

# *The Ombudsman and Children's Advocate Act*

*Repealed*

Chapter O-3.2\* of *The Statutes of Saskatchewan, 2012*  
(effective September 1, 2012).

*Formerly*

Chapter O-4 of *The Revised Statutes of Saskatchewan, 1978*  
(effective February 26, 1979) as amended by *The Revised Statutes  
of Saskatchewan, 1978 (Supplement)*, c.49; and the *Statutes of  
Saskatchewan, 1979*, c.49; 1990-91, c.35; 1991, c.T-1.1; 1992,  
c.59; 1994, c.7; 1998, c.P-30.11 and c.P-42.1; 2000, c.20; 2002,  
c.7; and 2004, c.5 and 65.

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER O-4

### An Act to Appoint an Ombudsman and a Children's Advocate and to Define their Duties, Functions and Powers

#### PART I

#### Short Title and Interpretation

##### Short title

**1** This Act may be cited as *The Ombudsman and Children's Advocate Act*.

1994, c.7, s.5.

##### Interpretation

**2** In this Act:

(a) **“agency of the government”** means any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which:

(i) are appointed by an Act or by an order of the Lieutenant Governor in Council; or

(ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;

(b) **“child”** means a person under 18 years of age and includes a person 18 years of age or more who is receiving services pursuant to the *Youth Criminal Justice Act* (Canada), *The Youth Justice Administration Act* or section 56 of *The Child and Family Services Act*;

(c) **“Children's Advocate”** means the Children's Advocate appointed pursuant to section 12.1;

(d) **“department”** means a department or branch of the Government of Saskatchewan;

(e) **“minister”** means a member of the Executive Council.

1994, c.7, s.6; 2000, c.20, s.3; 2004, c.65, s.20.

## PART II Ombudsman

### Appointment

**3(1)** There shall be appointed, as an officer of the Legislature, a commissioner for investigation to be called an Ombudsman.

(2) Subject to section 5, the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint the Ombudsman.

(3) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for a term of five years from the date of his appointment and may be reappointed for one additional term of five years.

(4) The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province.

R.S.S. 1978, c.O-4, s.3; 1992, c.59, s.3.

### Removal or suspension

**4** The Lieutenant Governor in Council on a resolution of the Assembly shall remove the Ombudsman from his office or suspend him according to the resolution.

R.S.S. 1978, c.O-4, s.4.

### Suspension when Legislature not in session

**5(1)** When the Legislature is not in session the Lieutenant Governor in Council may suspend the Ombudsman for incapacity to act, neglect of duty or misconduct proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next ensuing session of the Legislature.

(2) Where the office of Ombudsman is vacant or the Ombudsman is suspended under subsection (1), the Lieutenant Governor in Council shall appoint an acting Ombudsman to hold office until a person is appointed as Ombudsman under section 3 or the suspension has been dealt with by the Assembly.

R.S.S. 1978, c.O-4, s.5; 2000, c.20, s.4.

### Salary of the Ombudsman

**6(1)** Subject to subsections (2) and (3), the Ombudsman is to be paid a salary equal to the average salary of all the deputy ministers and acting deputy ministers of the Government of Saskatchewan calculated as at April 1 in each year.

(2) Any benefits or payments that may be characterized as deferred income, retirement allowances, separation allowances, severance allowances or payments in lieu of notice are not to be included in calculating the average salary of all the deputy ministers and acting deputy ministers pursuant to subsection (1).

(3) If, as a result of a calculation made pursuant to subsection (1), the salary of the Ombudsman would be less than the Ombudsman's previous salary, the Ombudsman is to be paid not less than his or her previous salary.

(4) The Ombudsman is entitled to receive any benefits of office and economic adjustments that are provided generally to deputy ministers.

(5) The Ombudsman is entitled to be paid an allowance for travel and other expenses incurred in the performance of the duties of the Ombudsman at a rate approved pursuant to *The Public Service Act, 1998* for employees of the public service.

(6) The salary of the Ombudsman shall be paid out of the general revenue fund.

2002, c.7, s.3.

