

Ombudsman Act

R.S.O. 1990, CHAPTER O.6

Consolidation Period: From January 1, 2016 to the [e-Laws currency date](#).

Last amendment: 2015, c. 20, Sched. 30.

Legislative History: 1996, c. 6, s. 4, 5; 1999, c. 5, s. 4; 2004, c. 3, Sched. A, s. 94; 2004, c. 17, s. 32; 2005, c. 29, s. 5; 2006, c. 19, Sched. C, s. 1 (1); 2006, c. 19, Sched. D, s. 15; 2006, c. 21, Sched. F, s. 136 (1); 2006, c. 32, Sched. C, s. 40; 2006, c. 35, Sched. C, s. 94, 134 (4); 2014, c. 13, Sched. 9, s. 1-16; 2015, c. 20, Sched. 30

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Definitions

1. (1) In this Act,

“governmental organization” means a Ministry, commission, board or other administrative unit of the Government of Ontario, and includes any agency thereof; (“organisation gouvernementale”)

“local board” means, except in section 14.1,

- (a) a local board as defined in subsection 1 (1) of the *Municipal Act, 2001* and subsection 3 (1) of the *City of Toronto Act, 2006*, other than any local board prescribed by regulations made under clause (2) (a) of this Act,
- (b) any body prescribed by regulations made under clause (2) (b); (“conseil local”)

“minister” means a member of the Executive Council. (“ministre”)

“municipally-controlled corporation” means,

- (a) a municipally-controlled corporation as defined in section 223.1 of the *Municipal Act, 2001*;
- (b) a city-controlled corporation as defined in section 156 of the *City of Toronto Act, 2006*; and
- (c) any corporation prescribed by regulations made under clause (2) (c); (“société contrôlée par une municipalité”)

“municipal Ombudsman” means an Ombudsman, if any, appointed by a municipality under the *Municipal Act, 2001* or the Ombudsman appointed under subsection 170 (1) of the *City of Toronto Act, 2006*, as the case may be; (“ombudsman municipal”)

“municipal sector entity” means,

- (a) a municipality;
- (b) a local board; and
- (c) a municipally-controlled corporation; (“entité du secteur municipal”)

“public sector body” means,

- (a) a governmental organization; and
- (b) any other entity to which this Act applies under section 13; (“organisme du secteur public”)

“school board” means a board as defined in subsection 1 (1) of the *Education Act*; (“conseil scolaire”)

“university” means a university in Ontario that receives regular direct operating funding from the Government. (“université”) R.S.O. 1990, c. O.6, s. 1; 2014, c. 13, Sched. 9, s. 1 (1-4).

Regulations

(2) The Lieutenant Governor in Council may make regulations,

- (a) exempting local boards from the definition of “local board” in subsection (1);
- (b) prescribing bodies that perform a public function as local boards for the purposes of the definition of “local board” in subsection (1);
- (c) prescribing corporations that perform a public function as municipally-controlled corporations for the purposes of the definition of “municipally-controlled corporation” in subsection (1). 2014, c. 13, Sched. 9, s. 1 (5).

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 1 (2, 3) - 1/09/2015; 2014, c. 13, Sched. 9, s. 1 (1, 4, 5) - 1/01/2016

Head of public sector body, municipal sector entity

Municipality

1.1 (1) For the purposes of this Act, the head of a public sector body that is a municipality is,

- (a) a member of the council of the municipality, or a committee of the council, designated by by-law of the municipality as head; or
- (b) if no member or committee is designated, the council. 2014, c. 13, Sched. 9, s. 2.

Local board

(2) For the purposes of this Act, the head of a public sector body that is a local board is,

- (a) a member of the local board, or a committee of the local board, designated in writing by the members of the local board as head; or
- (b) if no member or committee is designated, the members of the local board. 2014, c. 13, Sched. 9, s. 2.

Municipally-controlled corporation

(3) For the purposes of this Act, the head of a public sector body that is a municipally-controlled corporation shall be determined in accordance with regulations made under subsection (4). 2014, c. 13, Sched. 9, s. 2.

Regulations

(4) The Lieutenant Governor in Council may make regulations governing the determination of the head of a public sector body that is a municipally-controlled corporation. 2014, c. 13, Sched. 9, s. 2.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 2 - 1/01/2016

Head of public sector body, school board

1.2 For the purposes of this Act, the head of a public sector body that is a school board is,

- (a) a member or employee of the school board designated by the school board as head; or
- (b) if no one is designated, the director of education for the school board. 2014, c. 13, Sched. 9, s. 3.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 3 - 1/09/2015

Head of public sector body, university

1.3 For the purposes of this Act, the head of a public sector body that is a university is,

- (a) a member of the governing body of the university or other officer or employee of the university, or a committee of the governing body, designated by the governing body as head; or
- (b) if no person or committee is designated, the president of the university. 2014, c. 13, Sched. 9, s. 4.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 4 - 1/01/2016

Ombudsman

2. There shall be appointed, as an officer of the Legislature, an Ombudsman to exercise the powers and perform the duties prescribed by this Act. R.S.O. 1990, c. O.6, s. 2.

