

COMMONWEALTH OF THE BAHAMAS

Senate Contribution on Ombudsman Bill, 2023

Presented by

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on

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Introduction

Good afternoon, today I rise to move for the second reading of the Ombudsman Bill, 2023. This Bill is an important piece of legislation to advance our commitment as a Government to good governance and accountability of government and government agencies to the public. The PLP Government's "Blueprint for Change" under the mandate of Good Governance provides "We commit to fully implementing the Ombudsman Bill." Passing this Bill is the first step in implementing an Ombudsman in The Bahamas.

The Ombudsman

The Government has heard the cry of its citizenry as it voiced its frustration with no independent body to report their feelings or experiences of mistreatment by government agencies. The Ombudsman Bill 2024 will provide, when it is entered into

force, a voice for the citizenry. It is an institution that has as its primary role the promotion and protection of all human rights.

An Ombudsman is a neutral factfinder, not an advocate for one side or the other. They also play an active role in bridging civil society and Government; they link the responsibilities of the State to the rights of citizens, and they connect national laws to regional and international human rights systems.

An Ombudsman is an official, usually appointed by the government, who investigates complaints (usually lodged by private citizens) against business, financial institutions, universities, government departments, or other public entities, and attempts to resolve the conflicts or concerns raised, either by mediation or making recommendations.

The Ombudsman Bill will empower the Ombudsman in The Bahamas to investigate complaints about maladministration in the activities of all Government institutions, bodies, offices, or agencies. Where corruption is present, the ombudsman can investigate, expose, and help correct illegal behaviours and help prevent governments from abusing their power, such as imposing unfair laws and exerting controls over their citizens without constraints. They also help restore confidence in the system and its ability to fairly address issues.

Their responsibility can go beyond addressing individual complaints and advocate for systemic changes to prevent future injustices. Engaging with vulnerable groups, and confronting prejudice and discrimination, are essential to fostering an inclusive society. The tremendous benefit of this institution will be that, as the guardian and voice of the people, their

investigations and recommendations will ensure transparency, accountability, and good governance.

2017 vs 2023

The objectives of the Bill we debate today are to —

- (a) promote transparency, accountability and integrity in the administration and decision making of authorities; and
- (b) ensure the protection of fundamental rights and freedoms and international human rights as the foundation of a fair and just society.

In October 2017, the former administration tabled the Ombudsman Bill. Unlike the Bill we debate today, the objects of the 2017 Bill was to establish an Office of Ombudsman in The Bahamas to:

- a) investigate any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority; and
- b) make recommendations pursuant to an investigation to the authority concerning any administrative action that formed the subject of the investigation; and generally, about ways of improving its administrative practices and procedures.

The 2017 Bill was withdrawn as it provided a legal basis that is only partially compliant with the Paris Principles. The Paris Principles regulate to the status and functioning of national institutions for the protection and promotion of human rights.

Incorporation of Paris Principles – NHRI Hybrid Approach

Allow me to explain, and this will help us understand how the Ombudsman Bill we debate today is a more comprehensive

piece of legislation that ensures our international compliance with international obligations we have committed to.

The Ombudsman Bill is intended to utilize an ombudsman model National Human Rights Institute structure where the Ombudsman institution will not only be empowered to investigate complaints relating to maladministration but also breaches of fundamental human rights by a government authority. The existence of a Paris Principles compliant NHRI is an indication that a country is actively protecting human rights by receiving, investigating, and resolving complaints, mediating conflicts and monitoring activities; and promoting human rights through education, outreach, the media, publications, training as well as advising and assisting the Government. A Paris Principles compliant NHRI is also an indicator under the Sustainable Development Goals, to measure a country's

progress in implementing the 2030 Agenda. The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. The Ombudsman Bill, 2023 achieves these important human rights goals.

National Human Rights Institutions are State bodies with a constitutional and/or legislative mandate to protect and promote human rights. NHRIs that are compliant with the Paris Principles are the cornerstone of national human rights protection systems and, increasingly, serve as relay mechanisms between international human rights norms and the State. They are not under the direct authority of the executive, legislature, or judiciary although they are, as a rule, accountable to the legislature either directly or indirectly. Although the Paris

Principles set out the minimum standards for the roles and responsibilities of NHRIs, they do not dictate the NHRI models or structures.

Hybrid model institutions, like what we put forward in this Ombudsman Bill, are single State institutions with multiple mandates. They deal with human rights, but may also address maladministration, corruption or environmental matters. In Latin American countries, for instance, the practice has been to create a single institution that combines human rights and traditional ombudsman functions. These types of models usually share the same attributes as the Ombudsman-like NHRIs. Hybrid institutions have the additional advantage of an integrated mandate: they provide a “one-stop” service cross a range of issues. They offer economies of scale and avoid additional infrastructure costs. Finally, hybrid NHRIs leverage synergies

and can work more cooperatively on complaints that straddle several issues. These aspects are what differentiate the Bill we debate today with the one the former administration tabled, and later withdrew in 2017.

