

# *The Ombudsman Act, 2012*

*being*

Chapter O-3.2\* of *The Statutes of Saskatchewan, 2012* (effective September 1, 2012), as amended by the *Statutes of Saskatchewan, 2014, c.E-13.1*; and *2015, c.16* and *c.30*; *2017, c.P-30.3*.

**\*NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

## **NOTE:**

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER O-3.2

### An Act respecting the Ombudsman

#### PART I Preliminary Matters

##### Short title

1 This Act may be cited as *The Ombudsman Act, 2012*.

##### Interpretation

2 In this Act:

(a) **“agency of the government”** means any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which:

(i) are appointed by an Act or by an order of the Lieutenant Governor in Council; or

(ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;

(b) **“board member”** means a member of the board of management, or board of directors, of:

(i) an agency of the government; or

(ii) a publicly-funded health entity;

(b.01) **“chief officer”** means the mayor or reeve of a municipality;

(b.02) **“council member”** means any member of a council, including the mayor or reeve, council committee, controlled corporation or other body established by a council as defined in *The Cities Act, The Municipalities Act* or *The Northern Municipalities Act, 2010*;

(b.1) **“fiscal year”** means the period commencing on April 1 in one year and ending on March 31 in the next year;

(c) **“minister”** means a member of the Executive Council;

(d) **“ministry”** means a department, ministry, secretariat or office of the executive government of Saskatchewan;

(d.1) **“municipal entity”** means:

(i) a city as defined in *The Cities Act*;

(ii) a municipality as defined in *The Municipalities Act*;

(iii) a municipality as defined in *The Northern Municipalities Act, 2010*;

- (iv) a council, council committee, controlled corporation or other body established by a council as defined in *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*;
- (e) **“Ombudsman”** means the Ombudsman appointed pursuant to section 3 and includes any acting Ombudsman appointed pursuant to section 4, 5 or 6;
- (f) **“publicly-funded health entity”** means:
  - (i) the provincial health authority as defined in *The Provincial Health Authority Act*;
  - (ii) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*; and
  - (iii) a health care organization, including an affiliate, as those terms are defined in *The Provincial Health Authority Act*.

2012, c.O-3.2, s.2; 2015, c.16, s.6; 2015, c.30, s.5-1; 2017, cP-30.3, s.11-1.

## PART II Office and Appointment of Ombudsman

### Appointment of Ombudsman

- 3(1) The office of the Ombudsman is continued.
- (2) The Ombudsman is an Officer of the Legislative Assembly.
- (3) The Ombudsman shall be appointed by order of the Legislative Assembly.
- (4) Subject to sections 4 and 5, unless he or she resigns, dies or is removed from office, the Ombudsman holds office for a term of five years.
- (5) The Ombudsman may be reappointed for one additional term of five years.
- (6) The Ombudsman may resign the office at any time by giving written notice to the Speaker.

2012, c.O-3.2, s.3; 2015, c.16, s.6.

### Removal or suspension

- 4(1) The Legislative Assembly may, by order, remove the Ombudsman from office, or suspend the Ombudsman, for cause.
- (2) If the Ombudsman is suspended pursuant to subsection (1), the Legislative Assembly, by order, shall appoint an acting Ombudsman to hold office until:
  - (a) the suspension is revoked by the Legislative Assembly; or
  - (b) the Ombudsman is removed from office by the Legislative Assembly pursuant to subsection (1) and a person is appointed as Ombudsman pursuant to section 3.

2012, c.O-3.2, s.4; 2015, c.16, s.6.

**Suspension when Legislative Assembly not in session**

5(1) If the Legislative Assembly is not in session, the Board of Internal Economy may suspend the Ombudsman for incapacity to act, neglect of duty or misconduct that is proved to the satisfaction of the Board of Internal Economy.

(2) No suspension imposed pursuant to subsection (1) continues past the end of the next session of the Legislative Assembly.

(3) If the office of the Ombudsman is vacant or the Ombudsman is suspended pursuant to subsection (1), the Board of Internal Economy shall appoint an acting Ombudsman to hold office until:

- (a) a person is appointed as Ombudsman pursuant to section 3;
- (b) the suspension is revoked by the Legislative Assembly; or
- (c) the Ombudsman is removed from office by the Legislative Assembly pursuant to subsection 4(1) and a person is appointed as Ombudsman pursuant to section 3.

(4) For the purposes of this section, the Legislative Assembly is not in session when it:

- (a) is prorogued or dissolved; or
- (b) is adjourned for an indefinite period or to a day more than seven days after the date on which the Board of Internal Economy made the order suspending the Ombudsman.

2012, c.O-3.2, s.5; 2015, c.16, s.6.

**Acting Ombudsman**

6 If the Ombudsman has resigned or is ill or otherwise unable to act, the Board of Internal Economy may appoint another person as acting Ombudsman until:

- (a) the Ombudsman is able to act; or
- (b) another Ombudsman is appointed pursuant to this Act.

