



CANADA
PRIVY COUNCIL • CONSEIL PRIVÉ

P.C. 2020-703
September 30, 2020

Whereas, by Order in Council P.C. 2007-828 of May 24, 2007, the terms and conditions of employment of the special adviser to the Minister of National Revenue, to be known as the Taxpayers' Ombudsman, were established;

Whereas, by Orders in Council P.C. 2007-1117 of June 29, 2007 and P.C. 2011-33 of February 1, 2011, certain terms and conditions of employment of that special adviser were amended;

And whereas it is desirable to change the English version of the name by which that special adviser is to be known and to further amend those terms and conditions of employment;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister,

- (a) changes the English version of the name by which the special adviser to the Minister of National Revenue, who may be appointed by the Governor in Council under paragraph 127.1(1)(c) of the *Public Service Employment Act*, is to be known to the Taxpayers' Ombudsperson; and
- (b) replaces the schedule to Order in Council P.C. 2007-828 of May 24, 2007, as amended by Orders in Council P.C. 2007-1117 of June 29, 2007 and P.C. 2011-33 of February 1, 2011, with the annexed schedule.

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CLERK OF THE PRIVY COUNCIL—GREFFIER DU CONSEIL PRIVÉ

SCHEDULE

Terms and Conditions of Employment of the Taxpayers' Ombudsperson

Definitions

1 The following definitions apply in this schedule.

Act means the *Canada Revenue Agency Act.* (Loi)

Agency means the Canada Revenue Agency continued under subsection 4(1) of the Act. (Agence)

Board of Management means the Board of Management of the Agency established by section 14 of the Act. (conseil de direction)

Minister means the Minister of National Revenue. (ministre)

Ombudsperson means the Taxpayers' Ombudsperson. (ombudsman)

program legislation has the same meaning as in section 2 of the Act but also includes any legislation administered or enforced by the Agency on behalf of a provincial government, aboriginal government, public body performing a function of government in Canada or other agency or department of the Government of Canada. (législation fiscale)

taxpayer means a person who, under the program legislation, is liable to pay a tax, is eligible to receive an amount as a benefit or is provided with a service by the Agency. (contribuable)

Appointment

2 The Ombudsperson is appointed by the Governor in Council for a non-renewable term of five years, and may only be removed for cause by the Governor in Council.

Staff

3 The staff of the Office of the Taxpayers' Ombudsperson are appointed in accordance with the Act and are employees of the Agency.

Mandate

4 (1) The mandate of the Ombudsperson is to assist the Minister with and advise and inform the Minister about any matter relating to services provided to a taxpayer by the Agency.

(2) In carrying out the mandate, the Ombudsperson must

- (a) review and deal with any request for a review made by a taxpayer or their representative about a service matter or a matter arising from the application of any of sections 5, 6, 9 to 11 and 13 to 15, set out before the heading "Commitment to Small Business", of the *Taxpayer Bill of Rights*;
- (b) identify and review systemic and emerging issues related to service matters that have a negative impact on taxpayers;
- (c) identify opportunities for service improvement;
- (d) facilitate the access of taxpayers to redress mechanisms within the Agency, for the purpose of addressing service matters; and
- (e) provide information to taxpayers about the mandate of the Ombudsperson.

Limitations on Authority

- 5 (1) The Ombudsperson must not review any matter that arose before May 24, 2006, unless the Minister requests that the Ombudsperson do so.
- (2) The Ombudsperson must not review
 - (a) the administration or enforcement of the program legislation unless the review relates to service matters;
 - (b) Government of Canada legislation or policy or Agency policy, unless the legislation or policy relates to service matters;
 - (c) a request for review arising from the application of a provision of the *Taxpayer Bill of Rights* that is not referred to in paragraph 4(2)(a);
 - (d) an administrative interpretation provided by the Agency of a provision set out in the program legislation;
 - (e) any decision of or proceeding before a court;
 - (f) legal advice provided to the Government of Canada; or
 - (g) confidences of the Queen's Privy Council for Canada.

