

DRAFT OMBUDSMAN ACT FOR THE NORTHWEST TERRITORIES

LEGEND

- 1. This Draft Act was prepared based on similar legislation in other Canadian jurisdictions as indicated below. Provisions in this draft Act are annotated with reference to related, but not necessarily identical, provisions in the provincial statutes listed below. The annotated provisions identify the Act and subsection. (eg. Subsection 2(2) of Alberta's *Ombudsman Act* is written AB 2(2)):**

AB – Province of Alberta, *Ombudsman Act*, Revised Statutes of Alberta 2000, Chapter O-8

BC – Province of British Columbia, *Ombudsperson Act*, Revised Statutes of BC, Chapter 340

MB – Province of Manitoba, *The Ombudsman Act*, Continuing Consolidation of the Statutes of Manitoba, Chapter O45

SK – Province of Saskatchewan, *The Ombudsman Act*, 2012, The Statutes of Saskatchewan, Chapter O-3.2

ON – Province of Ontario, *Ombudsman Act*, Revised Statutes of Ontario 1990, Chapter O.6

YK – Yukon, *Ombudsman Act*, Revised Statutes of the Yukon 2002, Chapter 163

- 2. Annotated references to related provisions are shown in blue for the following Northwest Territories Statutes:**

ATIPP – Access to Information and Protection of Privacy Act

OLA – Official Languages Act

FAA – Financial Administration Act

- 3. Additional information about similar or related provisions in other jurisdictions is provided in green notes.**

DRAFT OMBUDSMAN ACT FOR THE NORTHWEST TERRITORIES

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Definitions	<p>1 In this Act,</p> <p>"Authority" means a board or agency set out in the Schedule or added under section 37 (Additions to schedule) and includes members and employees of the authority.</p> <p>"Board of Management" means the Legislative Assembly Board of Management continued under subsection 36(1) of the <i>Legislative Assembly and Executive Council Act</i>.</p> <p>"Standing Committee" means a standing committee of the Legislative Assembly designated by the Legislative Assembly to carry out the duties and functions of the Standing Committee under the Act.</p> <p>"Department" means a division of the public service continued or established by statute, or designated as a department by the Commissioner in Executive Council, on the recommendation of the Premier.</p> <p>"Deputy head" means,</p> <ul style="list-style-type: none">(a) in relation to a department, the Deputy Minister of that department, and(b) in relation to an authority, its chief executive officer or, if there is no chief executive officer, the person who the Minister responsible designates as deputy head for the purposes of this Act <p>"Government of the Northwest Territories" includes its departments and the authorities set out in the Schedule or added under section 37.</p>
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	<p>"Minister responsible" means a Member of Executive Council of the Government of the Northwest Territories, appointed by the Commissioner, on the advice of the Premier, to a ministerial portfolio and</p> <p>(a) in relation to a department, is the Minister responsible for the department, or</p> <p>(b) in relation to an authority, is the Minister responsible for the authority, or the Minister to which the authority is accountable;</p> <p>"Special Committee" means a special committee of the Legislative Assembly, composed equally of Cabinet and Regular Members, established pursuant to rule 92(1) of the <i>Rules of the Legislative Assembly</i> for the purpose of selecting an Ombudsman.</p>
<p>Scope of Act</p>	<p>2(1) The Government of the Northwest Territories is bound by this Act. [ATIPP 3]</p>
<p>Conflict with another Act</p>	<p>3 (1) If there is a conflict between a provision of this Act and a provision of another Act, this Act prevails to the extent of the conflict, unless</p> <p>(a) this Act otherwise provides; or</p> <p>(b) another Act expressly provides that it, or a provision of it operates notwithstanding this Act. [FAA 3; ATIPP 4]</p>
<p>PART 1: ADMINISTRATION</p>	
<p>Appointment of Ombudsman</p>	<p>4 (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint as an officer of the Legislature a commissioner for investigations, to be called the Ombudsman, to carry out the duties and functions set out in this Act.</p> <p>[AB 2(1-2); BC 2(1); MB 2(1) & 3(1); ON 2; SK 3(2); YT 2; ATIPP 61(1)]</p> <p>(2) The Legislative Assembly must not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed. [AB 2(2); BC 2(2); MB 2(2); ON 3; SK 3(3); YT 2]</p>

