PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

OMBUDSPERSON ACT

PLEASE NOTE

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This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the ***Table of Public Acts*** on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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OMBUDSPERSON ACT

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CHAPTER O-5.01

OMBUDSPERSON ACT

PART 1 - INTERPRETATION

1. Definitions

In this Act,

(a) "**agency of the government**" means a 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 Government, or for the proper discharge of their duties are, directly or indirectly, responsible to the Government;

(b) "**board member**" means a member of the board of management, or board of directors, of

(i) an agency of the government,

(ii) a post-secondary institution, or

(iii) a publicly-funded health entity;

(c) **"council member**" means a member of a council of a municipality, including the mayor, a council committee, a controlled corporation or other body established by a council as defined in the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1;

(d) "**fiscal year**" means the period commencing on April 1 in one year and ending on March 31 in the next year;

(e) "**mayor**" means the mayor of a municipality;

(f) "**Minister**" means a member of the Executive Council;

(g) "**ministry**" means a department, ministry, secretariat or office of the executive government of the province;

(h) "**municipal entity**" means a municipality as defined in the *Municipal Government Act* and includes a council, council committee, controlled corporation or other body established by a council;

(i) "**Ombudsperson**" means the Ombudsperson appointed pursuant to section 2 and includes an acting Ombudsperson appointed pursuant to section 3, 4 or 5;

(j) "**Operating Fund**" means the Operating Fund as defined in the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9;

(j.1) "**post-secondary institution**" means

(i) the University of Prince Edward Island established under the *University Act* R.S.P.E.I. 1988, Cap. U-4,

(ii) Holland College established under the *Holland College Act* R.S.P.E.I. 1988, Cap. H-6, or

(iii) La Société Éducative de L'Île-de-Prince Édouard Inc., a non-profit corporation established under the laws of the Province, operating under the trade name "Collège de l'Île";

(k) "**publicly-funded health entity**" means Health PEI. *2021,c.23,s.1; 2023,c.9,s.1*.

PART 2 - OFFICE AND APPOINTMENT OF OMBUDSPERSON

2. Office of Ombudsperson

(1) There is hereby established an office called the Office of the Ombudsperson.

Ombudsperson

(2) There shall be an Ombudsperson, who is an officer of the Legislative Assembly.

Appointment

(3) The Ombudsperson shall be appointed by the Legislative Assembly

(a) on the recommendation of the Standing Committee on Legislative Assembly Management; and

(b) following a resolution of the Legislative Assembly supported by at least two-thirds of the members present.

Member not eligible

(4) The Ombudsperson shall not be a member of the Legislative Assembly.

Term of office

(5) Except as provides for in this section, the Ombudsperson holds office for a term of five years and may be appointed for a single further term of five years.

Holdover

(6) Despite subsection (5), the Ombudsperson continues to hold office after the Ombudsperson's term of office expires until a successor is appointed or a period of six months has expired, whichever occurs first.

Resignation

(7) The Ombudsperson may resign at any time by giving written notice

(a) to the Speaker of the Legislative Assembly; or

(b) if there is no Speaker or the Speaker is absent from the province, to the Clerk of the Legislative Assembly. *2021,c.23,s.2*.

3. Suspension or removal

(1) The Legislative Assembly may, by a resolution passed by at least two-thirds of the members present, suspend or remove the Ombudsperson from office for cause or incapacity.

Acting Ombudsperson

(2) Where the Ombudsperson is suspended pursuant to subsection (1), the Legislative Assembly shall, by a resolution passed by at least two-thirds of the members present, appoint an acting Ombudsperson to hold office until

(a) the suspension is revoked by the Legislative Assembly; or

(b) the Ombudsperson is removed from office by the Legislative Assembly pursuant to subsection (1) and a person is appointed as Ombudsperson pursuant to section 2. *2021,c.23,s.3*.