Appointment

3. The Ombudsman shall be appointed by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. O.6, s. 3.

Term of office and removal

4. (1) The Ombudsman shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly. R.S.O. 1990, c. O.6, s. 4 (1); 1999, c. 5, s. 4 (1); 2005, c. 29, s. 5 (1).

(2) REPEALED: 2005, c. 29, s. 5 (2).

Section Amendments with date in force (d/m/y)

1999, c. 5, s. 4 (1) - 28/10/1999

2005, c. 29, s. 5 (1, 2) - 12/12/2006

Nature of employment

5. (1) The Ombudsman shall devote himself or herself exclusively to the duties of the Ombudsman's office and shall not hold any other office under the Crown or engage in any other employment. R.S.O. 1990, c. O.6, s. 5 (1).

Not a public servant

(2) The Ombudsman is not a public servant within the meaning of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 94 (1).

Section Amendments with date in force (d/m/y)

1999, c. 6, s. 4 - 25/04/1996

2006, c. 35, Sched. C, s. 94 (1) - 20/08/2007

Salary

6. (1) The Ombudsman shall be paid a salary to be fixed by the Lieutenant Governor in Council. R.S.O. 1990, c. O.6, s. 6 (1).

Idem

(2) The salary of the Ombudsman shall not be reduced except on address of the Assembly. R.S.O. 1990, c. O.6, s. 6 (2).

Expenses

(3) The Ombudsman is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of the Ombudsman's functions under this Act. R.S.O. 1990, c. O.6, s. 6 (3).

Pension

(4) The Ombudsman is a member of the Public Service Pension Plan. 1996, c. 6, s. 5.

Section Amendments with date in force (d/m/y)

1996, c. 6, s. 5 - 25/04/1996

Temporary Ombudsman

7. In the event of the death or resignation of the Ombudsman while the Legislature is not in session or if the Ombudsman is unable or neglects to perform the functions of his or her office, the Lieutenant Governor in Council may appoint a temporary Ombudsman, to hold office for a term of not more than six months, who shall, while in such office, have the powers and duties and perform the functions of the Ombudsman and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix. R.S.O. 1990, c. O.6, s. 7.

Employees

8. (1) Subject to the approval of the Lieutenant Governor in Council, the Ombudsman may employ such employees as the Ombudsman considers necessary for the efficient operation of his or her office and may determine their salary and remuneration and terms and conditions of employment. R.S.O. 1990, c. O.6, s. 8 (1).

Benefits

(2) The benefits determined under Part III of the *Public Service of Ontario Act, 2006* with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the permanent and full-time employees of the Ombudsman:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits.
2. Plans for group life insurance, medical-surgical insurance or long-term income protection.
3. The granting of leaves of absence. 2006, c. 35, Sched. C, s. 94 (2).

Same

(2.1) For the purposes of subsection (2), if a benefit applicable to an employee of the Ombudsman is contingent on the exercise of a discretionary power or the performance of a discretionary function, the power may be exercised or the function may be performed by the Ombudsman or any person authorized in writing by the Ombudsman. 2006, c. 35, Sched. C, s. 94 (2).

Employees' pension benefits

(3) The Ombudsman shall be deemed to have been designated by the Lieutenant Governor in Council under the *Public Service Pension Act* as an organization whose permanent and full-time probationary staff are required to be members of the Public Service Pension Plan. R.S.O. 1990, c. O.6, s. 8 (3).

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 94 (2) - 20/08/2007

Premises and supplies

9. The Ombudsman may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his or her office. R.S.O. 1990, c. O.6, s. 9.

Audit

10. The accounts and financial transactions of the office of the Ombudsman shall be audited annually by the Auditor General. R.S.O. 1990, c. O.6, s. 10; 2004, c. 17, s. 32.

Section Amendments with date in force (d/m/y)

2004, c. 17, s. 32 - 30/11/2004

Annual report

11. The Ombudsman shall report annually upon the affairs of the Ombudsman's office to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. O.6, s. 11.

Oath of office and secrecy

12. (1) Before commencing the duties of his or her office, the Ombudsman shall take an oath, to be administered by the Speaker of the Assembly, that he or she will faithfully and impartially exercise the functions of his or her office and that he or she will not, except in accordance with subsection (2), disclose any information received by him or her as Ombudsman. R.S.O. 1990, c. O.6, s. 12 (1).

Disclosure

(2) The Ombudsman may disclose in any report made by him or her under this Act such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. R.S.O. 1990, c. O.6, s. 12 (2).

