorities. The term (which is gender neutral) is of Swedish origin and is based on the *Justitieombudsman* position created by King Charles XII of Norway and Sweden in 1713. This "Procurator for Civil Affairs" position reported directly to the King, in his absence, on the activities of his administrators. When the Swedish Constitution was formally proclaimed in 1809, a parliamentary model was installed to continue on as a safeguard against Royal Officers' disregard of the law.

In *British Columbia Development Corporation v. Friedmann (Ombudsman)*[1] the Supreme Court of Canada noted:

> The need for some means of control over the machinery of government is nearly as old as government itself. The Romans, as long ago as 200 B.C., established a tribune—an official appointed to protect the interests and rights of the plebians from the patricians. They also had two censors—magistrates elected

[1] [1984] 2 S.C.R. 447

> approximately every five years to review the performance of officials and entertain complaints from the citizenry. And the dynastic Chinese had the Control Yuan, an official who supervised other officials and handled complaints about maladministration.

Over the course of the more than 200 years since the Swedish constitutional model was established, the parliamentary Ombudsman concept has spread worldwide with offices now operating at the supra-national, national, regional, state, provincial, and even municipal levels of government. The first Ombudsman office in the Commonwealth was established in New Zealand in 1962, and the first Canadian offices were opened in New Brunswick and Alberta in 1967.

The Ombudsman institution has since been recognized by global and regional organizations including the United Nations via a formal UN resolution[2] and a formal statement of principles (ie) the Venice Principles[3] by the European Union. The UN resolution states, in part:

> *Acknowledging* the long history of Ombudsman institutions and the subsequent extensive developments throughout the world in creating and strengthening Ombudsman and mediator institutions, and recognizing the important role that these institutions can play, in accordance with their mandate, in the promotion and protection of human rights and fundamental freedoms, promoting good governance and respect for the rule of law by addressing the imbalance of power between the individual and the providers of public services.
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> ...
>
> *Noting with serious concern* that Ombudsman and mediator institutions, where they exist, may be under threat, whether to their autonomy or credibility, to their budgets or to the physical safety and security of their officials.

The resolution highlights the importance of the Venice Principles as a relevant international instrument to inform the work of Ombudsman and mediator institutions and encourages member states to establish independent offices and strengthen existing ones by ensuring their independence consistent with the Venice Principles.

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[2] Appendix 1

[3] Appendix 2

In the words of my colleague the PEI Ombudsman:

> The Venice Principles represent the first, independent, international set of standards for the Ombudsman institution. They play a key role in protecting existing Ombudsman offices who are facing threats, provide guidelines for the improvement of current Ombudsman offices and set a template for new offices where none are present.

In 2023 all Canadian provinces and the Yukon and Northwest Territories employ these officers, and there are numerous specialized federal officers with defined Ombudsman mandates established under various federal statutes.[4]

The genesis of the Ombudsman idea for Newfoundland and Labrador is found in the Throne Speech for 1966. In the speech, the Smallwood government announced it was "concerned that the ever increasing size of the Civil Service may lead to a feeling on the part of individual citizens that they are not invariably treated with the utmost impartiality."[5] A Select Committee of the House of Assembly was formed to review the Ombudsman concept and give it a "thorough examination in the Newfoundland context." The Committee's report[6] concluded the province should follow along with the other provinces and create an Ombudsman office, stating:

> He cannot ensure us democratic perfection, but he can provide a new avenue of justice for the people, especially those with no knowledge of judicial proceedings who through their lack of understanding have no recourse to justice at the present time.
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> ...
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> ...there are bound to be cases where the cause of justice may get lost in a web of complicated regulations interpreted too literally by officials who either lack good judgement and common sense or who lack the necessary discretionary powers to exercise their own judgement. An independent review by an Ombudsman would certainly serve a needed function in such cases...The existence of the office would have a healthy effect upon administrators and would draw the attention of the public to Government's concern that laws be fairly administered.

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[4] Examples include the Taxpayer Ombudsman, the Ombudsman for Victims of Crime, the Veterans Ombudsman, the Correctional Investigator and the Procurement Ombudsman.

[5] Newfoundland and Labrador *Hansard,* November 30 1966, p.4.

[6] Newfoundland and Labrador. "Report of the Select Committee on the Appointment of an Ombudsman." April 1969.

The Office of the Parliamentary Commissioner was opened during the Moores administration in 1975 and the incumbent, Ambrose Peddle, served one and a half terms before his office was closed for austerity reasons in 1990. After an approximate 11 year hiatus the office was reincarnated and opened as the Office of the Citizens' Representative in 2002.