4. Suspension when Legislative Assembly not sitting

(1) Where the Legislative Assembly is not sitting, the Standing Committee on Legislative Assembly Management may, by unanimous resolution, suspend the Ombudsperson for incapacity to act, neglect of duty or misconduct that is proved to the satisfaction of the Standing Committee.

Acting Ombudsperson when Legislative Assembly not sitting

(2) Where the office of the Ombudsperson is vacant or the Ombudsperson is suspended pursuant to subsection (1), the Standing Committee on Legislative Assembly Management shall appoint an acting Ombudsperson to hold office until

(a) a person is appointed as Ombudsperson pursuant to section 2;

(b) the suspension is revoked by the Legislative Assembly; or

(c) the Ombudsperson is removed from office by the Legislative Assembly pursuant to subsection 3(1) and a person is appointed as Ombudsperson pursuant to section 2. *2021,c.23,s.4*.

5. Acting Ombudsperson

Where the Ombudsperson has resigned or is ill or otherwise unable to act, the Standing Committee on Legislative Assembly Management may appoint another person as acting Ombudsperson until

(a) the Ombudsperson is able to act; or

(b) another Ombudsperson is appointed pursuant to this Act. *2021,c.23,s.5*.

6. Salary

The Ombudsperson shall be paid the remuneration and allowances that are fixed by the Standing Committee on Legislative Assembly Management. *2021,c.23,s.6*.

7. Application of Civil Service Act

(1) The Ombudsperson is not subject to the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8.

Application of Public Sector Pension Plan Act

(2) The Ombudsperson is subject to the *Public Sector Pension Plan Act* R.S.P.E.I. 1988, Cap. P-32.11. *2021,c.23,s.7*.

8. Staff of Ombudsperson

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

Application of Public Sector Pension Plan Act

(2) The *Public Sector Pension Plan Act* applies to the members of the staff of the Ombudsperson.

Employees of Legislative Assembly

(3) Members of the staff of the Ombudsperson are employees of the Legislative Assembly and are not members of the public service of Prince Edward Island.

Employee benefits

(4) The employee benefits applicable to members of the public service of Prince Edward Island apply or continue to apply, as the case may be, to the Ombudsperson's staff.

Duties of Ombudsperson

(5) The Ombudsperson shall

(a) administer, manage and control the Ombudsperson's office and the general business of the office; and

(b) oversee and direct the Ombudsperson's staff. *2021,c.23,s.8*.

9. Submission of estimate

(1) The Ombudsperson shall submit to the Standing Committee on Legislative Assembly Management in respect of each fiscal year an estimate of the public money that will be required to be provided by the Legislative Assembly to defray the several charges and expenses of the Office of the Ombudsperson in that fiscal year.

Financing of operations

(2) The Standing Committee on Legislative Assembly Management shall review each estimate submitted pursuant to subsection (1) and, on the completion of the review, the chair of the Standing Committee shall transmit the estimate to the Minister of Finance and Affordability for presentation to the Legislative Assembly. *2021,c.23,s.9; 2026,c.11,s.3*.

10. Ombudsperson's oath or affirmation of office

Before entering on the duties of office, the Ombudsperson shall take an oath or make an affirmation before the Speaker of the Legislative Assembly or the Clerk of the Legislative Assembly in the form set out in the Schedule to this Act. *2021,c.23,s.10*.

11. Oath or affirmation required of staff

Before entering on the duties of the office, every member of the staff of the Ombudsperson shall take an oath or make an affirmation before the Ombudsperson in the form set out in the Schedule to this Act. *2021,c.23,s.11*.

12. Confidentiality

(1) The Ombudsperson and every member of the Ombudsperson'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.

Disclosure by Ombudsperson

(2) Notwithstanding subsection (1) or any oath or affirmation taken pursuant to this Act, the Ombudsperson may disclose in a report made by the Ombudsperson pursuant to this Act any

matter that the Ombudsperson considers necessary to disclose in order to establish grounds for a conclusion and recommendation in that report. *2021,c.23,s.12*.

