

Ombudsman Act

CHAPTER 327 OF THE REVISED STATUTES, 1989

as amended by

2004, c. 6, ss. 25, 26; 2018, c. 1, Sch. A, s. 134



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**An Act to Establish
the Office of the Ombudsman**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Ombudsman Act*. R.S., c. 327, s. 1.

Interpretation

2 In this Act,

(a) “agency” means an agency, board, commission, foundation or corporation established under an enactment that

(i) is appointed or has a majority of its members appointed by the Governor in Council, a member of the Executive Council or the Province, or

- (ii) is supported by or directs the expenditure of public funds of the Province and is designated by the Governor in Council;
- (b) “chief officer” includes a deputy minister, the head or chief executive officer of an agency, the mayor of a city or incorporated town, the warden of a municipality to which the *Municipal Act* applies and the head or chief executive officer of a municipal agency;
- (c) “department” means a department of the Government of Nova Scotia and includes an agency;
- (d) “House” means the House of Assembly;
- (e) “minister” means the member of the Executive Council who presides over a department or who is in charge of or responsible for an agency;
- (f) “municipal agency” means an agency, board, commission, foundation, corporation, hospital or a welfare, penal or other institution established by or on behalf of or controlled by a municipal unit or two or more municipal units;
- (g) “municipal unit” means a municipality to which the *Municipal Act* applies, a city or an incorporated town, and includes a municipal agency;
- (h) “officer” means any official, employee or member of a department or a municipal unit;
- (i) “Ombudsman” means the Ombudsman appointed under this Act. R.S., c. 327, s. 2; 2004, c. 6, s. 25; 2018, c. 1, Sch. A, s. 134.

Ombudsman

3 (1) There is hereby established, as an officer of the House, a commissioner for investigations to be called the Ombudsman.

(2) The Ombudsman shall be appointed by the Governor in Council.

(3) The Ombudsman may not be a member of the House and shall not hold any office of trust or profit, other than his office as Ombudsman, or engage in any occupation for reward outside the duties of his office without prior approval in each particular case by the House or by the Governor in Council when the House is not in session.

(4) The Ombudsman shall be paid such salary as is determined from time to time by the Governor in Council.

(5) Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office and will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(6) The Speaker or the Chief Clerk of the House shall administer the oath referred to in subsection (5).

(7) The costs and expenses incurred by the Ombudsman or in the administration of the Act may be paid from the Consolidated Fund of the Province. R.S., c. 327, s. 3.

Term of office

4 (1) Unless his office sooner becomes vacant, the Ombudsman is to hold office for five years from the date of his appointment under Section 3 and, if otherwise qualified, is eligible to be re-appointed.

(2) The Ombudsman may resign his office by notice in writing addressed to the Speaker of the House or, if there is no Speaker or if the Speaker is absent from the Province, to the Chief Clerk of the House. R.S., c. 327, s. 4.

Removal or suspension

5 (1) On the recommendation of the House, the Governor in Council may remove or suspend the Ombudsman from his office for cause or incapacity.

(2) When the House is not in session, a judge of the Trial Division of the Supreme Court may suspend the Ombudsman from his office for cause or incapacity upon an application by the Governor in Council.

(3) Where the Governor in Council makes an application under subsection (2), the practice and procedure of the Supreme Court shall apply *mutatis mutandis* to the application.

(4) Where a judge of the Trial Division of the Supreme Court suspends the Ombudsman under subsection (2) that judge shall

(a) request the Governor in Council to appoint a person as an acting Ombudsman to hold office until the suspension has been dealt with by the House; and

(b) table a report of the suspension within ten days following the commencement of the next ensuing session of the House.

(5) A suspension under subsection (2) is not to continue beyond the end of the next ensuing session of the House. R.S., c. 327, s. 5.

Extent of disclosure in report of Ombudsman

6 Notwithstanding subsection (5) of Section 3, the Ombudsman may disclose in a report made by him under this Act any matters which, in his opinion, are necessary to disclose in order to establish grounds for his conclusions and recommendations. R.S., c. 327, s. 6.

Personnel

7 (1) The Ombudsman may, subject to the approval of the Governor in Council, appoint such assistants and employees as he deems necessary for the efficient carrying out of his functions under this Act.

(2) Before performing any official duty under this Act a person appointed under subsection (1) shall take an oath, to be administered by the Ombudsman, that he will not divulge any information received by him under this Act, except for the purpose of giving effect to this Act. R.S., c. 327, s. 7.