**Application of certain Acts to Ombudsman and staff**

7(1) The Ombudsman is not subject to *The Public Service Act, 1998*, except section 32 of that Act.

(2) The Ombudsman is subject to *The Public Service Superannuation Act* and *The Superannuation (Supplementary Provisions) Act*.

(3) The staff for the Ombudsman is to consist of those persons or positions that are required for the proper administration of this Act.

(4) *The Public Service Act, 1998*, *The Public Service Superannuation Act* and *The Superannuation (Supplementary Provisions) Act* apply to the members of the staff of the Ombudsman.

1998, c.P-42.1, s.42.

**Oath of office**

8 The Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

**OATH OF OFFICE**

"I, \_\_\_\_\_, do swear that I will faithfully and impartially perform and discharge the duties and functions of Ombudsman and that I will not, except as provided in *The Ombudsman and Children's Advocate Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act".

R.S.S. 1978, c.O-4, s.8; 1994, c.7, s.9.

**Same**

**9** Every member of the staff of the Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Ombudsman the following oath:

**OATH OF OFFICE**

"I, \_\_\_\_\_, do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Ombudsman and that I will not, except as provided in *The Ombudsman and Children's Advocate Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act".

R.S.S. 1978, c.O-4, s.9; 1994, c.7, s.10.

**Secrecy**

**10(1)** The Ombudsman and every member of his staff shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his powers and the carrying out of his duties and functions under this Act.

(2) Notwithstanding subsection (1) or any oath taken under this Act, the Ombudsman may disclose in a report made by him under this Act any matter that he considers necessary to disclose in order to establish grounds for his conclusions and recommendations.

R.S.S. 1978, c.O-4, s.10.

**Delegation of powers**

**11(1)** The Ombudsman may, by writing under his hand, delegate to any member of his staff any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

(2) A delegation may be made to a specified person of the staff of the Ombudsman or to the holder for the time being of a specified office or to the holders of offices of a specified class of the staff.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit and may be made either generally or in relation to a particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and where the Ombudsman who made the delegation ceases to hold office the delegation shall continue to have effect as if it was made by his successor.

(6) Where the Ombudsman has delegated a power under this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his authority to exercise the power.

R.S.S. 1978, c.O-4, s.11; 1992, c.59, s.5.

**Powers, functions and duties**

**12(1)** It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

(2) The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1).

(2.1) The Ombudsman may waive the requirement that a complaint pursuant to subsection (2) be in writing where, in his or her opinion, the circumstances warrant a waiver.

(3) A committee of the Assembly may at any time refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration and the Ombudsman shall:

- (a) subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and
- (b) make such report to the committee as he thinks fit.

(4) The Lieutenant Governor in Council may at any time refer to the Ombudsman for investigation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof and the Ombudsman shall:

- (a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and
- (b) make such report to the Lieutenant Governor in Council as he thinks fit.

(5) The Ombudsman may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches.

(6) The Ombudsman may become involved in public education for the purpose of informing the public about the powers and duties of the Ombudsman.

### PART III Children's Advocate

#### Appointment of Children's Advocate

**12.1(1)** There shall be appointed, as an officer of the Legislature, a Children's Advocate.

(2) Subject to section 12.21, the Lieutenant Governor in Council, on the recommendation of the Assembly, shall appoint the Children's Advocate.

(3) Unless he or she resigns, dies or is removed from office, the Children's Advocate holds office for a term of five years.

(4) The Children's Advocate may be reappointed for one additional term of five years.

(5) The Children's Advocate may, at any time, resign his or her office by writing to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province.

1994, c.7, s.12.

**12.11 Repealed.** 2000, c.20, s.7.

#### Removal or suspension

**12.2** The Lieutenant Governor in Council, on a resolution of the Assembly shall remove the Children's Advocate from his or her office or suspend him or her according to the resolution.

1994, c.7, s.12.

#### Suspension when Legislature not in session

**12.21(1)** When the Legislature is not in session, the Lieutenant Governor in Council may suspend the Children's Advocate for incapacity to act, neglect of duty or misconduct proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next session of the Legislature.