Term of office	<p>5 (1) Subject to section 7 (Resignation, removal or suspension) the Ombudsman holds office during good behavior for a term of five (5) years. [AB 4; BC 3(1); MB 4(1); ON 4(1); SK 3(4); YT 3(1); ATIPP 61(2)] [Note: Provincial terms range from 5 to 6 yrs. with most allowing at least one reappointment.]</p> <p>(2) A person may be reappointed as Ombudsman for further terms. [AB 4; BC 3(1); MB 4(1); ON 4(1); SK 3(5); YT 3(1); ATIPP 61(4)]</p> <p>(3) The Ombudsman must not hold another office. [AB 3(1); BC 3(2); MB 3(2); ON 5(1); YT 3(2)]</p> <p>(4) The Ombudsman must be a Canadian citizen. [AB 3(3); MB 2(1)]</p> <p>(5) The Ombudsman may, with the prior approval of the Legislative Assembly and endorsement by the Conflict of Interest Commissioner, engage in another occupation for reward outside the duties of the office of the Ombudsman. [YT 3(3)] [Note: Most provincial statutes prohibit the Ombudsman from other employment. For reference, see the sections of the various provincial statutes annotated above under 5(3).]</p> <p>(6) A person holding office as Ombudsman continues to hold office after the expiry of his or her term of office until he or she is reappointed, a successor is appointed, or a period of six months has expired, whichever first occurs. [AB 4; ATIPP 61.3]</p>
Remuneration, Benefits & Pension	<p>6 (1) The Ombudsman shall be paid, out of the consolidated revenue fund, a salary at a rate fixed by the Commissioner. [AB 8(1) at a rate set by Standing Committee; BC 4(1) at a rate equal to a provincial court judge; MB 7(1) at a rate set by the Lieutenant Governor in Council; ON 6(1) at a rate set by the Lieutenant Governor in Council; SK 7(1) at a rate equal to a deputy minister & 7(6) paid out of the SK general revenue fund; YT 4(1) at a rate set by the Commissioner]</p> <p>(2) The Ombudsman's remuneration shall not be reduced except on an address of the Legislative Assembly made by at least two-thirds of the Members. [MB 7(2); ON 6(2); YT 4(2)]</p> <p>(3) The Ombudsman is not a member of the public service. [MB 9(2); ON 5(2); SK 8(1); YT] [Note: Under AB 10(1), the Ombudsman and</p>

	<p>staff are appointed pursuant to the AB <i>Public Service Act</i>; Under BC 8(2) the Ombudsperson is a Deputy Minister for the purposes of the application of the BC <i>Public Service Act</i>]</p> <p>(4) The Ombudsman is entitled to receive benefits equivalent to that of a Deputy Minister; [AB 8(2); MB 9(2); SK 7(4)]</p> <p>(5) The Ombudsman may be a member of the Northern Employees Benefits Services Pension Plan under the <i>Northern Employee Benefits Services Pension Plan Act</i>; [AB the Act is silent; BC 5 The Public Service Pension Plan, under the <i>Public Sector Pension Plans Act</i> applies to the Ombudsperson; MB 9(1) the Ombudsman and staff are employees within the meaning of the MB <i>Civil Service Superannuation Act</i>; SK 8(2) Ombudsman is subject to the SK <i>Public Service Superannuation Act</i> and <i>Public Employees Pension Plan Act</i>; ON 6(4) Ombudsman is a member of the ON <i>Public Service Pension Plan Act</i>.</p> <p>(6) The Ombudsman shall be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging the Ombudsman's duties. [AB 8; BC 4(2); MB 8; ON 6(3); SK 7(5)]</p>
<p>Resignation, removal or suspension</p>	<p>7 (1) The Ombudsman may resign at any time by notifying the Speaker of the Legislative Assembly or, if there is no Speaker or the Speaker is absent from the Northwest Territories, by notifying the Clerk of the Legislative Assembly. [AB 5; BC 6(1); MB 4(2); SK 3(6); YT 5(1); ATIPP 62(1)]</p> <p>(2) The Commissioner, on the recommendation of the Legislative Assembly, shall, for cause or incapacity, remove the Ombudsman from office or suspend the Ombudsman with or without remuneration. [AB 6(1); BC 6(2); MB 5; ON 4(1); SK 4(1); YT 5(2); ATIPP 62(2)]</p> <p>(3) If the Legislative Assembly is not sitting, the Commissioner, on the recommendation of the Committee, may suspend the Ombudsman for cause or incapacity. [AB 6(2); BC 6(5); MB 6(1); SK 4(1); YT 5(4); ATIPP 62(3)]</p>
<p>Acting Ombudsman</p>	<p>8 (1) The Commissioner, on the recommendation of the Legislative Assembly, shall appoint an acting Ombudsman, where the Ombudsman has resigned or, for cause or incapacity, been</p>