As you are no doubt aware, my authority is drawn mainly from the *Citizens' Representative Act*, (hereinafter "the Act") which was proclaimed in December of 2001. The Act is designed to allow citizens to file complaints with my office about matters of administration, and it also permits me to investigate matters I deem worthy under an "own initiative" provision contained in s.15. That is to say I do not need a specific written complaint or complainant to commence investigation of an issue.

You will find the Act is generally in line with the enabling legislation of most Commonwealth, and all other provincial and territorial Ombudsman laws, with some minor discrepancies. Read as a whole it has the "broad remedial purpose" anticipated by the Supreme Court of Canada in *Friedmann,* which found:

> The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. The Ombudsman "can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds."[7] On the other hand, he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.
>
> In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.

Paul G. Thomas, Professor Emeritus in Political Studies at the University of Manitoba and a recognized expert on horizontal accountability agencies like the statutory offices, has provided several reasons for their creation, foremost among them:

[7] Here, the Court cites "Re: Ombudsman Act" (1970), 72 W.W.R. 176 (Alta. S.C.), per Milvain C.J., at pp. 192-93.

> Parliamentarians needed some mechanisms to ensure that laws were interpreted and applied as intended. Parliamentary agencies represent their "eyes and ears" to perform this function.[8]

In addition, Professor Thomas has written that the independence of these types of agencies is of great importance.

> The fact that the agencies are created by and meant to serve Parliament gives them a legitimacy and measure of protection from ministerial or central agency control that is not available to regular departments of government.[9]

Finally, the importance of a functioning, independent Ombudsman office has been underscored in Wade and Forsyth's "Administrative Law" which has been judicially considered and interpreted widely since it was first published in 1961. The authors state:

> The administration of so many services and controls under the vast bureaucratic machinery of the central government inevitably causes many grievances and complaints. If something illegal is done, administrative law can supply a remedy, though the procedure of the courts is too formal and expensive to suit many complainants. But justified grievances may equally well arise from action which is legal, or at any rate not clearly illegal, when a government department has acted inconsiderately or unfairly or where it has misled a complainant or delayed his case excessively or treated him badly.
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> ...
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> What every form of government needs is some regular and smooth-running mechanism for feeding back the reactions of its disgruntled customers, after impartial assessment, and for correcting whatever may have gone wrong. Nothing of this kind existed in our system before the establishment of the Parliamentary Commissioner for Administration (or ombudsman) in 1967, except in very limited spheres. Yet it is a fundamental need in every system.[10]

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[8] "Accountability and Independent Parliamentary Agencies." Keynote address October 16 2002 to Canadian Council of Parliamentary Ombudsman training session on diversity, challenge and change. Winnipeg, MN.

[9] Paul G. Thomas. *"The past, present and future of officers of Parliament."* Canadian Public Administration. Vol. 46, No. 3 (Fall 2003), p.298.

[10] W.Wade and C. Forsyth. Administrative Law (11th Ed.) 2014. Oxford University Press. p. 68.

In terms of the daily functioning of my Office, receiving and investigating public complaints in the traditional classical Ombudsman fashion forms only one of my four assigned business lines, the others being:

- Public interest disclosures regarding alleged wrongdoing within the House of Assembly and its statutory offices under Part VI the *House of Assembly Accountability, Integrity and Administration Act;*[11]

- Public interest disclosures regarding alleged wrongdoing in departments, agencies, boards and commissions of the Government of Newfoundland and Labrador as defined in the *Public Interest Disclosure and Whistleblower Protection Act;*[12]

- Responsibility for investigations conducted under the *Harassment-Free Workplace Policy Applicable to Complaints Against Members of the House of Assembly.*[13]

Public interest disclosure mandates for the Ombudsman are also found in Nova Scotia, New Brunswick, Prince Edward Island, Quebec, Manitoba, Saskatchewan, Alberta, British Columbia and the Yukon. Ontario employs a separate Commissioner.

Nova Scotia is the only other jurisdiction that assigns responsibility for investigations relating to harassment in the legislature to the Ombudsman.

Our irreducible core values as an institution across all program areas are, in no particular order:

1. Confidentiality,
2. Accessibility,
3. Independence,
4. A credible investigative and complaint mediation process, and,
5. Impartiality and fairness.