Application of Act

13. (1) This Act does not apply,

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

(b) to deliberations and proceedings of the Executive Council or any committee thereof. R.S.O. 1990, c. O.6, s. 13.

Application to municipal sector entities

(2) This Act applies to municipal sector entities. 2014, c. 13, Sched. 9, s. 5 (1).

Application to school boards

(3) This Act applies to school boards. 2014, c. 13, Sched. 9, s. 5 (2).

Application to universities

(4) This Act applies to universities. 2014, c. 13, Sched. 9, s. 5 (3).

Exclusion re: Hydro One Inc.

(5) Hydro One Inc. and its subsidiaries are deemed not to be governmental organizations for the purposes of this Act on and after the date on which the *Building Ontario Up Act (Budget Measures), 2015* received Royal Assent. 2015, c. 20, Sched. 30, s. 1.

Transition

(6) Despite subsection (5), for a period of six months after the date described in that subsection,

(a) the Ombudsman may continue to exercise all of his or her powers under this Act in relation to Hydro One Inc. and its subsidiaries in relation to any matter occurring before the date described in subsection (5), except that the Ombudsman shall not commence any new investigation of Hydro One Inc. and its subsidiaries with respect to any matter, regardless of whether the matter occurred before, on or after the date described in subsection (5); and

(b) Hydro One Inc. and its subsidiaries continue to be governmental organizations in relation to matters occurring before the date described in subsection (5). 2015, c. 20, Sched. 30, s. 1.

Continuing authority to report, etc.

(7) For greater certainty, the powers and duties of the Ombudsman under section 21 with respect to an investigation permitted under subsection (6) continue after the expiry of the six-month period described in that subsection. 2015, c. 20, Sched. 30, s. 1.

Repeal

(8) **Subsections (6) and (7) and this subsection are repealed on a day to be named by proclamation of the Lieutenant Governor. 2015, c. 20, Sched. 30, s. 1.**

Section Amendments with date in force (d/m/y)

R.S.O. 1990, c. O.6, s. 13 (8) - not in force

2014, c. 13, Sched. 9, s. 5 (1-3) - 1/09/2015

2015, c. 20, Sched. 30, s. 1 - 4/06/2015

Function of Ombudsman

14. (1) The function of the Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity. R.S.O. 1990, c. O.6, s. 14 (1); 2014, c. 13, Sched. 9, s. 6 (1).

Investigation on complaint

(2) The Ombudsman may make any such investigation on a complaint made to him or her by any person affected or by any member of the Assembly to whom a complaint is made by any person affected, or of the Ombudsman's own motion. R.S.O. 1990, c. O.6, s. 14 (2).

(2.1)-(2.6) REPEALED: 2014, c. 13, Sched. 9, s. 6 (2).

Powers paramount

(3) The powers conferred on the Ombudsman by this Act may be exercised despite any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the person or body whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question. R.S.O. 1990, c. O.6, s. 14 (3); 2014, c. 13, Sched. 9, s. 6 (3).

Decisions not reviewable

(4) Nothing in this Act empowers the Ombudsman to investigate any decision, recommendation, act or omission,

- (a) in respect of which there is, under any Act, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to any court, or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired;
- (a.1) in respect of which there is, under any by-law or resolution of a school board, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to a designated school board official or employee, or to a committee constituted by or under a by-law or resolution of the school board, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired;
- (a.2) in respect of which there is, under any by-law or resolution of the governing body or senate of a university, a right of appeal or objection, or a right to apply for a hearing or review, on the merits of the case to a designated university official or employee, or to a committee or tribunal constituted by or under a by-law or resolution of the governing body or senate, until that right of appeal or objection or application has been exercised in the particular case, or until after any time for the exercise of that right has expired;
- (b) of any person acting as legal adviser to the public sector body or as counsel to the public sector body in relation to any proceedings, or, in the case of a public sector body that is a governmental organization, a legal adviser or counsel to the Crown. R.S.O. 1990, c. O.6, s. 14 (4); 2014, c. 13, Sched. 9, s. 6 (4-6).

Same

(4.1) For greater certainty, clause (4) (a) includes rights established under by-laws made by a municipal sector entity under any Act. 2014, c. 13, Sched. 9, s. 6 (7).

Municipal Ombudsman, Toronto

(4.2) Nothing in this Act empowers the Ombudsman to investigate a complaint respecting any decision, recommendation, act or omission that is within the jurisdiction of the municipal Ombudsman for the City of Toronto. 2014, c. 13, Sched. 9, s. 6 (7).

Same, other municipalities

(4.3) Nothing in this Act empowers the Ombudsman to investigate a complaint respecting any decision, recommendation, act or omission that is within the jurisdiction of any other municipal Ombudsman unless,

- (a) a complaint respecting the matter was made to the municipal Ombudsman and he or she refused to investigate the matter, or conducted and concluded an investigation into the matter; or

- (b) the time, if any, for bringing a complaint respecting the matter to the municipal Ombudsman for investigation has expired. 2014, c. 13, Sched. 9, s. 6 (7).