	<p>removed or suspended from office under section 7 (Resignation, removal or suspension). [AB 7; BC 6(3); MB 6(2); ON 7; SK 4(2) & 5(3); YT 5(3)]</p> <p>(2) The Commissioner, on the recommendation of the Standing Committee, may appoint an acting Ombudsman where:</p> <ul style="list-style-type: none">(a) the Ombudsman is temporarily absent because of illness or for another reason;(b) the office of Ombudsman is or becomes vacant when the Legislative Assembly is not sitting;(c) the Ombudsman is suspended when the Legislative Assembly is not sitting; or(d) the Ombudsman is removed or suspended or the office of the Ombudsman becomes vacant when the Legislative Assembly is sitting, but no recommendation is made by the Assembly under subsection 4(1) (Appointment of Ombudsman) before the end of the session. [AB; BC 7(1); SK 5(1) & 6; YT 6(1); ATIPP 63(1)] <p>(3) An acting Ombudsman holds office until:</p> <ul style="list-style-type: none">(a) the appointment of a new Ombudsman under section 4,(b) the suspension of the Ombudsman ends, or(c) the Ombudsman returns to office from the temporary illness or absence, <p>whichever occurs first. [AB; BC 6(4) & 7(2); MB 6(2); ON 7; SK 5(3) & 6; YT 6(2); ATIPP 63(2)]</p>
<p>Special Ombudsman</p>	<p>9 (1) Where, for any reason, the Ombudsman determines that he or she should not act in respect of any particular matter under this Act, the Commissioner, on the recommendation of the Standing Committee, may appoint a special Ombudsman to act in the place of the Ombudsman in respect of that matter. [ATIPP 63.1(1)]</p> <p>(2) A special Ombudsman holds office until the conclusion of the matter in respect of which he or she has been appointed. [ATIPP 63.1(2)]</p>

Office of the Ombudsman	<p>10 (1) The Office of the Ombudsman shall consist of the Ombudsman, and such persons or positions employed by the Ombudsman as are required to assist the Ombudsman in the effective and efficient administration of this Act. [AB 10; BC 8(1); MB 9(1); SK 9(1); YT 7; ATIPP 65]</p> <p>(2) The <i>Public Service Act</i> applies to persons employed under the Ombudsman. [AB; BC 8(2); MB 9(3); ON 8(2); SK 9(2)]</p> <p>(3) The Ombudsman may engage or contract the services of any persons necessary to assist in carrying out the duties and functions of the Ombudsman. [YT 7; ATIPP 65]</p> <p>(4) The Ombudsman shall submit annually to the Board of Management in respect of each upcoming financial year, an estimate of the sum that will be required to be provided by the Legislative Assembly to defray the expenses of the Office of the Ombudsman for that fiscal year. [YT 9(1)]</p> <p>(5) The Board of Management shall review the estimate submitted pursuant to subsection (4) and, on completion of the review, the Speaker shall transmit the estimate to the Minister of Finance for recommendation to the Legislative Assembly. [YT 9(2)]</p> <p>(5) The Board of Management may provide the Ombudsman with those premises and equipment and supplies necessary for the efficient operation of the office of the Ombudsman. [YT 7]</p> <p>(6) The Ombudsman may make a special report to the Legislative Assembly if the Ombudsman believes the amounts provided for the Office of the Ombudsman in the estimates are inadequate to enable the Ombudsman to fulfill the duties of the office. [AB 11; BC 8(3); ATIPP [Note: YT 9(3) provides for a special warrant to be prepared for additional funds required by the Ombudsman.]</p>
Oath	<p>11 (1) Before undertaking the duties of office, the Ombudsman shall take an oath, administered by either the Speaker or Clerk of the Legislative Assembly, to faithfully and impartially perform the duties of the Office of the Ombudsman and not to disclose any information received by the office under this Act except in accordance with this Act. [AB 9(1); BC 9(1); MB 10; ON</p>

	<p>12(1); SK 10; YT 10(1); ATIPP 64]</p> <p>(2) A person employed in or engaged by the Office of the Ombudsman shall take an oath, administered by the Ombudsman, not to disclose any information received by that person under this Act except in accordance with this Act. [AB 10(6); BC 9(2); MB 11; SK 11; YT 10(2); ATIPP 65(3)]</p>
Confidentiality	<p>12 (1) The Ombudsman and every person on the staff of the Ombudsman must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act. [BC 9(4); MB 12(1); SK 12(1); YT 10(3); ATIPP 56(1) & (2)]</p> <p>(2) The Ombudsman or a person holding an office or appointment under the Ombudsman must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except</p> <ul style="list-style-type: none">(a) to enforce the Ombudsman's powers of investigation,(b) to enforce compliance with this Act, or(c) with respect to a trial of a person for perjury. [BC 9(5); MB 41; ON 24(2); SK 31(2); YT 10(4); ATIPP 57] <p>(3) An investigation under this Act must be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation. [AB 17(1); BC 9(6); MB 26; ON 18(2); SK 24(1); YT 10(5); ATIPP 49.3.(1)]</p>
Disclosure by Ombudsman	<p>13 (1) Notwithstanding section 12 (Confidentiality) or any oath taken under this Act, the Ombudsman may disclose, or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsman, is necessary to</p> <ul style="list-style-type: none">(a) further an investigation,(b) prosecute an offence under this Act, or(c) establish grounds for conclusions and recommendations made in a report under this Act. [BC 9(7); MB 12(2); ON 12(2); SK 12(2); YT 10(6); ATIPP 56(3)]