Requests for Review

- 6 (1) The Ombudsperson must review any matter within the Ombudsperson's mandate at the request of the Minister.
- (2) The Ombudsperson may review any matter within the Ombudsperson's mandate on the Ombudsperson's own initiative or on receipt of a request from a taxpayer or their representative.

(3) The Ombudsperson may

- (a) refuse to deal with a request for review, except if the request is made by the Minister;
- (b) determine how a review is to be conducted; and
- (c) determine whether a review should be terminated before completion.

(4) In exercising the discretion set out in subsection (3), the Ombudsperson must consider factors such as

- (a) the age of the request or issue;
- (b) the amount of time that has elapsed since the requester became aware of the issue;
- (c) the nature and seriousness of the issue;
- (d) the question of whether the request was made in good faith; and
- (e) the findings of other redress mechanisms with respect to the request.

7 (1) The Ombudsperson may only review a request if the requester has exhausted the available redress mechanisms, unless there are compelling circumstances.

(2) To determine whether there are compelling circumstances, the Ombudsperson must consider factors such as

- (a) whether the request raises systemic issues;
- (b) whether exhausting the redress mechanisms will cause undue hardship to the requester; and
- (c) whether exhausting the redress mechanisms is unlikely to produce a result within a period of time that the Ombudsperson considers reasonable.

8 The Ombudsperson must inform the requester of the results of the review or any action taken to respond to their request, at the time and in the manner chosen by the Ombudsperson.

Accountability and Annual Report

9 (1) The Ombudsperson reports directly to and is accountable to the Minister.

(2) The Ombudsperson must submit to the Minister and to the Chair of the Board of Management an annual report on the activities of the Taxpayers' Ombudsperson, which must contain information regarding the carrying out of the Ombudsperson's mandate in the previous fiscal year and statistics related to those activities for that year. The Minister must cause a copy of the annual report to be tabled in each House of Parliament.

(3) If it appears to the Ombudsperson that information in an annual report could reflect adversely on any person or organization, the Ombudsperson must give those affected an opportunity to comment and must include an accurate summary of the comments in the report. With respect to the inclusion of any personal information in the annual report, the Ombudsperson must comply with the relevant provisions of the *Access to Information Act*, of the *Privacy Act* and of any other applicable Act of Parliament.

(4) The Ombudsperson must publish the annual report as soon as it has been tabled by the Minister.

Other Reports and Recommendations

¹⁰ (1) The Ombudsperson may, at any time, issue reports, with or without recommendations, concerning any review or other matter that is within the Ombudsperson's mandate. Recommendations contained in a report may be made to the Minister or to the Minister and the Chair of the Board of Management.

(2) The Ombudsperson's recommendations are not binding.

(3) The Ombudsperson may request from the Agency a management response that indicates what action is contemplated or being taken with respect to the report's recommendations or explains why the recommended action will not be taken. If the management response is considered unacceptable or is not received within a reasonable time, the Ombudsperson may submit the report to the Minister or to the Minister and the Chair of the Board of Management.

(4) The Ombudsperson may publish any report, other than the annual report, at any time after the 60th day after the day on which it is submitted to the Minister.

(5) If it appears to the Ombudsperson that information in a report could reflect adversely on any person or organization, the Ombudsperson must give those affected an opportunity to comment and must include an accurate summary of the comments in the report. With respect to the inclusion of any personal information, the Ombudsperson must comply with the relevant provisions of the *Access to Information Act*, of the *Privacy Act* and of any other applicable Act of Parliament.

(6) The Ombudsperson must attempt to resolve all matters within the Ombudsperson's mandate at the level at which they can most effectively be resolved and, when doing so, must communicate with any officials identified by the Agency.

Confidentiality

¹¹ (1) The Ombudsperson and their staff must not disclose any information that is obtained by or on behalf of the Ombudsperson or is prepared from that information unless, in the case of information concerning a taxpayer, the taxpayer consents in writing to its disclosure.

- (2) Despite subsection (1), the Ombudsperson and their staff
 - (a) may disclose information that does not, directly or indirectly, reveal the identity of the taxpayer to whom it relates; and
 - (b) if required by an Act of Parliament to do so, must disclose information in accordance with and for the purposes of that Act.