(2) Where the office of Children's Advocate is vacant or the Children's Advocate is suspended pursuant to subsection (1), the Lieutenant Governor in Council shall appoint an acting Children's Advocate to hold office until a person is appointed as Children's Advocate pursuant to section 12.1 or the suspension has been dealt with by the Assembly.

1994, c.7, s.12; 2000, c.20, s.8.

#### Salary of the Children's Advocate

**12.3(1)** Subject to subsections (2) and (3), the Children's Advocate is to be paid a salary equal to the average salary of all the deputy ministers and acting deputy ministers of the Government of Saskatchewan calculated as at April 1 in each year.

(2) Any benefits or payments that may be characterized as deferred income, retirement allowances, separation allowances, severance allowances or payments in lieu of notice are not to be included in calculating the average salary of all the deputy ministers and acting deputy ministers pursuant to subsection (1).



- (3) If, as a result of a calculation made pursuant to subsection (1), the salary of the Children's Advocate would be less than the Children's Advocate's previous salary, the Children's Advocate is to be paid not less than his or her previous salary.
- (4) The Children's Advocate is entitled to receive any benefits of office and economic adjustments that are provided generally to deputy ministers.
- (5) The Children's Advocate is entitled to be paid an allowance for travel and other expenses incurred in the performance of the duties of the Children's Advocate at a rate approved pursuant to *The Public Service Act, 1998* for employees of the public service.
- (6) The salary of the Children's Advocate shall be paid out of the general revenue fund.

2002, c.7, s.3.

#### **Appointment of staff and application of certain Acts**

**12.31(1)** The Children's Advocate may appoint the employees that are required in order to carry out the duties and responsibilities of the Children's Advocate effectively.

(2) *The Public Service Act, 1998, The Public Service Superannuation Act and The Superannuation (Supplementary Provisions) Act* apply to the persons appointed pursuant to subsection (1).

(3) The Children's Advocate is not subject to *The Public Service Act, 1998*, except section 32 of that Act.

(4) The Children's Advocate is subject to *The Public Service Superannuation Act and The Superannuation (Supplementary Provisions) Act*.

1998, c.P-42.1, s.42.

#### **Oath of office**

**12.4** The Children's Advocate shall, before entering on the duties of his or her office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

#### **OATH OF OFFICE**

"I, \_\_\_\_\_, do swear that I will faithfully and impartially perform and discharge the duties and functions of the Children's Advocate and that I will not, except as provided in *The Ombudsman and Children's Advocate Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions pursuant to that Act".

1994, c.7, s.12.

**Oath of office re staff**

**12.41** Every person appointed pursuant to section 12.31 shall, before entering on the duties of his or her office, take and subscribe before the Children's Advocate the following oath:

**OATH OF OFFICE**

"I, \_\_\_\_\_, do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Children's Advocate and that I will not, except as provided in *The Ombudsman and Children's Advocate Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions pursuant to that Act".

1994, c.7, s.12.

**Confidentiality**

**12.5(1)** The Children's Advocate and every member of his or her staff shall maintain confidentiality in respect of all matters that come to his or her knowledge in the performance of duties or the exercise of powers pursuant to this Act, and shall not disclose any matter except as provided in this Act.

(2) In the performance of his or her duties or in the exercise of his or her powers, the Children's Advocate may disclose any matter, subject to this section, that the Children's Advocate considers necessary.

(3) Any report the Children's Advocate makes pursuant to this Act shall not disclose the name of or any identifying information about any child involved in an investigation, any parent or guardian of the child or any complainant, except where, in the Children's Advocate's opinion, the interests of any of the following clearly outweigh any invasion of privacy that could result from the disclosure:

- (a) the public;
- (b) any department or agency of the government;
- (c) any person.

(4) Notwithstanding anything else in this section, the Children's Advocate shall not disclose information relating to the granting of an order of adoption unless authorized or permitted to do so pursuant to *The Adoption Act, 1998*.

1994, c.7, s.12; 2004, c.5, s.4.

