

1976 Bill 224

Second Session, 18th Legislature, 25 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 224

AN ACT TO AMEND THE OMBUDSMAN ACT

MR. MANDEVILLE

First Reading

Second Reading

Third Reading

Bill 224
Mr. Mandeville

BILL 224

1976

AN ACT TO AMEND THE OMBUDSMAN ACT

(Assented to , 1976)

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, a municipal or 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 administration of the municipality and affecting any person

Explanatory Notes

1. Amends Chapter 268 of the Revised Statutes of Alberta.

2. Definitions.

3. Jurisdiction expanded to municipalities. Section 11(1) presently reads:

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.

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 counsel for the Crown, or
 - (ii) acting as a solicitor to a municipality or acting as counsel 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 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

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

4. Section 12(1)(b) presently reads:

12. (1) (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 or administrative head, 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, or
- (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 of the person by whom it was produced at the request of the Ombudsman, 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(1) to (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) (a) If, where this section applies, the Ombudsman is of opinion

- (i) that the matter should be referred to the appropriate authority for further consideration, or
- (ii) that the omission should be rectified, or
- (iii) that the decision should be cancelled or varied, or
- (iv) that any practice on which the decision, recommendation, act or omission was based should be altered, or
- (v) that any law on which the decision, recommendation, act or omission was based should be reconsidered, or
- (vi) that reasons should have been given for the decision, or
- (vii) 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, or to the mayor and the administrative head of the municipality or municipal agency concerned, as the case may be.

(b) At the time of making his report as provided in clause (a) of subsection (3) the Ombudsman 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,

(a) 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 sees fit, or

7. Section 20(3), (4) and (5) presently read:

- (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
 - (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.

- (b) after considering the comments, if any, made by or on behalf of the municipality or municipal agency affected, may send a copy of the report and recommendations to the mayor and council of the municipality.
- (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, or
 - (d) any municipal agency or any member or employee of a municipal agency, or
 - (e) any other person or group of persons, unless prior to making the report to the Legislature

8. Section 24(1) and (2) presently read:

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 (2) and (3) presently read:

26. (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.

or publishing any report pursuant to subsection (2), as the case may be, the Ombudsman has 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. A section is added after section 29 with the following wording:

30. (1) Any council that desires that its municipality or any municipal agency over which it has authority be excluded from the provisions of this Act may file with the Ombudsman at any time prior to the expiry of twelve months from the commencement of this Act, a copy of a resolution passed by a majority of the members of the council to such effect and the sworn statement of the mayor of the council which shall state that the copy is a true copy and that the resolution was duly passed by the council and which shall state the date that it was so passed.

(2) Upon filing the documents provided for in subsection (1) the municipality or municipal agency stated in such resolution to be desirous of being so excluded shall, effective from the date of such filing be excluded from the provisions of this Act.

(3) If any municipality or municipal agency has become excluded from the provisions of this Act and wishes to be not so excluded it may by its responsible council file with the Ombudsman a resolution passed by a majority of such council to such effect and the sworn statement of the mayor of the council which shall state that the copy is a true copy and that the resolution was duly passed by the council and which shall state the date that it was so passed.

(4) Upon filing the documents provided for in subsection (3) the municipality or municipal agency stated in such resolution to be desirous of being not so excluded shall, effective from the date of such filing be included in the provisions of this Act.

(5) Any person is entitled to be advised by the Ombudsman whether a municipality or municipal agency is at that time excluded from the provisions of this Act and, on payment of a fee not to exceed 50 cents for each municipality or municipal agency may inspect any documents filed by any council under the provisions of this section.

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

10. Permits a municipality to elect not to be within the jurisdiction of the Ombudsman.

11. Coming into force.