2012, c.O-3.2, s.6.

**Salary of Ombudsman**

7(1) Subject to subsections (2) and (3), the Ombudsman is to be paid a salary equal to the average salary of all the deputy ministers and acting deputy ministers of the Government calculated as at April 1 in each year.

(2) Any benefits or payments that may be characterized as deferred income, retirement allowances, separation allowances, severance allowances or payments in lieu of notice are not to be included in calculating the average salary of all the deputy ministers and acting deputy ministers pursuant to subsection (1).

(3) If, as a result of a calculation made pursuant to subsection (1), the salary of the Ombudsman would be less than the Ombudsman's previous salary, the Ombudsman is to be paid not less than his or her previous salary.

- (4) The Ombudsman is entitled to receive any benefits of office and economic adjustments that are provided generally to deputy ministers.
- (5) The Ombudsman is entitled to be paid an allowance for travel and other expenses incurred in the performance of the duties of the Ombudsman at a rate approved pursuant to *The Public Service Act, 1998* for employees of the public service.
- (6) The salary of the Ombudsman shall be paid out of the general revenue fund.

2012, c.O-3.2, s.7.

**Application of certain Acts to Ombudsman**

8(1) The Ombudsman is not subject to *The Public Service Act, 1998*.

(2) The Ombudsman is subject to *The Public Service Superannuation Act* and *The Public Employees Pension Plan Act*.

2012, c.O-3.2, s.8; 2015, c.16, s.6.

**Staff of Ombudsman**

9(1) The Ombudsman may appoint the employees that are required in order to exercise the powers and perform the duties of the Ombudsman effectively.

(2) *The Public Service Superannuation Act* and *The Public Employees Pension Plan Act* apply to the members of the staff of the Ombudsman.

(3) Members of the staff of the Ombudsman are employees of the Legislative Assembly and are not members of the public service of Saskatchewan.

(4) The employee benefits applicable to the public servants of Saskatchewan apply or continue to apply, as the case may be, to the staff of the Ombudsman=s office.

(5) The Ombudsman shall:

(a) administer, manage and control the Ombudsman=s office and the general business of the office; and

(b) oversee and direct the staff of the Ombudsman=s office.

2012, c.O-3.2, s.9; 2015, c.16, s.6.

**Human resources and financial management policies**

9.1 The Ombudsman shall:

(a) prepare and maintain human resources and financial management policies that apply to his or her staff and operations; and

(b) within the period set by the Board of Internal Economy, table with the Board a copy of the policies mentioned in clause (a).

2015, c.16, s.6.

**Expenses limited to appropriation**

**9.2(1)** In this section, “**appropriation**” means:

- (a) an appropriation for the expenses of the Ombudsman=s office made by an *Appropriation Act*;
- (b) an appropriation by special warrant; and
- (c) any other amount that is permitted or directed to be paid out of the general revenue fund pursuant to this or any other Act for the expenses of the Ombudsman=s office.

(2) The Ombudsman shall not incur expenses for a fiscal year in excess of the appropriation for that fiscal year.

2015, c.16, s.6.

**Quarterly financial forecasts**

**9.3** Within 30 days after the end of each quarter in each fiscal year, the Ombudsman shall prepare and present to the Board of Internal Economy financial forecasts respecting the Ombudsman=s actual and anticipated operations for that fiscal year.

2015, c.16, s.6.

**Unprovided for or unforeseen expenses**

**9.4(1)** For the purposes of this section, the Legislative Assembly is not in session if it:

- (a) is prorogued; or
- (b) is adjourned for an indefinite period or to a day more than seven days after the Lieutenant Governor in Council made the order directing the preparation of the special warrant pursuant to this section.

(2) If the Legislative Assembly is not in session, the Ombudsman may report to the Board of Internal Economy that:

- (a) a matter has arisen with respect to the administration of this Act respecting an expense required by the Ombudsman=s office that was not foreseen or provided for, or was insufficiently provided for; and
- (b) the Ombudsman is of the opinion that there is no appropriation for the expense or that the appropriation is exhausted or insufficient and that the expense is urgently and immediately required for the public good.

(3) On receipt of a report of the Ombudsman pursuant to subsection (2), the Board of Internal Economy:

- (a) shall review the report and make any alterations to the funding request in the report that the Board considers appropriate; and
- (b) may recommend to the Minister of Finance that a special warrant be issued authorizing the expense in the amount the Board determines to be appropriate.

(4) On receipt of a recommendation of the Board of Internal Economy pursuant to subsection (3), the Minister of Finance shall recommend to the Lieutenant Governor in Council that a special warrant be issued authorizing the expense in the amount recommended by the Board.

(5) On receipt of a recommendation of the Minister of Finance pursuant to subsection (4), the Lieutenant Governor in Council may order a special warrant to be prepared for the signature of the Lieutenant Governor authorizing the expense in the amount recommended by the Board of Internal Economy.