**Delegation of powers**

**12.51(1)** The Children's Advocate may, in writing, delegate to any member of his or her staff any of his or her powers pursuant to this Act except the power of delegation pursuant to this section and the power to make a report pursuant to this Act.

(2) A delegation may be made to a specified person of the staff of the Children's Advocate or to the holder, for the time being, of a specified office or to the holders of offices of a specified class of the staff.

- (3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Children's Advocate.
- (4) A delegation may be made subject to those restrictions and conditions that the Children's Advocate thinks fit and may be made either generally or in relation to a particular case or class of cases.
- (5) Until a delegation is revoked, it continues in force according to its tenor, and where the Children's Advocate who made the delegation ceases to hold office, the delegation continues to have effect as if it were made by his or her successor.
- (6) Where the Children's Advocate has delegated a power pursuant to this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his or her authority to exercise the power.

1994, c.7, s. 12.

**Powers and responsibilities**

**12.6(1)** The Children's Advocate has the power to do all things necessary to carry out the responsibilities given to the Children's Advocate pursuant to this Act.

- (2) The Children's Advocate shall:
  - (a) become involved in public education respecting the interests and well-being of children;
  - (b) receive, review and investigate any matter that comes to his or her attention from any source, including a child, concerning:
    - (i) a child who receives services from any department or agency of the government;
    - (ii) a group of children who receive services from any department or agency of the government; and
    - (iii) services to a child or to a group of children by any department or agency of the government;
  - (c) where appropriate, try to resolve those matters mentioned in clause (b) that come to his or her attention through the use of negotiation, conciliation, mediation or other non-adversarial approaches; and
  - (d) where appropriate, make recommendations on any of those matters mentioned in clause (b).
- (3) The Children's Advocate may:
  - (a) conduct or contract for research to improve the interests and well-being of children;
  - (b) advise any minister responsible for services to children on any matter relating to the interests and well-being of children who receive services from any department or agency of the government;
  - (c) **Repealed.** 2000, c.20, s.10.

1994, c.7, s.12; 2000, c.20, s.10.

**c. O-4****OMBUDSMAN AND CHILDREN'S ADVOCATE****Referrals by committee of the Assembly and Lieutenant Governor in Council**

**12.61(1)** A committee of the Assembly may, at any time, refer to the Children's Advocate for review, investigation and report any petition or matter relating to the interests and well-being of children that is before the committee for consideration.

(2) The Children's Advocate shall:

(a) subject to any special directions of the committee, investigate the petition or matter referred to him or her as far as it is within his or her jurisdiction; and

(b) make any report to the committee that he or she thinks fit.

(3) The Lieutenant Governor in Council may, at any time, refer to the Children's Advocate for review, investigation and report any matter relating to the interests and well-being of children and services to children by any department or agency of the government or by any officer, employee or member of any department or agency of the government.

(4) The Children's Advocate shall:

(a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him or her as far as it is within his or her jurisdiction; and

(b) make any report to the Lieutenant Governor in Council that he or she thinks fit.

1994, c.7, s.12.

**Communication by child**

**12.7(1)** Where a child in a facility, foster home, group home or other home or place in which he or she is placed pursuant to an Act that authorizes services to children, asks to communicate with the Children's Advocate, that request shall be forwarded to the Children's Advocate immediately by the person in charge of that place.

(2) Where the child writes a letter addressed to the Children's Advocate, the person in charge of the place shall forward the letter immediately, unopened, to the Children's Advocate.

1994, c.7, s.12.

**Report to child**

**12.8** Where an investigation by the Children's Advocate involves a review of a complaint about services from any department or agency of the government to a child, the Children's Advocate may, in a manner that the Children's Advocate considers appropriate:

(a) report the results of the investigation to the parent or guardian of that child;

(b) report the results of the investigation to the child.

1994, c.7, s.12.

**Provisions apply**

**12.9** Part IV applies to the Children's Advocate and employees of the Children's Advocate with any modification that is necessary in the circumstances.

1994, c.7, s.12.