Other municipal matters

- (4.4) Subsection (4.3) applies with necessary modifications in respect of a matter that is within the jurisdiction of,
 - (a) an Integrity Commissioner, registrar or Auditor General appointed under Part V.1 of the *Municipal Act, 2001*; or
 - (b) an Integrity Commissioner, registrar or Auditor General appointed under Part V of the *City of Toronto Act, 2006*. 2014, c. 13, Sched. 9, s. 6 (7).

Investigation on own motion

(4.5) For greater certainty, subsections (4.2), (4.3) and (4.4) do not affect the Ombudsman's ability under subsection (2) to investigate on his or her own motion. 2014, c. 13, Sched. 9, s. 6 (7).

Application to determine jurisdiction

(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, the Ombudsman or any person who is directly affected may apply to the Divisional Court for a declaratory order determining the question. 2014, c. 13, Sched. 9, s. 6 (8).

Section Amendments with date in force (d/m/y)

2006, c. 32, Sched. C, s. 40 - 1/01/2008; 2006, c. 35, Sched. C, s. 134 (4) - 1/01/2008

2014, c. 13, Sched. 9, s. 6 (1-4, 6, 8) - 1/09/2015; 2014, c. 13, Sched. 9, s. 6 (5, 7) - 1/01/2016

Specific powers of investigation re municipalities, local boards

14.1 (1) This section applies in the circumstances described in clause 239.1 (b) of the *Municipal Act, 2001* or clause 190.1 (1) (b) of the *City of Toronto Act, 2006*, as the case may be. 2014, c. 13, Sched. 9, s. 7 (1).

Definition

(2) In this section,
“local board” means,

- (a) when used in relation to a municipality other than the City of Toronto, a local board as defined in subsection 238 (1) of the *Municipal Act, 2001*; and
- (b) when used in relation to the City of Toronto, a local board as defined in subsection 3 (1) of the *City of Toronto Act, 2006* to which section 189 of that Act applies. 2014, c. 13, Sched. 9, s. 7 (1).

Investigation by Ombudsman

(3) If a person makes a request under clause 239.1 (b) of the *Municipal Act, 2001* or clause 190.1 (1) (b) of the *City of Toronto Act, 2006*, the Ombudsman may, as the case may be, investigate,

- (a) whether a municipality or local board of a municipality has complied with section 239 of the *Municipal Act, 2001* or a procedure by-law under subsection 238 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public; or
- (b) whether the City of Toronto or a local board of the City has complied with section 190 of the *City of Toronto Act, 2006* or a procedure by-law under subsection 189 (2) of that Act in respect of a meeting or part of a meeting that was closed to the public. 2014, c. 13, Sched. 9, s. 7 (1).

Application of Act

(4) Subject to subsection (5), this Act applies to an investigation under subsection (3). 2014, c. 13, Sched. 9, s. 7 (1).

Exceptions

(5) Subsections 14 (4) and 18 (5.1), sections 20 and 21 and subsections 22 (1) and 25 (3) and (4) do not apply to an investigation under subsection (3). 2014, c. 13, Sched. 9, s. 7 (1); 2014, c. 13, Sched. 9, s. 7 (2).

Interpretation

(6) For the purposes of subsection (4), the remaining provisions of this Act apply with necessary modifications to a municipality or local board as if it were a public sector body that is a municipal sector entity. 2014, c. 13, Sched. 9, s. 7 (3).

Report and recommendations

(7) If, after completing an investigation under subsection (3), the Ombudsman is of opinion that the meeting or part of the meeting that was the subject-matter of the investigation appears to have been closed to the public contrary to section 239 of the *Municipal Act, 2001* or to a procedure by-law under subsection 238 (2) of that Act or contrary to section 190 of the *City of Toronto Act, 2006* or to a procedure by-law under subsection 189 (2) of that Act, as the case may be, the Ombudsman shall report his or her opinion, and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. 2014, c. 13, Sched. 9, s. 7 (1).

Reports to be public

(8) The municipality or local board shall ensure that reports received under subsection (7) by the municipality or local board, as the case may be, are made available to the public. 2014, c. 13, Sched. 9, s. 7 (1).

Ombudsman may publish report

(9) The Ombudsman may, after making a report under subsection (7), publish the report or otherwise make it available to the public. 2014, c. 13, Sched. 9, s. 7 (1).

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 7 (1) - 1/09/2015; 2014, c. 13, Sched. 9, s. 7 (2, 3) - 1/01/2016

Guidance rules

15. (1) The Assembly may make general rules for the guidance of the Ombudsman in the exercise of his or her functions under this Act. R.S.O. 1990, c. O.6, s. 15 (1).