These core values are reasonably well-bolstered by the legislation and policy that guide our work, and also line up with standards for Ombudsman offices endorsed by the American Bar Association. They also met the criteria for our (granted) application for institutional membership in the International Ombudsman Institute (IOI) which is the recognized global leader in cooperation and networking for parliamentary Ombudsman in over 100 countries.

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[11] Added to responsibilities in 2007.
[12] Added to responsibilities in 2014.
[13] Added to responsibilities in 2020.

The Office of the Citizens' Representative takes these oversight roles seriously. They are not without their pitfalls. Speaking truth to power is a frequent topic of discussion and teaching in this profession and, as you can imagine, especially in many developing countries, speaking truth to power can come with a high price. Even in developed and democratically advanced jurisdictions, advancing inconvenient truths about maladministration, misconduct and corruption can lead to reprisals which can be overt or subtle, and Ombudsman in the western world regularly face outright dismissal, erosion of budgetary resources, retaliatory investigations and jurisdictional litigation as a result of their attempts to hold individuals and institutions accountable in the public interest.

In sum, the Office of the Citizens' Representative:

1. Provides independent, confidential and accessible investigation and mediation services as well as other informal assistance to citizens in need across four business lines;

2. Brings finality to citizen complaints outside of the judicial system, provides surveillance in matters of administration and provides feedback through reporting on program and policy outcomes for the legislature with fairness as the watchword;

3. Acknowledges and credits the administration of governmental programs and services as fair and flexible, thereby strengthening public trust and confidence in the public service; and,

4. Prevents the re-occurrence of circumstances germane to complaints, thus improving public administration in general.

None of the above should lead you to conclude I believe the Ombudsman is immune from being transparent and accountable. Accountability does not necessarily place independence in peril. Paul Thomas states.

> To ensure objectivity in audit findings and impartial administration of the law respecting various rights of citizens, it is necessary to make some parts of the operations of agencies free of both executive and parliamentary interference. This principle does not mean, however that executive and / or parliamentary control / supervision over policy-setting and over certain administrative matters is inappropriate.
>
> Periodically, there will be need to review and possibly revise the statutory mandates of parliamentary agencies. How such reviews are initiated and

> conducted will both reflect and affect the relationship among the three key actors – the executive, Parliament and the parliamentary agency.[14]

I have had the opportunity to review your Terms of Reference and offer the following commentary on the Terms in the order they are presented.

1. *The minimum required competencies for each statutory officer.*

Each of the statutory offices require certain skill sets. At a minimum, in my opinion, an incumbent should possess a graduate-level degree. Graduate level degrees require demonstrated competency in research and reporting, which form a large component of the work. They would also require presentation skills which are essential for communicating the role and mandate of the respective office, as well as formulating and communicating public responses to concerns involving the office. With respect to the Ombudsman arena, I would also recognize and acknowledge the trend in some provinces of Canada to favour former law enforcement officers who would have extensive knowledge in the prudent conduct of investigations, and often some prior control over units of investigators.

Another competency for a statutory officer is good character. This entails the ability to remain impartial and grounded in the core aspects of one's mandate during a full term of office. It requires empathy for those the officer serves. Generally, it is acquired through progressive, effective accumulation of leadership skills and professional experience. It requires more than an adherence to a Code of Conduct; it requires being imbued with the fundamental principles on which the Code is based.

Demonstrable managerial skills are essential, particularly in small office environments where managers would be exposed to the full spectrum of the minutiae of running a small unit effectively. Incumbent on this skill is the ability to motivate employees, build a cohesive team and strive to be a flagship organization among many. It also requires the mundane functions of budget preparation and monitoring, human resources and general office administration.

[14] Paul G. Thomas. *"The past, present and future of officers of Parliament."* Canadian Public Administration. Vol. 46, No. 3 (Fall 2003), p.298.

2. *The number of statutory offices and whether a statutory officer could fulfil the obligations of more than one statutory role; which offices/statutory officers could be combined based on common objectives, functions, qualifications, clients, etc.*

With respect to this term, I will leave it to the Review to make conclusions as it will have had the benefit of conducting in-depth analysis of the internal operations of all offices. I would note this office is at capacity with the second smallest budget and human resource complement among the offices, prosecuting 3 statute-enabled investigative roles and 1 policy-based role.