#### PART IV Jurisdiction and Procedure

#### 13 **Repealed.** 1992, c.59, s.6.

#### **Ombudsman not restricted by provisions of other Acts**

**14** The Ombudsman may exercise his powers and shall carry out his duties and functions under this Act notwithstanding anything in any other Act which provides:

- (a) that any decision, recommendation, act or omission that he is investigating is final or that no appeal lies in respect thereof; or
- (b) that no proceeding or decision of the department, agency of the government, officer, employee or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question.

R.S.S. 1978, c.O-4, s.14.

#### **Restrictions on jurisdiction**

**15(1)** Nothing in this Act authorizes the Ombudsman to investigate:

- (a) any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant Governor in Council, the Executive Council or a committee of the Executive Council;
- (b) any decision, order or omission of a court, a judge of a court or a justice of the peace made or given in any action or proceeding in the court or before the judge or justice of the peace;
- (c) **Repealed.** 1992, c.59, s.7.
- (d) any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;
- (e) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings.
- (f) **Repealed.** 1992, c.59, s.7.
- (g) **Repealed.** 1992, c.59, s.7.

**(2) Repealed.** 1992, c.59, s.7.

R.S.S. 1978, c.O-4, s.15; 1992, c.59, s.7.

**Question of jurisdiction to investigate**

**16(1)** Where any question arises respecting the jurisdiction of the Ombudsman to investigate any case or class of cases under this Act, he may apply to the Court of Queen's Bench or a judge of the court sitting in chambers for a declaratory order determining the question.

(2) Notice of an application under subsection (1) shall be served upon the Attorney General not less than fifteen days before the date on which the application is to be heard.

R.S.S. 1978, c.O-4, s.16.

**Certain correspondence with Ombudsman privileged**

**17** Notwithstanding any Act, where a letter written by a person in custody on a charge for an offence or after conviction for an offence, or by an inmate of a hospital, mental hospital, facility or institution operated by or under the direction of the government, or by any person in custody of another person for any reason, is addressed to the Ombudsman, it shall be forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer of the letter is detained or in which he is an inmate or by the person having custody of the writer.

R.S.S. 1978, c.O-4, s.17.

**Refusal to investigate**

**18(1)** The Ombudsman may, in his discretion, refuse to investigate or cease to investigate a complaint if:

- (a) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;
- (b) in his opinion it is frivolous, vexatious, not made in good faith or concerns a trivial matter;
- (c) in his opinion upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued;
- (d) in his opinion the circumstances of the case do not warrant investigation;
- (e) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or
- (f) during the course of an investigation it appears to him:
  - (i) that under the law or existing administrative practices the complainant has adequate remedy or right of appeal, other than a petition to the Legislature, whether or not the complainant has availed himself of it; or
  - (ii) that, having regard to all the circumstances of the case, further investigation is unnecessary.

(2) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12.

R.S.S. 1978, c.O-4, s.18.

**Notice of cessation, etc., of investigation**

**19** Where the Ombudsman decides not to investigate, or to cease to investigate, a complaint, he shall inform the complainant of his decision and may, if he thinks fit, state his reasons therefor.

R.S.S. 1978, c.O-4, s.19.

**Notice of investigation**

**20(1)** Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation.

(2) The notice shall be in writing and shall set forth the nature of the complaint, if any, received by the Ombudsman.

(3) The Ombudsman may in his discretion at any time during or after an investigation consult with the minister who is concerned in the matter of the investigation.

(4) On the request of the minister in charge of the department or agency of the government or in any case where an investigation relates to any recommendation made to a minister, the Ombudsman shall consult the minister after making the investigation and before forming a final opinion of any matter referred to in subsections (1) and (2) of section 24.

(5) Where, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any department or agency of the government, he shall refer the matter to the minister in charge of the department or agency of the government, as the case may require, and may then continue with any ongoing investigation.

R.S.S. 1978, c.O-4, s.20; 2000, c.20, s.11.

**Conduct of investigation**

**21(1)** Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hold hearings and hear or obtain information from any person he thinks fit and may make such inquiries as he thinks necessary.