(6) For the purposes of *The Financial Administration Act, 1993* and this Act, a special warrant issued pursuant to this section is deemed to be a special warrant issued pursuant to section 14 of *The Financial Administration Act, 1993*, and that Act applies to a special warrant issued pursuant to this section as if it were issued pursuant to section 14 of that Act.

2015, c.16, s.6.

**Oath or affirmation of office**

**10** Before entering on the duties of office, the Ombudsman shall take an oath or affirmation before the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly in the following form:

**OATH OF (OR AFFIRMATION RESPECTING) OFFICE**

I, \_\_\_\_\_, do swear (affirm) that I will faithfully and impartially perform and discharge the duties of Ombudsman and that I will not, except as provided in *The Ombudsman Act, 2012*, divulge any information received by me in the exercise of my powers or the performance of my duties pursuant to that Act.

2012, c.O-3.2, s.10.

**Oath or affirmation required of staff of Ombudsman**

**11** Before entering on the duties of his or her office, every member of the staff of the Ombudsman shall take an oath or affirmation before the Ombudsman in the following form:

**OATH OF (OR AFFIRMATION RESPECTING) OFFICE**

I, \_\_\_\_\_, do swear (affirm) that I will faithfully and impartially perform and discharge the duties of my office as a member of the staff of the Ombudsman and that I will not, except as provided in *The Ombudsman Act, 2012*, divulge any information received by me in the exercise of my powers or the performance of my duties pursuant to that Act.

2012, c.O-3.2, s.11.

**Confidentiality**

12(1) The Ombudsman and every member of the Ombudsman's staff shall maintain confidentiality with respect to all matters that come to their knowledge in the exercise of their powers and the carrying out of their duties pursuant to this Act.

(2) Notwithstanding subsection (1) or any oath or affirmation taken pursuant to this Act, the Ombudsman may disclose in a report made by the Ombudsman pursuant to this Act any matter that the Ombudsman considers necessary to disclose in order to establish grounds for a conclusion and recommendation in that report.

2012, c.O-3.2, s.12.

**Delegation of powers**

13(1) The Ombudsman may, in writing, delegate to any member of the staff of the Ombudsman or any person any of the Ombudsman's powers other than:

- (a) the power of delegation pursuant to this section; and
- (b) the power or duty to make a report pursuant to this Act.

(2) A delegation pursuant to this section may:

- (a) be made to:
  - (i) a specified member of the Ombudsman's staff; or
  - (ii) the holder for the time being of a specified office or the holders of offices of a specified class of the staff; and
- (b) be made either generally or in relation to a particular case or class of cases.

(3) The Ombudsman may revoke a delegation at any time.

(4) No delegation prevents the exercise of any power by the Ombudsman.

(5) The Ombudsman may impose any restrictions or conditions that the Ombudsman considers appropriate on a delegation.

(6) A delegation continues in effect until it is revoked.

(7) If the Ombudsman who made a delegation ceases to hold office, the delegation continues in effect as if it were made by that Ombudsman's successor.

(8) If the Ombudsman has delegated a power pursuant to this section, the person to whom the power is delegated shall produce evidence of that person's authority to exercise the power when required to do so.

2012, c.O-3.2, s.13.

**PART III  
Powers and Duties**

**Powers and duties of Ombudsman**

14(1) The Ombudsman has the powers set out in this section, and the Ombudsman has the duty to exercise those powers in accordance with this Act.

(2) With respect to a matter of administration affecting any person or body of persons in their personal capacity, the Ombudsman has the power to investigate:

(a) any decision or recommendation, including any recommendation made to a minister, that:

(i) is made in or by a ministry, an agency of the government, a publicly-funded health entity, a municipal entity, any council member, any board member or any officer or employee of the Government in the exercise of any power, duty or function conferred or imposed on them by an Act; and

(ii) aggrieves or may aggrieve any person; or

(b) any act that:

(i) was done or omitted to be done in or by any of the following in the exercise of any power, duty or function conferred or imposed on them by any Act:

(A) a ministry;

(B) an agency of the government;

(C) a publicly-funded health entity;

(D) a municipal entity;

(E) a council member, including any matter with respect to that member respecting a conflict of interest or alleged contravention of a code of ethics;

(F) a board member;

(G) any officer or employee of the Government; and

(ii) aggrieves or may aggrieve any person.

(3) The Ombudsman may:

(a) make an investigation pursuant to this section on a complaint made by any person or on the Ombudsman's own initiative; and

(b) commence an investigation pursuant to this section notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (2).

- (4) The Ombudsman may require that a complaint pursuant to subsection (3) be in writing if, in the Ombudsman's opinion, the circumstances warrant.
- (5) The Ombudsman may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches.
- (6) The Ombudsman may become involved in public education for the purpose of informing the public about fairness and the powers and duties of the Ombudsman.

