

1967 Bill 7

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY ~~OF ALBERTA~~

BILL 7

An Act to Provide for the Appointment of a Commissioner to Investigate Administrative Decisions and Acts of Officials of the Government and its Agencies

THE PREMIER

First Reading

Second Reading

Third Reading

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An Act to Provide for the Appointment of a Commissioner
to Investigate Administrative Decisions and Acts of
Officials of the Government and its Agencies

(Assented to _____, 1967)

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

1. This Act may be cited as *The Ombudsman Act*.
2. In this Act,
 - (a) "agency" means an agency of the Government of Alberta;
 - (b) "department" means a department of the Government of Alberta;
 - (c) "Minister" means a member of the Executive Council.
3. (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 Assembly.
4. (1) The Ombudsman may not be a member of the Assembly and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office.
(2) The Ombudsman shall be a Canadian citizen.
5. (1) Unless his office sooner becomes vacant, a person appointed as Ombudsman holds office for five years
 - (a) from the date of his appointment under section 3,
or
 - (b) from the date his appointment under section 7 is confirmed under that section,and any person, if otherwise qualified, may be reappointed.
(2) The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Assembly or, if there is no Speaker or if the Speaker is absent from Alberta, to the Clerk of the Assembly.
6. (1) On the recommendation of the Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Ombudsman from his office for disability, neglect of duty, misconduct or bankruptcy.

Explanatory Note

1. This Bill provides for the appointment of an officer of the Legislature to be called the Ombudsman, and sets out his functions and duties. Similar officials presently exist in Sweden, Finland, Denmark, Norway, New Zealand and the United Kingdom.

2. Definitions.

3. Appointment of Ombudsman.

4. The Ombudsman may hold no other office.

5. Term of office.

6. Suspension and removal from office.

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

7. (1) If the Ombudsman dies, retires, resigns or is removed from office, the vacancy thereby 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 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 may appoint an Ombudsman to fill the vacancy and unless his office sooner becomes vacant, the person so appointed holds office until his appointment is confirmed by the Assembly.

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

8. (1) The Ombudsman shall be paid a salary of \$20,000 which shall be charged to and paid out of the General Revenue Fund.

(2) There shall be paid to the Ombudsman in respect of time spent in travelling in the exercise of his functions such travelling allowances and expenses as may be prescribed by the Lieutenant Governor in Council.

9. (1) Before entering upon his duties, the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and that he will not, except in accordance with subsection (2) of section 19, divulge any information received by him under this Act.

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

10. (1) Subject to *The Public Service Act, 1962* there may be appointed such officers and employees as may be necessary to assist the Ombudsman in the efficient carrying out of his functions under this Act.

(2) Every person holding an office or appointment under the Ombudsman shall, before he begins to perform his

7. Filling vacancy in office.

8. Salary and allowances of Ombudsman.

9. Oath of office.

10. Staff of the Ombudsman.

duties under this Act, take an oath, to be administered by the Ombudsman, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

11. (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 his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Ombudsman may make an investigation either on a 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 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, or
- (b) that no appeal lies in respect thereof, or
- (c) that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(4) Without limiting subsection (1), any committee of the Assembly may at any time refer to the Ombudsman, for investigation and report by him, 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 matters so referred to him so far as they are within his jurisdiction, and
- (b) make such report to the committee as he thinks fit,

but nothing in section 14, 20 or 21 applies in respect of any investigation or report made under this subsection.

12. (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

- 11.** (1) Function of the Ombudsman.
- (2) Initiation of investigation.
- (3) Ombudsman's powers not affected by restrictions in other Acts.
- (4) Referrals by committees of the Assembly.

12. Areas outside jurisdiction of the Ombudsman.

until after the time prescribed for the exercise of that right has expired, or

- (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.

(2) If any question arises as to whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court of Alberta for a declaratory order determining the question.

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

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

- (a) any person in custody on a charge or after conviction of any offence, or
- (b) any patient of a hospital within the meaning 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 he is a patient.

14. (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 has availed himself of it, or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary, he may in his discretion refuse to investigate the matter further.

(2) The Ombudsman may, in his 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 his opinion,
 - (i) the subject matter of the complaint is trivial, or
 - (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.