13. Delegation of powers

(1) The Ombudsperson may, in writing, delegate to any member of the staff of the Ombudsperson or any person any of the Ombudsperson'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.

Scope of delegation

(2) A delegation pursuant to this section may

(a) be made to

(i) a specified member of the Ombudsperson'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.

Revocation of delegation

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

Power retained by Ombudsperson

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

Restrictions, etc., may be imposed

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

Term of delegation

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

Delegation continues

(7) Where the Ombudsperson who made a delegation ceases to hold office, the delegation continues in effect as if it were made by that Ombudsperson's successor until it is revoked by the successor pursuant to subsection (3).

Evidence of authority to be produced

(8) Where the Ombudsperson 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. *2021,c.23,s.13*.

PART 3 - POWERS AND DUTIES

14. Powers and duties of Ombudsperson

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

Investigatory powers

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

(a) a decision or recommendation, including a 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 post secondary institution, a municipal entity, a council member, a board member or an officer or employee of the Government in the exercise of a power, duty or function conferred or imposed on them by an Act, and

(ii) aggrieves or may aggrieve a person; or

(b) an act that

(i) was done or omitted to be done in the exercise of a power, duty or function conferred or imposed by an Act in or by

(A) a ministry,

(B) an agency of the government,

(C) a publicly-funded health entity,

(C.1) a post-secondary institution,

(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 conduct,

(F) a board member, or

(G) an officer or employee of the Government, and

(ii) aggrieves or may aggrieve a person.

Authority to commence investigation

(3) The Ombudsperson may

(a) make an investigation pursuant to this section on a complaint made by a person or on the Ombudsperson'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 referred to in subsection (2).

Written complaint may be required

(4) The Ombudsperson may require that a complaint pursuant to subsection (3) be in writing if, in the Ombudsperson's opinion, the circumstances warrant.

Authority to attempt resolution

(5) The Ombudsperson may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches.

Authority to engage in public education

(6) The Ombudsperson may become involved in public education for the purpose of informing the public about fairness and the powers and duties of the Ombudsperson. *2021,c.23,s.14; 2023,c.9,s.2*.

15. Special request to review certain matters

(1) A person or body may request that the Ombudsperson review any matter involving that person or body.

Review by Ombudsperson

(2) On receipt of a request pursuant to subsection (1), the Ombudsperson may review the matter where

(a) the Ombudsperson considers that the matter is one in which the Ombudsperson has expertise;

(b) the Ombudsperson determines that resources are available for the review of the matter; and

(c) the person or body and the Ombudsperson agree respecting the fee that the Ombudsperson may charge for the review.

Fee not to exceed reasonable costs

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

Report on completion of review

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

Part 4 does not apply

(5) Part 4 does not apply to a review or a report pursuant to this section. *2021,c.23,s.15*.

16. Referrals to Ombudsperson by Legislative Assembly

(1) A committee of the Legislative Assembly may refer to the Ombudsperson for investigation and report any matter that is before the committee for consideration.

Authority of Ombudsperson on referral

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

(a) subject to any special directions of the committee of the Legislative Assembly, investigate the matter referred to the Ombudsperson insofar as it is within the Ombudsperson's jurisdiction; and

(b) make any report to the committee that the Ombudsperson considers appropriate.

Referrals to Ombudsperson by Lieutenant Governor in Council

(3) The Lieutenant Governor in Council may refer to the Ombudsperson for investigation and report any matter relating to a ministry, an agency of the government, a publicly-funded health entity, a post-secondary institution, a municipal entity, a council member, a board member or an officer, employee or member of the Government.

Authority of Ombudsperson on referral

(4) On a referral pursuant to subsection (3), the Ombudsperson shall

(a) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to the Ombudsperson insofar as it is within the Ombudsperson's jurisdiction; and

(b) make any report to the Lieutenant Governor in Council that the Ombudsperson considers appropriate. *2021,c.23,s.16; 2023,c.9,s.3*.

