

1972 Bill 75

First Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 75

The Ombudsman Amendment Act, 1972

THE ATTORNEY GENERAL

First Reading

Second Reading

Third Reading

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BILL 75

1972

THE OMBUDSMAN AMENDMENT ACT, 1972

(Assented to _____, 1972)

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

1. The Ombudsman Act is hereby amended.

2. Section 8 is amended by striking out subsection (1) and by substituting the following:

8. (1) The Ombudsman shall be paid a salary at the rate of

(a) \$28,000 a year, effective as of January 1, 1971, and

(b) \$30,000 a year, effective as of January 1, 1972, which shall be charged to and paid out of the General Revenue Fund.

3. Section 9, subsection (1) is amended by adding after the words "except in accordance with section 19, subsection (2)" the words "or section 21.1, subsections (3) and (4)".

4. Section 16 is amended by striking out subsection (3) and by substituting the following:

(3) Subject to section 26, subsection (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.

5. Section 17 is amended by adding the following subsection after subsection (1):

(1.1) Where the Ombudsman requires the production of a document, paper or thing under subsection (1), he may require it to be produced at a place designated by him and may require that it be left in his possession for the purposes of his investigation but, upon the request of the deputy minister of the department or the administrative head of

Explanatory Notes

1. This Bill will amend chapter 268 of the Revised Statutes of Alberta 1970.

2. Section 8, subsection (1) presently reads:

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

3. Section 9, subsection (1) presently reads:

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 section 19, subsection (2), divulge any information received by him under this Act.

See the Note to section 7 of this Bill.

4. Section 16, subsection (3) presently reads:

(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.

See Note to section 8 of this Bill.

5. Section 17, subsection (1) presently reads:

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 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.

the agency, the Ombudsman shall return the document, paper or thing to the department or agency as quickly as possible, but not later than 48 hours after the receipt of the request, subject to his right to again require its production in accordance with this section.

6. *Section 20 is amended by striking out subsection (6).*

7. *The following section is added after section 21:*

21.1 (1) No report or recommendation of the Ombudsman or any 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, or
- (b) a committee of members of the Assembly appointed by a resolution of the Assembly, or
- (c) a commissioner under *The Public Inquiries Act*, if a resolution of the 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 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 19 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 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

6. Section 20, subsection (6) presently reads:

(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.

See Note to section 8 of this Bill.

7. The new section 21.1 prohibits a Royal Commission inquiry or any other kind of investigation or review of a report or recommendation of the Ombudsman or any proceedings leading to it, unless otherwise authorized by the Legislative Assembly, the body to whom the Ombudsman is responsible.

(b) shall not produce or be compelled to produce any document, paper or thing, where the Ombudsman or counsel on his behalf objects on the ground that the answer, document, paper or thing relates to matters of a secret and confidential nature.

(5) Where 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 summoned that witness shall forthwith give notice of that fact to the Ombudsman that is sufficient in the circumstances to enable him to appear and to make objections in respect of the witness's testimony pursuant to subsection (4).

8. Section 26 is amended by adding the following subsection after subsection (2):

(3) The Ombudsman shall not, in any 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, or
- (b) any agency or any member or employee of an agency, or
- (c) 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 had given that department, agency, officer, member, employee, person or group of persons an opportunity to know the nature of the opinion or comment and to make representations to him in respect of it either personally or by counsel.

9. This Act comes into force on the day upon which it is assented to.

8. The new subsection 26(3) replaces part of the present section 16(3) and section 20(6) of the Act. See sections 4 and 6 of this Bill. The two subsections apparently deal with the same subject matter but in different terms. The new section 26(3) is thus intended to clarify the matter of the right to make representations to the Ombudsman in one provision. The new subsection (3) will apply only in respect to those reports of the Ombudsman that become public that is, his reports to the Legislature under section 26(1) and any report he publishes under section 26(2).