

Department of Defence

MILITARY OMBUD BILL 2011

16 November 2011

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AIM

To brief the Select Committee on origin and objectives of the Military Ombud Bill.

BACKGROUND

May 1996 White Paper on Defence states that:” *The Department of Defence supports the creation of the post of Military Ombudsperson whose main duties are to monitor adherence to democratic civil-military relations, and undertake investigations at request of Parliament, and investigate complaints against SANDF by*

BACKGROUND CONT.

military personnel members and members of public. The Ombudsperson would be an independent who is appointed by, and reports to Parliament. The powers and functions of the Ombudsperson would be spelt out in the legislation”

BACKGROUND CONT.

Defence Review 1998 reiterates the need for the Ombudsman and provides that:

“The White Paper on Defence motivates for a Military Ombudsperson inter alia to investigate complaints against the SANDF by military personnel. It is envisaged that the ombudsperson will address any military personnel matters which can't be resolved through the already existing mechanisms

BACKGROUND CONT.

Notwithstanding these policy statements the DOD and the Public Protector came to an arrangement that a military investigator be appointed within the Public Protector to investigate military complaints.

The PCD, expressed dissatisfaction with the arrangement and commenced a series of consultation within both the DOD and PP to canvass opinions on this issue. The DOD and PP, at the time, maintained they were content with the arrangement.

BACKGROUND CONT.

The series of consultations resulted in the current Bill before the Select Committee.

BILL

The Bill establishes the Office of the Military Ombud and sets requirements for appointment to the Office. The Bill further provides for the appointment, functions and powers of the Military Ombud and his or her Deputy.

Establishment & Objects of the Bill

- Sec 2: establishes the Office of the Military Ombud and empowers the Ombud, in consultation with the Minister, to determine the seat of the Office.
- Sec 3: sets out the object of the Office which is to investigate and ensure that complaints are resolved in a fair, economical and expeditious manner.

Mandate of the Office

- Sec 4: Mandate of the Office of Military Ombud is to investigate complaints lodged in writing by members/former members regarding conditions of service, and members of the public regarding the official conduct of a member of Defence Force

Appointment and Removal

Sec 5: The President appoints the Ombud on recommendation of National Assembly, and in consultation with the Ombud, the President appoints the Deputy Ombud.

NA recommends a person nominated by PCD.

The Ombud must possess knowledge of the Constitution and have legal knowledge, he must have knowledge or experience of military or public service of at least 10 years.

The Ombudsman is appointed for non-renewable term of seven years

The President determines the remuneration and other conditions of employment with concurrence of the Minister of Finance;

Appointment and Removal Cont.

The Deputy Ombud may be removed from Office by the President on grounds of misconduct, incapacity or incompetence. President must afford Deputy Ombud a reasonable opportunity to be heard.

The Ombud may be removed from office on a finding to that effect by PCD, and on adoption by NA of a resolution calling for the removal of the Ombud from office.

Resolution must be adopted with a supporting vote of a majority of the members of the National Assembly.

Powers and Functions of Ombud

Sec 6: sets out powers and functions of the Ombud and the Deputy Ombud.

Ombud investigates complaints fairly and expeditiously without fear or prejudice.

Ombud must inform all interested parties to the complaint before conducting investigations.

Ombud may summon any person to give evidence.

Ombud may confirm or dismiss the complaint, or issue alternative resolution.

Limitation on Jurisdiction S7

Sec 7: deals with limitation of jurisdiction of the Ombud

The Ombud may not investigate complaints relating to:

- Military judicial officer's performance;
- Pending matters before military or civil court;
- Matter finalised by civil or military court.

The Ombud may refuse to deal with:

- Frivolous complaints,
- complaint that may undermine channel of command
- "Prescribed" complaints
- Complaint subject to other disputed resolution mechanisms
- Complainant who did not subject his complaint to Grievance Regulations

Independence and Impartiality

Sec 8: Provides for independence and impartiality of the Office.

- Ombud and the staff must perform their functions in good faith and without fear, favour, bias or prejudice, subject to the Constitution and the law
- Minister must assist Ombud to protect independence and impartiality and dignity of the Office
- Employees and members must cooperate with Ombud
- Office must preserve confidentiality of any information acquired in performance of its functions

Staff of the Ombud's Office

Sec 9: Staff of the Office of Military Ombud

- Ombud is empowered to appoint staff to assist him in the performance of his functions
- Staff of Ombud must be issued with grading of security clearance by Intelligence Division of Defence Force
- Ombud, with concurrence of Minister and the Minister of Finance, determines the remunerations and other terms and conditions of service of the staff.

Finances, Reporting and Review

Sec 10: Provides for the finances and accountability.

- Funded from monies appropriated by Parliament for that purpose

Sec 11: Reporting

- Ombud reports to the Minister, and the Minister must table the Report in Parliament.

Sec 13: Review

- Decision of the Ombud is reviewable by High Court

Offences and Penalties

Section 14: Anyone who hinders or obstructs the Ombud or staff in performance of their duties commits an offence, liable on conviction to period not exceeding 12 or fine or both.

Anyone who fails to preserve confidentiality in respect of information of the office is liable on conviction to period not exceeding 24 or fine or both.

CONCLUSION

An institution of this nature is not new in the Public Service:

- Independent Complaints Directorate for SAPS investigates complaints from public regarding police conducts and incidents of death in custody.

Internationally, Canada has an institution of similar nature. The Ombudsman Office in Canada is tasked with the responsibility to review and investigate concerns and complaints from current and former Canadian Forces members, departmental employees and their immediate family members who believe that they have been treated improperly or unfairly by the Department of National Defence or Canadian Forces

END

THANK YOU