I would also provide polite caution against the combination of advocacy and investigative roles. This office is an investigative body and advocates only for fairness, accountability in public administration, and the acceptance of evidence-based recommendations formed after a statutory investigation is completed. I believe there is an inherent tension between advocacy and investigation. In my view, advocacy entails assessing the preferred positions of a subset of society, articulating a persuasive message as to why that position should be accepted, and then promoting that position to those who can effect change. Investigation requires a different skill set. Investigators gather facts, assess evidence, determine credibility, write unbiased and impartial reports, and then only if a finding is made, advocate for that finding.

3. *Whether each Statutory Office requires the dedication of a full-time statutory officer or whether it could be part-time or on an as-needed basis.*

Having limited knowledge of the internal operations and daily workings of the other statutory offices, I defer to the conclusions of the Review. However, the Citizens' Representative position requires, without question, a full time incumbent. Given the small size of the investigative staff and the recent year over year increase in complaints received, the incumbent should also be capable of actually prosecuting investigative files and playing an active role in writing and editing Office documents; in addition to providing overall philosophical direction, external communications, strategic planning, budgeting and guiding the day-to-day human resource and administrative functioning of the office. There are no part-time federal, provincial or territorial Ombudsman.

4. *How each statutory officer should be recruited, appointed, re-appointed, compensated, disciplined, and removed from office.*

   (i) *Recruitment of statutory officers.* Initial recruitment of a statutory officer should follow the current advertisement format (ie) making the recruitment known to members of the public and public service who may be interested in offering their services and skills. The candidates should be screened by senior House

of Assembly HR personnel with the assistance of the Public Service Commission (PSC).

Beyond any technical knowledge required, all of these leadership positions require a different skill set including teamwork, team building, problem solving, communication, adaptability, critical thinking, time management and interpersonal skills. As you are aware these are long-term appointments which, in order to be successful, require stable leadership. Therefore a confidential 360 degree vetting process for shortlisted candidates should take place which should include interviews with provided references, former subordinates, and former supervisors in order to gauge whether a candidate displays any risk of ethical or Code of Conduct violations based on past history or reputation.

In my experience, shortlisted candidates for statutory officers can face up to 3 interviews (PSC level, Independent Appointment Commission level [discretionary], Cabinet level). Given the tenure of these appointments and the elongated process for investigation, suspension and eventual removal of an incumbent, personally I see no need to add or subtract from the number of vetting interviews.

(ii) *Appointment of statutory officers.* These appointments are each prescribed by statute. It follows that changing the appointment process would require individual or omnibus statutory amendment. Officers of the House of Assembly should still be approved by the House sitting as a collective, and appointment should be by majority or super-majority (ie 2/3). Dean Gottehrer and Michael Hostina,[15] who worked together to establish the essential characteristics of an Ombudsman,[16] suggest a super majority is preferable because it "ensures that the candidate is one who has wide respect among different political parties and even parties that oppose one another or the government."[17]

(iii) *Re-appointment of statutory officers.* Re-appointment for statutory officers should follow a transparent, fixed timeline for two reasons.

First, it would provide some certainty for statutory officers near the end of their term, permitting them to make future career and personal plans. Having discussed this issue with a number of former officers, I have noticed that some

[15] Former President of the United States Ombudsman Association and legal counsel respectively.

[16] These were adopted as 4 of our 5 our core values as stated on page 6 of this submission.

[17] https://www.usombudsman.org/essential-characteristics-of-a-classical-ombudsman/ Accessed 14 April 2023.

are contacted up to 6 months in advance of their term expiry to gauge interest in continuing into a second term, while others get perilously close to their expiry without hearing from the government. Some have continued on short term contract beyond term expiry while recruitment of their successor takes place. I perceive this to be unfair to the officer, and to office staff, as it introduces periods of needless uncertainty. For the officer it is financial / career uncertainty and for the staff it is leadership uncertainty. In my view, re-appointment should therefore be discussed, confirmed or denied at least six months prior to term expiry.

Second, a fixed timeline for reappointment would help ensure the perceived impartiality of the statutory officer near the end of his or her term. Otherwise citizens may perceive the statutory officer currying favour with the government just prior to his or her re-appointment. The closer to the end of a term without a decision on re-appointment being made increases the chance of this perception.

(iv) *Compensation of statutory officers.* Statutory officers are graded along the Executive Pay Plan and the historical rationale has been that the salary is pinned to the size of their operations and budgets. As Deputy Minister equivalents they tend to make less than most Deputy Ministers and in my case less than some associate and assistant deputy ministers. To the best of my knowledge and belief the Newfoundland and Labrador Ombudsman has historically made less than all of his provincial and territorial colleagues.