13. Mode of complaint.

14. Ombudsman may refuse to investigate a complaint.

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

15. (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 affected, as the case may be, of his intention to make the investigation.

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

(3) On the request of any Minister in relation to an investigation or in any case where an investigation relates to any recommendation made to a Minister, the Ombudsman shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection (1) or (2) of section 20.

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

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

(2) The Ombudsman may hear or obtain information from such persons as he thinks fit and he may make such inquiries as he thinks fit.

(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, but, if at any time during the course of an investigation it appears to the Ombudsman that there may be sufficient grounds for his making a report or recommendation that may adversely affect any department, agency or person, he shall give to that department, agency or person an opportunity to be heard, and the department, agency or person is entitled to counsel at the hearing.

(4) Subject to this Act and any rules made under section 27, the Ombudsman may regulate his procedure in such manner as he thinks fit.

17. (1) Subject to this section and section 18, 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 the information to him, and
- (b) to produce any document, paper or thing that in his opinion relates to the matter being investigated and

15. Notice to departments and consultations with Ministers.

16. Form of proceedings on an investigation.

17. Power to obtain evidence.

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 or agency and whether or not the document, paper or thing is in the custody or under the control of a department or agency.

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

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

(3) Subject to subsection (4), a person who is bound by any Act to maintain secrecy in relation to, or not to disclose, any matter is not required to

- (a) supply any information to or answer any question put by the Ombudsman in relation to that matter, or
- (b) produce to the Ombudsman any document, paper or thing relating to it,

if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the prior consent in writing of a complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document, paper or thing relating only to the complainant, and it is the duty of the person to comply with the requirement.

(5) 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.

(6) 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.

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

18. (1) Where the 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 committee thereof 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.

19. (1) The Ombudsman and every person holding an office or appointment under him 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 him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations.

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

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

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

- (a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised
 - (i) for an improper purpose, or
 - (ii) on irrelevant grounds, or

18. Disclosure of certain matters not to be required.

19. Ombudsman and his staff to maintain secrecy.

20. Procedure after an investigation.

(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, where this section applies, the Ombudsman is of opinion

(a) that the matter should be referred to the appropriate authority for further consideration, or

(b) that the omission should be rectified, or

(c) that the decision should be cancelled or varied, or

(d) that any practice on which the decision, recommendation, act or omission was based should be altered, or

(e) that any law on which the decision, recommendation, act or omission was based should be reconsidered, or

(f) that reasons should have been given for the decision, or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion and his reasons therefor to the appropriate Minister and to the department or agency concerned, and may make such recommendations as he thinks fit and in that case he may request the department or agency to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments, if any, made by or on behalf of the department or agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may thereafter make such report to the Legislature on the matter as he thinks fit.

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the department or agency concerned.

(6) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

21. (1) Where the Ombudsman makes a recommendation under subsection (3) of section 20 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.

21. Complainant to be informed of results of investigation.

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

22. 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.

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

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

24. (1) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any department or agency and inspect the premises and, subject to sections 17 and 18, carry out therein any investigation that is within his jurisdiction.

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

25. (1) With the prior approval of the Lieutenant Governor in Council, the Ombudsman may, by writing under his hand, delegate to any person holding any office under him any of his 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.

22. Proceedings of Ombudsman are not subject to review by the courts.

23. Proceedings privileged.

24. Power of entry onto premises of department or agency.

25. Delegation of powers by 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 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 his 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 his authority to exercise the power.

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

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

(a) generally to the exercise of his functions under this Act, or

(b) to any particular case investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to the Legislature.

27. The Assembly may,

(a) of its own volition, or

(b) upon the recommendation of the Lieutenant Governor in Council,

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

28. Any person who,

(a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act, or

(b) 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

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act,

is guilty of an offence and is liable on summary conviction to a fine of not more than \$500 and in default of payment to imprisonment for a term not exceeding three months.

26. Ombudsman to make reports.

27. Rules.

28. Offence and penalty.

29. 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.

30. This Act comes into force on the first day of July, 1967.

29. Provisions of Act are in addition to other laws.