PART 4 - JURISDICTION AND PROCEDURES

17. Ombudsperson not restricted by provisions of other Acts

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

(a) that any decision, recommendation, act or omission that the Ombudsperson is investigating is final;

(b) that no appeal lies with respect to the decision, recommendation, act or omission that the Ombudsperson is investigating; or

(c) that no decision, recommendation, act or omission of a ministry, agency of the government, publicly-funded health entity, post-secondary institution, municipal entity, council member, board member, officer, employee or person shall be challenged, reviewed, quashed or called into question. *2021,c.23,s.17; 2023,c.9,s.4*.

18. Restrictions on jurisdiction

(1) Nothing in this Act authorizes the Ombudsperson to investigate

(a) a 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) a 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), a 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 a 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) a decision, recommendation, act or omission of a lawyer for the Government in relation to any proceeding.

Exception

(2) Clause (1)(c) does not apply where the Ombudsperson is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal.

Commencement of investigation

(3) In the circumstances mentioned in subsection (2), the Ombudsperson shall not commence any investigation until after the time for the exercise of that right to appeal, object or apply has expired. *2021,c.23,s.18*.

19. Application to court re question of jurisdiction to investigate

(1) Where a question arises respecting the jurisdiction of the Ombudsperson to investigate a case or class of cases pursuant to this Act, the Ombudsperson may apply to the Supreme Court for a declaratory order determining the question.

Notice of application to be served

(2) Notice of an application pursuant to subsection (1) shall be served on the Minister of Justice and Public Safety and Attorney General at least 15 days before the date on which the application is to be heard. *2021,c.23,s.19*.

20. Definitions

(1) In this section,

(a) "**designated facility**" means a facility owned or operated by a publicly-funded health entity;

(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.

Privileged communication

(2) Notwithstanding any Act, where a letter is written by or on behalf of a restricted complainant or resident in care and is addressed to the Ombudsperson, the person in charge shall forward the letter, unopened, to the Ombudsperson.

Duty of institution

(3) An 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 Ombudsperson; and

(b) inform each restricted complainant in the institution of

(i) the restricted complainant's right to communicate in private with the Ombudsperson,

(ii) the services provided by the Ombudsperson, and

(iii) how to communicate with the Ombudsperson and the contact information for the Ombudsperson.

Duty of designated facility

(4) A 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 Ombudsperson; 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 Ombudsperson,

(ii) the services provided by the Ombudsperson, and

(iii) how to communicate with the Ombudsperson and the contact information for the Ombudsperson. *2021,c.23,s.20*.

21. Refusal to investigate

(1) The Ombudsperson may refuse to investigate or cease to investigate a complaint where

(a) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint was received by the Ombudsperson;

(b) in the Ombudsperson's opinion, it is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(c) in the Ombudsperson'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 Ombudsperson'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 Ombudsperson

(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.

Exception

(2) This section does not apply to an investigation or report required to be made pursuant to section 16. *2021,c.23,s.21*.

22. Notice to complainant

(1) Where the Ombudsperson decides not to investigate a complaint or to cease to investigate a complaint, the Ombudsperson shall inform the complainant of the decision.

Reasons may be provided

(2) Where the Ombudsperson considers it appropriate, the Ombudsperson may state the reasons for a decision referred to in subsection (1). *2021,c.23,s.22*.

23. Notice to investigate

(1) Before investigating a matter pursuant to this Act, the Ombudsperson shall notify the following of the Ombudsperson'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;

(b.1) in the case of a post-secondary institution,

(i) if the matter is related to the institution, the president, or

(ii) if the matter is related to the governing body of the institution or the president, the chairperson of the governing body;

(c) in the case of a municipal entity,

(i) if the matter is related to the municipality, the chief administrative officer,

(ii) if the matter is related to a council, council committee, controlled corporation or other body established by a council, or to a council member other than the mayor, the mayor of the affected municipality, or

(iii) if the matter is related to a mayor, the Minister to whom the administration of the *Municipal Government Act* is assigned.

