

1978 BILL 40

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 40

THE OMBUDSMAN AMENDMENT ACT, 1978

HONOURABLE MR. HYNDMAN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 40

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1978

THE OMBUDSMAN AMENDMENT ACT, 1978

(Assented to , 1978)

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

1 The Ombudsman Act is amended by this Act.

2 Section 2 is amended

(a) by repealing clauses (a) and (b) and substituting the following:

(a) "agency" means a Provincial agency as defined in *The Financial Administration Act, 1977* but does not include

(i) the board of a university under *The Universities Act*,

(ii) the board of a public college under *The Colleges Act*, and

(iii) the Governors of the Banff Centre for Continuing Education;

(b) "department" means a department as defined in section 1 of *The Financial Administration Act, 1977*;

(b) by adding the following after clause (c):

(d) "Select Standing Committee" means the Select Standing Committee on the Offices of the Auditor General and the Ombudsman.

Explanatory Notes

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

2 Section 2 presently reads in part:

2 In this Act,

(a) "agency" means an agency of the Government of Alberta and includes The Workers' Compensation Board;

(b) "department" means a department of the Government of Alberta;

3 *Section 6(2) is repealed and the following is substituted:*

(2) At any time the Legislature is not in session the Lieutenant Governor in Council, on the recommendation of the Select 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 ensuing session of the Legislature.

4 *Section 7(3) is amended by adding “, on the recommendation of the Select Standing Committee,” after “Lieutenant Governor in Council”.*

5(1) *Section 8 is repealed and the following is substituted:*

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

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

(2) *Notwithstanding subsection (1), the Ombudsman shall be paid a salary of the rate of \$38 584 a year, effective as of April 1, 1978, until his salary rate has been set by the Select Standing Committee on the Offices of the Auditor General and the Ombudsman.*

6 *Section 10 is amended by adding the following after subsection (1):*

(1.1) On the recommendation of the Ombudsman, the Select Standing Committee may, by resolution, direct that any regulation, order or directive made under *The Public Service Act* or *The Financial Administration Act, 1977* or any allocation, designation or other decision of the Public Service Commissioner under *The Public Service Act* be inapplicable to, or be varied in its operation in respect of, the Office of the Ombudsman.

(1.2) A direction made under subsection (1.1) in relation to a regulation, order or directive made under *The Financial Administration Act, 1977* operates notwithstanding that Act.

7 *Section 11 is amended by adding the following after subsection (4):*

3 Section 6(2) presently reads:

(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.

4 Section 7(3) presently reads:

(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.

Provides for the appointment of an Ombudsman on the recommendation of the Select Standing Committee in a case where the Assembly is not in session.

5 Section 8 presently reads:

8(1) The Ombudsman shall be paid a salary at the rate of \$36,400 a year, effective as of April 1, 1976, 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.

Provides for the salary and benefits of the Ombudsman.

6 Allows the Select Standing Committee on the Offices of the Auditor General and the Ombudsman to provide relief from regulations, orders, directives or decisions made under The Public Service Act or The Financial Administration Act, 1977.

7 Allows a Minister of the Crown to refer a matter to the Ombudsman for investigation and report.

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

(a) subject to any special directions of the Minister, investigate the matters so referred to him so far as they are within his jurisdiction, and

(b) make such report to the Minister as he thinks fit,

but nothing in section 14, 15(1), 20, 21 or 24(2) 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.

8 *Section 13(2)(b) is repealed and the following is substituted:*

(b) a patient of

(i) a facility within the meaning of *The Mental Health Act, 1972*, or

(ii) a place established under section 3(1) of that Act,

9 *Section 18 is amended by adding the following after subsection (2):*

(3) Nothing in this Act authorizes the Ombudsman to require any person

(a) to produce, or

(b) to furnish any information contained in or relating to,

a document, paper or thing coming into existence pursuant to Part 2 or 3 of *The Child Welfare Act* or a pre-sentence report.

10 *In the following provisions, "Lieutenant Governor in Council" is struck out and "Select Standing Committee" is substituted:*

section 25(1);

section 27(b).

8 Section 13(2) presently reads:

(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) a patient of a facility within the meaning of The Mental Health Act, 1972

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.

9 Prevents access to pre-sentence reports or to information arising under Part 2 or 3 of The Child Welfare Act.

10 Provides for control of the Ombudsman by the Select Steering Committee on the Offices of the Auditor General and the Ombudsman rather than control by the Lieutenant Governor in Council.

11 The following is added after section 27:

27.1(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 7 of *The Department of Government Services 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.

12 Section 28 is amended by striking out “\$500” and substituting “\$1000”.

11 Storage of and access to files of the Ombudsman.

12 Section 28 presently reads:

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 of imprisonment for a term not exceeding three months.

13 The Auditor General Act is amended

(a) in section 1(1)(g) by striking out “Office of the Auditor General” and substituting “Offices of the Auditor General and Ombudsman”, and

(b) by repealing section 2.

14 The Financial Administration Act, 1977 is amended in section 33(c)

(a) by repealing subclause (i)(B), and

(b) by repealing subclause (ii) and substituting the following:

(ii) the Chairman of the Select Standing Committee on the Offices of the Auditor General and the Ombudsman or, in the event of the absence or inability to act of the Chairman or if there is no Chairman, the Deputy Chairman, with respect to

(A) the Auditor General and the staff of the Office of the Auditor General, and

(B) the Ombudsman and the staff of the Office of the Ombudsman;

15 The Act comes into force on the day upon which it is assented to.

13 Consequential. Amends chapter 56 of the Statutes of Alberta, 1977.

14 Consequential. Amends chapter 67 of the Statutes of Alberta, 1977.