Idem

(2) All rules made under this section shall be deemed to be regulations within the meaning of Part III (Regulations) of the *Legislation Act, 2006*. R.S.O. 1990, c. O.6, s. 15 (2); 2006, c. 21, Sched. F, s. 136 (1).

Application of rules

(2.1) Rules made under this section in respect of governmental organizations apply in respect of all public sector bodies, unless this Act or the rules expressly provide otherwise. 2014, c. 13, Sched. 9, s. 8.

Exception

(2.2) Any rules relating to the operation of subsection 21 (4) or (5) apply only to public sector bodies that are governmental organizations. 2014, c. 13, Sched. 9, s. 8.

Procedures

(3) Subject to this Act and any rules made under this section, the Ombudsman may determine his or her procedures. R.S.O. 1990, c. O.6, s. 15 (3).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. F, s. 136 (1) - 25/07/2007

2014, c. 13, Sched. 9, s. 8 - 1/09/2015

Mode of complaint

16. (1) Every complaint to the Ombudsman shall be made in writing. R.S.O. 1990, c. O.6, s. 16 (1).

To be forwarded

(2) Despite any provision of any Act, if a letter addressed to the Ombudsman is written by an inmate of a provincial correctional institution, a person held in a youth custody facility under the *Youth Criminal Justice Act* (Canada) or a patient in a provincial psychiatric facility, the letter shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, youth custody facility or other facility. 2006, c. 19, Sched. D, s. 15.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. D, s. 15 - 22/06/2006

Ombudsman may refuse to investigate complaint

17. (1) If, in the course of the investigation of any complaint within his or her jurisdiction, it appears to the Ombudsman,
- (a) that under the law or existing administrative practice there is an adequate remedy for the complainant, whether or not the complainant has availed himself, herself or itself of it; or

(b) that, having regard to all the circumstances of the case, any further investigation is unnecessary, the Ombudsman may in his or her discretion refuse to investigate the matter further. R.S.O. 1990, c. O.6, s. 17 (1).

Idem

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his or her discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman, or, if in his or her opinion,

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint. R.S.O. 1990, c. O.6, s. 17 (2).

Complainant to be informed

(3) In any case where the Ombudsman decides not to investigate or further investigate a complaint, the Ombudsman shall inform the complainant in writing of that decision, and may if he or she thinks fit state the reasons therefor. R.S.O. 1990, c. O.6, s. 17 (3).

Proceedings of Ombudsman

18. (1) Before investigating any matter, the Ombudsman shall inform the head of the public sector body affected of his or her intention to make the investigation. R.S.O. 1990, c. O.6, s. 18 (1); 2014, c. 13, Sched. 9, s. 9 (1).

Investigation to be in private

(2) Every investigation by the Ombudsman under this Act shall be conducted in private. R.S.O. 1990, c. O.6, s. 18 (2).

Where hearing necessary

(3) The Ombudsman may hear or obtain information from such persons as he or she thinks fit, and may make such inquiries as he or she thinks fit and it is not necessary for the Ombudsman to hold any hearing and no person is entitled as of right to be heard by the Ombudsman, but, if at any time during the course of an investigation, it appears to the Ombudsman that there may be sufficient grounds for him or her to make any report or recommendation that may adversely affect any public sector body or person, the Ombudsman shall give to that public sector body or person an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel. R.S.O. 1990, c. O.6, s. 18 (3); 2014, c. 13, Sched. 9, s. 9 (2).

Documents provided by Ombudsman

(3.1) The following rules apply with respect to any documents provided by the Ombudsman to a public sector body or person under subsection (3) for the purposes of giving the public sector body or person an opportunity to make representations:

- 1. The documents shall be maintained by the public sector body or person in confidence and shall not be disclosed except as authorized by the Ombudsman.
- 2. Despite any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the public sector body or person,
 - i. the public sector body or person shall return the documents to the Ombudsman on his or her request, and
 - ii. no copy of any of the documents shall be retained by the public sector body or person. 2014, c. 13, Sched. 9, s. 9 (3).

Prevails over FIPPA, MFIPPA

(3.2) Subsection (3.1) prevails over the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*, as the case may be. 2014, c. 13, Sched. 9, s. 9 (3).

May consult minister

(4) The Ombudsman may in his or her discretion, at any time during or after any investigation respecting a governmental organization, consult any minister who is concerned in the matter of the investigation. R.S.O. 1990, c. O.6, s. 18 (4); 2014, c. 13, Sched. 9, s. 9 (4).

Must consult minister

(5) On the request of any minister in relation to any investigation respecting a governmental organization, or in any case where any investigation relates to any recommendation made to a minister, the Ombudsman shall consult that minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection 21 (1) or (2). R.S.O. 1990, c. O.6, s. 18 (5); 2014, c. 13, Sched. 9, s. 9 (5).