(v) *Discipline of statutory officers.* Statutory officers report to the House of Assembly via the Speaker. Discipline of statutory officers should be meted according to the present statutory ambit which puts the House in ultimate control. Given the low number of actual sitting days, and the need to be able to act quickly in demonstrated cases of gross mismanagement or other *prima facie* misconduct the Lieutenant Governor in Council should retain the ability to suspend but not beyond the next sitting. In the alternative, an all-party committee of the House, dedicated to the activities of the statutory officers, could be assigned this responsibility and remove this power from the Cabinet if it is the will of the House.

(vi) *Removal from office.* I believe a 2/3 super majority of voting Members should be required to remove a statutory officer.

5. *How to manage conflicts which arise between statutory offices.* Statutory officers have few annual direct personal interactions that would give rise to conflict. However, from time to time an officer will fall under scrutiny by one of their colleagues. The statutory officers exercise varying degrees of statutory jurisdiction over one another. Examples include the Auditor General being able to audit all offices, the Information and Privacy Commissioner investigating complaints about access and privacy across all offices, and the Citizens' Representative holding the ability to conduct investigations of all statutory officers in cases of alleged wrongdoing.

Given the low level of informal personal interactions, the probability for interpersonal struggles is highest when an officer is placed under statute-enabled examination by another officer. These interpersonal struggles do not negate the authority granted to the reviewing officer, however they are rooted in that authority.

In my view it is poor form and unprofessional not to cooperate with an investigating colleague who is doing nothing other than the job they are hired to do. In my experience, interpersonal struggles have been diminished by both sides employing legal counsel. It is only the use of retaliatory or collateral processes against the investigating officer that has created tension. It would be counterproductive, financially wasteful and potentially obstructionist to suggest that a parallel internal, external or independent investigation of an investigating officer would be useful in these situations. Alternate Dispute Resolution, as successful as it may be, will not invalidate the investigating officer's statutory authority.

Jurisdictional conflicts should be the sole domain of the courts. Under Section 21 of the Act I have the ability to seek a declaratory order from the Trial Division regarding any question of my jurisdiction. This is as it should be.

6. *Whether and how quality assurance and performance of (i) each statutory officer / (ii) statutory office should be measured and overseen.*

(i) The legislature has a duty to monitor the performance of its officers. Statutory officers report to the legislature via the Speaker and are accountable only to the legislature, not the executive. Officers have certain statute-based obligations to meet throughout the year to demonstrate performance to the legislature they serve. In my case I am obliged to report on the exercise and performance of my functions and duties under s. 43 of the Act, s. 20 of the *Public Interest Disclosure and Whistleblower Protection Act* and, from a strategic planning and organizational improvement perspective, s. 9 of the *Transparency and Accountability Act.*

(ii) As I am unsure what exactly "quality assurance and performance" mean in the context of this review, I can only say that some of my national colleagues do meet with a select committee of the legislature to discuss their reports and answer any questions parliamentarians may have. I suggest it would be a contravention of international standards for the independence of Ombudsman to become subject to arbitrary "quality assurance and performance" reviews and be "overseen" by anyone outside of the Members of the House to which we report.

7. *Administrative oversight model(s) for the Statutory Offices inclusive of financial management, human resources management, information management, procurement and any other "back office" functions; structure.*

As the second smallest statutory office I cannot express enough thanks to the members of the House of Assembly Service who provide assistance in all of the areas outlined above, and have done so for more than twenty years. We have benefitted immensely from their non-partisan professional assistance in ensuring the government-standard compliance the public expects in these areas. Assuming responsibility for these areas as a stand alone proposition would more than double the office budget and would require expansion or relocation.

8. *Whether physical space and administrative functions could be shared among Statutory Offices.*

In my view, oversight agencies should not be co-located with entities they investigate. Physical separation assists the perception of independence.

This office is currently under lease from Martek at a competitive rate. Martek has been an excellent landlord and all existing office space is utilized. Our space is fully accessible for members of the disabled community. All offices have doors to reduce background noise and allow investigators to conduct conversations in private. The office is centrally located, on a bus route with free parking.

Shared administration is not currently an option as there is no space to absorb additional staff or share functions with another office. Further, there may be document or information security issues with sharing a space with another statutory office or officer that may be under investigation.

9. *Where reports from each Statutory Office should be directed, such as whether any of the reports of the Statutory Offices should go to a standing or select committee of the House of Assembly for review and analysis.*

   All officers are obliged to table annual reports to the House of Assembly via the Speaker. This is in keeping with Commonwealth and Canadian best practice.

