



SPECIAL COMMITTEE TO APPOINT AN OMBUDSPERSON

May 2021



LEGISLATIVE ASSEMBLY
of BRITISH COLUMBIA

Second Session, 42nd Parliament



May 13, 2021

To the Honourable
Legislative Assembly of the
Province of British Columbia
Honourable Members:

We have the honour to present herewith the Report of the Special Committee to Appoint an Ombudsperson containing our unanimous recommendation.

Respectfully submitted on behalf of the Committee,

Janet Routledge, MLA
Chair

Bruce Banman, MLA
Deputy Chair

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COMPOSITION OF THE COMMITTEE

Members

Janet Routledge, MLA, Chair
Burnaby North

Bruce Banman, MLA, Deputy Chair
Abbotsford South

Jagrup Brar, MLA
Surrey-Fleetwood

Fin Donnelly, MLA
Coquitlam-Burke Mountain

Teresa Wat, MLA
Richmond North Centre

Committee Staff

Kate Ryan-Lloyd, Clerk of the Legislative Assembly

Jennifer Arril, Clerk of Committees

Ron Wall, Manager, Committee Research Services

Natalie Beaton, Committee Researcher

Mary Newell, Administrative Coordinator



TERMS OF REFERENCE

On April 13, 2021, the Legislative Assembly agreed that a Special Committee to Appoint an Ombudsperson be appointed to select and unanimously recommend to the Legislative Assembly the appointment of an individual as Ombudsperson, pursuant to section 2 of the *Ombudsperson Act* (R.S.B.C. 1996, c. 340).

That the Special Committee have all the powers of a Select Standing Committee and in addition be empowered to:

- a. appoint of its number one or more subcommittees and to refer to such subcommittees any of the matters referred to the Special Committee and to delegate to the subcommittees all or any of its powers except the power to report directly to the House;
- b. sit during a period in which the House is adjourned, during the recess after prorogation until the next following Session and during any sitting of the House;
- c. adjourn from place to place as may be convenient; and
- d. retain personnel as required to assist the Special Committee.

That any information or evidence previously under consideration by the Special Committee appointed by order of the House on March 2, 2021 be referred to the Special Committee.

That the Special Committee report to the House as soon as possible; and that during a period of adjournment, the Special Committee deposit its reports with the Clerk of the Legislative Assembly, and upon resumption of the sittings of the House, or in the next following Session, as the case may be, the Chair present all reports to the House.



INTRODUCTION

The Ombudsperson is an independent officer of the Legislature whose roles and responsibilities are provided by the *Ombudsperson Act* and the *Public Interest Disclosure Act*. First, the *Ombudsperson Act* establishes the position of Ombudsperson, authorizes the creation of the Office of the Ombudsperson, and sets out its responsibility to investigate complaints from members of the public about decisions, recommendations, acts, or procedures used by public authorities in administering their duties. The Act authorizes the Office to impartially investigate and respond to approximately 8,000 such complaints each year.

Second, the Ombudsperson has responsibilities set out in British Columbia's new whistleblower protection law, the *Public Interest Disclosure Act*. Presently, the Act, which was adopted by the Legislative Assembly in 2018, provides current and former employees of provincial government ministries and eight statutory offices with a safe and protected process for disclosing allegations of wrongdoing and reprisal. The Office of the Ombudsperson is responsible for receiving and investigating these allegations and issuing reports on the outcome of investigations. Legislative amendments introduced in April 2021 would extend the Act's application to the broader public sector, such as provincial health authorities, ensure consistent interpretation of critical definitions and provisions, and clarify statutory roles.

In keeping with the Ombudsperson's status as an officer of the Legislature, the *Ombudsperson Act* and the *Public Interest Disclosure Act* require the Ombudsperson to report annually through the Speaker on the exercise and performance of their functions. These statutory provisions also authorize the preparation of special reports to the Legislative Assembly on any matter which the Ombudsperson considers to be in the public interest or in the interest of a person or authority.

Like other statutory officers, the Ombudsperson must submit to a parliamentary committee designated by the Legislative Assembly an estimate of the budgetary resources to cover the work of the Office for the next fiscal year as well as a service plan and performance measures related to the work of the Office. The Select Standing Committee on Finance and Government Services has been designated as the parliamentary committee for this purpose.

The expansion of the Office of the Ombudsperson's responsibilities has been accompanied by increased management and financial responsibilities for the Ombudsperson. The Office's operating budget grew from \$7.5 million in the 2017-18 fiscal year to an anticipated \$10.8 million in 2021-22, an increase of over 40 percent, while the number of full-time employees rose from 61 to 70, an 15 percent increase, over the same period.