Consultation, municipal sector entities

(5.1) Subsections (4) and (5) apply with necessary modifications to any investigation respecting a municipal sector entity, except that,

- (a) the reference to an investigation respecting a governmental organization shall be read as a reference to an investigation respecting a municipal sector entity; and
- (b) the reference to a minister shall be read as a reference to the municipality. 2014, c. 13, Sched. 9, s. 9 (6).

Consultation, school boards

(5.2) Subsections (4) and (5) apply with necessary modifications to any investigation respecting a school board, except that,

- (a) the reference to an investigation respecting a governmental organization shall be read as a reference to an investigation respecting a school board; and
- (b) the reference to a minister shall be read as a reference to the head for the school board under section 1.2. 2014, c. 13, Sched. 9, s. 9 (7).

Consultation, universities

(5.3) Subsections (4) and (5) apply with necessary modifications to any investigation respecting a university, except that,

- (a) the reference to an investigation respecting a governmental organization shall be read as a reference to an investigation respecting a university; and
- (b) the reference to a minister shall be read as a reference to the head for the university under section 1.3. 2014, c. 13, Sched. 9, s. 9 (8).

Breach of duty or misconduct

(6) If, during or after an investigation, the Ombudsman is of opinion that there is evidence of a breach of duty or of misconduct on the part of any officer or employee of any public sector body, the Ombudsman may refer the matter to the appropriate authority. R.S.O. 1990, c. O.6, s. 18 (6); 2014, c. 13, Sched. 9, s. 9 (9).

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 9 (1-5, 7, 9) - 1/09/2015; 2014, c. 13, Sched. 9, s. 9 (6, 8) - 1/01/2016

Meetings to be closed to the public

18.1 (1) Despite any other Act, any meeting or part of a meeting held by the governing body or senate of a university or the executive committee of the governing body or senate, or by any governmental organization prescribed under subsection (2), shall be closed to the public if the subject matter being considered is an ongoing investigation under this Act respecting the university or governmental organization, as the case may be. 2014, c. 13, Sched. 9, s. 10.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing governmental organizations for the purposes of subsection (1). 2014, c. 13, Sched. 9, s. 10.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 10 - 1/01/2016

Evidence

19. (1) The Ombudsman may from time to time require any officer, employee or member of any public sector body who in his or her opinion is able to give any information relating to any matter that is being investigated by the Ombudsman to furnish to him or her any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person. R.S.O. 1990, c. O.6, s. 19 (1); 2014, c. 13, Sched. 9, s. 11 (1).

Examination under oath

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

- (a) any complainant;
- (b) any person who is an officer or employee or member of any public sector body and who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1); or
- (c) any other person who, in the Ombudsman's opinion, is able to give any information mentioned in subsection (1), and for that purpose may administer an oath. R.S.O. 1990, c. O.6, s. 19 (2); 2014, c. 13, Sched. 9, s. 11 (2).

Secrecy

(3) Subject to subsection (4), no person who is bound by the provisions of any Act, other than the *Public Service of Ontario Act, 2006*, the *Municipal Act, 2001* or the *City of Toronto Act, 2006*, as the case may be, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure. R.S.O. 1990, c. O.6, s. 19 (3); 2006, c. 35, Sched. C, s. 94 (3); 2014, c. 13, Sched. 9, s. 11 (3).

Providing personal information despite privacy Acts

(3.1) A person who is subject to the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* or the *Personal Health Information Protection Act, 2004* is not prevented by any provisions in those Acts from providing personal information to the Ombudsman, when the Ombudsman requires the person to provide the information under subsection (1) or (2). 2004, c. 3, Sched. A, s. 94; 2014, c. 13, Sched. 9, s. 11 (4).

Idem

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply information or answer any question or produce any document or thing relating only to the complainant, and it is the duty of the person to comply with that requirement. R.S.O. 1990, c. O.6, s. 19 (4).

Privileges

(5) Every person has the same privileges in relation to the giving of information, the answering of questions, and the production of documents and things as witnesses have in any court. R.S.O. 1990, c. O.6, s. 19 (5).

Protection

(6) Except on the trial of any person for perjury in respect of the person's sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman is admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person. R.S.O. 1990, c. O.6, s. 19 (6).

Right to object to answer

(7) A person giving a statement or answer in the course of any inquiry or proceeding before the Ombudsman shall be informed by the Ombudsman of the right to object to answer any question under section 5 of the *Canada Evidence Act*. R.S.O. 1990, c. O.6, s. 19 (7).

Prosecution

(8) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with any requirement of the Ombudsman under this section. R.S.O. 1990, c. O.6, s. 19 (8).

