

2010 Bill 206

Third Session, 27th Legislature, 59 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 206

UTILITIES CONSUMER ADVOCATE ACT

MR. KANG

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 206

2010

UTILITIES CONSUMER ADVOCATE ACT

(Assented to _____, 2010)

WHEREAS the Legislative Assembly must ensure that consumers of utilities in Alberta have their interests protected and that they are not overcharged for the utilities and related services that they receive;

WHEREAS Alberta utilities consumers are entitled to have reliable, independent and easily understandable consumer information readily available to them;

WHEREAS consumers of utilities in Alberta should be represented at all hearings to ensure that their interests are foremost in the setting of rates; and

WHEREAS the interests of consumers are so important that they should be represented by an office that is independent of the Government;

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” means the Utilities Consumer Advocate appointed under section 2;
- (b) “Commission” means the Alberta Utilities Commission established by the *Alberta Utilities Commission Act*;

- (c) “consumer” means an individual who receives or has the right to receive services from a public utility as a result of purchase, prospective purchase or other obligation entitling the individual to receive utility service but does not include an individual who intends to sell the public utility services after receiving them;
- (d) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for the *Fair Trading Act*;
- (e) “public utility” means an entity that provides public utility services;
- (f) “public utility services” means gas and electricity services that are provided by an owner, distributor or default supply provider, the access to which or the use of which is controlled by the owner, distributor or default supply provider and includes gas and electricity services the costs of which are recoverable under a tariff approved by the Commission;
- (g) “Standing Committee” means the Standing Committee on Legislative Offices.

Appointment of Utilities Consumer Advocate

2(1) The Lieutenant Governor in Council, on the recommendation of the Legislative Assembly, must appoint a Utilities 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.

Responsibilities

3(1) The Utilities Consumer Advocate has the following responsibilities:

- (a) to represent the interests of residential, farm and small business consumers of electricity and natural gas in Alberta in proceedings before the Alberta Utilities Commission and other bodies whose decisions may affect the interests of those consumers;

- (b) to disseminate independent and impartial information about the regulatory process relating to electricity and natural gas, including an analysis of the impact of decisions by the Alberta Utilities Commission, other bodies and the courts relating to electricity and natural gas;
- (c) to receive, review and investigate consumer complaints regarding the provision of natural gas or electricity by public utilities;
- (d) subject to section 19, to review and investigate complaints about fairness arising from proceedings before the decisions of the Commission;
- (e) to review the adequacy and nature of any Government response to a Commission decision;
- (f) to inform and educate consumers about electricity and natural gas issues;
- (g) to carry out such other responsibilities relating to electricity and natural gas as may be assigned by the Assembly.

(2) In order to fulfill his or her responsibilities, the Utilities Consumer Advocate

- (a) shall review the policies, programs, services and administrative procedures in matters pertaining to protection of utilities consumers;
- (b) may investigate complaints of practices by public utilities that appear to be detrimental to a public utilities consumer or are unethical business practices;
- (c) may compile, study and assess information directly or indirectly related to matters pertaining to protection of utilities consumers in order to carry out his or her functions and responsibilities under this Act with a view to providing that information or the results of the study and assessment to Government departments, agencies, boards, commissions, the Legislative Assembly and the public;
- (d) may do other things he or she considers necessary to further the protection of public utilities consumers.

Investigations

4(1) The Legislative Assembly, any of its committees or a member of the Executive Council may at any time refer a matter to the Advocate for investigation and report.

(2) The Advocate may commence an investigation either on a complaint made by any person or on the Advocate's own initiative.

Term of office

5(1) The Utilities Consumer Advocate holds office for a term not exceeding 5 years.

(2) A person holding office as Advocate continues to hold office after the expiry of that person's appointment 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 Advocate for no more than 2 terms.

Oath

6(1) Before commencing the duties of office, the Utilities Consumer Advocate must take an oath to faithfully and impartially perform the duties of the office and not, except as provided by law, to disclose any information received by the Office of the Utilities Consumer Advocate under this Act.

(2) The oath shall be administered by the Speaker or the Clerk of the Legislative Assembly.

Resignation

7 The Utilities 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 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 Advocate from office for

cause or incapacity, but the suspension shall not continue in force beyond the end of the next sitting of the Assembly.