Delegation of powers

8 (1) The Ombudsman, by writing under his signature, may delegate to a person appointed an assistant under subsection (1) of Section 7 any of his powers under this Act except the power of delegation and the power to make a report under this Act.

(2) A person purporting to exercise power of the Ombudsman by virtue of a delegation under subsection (1) shall produce evidence of his authority to exercise that power when required to do so. R.S., c. 327, s. 8.

Ombudsman as commissioner

9 For the purposes of this Act, the Ombudsman is a commissioner under the *Public Inquires Act*. R.S., c. 327, s. 9.

Act does not apply

10 This Act does not apply

(a) to judges and justices or to the functions of any court of the Province; and

(b) to deliberations and proceedings of the Executive Council or any committee thereof. R.S., c. 327, s. 10.

Investigation

11 (1) Subject to subsection (2), where any person is aggrieved or, in the opinion of the Ombudsman, may be aggrieved, the Ombudsman, on the written complaint of or on behalf of the person aggrieved or on his own motion, may investigate the administration

(a) by a department or an officer thereof, of any law of the Province;

(b) by a municipal unit or an officer thereof, of any law of the municipal unit or any law of the Province that applies to the municipal unit.

(2) Notwithstanding subsection (1), the Ombudsman shall not 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, whether or not that right of appeal or objection or application has been exercised in the particular case and whether or not any 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 or prosecuting officer for the Crown or acting as council for the Crown in relation to any proceeding.

(3) Where a question arises as to the jurisdiction of the Ombudsman to investigate a grievance under this Act, he may apply to the Appeal Division of the Supreme Court for a determination of the question of his jurisdiction. R.S., c. 327, s. 11.

Complaint, referral of petition or letter from inmate or patient

12 (1) Subject to the provisions of this Act, a person may apply by written complaint to the Ombudsman to investigate a grievance.

(2) Notwithstanding Sections 14, 20 and 21, a committee of the House may refer any petition that is before the committee for consideration or any matter relating to such petition to the Ombudsman for investigation and report.

(3) Notwithstanding Sections 14, 20 and 21, where a matter has been referred to the Ombudsman under subsection (2), the Ombudsman, subject to any special directions of the committee, shall investigate the matter as far as it is within his jurisdiction and shall make such report to the committee as he thinks fit.

(4) Notwithstanding any Act, where a letter written by a person in custody on a charge or after conviction of any offence or by any inmate or patient of any sanatorium or mental hospital is addressed to the Ombudsman, it shall be forwarded immediately, 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 an inmate or patient. R.S., c. 327, s. 12.

Statutory prohibitions inapplicable

13 Notwithstanding any other Act providing that a decision, recommendation, act or omission is final or that no appeal lies in respect thereof or that no proceeding, decision, recommendation, act or omission of a department or municipal unit or officer thereof is to be challenged, reviewed, quashed or called in question, the Ombudsman may exercise the powers under this Act. R.S., c. 327, s. 13.

Refusal or cessation of investigation

14 (1) The Ombudsman, in his discretion, may refuse to investigate or may cease to investigate a grievance if

(a) an adequate remedy or right of appeal already exists whether or not the complainant has availed himself of the remedy or right of appeal;

(b) the grievance is trivial, frivolous, vexatious or not made in good faith;

(c) having regard to all the circumstances of the case, further investigation is unnecessary;

(d) the grievance relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than one year before complaining;

(e) the complainant does not have a sufficient personal interest in the subject-matter of the grievance; or

(f) upon a balance of convenience between the public interest and the person aggrieved the Ombudsman is of the opinion that the grievance should not be investigated.

(2) Where the Ombudsman decides not to investigate or to cease to investigate a grievance he shall inform the complainant and any other interested person of his decision and may state his reasons therefor. R.S., c. 327, s. 14.

Notification of investigation

15 Where the Ombudsman intends to investigate a grievance under this Act, he shall

(a) in the case of a grievance relating to a department, notify the minister and the chief officer of the department;

(b) in the case of a grievance relating to a municipal unit, notify the chief officer of the municipal unit. R.S., c. 327, s. 15.

Nature of investigation

16 (1) Every investigation under this Act is to be conducted in private.

(2) Subject to this Act, the Ombudsman may hear or obtain information from any person and may make inquiries.