The procedure for the appointment of the Ombudsperson is established through section 2 of the *Ombudsperson Act*, which states:

(1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsperson to exercise the powers and perform the duties assigned to the Ombudsperson under this Act.

(2) The Legislative Assembly must not recommend a person to be appointed Ombudsperson unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

Section 3(1) of the *Ombudsperson Act* provides for the position's appointment for a term of six years and for reappointment for further six-year terms. There is no restriction on the number of times an Ombudsperson can be reappointed.

On March 2, 2021, the Special Committee to Appoint an Ombudsperson was established by the Legislative Assembly to recommend the appointment of an Ombudsperson. On April 13, 2021, the Legislative Assembly re-established the Committee to continue this work in the Second Session of the 42nd Parliament. This is the eighth time that the act's provisions for recruitment have been used. Previous committees were established for the purposes of recruiting for this position in 1979, 1986, 1992, 1999, 2006, 2012, and 2015.

The 2015 appointment process culminated in a unanimous recommendation in the Committee's May 26, 2015 report to the Legislative Assembly that James (Jay) Michael Chalke, Q.C., be appointed as Ombudsperson. The Legislative Assembly unanimously adopted a resolution supporting the appointment later that day.

Meeting Schedule

The Committee met on the following dates for the purposes described below:

1st Session, 42nd Parliament

- Tuesday, March 9, 2021, Organization and planning
- Tuesday, March 15, 2021, Deliberations
- Tuesday, March 23, 2021, Deliberations
- Tuesday, March 30, 2021, Deliberations

2nd Session, 42nd Parliament

- Monday, April 19, 2021, Organization and Planning
- Thursday, April 22, 2021, Interview
- Tuesday, April 27, 2021, Deliberations
- Monday, May 3, 2021, Final deliberations and Approval of Draft Report

Further information about the work of the Special Committee is available at: <https://www.leg.bc.ca/cmt/ombud>.



RECRUITMENT PROCESS

The Committee commenced work on the appointment process for an Ombudsperson on March 9, 2021 with an organizational and planning meeting. The Committee elected a Chair and Deputy Chair and adopted a motion to hold all meetings and deliberations on a confidential, *in camera* basis, in keeping with the usual practice for special appointment committees. Members also reviewed the Committee's terms of reference, the duties and functions of the position of Ombudsperson, and a preliminary workplan for the Committee's activities.

In subsequent meetings, the Committee held in-depth discussions of the profile and key competencies for the position of Ombudsperson and the evolving responsibilities and activities of the role. On March 27, 2021, the incumbent, Mr. James (Jay) Michael Chalke, Q.C., provided the Committee with a letter confirming his interest in appointment for a further term of six years and an accompanying detailed curriculum vitae.

On April 22, 2021, Committee Members interviewed Mr. Chalke. Members reviewed his qualifications and experience as well as his work and achievements since being appointed as Ombudsperson in 2015. They also considered his knowledge of the roles, responsibilities and policies of the Office of the Ombudsperson and its relationship with the Legislative Assembly, public sector organizations and British

Columbians; leadership and organizational management abilities; effectiveness in building public confidence in the work of the Office and citizen services; communication and relationship-building skills; approaches to Indigenous reconciliation and engagement of the province's diverse populations; analytical and decision-making abilities; and ethics, values and personal suitability for reappointment as an independent, non-partisan officer of the Legislature.

Members were impressed by Mr. Chalke's track record of senior executive leadership in the provincial public service and as British Columbia's Ombudsperson since 2015, his thorough and substantive responses during the interview, his prudent approach to financial management, and his vision for enhancing service delivery, strengthening public sector administrative fairness, and supporting Indigenous reconciliation and the engagement of the province's diverse populations.

Members acknowledged Mr. Chalke's effective management of responsibilities under the *Ombudsperson Act*, including an improvement in timely services for those who rely on the Office. As well, they affirmed his successful role in leading the Office's implementation of significant new responsibilities under the *Public Interest Disclosure Act*. They recognized Mr. Chalke's achievement in leading the Office's investigation, undertaken pursuant to section 10(3) of the *Ombudsperson*

Act at the request of the Select Standing Committee on Finance and Government Services, of issues arising from the 2012 Ministry of Health employee terminations. The investigation was the most resource-intensive in the 40-year history of the Office. After receiving over 4 million records and interviewing 130 witnesses, the Office submitted its 2017 report to the Speaker of the Legislative Assembly titled, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*, with a key recommendation that the government bring forward legislation to give “whistleblowers” a legal framework to make their disclosures and to ensure that any resulting investigations are conducted in a fair manner. As noted, the *Public Interest Disclosure Act* was subsequently adopted by the Legislative Assembly in 2018.