PART 2: POWERS AND DUTIES OF THE OMBUDSMAN

Investigation

- 14** (1) It is the function and duty of the Ombudsman, with respect to a matter of administration, on a complaint or on the Ombudsman's own initiative, to investigate
- (a) a decision or recommendation made,
 - (b) an act done or omitted, or
 - (c) a procedure used,
- that aggrieves or may aggrieve a person or body of persons, in or by any department or authority or by any officer, employee or member of any department or authority in the exercise of any power or the performance of any function conferred on the officer, employee or member by any enactment. [AB 12(1) & (2); BC 10(1); MB 15; ON 14(1) & (2); SK 14; YT 11(1) & (2); ATIPP 49.2.(1)]
- (2) The powers and duties conferred on the Ombudsman may be exercised and performed despite a provision in an Act to the effect that
- (a) a decision, recommendation or act is final,
 - (b) no appeal lies in respect of it, or
 - (c) a proceeding or decision of the authority whose decision, recommendation or act it is must not be challenged, reviewed, quashed or called into question. [AB 12(3); BC 10(2); MB 17; ON 14(3); SK 17; YT 11(3)]
- (3) 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. [AB 17(3); BC 27; MB 28; ON 18(3); SK 24(3); YT 27; ATIPP 49.3.(3)]
- (4) Notwithstanding subsection (3) if, at any time, the Ombudsman is of the opinion that there is sufficient grounds for the making of a report or recommendation in respect of any matter that may adversely affect any authority, the Ombudsman must, before deciding the matter,
- (a) inform the authority of the grounds, and
 - (b) give the authority the opportunity to make representations in respect of the matter

	<p>(i) either directly or by counsel, and (ii) either orally or in writing at the discretion of the Ombudsman. [AB 16(1) & (2); BC 17; SK 24(4) & (5); YT 17; ATIPP 49.3.(2)]</p> <p>(5) The Ombudsman may try to resolve any problem raised in a complaint through the use of negotiation, conciliation, mediation or other non-adversarial approaches. [ON 14(5)]</p> <p>(6) The Ombudsman may become involved in public education for the purpose of informing the public about administrative fairness and the powers and duties of the Ombudsman. [ON 14(6)]</p>
<p>Referral by Legislative Assembly or Other NWT Government</p>	<p>15 (1) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report. [AB 12(4); BC 10(3); MB 16(1) & (2); SK 16(1) & (3); YT 11(4)]</p> <p>(2) The Ombudsman must</p> <p>(a) investigate the matter referred under subsection (1), so far as it is within the Ombudsman's jurisdiction and subject to any special directions, and</p> <p>(b) report back as the Ombudsman thinks fit. [BC 10(4); SK16(2) & (4)]</p> <p>(3) Sections 29 (Procedure after investigation), 30 (Authority to notify Ombudsman of steps taken), 31 (Report of Ombudsman if no suitable action taken) and 32 (Complainant to be informed) do not apply in respect of an investigation or report made under subsection (2)(b). [BC 10(5)]</p> <p>(4) A Northwest Territories Aboriginal or municipal government may at any time refer a matter to the Ombudsman for investigation and report and the Ombudsman shall</p> <p>(a) subject to being able to recover the costs of the investigation from the Aboriginal or municipal government, investigate the matter referred; and</p> <p>(b) report back as the Ombudsman thinks fit, but sections 29 to 32 do not apply in respect of an investigation or report made under this subsection. [YT 11(5)]</p>

<p>Jurisdiction of Ombudsman</p>	<p>16 (1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission</p> <ul style="list-style-type: none">(a) in respect of which there is under any Act a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted under any Act, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired, or(b) of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding. [AB 13(1); BC 11(1); MB 18; ON 14(4); SK 17 & 18(1); YT 12(1)] <p>(2) The Ombudsman may investigate conduct occurring before the commencement of this Act. [BC 11(2)] [Note: YT 12(2) prohibits the investigation of conduct occurring before the commencement of the Act.]</p> <p>(3) If a question arises about the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, the Ombudsman may apply to the Supreme Court of the Northwest Territories for a declaratory order determining the question. [AB 13(2); BC 11(3); MB 20; ON 14(5); SK 19(1); YT 12(3)]</p>
<p>Delegation of powers</p>	<p>17 (1) The Ombudsman may, in writing, delegate to a person or class of persons any of the Ombudsman's powers or duties under this Act, except the power</p> <ul style="list-style-type: none">(a) to delegate under this section,(b) to make a report under this Act, and(c) to require a production or disclosure under section 25(1) (Application of other laws respecting disclosure). <p>(2) A delegation under this section is revocable at will and does not prevent the Ombudsman from exercising the delegated power at any time.</p> <p>(3) A delegation may be made subject to terms the Ombudsman considers appropriate.</p> <p>(4) If the Ombudsman by whom a 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</p>