Fees

(9) Where any person is required by the Ombudsman to attend before him or her for the purposes of this section, the person is entitled to the same fees, allowances, and expenses as if he or she were a witness in the Superior Court of Justice, and the provisions of any Act, regulation or rule in that behalf apply accordingly. R.S.O. 1990, c. O.6, s. 19 (9); 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

2004, c. 3, Sched. A, s. 94 - 1/11/2004

2006, c. 19, Sched. C, s. 1 (1) - 22/06/2006; 2006, c. 35, Sched. C, s. 94 (3) - 20/08/2007

2014, c. 13, Sched. 9, s. 11 (3) - 1/01/2016

Disclosure of certain matters not to be required

20. (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 thing,

- (a) might interfere with or impede investigation or detection of offences;
- (b) might involve the disclosure of the deliberations of the Executive Council; or
- (c) might involve the disclosure of proceedings of the Executive Council or of any committee 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, as the case may be, the document or thing to be produced. R.S.O. 1990, c. O.6, s. 20 (1).

Idem

(2) Subject to subsection (1), the rule of law which authorizes or requires the withholding of any document, or the refusal to answer any question, on the ground that the disclosure of the document 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.O. 1990, c. O.6, s. 20 (2).

Procedure after investigation

21. (1) This section applies in every case where, after making an investigation under this Act, the Ombudsman is of opinion that the decision, recommendation, act or omission which 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 or 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. R.S.O. 1990, c. O.6, s. 21 (1).

Idem

(2) This section also applies in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision. R.S.O. 1990, c. O.6, s. 21 (2).

Ombudsman's report and recommendations

- (3) If in any case to which this section applies the Ombudsman is of 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 or recommendation 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 or recommendation; or
 - (g) that any other steps should be taken,

the Ombudsman shall report his or her opinion, and the reasons therefor, to the appropriate public sector body, and may make such recommendations as he or she thinks fit and the Ombudsman may request the public sector body to notify him or her, within a specified time, of the steps, if any, that it proposes to take to give effect to his or her recommendations. R.S.O. 1990, c. O.6, s. 21 (3); 2014, c. 13, Sched. 9, s. 12 (1).

Same

(3.1) In the case of an investigation respecting a governmental organization, the Ombudsman shall also send a copy of the report and recommendations to the appropriate minister. 2014, c. 13, Sched. 9, s. 12 (2).

Same

(3.2) In the case of an investigation respecting a local board or municipally-controlled corporation, the Ombudsman shall also send a copy of the report and recommendations to the municipality. 2014, c. 13, Sched. 9, s. 12 (3).

Same

(3.3) In the case of an investigation respecting a school board, the Ombudsman shall also send a copy of the report and recommendations to the head of the school board under section 1.2. 2014, c. 13, Sched. 9, s. 12 (4).

Same

(3.4) In the case of an investigation respecting a university, the Ombudsman shall also send a copy of the report and recommendations to the head of the university under section 1.3. 2014, c. 13, Sched. 9, s. 12 (5).

Where no appropriate action taken

(4) In the case of a report respecting a governmental organization, if within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his or her discretion, after considering the comments, if any, made by or on behalf of any governmental organization affected, may send a copy of the report and recommendations to the Premier, and may thereafter make such report to the Assembly on the matter as he or she thinks fit. R.S.O. 1990, c. O.6, s. 21 (4); 2014, c. 13, Sched. 9, s. 12 (6).

Idem

(5) The Ombudsman shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the governmental organization affected. R.S.O. 1990, c. O.6, s. 21 (5).

Other reports may be made public

(6) In the case of a report respecting a public sector body other than a governmental organization, the Ombudsman may, after making the report, publish the report or otherwise make it available to the public. 2014, c. 13, Sched. 9, s. 12 (7).

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 12 (1, 2, 4, 6, 7) - 1/09/2015; 2014, c. 13, Sched. 9, s. 12 (3, 5) - 1/01/2016

Complainant to be informed of result of investigation

22. (1) Where, on any investigation following a complaint, the Ombudsman makes a recommendation under subsection 21 (3), and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his or her recommendation, and may make such comments on the matter as he or she thinks fit. R.S.O. 1990, c. O.6, s. 22 (1).

Idem

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he or she thinks proper, of the result of the investigation. R.S.O. 1990, c. O.6, s. 22 (2).

Proceedings not to be questioned or to be subject to review

23. No proceeding of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court. R.S.O. 1990, c. O.6, s. 23.

Proceedings privileged

24. (1) No proceedings lie against the Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he or she may do or report or say in the course of the exercise or intended exercise of his or her functions under this Act, unless it is shown that he or she acted in bad faith. R.S.O. 1990, c. O.6, s. 24 (1).

Idem

(2) The Ombudsman, and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in the exercise of his or her functions under this Act. R.S.O. 1990, c. O.6, s. 24 (2).

Idem

(3) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court. R.S.O. 1990, c. O.6, s. 24 (3).

