

OMBUDSMAN ACT

Chapter O-8

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “accounting organization” means
 - (i) an accounting organization as defined in the *Regulated Accounting Profession Act*, and
 - (ii) a governing body, committee or tribunal of an accounting organization, a registrar, CIC chair, CIC secretary, discipline tribunal secretary, discipline tribunal chair, appeal tribunal secretary and appeal tribunal chair and any practice reviewer, investigator or person engaged by an accounting organization to perform any duty or exercise any powers under the *Regulated Accounting Profession Act*,
- (b) “administrative head”
 - (i) when used in reference to an agency means the person designated by the Minister responsible for that agency to act as the head of that agency or, if a head is not so designated, the person who acts as the chief officer and is charged with the administration and operation of that agency,
 - (ii) when used in reference to an accounting organization means an executive head as defined in the *Regulated Accounting Profession Act*,
 - (iii) when used in reference to a health profession college means a registrar as defined in the *Health Professions Act*,
 - (iv) when used in reference to a forestry college means a registrar as defined in the *Regulated Forestry Profession Act*, and

- (v) when used in reference to a veterinary association means the Registrar as defined in the *Veterinary Profession Act*;
- (c) “agency” means
 - (i) a Provincial agency as defined in section 1 of the *Financial Administration Act*, but not including
 - (A) the governors of a university under the *Universities Act*,
 - (B) the board of governors of a public college under the *Colleges Act*,
 - (C) the Governors of the Banff Centre for Continuing Education,
 - (D) a provincial health board under the *Regional Health Authorities Act*,
 - (E) the Alberta Cancer Board,
 - (F) the Hospital Privileges Appeal Board, or
 - (G) the board of governors of a technical institute under the *Technical Institutes Act*,
 - and
 - (ii) a board, commission, corporation, office or other body designated as an agency in the regulations;
- (d) “department” means a department as defined in section 1 of the *Financial Administration Act*;
- (e) “forestry college” means
 - (i) a college as defined in the *Regulated Forestry Profession Act*, and
 - (ii) a council, panel, committee, tribunal, registrar, president, complaints director and hearings director of a forestry college and any officer, investigator or person engaged by a forestry college;
- (f) “health profession college” means
 - (i) a college as defined in the *Health Professions Act*, and

- (ii) a council, panel, committee, tribunal, registrar, president, complaints director and hearings director of a health profession college and any officer, investigator or person engaged by a health profession college;
- (g) “Minister” means a member of the Executive Council;
- (h) “professional organization” means
 - (i) an accounting organization,
 - (ii) a health profession college,
 - (iii) a forestry college, and
 - (iv) a veterinary association;
- (i) “Standing Committee” means the Standing Committee on Legislative Offices;
- (j) “veterinary association” means
 - (i) the Alberta Veterinary Medical Association, and
 - (ii) the Council, a board, committee or tribunal and the Registrar, Executive Director, Complaints Director and Hearings Director of the Alberta Veterinary Medical Association and any officer, investigator or person engaged by the Alberta Veterinary Medical Association.

RSA 2000 cO-8 s1;RSA 2000 cH-7 s138;
 RSA 2000 cR-12 s148;RSA 2000 cR-13 s105;
 2002 c26 s22;2003 c30 ss2,17

Health Information Act

1.1 This Act prevails despite the *Health Information Act*, except section 94 of that Act.

2003 c30 s2

Appointment

2(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigations to be called the Ombudsman.

(2) Subject to section 7, the Lieutenant Governor in Council shall appoint the Ombudsman on the recommendation of the Legislative Assembly.

RSA 1980 cO-7 s2

Restriction as to holding other offices

3(1) The Ombudsman may not be a member of the Legislative Assembly and shall not hold any office of trust or profit, other than the office as Ombudsman, or engage in any occupation for reward outside the duties of that office.

(2) Notwithstanding subsection (1), the Ombudsman may, with the approval of the Standing Committee, act in an office of trust, on an interim basis, for a territory of Canada.

(3) The Ombudsman must be a Canadian citizen.

