

Appendix B – Extract from *Ombudsman Act, 1990*, Section 14 Function of Ombudsman

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).

Same, children's services

(1.1) In addition to the Ombudsman's function to conduct investigations under subsection (1), the Ombudsman may investigate,

- (a) any matter concerning a child with respect to a children's aid society service;
- (b) any matter concerning a child or young person with respect to a service, as defined in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*, provided by a residential licensee, including,
 - (i) a service provided by a residential licensee to a child who has been placed with the licensee by a children's aid society or another person or entity,
 - (ii) a service provided by a residential licensee to a child who has been committed to a secure treatment program pursuant to an order made under subsection 164 (1) or 167 (5) of the *Child, Youth and Family Services Act, 2017* or admitted to a secure treatment program under section 171 of that Act, and
 - (iii) a service provided by a residential licensee to a young person who is detained or committed to custody under the *Youth Criminal Justice Act (Canada)* or under the *Provincial Offences Act*; and
- (c) any other matter concerning a child or young person who is seeking or receiving a service prescribed by regulations made under clause (1.4) (a) that is provided or funded under the *Child, Youth and Family Services Act, 2017*, with respect to the service. 2018, c. 17, Sched. 28, s. 7.

Application to societies, licensees etc.

(1.2) For the purposes of conducting an investigation under subsection (1.1),

- (a) this Act applies to a children's aid society, a residential licensee or a person or entity that provides a service prescribed for the purposes of clause (1.1) (c), as the case may be, as if the society, the licensee, the person or the entity were a public sector body; and
- (b) a reference in this Act to the head of the society, the licensee, the person or the entity shall be read as a reference to its administrative head. 2018, c. 17, Sched. 28, s. 7.

Ombudsman, additional functions

(1.3) In addition to the Ombudsman's functions under subsections (1) and (1.1), the Ombudsman may perform a function that is prescribed by regulations made under clause (1.4) (b) respecting,

- (a) services provided or funded under the *Child, Youth and Family Services Act, 2017*; and
- (b) services provided to children who are pupils of schools established or continued under section 13 of the *Education Act, 2018*, c. 17, Sched. 28, s. 7.

Regulations

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

- (a) prescribing services for the purposes of clause (1.1) (c);
- (b) prescribing functions for the purposes of subsection (1.3). 2018, c. 17, Sched. 28, s. 7.

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).

Matters excluded from investigation

(4.6) Despite subsection (1.1), the Ombudsman shall not investigate the following matters under that subsection:

1. Child deaths that fall within the jurisdiction of the Office of the Chief Coroner or of any committees that report to the Office of the Chief Coroner.
2. Any other matter prescribed by regulations made under subsection (4.7). 2018, c. 17, Sched. 28, s. 7.

Regulations

(4.7) The Lieutenant Governor in Council may make regulations prescribing matters for the purposes of paragraph 2 of subsection (4.6). 2018, c. 17, Sched. 28, s. 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).

Obligations of societies and licensees

14.0.1 (1) A children's aid society or residential licensee, as the case may be, shall inform a child in care, in language suitable to his or her understanding, of the existence of the Ombudsman, of the Ombudsman's functions under subsections 14 (1.1) and (1.3) and of how the Ombudsman may be contacted. 2018, c. 17, Sched. 28, s. 8.

Same

(2) A children's aid society or residential licensee, as the case may be, shall afford a child in care who wishes to contact the Ombudsman with the means to do so privately and without delay. 2018, c. 17, Sched. 28, s. 8.

Same

(3) Children's aid societies and residential licensees shall, without unreasonable delay, provide the Ombudsman with private access to children in care who wish to meet with the Ombudsman. 2018, c. 17, Sched. 28, s. 8.

Same

(4) Children's aid societies and residential licensees shall,

- (a) prominently display at their premises, in a manner visible to persons receiving services, a notice advising of the existence and role of the Ombudsman under subsections 14 (1.1) and (1.3) and of how the Ombudsman may be contacted; and
- (b) make available on request any informational materials produced by the Ombudsman respecting his or her functions under those subsections. 2018, c. 17, Sched. 28, s. 8.

Child in care

(5) In this section,

"child in care" has the same meaning as in subsection 2 (1) of the *Child, Youth and Family Services Act, 2017*. 2018, c. 17, Sched. 28, s. 8.

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).