2012, c.O-3.2, s.14; 2015, c.30, s.5-1.

**Special request to review certain matters**

**15(1)** Any person or body may request that the Ombudsman review any matter involving that person or body.

(2) On receipt of a request pursuant to subsection (1), the Ombudsman may review the matter if:

- (a) the Ombudsman considers that the matter is one for which the Ombudsman has expertise;
- (b) the Ombudsman determines that he or she has the resources to review the matter; and
- (c) the person or body and the Ombudsman agree respecting the fee that the Ombudsman may charge for the review.

(3) For the purposes of clause (2)(c), the fee that the Ombudsman may charge is not to exceed the reasonable costs, as determined by the Ombudsman, of undertaking the review and preparing a report.

(4) On completion of a review pursuant to subsection (2), the Ombudsman may make any report to that person or body that the Ombudsman considers appropriate.

(5) Part IV does not apply to a review or a report pursuant to this section.

2012, c.O-3.2, s.15.

**Referrals to Ombudsman by Legislative Assembly and Lieutenant Governor in Council**

**16(1)** A committee of the Legislative Assembly may refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration.

(2) On a referral pursuant to subsection (1), the Ombudsman shall:

- (a) subject to any special directions of the committee of the Legislative Assembly, investigate the petition or matter referred to the Ombudsman insofar as it is within the Ombudsman's jurisdiction; and
- (b) make any report to the committee that the Ombudsman considers appropriate.

- (3) The Lieutenant Governor in Council may refer to the Ombudsman for investigation and report any matter relating to any ministry, any agency of the government, any publicly-funded health entity, any municipal entity, a council member, a board member or any officer, employee or member of the Government.
- (4) On a referral pursuant to subsection (3), the Ombudsman shall:
- (a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to the Ombudsman insofar as it is within the Ombudsman's jurisdiction; and
  - (b) make any report to the Lieutenant Governor in Council that the Ombudsman considers appropriate.

2012, c.O-3.2, s.16; 2015, c.30, s.5-1.

#### PART IV Jurisdiction and Procedures

##### **Ombudsman not restricted by provisions of other Acts**

**17** The Ombudsman may exercise the Ombudsman's powers and shall carry out the Ombudsman's duties pursuant to this Act notwithstanding anything in any other Act that provides:

- (a) that any decision, recommendation, act or omission that the Ombudsman is investigating is final;
- (b) that no appeal lies with respect to the decision, recommendation, act or omission that the Ombudsman is investigating; or
- (c) that no decision, recommendation, act or omission of a ministry, agency of the government, publicly-funded health entity, municipal entity, council member, board member, officer, employee or person shall be challenged, reviewed, quashed or called into question.

2012, c.O-3.2, s.17; 2015, c.30, s.5-1.

##### **Restrictions on jurisdiction**

**18(1)** Nothing in this Act authorizes the Ombudsman to investigate:

- (a) any decision, recommendation, act, order or omission of the Legislative Assembly, a committee of the Legislative Assembly, the Lieutenant Governor in Council, the Executive Council or a committee of the Executive Council;
- (b) any decision, order or omission of a court, a judge of a court or a justice of the peace made or given in any action or proceeding in the court or before the judge or justice of the peace;

- (c) subject to subsection (2), any decision, recommendation, act or omission with respect to which there is pursuant to an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or pursuant to an Act, whether or not:
- (i) that right of appeal, objection or application has been exercised in the particular case; and
  - (ii) any time prescribed for the exercise of that right has expired; or
- (d) any decision, recommendation, act or omission of any lawyer for the Crown in relation to any proceeding.
- (2) Clause (1)(c) does not apply if the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal.
- (3) In the circumstances mentioned in subsection (2), the Ombudsman shall not commence any investigation until after the time for the exercise of that right to appeal, object or apply has expired.

2012, c.O-3.2, s.18.

**Application to court re question of jurisdiction to investigate**

- 19(1) If any question arises respecting the jurisdiction of the Ombudsman to investigate any case or class of cases pursuant to this Act, the Ombudsman may apply to the Court of Queen's Bench for a declaratory order determining the question.
- (2) Notice of an application pursuant to subsection (1) must be served on the Attorney General for Saskatchewan at least 15 days before the date on which the application is to be heard.

2012, c.O-3.2, s.19.