	<p>Ombudsman.</p> <p>(5) A person purporting to exercise power of the Ombudsman through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.</p> <p>[AB 27; BC 30; MB 14 (1) & (2); ON 26; SK 13; YT 30; ATIPP 66]</p>
Complaint to Ombudsman	<p>18 (1) A complaint under this Act may be made by a person or group of persons. [BC 12(1); SK 15(1) YT 13(1); ATIPP 49.1.(1)]</p> <p>(2) A complaint must be in writing. [AB 14(1); BC 12(2); MB 21; ON 16(1); SK 14(4); YT 13(2)]</p> <p>(3) If a communication written by or on behalf of a person confined in a federal or territorial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman the person in charge of the institution, hospital or facility in which the writer is confined or the person having custody of the writer must immediately, mail or forward the communication, unopened, to the Ombudsman. [AB 14(2); BC 12(3); MB 22; ON 16(2); SK 20(2); YT 13(3)]</p> <p>(4) A communication from the Ombudsman to a person confined or in custody as described in subsection (3) must be forwarded to that person in a similar manner. [AB; BC 12(4); MB; ON; SK 20(3) & (4); YT 13(3)]</p> <p>(5) Subsections (3) and (4) apply despite any other enactment. [BC 12(5)]</p>
Refusal to investigate or continue investigation	<p>19 (1) The Ombudsman may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsman, any of the following apply:</p> <p>(a) the complainant or aggrieved person knew or ought to have known of the decision, recommendation, act or omission, to which the complaint refers, more than one year before the complaint was received by the Ombudsman;</p> <p>(b) the subject matter of the complaint primarily affects a</p>

	<p>person other than the complainant and the complainant does not have sufficient personal interest in it;</p> <ul style="list-style-type: none">(c) the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so;(d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;(e) having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;(f) in the circumstances, investigation would not benefit the complainant or person aggrieved;(g) the complainant has abandoned the complaint<ul style="list-style-type: none">(i) by failing to advise the Ombudsman of a current address or telephone number at which the Ombudsman can contact him or her, or(ii) by failing to respond after a reasonable number of attempts by the Ombudsman to contact him or her in writing or verbally;(h) the complaint is withdrawn by the complainant by notice to the Ombudsman;(i) the complaint is settled under section 21 (2). [AB 15(1-2); BC 13; MB 23(1) & (2); ON 17; SK 21(1); YT 14; ATIPP 49.2.(2)]
Referral of complaint	<p>20 (1) Where the Ombudsman receives a complaint, the subject of which falls within the mandate of another Commissioner or Commission duly established by territorial enactment, the Ombudsman must refer that complaint, in writing, to the appropriate Commission or Commissioner for furtherance and notify the complainant of the referral.</p> <p>(2) Other Commissions or Commissioners include, but are not limited to, the Northwest Territories Human Rights Commission, the Information and Privacy Commissioner of the Northwest Territories, the Languages Commissioner of</p>

	<p>the Northwest Territories and the Equal Pay Commissioner of the Northwest Territories.</p> <p>[Note: AB 13(1)(c) prohibits Ombudsman from investigating decisions of the Mental Health Patient Advocate under the <i>Mental Health Act</i>; MB 16.1 requires the Ombudsman to monitor and report on the implementation of recommendations made by the Children’s Advocate under the <i>MB Child and Family Services Act</i>;</p>
Notice of Investigation	<p>21 (1) If the Ombudsman investigates a matter, the Ombudsman must notify in writing in advance the Minister responsible and deputy head of the affected department or authority and any other person the Ombudsman considers appropriate to notify in the circumstances. [AB 16(1); BC 14(1); MB 25; ON 18(1); SK 23(1) & (2); YT 15(1)]</p> <p>(2) At any time during or after an investigation the Ombudsman may consult with a department or authority to attempt to settle the complaint, or for any other purpose. [BC 14(2); SK 22(5)]</p> <p>(3) The Ombudsman may exercise the discretionary power to consult with any Minister who is affected by the investigation any time during or after the investigation. [MB 29(1); ON 18(4); SK 22(3)]</p> <p>(4) If before making a decision respecting a matter being investigated the Ombudsman receives a request for consultation from the department or authority, the Ombudsman must consult with the department or authority. [BC 14(3); ON 18(5); SK 22(4)]</p> <p>(5) If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any department or authority, the Ombudsman shall refer the matter to the Deputy Head of the department or authority, as the case may be. Where the breach or misconduct potential involves the Minister or the Deputy Head, the matter is referred to the Premier or to the Secretary to Cabinet accordingly. [AB 16(4); MB 29(2); ON 18(6); SK 22(6) & (7)]</p>

