

2007 Bill 202

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 202**

## **CONSUMER ADVOCATE ACT**

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MR. ELSALHY

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 202*  
*Mr. Elsalhy*

## **BILL 202**

2007

### **CONSUMER ADVOCATE ACT**

*(Assented to \_\_\_\_\_, 2007)*

#### **Preamble**

WHEREAS Alberta's economy depends on consumers' trust in the marketplace and the enforcement of fair business practices;

WHEREAS consumers require further protection;

WHEREAS there is a need for readily accessible, independent consumer information; and

WHEREAS there is a need for an independent officer of the Legislature to have an ongoing role in evaluating, investigating and improving consumer protection in Alberta;

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

#### **Definitions**

**1** In this Act,

- (a) "Advocate" or "Consumer Advocate" means the Consumer Advocate appointed under section 2;
- (b) "consumer" means a consumer as defined in the *Fair Trading Act*;
- (c) "Director of Fair Trading" means the Director of Fair Trading appointed under the *Fair Trading Act*;

- (d) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the *Fair Trading Act*;
- (e) “Standing Committee” means the Standing Committee on Legislative Offices;
- (f) “Utilities Consumer Advocate” means the person designated by the Government as the Utilities Consumer Advocate.

### **Appointment of Consumer Advocate**

**2(1)** The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Consumer Advocate to carry out the duties and functions set out in this Act.

**(2)** The Advocate is an officer of the Legislature.

**(3)** The Advocate may not be a Member of the Legislative Assembly.

### **Mandate in first year of office**

**3(1)** Within the first year of taking office, the Consumer Advocate must

- (a) review Alberta’s consumer protection statutes including but not limited to the *Fair Trading Act*, the *Residential Tenancies Act*, the *Natural Gas Price Protection Act* and the *Real Estate Act*,
- (b) assess the role and effectiveness of the Utilities Consumer Advocate, and
- (c) complete a report with recommendations, including proposals for legislative change.

**(2)** Upon completion of the report prepared under subsection (1), the Consumer Advocate must immediately make it public by submitting it to the Speaker of the Assembly, who must

- (a) if the Assembly is sitting, table it in the Assembly, or
- (b) if the Assembly is not sitting,
  - (i) distribute it to every Member of the Assembly, and
  - (ii) make it available to the public.

(3) Within 12 months of the completion of the Consumer Advocate's report, a member of the Executive Council must introduce a Bill that incorporates the recommendations in the Consumer Advocate's report.

(4) The Government must take all reasonable steps to ensure that the Bill introduced under subsection (3) is promptly moved at all stages of debate so that if it passes all stages, it can come to a vote in the Assembly at third reading 30 days after introduction.

### **Duties and powers**

**4(1)** The duties and functions of the Consumer Advocate include the following:

- (a) to represent the rights, interests and viewpoints of consumers in Alberta;
- (b) to receive, review and investigate consumer complaints regarding any act or omission on the part of the Director of Fair Trading;
- (c) to receive, review and investigate consumer complaints regarding any act or omission on the part of the Utilities Consumer Advocate;
- (d) to initiate, recommend or undertake programs designed to promote the interests of consumers in the Province;
- (e) to operate a publicly accessible database of consumer complaints that includes
  - (i) the name of the business,
  - (ii) the nature of the complaint,
  - (iii) the findings of any investigation, and
  - (iv) details regarding any administrative orders that have been rendered, charges that have been laid or fines that have been levied;
- (f) to prepare and submit to the Legislative Assembly annual reports and any other report required under this Act;
- (g) to receive submissions from, and consult with, consumer organizations;

- (h) to conduct research on matters relating to consumer protection.
- (2) The Legislative Assembly or any of its committees may at any time refer a matter to the Consumer Advocate for investigation and report.
- (3) A Minister may at any time refer any matter to the Consumer Advocate for investigation and report.
- (4) The Consumer Advocate may commence an investigation either on a complaint made by any person or on the Consumer Advocate's own initiative.

### **Term of office**

- 5(1)** Except as provided in section 8, the Consumer Advocate holds office for a term not exceeding 5 years.
- (2) A person holding office as the Consumer Advocate continues to hold office after the expiry of that person's office until that person is reappointed, a successor is appointed or a period of 6 months has expired, whichever occurs first.
- (3) A person is eligible to hold office as the Consumer Advocate for no more than 2 terms.

### **Oath**

- 6(1)** Before commencing the duties of office, the Consumer Advocate must take an oath to faithfully and impartially perform the duties of the office and not, except as provided in this Act, to disclose any information received by the office of the Consumer Advocate under this Act.
- (2) The oath shall be administered by the Speaker or the Clerk of the Legislative Assembly.