Acting Utilities Consumer Advocate

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

- (a) the office of Advocate is or becomes vacant when the Legislative Assembly is not sitting,
- (b) the Advocate is suspended when the Legislative Assembly is not sitting, or
- (c) the Advocate is suspended or removed or the office of the Utilities 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) An acting Utilities Consumer Advocate appointed under subsection (1) holds office until

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

(3) If the Advocate is temporarily absent from office and the office is not vacant for any of the reasons in subsection (1)(a), (b) or (c), then the Advocate may appoint an acting Utilities Consumer Advocate subject to any restrictions he or she sees fit.

(4) An appointment under subsection (3) must be in writing and a copy must be provided to the Chair of the Standing Committee.

(5) An acting Utilities Consumer Advocate may perform all the functions and assumes all the responsibilities of the Utilities Consumer Advocate.

Office of the Utilities Consumer Advocate

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

the *Public Service Act* to assist the 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 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 Advocate.

Annual report

12(1) The Utilities 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) interventions and appearances before tribunals,
 - (ii) complaints received under this Act;
 - (iii) investigations undertaken by the Advocate;
- (e) the participation of the Advocate's office before tribunals;
- (f) impact of tribunal decisions on utilities' consumers;
- (g) the nature of conflicts that resulted in the Advocate retaining outside counsel to represent the office.

(2) The annual report shall be made public in the manner outlined in section 15(4).

Notice of investigation

13 Before investigating any matter under this Act, the Utilities Consumer Advocate shall notify the relevant entity of the Advocate's intention to conduct the investigation.

Inquiries and investigations

14(1) For the purpose of carrying out an inquiry or conducting an investigation under this Act, the Utilities Consumer Advocate has all the powers of a commissioner under the *Public Inquiries Act* as though the inquiry or investigation were an inquiry under that Act.

(2) For the purpose of carrying out an inquiry or conducting an investigation under this Act, a representative of the Advocate, on production of the representative's authorization from the Utilities Consumer Advocate, may at any reasonable time enter any premises referred to in the authorization in which books or documents of a provider of utilities which is the subject matter of the inquiry or investigation are kept and may examine and make copies of the books or documents or remove them temporarily for the purpose of making copies.

(3) Any information with respect to the affairs of a public utility that is reasonably required by the Utilities Consumer Advocate in the course of the Advocate's duties under this Act must be provided by the public utility within 30 days after a written request for it is received from the Advocate or within an extended period that the Advocate may determine.

(4) Subject to subsection (5), any former Utilities Consumer Advocate and every person who is or was employed or engaged by the Office of the Utilities Consumer Advocate shall maintain the confidentiality of all information and allegations that come to their knowledge in the course of an inquiry or investigation.

(5) Information and allegations to which subsection (4) applies may be

- (a) disclosed to the person whose conduct is the subject of proceedings under this Act;
- (b) disclosed by a person conducting an investigation to the extent necessary to enable that person to obtain information from another person;
- (c) adduced in evidence at an inquiry under this section;

- (d) disclosed where the Advocate believes on reasonable grounds that the disclosure is necessary for the purpose of advising the Minister of Justice and Attorney General or a law enforcement agency of an alleged offence under this or any other enactment of Alberta or an Act or regulation of Canada.

Procedure after investigation

15(1) This section applies when, after making an investigation under this Act, the Utilities 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 Utilities 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 Utilities 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 Advocate shall report that opinion and the Advocate's reasons for it to the entity concerned and may make any recommendations the Advocate thinks fit, and in that case the Advocate may request the entity to notify the Advocate within a specified time of the steps, if any, that it proposes to take to give effect to the 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 Advocate to be adequate and appropriate, the Advocate, at the Advocate's discretion after considering the comments, if any, made by or on behalf of the entity, must submit 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,
 - (ii) make it available to the general public, and
 - (iii) table it in the Assembly within 15 days of the next sitting.

(5) The Advocate shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the entity concerned.

Results of investigation to complainants

16 If the Utilities Consumer Advocate makes a recommendation under section 15 and no action is taken that seems to the Advocate to be adequate and appropriate on the recommendation within a reasonable time, the Advocate shall inform the complainant of the recommendation and make whatever comments on the matter the Advocate thinks fit.