**Privileged communication**

20(1) In this section:

- (a) **“designated facility”** means a facility owned or operated by a publicly-funded health entity that is designated by the minister pursuant to:
- (i) section 2-9 of *The Provincial Health Authority Act*;
  - (ii) section 4 of *The Mental Health Services Act*; or
  - (iii) section 3 of *The Youth Drug Detoxification and Stabilization Act*;
- (b) **“person in charge”** means the person who:
- (i) is in charge of an institution where a restricted complainant is in custody on a charge for an offence or after conviction for an offence;
  - (ii) has custody of a restricted complainant; or
  - (iii) is in charge of a designated facility in which a resident in care is located and from which the resident in care is receiving services;

- (c) **“resident in care”** means a person who is located in a designated facility and who is receiving services from the designated facility;
- (d) **“restricted complainant”** means a person who is:
  - (i) in custody on a charge for an offence or after conviction for an offence; or
  - (ii) in the custody of another person for any reason.
- (2) Notwithstanding any Act, if a letter is written by or on behalf of a restricted complainant or resident in care and is addressed to the Ombudsman, the person in charge shall forward the letter, unopened, to the Ombudsman.
- (3) Every institution where restricted complainants are in custody or confined shall:
  - (a) establish procedures and provide means that permit each restricted complainant to communicate in private with the Ombudsman; and
  - (b) inform each restricted complainant in the institution of:
    - (i) the restricted complainant’s right to communicate in private with the Ombudsman;
    - (ii) the services provided by the Ombudsman; and
    - (iii) how to communicate with the Ombudsman and the contact information for the Ombudsman.
- (4) Every designated facility in which residents in care are located and from which residents in care are receiving services shall:
  - (a) establish procedures and provide means that permit each resident in care to communicate in private with the Ombudsman; and
  - (b) inform each resident in care in the designated facility of:
    - (i) the resident in care’s right to communicate in private with the Ombudsman;
    - (ii) the services provided by the Ombudsman; and
    - (iii) how to communicate with the Ombudsman and the contact information for the Ombudsman.

2012, c.O-3.2, s.20; 2017, cP-30.3, s.11-17.

**Refusal to investigate**

**21(1)** The Ombudsman may refuse to investigate or cease to investigate a complaint if:

- (a) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;
- (b) in the Ombudsman’s opinion, it is frivolous, vexatious, not made in good faith or concerns a trivial matter;

- (c) in the Ombudsman's opinion on a balance between the public interest and the interest of the person aggrieved, it should not be investigated or the investigation should not be continued;
  - (d) in the Ombudsman's opinion, the circumstances of the case do not warrant investigation;
  - (e) the complainant does not have a sufficient personal interest in the subject-matter of the complaint; or
  - (f) during the course of an investigation it appears to the Ombudsman:
    - (i) that the complainant has an adequate remedy or right of appeal under the law or existing administrative practices, other than a petition to the Legislature, whether or not the complainant has availed himself or herself of that remedy or right; or
    - (ii) that, having regard to all the circumstances of the case, further investigation is unnecessary.
- (2) This section does not apply to an investigation or report required to be made pursuant to section 16.

2012, c.O-3.2, s.21.

**Notice not to investigate or cease an investigation**

- 22(1)** If the Ombudsman decides not to investigate a complaint or to cease to investigate a complaint, the Ombudsman shall inform the complainant of the decision.
- (2) If the Ombudsman considers it appropriate, the Ombudsman may state the reasons for a decision mentioned in subsection (1).

2012, c.O-3.2, s.22.

**Notice to investigate**

- 23(1)** Before investigating any matter pursuant to this Act, the Ombudsman shall notify the following of the Ombudsman's intention to make the investigation:
- (a) in the case of a ministry, the deputy minister of the affected ministry;
  - (b) in the case of an agency of the government or a publicly-funded health entity, the administrative or executive head of the affected agency of the government or publicly-funded health entity;
  - (c) in the case of a municipal entity:
    - (i) if the matter is related to a municipal entity mentioned in subclause 2(d.1)(i), (ii) or (iii), the administrative or executive head of the affected municipal entity;
    - (ii) if the matter is related to a municipal entity mentioned in subclause 2(d.1)(iv) or to a council member other than the chief officer, the chief officer of the affected municipal entity; or

(iii) if the matter is related to a chief officer, the minister to whom for the time being the administration of *The Cities Act*, *The Municipalities Act* or *The Northern Municipalities Act, 2010*, as the case may be, is assigned.

- (2) The notice must:
  - (a) be in writing; and
  - (b) set out the nature of the complaint, if any, received by the Ombudsman.
- (3) At any time during or after an investigation, the Ombudsman may consult with the minister, or in the case of an investigation concerning a municipal entity, the chief officer who is concerned in the matter of the investigation.
- (4) On the request of the minister responsible for the ministry or agency of the government or if an investigation relates to any recommendation made to a minister, the Ombudsman shall consult with that minister after making the investigation and before forming a final opinion on any matter mentioned in section 27.
- (5) On the request of the administrative or executive head of a publicly-funded health entity, the Ombudsman shall consult with that administrative or executive head after making the investigation and before forming a final opinion on any matter mentioned in section 27.
- (6) On the request of the chief officer of a municipal entity or if an investigation relates to any recommendation made to a municipal entity mentioned in subclause 2(d.1)(iv), the Ombudsman shall consult with that chief officer after making the investigation and before forming a final opinion on any matter mentioned in section 27.
- (7) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any ministry or agency of the government, the Ombudsman:
  - (a) shall refer the matter to the minister responsible for the ministry or agency of the government; and
  - (b) following the referral mentioned in clause (a), may continue with any ongoing investigation.
- (8) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any publicly-funded health entity or municipal entity, the Ombudsman:
  - (a) shall refer the matter to the administrative or executive head of the publicly-funded health entity or the chief officer of the municipal entity; and
  - (b) following the referral mentioned in clause (a), may continue with any ongoing investigation.