### **Resignation**

- 7** The Consumer Advocate may at any time resign from office by delivering a written resignation to the Clerk of the Legislative Assembly.

### **Suspension or removal**

**8(1)** On the recommendation of the Legislative Assembly, the Lieutenant Governor in Council may, at any time, suspend or remove the Consumer Advocate from office for cause or incapacity.

**(2)** At any time the Legislative Assembly is not sitting, the Lieutenant Governor in Council, on the recommendation of the Standing Committee, may suspend the Consumer Advocate from office for cause or incapacity, but the suspension shall not continue in force beyond the end of the next sitting of the Legislative Assembly.

### **Acting Consumer Advocate**

**9(1)** The Lieutenant Governor in Council, on the recommendation of the Standing Committee, may appoint an acting Consumer Advocate if

- (a) the Office of Consumer Advocate is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Consumer Advocate is suspended when the Legislative Assembly is not sitting, or
- (c) the Consumer Advocate is suspended or removed or the Office of the Consumer Advocate otherwise becomes vacant when the Legislative Assembly is sitting but no recommendation is made by the Assembly before the end of the session.

**(2)** The Lieutenant Governor in Council may appoint an acting Consumer Advocate if the Consumer Advocate is temporarily absent because of illness or for another reason.

**(3)** An acting Consumer Advocate holds office until

- (a) a person is appointed as Consumer Advocate under section 2,
- (b) the suspension of the Consumer Advocate ends, or
- (c) the Consumer Advocate returns to office after a temporary absence.

### **Office of the Consumer Advocate**

**10** The Office of the Consumer Advocate is hereby established consisting of the Consumer Advocate and, provided that funds are allocated by the Legislature, those employees appointed pursuant to

the *Public Service Act* to assist the Consumer Advocate in carrying out his or her duties and functions under this Act.

### **Remuneration**

**11** Provided that the funds are allocated by the Legislature, the Consumer Advocate shall be entitled to receive

- (a) remuneration as determined by the Standing Committee for his or her services, and
- (b) reasonable travelling and living expenses incurred while away from his or her ordinary place of residence in the course of fulfilling his or her duties as Consumer Advocate.

### **Annual report**

**12** The Consumer Advocate must report annually to the Legislative Assembly on

- (a) the exercise of his or her functions under this Act;
- (b) any recommendations made by the Advocate to the Government;
- (c) the actions taken by the Government in response to the Advocate's recommendations;
- (d) statistics respecting
  - (i) complaints received under this Act,
  - (ii) prosecutions under consumer protection statutes including but not limited to the legislation enumerated in section 3(1)(a),
  - (iii) the cost of consumer commodities, such as rent, utilities, automobile insurance and retail gasoline, in Alberta as compared to other Canadian provinces;
- (e) government programs and legislation and their effectiveness in addressing consumers' rights.

### **Notice of investigation**

**13(1)** Before investigating any matter under this Act, the Consumer Advocate shall inform the deputy minister of the department, or in the case of an investigation of the Utilities Consumer Advocate, the

deputy minister of the Executive Council, of the Consumer Advocate's intention to conduct the investigation.

(2) The Consumer Advocate may, at the Consumer Advocate's discretion, at any time during or after an investigation, consult any Minister or administrative head who is concerned in the matter of the investigation.

(3) On the request of the Minister or administrative head in relation to an investigation or in any case where an investigation relates to a recommendation made to the Minister or administrative head, the Consumer Advocate shall consult the Minister or administrative head after making the investigation and before forming a final opinion on any of the matters referred to in section 16(1) or (2).

(4) If, during or after an investigation, the Consumer Advocate 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, the Consumer Advocate shall refer the matter to the deputy minister of the department or the administrative head of the agency.

#### **Conduct at investigation**

**14(1)** Every investigation by the Consumer Advocate under this Act shall be conducted in private.

(2) The Consumer Advocate may hear or obtain information from any persons the Consumer Advocate thinks fit and may make inquiries the Consumer Advocate thinks fit.

(3) It is not necessary for the Consumer Advocate to hold any hearing and no person is entitled as of right to be heard by the Consumer Advocate.

(4) Subject to this Act, the Consumer Advocate may regulate the Consumer Advocate's procedure in any manner the Consumer Advocate thinks fit.

#### **Evidence at investigation**

**15(1)** Subject to this section, the Consumer Advocate may require any person who in the Consumer Advocate's opinion is able to give any information relating to any matter being investigated by the Consumer Advocate

(a) to furnish the information to the Consumer Advocate, and



- (b) to produce any document, paper or thing that in the Consumer Advocate's opinion relates to the matter being investigated and that may be in the possession or under the control of that person.

