

TABLE OF CONTENTS

Table of Cases	xi
Foreword	xvii
Acknowledgments	xxi
Chapter 1 Introduction	1
Chapter 2 Establishment of Ombudsman	5
2.1 Introduction	5
2.2 Ombudsman and Officer	7
2.2.1 Title	7
2.2.2 Officer of the Legislature	9
2.3 Appointment	10
2.3.1 Who Appoints	10
2.3.2 Appointment Process	11
2.3.2.a Original Appointment	11
2.3.2.b Reappointment	13
2.3.2.c Extraordinary Appointment	14
2.3.3 Qualifications	15
2.4 Suspension or Removal	16
2.5 Obligations on Attaining Office	18
2.5.1 Oath of Office	19
2.5.2 No Outside Employment	19
2.6 Attributes of Employment in Office — Term and Salary ...	21
2.6.1 Term of Office	21
2.6.2 Salary	22
2.7 Administration of the Office	24
2.7.1 Administrative Status of the Ombudsman	24
2.7.2 Administrative and Corporate Status of the Ombudsman’s Office	25

Table of Contents

2.7.3 Finances	25
2.7.4 Specific Resourcing	27
2.7.4.a. Staff	28
2.7.4.b. Premises and Equipment	30
2.7.4.c. Expenses	30
2.8 Summary	31
Chapter 3 Functions of the Ombudsman	33
3.1 Introduction	33
3.2 Complaint	35
3.2.1 Who May Complain	36
3.2.2 Who May Initiate, Refer or Request Investigations ...	37
3.3 Investigation	39
3.4 The Subject and Object of Investigation	40
3.4.1 Administration	40
3.4.2 Acts Done	42
3.4.3 Public Sector Entities	45
3.4.4. Grievance	48
3.5 Conclusion	49
Chapter 4 The Art of Complaint	51
4.1 Introduction	51
4.2 The Form of Complaint	51
4.3 Acceptance or Refusal of Complaints	53
4.3.1 Insufficient Personal Interest	56
4.3.2 Trivial, Frivolous, Vexatious, Bad Faith	57
4.3.2.a. Trivial or Frivolous	57
4.3.2.b. Vexatiousness	58
4.3.2.c. Bad Faith	58
4.3.3 Further Investigation Unnecessary	59
4.3.4 Abandonment or Withdrawal	59
4.3.4.a Abandonment	60
4.3.4.b Withdrawal	60
4.3.5 Prior Settlement	60

Table of Contents

4.3.6 Time	61
4.3.7 Adequate and Available Alternate Remedy	61
4.3.7.a Remedy	62
4.3.7.b Adequate	63
4.3.7.c. Available	63
4.3.7.d. Conclusion	64
4.4 Ombudsman Initiated Investigations	64
4.5 Complaining and Complaints	66
Chapter 5 Powers of Investigation	69
5.1 Introduction	69
5.2 Investigative Powers	69
5.2.a General Inquiry Powers	70
5.2.b Specific Inquiry Powers	71
5.3 Limitations on Investigation	73
5.3.1 Jurisdiction	73
5.3.1.a General Jurisdiction — Functions and Organizations	73
5.3.1.b Jurisdiction respecting Appeal Processes ...	74
5.3.1.c Jurisdiction Respecting Legal Process	74
5.3.1.d Questions Respecting Jurisdiction	74
5.3.2 Restrictions on Information Gathering	74
5.3.2.a Non-Interference in Other Investigations ...	75
5.3.2.b Restricting Access to Executive Council Information	76
5.3.2.c. Accountability and Limitation of Ombudsman Investigations	77
5.4 Shielding the Ombudsman and the Ombudsman Process	78
5.4.1 General Protections	78
5.4.1.a Immunity from Law Suit	78
5.4.1.b Confidentiality	79
5.4.1.c Offences Against Ombudsman Process	82
5.4.2 Specific Protections	84
5.4.2.a Protection from Testifying	85