Requirements for notice

(2) The notice shall

(a) be in writing; and

(b) set out the nature of the complaint, if any, received by the Ombudsperson.

Consultation permitted

(3) At any time during or after an investigation, the Ombudsperson may consult with the Minister, or in the case of an investigation concerning a municipal entity, the mayor, who is concerned in the matter of the investigation.

Consultation required with Minister

(4) On the request of the Minister responsible for the ministry or agency of the Government, or where an investigation relates to a recommendation made to a Minister, the Ombudsperson shall consult with that Minister after making the investigation and before forming a final opinion on any matter referred to in section 27.

Consultation required with administrative head

(5) On the request of the administrative or executive head of a publicly-funded health entity, the Ombudsperson shall consult with that administrative or executive head after making the investigation and before forming a final opinion on any matter referred to in section 27.

Consultation with mayor

(6) On the request of the mayor of a municipality or where an investigation relates to a recommendation made to a municipal entity referred to in clause 1(h), the Ombudsperson shall consult with that mayor after making the investigation and before forming a final opinion on any matter referred to in section 27.

Consultation respecting post-secondary institution

(6.1) On the request of the president or chairperson of the governing body of a post-secondary institution, the Ombudsperson shall consult with that president or chairperson after making the investigation and before forming a final opinion on any matter referred to in section 27.

Referral to Minister

(7) Where, during or after an investigation, the Ombudsperson 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 Ombudsperson

(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.

Referral to administrative head

(8) Where, during or after an investigation, the Ombudsperson is of the opinion that there is evidence of breach of duty or misconduct on the part of an officer or employee of a publicly-funded health entity or municipal entity, the Ombudsperson

(a) shall refer the matter to the administrative or executive head of the publicly-funded health entity or the mayor of the municipal entity; and

(b) following the referral mentioned in clause (a), may continue with any ongoing investigation.

Referral to mayor

(9) Where, during or after an investigation, the Ombudsperson is of the opinion that there is evidence of breach of duty or misconduct on the part of a council member, other than the mayor, of a municipality, the Ombudsperson

(a) shall refer the matter to the mayor of the municipality; and

(b) following the referral mentioned in clause (a), may continue with any ongoing investigation.

Referral respecting post-secondary institution

(10) Where, during or after an investigation, the Ombudsperson is of the opinion that there is evidence of breach of duty or misconduct on the part of an officer or employee of a post-secondary institution, the Ombudsperson

(a) shall refer the matter to the president or chairperson of the governing body of the institution, as the Ombudsperson considers appropriate in the circumstances; and

(b) following the referral mentioned in clause (a), may continue with any ongoing investigation. *2021,c.23,s.23; 2023,c.9,s.5; 2025,c.11,s.21(2)*.

24. Conduct of investigation

(1) Every investigation by the Ombudsperson pursuant to this Act shall be conducted in private.

Authority to obtain information

(2) The Ombudsperson may

(a) hold any hearings and hear or obtain any information from any person that the Ombudsperson considers appropriate; and

(b) make any inquiries that the Ombudsperson considers appropriate.

Hearings not required

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

Opportunity to make representations

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

Representations by counsel

(5) The ministry, agency of the government, publicly-funded health entity, post-secondary institution, municipal entity, council member or person mentioned in subsection (4) may make representations with respect to the matter by counsel. *2021,c.23,s.24; 2023,c.9,s.4*.

25. Power to require information

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

(a) to furnish information to the Ombudsperson; and

(b) to produce any document, paper or thing that, in the Ombudsperson's opinion,

(i) relates to the matter being investigated, and

(ii) may be in the possession or under the control of that person.

Powers prevail

(2) The Ombudsperson 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, post-secondary institution 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, post-secondary institution or municipal entity.

Authority to make copies

(3) The Ombudsperson may take possession of any document, paper or thing mentioned in subsection (1) to make copies for the purposes of the investigation.