(9) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any council member, other than the chief officer, of any municipal entity, the Ombudsman:

- (a) shall refer the matter to the chief officer of the municipal entity; and
- (b) following the referral mentioned in clause (a), may continue with any ongoing investigation.

2015, c.30, s.5-1.

**Conduct of investigation**

**24(1)** Every investigation by the Ombudsman pursuant to this Act must be conducted in private.

(2) The Ombudsman may:

- (a) hold any hearings and hear or obtain any information from any person that the Ombudsman considers appropriate; and
- (b) make any inquiries that the Ombudsman considers appropriate.

(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman.

(4) Notwithstanding subsection (3), if at any time it appears to the Ombudsman that there are sufficient grounds for making a report or recommendation with respect to any matter that may adversely affect any ministry, agency of the government, publicly-funded health entity, municipal entity, council member or person, the Ombudsman shall give that ministry, agency of the government, publicly-funded health entity, municipal entity, council member or person an opportunity to make representations with respect to the matter.

(5) The ministry, agency of the government, publicly-funded health entity, municipal entity, council member or person mentioned in subsection (4) may make representations with respect to the matter by counsel.

2012, c.O-3.2, s.24; 2015, c.30, s.5-1.

**Power to require information and examine persons**

**25(1)** Subject to section 26, the Ombudsman may require any person who in the Ombudsman's opinion is able to give any information relating to any matter being investigated pursuant to this Act:

- (a) to furnish information to him or her; and
- (b) to produce any document, paper or thing that, in the Ombudsman's opinion:
  - (i) relates to the matter being investigated; and
  - (ii) may be in the possession or under the control of that person.

- (2) The Ombudsman may exercise the powers mentioned in subsection (1) whether or not:
- (a) the person mentioned in that subsection is an officer or employee of a ministry, agency of the government, publicly-funded health entity or municipal entity or a council member or a board member; and
  - (b) the document, paper or thing is in the custody or under the control of a ministry, agency of the government, publicly-funded health entity or municipal entity.
- (3) The Ombudsman may take possession of any document, paper or thing mentioned in subsection (1) to make copies for the purposes of the investigation.
- (4) The Ombudsman may summon and examine under oath or on affirmation:
- (a) any person who:
    - (i) is an officer, employee or member of any ministry, agency of the government, publicly-funded health entity or municipal entity or a council member or a board member; and
    - (ii) in the opinion of the Ombudsman, may be able to give any information relating to any matter being investigated pursuant to this Act;
  - (b) any complainant; and
  - (c) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated pursuant to this Act.
- (5) For the purposes of subsection (4), the Ombudsman may administer an oath or take an affirmation.
- (6) Every examination by the Ombudsman pursuant to subsection (4) is deemed a judicial proceeding for the purposes of section 136 of the *Criminal Code*.
- (7) Subject to section 26:
- (a) 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 or answer would be injurious to the public interest does not apply with respect to any investigation by or proceedings before the Ombudsman;
  - (b) a provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall not apply with respect to an investigation by the Ombudsman;
  - (c) no person who is required by the Ombudsman to furnish any information or to produce any document, paper or thing or who is summoned by the Ombudsman to give evidence shall refuse to furnish the information, produce the document, paper or thing or to answer questions on the ground of a provision of an Act mentioned in clause (b); and

- (d) nothing in subsection (4) permits the Ombudsman to require questions to be answered, or to require the production of any information, report, statement, recommendation, memorandum, data or record that would be the subject of a privilege pursuant to section 10 of *The Evidence Act* or section 58 of *The Regional Health Services Act* or section 8-2 of *The Provincial Health Authority Act*.
- (8) Except on the trial of a person respecting an offence against this Act:
- (a) no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Ombudsman is admissible in evidence against any person in any court, at any inquiry or in any other proceedings; and
- (b) no evidence with respect to proceedings before the Ombudsman is admissible against any person.
- (9) No person is liable to prosecution for an offence against any Act by reason of the person's compliance with any requirement of the Ombudsman pursuant to this section.

2012, c.O-3.2, s.25; 2015, c.30, s.5-1; 2017,  
cP-30.3, s.11-17.