Committee Members appreciated Mr. Chalke’s support for parliamentary democracy and his work in building public confidence in democratic institutions and ensuring that the Office’s complaint processes are fair and effective. He has established a leading Ombudship program to proactively work with public bodies on best practices and guidance for administrative fairness. He has also substantially reduced a backlog in the investigation of complaints.

Members took note of Mr. Chalke’s strong commitment to engaging with Indigenous stakeholders regarding their access to the Office’s services and working collaboratively to strengthen the Office’s provision of services to Indigenous communities and individuals. Members appreciated his work on an Indigenous services plan for Indigenous communities and his identification of this plan as a key priority in a further term.

Committee Members also appreciated Mr. Chalke’s leadership on diversity. An inclusiveness and diversity committee has been established, staffing aims to be representative of the province, the Office’s administrative policies are being reviewed to support a diverse workplace, and community engagement is more broadly based. Members welcomed Mr.

Chalke’s commitment to continue to improve the Office’s performance in this area.

Overall, Mr. Chalke’s experience, professionalism, commitment to administrative fairness, demonstrated unbiased, objective approach in carrying out the roles and responsibilities of Ombudsperson, and vision for improvements in the work of the Office resulted in him receiving their full confidence for continued leadership in this important position. The Committee agreed unanimously to recommend to the Legislative Assembly that he be appointed as Ombudsperson for a further term of six years.



RECOMMENDATION

The Special Committee to Appoint an Ombudsperson unanimously recommends to the Legislative Assembly that it recommend to Her Honour the Lieutenant Governor that James Michael Chalke, Q.C., be reappointed Ombudsperson, for a six-year term commencing on July 1, 2021, pursuant to the *Ombudsperson Act* (R.S.B.C. 1996, c. 340).

BIOGRAPHICAL INFORMATION

James (Jay) Michael Chalke, Q.C., was appointed as British Columbia's sixth Ombudsperson effective July 1, 2015.

As Ombudsperson, Mr. Chalke established an innovative program of preventative Ombudship, now known as Public Authority Consultation and Training, to proactively assist those public bodies who wish to obtain advice when establishing new public programs or reviewing existing programs and to train public sector employees on delivering services fairly. In addition, as Ombudsperson, Mr. Chalke has produced a number of significant and influential public reports on a range of public services including crown land allocation, prison inspections, bylaw enforcement, civil rights protections for patients of psychiatric facilities and income and disability assistance. In 2017, Mr. Chalke investigated and reported on certain human resource and data management practices in the provincial government following the first ever referral of a matter from a legislative committee to the Ombudsperson. He oversaw the implementation of the Ombudsperson's responsibilities under the province's new whistleblowing law, the *Public Interest Disclosure Act*. He served as Chair of the Canadian Council of Parliamentary Ombudsmen from 2018 to 2019.

Mr. Chalke has an extensive background in public sector leadership in British Columbia having served as Assistant Deputy Minister, Justice Services Branch, Ministry of the



Attorney General and, for over a decade, as the province's Public Guardian and Trustee. Earlier in his career, Mr. Chalke served in a number of legal positions with the Ontario provincial government and conducted a review of civil rights protections in the New Brunswick provincial correctional system.

Mr. Chalke obtained an undergraduate degree from the University of Western Ontario (now Western University) and a Bachelor of Laws degree from the University of Ottawa. He completed the French Immersion program at the Collège (now Université) de Saint-Boniface.

Mr. Chalke is married and has four adult children.

APPENDIX A: OMBUDSPERSON ACT

OMBUDSPERSON ACT

[RSBC 1996] CHAPTER 340

Definition

- 1 In this Act, "**authority**" means an authority set out in the Schedule or added under section 35 and includes members and employees of the authority.

Appointment of Ombudsperson

- 2 (1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsperson to exercise the powers and perform the duties assigned to the Ombudsperson under this Act.
(2) The Legislative Assembly must not recommend a person to be appointed Ombudsperson unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

Term of office

- 3 (1) The Ombudsperson must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.
(2) The Ombudsperson must not hold another office or engage in other employment.