Power to examine persons

(4) The Ombudsperson may summon and examine under oath or on affirmation

(a) a person who

(i) is an officer, employee or member of any ministry, agency of the government, publicly-funded health entity, post-secondary institution or municipal entity or a council member or a board member, and

(ii) in the opinion of the Ombudsperson, may be able to give information relating to a matter being investigated pursuant to this Act;

(b) a complainant; and

(c) any other person who in the opinion of the Ombudsperson is able to give information relating to a matter being investigated pursuant to this Act.

Power to administer oath, etc.

(5) For the purposes of subsection (4), the Ombudsperson may administer an oath or take an affirmation.

Deemed judicial proceeding

(6) Every examination by the Ombudsperson pursuant to subsection (4) is deemed a judicial proceeding for the purposes of section 136 of the *Criminal Code*.

Application of other law

(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 Ombudsperson;

(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 Ombudsperson; and

(c) no person who is required by the Ombudsperson to furnish any information or to produce any document, paper or thing or who is summoned by the Ombudsperson 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 referred to in clause (b).

Inadmissibility of statements, etc.

(8) Except on the trial of a person in respect of a contravention of 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 Ombudsperson 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 Ombudsperson is admissible against any person.

Protection from liability

(9) No person is liable to prosecution for an offence against any Act by reason of the person's compliance with a requirement of the Ombudsperson pursuant to this section. *2021,c.23,s.25; 2023,c.9,s.4*.

26. Disclosure of certain matters not required

(1) The Ombudsperson 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 Minister of Justice and Public Safety and Attorney General certifies to the Ombudsperson 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.

Inclusion in report

(2) The Ombudsperson shall report the receipt of every certificate pursuant to this section in the next annual report. *2021,c.23,s.26*.

27. Reasons for report

(1) The Ombudsperson shall take the actions described in subsection (2) where, after an investigation pursuant to this Act, the Ombudsperson 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.

Report on investigation

(2) In the circumstances mentioned in subsection (1), the Ombudsperson

(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, post-secondary institution or municipal entity; and

(b) may make any recommendations that the Ombudsperson considers appropriate.

Possible recommendations

(3) Without limiting the generality of subsections (1) and (2), in making a report pursuant to those subsections, the Ombudsperson 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 a practice on which a decision, recommendation, act or omission was based should be altered or reviewed;

(e) that a law on which a decision, recommendation, act or omission was based should be reconsidered;

(f) that reasons should be given for a decision, recommendation, act or omission; or

(g) that any other steps should be taken.

Exception

(4) This section does not apply to an investigation or report required to be made pursuant to section 16. *2021,c.23,s.27; 2023,c.9,s.4*.

28. Notice of steps taken

(1) Where the Ombudsperson makes a recommendation pursuant to section 27, the Ombudsperson may request the ministry, agency of the government, publicly-funded health entity, post-secondary institution 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.

Where no steps taken

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

(a) after considering the comments, if any, made by or on behalf of the ministry, agency of the government, publicly-funded health entity, post-secondary institution 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. *2021,c.23,s.28; 2023,c.9,s.4*.

29. Review of recommendations

Where the Ombudsperson makes a recommendation pursuant to section 27 and no action that seems to the Ombudsperson to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsperson shall

(a) inform the complainant of the recommendation; and

(b) make any comments on the matter that the Ombudsperson considers appropriate. *2021,c.23,s.29*.

30. Want of form does not invalidate

(1) No proceeding of the Ombudsperson is invalid for want of form.

Proceedings not subject to review

(2) Except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsperson is liable to be challenged, reviewed, quashed or called into question in any court. *2021,c.23,s.30*.

31. Protection from personal liability

(1) No action or proceeding lies or shall be commenced against the Ombudsperson, or against any member of the Ombudsperson'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 the person's powers and duties pursuant to this Act; or

(b) anything the person may do, report or say in good faith in the course of the exercise or performance, or intended exercise or performance, of the person's powers and duties pursuant to this Act.

Proceedings privileged

(2) Neither the Ombudsperson or any member of the Ombudsperson'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 the person's knowledge in the exercise or performance of the person's powers and duties pursuant to this Act.