RSA 1980 cO-7 s3;1996 c28 s31

Term of office

4 Unless the office sooner becomes vacant, a person appointed as Ombudsman holds office for 5 years

- (a) from the date of the person's appointment under section 2, or
- (b) from the date the person's appointment under section 7 is confirmed under that section,

and continues to hold office after the expiry of the person's term of office until the person is reappointed, the person's successor is appointed or a period of 6 months has expired, whichever occurs first.

RSA 1980 cO-7 s4;1983 c91 s2

Resignation

5 The Ombudsman may at any time resign the Ombudsman's office by writing addressed to the Speaker of the Legislative Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Legislative Assembly.

RSA 1980 cO-7 s5

Suspension or removal from office

6(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ombudsman from his or her office for disability, neglect of duty, misconduct or bankruptcy.

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may suspend the Ombudsman from office for disability, neglect of duty, misconduct or bankruptcy, but the suspension shall not continue in force beyond the end of the next session of the Legislature.

RSA 1980 cO-7 s6

Vacancy in office

7(1) If the Ombudsman dies, retires, resigns or is removed from office, the vacancy created shall be filled in accordance with this section.

(2) If a vacancy occurs while the Legislature is in session, but no recommendation is made by the Legislative Assembly before the close of that session, subsection (3) applies as if the vacancy had occurred while the Legislature was not in session.

(3) If a vacancy occurs while the Legislature is not in session, the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an Ombudsman to fill the vacancy and unless the office sooner becomes vacant, the person so appointed holds office until the person's appointment is confirmed by the Legislative Assembly.

(4) If an appointment under subsection (3) is not confirmed within 30 days after the commencement of the next regular session, the appointment lapses and there is deemed to be another vacancy in the office of Ombudsman.

RSA 1980 cO-7 s7

Salary

8(1) The Ombudsman shall be paid a salary at a rate set by the Standing Committee and the Standing Committee shall review that salary rate at least once a year.

(2) The Ombudsman shall receive similar benefits to those provided to Deputy Ministers.

RSA 1980 cO-7 s8

Oath of office

9(1) Before entering on the Ombudsman's duties, the Ombudsman shall take an oath that he or she will faithfully and impartially perform the duties of the Ombudsman's office and that the Ombudsman will not, except in accordance with section 20(2) or 23(3) and (4), divulge any information received by him or her under this Act.

(2) The oath shall be administered by the Speaker of the Legislative Assembly or by the Clerk of the Legislative Assembly.

RSA 1980 cO-7 s9

Office of the Ombudsman

10(1) There shall be a department of the public service of Alberta called the Office of the Ombudsman consisting of the Ombudsman and the employees appointed pursuant to the *Public Service Act* to assist the Ombudsman in the efficient carrying out of the Ombudsman's functions under this Act.

(2) On the recommendation of the Ombudsman, the Standing Committee may order that

- (a) any regulation, order or directive made under the *Financial Administration Act*, or
- (b) any regulation, order, directive, rule, procedure, direction, allocation, designation or other decision under the *Public Service Act*,

be inapplicable to, or be varied in respect of, the Office of the Ombudsman or any particular employee or class of employees in the Office of the Ombudsman.

(3) An order made under subsection (2)(a) in relation to a regulation, order or directive made under the *Financial Administration Act* operates notwithstanding that Act.

(4) The *Regulations Act* does not apply to orders made under subsection (2).

(5) The chair of the Standing Committee shall lay a copy of each order made under subsection (2) before the Assembly if it is then sitting or, if it is not then sitting, within 15 days after the commencement of the next sitting.

(6) Every person holding an office or appointment under the Ombudsman shall, before the person begins to perform his or her duties under this Act, take an oath, to be administered by the Ombudsman, that the person will not divulge any information received by him or her under this Act except for the purpose of giving effect to this Act.

RSA 1980 cO-7 s10;1983 cL-10.1 s57;1984 c55 s36

Financing of operations

11(1) The Ombudsman shall submit annually to the Standing Committee in respect of each fiscal year an estimate of the sum that will be required to be provided by the Legislature to defray the

several charges and expenses of the Office of the Ombudsman in that fiscal year.

(2) The Standing Committee shall review each estimate submitted pursuant to subsection (1) and, on completion of the review, the chair of the Committee shall transmit the estimate to the Minister of Finance for presentation to the Assembly.