Power to obtain information

- 22** (1) The Ombudsman may receive and obtain information from the persons and in the manner the Ombudsman considers appropriate, and at the Ombudsman's discretion may conduct hearings. [AB 17(2); BC 15(1); MB 27; ON 18(3); SK 25(1); YT 16(1); ATIPP 49.4]
- (2) Without restricting subsection (1), but subject to this Act, the Ombudsman may do one or more of the following:
- (a) at any reasonable time, and with prior notice, enter, remain on, and inspect all of the premises occupied by an authority, talk in private with any person there and otherwise investigate matters within the Ombudsman's jurisdiction; [AB 26(1); BC 15(2)(a); MB 35(1) & (2); ON 25(1)&(2); SK 32(1) & (2); YT 16(2)(a)]
 - (b) require a person to furnish information or produce, at a time and place the Ombudsman specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority; [AB 18(1); BC15(2)(b); MB 30(1); ON 19(1); SK 25(1) & (2); YT 16(2)(b)] [Note: Under SK 34, an authority may voluntarily provide any information to the Ombudsman that they believe will assist the Ombudsman.]
 - (c) make copies of information furnished or a document or thing produced under this section; [BC 15(2)(c); SK 25(3); YT 16(2)(c)]
 - (d) summon before the Ombudsman and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath; [AB 18(3); BC 15(2)(d); MB 30(2); ON 19(2); SK 25(4); YT 16(2)(d)]
 - (e) receive and accept, on oath or otherwise, evidence the Ombudsman considers appropriate, whether or not it

	<p>would be admissible in a court. [BC15(2)(e); YT 16(2)(e)]</p> <p>(3) If the authority requests the return of a document or thing obtained under subsection (2), the Ombudsman must return it to the authority within 48 hours after receiving the request, but the Ombudsman may again require its production in accordance with this section. [AB 18(2); BC 15(3); YT (16)(3)]</p>
Protections	<p>23 (1) No person is guilty of an offence against any other act by reason of compliance with any request or requirement of the Ombudsman to provide information or produce any document, paper, or thing, or by reason of answering any question in any investigation of the Ombudsman. [MB 34; ON 19(8); SK 25(9); ATIPP 58]</p> <p>(2) Subject to section 25 (application of other laws respecting disclosure), a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as the person would have with respect to a proceeding in a court. [AB 18(6); BC 20(1); ON 19(5); YT 20(1)]</p> <p>(3) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature. [AB 18(7); BC 20(2); MB 33; ON 19(6); SK 25 (8)(a); YT 20(2); ATIPP 34(3)]</p> <p>(4) For the purposes of any Act or law respecting libel or slander, anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsman under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court. [BC 29(2)(a); ON 24(3); SK 31(3); YT 29(2)(a)]</p>
Minister of Justice may restrict investigative powers	<p>24(1) The Ombudsman must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Minister of Justice certifies that entering the premises, giving the information,</p>

	<p>answering the question or producing the document or thing might</p> <ul style="list-style-type: none">(a) interfere with or impede the investigation or detection of an offence,(b) result in or involve the disclosure of deliberations of the Executive Council, or(c) result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest. [AB 19(1); BC 18(1); MB 19 (1) & 31; ON 20(1) & (2); SK 26(1); YT 18] <p>(2) The Ombudsman must report to the Legislative Assembly not later than in the Ombudsman's next annual report each instance where the Minister of Justices makes a certification under subsection (1). [BC 18(2); MB 19(2); SK 26(2)]</p>
<p>Application of other laws respecting disclosure</p>	<p>25 (1) Subject to section 24 (Minister of Justice may restrict investigative powers), a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman. [AB 19(2); BC 19(1); MB 32(1); SK 25(7)(a); YT 19(1)]</p> <p>(2) Subject to section 24 and to subsection (4), a person who is bound by the provisions of any act to maintain confidentiality in relation to or not to disclose any matter must not 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 confidentiality or nondisclosure. [AB 18(4); BC 19(2); ON 19(3); YT 19(2)]</p> <p>(3) Subject to section 24 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter</p>