(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman but if at any time it appears to the Ombudsman that there are sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government or person, he shall give to that department, agency or person an opportunity to make representations in respect of the matter and the department, agency or person may make representations in respect of the matter by counsel.

R.S.S. 1978, c.O-4, s.21.

**Ombudsman may require information and examine persons**

**22(1)** Subject to section 23, the Ombudsman may require any person who in his opinion is able to give any information relating to any matter being investigated by him:

- (a) to furnish information to him; and
- (b) to produce any document, paper or thing that, in his opinion, relates to the matter being investigated and that may be in the possession or under the control of that person;

whether or not that person is an officer, employee or member of the department or agency of the government and whether or not the document, paper or thing is in the custody or under the control of a department or agency of the government.

(1.1) The Ombudsman may take possession of any document, paper or thing mentioned in subsection (1) to make copies for the purposes of the investigation.

(2) The Ombudsman may summon before him and examine under oath:

- (a) any person who is an officer, employee or member of any department or agency of the government and who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;
- (b) any complainant; and
- (c) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

and for that purpose may administer an oath.

(3) Every examination by the Ombudsman under subsection (2) shall be deemed a judicial proceeding for the purposes of section 131 of the *Criminal Code*.

(4) Subject to section 23:

- (a) a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman;
- (b) no provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall apply in respect of an investigation by the Ombudsman and no person who is required by the Ombudsman to furnish any information or to produce any document, paper or thing or who is summoned by the Ombudsman to give evidence, shall refuse to furnish the information, produce the document, paper or thing or to answer questions on the ground of such a provision.

(5) Except on the trial of a person for perjury, no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Ombudsman is admissible in evidence against any person in any court, at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(6) No person shall be prosecuted for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section.



**Disclosure restricted**

**23** Where the Attorney General certifies to the Ombudsman that the giving of any information, the answering of any question or the production of any document, paper or writing might involve the disclosure of:

- (a) the deliberations of the Executive Council; or
- (b) proceedings of the Executive Council or a committee of the Executive Council relating to matters of a secret or confidential nature the disclosure of which would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document, paper or writing to be produced, as the case may be, but shall report the receipt of the certificate in his next annual report.

R.S.S. 1978, c.O-4, s.23.

**Report on investigation**

**24(1)** Where, after making an investigation under this Act, the Ombudsman is of the opinion:

- (a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been:
  - (i) contrary to law;
  - (ii) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
  - (iii) based in whole or in part on a mistake of law or fact; or
  - (iv) wrong;
- (b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:
  - (i) for an improper purpose;
  - (ii) on irrelevant grounds; or
  - (iii) on the taking into account of irrelevant considerations; or
- (c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

- (a) that a matter should be referred to the appropriate authority for further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled or varied;

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- (d) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;
  - (e) that any law on which a decision, recommendation, act or omission was based should be reconsidered;
  - (f) that reasons should be given for any decision, recommendation, act or omission; or
  - (g) that any other steps should be taken.
- (3) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12.

R.S.S. 1978, c.O-4, s.24.

**Notice of proposed steps**

**25(1)** Where the Ombudsman makes a recommendation under section 24, he may request the department or agency of the government to notify him within a specified time of the steps that it has taken or proposed to take to give effect to his recommendations.

(2) If, within a reasonable time after a request respecting recommendations is made under this section, no action is taken that seems to the Ombudsman to be adequate or appropriate the Ombudsman after considering the comments, if any, made by or on behalf of the department or agency of the government affected may submit a report of the matter, including a copy of the report containing the recommendation, to the Lieutenant Governor in Council and may thereafter mention the report in his next annual report to the Assembly.

R.S.S. 1978, c.O-4, s.25.

**Review of Ombudsman's decision**

**26(1)** Where the Ombudsman makes a recommendation under section 24 and no action that seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any event inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

R.S.S. 1978, c.O-4, s.26.

**Proceedings not subject to review**

**27** No proceeding of the Ombudsman is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be challenged, reviewed, quashed or called into question in any court.

