

Appendix A – Extract from *Municipal Act, 2001*, Sections 223.13 to 223.18 Ombudsman

Ombudsman

223.13 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the municipality may specify and affecting any person or body of persons in his, her or its personal capacity. 2006, c. 32, Sched. A, s. 98.

Powers and duties

(2) Subject to this Part, in carrying out the functions under subsection (1), the Ombudsman may exercise the powers and shall perform the duties assigned to him or her by the municipality. 2006, c. 32, Sched. A, s. 98.

Matters to which municipality is to have regard

(3) In appointing the Ombudsman and in assigning powers and duties to him or her, the municipality shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 98.

Same, Ombudsman

(4) In carrying out his or her functions under subsection (1), the Ombudsman shall have regard to, among other matters, the importance of the matters listed in subsection (5). 2006, c. 32, Sched. A, s. 98.

Same

- (5) The matters referred to in subsections (3) and (4) are,
- (a) the Ombudsman's independence and impartiality;
 - (b) confidentiality with respect to the Ombudsman's activities; and
 - (c) the credibility of the Ombudsman's investigative process. 2006, c. 32, Sched. A, s. 98.

Powers paramount

(6) The powers conferred on the Ombudsman under this Part 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 of them, or that no proceeding or decision of the person or organization whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question. 2006, c. 32, Sched. A, s. 98.

Decisions not reviewable

(7) Nothing in this Part 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; or
- (b) of any person acting as legal adviser to the municipality, a local board or a municipally-controlled corporation or acting as counsel to any of them in relation to any proceedings. 2006, c. 32, Sched. A, s. 98.

Delegation

(8) The Ombudsman may delegate in writing to any person, other than a member of council, any of the Ombudsman's powers and duties under this Part. 2006, c. 32, Sched. A, s. 98.

Same

(9) The Ombudsman may continue to exercise the delegated powers and duties, despite the delegation. 2006, c. 32, Sched. A, s. 98.

Status

(10) The Ombudsman is not required to be a municipal employee. 2006, c. 32, Sched. A, s. 98.

Investigation

223.14 (1) Every investigation by the Ombudsman shall be conducted in private. 2006, c. 32, Sched. A, s. 98.

Opportunity to make representations

(2) 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 the municipality, a local board, a municipally-controlled corporation or any other person, the Ombudsman shall give him, her or it an opportunity to make representations respecting the adverse report or recommendation, either personally or by counsel. 2006, c. 32, Sched. A, s. 98.

Application of *Ombudsman Act*

(3) Section 19 of the *Ombudsman Act* applies to the exercise of powers and the performance of duties by the Ombudsman under this Part and, for the purpose, references in section 19 of that Act to “any public sector body” are deemed to be references to “the municipality, a local board or a municipally-controlled corporation”. 2014, c. 13, Sched. 9, s. 21.

(4) REPEALED: 2014, c. 13, Sched. 9, s. 21.

Duty of confidentiality

223.15 (1) Subject to subsection (2), the Ombudsman and every person acting under the instructions of the Ombudsman shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part. 2006, c. 32, Sched. A, s. 98.

Disclosure

(2) The Ombudsman may disclose in any report made by him or her under this Part such matters as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for his or her conclusions and recommendations. 2006, c. 32, Sched. A, s. 98.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*. 2006, c. 32, Sched. A, s. 98.

No review, etc.

223.16 No proceeding of the Ombudsman under this Part 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. 2006, c. 32, Sched. A, s. 98.

Testimony

223.17 (1) The Ombudsman and any person acting under the instructions of the Ombudsman 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 Part. 2006, c. 32, Sched. A, s. 98.

Same

(2) Anything said or any information supplied or any document or thing produced by any person in the course of any investigation by or proceedings before the Ombudsman under this Part is privileged in the same manner as if the inquiry or proceedings were proceedings in a court. 2006, c. 32, Sched. A, s. 98.

Effect on other rights, etc.

223.18 The rights, remedies, powers, duties and procedures established under sections 223.13 to 223.17 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 Part limits or affects any such remedy or right of appeal or objection or procedure. 2006, c. 32, Sched. A, s. 98.