Remuneration

- 4 (1) The Ombudsperson is entitled to be paid, out of the consolidated revenue fund, a salary equal to the salary paid to the chief judge of the Provincial Court.
(2) The Ombudsperson must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

Pension

- 5 (1) Subject to subsection (2), the Public Service Pension Plan, continued under the *Public Sector Pension Plans Act*, applies to the Ombudsperson.
(2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as Ombudsperson must be counted as 1 1/2 years of pensionable service.
(3) [Repealed 2003-62-3.]

Resignation, removal or suspension

- 6** (1) The Ombudsperson may at any time resign the office by written notice
- (a) to the Speaker of the Legislative Assembly, or
 - (b) to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from British Columbia.
- (2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the Lieutenant Governor must, in accordance with the recommendation,
- (a) suspend the Ombudsperson, with or without salary, or
 - (b) remove the Ombudsperson from office.
- (3) On the recommendation of the Legislative Assembly the Lieutenant Governor must appoint an acting Ombudsperson if
- (a) the Ombudsperson is suspended or removed,
 - (b) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (4) (c), or
 - (c) the Ombudsperson is temporarily ill or temporarily absent for another reason.
- (4) The appointment of an acting Ombudsperson under subsection (3) terminates
- (a) on the appointment of a new Ombudsperson under section 2,
 - (b) at the end of the period of suspension of the Ombudsperson,
 - (c) immediately after the expiry of 30 sitting days after the commencement of the next session of the Legislature, or
 - (d) on the return to office of the Ombudsperson from the temporary illness or absence
- whichever occurs first.
- (5) If the Legislature is not sitting and is not ordered to sit within the next 5 days, the Lieutenant Governor in Council may suspend the Ombudsperson from office, with or without salary, for cause or incapacity, but the suspension does not continue in force after the expiry of 30 sitting days.

Appointment of acting Ombudsperson without recommendation of Legislature

- 7** (1) The Lieutenant Governor in Council may appoint an acting Ombudsperson
- (a) if
 - (i) the Ombudsperson is suspended or removed, or
 - (ii) the office of Ombudsperson becomes vacant for a reason other than by operation of subsection (2) (c),
- when the Legislature is sitting but it does not make a recommendation under section 2 or 6 (3) before the end of that sitting or before an adjournment of the Legislature exceeding 5 days,

- (2) A person on the staff of the Ombudsperson must, before beginning to perform duties, take an oath before the Ombudsperson not to divulge any information
 - (b) if the Ombudsperson is suspended or the office of Ombudsperson becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days, or
 - (c) if the Ombudsperson is temporarily ill or temporarily absent for another reason.
- (2) The appointment of an acting Ombudsperson under subsection (1) terminates
 - (a) on the appointment of a new Ombudsperson under section 2,
 - (b) at the end of the period of suspension of the Ombudsperson,
 - (c) immediately after the expiry of 30 sitting days after the day on which the Ombudsperson was appointed,
 - (d) on the appointment of an acting Ombudsperson under section 6 (3), or
 - (e) on the return to office of the Ombudsperson from temporary illness or absence,whichever occurs first.

Staff

- 8 (1) In accordance with the *Public Service Act*, the Ombudsperson may appoint employees necessary to perform the duties of the office.
- (2) For the purposes of the application of the *Public Service Act* to this section, the Ombudsperson is a deputy minister.
- (3) The Ombudsperson may make a special report to the Legislative Assembly if the Ombudsperson believes
 - (a) the amounts and establishment provided for the office of the Ombudsperson in the estimates, or
 - (b) the services provided to the Ombudsperson by the BC Public Service Agencyare inadequate to enable the Ombudsperson to fulfill the duties of the office.

Confidentiality

- 9 (1) Before beginning to perform the duties of the office, the Ombudsperson must take an oath before the Clerk of the Legislative Assembly
 - (a) to faithfully and impartially exercise the powers and perform the duties of the office, and
 - (b) not to divulge any information received under this Act, except if permitted by this Act.

- (2) A person on the staff of the Ombudsperson must, before beginning to perform duties, take an oath before the Ombudsperson not to divulge any information received under this Act except if permitted by this Act.
- (3) For the purposes of subsection (2) the Ombudsperson is a commissioner for taking affidavits for British Columbia.
- (4) The Ombudsperson and every person on the staff of the Ombudsperson must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.
- (5) The Ombudsperson or a person holding an office or appointment under the Ombudsperson 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
 - (a) to enforce the Ombudsperson's powers of investigation,
 - (b) to enforce compliance with this Act, or
 - (c) with respect to a trial of a person for perjury.
- (6) An investigation under this Act must be conducted in private unless the Ombudsperson considers that there are special circumstances in which public knowledge is essential in order to further the investigation.
- (7) Despite this section, the Ombudsperson may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsperson, is necessary to
 - (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.

