

1985 BILL 215

Third Session, 20th Legislature, 34 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 215

AN ACT TO AMEND THE OMBUDSMAN ACT

MR. LEE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 215
Mr. Lee

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1985

AN ACT TO AMEND THE OMBUDSMAN ACT

(Assented to _____, 1985)

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 1 is amended, by adding the following after clause (c):

(c.1) "municipal agency" means an agency of a municipality that carries out any function of public administration excluding medical treatment or health facilities, educational services and law enforcement;

(c.2) "participating municipality" means a city whose council has passed a resolution determining that the Ombudsman shall have jurisdiction with respect to the administration of the City and its municipal agencies pursuant to this Act.

3 Section 11 is amended

(a) in subsection (1) by adding "or by any participating municipality or any administrative division or municipal agency of it" after "by any department or agency", and

(b) by adding the following subsection at the end of it:

(7) Without limiting subsection (1) the council of a participating municipality may at any time by resolution refer any matter to the Ombudsman for investigation and report by him, and, in that case, the Ombudsman may

Explanatory Notes

1 This Bill will amend chapter O-7 of the Revised Statutes of Alberta 1980.

2 New definitions.

3 Jurisdiction expanded to municipalities that elect to participate.

(a) 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.

(b) Referral of matter to Ombudsman by council.

(a) subject to any special directions by the council, investigate the matter so referred to him insofar as it is within his jurisdiction, and

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

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

4 Section 15 is amended

(a) in subsection (1) by adding “or the council of the participating municipality” after “agency”,

(b) in subsection (2) by adding “or the council of a participating municipality” after “Minister”,

(c) in subsection (3) by adding “or the council of a participating municipality” after “Minister” wherever it occurs, and

(d) in subsection (4) by adding “or the council of a participating municipality or the administrative head of the agency of it” after “administrative head of the agency”.

5 Section 17 is amended

(a) in subsection (2)

(i) by adding “or the council of the participating municipality or the administrative head of the agency of it” after “administrative head of the agency”, and

(ii) by adding “, municipality” after “to the department”, and

(b) in subsection (3) by deleting “department or agency” and substituting “department, agency, participating municipality or agency of it”.

4 Amends section 15 to include reference to participating municipalities and agencies of them. 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(1) or (2).

(4) If, during or after an investigation, the Ombudsman is of the 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.

5 Section 17(2) and (3) presently read:

(2) When 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.

(3) 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),

6 *Section 20 is amended*

(a) *in subsection (3) by adding “, participating municipality or municipal agency” after “department or agency”, wherever it occurs, and*

(b) *in subsection (4) by adding at the end of it:*

“or, where the report concerned a participating municipality or a municipal agency the Ombudsman may send a copy of the report and recommendations to the Minister of Municipal Affairs”, and

(c) *in subsection (5) by adding “, participating municipality or municipal agency” after “agency”.*

7 *Section 25 is amended*

(a) *in subsection (1) by adding “participating municipality or agency of it” after “agency”, and*

(b) *in subsection (2) by adding “or the council of the participating municipality or the administrative head of the municipal agency” before “that occupies the premises”.*

6 Amends section 20 to include a reference to participating municipalities and municipal agencies. Section 20 presently reads in part:

20(3) If, when this section applies, the Ombudsman is of the opinion

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

(b) that the omission should be rectified,

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

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

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

(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 for it to the appropriate Minister and to the department or agency concerned, and may make any recommendations 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 any report to the Legislature on the matter that 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.

7 Amends section 25 to reflect the involvement of participating municipalities. Section 25 presently reads:

25(1) For the purposes of this Act, the Ombudsman may at any time enter on any premises occupied by any department or agency and inspect the premises and, subject to sections 17 and 18, carry out in those premises any investigation that is within his jurisdiction.

8 *Subsection 27 is amended*

(a) *in subsection (2) by adding “or participating municipality or agency of it” after “agency”,*

(b) *in subsection (3)*

(i) *by adding the following after clause (b):*

“(b.1) any participating municipality or agency of it or any officer or employee of the municipality or agency, or” *and*

(ii) *by adding “participating municipality,” after “the Ombudsman had given that agency,”, and*

(c) *by adding the following at the end of it:*

(4) the Ombudsman shall send a copy of any report made pursuant to subsection (1) to every participating municipality.

9 *This Act comes into force on Proclamation.*

(2) Before entering on 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.

8 Section 27 presently reads in part:

(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 a 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,

*(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 has 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

9 Coming into force.