(3) If at any time the Legislative Assembly is not in session the Standing Committee, or if there is no Standing Committee, the Minister of Finance,

- (a) reports that the Ombudsman has certified that in the public interest an expenditure of public money is urgently required in respect of any matter pertaining to the Ombudsman's office, and
- (b) reports that either
 - (i) there is no supply vote under which an expenditure with respect to that matter may be made, or
 - (ii) there is a supply vote under which an expenditure with respect to that matter may be made but the authority available under the supply vote is insufficient,

the Lieutenant Governor may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount estimated to be required.

(4) When the Legislative Assembly is adjourned for a period of more than 14 days, then, for the purposes of subsection (3), the Assembly is deemed not to be in session during the period of the adjournment.

(5) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of the *Financial Administration Act*.

(6) When a special warrant is prepared and signed under subsection (3) on the basis of a report referred to in subsection (3)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of the *Financial Administration Act*, added to and deemed to be part of the supply vote to which the report relates.

(7) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after it for granting to Her Majesty sums of money to defray certain expenditures of the Public Service of Alberta.

RSA 2000 cO-8 s11;2003 c30 s3

Functions and duties

12(1) It is the function and duty of the Ombudsman 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 the person's or its personal capacity, in or by any department, agency or professional organization, or by any officer, employee or member of any department or agency in the exercise of any power or the performance of any function conferred on the officer, employee or member by any enactment.

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

(3) The powers and duties conferred on the Ombudsman by this Act may be exercised and performed notwithstanding any provision in any Act to the effect

- (a) that any decision, recommendation, act or omission mentioned in subsection (1) is final,
- (b) that no appeal lies in respect of it, or
- (c) that no proceeding or decision of the person, department, agency or professional organization whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question.

(4) Without limiting subsection (1), any committee of the Legislative Assembly may at any time refer to the Ombudsman, for investigation and report by the Ombudsman, any petition that is before that committee for consideration or any matter to which the petition relates and, in that case, the Ombudsman shall,

- (a) subject to any special directions of the committee, investigate the matter so referred to the Ombudsman so far as it is within the Ombudsman's jurisdiction, and

- (b) make any report to the committee that the Ombudsman thinks fit,

but nothing in section 15, 21 or 22 applies in respect of any investigation or report made under this subsection.

(5) Without limiting subsection (1), a Minister may at any time by order refer any matter to the Ombudsman for investigation and report by the Ombudsman and, in that case, the Ombudsman may

- (a) subject to any special directions of the Minister, investigate the matter so referred to the Ombudsman so far as it is within the Ombudsman's jurisdiction, and
- (b) make any report to the Minister that the Ombudsman thinks fit,

but nothing in section 15, 21 or 22 applies in respect of any investigation or report made under this subsection.

(6) An order made by a Minister under subsection (5) shall be published forthwith in The Alberta Gazette.

RSA 2000 cO-8 s12;RSA 2000 cH-7 s138;
RSA 2000 cR-12 s148;2003 c30 s4

Jurisdiction restricted

13(1) Nothing in this Act authorizes the Ombudsman to investigate

- (a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired,
- (b) any decision, recommendation, act or omission of any person acting as a solicitor for the Crown or acting as counsel for the Crown in relation to any proceedings, or
- (c) any decision, recommendation, act or omission of the Mental Health Patient Advocate or an employee of the Mental Health Patient Advocate appointed or employed under the *Mental Health Act*.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, the Ombudsman may, if the Ombudsman thinks fit, apply to the

Court of Queen's Bench for a declaratory order determining the question.

RSA 1980 cO-7 s12;1988 cM-13.1 s55

Complaint to Ombudsman

14(1) Every complaint to the Ombudsman shall be made in writing.

(2) Notwithstanding any Act, when a letter written by

- (a) any person in custody on a charge or after conviction of any offence, or
- (b) a patient of a place established under section 49(a) or (b) of the *Mental Health Act*,

is addressed to the Ombudsman, it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which the writer is a patient.

RSA 1980 cO-7 s13;1988 cM-13.1 s55

Refusal to investigate

15(1) If in the course of the investigation of any complaint it appears to the Ombudsman

- (a) that under the law or existing administrative practice there is an adequate remedy, other than the right to petition the Legislature, for the complainant, whether or not he or she has availed himself or herself of it, or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

the Ombudsman may in the Ombudsman's discretion refuse to investigate the matter further.