(3) The Ombudsman may hold hearings under this Act but, subject to subsections (4) and (5), no person is entitled as of right to be heard by the Ombudsman.

(4) Where during an investigation the Ombudsman is satisfied that there is *prima facie* evidence that

(a) a department or officer thereof administered a law of the Province;

(b) a municipal unit or officer thereof administered a law of the municipal unit or any law of the Province that applies to the municipal unit,

so as to cause a grievance or to give cause for a grievance, he shall so advise the minister and the chief officer of the department or the chief officer of the municipal unit, as the case may be, and the officer causing the grievance and give each an opportunity to be heard.

(5) Where a minister, a chief officer or officer thereof appears at a hearing under subsection (4), the minister, chief officer or officer, as the case may be, is entitled to counsel.

(6) The Ombudsman may at any time during or after an investigation consult a minister or chief officer of a department or a municipal unit concerned in the matter of the investigation.

(7) Before forming a final opinion on any matter referred to in subsection (1) of Section 20, the Ombudsman shall consult with

(a) the minister, when the investigation relates to a department, a recommendation to the minister or when the minister requests; or

(b) the chief officer of the municipal unit when the investigation relates to a municipal unit.

(8) Where during or after an investigation the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct by a department or municipal unit or officer thereof, he shall refer the matter to the minister and chief officer of the department or the chief officer of the municipal unit.

(9) Subject to this Act and any rules made under Section 25, the Ombudsman may regulate his procedure. R.S., c. 327, s. 16.

Furnishing of information

17 (1) Subject to subsections (2), (3), (4), (5), (6) and (7) and Section 18, where the Ombudsman requests a person who, in the opinion of the Ombudsman, is able to furnish information relating to a matter being investigated by the Ombudsman to furnish such information, that person shall furnish that information and produce any documents or papers that, in the opinion of the Ombudsman, relate to the matter and that may be in the possession or under the control of that person whether or not that person is an officer of a department or municipal unit, and whether or not the documents and papers are in the custody or under the control of that department or municipal unit.

(2) The Ombudsman may summon before him and examine on oath

- (a) any officer of a department or municipal unit who, in his opinion, is able to give any information referred to in subsection (1);
- (b) any complainant; and
- (c) with the approval of the Attorney General, any other person who, in the opinion of the Ombudsman, is able to give any information referred to in subsection (1).

(3) The oath referred to in subsection (2) is to be administered by the Ombudsman.

(4) Subject to subsection (5), where a person is bound by any law or by an enactment to maintain secrecy in relation to, or not to disclose any matter, the Ombudsman shall not require that person to supply any information or to answer any question in relation to that matter or to produce any document or paper relating to the matter which would be in breach of the obligation of secrecy or non-disclosure.

(5) With the prior consent in writing of the complainant the Ombudsman may require a person to whom subsection (4) applies to supply information or answer questions or produce documents or papers relating only to the complainant and that person shall do so.

(6) The rules for taking evidence in the Supreme Court apply to evidence given by a person required to give information, answer questions and produce documents or papers under this Act.

(7) Any person required to attend a hearing under this Act is entitled to the same fees, allowance and expenses as if he were a witness in the Supreme Court.

(8) Except on the trial of a person for perjury, evidence given by any person in proceedings before the Ombudsman and evidence of any proceeding before the Ombudsman is not admissible against any person in any court or in any proceedings of a judicial nature.

(9) No person is liable for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this Act. R.S., c. 327, s. 17.

Limitations on provision of information

18 (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper may disclose

- (a) deliberations of the Executive Council; or

(b) activities of the Executive Council or any member of the Executive Council relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or the document or paper produced.

(2) Subject to subsection (1), a rule of law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question on the ground that the disclosure of the document, paper or thing, or the answering of the question would be injurious to the public interest, does not apply in respect of any investigation by or proceedings before the Ombudsman. R.S., c. 327, s. 18.

Right of entry and investigation

19 (1) For the purposes of this Act, the Ombudsman may enter upon any premises occupied by any department or municipal unit and, subject to Sections 17 and 18, carry out any investigation within his jurisdiction.

(2) Before entering any premises under subsection (1) the Ombudsman shall notify the chief officer of the department or municipal unit of his intention to enter the premises. R.S., c. 327, s. 19.