Information, etc., privileged

(3) Anything said or any information supplied or any document, paper or thing produced by a person in any court relating to an investigation by or proceedings before the Ombudsperson pursuant to this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court. *2021,c.23,s.31*.

32. Entry on premises

(1) For the purposes of this Act, the Ombudsperson may

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

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

Prior notification

(2) Before entering on any premises pursuant to subsection (1), the Ombudsperson shall notify the deputy minister or administrative or executive head of the ministry, agency of the government, publicly-funded health entity, post-secondary institution or municipal entity that occupies the premises of the intention to conduct an investigation pursuant to this Act and to enter the premises. *2021,c.23,s.32; 2023,c.9,s.4*.

PART 5 - GENERAL

33. Rules for guidance

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

Procedure determined by Ombudsperson

(2) Subject to this Act and any rules made pursuant to subsection (1), the Ombudsperson may determine the procedure for the office of the Ombudsperson and its staff in the exercise of their powers, and the performance of their duties, pursuant to this Act. *2021,c.23,s.33*.

34. Voluntary provision of information to Ombudsperson

At the request of the Ombudsperson, a ministry, agency of the government, publicly-funded health entity, post-secondary institution 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, post-secondary institution or municipal entity to the Ombudsperson, where it is satisfied that providing the information will assist the Ombudsperson in fulfilling any of the Ombudsperson's duties or in exercising any of the Ombudsperson's powers pursuant to this Act. *2021,c.23,s.34; 2023,c.9,s.4*.

35. Offence

(1) No person shall

(a) without lawful justification or excuse wilfully obstruct, hinder or resist the Ombudsperson or any other person in the exercise or performance of the person's 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 Ombudsperson or any other person imposed pursuant to this Act; or

(c) wilfully make any false statement to, or mislead or attempt to mislead, the Ombudsperson or any other person in the exercise or performance of the Ombudsperson's powers and duties pursuant to this Act.

Penalty

(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 a term of not more than three months or to both. *2021,c.23,s.35*.

36. Attorney General may intervene

The Minister of Justice and Public Safety and Attorney General or counsel appointed by the Minister 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 Minister shall be made as a result of the intervention. *2021,c.23,s.36*.

37. Act to provide additional remedies

The provisions of this Act are in addition to the provisions of any other Act or rule of law under which a remedy, right of appeal or objection is provided for any person, or a 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. *2021,c.23,s.37*.

38. Annual report of Ombudsperson

(1) The Ombudsperson shall, in each year, submit to the Speaker an annual report describing the progress and activities of the Ombudsperson in the previous year.

Report to be laid before Legislative Assembly

(2) The Speaker shall lay before the Legislative Assembly each report received by the Speaker pursuant to subsection (1).

Other reports

(3) The Ombudsperson 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, post-secondary institution 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 the Ombudsperson's powers and the performance of duties pursuant to this Act;

(b) any particular case that the Ombudsperson has investigated. *2021,c.23,s.38; 2023,c.9,s.4*.

39. Power to reconsider matters

(1) On the recommendation of the Ombudsperson pursuant to subsection 27(3), a ministry, agency of the government, publicly-funded health entity, post-secondary institution 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, post-secondary institution, 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.

Enactment applies to reconsideration

(2) Where 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.

Application of section

(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, post-secondary institution or municipal entity whose decision, recommendation, act or omission it is may be challenged, reviewed, quashed or called in question. *2021,c.23,s.39; 2023,c.9,s.4*.

40. Appropriation required

The moneys required for the purposes of this Act shall be paid out of moneys appropriated for that purpose by the Legislature. *2021,c.23,s.40*.

SCHEDULE

FORM 1

OMBUDSPERSON'S OATH OF (OR AFFIRMATION RESPECTING) OFFICE

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

FORM 2

STAFF MEMBER'S OATH OF (OR AFFIRMATION RESPECTING) OFFICE

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