   The exceptions in my office are public interest disclosure reports. Under Part VI of the *House of Assembly Accountability, Integrity and Administration Act* a public interest disclosure report is provided to the Speaker and Clerk of the House of Assembly. The Speaker then has a duty to refer the report to a list of possible recipients or to an official he/she deems appropriate. Any reform of that program should divert reporting obligations away from the Speaker and Clerk to the House of Assembly Management Commission, or a select committee of the House. In the alternative, parliamentarians should consider whether to impose a defined period for referral to which the Speaker must adhere.

   Under s. 18 of the *Public Interest Disclosure and Whistleblower Protection Act*, a report is given to the chief executive of the appropriate department or public body. In the event the chief executive is the subject of the report, in cases involving line departments the report is tendered to the Minister responsible, and in the case of another public body, to the board of directors and the Minister responsible. A report on results is also given to the employee whose disclosure precipitated the investigation at a manner and time I consider appropriate.

Thank you for the opportunity to make a submission to your review and I look forward to meeting you in June.

Respectfully,

Bradley J. Moss
Citizens' Representative

Appendix 1

United Nations A/RES/77/224

General Assembly

Distr.: General
6 January 2023

Seventy-seventh session
Agenda item 68 (b)
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Resolution adopted by the General Assembly on 15 December 2022

[*on the report of the Third Committee (A/77/463/Add.2, para. 87)*]

77/224. The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law

The General Assembly,

Reaffirming its commitment to the purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights,[1]

Recalling the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,[2] in which the Conference reaffirmed the important and constructive role played by national institutions for the promotion and protection of human rights,

Reaffirming its resolutions 65/207 of 21 December 2010, 67/163 of 20 December 2012, 69/168 of 18 December 2014, 71/200 of 19 December 2016, 72/186 of 19 December 2017 and 75/186 of 16 December 2020 on the role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law,

Recalling the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), welcomed by the General Assembly in its resolution 48/134 of 20 December 1993 and annexed thereto,

Acknowledging the principles on the protection and promotion of the Ombudsman institution (the Venice Principles),

[1] Resolution 217 A (III).
[2] A/CONF.157/24 (Part I), chap. III.

Recalling its previous resolutions on national institutions for the promotion and protection of human rights, in particular resolutions 66/169 of 19 December 2011, 68/171 of 18 December 2013, 70/163 of 17 December 2015, 74/156 of 18 December 2019 and 76/170 of 16 December 2021, as well as Human Rights Council resolutions 23/17 of 13 June 2013,[3] 27/18 of 25 September 2014,[4] 33/15 of 29 September 2016,[5] 39/17 of 28 September 2018,[6] 45/22 of 6 October 2020[7] and 51/31 of 7 October 2022,[8]

Reaffirming the functional and structural differences between national human rights institutions, on the one hand, and Ombudsman and mediator institutions, on the other, and underlining in this regard that reports on the implementation of General Assembly resolutions on the role of the Ombudsman and mediator institutions by the Office of the United Nations High Commissioner for Human Rights should be stand-alone reports,

Noting with appreciation that some Ombudsman or mediator institutions have been designated as national preventive mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,[9]

Acknowledging the long history of Ombudsman institutions and the subsequent extensive developments throughout the world in creating and strengthening Ombudsman and mediator institutions, and recognizing the important role that these institutions can play, in accordance with their mandate, in the promotion and protection of human rights and fundamental freedoms, promoting good governance and respect for the rule of law by addressing the imbalance of power between the individual and the providers of public services,

Welcoming the rapidly growing interest throughout the world in the creation and strengthening of Ombudsman and mediator institutions, and recognizing the important role that these institutions can play, in accordance with their mandate, in support of national complaint resolution,

Encouraging Member States to establish independent Ombudsman and mediator institutions and to strengthen existing institutions, including by ensuring their independence, consistent with relevant principles, including the Venice Principles, and to consider seeking the assistance of the Office of the United Nations High Commissioner for Human Rights in this regard,

Recognizing that the role of Ombudsman and mediator institutions, whether they are national human rights institutions or not, is the promotion and protection of human rights and fundamental freedoms, promotion of good governance and respect for the rule of law, as a separate and additional function, but also as an integral part to all other aspects of their work,

Underlining the importance of autonomy and independence from the executive or judicial branches of Government, its agencies or political parties, of Ombudsman and mediator institutions, where they exist, in order to enable them to consider all issues related to their fields of competence, without real or perceived threat to their

[3] See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 53* (A/68/53), chap. V, sect. A.