	<p>only because of an oath made under the <i>Public Service Act</i> or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Ombudsman. [BC 19(3); MB 32(2); ON 19(3.1); SK 25(7)(b); YT 19(3)]</p> <p>(4) Subject to section 24, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection (2) to, and that person must, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant. [BC 19(4); ON 19(4); YT 19(4)]</p>
<p>Proceedings privileged</p>	<p>26 (1) Proceedings of the Ombudsman must not be challenged, reviewed, quashed or called into question by a court, except on the ground of lack or excess of jurisdiction. [AB 24; BC 28; MB 39; ON 23; SK 30(2); YT 28]</p> <p>(2) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything done in good faith, reported or said in the course of the exercise or purported exercise of duties under this Act. [AB 25(1); BC 29(1); MB 40; ON 24(1); SK 31(1); YT 29(1)]</p> <p>(3) No proceeding of the Ombudsman is invalid for want of form. [AB 24; MB 39; ON; SK 30(1)]</p> <p>(4) For the purposes of any Act or law respecting libel or slander, a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court. [BC 29(2)(b); YT 29(2)(b)]</p>
<p>Witness and information expenses</p>	<p>27(1) A person examined under section 22(2)(d) (power to obtain information) is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court of the Northwest Territories. [BC 21(1); YT 21(1)]</p> <p>(2) If a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may reimburse that person for</p>

	<p>reasonable expenses incurred that are not covered under subsection (1). [BC21(2); YT 21(2)]</p>
If investigation is refused or discontinued or complaint is not substantiated	<p>28 (1) If the Ombudsman decides</p> <ul style="list-style-type: none">(a) not to investigate or further investigate a complaint under section 13, or(b) at the conclusion of an investigation, that the complaint has not been substantiated, <p>the Ombudsman must</p> <ul style="list-style-type: none">(c) record the decision in writing, and(d) as soon as is reasonable, notify both the complainant and the authority of the decision and the reasons for it. <p>[BC 22(1); MB 24; ON 17(3); SK 22(1); YT 22]</p> <p>(2) The reasons provided under subsection (1) (d) with respect to a decision referred to in subsection (1)(b) must be in writing.</p> <p>[BC 22(2); SK 22(2)]</p> <p>(3) The Ombudsman may indicate with the notification under subsection (1)(d) any other recourse that may be available to the complainant. [BC 22(3); YT 22]</p>
Procedure after investigation	<p>29 (1) If, after completing an investigation, the Ombudsman is of the opinion that</p> <ul style="list-style-type: none">(a) a decision, recommendation, act or omission that was the subject matter of the investigation was<ul style="list-style-type: none">(i) contrary to law,(ii) unjust, oppressive or improperly discriminatory,(iii) made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,(iv) based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,(v) related to the application of arbitrary, unreasonable or unfair procedures, or(vi) otherwise wrong, <p>[AB 21(1); BC 23(1)(a); MB; ON 21(1); SK 27(1)(a); YT 23(1)(a)]</p> <p>(b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority</p>

	<p>(i) did so for an improper purpose,</p> <p>(ii) failed to give adequate and appropriate reasons in relation to the nature of the matter, or</p> <p>(iii) was negligent or acted improperly, or</p> <p>(c) there was unreasonable delay in dealing with the subject matter of the investigation,</p> <p>the Ombudsman must report that opinion and the reasons for it to the Minister and administrative head of the authority and may make the recommendation the Ombudsman considers appropriate. [AB 21(2); BC 23(1)(b) & (c); ON 21(2); SK 27(1)(b) & 27(2); YT 23(1)(b) & (c)]</p> <p>(2) Without restricting subsection (1), the Ombudsman may recommend that</p> <p>(a) a matter be referred to the appropriate authority for further consideration,</p> <p>(b) an act be remedied,</p> <p>(c) an omission or delay be rectified,</p> <p>(d) a decision or recommendation be cancelled or changed,</p> <p>(e) reasons be given,</p> <p>(f) a practice, procedure or course of conduct be altered,</p> <p>(g) an enactment or other rule of law be reconsidered, or</p> <p>(h) any other steps be taken.</p> <p>[AB 21(3); BC 23(2); MB 36(2); ON 21(3); SK 27(3); YT 23(2)]</p>
<p>Authority to notify Ombudsman of steps taken</p>	<p>30 (1) If a recommendation is made under section 29 (procedure after investigation), the Ombudsman may request the authority</p> <p>(a) to notify the Ombudsman within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or</p> <p>(b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.</p> <p>[BC 24(1); MB 37(1); ON 21(3); SK 28(1); YT 24(1)]</p> <p>(2) If, after considering a response made by an authority under subsection (1), the Ombudsman believes it advisable to modify or further modify the recommendation, the</p>