Report of Ombudsman if grievance established

20 (1) Where upon investigation the Ombudsman is of the opinion that a grievance exists or may exist because a department or municipal unit or officer thereof administered or is administering a law of the Province or a law of the municipal unit or a law of the Province that applies to the municipal unit

(a) unreasonably, unjustly, oppressively or in a discriminatory manner, or pursuant to a rule of law, enactment or practice that so results;

(b) under mistake of law or fact, in whole or in part;

(c) wrongly;

(d) contrary to law; or

(e) by using a discretionary power for an improper purpose, or on irrelevant grounds, or by taking irrelevant considerations into account, or by failing to give reasons for the use of a discretionary power when reasons should have been given,

and if the Ombudsman is of the opinion that

(f) the grievance should be referred to the department or municipal unit or officer thereof for further consideration;

(g) an omission should be rectified;

(h) a decision should be cancelled or rectified;

- (i) a practice by reason of which the grievance arose or may arise should be altered;
- (j) a law by reason of which the grievance arose or may arise should be reconsidered;
- (k) reasons should be given for the use of a discretionary power; or
- (l) other steps should be taken as he may advise,

the Ombudsman shall report his opinion, his reasons therefor and any recommendation to the minister and the chief officer of the department or the chief officer of the municipal unit concerned.

(2) Where the Ombudsman makes a recommendation under subsection (1) he may request the department or municipal unit to notify him within a specified time of the steps it proposes to take to give effect to his recommendations.

(3) Where, after the time stated under subsection (2), the department or municipal unit does not act upon the recommendation of the Ombudsman, refuses to act thereon or acts in a manner unsatisfactory to the Ombudsman, the Ombudsman may send a copy of his report and recommendation to the Governor in Council, in the case of a department, or the council of the municipal unit, in the case of a municipal unit, and may thereafter make a report to the House.

(4) The Ombudsman shall include with any report made under subsection (3) a copy of any comment made by the department or municipal unit upon his opinion or recommendation.

(5) In any report made by him under this Act the Ombudsman shall not make any finding or comment that is adverse to any person unless he gives that person an opportunity to be heard. R.S., c. 327, s. 20.

Duty to inform complainant

21 (1) Where the Ombudsman makes a recommendation under subsection (1) of Section 20 and the department or municipal unit does not act upon such recommendation to his satisfaction, the Ombudsman shall inform the complainant of his recommendation and may add any comment.

(2) The Ombudsman shall in any case inform the complainant in the manner and time he deems proper of the result of the investigation. R.S., c. 327, s. 21.

Review of decision of Ombudsman

22 No proceeding of the Ombudsman is void for want of form and, except on the ground of lack of jurisdiction, no proceedings or decisions of the Ombudsman are to be challenged, reviewed, quashed or called in question in any court. R.S., c. 327, s. 22.

No liability or compellability of Ombudsman or personnel

23 (1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman for any thing he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown he acted in bad faith.

(2) The Ombudsman and any person holding any office or appointment under the Ombudsman shall not be called to give evidence in any court or in any proceedings of a judicial nature in respect of any thing coming to his knowledge in the exercise of his functions under this Act. R.S., c. 327, s. 23.

Reports

24 (1) The Ombudsman shall report annually to the House on the exercise of his functions under this Act.

(2) The Ombudsman, in the public interest or in the interests of a person, department or municipal unit, may publish reports relating generally to the exercise of his functions under this Act or to any particular case investigated by him, whether or not the matters to be dealt with in the report have been the subject of a report made to the House under this Act. R.S., c. 327, s. 24.

General rules

25 The House may make general rules for the guidance of the Ombudsman in the exercise of his functions under this Act. R.S., c. 327, s. 25.

Offences and penalties

26 Every person who

(a) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his functions under this Act;

(b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirements of the Ombudsman or any other person under this Act;

(c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his functions under this Act; or

(d) refuses or wilfully fails to comply with subsection (4) of Section 12,

is guilty of an offence and on summary conviction is liable to a penalty not exceeding five hundred dollars. R.S., c. 327, s. 26.

Existing right or remedy preserved

27 This Act does not affect, abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any substantive or procedural right or remedy existing elsewhere or otherwise than in this Act. R.S., c. 327, s. 27.

Regulations

28 (1) The Governor in Council may make regulations designating an agency, board, commission, foundation or corporation for the purpose of clause (a) of Section 2.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2004, c. 6, s. 26.