**Disclosure of certain matters not required**

- 26(1)** The Ombudsman shall not require any information or answer to be given or any document, paper or thing to be produced, as the case may be, if the Attorney General for Saskatchewan certifies to the Ombudsman that the giving of the information, the answering of the question or the production of the document, paper or thing might involve the disclosure of:
- (a) the deliberations of the Executive Council; or
- (b) proceedings of the Executive Council or a committee of the Executive Council relating to matters of a secret or confidential nature the disclosure of which would be injurious to the public interest.
- (2) The Ombudsman shall report the receipt of every certificate pursuant to this section in the next annual report.

2012, c.O-3.2, s.26.

**Report on investigation**

- 27(1)** The Ombudsman shall take the actions described in subsection (2) if, after an investigation pursuant to this Act, the Ombudsman is of the opinion:
- (a) that a decision, recommendation, act or omission that is the subject-matter of the investigation appears to have been:

- (i) contrary to law;
  - (ii) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
  - (iii) based in whole or in part on a mistake of law or fact; or
  - (iv) wrong;
- (b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:
- (i) for an improper purpose;
  - (ii) on irrelevant grounds; or
  - (iii) on the taking into account of irrelevant considerations; or
- (c) that reasons should have been given for a decision, recommendation, act or omission that was the subject-matter of the investigation.
- (2) In the circumstances mentioned in subsection (1), the Ombudsman:
- (a) shall report the opinion and the reasons for it to the appropriate minister and to the relevant ministry, agency of the government, publicly-funded health entity or municipal entity; and
  - (b) may make any recommendations that the Ombudsman considers appropriate.
- (3) Without limiting the generality of subsections (1) and (2), in making a report pursuant to those subsections, the Ombudsman may recommend:
- (a) that a matter should be referred to the appropriate authority for further consideration;
  - (b) that an omission should be rectified;
  - (c) that a decision should be cancelled or varied;
  - (d) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;
  - (e) that any law on which a decision, recommendation, act or omission was based should be reconsidered;
  - (f) that reasons should be given for any decision, recommendation, act or omission; or
  - (g) that any other steps should be taken.
- (4) This section does not apply to an investigation or report required to be made pursuant to section 16.

**Notice of steps taken**

**28(1)** If the Ombudsman makes a recommendation pursuant to section 27, the Ombudsman may request the ministry, agency of the government, publicly-funded health entity or municipal entity to provide notice within a specified time of the steps that it has taken or proposes to take to give effect to the recommendation.

(2) If, within a reasonable time after a request respecting a recommendation is made pursuant to this section, no action is taken that seems to the Ombudsman to be adequate and appropriate, the Ombudsman may:

(a) after considering the comments, if any, made by or on behalf of the ministry, agency of the government, publicly-funded health entity or municipal entity affected, submit a report of the matter, including a copy of the report containing the recommendation, to the Lieutenant Governor in Council; and

(b) after submitting a report pursuant to clause (a), mention the report in the next annual report to the Legislative Assembly.

2012, c.O-3.2, s.28; 2015, c.30, s.5-1.

**Review of recommendations**

**29** If the Ombudsman makes a recommendation pursuant to section 27 and no action that seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman shall:

(a) inform the complainant of the recommendation; and

(b) make any comments on the matter that the Ombudsman considers appropriate.

2012, c.O-3.2, s.29.

**Proceedings not subject to review**

**30(1)** No proceeding of the Ombudsman is invalid for want of form.

(2) Except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called into question in any court.

2012, c.O-3.2, s.30.

**Proceedings privileged**

**31(1)** No action or proceeding lies or shall be commenced against the Ombudsman, or against any member of the Ombudsman's staff, for:

(a) anything done, or omitted to be done, in good faith in the course of the exercise or performance, or intended exercise or performance, of his or her powers and duties pursuant to this Act; or

(b) anything he or she may do, report or say in good faith in the course of the exercise or performance, or intended exercise or performance, of his or her powers and duties pursuant to this Act.

(2) Neither the Ombudsman or any member of the Ombudsman's staff is competent or compellable to give evidence in any court or in any proceedings of a judicial nature with respect to anything coming to his or her knowledge in the exercise or performance of his or her powers and duties pursuant to this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in any court relating to an investigation by or proceedings before the Ombudsman pursuant to this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court.

(4) For the purposes of *The Libel and Slander Act*:

(a) any report made by the Ombudsman pursuant to this Act is deemed to be privileged; and

(b) a fair and accurate report on any report made by the Ombudsman pursuant to this Act in a newspaper or a broadcast of it is deemed to be privileged.

2012, c.O-3.2, s.31.

#### **Entry on premises**

**32(1)** For the purposes of this Act, the Ombudsman may:

(a) at any time enter on the premises occupied by any ministry, agency of the government, publicly-funded health entity or municipal entity; and

(b) subject to section 14, carry out any investigation pursuant to this Act.

(2) Before entering on any premises pursuant to subsection (1), the Ombudsman shall notify the deputy minister or administrative or executive head of the ministry, agency of the government, publicly-funded health entity or municipal entity that occupies the premises of the intention to conduct an investigation pursuant to this Act and to enter the premises.

