

1973 Bill 212

Second Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 212

An Act to amend The Ombudsman Act

MR. LUDWIG

First Reading

Second Reading

Third Reading

Bill 212
Mr. Ludwig

BILL 212

1973

AN ACT TO AMEND THE OMBUDSMAN ACT

(Assented to _____, 1973)

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 2 is amended*
 - (a) *by adding after clause (a) the following clause:*
 - (a1) "council" includes, as the case may be, county council or a school board;
 - (b) *by adding after clause (c) the following clauses:*
 - (d) "mayor" includes, as the case may be, the reeve of a municipal district, the reeve of a county or the chairman of a school board;
 - (e) "municipality" means a city, town, village, summer village, municipal district, county or school board;
 - (f) "municipal agency" means an agency of a municipality.
3. *Section 11 is amended by striking out subsection (1) and by substituting the following therefor:*
 - 11.** (1) It is the function and duty of the Ombudsman to investigate
 - (a) 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, and
 - (b) any decision or recommendation made, including any recommendation made to a mayor, or any act done or omitted, relating to a matter of administra-

Explanatory Notes

- 1.** This Act will amend chapter 268 of the Revised Statutes of Alberta 1970.
- 2.** This amendment will define the enumerated terms.
- 3.** This amendment will give the Ombudsman power to investigate complaints against the administration of a municipality.

tion of the municipality and affecting any person or body of persons in his or its personal capacity, in or by any municipality or municipal agency, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment, by-law or resolution.

4. section 12, subsection (1) is amended by striking out clause (b) and by substituting therefor the following:

- (b) any decision, recommendation, act or omission of any person
 - (i) acting as a solicitor to the Crown or acting as council for the Crown, or
 - (ii) acting as a solicitor to a municipality or acting as council for the municipality in relation to any proceedings.

5. Section 15 is struck out and the following is substituted therefor:

15. (1) Before investigating any matter under this Act, the Ombudsman shall

- (a) in respect of those matters referred to in section 11, subsection (1), clause (a) inform the deputy minister of the department or the administrative head of the agency affected, as the case may be, and
- (b) in respect of those matters referred to in section 11, subsection (1), clause (b), inform the mayor or the administrative head of the municipality, or the administrative head of the municipal agency, 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

- (a) in respect of those matters referred to in section 11, subsection (1), clause (a) any Minister who is concerned in the matter of the investigation, and
- (b) in respect of those matters referred to in section 10, subsection (1), clause (b) any mayor who is concerned in the matter of the investigation.

(3) On the request of

- (a) any Minister in relation to an investigation or in any case where an investigation relates to any recommendations made to a Minister, and
- (b) any mayor in relation to an investigation or in any case where an investigation relates to any recommendation made to a mayor,

4. Section 12, subsection (1), clause (b) presently reads:

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

5. Section 15 presently reads:

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 section 20, subsection (1) or (2).

(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.

the Ombudsman shall consult that Minister or mayor, as the case may be, after making the investigation and before forming a final opinion on any of the matters referred to in section 20, subsection (1) or (2).

(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

- (a) 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, and
- (b) any officer or employee of any municipality, or municipal agency, he shall refer the matter to the mayor of the municipality or the administrative head of the municipal agency, as the case may be.

6. Section 17 is amended

- (a) *as to subsection (1) by striking out the words "department or agency" wherever they occur and by substituting therefor the words "department, agency, municipality or municipal agency",*
- (b) *by striking out subsection (1.1) and by substituting therefor the following:*

(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

(a) of the deputy minister of the department or the administrative head of the agency, or

(b) the mayor or administrative head of the municipality or the administrative head of the municipal agency,

as the case may be, the Ombudsman shall return the document, paper or thing to that department, agency, municipality or municipal 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.

- (c) *as to subsection (2), clause (a) by striking out the words "department or agency" and by substituting therefor the words "department, agency, municipality or municipal agency".*

6. Section 17, subsections (1), (1.1) and (2) presently read:

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.

(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 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.

- (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),
 - (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.

7. *Section 20 is amended*

(a) *by striking out subsection (3) and by substituting therefor the following:*

(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

(h) appropriate Minister and to the department or agency concerned, or

(i) the mayor and the administrative head of the municipality or municipal agency concerned, and may make such recommendations as he thinks fit and in that case he may request the department, agency, municipality or municipal agency, as the case may be, to notify him within a specified time of the steps, if any, that it proposes to take to give effect to his recommendations.

(b) *by striking out subsection (4) and by substituting therefor the following:*

(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

(a) the municipality or municipal agency affected, may send a copy of the report and recommendations to the mayor and council of the municipality, and

(b) the department, agency, municipality or municipal agency affected, may send a copy of the report and recommendations to the Lieutenant Governor in Council and may

7. Section 20 presently reads:

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
 - (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 matters 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.

thereafter make such report to the Legislature on the matter as he thinks fit.

- (c) *as to subsection (5) by striking out the words "department or agency" and by substituting therefor the words "department, agency, municipality or municipal agency".*

8. *Section 24 is amended*

- (a) *as to subsection (1), by striking out the words "department or agency" and by substituting therefor the words "department, agency, municipality or municipal agency",*
- (b) *by striking out subsection (2) and by substituting therefor the following:*

(2) Before entering upon any premises pursuant to subsection (1), the Ombudsman shall notify

- (a) the deputy minister of the department, or
 - (b) the administrative head of the agency, or
 - (c) the mayor or the administrative head of the municipality, or
 - (d) the administrative head of the municipal agency,
- as the case may be, that occupies the premises of his intention to do so.

9. *Section 26 is amended*

- (a) *as to subsection (2) by striking out the words "or department or agency" and by substituting therefor the words " , department, agency, municipality or municipal agency",*
- (b) *by striking out subsection (3) and by substituting therefor the following:*

(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 municipality, or any officer or employee of the municipality,
 - (d) any municipal agency or any member or employee of a municipal agency, and
 - (e) any other person or group of persons,
- unless, prior to making the report to the Legisla-

8. Section 24 presently reads:

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.

9. Section 26 presently reads:

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.

(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.

ture, municipal council or publishing the report pursuant to subsection (2), as the case may be, the Ombudsman had given that department, agency, municipality, municipal 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.

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