

16 July 2023

The Honourable Robert A. Fowler
Review of Statutory Offices of the House of Assembly

By email: info@rsonl.ca

Your Honour

I am grateful to you for the opportunity to make this submission to the Review of Statutory Offices of the House of Assembly (**Review**).¹ I write to you in my capacity as President of the International Ombudsman Institute (**IOI**). I also serve as the Western Australian Ombudsman and I am currently the longest serving Ombudsman in Australia, having had the privilege to serve Parliament and the citizens of Western Australia for sixteen years. I am also the only Ombudsman in the fifty-year history of the institution in Australia to have been appointed to four terms of office (a term of office being five years).

I note that it is the sovereign right of the Canadian people, through their elected representatives, to govern their own affairs and that this sovereignty is absolute. I respect this sovereignty and have made this submission solely with a view to provide the greatest assistance to you on the internationally accepted principles applicable to all countries with Ombudsman institutions, which form part of the rules based international order. These principles are equally relevant to the creation, operation and review of the Ombudsman institution.

I have also noted and read the submission to the Review by the Forum of Canadian Ombudsman. I agree with this submission in its entirety and strongly endorse the submission.

The IOI, established in 1978, is the global organisation for the cooperation of more than 200 independent Ombudsman institutions from more than 100 countries worldwide. The IOI is organised in six regional chapters: Africa, Asia, Australasia & Pacific, Europe, the Caribbean & Latin America, and North America. The North America Region of the IOI comprises 26 Ombudsman institutions, including the Office of the Citizens' Representative for Newfoundland and Labrador.

¹ This submission draws upon an Address provided by me to the International Conference on the occasion of the 20th Anniversary of the creation of the Mediator Institution of the Kingdom of Morocco, Rabat, Rabat, February 28th, 2023.

The purpose of the IOI is to contribute to:

- Respect for human rights and fundamental freedoms;
- Adherence to the rule of law;
- Effective democracy;
- Administrative justice and procedural fairness in public organisations;
- Improving public services;
- Open and accountable government; and
- Access to justice for all,

by promoting the concept and institution of the Ombudsman and encouraging its development throughout the world.²

As you know of course, the Terms of Reference of the Review provides that a report will be prepared that includes recommendations for the following:

- The minimum required competencies for each statutory officer;
- ...
- How each statutory officer should be recruited, appointed, re-appointed, compensated, disciplined, and removed from office;
- How to manage conflicts which arise between Statutory Offices, who should investigate alleged misconduct of a statutory officer, and how that investigation should be conducted (internally, externally, independent ADR etc.).
- Whether and how quality assurance and performance of each statutory officer/Statutory Office should be measured and overseen;
- What is an appropriate administrative oversight model for the Statutory Offices, inclusive of financial management, human resources management, information management, procurement, and any other “back office” functions; structure...

In this submission I have directed myself to these aspects of the Review. In terms of enumerating international principles that directly inform the Terms of Reference, I note the Council of Europe’s Principles on the Protection and Promotion of the Ombudsman Institution (**Venice Principles**), which were adopted by the European Commission for Democracy through Law and are the equivalent of the Paris Principles for National Human Rights Institutions. The Venice Principles are the global standards to be observed for the establishment and proper functioning of an Ombudsman, and for the safeguarding of its independence and legitimacy. Relevantly to the Review, this includes:

Article 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.

Article 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.

Article 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

² International Ombudsman Institute, By-laws, *Article 2*.

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.

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

Article 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.

Article 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

Article 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 threats³.

In December 2020, the IOI welcomed the adoption by the United Nations (**UN**) General Assembly of the UN Resolution, *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law (UN Resolution)*.⁴ The IOI worked closely with the UN to develop the UN Resolution. The Kingdom of Morocco is responsible for the biennial submission of the UN Resolution and, of course, it was supported by Canada. The UN Resolution is not static but develops iteratively. On 15 December 2022, the UN General Assembly adopted the newest version of the UN Resolution, numbered 77/224. The UN Resolution is also not an abstract or prosaic document. Very much like the Venice Principles, it creates a clear understanding of the standards and aspirations for those in nations seeking to create Ombudsman institutions or those, like yourself, charged with review of Ombudsman institutions. At its very core, modern Ombudsman and Mediator institutions are human rights institutions; international, national and sub-national bodies that have a fundamental role in protecting and promoting human rights. The UN Resolution enables, enlivens and ennobles this most principled of roles.

A matter of significance is that the latest iteration of the UN Resolution notes:

with satisfaction the active continuing work of the global network of Ombudsmen, the International Ombudsman Institute [and] [e]ncourages Ombudsman and mediator institutions... [t]o 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.⁵

The UN Resolution provides substantial guidance for you in relation to your review.

³ Council of Europe (Venice Commission), *Principles on the Protection and Promotion of the Ombudsman Institution*, Adopted 15 March 2019..

⁴ UN General Assembly, *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*, A/RES/75/186.

⁵ See footnote 4.

The final international development to which I draw your attention is the Manchester Memorandum, an initiative of the highly regarded United Kingdom Parliamentary and Health Service Ombudsman, Vice President of the Europe Region of the IOI and Director World Board of the IOI, Mr Rob Behrens CBE. The Manchester Memorandum is now the accepted global standard for peer review of Ombudsman offices.⁶

Within its sub-national, national and supranational framework, the Ombudsman institution plays a vital role in not only providing an impartial and independent mechanism for citizens to pursue their rights regarding wrongful government action, but also acts as a vital means of promoting and protecting integrity in public institutions, good governance, the rule of law and human rights. The Review provides a welcome opportunity to further strengthen the Office of the Citizens' Representative for Newfoundland and Labrador such that it continues to align with the latest iteration of the UN Resolution.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Field', written in a cursive style.

Chris Field PSM
President

⁶ See <https://www.ombudsman.org.uk/news-and-blog/blog/manchester-memorandum-working-seminar-development-national-ombudsman-1> (viewed on 15 July 2023).