Table of Contents

5.4.2.b Protection Respecting Misuse of Testimony	86
5.4.2.c Protection of Witnesses Respecting Testimony	86
5.4.2.d Protection against Reprisal	87
5.5 Fairness and the Ombudsman Process	88
5.5.1 Notice of Investigation	89
5.5.2 Notice of Entry on Premises, Summons and Subpoena as Notice	89
5.5.3 Ability to Comment on Potentially Adverse Statements	90
5.5.4 Absences in Process	91
5.6 Summary	91
Chapter 6 Administrative Justice and the Ombudsman	93
6.1 Introduction	93
6.2 Administrative Justice Code	94
6.2.1 Introduction to the Codes	94
6.2.2 The Wrongs	96
6.2.2.a Contrary to Law	97
6.2.2.b Oppressive Conduct	98
6.2.2.c Unjust Behaviour	99
6.2.2.d Unreasonableness	99
6.2.2.e Improperly Discriminatory	100
6.2.2.f Mistake of Law or Fact	101
6.2.2.g Irrelevant Considerations and Irrelevant Grounds	101
6.2.2.h Improper Purpose	102
6.2.2.i Wrong	102
6.3 Righting Wrongs — the Recommendation Power	103
6.3.1 Introduction to the Recommendation Power	103
6.3.2 Recommendatory Actions	104
6.3.2.a Referral	105
6.3.2.b Rectification	105
6.3.2.c Cancelled or Varied	106

Table of Contents

6.3.2.d Alteration	106
6.3.2.e Reconsidered	106
6.3.2.f Reasons	107
6.3.2.g Any Other Steps	108
6.4 Summary	108
Chapter 7 Resolving and Reporting Complaints	111
7.1 Introduction	111
7.2 Settlement of Complaints	111
7.3 Reporting	114
7.3.1 Introduction to the Reporting Power	114
7.3.2 Reports on Investigations to Governmental Entities	115
7.3.3 Reports on Investigations to the Highest Levels of Government and to the Legislature	117
7.3.4 Public Reports Generally	120
7.3.5 Reporting to Individuals	122
7.3.6 Annual Reports	124
7.4 Utilizing and Challenging Reports and Recommendations	125
7.4.1 Information about and from Ombudsman Investigations in Court	126
7.4.2 Use of Reports and Recommendations in Court and Tribunal Processes	127
7.4.3 Challenging the Ombudsman	129
7.5 Conclusion	130
Chapter 8 Additional Functions of Ombudsmen in Canada	131
8.1 Introduction	131
8.2 Open Meetings Investigation — Ontario Ombudsman	132
8.2.1 Ombudsman Investigation of Open Meetings	132
8.2.2 Ombudsman Reporting on Open Meetings Investigations	134

Table of Contents

8.2.3 Summary	135
8.3 Policing Favouritism in the Civil Service — New Brunswick	135
8.3.1 Ombudsman Investigation of Favouritism in Hiring	135
8.3.2 Information and Recommendation — Favouritism Investigations	137
8.3.3 Reporting	139
8.4 Summary	140
Chapter 9 Conclusion	141
Appendix — Ombudsman Legislation	143
Citizens' Representative Act, S.N. 2001, c. C-14.1	145
Ombudsman Act, R.S.A. 2000, c. O-8	161
Ombudsman Act, R.S.M. 1987, c. O45	183
Ombudsman Act, R.S.N.B. 1973, c. O-5	199
Ombudsman Act, R.S.N.S. 1989, c. 327	215
Ombudsman Act, R.S.O. 1990, c. O.6	227
Ombudsman and Children's Advocate Act, R.S.S. 1978, c. O-4	241
The Ombudsman Act, 2011 Bill No. 25	257
Ombudsperson Act, R.S.B.C. 1996, c. 340	279
Public Protector Act, R.S.Q., c. P-32	299
Ombudsman Act, R.S.Y. 2002, c. 163	315
Cities and Towns Act, R.S.Q., c. C-19	331
City of Montreal, Bylaw Concerning the Ombudsman, Bylaw 02-146	333
Montreal Charter of Rights and Responsibilities, Art. 29-41	339
City of Toronto Act, 2006, S.O. 2006, c. 11, Sched. A, Part V (ss. 170-176)	343
Municipal Code of the City of Toronto, Accountabili- ty Officers, c. 3 (Excerpt)	347

Table of Contents

Index355