[4] Ibid., *Sixty-ninth Session, Supplement No. 53A* and corrigenda (A/69/53/Add.1, A/69/53/Add.1/Corr.1 and A/69/53/Add.1/Corr.2), chap. IV, sect. A.

[5] Ibid., *Seventy-first Session, Supplement No. 53A* and corrigendum (A/71/53/Add.1 and A/71/53/Add.1/Corr.1), chap. II.

[6] Ibid., *Seventy-third Session, Supplement No. 53A* (A/73/53/Add.1), chap. III.

[7] Ibid., *Seventy-fifth Session, Supplement No. 53A* (A/75/53/Add.1), chap. III.

[8] Ibid., *Seventy-seventh Session, Supplement No. 53A* (A/77/53/Add.1), chap. II, sect. A.

[9] United Nations, *Treaty Series*, vol. 2375, No. 24841.

procedural ability or efficiency and without fear of reprisal, intimidation or recrimination in any form, whether online or offline, that may threaten their functioning or the physical safety and security of their officials,

Noting with serious concern that Ombudsman and mediator institutions, where they exist, may be under threat, whether to their autonomy or credibility, to their budgets or to the physical safety and security of their officials,

Considering the role of Ombudsman and mediator institutions in promoting good governance in public administrations and improving their relations with citizens, in promoting respect for human rights and fundamental freedoms and in strengthening the delivery of public services, by promoting the rule of law, good governance, transparency, accountability, and fairness,

Considering also the important role of the existing Ombudsman and mediator institutions in contributing to the effective realization of the rule of law and respect for the principles of justice and equality,

Acknowledging the importance of affording these institutions, as appropriate, the necessary mandate, including the authority to assess, monitor and, where provided for by national legislation, investigate matters on their own initiative, as well as protection to allow action to be taken independently and effectively against unfairness towards any person or group and the importance of State support for the autonomy, competence and impartiality of the Ombudsman and of the process,

Stressing the importance of the financial and administrative independence and stability of these institutions, and noting with satisfaction the efforts of those States that have provided their Ombudsman and mediator institutions with more autonomy and independence, including by giving them an investigative role or enhancing such a role,

Stressing also that these institutions, where they exist, can play an important role in advising Governments with respect to drafting or amending existing national laws and policies, ratifying relevant international instruments and bringing national legislation and national practices into line with their States' international human rights obligations,

Stressing further the importance of international cooperation between Ombudsman offices and mediators, and recalling the role played by regional and international associations of Ombudsman and mediator institutions in promoting cooperation and sharing best practices,

Encouraging the Ombudsman and mediator institutions to share best practices on their work and functioning, and to continue engaging actively with the Office of the United Nations High Commissioner for Human Rights, the International Ombudsman Institute, the Global Alliance of National Human Rights Institutions and other regional networks and associations to exchange experiences, lessons learned and best practices,

Noting with satisfaction the active continuing work of the global network of Ombudsmen, the International Ombudsman Institute, and the close cooperation with the active regional Ombudsman and mediator associations and networks, namely, the Association of Mediterranean Ombudsmen, the Ibero-American Federation of Ombudsmen, the Association of Ombudsmen and Mediators of la Francophonie, the Asian Ombudsman Association, the African Ombudsman and Mediators Association, the Arab Ombudsman Network, the European Mediation Network Initiative, the Pacific Ombudsman Alliance, the Eurasian Ombudsman Alliance, and other active Ombudsman and mediator associations and networks,

1. *Takes note* of the report of the Secretary-General;[10]

2. *Strongly encourages* Member States:

(a) To consider the creation or the strengthening of independent and autonomous Ombudsman and mediator institutions at the national level and, where applicable, at the regional or local level, consistent with the principles on the protection and promotion of the Ombudsman institution (the Venice Principles), either as national human rights institutions or alongside them;

(b) To endow Ombudsman and mediator institutions, where they exist, with the necessary constitutional and legislative framework, as well as State support and protection, adequate financial allocation for staffing and other budgetary needs, a broad mandate across all public services, the powers necessary to ensure that they have the tools they need to select issues, resolve maladministration, investigate thoroughly and communicate results, and all other appropriate means, in order to ensure the efficient and independent exercise of their mandate and to strengthen the legitimacy and credibility of their actions as mechanisms for the promotion and protection of human rights and the promotion of good governance and respect for the rule of law;