2012, c.O-3.2, s.32; 2015, c.30, s.5-1.

## **PART V General**

#### **Rules for guidance**

**33(1)** On its own initiative or on the recommendation of the Lieutenant Governor in Council, the Legislative Assembly may make rules to guide the Ombudsman in the exercise of the Ombudsman's powers, and the performance of the Ombudsman's duties, pursuant to this Act.

(2) Subject to this Act and any rules made pursuant to subsection (1), the Ombudsman may determine the procedure and the procedure for the members of the Ombudsman's staff in the exercise of their powers, and the performance of their duties, pursuant to this Act.

2012, c.O-3.2, s.33.

**Voluntary provision of information to Ombudsman**

**34** At the request of the Ombudsman, a ministry, agency of the government, publicly-funded health entity or municipal entity may provide information in its possession, custody or control respecting any person who is receiving services from or dealing with the ministry, agency of the government, publicly-funded health entity or municipal entity to the Ombudsman if it is satisfied that providing the information will assist the Ombudsman in fulfilling any of the Ombudsman's duties or in exercising any of the Ombudsman's powers pursuant to this Act.

2015, c.30, s.5-1.

**Offence and penalty**

**35(1)** No person shall:

- (a) without lawful justification or excuse wilfully obstruct, hinder or resist the Ombudsman or any other person in the exercise or performance of his or her powers and duties pursuant to this Act;
- (b) without lawful justification or excuse, refuse or wilfully fail to comply with any lawful requirement of the Ombudsman or any other person imposed pursuant to this Act; or
- (c) wilfully make any false statement to, or mislead or attempt to mislead, the Ombudsman or any other person in the exercise or performance of the Ombudsman's powers and duties pursuant to this Act.

(2) Every person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$500, to imprisonment for not more than three months or to both.

2012, c.O-3.2, s.35.

**Attorney General may intervene**

**36** The Attorney General for Saskatchewan or counsel appointed by the Attorney General for Saskatchewan may, without leave of the court or judge, intervene in any action or proceedings taken in any court pursuant to section 30 or 31, and no order for costs for or against the Attorney General for Saskatchewan is to be made as a result of the intervention.

2012, c.O-3.2, s.36.

**Act to provide additional remedies**

**37** The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter, and nothing in this Act limits or affects any of those remedies, rights of appeal, objections or procedures.

2012, c.O-3.2, s.37.

**Annual report of Ombudsman**

**38(1)** In accordance with section 13 of *The Executive Government Administration Act*, the Ombudsman shall, in each year, submit to the Speaker an annual report describing the progress and activities of the Ombudsman in the previous year.

(2) In accordance with section 13 of *The Executive Government Administration Act*, the Speaker shall lay before the Legislative Assembly each report received by the Speaker pursuant to subsection (1).

(3) The Ombudsman may, from time to time in the public interest or in the interest of any person, ministry, agency of the government, publicly-funded health entity or municipal entity, publish reports respecting any of the following matters, whether or not those matters have been the subject of a report to the Legislative Assembly:

- (a) the exercise of his or her powers and the performance of his or her duties pursuant to this Act;
- (b) any particular case that he or she has investigated.

2012, c.O-3.2, s.38; 2014, c.E-13.1, s.62; 2015, c.30, s.5-1.

**Power to reconsider matters**

**39(1)** On the recommendation of the Ombudsman pursuant to subsection 27(3), a ministry, agency of the government, publicly-funded health entity or municipal entity may:

- (a) rehear a matter or reconsider a decision or recommendation made by the ministry, agency of the government, publicly-funded health entity, municipal entity, council member, board member or officer or employee of the Government; and
- (b) quash, confirm or vary that decision or recommendation or any part of it.

(2) If a matter is reheard or reconsidered pursuant to subsection (1), the provisions of the enactment governing the original hearing or consideration apply to the rehearing or reconsideration.

(3) This section applies notwithstanding any provision in any Act to the effect that:

- (a) no appeal lies with respect to it; or
- (b) no proceeding or decision of the ministry, agency of the government, publicly-funded health entity or municipal entity whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question.

2012, c.O-3.2, s.39; 2015, c.30, s.5-1.

## PART VI

**Repeal, Transitional and Coming into Force**

**40** **Dispensed.** This/these section(s) makes consequential amendments to another/ other Act(s). Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the amendments have been incorporated into the corresponding Act(s). Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

**Transitional**

**41** The person holding the office of the Ombudsman on the day before the coming into force of this Act continues in office as the Ombudsman for the term for which he or she was appointed unless the person sooner dies, resigns or is suspended or removed from office pursuant to this Act.

2012, c.O-3.2, s.41.

**Coming into force**

**42** This Act comes into force on proclamation.

2012, c.O-3.2, s.42.