	<p>Ombudsman must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsman</p> <p>(a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or</p> <p>(b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.</p> <p>[BC 24(2); SK 39(1); YT 24(2)]</p>
<p>Report of Ombudsman if no suitable action taken</p>	<p>31 (1) If within a reasonable time after a request has been made under section 30 (authority to notify Ombudsman of steps taken) no action is taken that the Ombudsman believes adequate or appropriate, the Ombudsman, after considering any reasons given by the authority, may submit a report of the matter to the Legislative Assembly respecting the matter as the Ombudsman considers appropriate. [AB 21(4) & (5); BC 25(1); MB 37(2); ON 21(4); SK 29; YT 25(1)]</p> <p>(2) The Ombudsman must attach to a report under subsection (1) a copy of the Ombudsman's recommendation and any response made to it under section 30, but the Ombudsman must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer or employee of an authority. [BC 25 (2); ON 21(5); YT 25(2)]</p>
<p>Complainant to be informed</p>	<p>32 (1) If the Ombudsman makes a recommendation under section 29 (procedure after investigation) or 30 (authority to notify Ombudsman of steps taken) and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, the Ombudsman</p> <p>(a) must inform the complainant of the recommendation and</p> <p>(b) may make additional comments the Ombudsman considers appropriate.</p> <p>[AB 22(1); BC 26(1); MB 38; ON 22(1); YT 26(1)]</p> <p>(2) The Ombudsman must in every case inform the complainant within a reasonable time of the result of the investigation.</p>

	[AB 22(2); BC 26(2); ON 22(2); YT 26(2)]
Annual and special reports	<p>33 (1) The Ombudsman must report annually on the affairs of the Ombudsman's office to the Speaker of the Legislative Assembly.</p> <p>(2) The Speaker must lay the report before the Legislative Assembly as soon as possible.</p> <p>(3) If the Ombudsman considers it to be in the public interest or in the interest of a person or authority, the Ombudsman may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsman's duties under this Act or to a particular case investigated by the Ombudsman.</p> <p>(4) The Ombudsman may make a special report to the Legislative Assembly, providing recommendations on any changes to this Act that the Ombudsman cares to make, whenever this Act is reviewed in accordance with section 38 (Review at 10 year intervals).</p> <p>(5) The Ombudsman may make a special report pursuant to section 10(4) (Office of the Ombudsman).</p> <p style="text-align: center;">[AB 28; BC 31; MB 42 & 43; ON 11; SK 38; YT 31; ATIPP 68]</p>
Rules	<p>34 (1) On its own initiative or on the recommendation of the Legislative Assembly, the Standing Committee may make rules for the guidance of the Ombudsman in exercising the powers and performing the duties of the office.</p> <p style="text-align: center;">[AB 29; BC 34 (1); MB 44(1); ON 15(1); SK 33(1); YT 34(1)]</p> <p>(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine the Ombudsman's procedure and the procedure for the members of the Ombudsman's staff in exercising of the powers conferred and performing the duties imposed by this Act. [AB 17(4); BC 34 (2); MB 44(2); ON 15(3); SK 33(2); YT 34(2)]</p>
PART 3: OTHER MATTERS	
Offences	<p>35 (1) A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person</p>

	<p>complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act. [BC 16]</p> <p>(2) Any person who:</p> <ul style="list-style-type: none"> (a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of a power conferred or a duty imposed under this Act; (b) without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act; (c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the exercise of a power conferred or a duty imposed under this Act; (d) violates an oath taken under this Act; (e) contravenes subsection (1); <p>is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5000. [AB 32; BC 32; MB 45; ON 27; SK 35; YT 32; ATIPP 59] [Note: Most provinces have fines ranging from \$500-\$1500, with a 3 month jail term. The Yukon has no provision for a jail term, but sets the maximum fine at \$5,000. Offences under ATIPP are subject to a fine not exceeding \$5000]</p>
<p>Other remedies</p>	<p>36 The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which</p> <ul style="list-style-type: none"> (a) a remedy, right of appeal or objection is provided, or (b) a procedure is provided for inquiry into or investigation of a matter, <p>and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure. [AB 33; BC 33; MB 46; ON 28; SK 37 ; YT 33]</p>
<p>Additions to Schedule</p>	<p>37 (1) The Commissioner, on the recommendation of the Legislative Assembly may, by order, add authorities to the Schedule. [BC 35]</p>

Review at 10-year intervals	38 (1) The Legislative Assembly, or a committee of the Legislative Assembly designated or established by it, shall review the provisions and operation of this Act at the tenth anniversary of the date of its coming into force and subsequently at the next session following each successive tenth anniversary of that date. [OLA 35] (2) Prior to completing its review the Legislative Assembly, or a committee of the Legislative Assembly designated or established by it, shall consider the recommendations of the Ombudsman made under section 33 (4) (Annual and special reports) where such recommendations are provided.
SCHEDULE	
<ul style="list-style-type: none">• Departments of the GNWT• Boards and agencies listed in Schedules A and B of the new <i>Financial Administration Act</i> [FAA]	