(c) Where they exist, to take the appropriate steps to ensure that the means of appointment of the Ombudsman or mediator respect the full independence and State recognition of, as well as respect for, the Ombudsman and mediator institutions and their work;

(d) To provide for the clear mandate of Ombudsman and mediator institutions, where they exist, to enable the prevention and appropriate resolution of any unfairness and maladministration and the promotion and protection of human rights, and to report on their activities, as may be appropriate, both generally and on specific issues;

(e) To ensure that the Ombudsman and mediator institutions and their staff have appropriate protections from unwarranted and arbitrary abuses of legal process in respect of matters carried out in connection with their lawful duties and obligations;

(f) To take the appropriate steps to ensure that adequate protection exists for Ombudsman and mediator institutions, where they exist, against coercion, reprisals, intimidation or threat, including from other authorities, and that these acts are promptly and duly investigated and the perpetrators held accountable;

(g) To give due consideration to the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles)[11] when assigning to the Ombudsman or the mediator institution the role of national preventive mechanisms and national monitoring mechanisms;

(h) To develop and conduct, as appropriate, outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of Ombudsman and mediator institutions;

(i) To share and exchange best practices on the work and functioning of their Ombudsman and mediator institutions, in collaboration with the Office of the United Nations High Commissioner for Human Rights and with the International Ombudsman Institute and other international and regional Ombudsman organizations;

3. *Recognizes* that, in accordance with the Vienna Declaration and Programme of Action, it is the right of each State to choose the framework for national institutions, including those of the Ombudsman and the mediator, which is best suited

[10] A/77/248.

[11] Resolution 48/134, annex.

to its particular needs at the national level, in order to promote human rights in accordance with international human rights instruments;

4. *Encourages* Member States to ensure adequate protection for their respective Ombudsman and mediator institutions against coercion, reprisals, intimidation or threat;

5. *Also encourages* Member States to ensure that adequate funding is provided to their respective Ombudsman and mediator institutions to enable them to discharge their mandates in an independent and efficient manner;

6. *Recognizes* that the practical effectiveness of the chosen framework for such national institutions should be monitored and assessed, consistent with internationally accepted and recognized standards, and that this framework should neither threaten the autonomy nor the independence of the institution nor diminish its ability to carry out its mandate;

7. *Welcomes* the active participation of the Office of the High Commissioner in all international and regional meetings of Ombudsman and mediator institutions, whether in person or, alternatively, by electronic means;

8. *Encourages* Member States and regional and international Ombudsman and mediator institutions to regularly interact, exchange information and share best practices with the Office of the High Commissioner on all matters of relevance;

9. *Encourages* the Office of the High Commissioner, through its advisory services, to develop and support activities dedicated to the existing Ombudsman and mediator institutions and to strengthen their role within national systems for human rights protection;

10. *Encourages* Ombudsman and mediator institutions, where they exist:

(a) To operate, as appropriate, in accordance with all relevant international instruments, including the Paris Principles and the Venice Principles, in order to strengthen their independence and autonomy and to enhance their capacity to assist Member States in the promotion and protection of human rights and the promotion of good governance and respect for the rule of law;

(b) To request, in cooperation with the Office of the High Commissioner, their accreditation by the Global Alliance of National Human Rights Institutions, where the Ombudsman or mediator institution is the national human rights institution, in order to enable them to interact effectively with the relevant human rights bodies of the United Nations system;

(c) To publicly report, in the interests of accountability and transparency, to the authority that appoints the Ombudsman or the mediator of Member States on their activities at least annually;

(d) To cooperate with relevant State bodies and develop cooperation with civil society organizations, without compromising their autonomy or independence;

(e) To conduct awareness-raising activities on their roles and functions, in collaboration with all relevant stakeholders;

(f) To engage with the International Ombudsman Institute, the Global Alliance of National Human Rights Institutions and other regional networks and associations, with a view to exchanging experiences, lessons learned and best practices;

11. *Requests* the President of the General Assembly to hold, within existing resources, during the seventy-eighth session, a high-level panel on the theme "Public accessibility and inclusivity: developing strategic initiatives to raise awareness on the

role and work of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law" and prepare a summary of the discussion for transmission to all Member States;

12. *Requests* the Secretary-General to report to the General Assembly at its seventy-ninth session on the implementation of the present resolution, in particular on the obstacles encountered by Member States in this regard, and on best practices in the work and functioning of Ombudsman and mediator institutions, as well as on solutions to promote the role and work of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law.

54th plenary meeting
15 December 2022

Appendix 2

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.