(2) The Ombudsman may in the Ombudsman's discretion refuse to investigate or cease to investigate any complaint

- (a) if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman, or
- (b) if in the Ombudsman's opinion,
 - (i) the subject-matter of the complaint is trivial,

- (ii) the complaint is frivolous or vexatious or is not made in good faith, or
- (iii) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) When the Ombudsman decides not to investigate or to cease to investigate a complaint, the Ombudsman shall inform the complainant of that decision and the Ombudsman may, if the Ombudsman thinks fit, state the reasons for that decision.

RSA 1980 cO-7 s14

Notice of investigation

16(1) Before investigating any matter under this Act, the Ombudsman shall inform the deputy minister of the department or the administrative head of the agency or professional organization affected, as the case may be, of the Ombudsman's intention to make the investigation.

(2) The Ombudsman may, in the Ombudsman's discretion, at any time during or after an investigation, consult any Minister or administrative head who is concerned in the matter of the investigation.

(3) On the request of any Minister or administrative head in relation to an investigation or in any case where an investigation relates to a recommendation made to a Minister or administrative head, the Ombudsman shall consult that Minister or administrative head after making the investigation and before forming a final opinion on any of the matters referred to in section 21(1) or (2).

(4) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department, agency or professional organization, the Ombudsman shall refer the matter to the deputy minister of the department or the administrative head of the agency or professional organization, as the case may be.

RSA 2000 cO-8 s16;RSA 2000 cH-7 s138;RSA 2000 cR-12 s148;

RSA 2000 cR-13 s105;2003 c30 s6

Conduct at investigation

17(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hear or obtain information from any persons the Ombudsman thinks fit and may make inquiries the Ombudsman thinks fit.

(3) Subject to section 28(3), it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman.

(4) Subject to this Act and any rules made under section 29, the Ombudsman may regulate the Ombudsman's procedure in any manner the Ombudsman thinks fit.

RSA 1980 cO-7 s16

Evidence at investigation

18(1) Subject to this section and section 19, the Ombudsman may require any person who in the Ombudsman's opinion is able to give any information relating to any matter being investigated by the Ombudsman

- (a) to furnish the information to the Ombudsman, and
- (b) to produce any document, paper or thing that in the Ombudsman's 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 a department, agency or professional organization, and whether or not the document, paper or thing is in the custody or under the control of a department, agency or professional organization.

(2) When the Ombudsman requires the production of a document, paper or thing under subsection (1), the Ombudsman may require it to be produced at a place designated by the Ombudsman and may require that it be left in the Ombudsman's possession for the purposes of the Ombudsman's investigation but, on the request of the deputy minister of the department, the administrative head of the agency or professional organization or the person who produced the document, paper or thing, the Ombudsman shall return the document, paper or thing to the department, agency, professional organization or person as quickly as possible, and in any case not later than 48 hours after the receipt of the request, subject to the Ombudsman's right to require its production again in accordance with this section.

(3) The Ombudsman may summon before the Ombudsman and examine on oath

- (a) any person who is an officer, employee or member of any department, agency or professional organization and who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),
- (b) any complainant, and

- (c) any other person who in the Ombudsman's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Any person who is bound by an Act to maintain secrecy in relation to, or not to disclose, any matter may be required by the Ombudsman to supply information or answer any question or produce any document, paper or thing that, in the Ombudsman's opinion, relates to the matter being investigated, and it is the duty of the person to comply with the requirement notwithstanding that person's duty to maintain secrecy or not to disclose the matter.

(5) Repealed 2003 c30 s7.

(6) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

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

(8) No person is liable to prosecution for an offence against any Act by reason of the person's compliance with any requirement of the Ombudsman under this section.

RSA 2000 cO-8 s18;RSA 2000 cH-7 s138;RSA 2000 cR-12 s148;
RSA 2000 cR-13 s105;2003 c30 s7

Disclosures restricted

19(1) When the Minister of Justice and Attorney General certifies that the giving of any information or the answering of any question or the production of any document, paper or thing might involve the disclosure of

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

the Ombudsman shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced, but shall report the giving of the certificate to the Legislature.