R.S.S. 1978, c.O-4, s.27.

**Proceedings against Ombudsman prohibited**

**28(1)** No proceedings lie against the Ombudsman or against any member of his staff for anything he may do, report or say in the course of the exercise or performance, or intended exercise or performance, of his powers, duties and functions under this Act unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any member of his staff shall be called in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise or performance of his powers, duties and functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the court relating to an investigation by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court.

(4) For the purposes of *The Libel and Slander Act*, any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report thereon in a newspaper or a broadcast shall be deemed to be privileged.

R.S.S. 1978, c.O-4, s.28.

#### **Entry of premises**

**29(1)** For the purposes of this Act, the Ombudsman may at any time enter upon the premises occupied by any department or agency of the government and, subject to section 12, carry out therein any investigation within his jurisdiction.

(2) Before entering upon any premises under subsection (1), the Ombudsman shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises of his intention to conduct an investigation.

R.S.S. 1978, c.O-4, s.29.

## **PART V**

### **General**

#### **Report by Ombudsman**

**30(1)** In accordance with *The Tabling of Documents Act, 1991*, the Ombudsman shall, in each year, submit to the Speaker an annual report describing the progress and activities of the Ombudsman in the previous year.

(2) In accordance with *The Tabling of Documents Act, 1991*, the Speaker shall lay before the Assembly each report received by the Speaker pursuant to subsection (1).

(3) The Ombudsman may, from time to time in the public interest or in the interest of any person, department or agency of the Government, publish reports respecting any of the following matters, whether or not those matters have been the subject of a report to the Assembly:

- (a) the exercise of his or her powers and the performance of his or her duties and functions pursuant to this Act;
- (b) any particular case that he or she has investigated.

2000, c.20, s.13.

**c. O-4****OMBUDSMAN AND CHILDREN'S ADVOCATE****Report by Children's Advocate**

**30.1(1)** In accordance with *The Tabling of Documents Act, 1991*, the Children's Advocate shall, in each year, submit to the Speaker an annual report describing the progress and activities of the Children's Advocate in the previous year.

(2) In accordance with *The Tabling of Documents Act, 1991*, the Speaker shall lay before the Assembly each report received by the Speaker pursuant to subsection (1).

(3) The Children's Advocate may, from time to time in the public interest or in the interest of any person, department or agency of the Government, publish reports respecting any of the following matters, whether or not those matters have been the subject of a report to the Assembly:

- (a) the exercise of his or her powers and the performance of his or her duties and functions pursuant to this Act;
- (b) any particular case that he or she has investigated.

2000, c.20, s.13.

**Rules for guidance**

**31(1)** The Assembly may, on its own, or on the recommendation of the Lieutenant Governor in Council, make rules for the guidance of the Ombudsman or Children's Advocate in the exercise of his or her powers and the performance of his or her duties and functions.

(2) Subject to this Act and any rules made pursuant to subsection (1), the Ombudsman or Children's Advocate may determine his or her procedure and the procedure for the members of his or her staff in the exercise of the powers conferred and the performance of the duties and functions imposed by this Act.

1994, c.7, s.16.

**Offences and penalties**

**32** Any person who:

- (a) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or Children's Advocate or any other person in the exercise or performance of his or her powers, duties and functions pursuant to this Act;
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or Children's Advocate or any other person under this Act; or
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or Children's Advocate or any other person in the exercise or performance of his or her powers, duties and functions pursuant to this Act;

is guilty of an offence and liable on summary conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding three months or to both fine and imprisonment.

R.S.S. 1978, c.O-4, s.32; 1994, c.7, s.17.

**Attorney General may intervene**

**33** The Attorney General or counsel appointed by him for the purpose may at any time, without leave of the court or judge, intervene in any action or proceedings taken in any court under section 27 or 28 and no order for costs for or against the Attorney General shall be made as a result of the intervention.

R.S.S. 1978, c.O-4, s.33.

**Act to provide additional remedies**

**34** The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure.

R.S.S. 1978, c.O-4, s.34.