Powers and duties of Ombudsperson in administrative matters

- 10** (1) The Ombudsperson, with respect to a matter of administration, on a complaint or on the Ombudsperson's own initiative, may investigate
 - (a) a decision or recommendation made,
 - (b) an act done or omitted, or
 - (c) a procedure usedby an authority that aggrieves or may aggrieve a person.
- (2) The powers and duties conferred on the Ombudsperson 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.
- (3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsperson for investigation and report.
- (4) The Ombudsperson must
 - (a) investigate the matter referred under subsection (3), so far as it is within the Ombudsperson's jurisdiction and subject to any special directions, and
 - (b) report back as the Ombudsperson thinks fit.
- (5) Sections 23 to 26 do not apply in respect of an investigation or report made under subsection (4).

Jurisdiction of Ombudsperson

- 11** (1) This Act does not authorize the Ombudsperson to investigate a decision, recommendation, act or omission
- (a) in respect of which there is under an enactment 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 an enactment, 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.
- (2) The Ombudsperson may investigate conduct occurring before the commencement of this Act.
- (3) If a question arises about the Ombudsperson's jurisdiction to investigate a case or class of cases under this Act, the Ombudsperson may apply to the Supreme Court for a declaratory order determining the question.

Complaint to Ombudsperson

- 12** (1) A complaint under this Act may be made by a person or group of persons.
- (2) A complaint must be in writing.
- (3) If a communication written by or on behalf of a person confined in a federal or Provincial 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 Ombudsperson 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 Ombudsperson.

(4) A communication from the Ombudsperson to a person confined or in custody as described in subsection (3) must be forwarded to that person in a similar manner.

(5) Subsections (3) and (4) apply despite any other enactment.

Refusal to investigate

13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:

- (a) the complainant or person aggrieved 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 Ombudsperson;
- (b) the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
- (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
 - (i) by failing to advise the Ombudsperson of a current address or telephone number at which the Ombudsperson can contact him or her, or
 - (ii) by failing to respond after a reasonable number of attempts by the Ombudsperson to contact him or her in writing or verbally;
- (h) the complaint is withdrawn by the complainant by notice to the Ombudsperson;
- (i) the complaint is settled under section 14.

Ombudsperson to notify authority

14 (1) If the Ombudsperson investigates a matter, the Ombudsperson must notify the authority affected and any other person the Ombudsperson considers appropriate to notify in the circumstances.

- (2) At any time during or after an investigation the Ombudsperson may consult with an authority to attempt to settle the complaint, or for any other purpose.
- (3) If before making a decision respecting a matter being investigated the Ombudsperson receives a request for consultation from the authority, the Ombudsperson must consult with the authority.

Power to obtain information

- 15** (1) The Ombudsperson may receive and obtain information from the persons and in the manner the Ombudsperson considers appropriate, and in the Ombudsperson's discretion may conduct hearings.
- (2) Without restricting subsection (1), but subject to this Act, the Ombudsperson may do one or more of the following:
- (a) at any reasonable time 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 Ombudsperson's jurisdiction;
 - (b) require a person to furnish information or produce, at a time and place the Ombudsperson 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;
 - (c) make copies of information furnished or a document or thing produced under this section;
 - (d) summon before the Ombudsperson and examine on oath any person who the Ombudsperson 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;
 - (e) receive and accept, on oath or otherwise, evidence the Ombudsperson considers appropriate, whether or not it would be admissible in a court.
- (3) If the authority requests the return of a document or thing obtained under subsection (2), the Ombudsperson must return it to the authority within 48 hours after receiving the request, but the Ombudsperson may again require its production in accordance with this section.

Protection

- 16** 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 complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

Opportunity to make representations

- 17 If it appears to the Ombudsperson that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsperson must, before deciding the matter,
- (a) inform the authority or person of the grounds, and
 - (b) give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsperson.

Attorney General may restrict investigative powers

- 18 (1) The Ombudsperson 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 Attorney General certifies that entering the premises, giving the information, answering the question or producing the document or thing might
- (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.
- (2) The Ombudsperson must report each certificate of the Attorney General to the Legislative Assembly not later than in the Ombudsperson's next annual report.