(2) Subject to subsection (1), the 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 of the document, paper or thing or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman.

(3) Nothing in this Act authorizes the Ombudsman to require any person to produce a pre-sentence report or to furnish any information contained in or relating to a pre-sentence report.

RSA 1980 cO-7 s18;1994 cG-8.5 s89

Maintenance of secrecy

20(1) The Ombudsman and every person holding an office or appointment under the Ombudsman shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(2) Notwithstanding subsection (1), the Ombudsman may disclose in any report made by the Ombudsman under this Act any matters that in the Ombudsman's opinion ought to be disclosed in order to establish grounds for the Ombudsman's conclusions and recommendations.

RSA 1980 cO-7 s19

Procedure after investigation

21(1) This section applies when, after making an investigation under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission that was the subject-matter of the investigation

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) was wrong.

(2) This section also applies when the Ombudsman is of the opinion

- (a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power was exercised

- (i) for an improper purpose,
- (ii) on irrelevant grounds, or
- (iii) on the taking into account of irrelevant considerations,

or

- (b) that, in the case of a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(3) If, when this section applies, the Ombudsman is of the opinion

- (a) that the matter should be referred to the appropriate authority for further consideration,
- (b) that the omission should be rectified,
- (c) that the decision should be cancelled or varied,
- (d) that any practice on which the decision, recommendation, act or omission was based should be altered,
- (e) that any law on which the decision, recommendation, act or omission was based should be reconsidered,
- (f) that reasons should have been given for the decision,
- (g) that the matter should be reheard or reconsidered by the appropriate authority, or
- (h) that any other steps should be taken,

the Ombudsman shall report that opinion and the Ombudsman's reasons for it to the appropriate Minister and to the department or agency concerned or to the administrative head of the professional organization concerned, and may make any recommendations the Ombudsman thinks fit, and in that case the Ombudsman may request the department, agency or administrative head of the professional organization to notify the Ombudsman within a specified time of the steps, if any, that it proposes to take to give effect to the Ombudsman's recommendations.

(4) If within a reasonable time after the report is made under subsection (3) to the administrative head of a professional organization no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman may, after considering the comments, if any, made by or on behalf of the professional organization, send a copy of the report to the appropriate Minister.

(5) If, within a reasonable time after the report is made to the appropriate Minister and the department or agency under subsection (3) or to the administrative head of a professional organization under subsection (3) and to the appropriate Minister under subsection (4), no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in the Ombudsman's discretion after considering the comments, if any, made by or on behalf of the department, agency or professional organization, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may afterwards make any report to the Legislature on the matter that the Ombudsman thinks fit.

(6) The Ombudsman shall attach to every report sent or made under subsection (5) a copy of any comments made by or on behalf of the department, agency or professional organization concerned.

RSA 2000 cO-8 s21;RSA 2000 cH-7 s138;RSA 2000 cR-12 s148;
RSA 2000 cR-13 s105;2003 c30 s8

Power to reconsider matters

21.1(1) On the recommendation of the Ombudsman under section 21(3), a department, agency or professional organization may

- (a) rehear a matter or reconsider a decision or recommendation made by the department or agency or professional organization or an officer, employee or member of it, and
- (b) quash, confirm or vary that decision or recommendation or any part of it.

(2) If a matter is reheard or reconsidered pursuant to subsection (1), the provisions of the enactment governing the original hearing or consideration apply to the rehearing or reconsideration.

(3) This section applies notwithstanding any provision in any Act to the effect that

- (a) any decision, recommendation, act or omission referred to in section 12(1) is final,
- (b) no appeal lies in respect of it, or
- (c) no proceeding or decision of the person, department, agency or professional organization whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question.

Results of investigation to complainant

22(1) If the Ombudsman makes a recommendation under section 21(3) and no action that seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman shall inform the complainant of the recommendation and make whatever comments on the matter the Ombudsman thinks fit.

