

July 10, 2023

Attn: The Honourable Robert Fowler

The Review of the Statutory Offices of the House of Assembly

Re: Forum of Canadian Ombudsman Submission: The Office of the Citizens' Representative

Dear/Cher Mr. Fowler.

The Forum of Canadian Ombudsman (FCO) is grateful for the opportunity to participate in the Government's current review process of (amongst other offices) the Office of the Citizens' Representative.

FCO is a diverse group with each member acting as an ombudsman within their respective organization. Its members come from both the public and private sectors. Many of our members are appointed by provinces and territories, and are independent officers of their provincial or territorial legislatures. We also have members working in the federal government, cities, universities, colleges, banks and businesses of all kinds.

The FCO promotes the ideal that government and private entities which serve the public must do so fairly, guided by balanced policies, formal codes of conduct, and relevant and applicable laws. Our member offices receive complaints directly from members of the public regarding their experiences with, and treatment by, government authorities or private organizations.

In the FCO's advanced training certificate program offered through York University, Osgoode School of Law, we teach that the goal of ombudsman work is to find solutions and rebuild trust when those accessing or benefiting from services of large institutions, find gaps. Our work is grounded in the realities, resources, and capabilities of the institutions that employ us – we do not chase "an ideal" of what could have happened. And we consider the expectations, knowledge and needs of the stakeholder.

In the case of a legislative ombudsman, when we do our job well, we succeed in rebuilding trust between citizens and the government. We make recommendations to improve – to make the system better – for the future. And we do this from a position of independence, knowledge, facts and listening to all sides.

To do this effective and important work in the governance of Newfoundland & Labrador, it is fundamental for an office such as the Office of the Citizens' Representative to have the resources it requires and the neutral conditions needed to issue unbiased findings.

The FCO knows too well the trends across our country, where our members are working in sometimes fragile circumstances. Whether by attrition of budgets or actual attacks on the office through backroom reprisals, or more overtly in public and on social media (or worse, grounded in ideological or partisan positioning) these conditions atrophy the neutral, mediating space necessary for our work to succeed.

In all types of organizations it is inevitable that there will be occasions when citizens feel aggrieved and feel that they have been treated unfairly. Experience in other jurisdictions demonstrates that there are times when it is

simply not practical or efficient or even possible to seek redress from elected officials or courts. There has to be another way. In many jurisdictions around the world, in such circumstances, citizens have access to the service of an ombudsman.

Unlike an elected official, management or member of a board of directors, ombudsmen are independent of the administration. They receive complaints directly from citizens and generally act as a last resort for complainants who have previously tried to resolve their problem by resorting to other established channels and means. They have the necessary independence and are not in a relationship of subordination with respect to management or elected officials.

Ombudsmen have the authority to investigate complaints and have the required access to relevant information. They show no bias for any of the people involved in an intervention and have no preconceived ideas about the issue in dispute. They do not have to obtain prior approval before intervening. They are free to draw their own conclusions and have full autonomy as to their modes of operation, etc. They have the authority to undertake investigations on their own initiative. They preserve the confidential nature of the information brought to their attention in the exercise of their function. Several ombudsmen are also exempt from the application of access to information laws. They report on their activities and recommendations to the public.

The Ombudsman is impartial and treats complainants and authorities fairly and with respect. They are guided by evidence, precedent, a strong sense of administrative justice and the belief that when institutions take corrective action, they come out stronger in fact and in perception to those who felt aggrieved.

The Ombudsman sheds light on situations that need to be corrected. In doing so, they bring transparency where it may be lacking. When they reconcile the organization with the people who have complained, the Ombudsman encourages accountability in authorities. When they resolve a complaint to everyone's satisfaction, the balance is restored between the citizen and the organization.

Even the Supreme Court has eloquently described the role of the ombudsman in democratic systems of government:

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": Re Ombudsman Act (1970), 72 W.W.R. 176 (Alta. S.C.), per Milvain C.J., at pp. 192-93. 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.¹

Our role is to find the best possible solution for all; to rebuild trust between the citizen and the government's institutions, and to separate fairness from an unfortunate circumstance.

As you conduct your review, we respectfully ask that you consider the value of a strong, vital and independent ombudsman office in the administration of Newfoundland & Labrador's government. The benefits of such an office are many and impressive. To name a few, these offices:

- Restore confidence in citizens or service users
- Rebalance power between citizens and bureaucracy
- Detect and fix systemic problems
- Improve the quality of service
- Encourage greater transparency in the functioning of institutions
- Improve governance (internal procedures and policies, etc.)
- Ensure fairness in decision-making processes

To fully realize the benefits of the Office, certain critical characteristics must be in place:

- The Office and office-holder must be apolitical
- There must be total independence of action. The Office cannot be in a relationship of subordination to administrative or elected officials. They must have investigative powers and freedom and autonomy to draw independent conclusions and the resources to do this effectively.
- They must be unbiased, without preconceived ideas about the issues in dispute, and without real or perceived conflicts of interest.
- Services must be free and accessible to citizens with diverse needs.
- Complete confidentiality and freedom from reprisal must be assured, both for complainants and for the employees who share information with the Office. Access to files and physical space must be safeguarded and secure from unauthorized access.
- The Office must have the power to recommend and convince, but not to decide. Ombudsman processes are in effect alternative dispute resolutions that typically take place after the management under investigation has had the opportunity to respond and resolve the complaint, but before citizens are required to exhaust their legal remedies.
- The Office typically holds the discretion to comment publicly, if deemed in the public interest.

We would also like to draw your attention to the [25 Venice Principles which represent the first, independent, international set of standards for the Ombudsman institution](#). They are the equivalent of the Paris Principles which set out the standards against which national human rights institutions are judged. 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.

¹ *British Columbia Development Corporation et al. c. Friedmann et al.* (1984). 14 D.L.R. (4th) 129, (under the name *British Columbia Development Corporation v. British Columbia (Ombudsman)*), [1984] 2 S.C.R. 447 [BCDC with S.C.R. references].



Ombudsman institutions represent a beacon in the night for citizens. The Office of the Citizen's Representative acts as a leader in this area and not only applies the values intrinsic to the role of ombudsman but promotes it to as many people as possible.

It is normal that criticisms and recommendations sometimes generate discomfort among decision-makers, elected officials or others. But mature organizations or governments know how to recognize, as Leonard Cohen did, "there is a crack in everything, that's how the light gets in".

On behalf of my 450 fellow-ombudsman across Canada, thank you for your vital work and for your consideration of our submission.

Yours sincerely,

Nadine Mailloux, President, Forum of Canadian Ombudsman

Ombudsman
Ombudsman de Montréal
Les Cours Mont-Royal
1550, rue Metcalfe, bureau 1150, Montréal (Québec) H3A 1X6
Tél: 514 872-8999

About FCO

The Forum of Canadian Ombudsman is a non-profit professional association dedicated to protecting, developing and enhancing the ombudsmen and women across Canada. Our 450 members represent a broad range of industry, jurisdiction, public and private organizations that play a role in Canada's society. We all play a vital role in governing our systems, institutions and governments to ensure they work to their best capacity in serving their communities and clients.