Power of entry of premises

25. (1) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any public sector body and inspect the premises and carry out therein any investigation within his or her jurisdiction. R.S.O. 1990, c. O.6, s. 25 (1); 2014, c. 13, Sched. 9, s. 13 (1).

Notice of entry

- (2) Before entering any premises under this section, the Ombudsman shall,
- (a) notify the head of the public sector body; and
 - (b) provide the head a reasonable opportunity to give reasons why entry to the premises is not appropriate. 2014, c. 13, Sched. 9, s. 13 (2).

Private dwellings

(2.1) Despite subsection (1), the Ombudsman shall not enter a place that is being used as a dwelling, except with the consent of the occupier or under the authority of a warrant issued under subsection (2.2). 2014, c. 13, Sched. 9, s. 13 (3).

Warrant

(2.2) A justice of the peace may issue a warrant authorizing a person to enter a place being used as a dwelling if the justice of the peace is satisfied, on evidence under oath or affirmation, that there are reasonable grounds to believe that it is necessary to enter the place in order to carry out an investigation under this Act. 2014, c. 13, Sched. 9, s. 13 (3).

Same

(2.3) Any entry under the warrant shall be made at such reasonable times as may be specified in the warrant. 2014, c. 13, Sched. 9, s. 13 (3).

Notice to desist

(3) The Attorney General may by notice to the Ombudsman exclude the application of subsection (1) to any specified premises or class of premises if he or she is satisfied that the exercise of the powers mentioned in subsection (1) might be prejudicial to the public interest. R.S.O. 1990, c. O.6, s. 25 (3).

Order of judge

(4) Where a notice is given under subsection (3) and in the opinion of the Ombudsman it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a judge of the Superior Court of Justice for an order setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he or she may make the order. R.S.O. 1990, c. O.6, s. 25 (4); 2006, c. 19, Sched. C, s. 1 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. C, s. 1 - 22/06/2006

2014, c. 13, Sched. 9, s. 13 (1-3) - 1/09/2015

Delegation of powers

26. (1) The Ombudsman may in writing delegate to any person holding any office under him or her any of the Ombudsman's powers under this Act except the power of delegation under this section and the power to make a report under this Act. R.S.O. 1990, c. O.6, s. 26 (1).

Delegation is revocable

(2) Every delegation under this section is revocable at will and no such delegation prevents the exercise by the Ombudsman of any power so delegated. R.S.O. 1990, c. O.6, s. 26 (2).

Restrictions and conditions

(3) Every such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit. R.S.O. 1990, c. O.6, s. 26 (3).

Continuing effect of delegation

(4) In the event that the Ombudsman by whom any such delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman. R.S.O. 1990, c. O.6, s. 26 (4).

Evidence of obligation

(5) Any person purporting to exercise any power of the Ombudsman by virtue of a delegation under this section shall, when required so to do, produce evidence of his or her authority to exercise the power. R.S.O. 1990, c. O.6, s. 26 (5).

Offences and penalties

27. Every person who,

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the performance of his or her functions under this Act; or
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his or her functions under this Act,

is guilty of an offence and liable on conviction to a fine of not more than \$500 or to imprisonment for a term of not more than three months, or to both. R.S.O. 1990, c. O.6, s. 27.

Rights under Act do not affect other rights, etc.

28. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or procedure. R.S.O. 1990, c. O.6, s. 28.

Constitutional rights and privileges relating to education

29. Nothing in this Act adversely affects the rights and privileges guaranteed by section 93 of the *Constitution Act, 1867* and section 23 of the *Canadian Charter of Rights and Freedoms*, and the Ombudsman shall exercise his or her authority under this Act with respect to school boards in a manner that is consistent with and respectful of those rights and privileges. 2014, c. 13, Sched. 9, s. 14.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 14 - 1/09/2015

Universities and academic freedom

30. In exercising his or her authority under this Act with respect to universities, the Ombudsman shall consider the application of the principles of academic freedom within universities. 2014, c. 13, Sched. 9, s. 15.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 15 - 1/01/2016

Regulations re transitional matters

31. (1) The Lieutenant Governor in Council may make regulations providing for transitional matters as the Lieutenant Governor in Council considers necessary or advisable to,

- (a) facilitate the implementation of amendments to this Act made by Schedule 9 to the *Public Sector and MPP Accountability and Transparency Act, 2014*; and
- (b) deal with any problems or issues arising as a result of the repeal, amendment, enactment or re-enactment of a provision of this Act by Schedule 9 to the *Public Sector and MPP Accountability and Transparency Act, 2014*. 2014, c. 13, Sched. 9, s. 16.

Conflicts

(2) If there is a conflict between a regulation made under this section and a provision of this or any other Act or a provision of another regulation made under this or any other Act, the regulation made under this section prevails. 2014, c. 13, Sched. 9, s. 16.

Section Amendments with date in force (d/m/y)

2014, c. 13, Sched. 9, s. 16 - 1/09/2015

Français

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