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

RSA 2000 cO-8 s22;RSA 2000 cH-7 s138;
RSA 2000 cR-12 s148;2003 c30 s10

Other inquiries

23(1) No report or recommendation of the Ombudsman and no investigation or other proceeding under this Act leading to a report or recommendation of the Ombudsman shall be made the subject of

- (a) an inquiry under the *Public Inquiries Act*, or
- (b) an inquiry, investigation, review or hearing by any person or body pursuant to any other Act.

(2) Subsection (1) does not apply to an inquiry, investigation, review or hearing conducted by

- (a) the Legislative Assembly,
- (b) a committee of members of the Legislative Assembly appointed by a resolution of the Legislative Assembly,
- (c) a commissioner under the *Public Inquiries Act*, if a resolution of the Legislative Assembly authorized the Lieutenant Governor in Council to make an order for the inquiry under that Act, or
- (d) any other person or body appointed by a resolution of the Legislative Assembly,

and any resolution made under clause (b), (c) or (d) shall prescribe the terms of reference of the inquiry, investigation, review or hearing.

(3) Notwithstanding section 20 or any oath taken under section 9 or 10 but subject to subsection (4),

- (a) the Ombudsman or a former Ombudsman, or

- (b) any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman,

is a compellable witness in any inquiry, investigation, review or hearing mentioned in subsection (2) in respect of matters that came to his or her knowledge in the course of the administration of this Act.

(4) The Ombudsman or any other person mentioned in subsection (3) who is a witness in any inquiry, investigation, review or hearing mentioned in subsection (2)

- (a) shall not answer any question or be compelled to answer any question, and
- (b) shall not produce or be compelled to produce any document, paper or thing,

when the Ombudsman or counsel on the Ombudsman's behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) When a former Ombudsman or any person who holds or formerly held an office or appointment under the Ombudsman or a former Ombudsman is summoned as a witness in an inquiry, investigation, review or hearing mentioned in subsection (2), the person who summons that witness shall forthwith give notice of that fact to the Ombudsman that is sufficient in the circumstances to enable the Ombudsman to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

RSA 1980 cO-7 s22

Proceedings not subject to review

24 No proceedings of the Ombudsman shall be held bad for want of form and, except on the ground of lack of jurisdiction, no proceedings or decision of the Ombudsman shall be challenged, reviewed, quashed or called in question in any court.

RSA 1980 cO-7 s23

Proceedings privileged

25(1) No proceedings lie against the Ombudsman or against any person holding an office or appointment under the Ombudsman for any thing the Ombudsman or person may do or report or say in the course of the exercise or intended exercise of the Ombudsman's or person's functions under this Act, unless it is shown that the Ombudsman or person acted in bad faith.

(2) Neither the Ombudsman nor any person holding an office or appointment under the Ombudsman shall be called on to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to the Ombudsman's or person's knowledge in the exercise of the Ombudsman's or person's functions under this Act.

(3) Any thing said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(4) For the purposes of the *Defamation Act*, any report made by the Ombudsman under this Act is deemed to be privileged and a fair and accurate report on it in a newspaper or a broadcast is deemed to be privileged.

RSA 1980 cO-7 s24;1987 c29 s19

Entry of premises

26(1) For the purposes of this Act, the Ombudsman may at any time enter on any premises occupied by any department, agency or professional organization and inspect the premises and, subject to sections 18 and 19, carry out in those premises any investigation that is within the Ombudsman's jurisdiction.

(2) Before entering on any premises pursuant to subsection (1), the Ombudsman shall notify, as the case may require, the deputy minister of the department or the administrative head of the agency or professional organization that occupies the premises of the Ombudsman's intention to do so.

RSA 2000 cO-8 s26;RSA 2000 cH-7 s138;RSA 2000 cR-12 s148;
RSA 2000 cR-13 s105;2003 c30 s11

Delegation of powers

27(1) With the prior approval of the Standing Committee, the Ombudsman may, by writing under the Ombudsman's hand, delegate to any person holding any office under the Ombudsman any of the Ombudsman's powers under this Act, except this power of delegation and the power to make any report under this Act.

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

(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 any restrictions and conditions the Ombudsman thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and, in the event of the Ombudsman by whom it was made ceasing to hold office, continues to have effect as if made by the Ombudsman's successor.

(6) Any person purporting to exercise any power of the Ombudsman by virtue of such a delegation shall, when required to do so, produce evidence of the person's authority to exercise the power.