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

Frivolous complaint

17 The Utilities Consumer Advocate may refuse to investigate or cease to investigate a complaint if in the 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.

Actions against Utilities Consumer Advocate and others

18(1) No action lies against the Utilities Consumer Advocate or any former Utilities Consumer Advocate or any other person who is or was employed or engaged by the Office of the Utilities Consumer Advocate for anything done in good faith under this Act.

(2) No action lies against a person who in good faith provides information or gives evidence in a proceeding under this Act to the Utilities Consumer Advocate or to a person employed or engaged by the Office of the Utilities Consumer Advocate.

Jurisdiction restricted

19(1) Nothing in this Act authorizes the Utilities Consumer Advocate to investigate

- (a) any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been

exercised in the particular case or until after the time prescribed for the exercise of that right has expired, or

- (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,

(2) If any question arises as to whether the Utilities Consumer Advocate has jurisdiction to investigate any case or class of cases under this Act, the Advocate may, if the Advocate thinks fit, apply to the Court of Queen's Bench for a declaratory order determining the question.

Offences and penalties

20 Any person who,

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Utilities Consumer Advocate or any other person in the exercise of the Advocate's or other person's powers under this Act,
- (b) without lawful justification or excuse, evicts, discharges, suspends, expels, intimidates, coerces, imposes a financial or other penalty on or otherwise discriminates against a person because that person has, in good faith,
 - (i) made or attempted to make a complaint under this Act,
 - (ii) assisted another person in making or attempting to make a complaint under this Act, or
 - (iii) given evidence or otherwise co-operated in an investigation under this Act,
- (c) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Advocate or any other person under this Act, or
- (d) wilfully makes a false statement to or misleads or attempts to mislead the Advocate or any other person in the exercise of the Advocate's or other person's powers under this Act,

is guilty of an offence and liable to a fine of not more than

- (i) \$5000 if the person is an individual and

- (ii) \$25 000 if the person is a corporation or entity other than an individual.

Amends SA 2007 cA-37.2

21 The *Alberta Utilities Commission Act* is amended in section 21 by adding the following after subsection (2):

(3) When the Utilities Consumer Advocate appears or designates counsel to appear on behalf of a consumer or group of consumers, the Commission shall take notice of the role of the Advocate and give a favourable disposition to any such group on the issue of costs.

(4) The Commission may request to hear from the Utilities Consumer Advocate on issues pertaining to costs payable to interveners whether or not the Advocate has participated in the particular hearing.

Amends RSA 2000 cF-5

22 The *Freedom of Information and Protection of Privacy Act* is amended in section 1(m) by striking out “or the Information and Privacy Commissioner” and substituting “, the Information and Privacy Commissioner or the Utilities Consumer Advocate”.

Amends RSA 2000 cO-8

23 The *Ombudsman Act* is amended in section 13(1) by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding the following after clause (c):

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

Explanatory Notes

21 Amends chapter A-37.2 of the Statutes of Alberta, 2007. Section 21 presently reads:

21(1) The Commission may order by whom and to whom its costs and any other costs of or incidental to any hearing or other proceeding of the Commission are to be paid.

(2) The Commission may make rules respecting the payment of costs to an intervener other than a local intervener referred to in section 22.

22 Amends chapter F-5 of the Revised Statutes of Alberta 2000. Section 1(m) presently reads:

- (m) *“officer of the Legislature” means the Auditor General, the Ombudsman, the Chief Electoral Officer, the Ethics Commissioner or the Information and Privacy Commissioner;*

23 Amends chapter 0-8 of the Revised Statutes of Alberta 2000. Section 13(1) presently reads:

13(1) Nothing in this Act authorizes the Ombudsman to investigate

- (a) *any decision, recommendation, act or omission in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to any court or to any tribunal constituted by or under any Act until after that right of appeal or objection or application has been exercised in the particular case or until after the time prescribed for the exercise of that right has expired,*
- (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, or*
- (c) *any decision, recommendation, act or omission of the Mental Health Patient Advocate or an employee of the Mental Health*

Coming into force

24 This Act comes into force on November 1, 2011.

Patient Advocate appointed or employed under the Mental Health Act.

24 Coming into force.

