

ORDER IN COUNCIL

Whereas, pursuant to paragraph 127.1(1)(c) of the *Public Service Employment Act*, the Governor in Council may appoint a special adviser to a minister;

And whereas the Governor in Council deems it necessary that there be a special adviser to the Minister of National Revenue acting as the ombudsman for taxpayers;

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby sets out in the annexed schedule the terms and conditions of employment of the special adviser to the Minister of National Revenue, to be known as the Taxpayers' Ombudsman, who may be appointed by the Governor in Council under paragraph 127.1(1)(c) of the *Public Service Employment Act*.

SCHEDULE

INTERPRETATION

1. The following definitions apply in this schedule.

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

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

"Minister" means the Minister of National Revenue. (ministre)

"Ombudsman" means the Taxpayers' Ombudsman. (ombudsman)

"program legislation" means program legislation as defined in section 2 of the *Canada Revenue Agency Act* and 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 a service by the Agency. (contribuable)

APPOINTMENT

2. The Ombudsman shall be appointed by the Governor in Council for a term of five years, which term may not be renewed, and may only be removed for cause by the Governor in Council.¹

STAFF AND SUPPORT

3. The staff of the Office of the Taxpayers' Ombudsman shall be employed pursuant to the *Canada Revenue Agency Act* and shall be within the Agency.

MANDATE

4. (1) The mandate of the Ombudsman shall be to assist, advise and inform the Minister about any matter relating to services provided to a taxpayer by the Agency.

(2) In discharging the mandate, the Ombudsman shall

(a) review and address any request for a review made by a taxpayer or their representative about a service matter or a matter arising from the application of the provisions of sections 5 and 6, 9 to 11 and 13 to 15 of the Taxpayer Bill of Rights;

(b) identify and review systemic and emerging issues related to service matters that impact negatively on taxpayers;

(c) facilitate access by taxpayers to redress mechanisms within the Agency to address service matters; and

(d) provide information to taxpayers about the mandate of the Ombudsman.

LIMITATIONS ON AUTHORITY

5. (1) The Ombudsman shall not review any matter that arose more than one year before the day on which the Office of the Taxpayers' Ombudsman is established, unless the Minister requests that the Ombudsman do so.

(2) The Ombudsman shall not review

(a) the administration or enforcement of program legislation other than to the extent that the review relates to service matters;

(b) Government of Canada legislation or policy or Agency policy, other than to the extent that the legislation or policy relates to service matters;

(c) a request for a 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) the provision of an administrative interpretation by the Agency of a provision set out in the program legislation;

(e) any decision of, proceeding in or matter before, a court;

(f) legal advice provided to the Government of Canada; and

(g) confidences of the Queen's Privy Council for Canada.

REQUESTS FOR REVIEW

6. (1) The Ombudsman shall review any issue within the Ombudsman's mandate at the request of the Minister.

(2) The Ombudsman may review any issue within the Ombudsman's mandate on the Ombudsman's own initiative or on receipt of a request from a taxpayer or their representative.

(3) The Ombudsman 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 Ombudsman shall consider such factors 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 Ombudsman shall 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 Ombudsman shall consider such factors as whether

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

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

ACCOUNTABILITY AND ANNUAL REPORT

9. (1) The Ombudsman shall report directly to and be accountable to the Minister.

(2) The Ombudsman shall, before December 31 of each year following the first full year of operations of the Office of the Taxpayers' Ombudsman, submit an annual report on the activities of the Office to the Minister and to the Chair of the Board of Management for the preceding fiscal year. The Minister shall cause a copy of the annual report to be tabled in each House of Parliament.

(3) The Ombudsman shall publish an annual report as soon as it has been tabled by the Minister.

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

OTHER REPORTS AND RECOMMENDATIONS

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

(2) The Ombudsman shall attempt to resolve all issues within the Ombudsman's mandate at the level at which they can most efficiently and effectively be resolved and shall, in so doing, communicate with any officials that may be identified by the Agency.

(3) The Ombudsman's recommendations are not binding.

(4) The Ombudsman may request a management response from the Agency 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 Ombudsman may submit the report to the Minister or to the Minister and the Chair of the Board of Management.

(5) The Ombudsman may publish any report, other than the annual report, on the expiry of 60 days after it has been submitted to the Minister.

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

CONFIDENTIALITY

11. (1) The Ombudsman and any person acting on the Ombudsman's behalf shall not disclose information of any kind that is obtained by or on behalf of the Ombudsman, or prepared from information obtained by or on behalf of the Ombudsman unless, in the case of information concerning a taxpayer, the taxpayer consents in writing to its disclosure.

(2) Despite subsection (1), the Ombudsman and any person acting on the Ombudsman's behalf

(a) may disclose information that does not, directly or indirectly, reveal the identity of the taxpayer to whom it relates; and

(b) shall disclose information if required by an Act of Parliament to disclose information but only in accordance with, and for the purposes of, that Act.

ORDER IN COUNCIL

(AMENDS ORDER IN COUNCIL P.C. 2007-0828)

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

And whereas it is desirable to amend those terms and conditions of employment;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby amends the schedule to Order in Council P.C. 2007-828 of May 24, 2007 by replacing section 2 with the following:

2. The Ombudsman shall be appointed by the Governor in Council for a term of five years, which term may not be renewed, and may only be removed for cause by the Governor in Council.

This Order takes effect on February 18, 2011.

ⁱ Original section 2 text: The Ombudsman shall be appointed by the Governor in Council for a term of three years, which term may be renewed, and may only be removed for cause by the Governor in Council.