RSA 1980 cO-7 s26

Annual report

28(1) The Ombudsman shall in each year make a report to the Legislature on the exercise of the Ombudsman's functions under this Act.

(2) The Ombudsman may, from time to time, in the public interest or in the interests of any person, department, agency or professional organization, publish reports relating

- (a) generally to the exercise of the Ombudsman's functions under this Act, or
- (b) to any particular case investigated by the Ombudsman,

whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

(3) The Ombudsman shall not, in a report made under this section, express any opinion or make any comment that is adverse to

- (a) any department or any officer or employee of a department,
- (b) any agency or any officer, member or employee of an agency,
- (c) any professional organization, or
- (d) any other person or group of persons,

unless prior to making the report to the Legislature or publishing the report pursuant to subsection (2), as the case may be, the Ombudsman has given that department, agency, professional organization, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or

comment and to make representations to the Ombudsman in respect of it either personally or by counsel.

RSA 2000 cO-8 s28;RSA 2000 cH-7 s138;RSA 2000 cR-12 s148;
RSA 2000 cR-13 s105;2003 c30 s12

Rules for guidance

29 The Legislative Assembly may,

- (a) of its own volition, or
- (b) on the recommendation of the Standing Committee,

make rules for the guidance of the Ombudsman in the exercise of the Ombudsman's functions and duties.

RSA 2000 cO-8 s29;2003 c30 s13

Storage of and access to files

30(1) The Ombudsman may place any file relating to a complaint made to or an investigation made by the Ombudsman in the Provincial Archives of Alberta at any time after 2 years have elapsed from the date on which the file was closed, if access to the public records in the area in which the files are placed is prohibited or restricted by regulations under section 14 of Schedule 11 to the *Government Organization Act*.

(2) After 6 years have elapsed from the date on which it is closed

- (a) a file relating to a complaint for which the Ombudsman declined to accept jurisdiction may be destroyed, and
- (b) any other file made by the Ombudsman relating to a complaint or investigation under this Act may, after it is microfilmed, be destroyed and the microfilm stored in the Provincial Archives.

(3) No person, other than the Ombudsman and the staff of the Office of the Ombudsman, shall have access to the information contained in a file or a microfilm of a file stored in the Provincial Archives under this section.

RSA 1980 cO-7 s29;1983 cD-25.5 s23;1994 cG-8.5 s52

Records management

31 On the recommendation of the Ombudsman, the Standing Committee may, subject to section 30, make an order

- (a) respecting the management of records in the custody or under the control of the Office of the Ombudsman, including their creation, handling, control, organization, retention, maintenance, security, preservation, disposition,

alienation and destruction and their transfer to the Provincial Archives of Alberta;

- (b) establishing or governing the establishment of programs for any matter referred to in clause (a);
- (c) defining and classifying records;
- (d) respecting the records or classes of records to which the order or any provision of it applies.

1995 c34 s12

Offences and penalties

32 Any person who,

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of the Ombudsman's or other person's powers under this Act,
- (b) without lawful justification or excuse, evicts, discharges, suspends, expels, intimidates, coerces, imposes a financial or other penalty on or otherwise discriminates against a person because that person has, in good faith,
 - (i) made or attempted to make a complaint under this Act,
 - (ii) assisted another person in making or attempting to make a complaint under this Act, or
 - (iii) given evidence or otherwise co-operated in an investigation under this Act,
- (c) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act, or
- (d) wilfully makes a false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of the Ombudsman's or other person's powers under this Act,

is guilty of an offence and liable to a fine of not more than \$1000 and in default of payment to imprisonment for a term not exceeding 3 months.

RSA 1980 cO-7 s30;1996 c28 s31

Other laws

33 The provisions of this Act are in addition to the provisions of any other Act or any rule of law under which

- (a) any remedy or right of appeal or objection is provided for any person, or
- (b) any procedure is provided for the inquiry into or investigation of any matter,

and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure.

RSA 1980 cO-7 s31

Power to make regulations

34 The Lieutenant Governor in Council may make regulations designating boards, commissions, corporations, offices or other bodies as agencies for the purposes of this Act.

2003 c30 s14