(2) When the Consumer Advocate requires the production of a document, paper or thing under subsection (1), the Consumer Advocate may require it to be produced at a place designated by the Consumer Advocate and may require that it be left in the Consumer Advocate's possession for the purposes of the Consumer Advocate's investigation but, on the request of the deputy minister of the department, the administrative head of the agency or the person who produced the document, paper or thing, the Consumer Advocate shall return the document, paper or thing to the department, agency or person as quickly as possible, and in any case not later than 7 days after the receipt of the request, subject to the Consumer Advocate's right to require its production again in accordance with this section.

(3) The Consumer Advocate may summon before the Consumer Advocate and examine on oath

- (a) any person who is an officer, employee or member of any department or agency and who in the Consumer Advocate's opinion is able to give any information mentioned in subsection (1),
- (b) any complainant, and
- (c) any other person who in the Consumer Advocate's opinion is able to give any information mentioned in subsection (1),

and for that purpose may administer an oath.

(4) Every person has the same privileges in relation to the giving of information, the answering of questions and the production of documents, papers and things under this Act as witnesses have in any court.

(5) No person is liable to prosecution for an offence under any Act by reason of the person's compliance with this section.

### **Procedure after investigation**

**16(1)** This section applies when, after making an investigation under this Act, the Consumer Advocate is of the opinion that the decision, recommendation, act or omission that was the subject matter of the investigation

- (a) appears to have been contrary to law,
- (b) was unreasonable, unjust, oppressive or improperly discriminatory or was in accordance with a rule of law, a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory,
- (c) was based wholly or partly on a mistake of law or fact, or
- (d) was wrong.

**(2)** This section also applies when the Consumer Advocate is of the opinion

- (a) that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power was exercised
  - (i) for an improper purpose,
  - (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, when this section applies, the Consumer Advocate 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 reconsidered,
- (f) that reasons should have been given for the decision,

- (g) that the matter should be reheard or reconsidered by the appropriate authority, or
- (h) that any other steps should be taken,

the Consumer Advocate shall report that opinion and the Consumer Advocate's reasons for it to the Minister and to the department or agency concerned and may make any recommendations the Consumer Advocate thinks fit, and in that case the Consumer Advocate may request the department or agency to notify the Consumer Advocate within a specified time of the steps, if any, that it proposes to take to give effect to the Consumer Advocate's recommendations.

(4) If, within a reasonable time after the report is made under subsection (3), no action is taken that seems to the Consumer Advocate to be adequate and appropriate, the Consumer Advocate, at the Consumer Advocate's discretion after considering the comments, if any, made by or on behalf of the department or agency, shall send a copy of the report and recommendations to the Legislature.

(5) The provisions governing a report under section 3(2) apply to a report under this section.

(6) The Consumer Advocate shall attach to every report sent or made under subsection (5) a copy of any comments made by or on behalf of the department or agency concerned.

### **Results of investigation to complainant**

17(1) If the Consumer Advocate makes a recommendation under section 16 and no action that seems to the Consumer Advocate to be adequate and appropriate is taken on the recommendation within a reasonable time, the Consumer Advocate shall inform the complainant of the recommendation and make whatever comments on the matter the Consumer Advocate thinks fit.

(2) The Consumer Advocate shall in any case inform the complainant, in the manner and at the time the Consumer Advocate thinks proper, of the result of the investigation.

### **Frivolous complaint**

18 The Consumer Advocate may refuse to investigate or cease to investigate a complaint if in the Consumer Advocate's opinion

- (a) the subject matter of the complaint is trivial,

- (b) the complaint is frivolous or vexatious, or
- (c) having regard to all the circumstances, no investigation is necessary.

**Amends RSA 2000 cF-2**

**19 The *Fair Trading Act* is amended by adding the following after section 173:**

**Director's monthly report to Consumer Advocate**

**173.1** The Director must provide the Consumer Advocate with information on a monthly basis respecting complaints and offences under this Act including but not limited to the following:

- (a) the name of the business that is the subject of a complaint,
- (b) the nature of the complaint,
- (c) the findings of any investigation, and
- (d) details regarding any administrative orders rendered, charges that have been laid or fines that have been levied.

**Amends RSA 2000 cO-8**

**20 The *Ombudsman Act* is amended in section 13(1) by adding the following after clause (c):**

- (d) any decision, recommendation, act or omission of the Consumer Advocate.

**Coming into force**

**21** This Act comes into force on January 1, 2008.

## **Explanatory Notes**

**19** Amends chapter F-2 of the Revised Statutes of Alberta 2000.  
Consequential amendments.

**20** Amends chapter O-8 of the Revised Statutes of Alberta 2000.  
Consequential amendments.

**21** Coming into force.