Ombudsman Bill 2023

In designing the Ombudsman Bill around compliance with the Paris Principles we considered the following three criteria:

(i) Competence and mandate

The Ombudsman Bill, 2023 seeks to establish the Office of the Ombudsman

(a) to investigate any administrative action of an authority for the purpose of deciding whether there is evidence of maladministration on the part of the authority;

(b) to make recommendations pursuant to an investigation to the authority concerning any administrative practices and procedures.

The definition of ‘maladministration includes an “administrative action that is (i) contrary to law; (ii) unfair, oppressive or improperly discriminatory or based on procedures that are unfair, oppressive or improperly discriminatory;”’.

(ii) Composition and pluralism

The First Schedule of the Bill deals with the Constitution of the Office of the Ombudsman. Clause 6 of the First Schedule provides for the appointment of public officers to assist the Ombudsman in discharging his functions. It further provides for the engagement from time to time of technical or professional advisers that the Ombudsman deems necessary. This provision

provides for pluralist representation of the social forces (of civilian society), in keeping with the Paris Principles.

(iii) Autonomy and independence

The Bill provides for autonomy and independence in the following ways:

- (a) Legal autonomy (cl. 4);
- (b) Financial autonomy (cl. 23);
- (c) Appointment and dismissal procedures (cl. 4(2) and Sch., para. 1(6) and (7), respectively);
- (d) Method of appointment (cl. 4(2));
- (e) Criteria for appointment (cl. 4(3) and Sch., para 2);
- (f) Duration of appointment and reappointment (Sch. Para 1(1));
- (g) Dismissal of members (Sch. Para 1(5)); and
- (h) Privileges and immunities (cl. 21).

The Ombudsman is appointed by the Governor General on recommendation from a bi-partisan committee. An Ombudsman must be a person qualified for appointment as a Justice of the Supreme Court. The Ombudsman must be independent of government, and thus The Ombudsman shall not be a public officer and must not hold any other office. The overall functions of the Ombudsman are to enquire into and investigate any administrative action by an authority for the purpose of deciding whether there is evidence of —

- (i) maladministration; or
- (ii) breach of fundamental rights and freedoms;

It is important to highlight that the Ombudsman authorities extend to actions or inactions by an authority only which includes:

- (a) public entity;
- (b) Government Business Enterprise;
- (c) local government;
- (d) any company registered under the Companies Act (Ch. 308),
being a company in which the Government or an agency of
Government holds not less than forty-nine per centum of the
ordinary shares;
- (e) any other body —
 - (i) which is established by Act of Parliament ; or
 - (ii) whose revenues are wholly or partially derived from public
resources (as the term is defined in the Public Finance
Management Act, 2023 No. 4 of 2023)

The Ombudsman shall have investigative powers and shall receive complaints from the affected parties. The Ombudsman may also determine a complaint by mediation if he is of the

opinion, having regard to all the circumstances of the case, that mediation is suitable. This is important as in many disputes mediation can reach an acceptable resolution without prolonged and at time inconvenient investigations.

In conducting an investigation, the Ombudsman shall have the powers of a Justice of the Court to summon, compel the attendance and examination of persons, the production of documents or things, and the power to administer oaths and affirmations.

If at the conclusion of an investigation, the Ombudsman determines that there is no evidence of maladministration or in his opinion there is no breach of fundamental rights and freedoms on the part of the authority, he shall as soon as is reasonable and in any case not more than ninety days after his

conclusion record his decision and reasons in writing; and notify both the complainant and the authority of his decision and reasons.

If at the conclusion of an investigation, the Ombudsman decides that there is evidence of maladministration on the part of the authority, the Ombudsman shall report his decision to the authority and the complainant in writing as soon as is reasonable, and in any case not more than ninety days after such decision, make such recommendation to the authority as he sees fit. The authority shall notify the Ombudsman in writing, within twenty-one days of receipt of the recommendation, of the action taken or proposed to be taken to give effect to the recommendation.

Where an Ombudsman has made a recommendation, and the authority fails to comply with the recommendation or has taken action that is inadequate or inappropriate, the Ombudsman shall prepare a special report on the investigation. The Ombudsman shall deliver a special report made under this section to the —

Speaker of the House of Assembly;

Governor-General;

President of the Senate; and

Minister charged with responsibility for the authority.

It is important to note that in the Second Schedule are a list of matters that are not subject of an investigation by the Ombudsman. These are generally matters that are listed because of public policy, or because there are subject of the courts or other legal adjudication.

Conclusion

The Ombudsman Bill is a commitment of our pledge of good governance and providing a mechanism for the general public to seek recourse when they are subjected to maladministration or breaches of human rights by government enterprise. This is a fundamental shift on how the general public and government will interact. We emphasize that the structure of the Ombudsman Bill as a hybrid approach to a NHRI in conformance with the Paris Principles is also a fundamental shift. The Ombudsman is given the function to receive and investigate authorities regarding human rights related matters. We believe this is the best approach and an approach that gives the greatest level of empowerment to our people.