Application of other laws respecting disclosure

- 19 (1) Subject to section 18, 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 Ombudsperson.
- (2) Subject to section 18 and to subsections (4) and (5), a person who is bound by an enactment 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 Ombudsperson in relation to that matter, or to produce to the Ombudsperson any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.
- (3) Subject to section 18 but despite subsection (2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under the *Public Service Act* 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 Ombudsperson.

- (4) Subject to section 18, after receiving a complainant's consent in writing, the Ombudsperson 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 Ombudsperson that relates only to the complainant.
- (5) If the Ombudsperson is investigating a matter referred to the Ombudsperson under section 10 (3),
 - (a) subsection (2) of this section does not apply, and
 - (b) despite any other enactment, the Ombudsperson may exercise any power under section 15 in order to investigate and report on the matter referred to the Ombudsperson under section 10 (3).

Privileged information

- 20** (1) Subject to section 19, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsperson as the person would have with respect to a proceeding in a court.
- (2) 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 Ombudsperson 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.

Witness and information expenses

- 21** (1) A person examined under section 15 (2) (d) is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court.
- (2) If a person incurs expenses in complying with a request of the Ombudsperson for production of documents or other information, the Ombudsperson may reimburse that person for reasonable expenses incurred that are not covered under subsection (1).

If investigation is refused or discontinued or complaint is not substantiated

- 22** (1) If the Ombudsperson decides
 - (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,the Ombudsperson must
 - (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.
- (2) The reasons provided under subsection (1) (d) with respect to a decision referred to in subsection (1) (b) must be in writing.

- (3) The Ombudsperson may indicate with the notification under subsection (1) (d) any other recourse that may be available to the complainant.

Procedure after investigation

- 23** (1) If, after completing an investigation, the Ombudsperson is of the opinion that
- (a) a decision, recommendation, act or omission that was the subject matter of the investigation was
 - (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,
 - (b) in doing or omitting an act or in making or acting on a decision or recommendation, an authority
 - (i) did so for an improper purpose,
 - (ii) failed to give adequate and appropriate reasons in relation to the nature of the matter, or
 - (iii) was negligent or acted improperly, or
 - (c) there was unreasonable delay in dealing with the subject matter of the investigation,

the Ombudsperson must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsperson considers appropriate.

- (2) Without restricting subsection (1), the Ombudsperson may recommend that
- (a) a matter be referred to the appropriate authority for further consideration,
 - (b) an act be remedied,
 - (c) an omission or delay be rectified,
 - (d) a decision or recommendation be cancelled or changed,
 - (e) reasons be given,
 - (f) a practice, procedure or course of conduct be altered,
 - (g) an enactment or other rule of law be reconsidered, or
 - (h) any other steps be taken.

Authority to notify Ombudsperson of steps taken

- 24** (1) If a recommendation is made under section 23, the Ombudsperson may request the authority
- (a) to notify the Ombudsperson within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or
 - (b) if no steps have been or are proposed to be taken, the reasons for not following the recommendation.
- (2) If, after considering a response made by an authority under subsection (1), the Ombudsperson believes it advisable to modify or further modify the recommendation, the Ombudsperson must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsperson
- (a) of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
 - (b) if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

Report of Ombudsperson if no suitable action taken

- 25** (1) If within a reasonable time after a request has been made under section 24 no action is taken that the Ombudsperson believes adequate or appropriate, the Ombudsperson, after considering any reasons given by the authority, may submit a report of the matter to the Lieutenant Governor in Council and, after that, may make a report to the Legislative Assembly respecting the matter as the Ombudsperson considers appropriate.
- (2) The Ombudsperson must attach to a report under subsection (1) a copy of the Ombudsperson's recommendation and any response made to it under section 24, but the Ombudsperson 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.

Complainant to be informed

- 26** (1) If the Ombudsperson makes a recommendation under section 23 or 24 and no action that the Ombudsperson believes adequate or appropriate is taken within a reasonable time, the Ombudsperson
- (a) must inform the complainant of the recommendation and
 - (b) may make additional comments the Ombudsperson considers appropriate.
- (2) The Ombudsperson must in every case inform the complainant within a reasonable time of the result of the investigation.

No hearing as of right

- 27** A person is not entitled as of right to a hearing before the Ombudsperson except as provided in this Act.

Ombudsperson not subject to review

- 28** Proceedings of the Ombudsperson must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

Proceedings privileged

- 29** (1) Proceedings do not lie against the Ombudsperson or against a person acting under the authority of the Ombudsperson for anything done in good faith, reported or said in the course of the exercise or purported exercise of duties under this Act.
- (2) For the purposes of any Act or law respecting libel or slander,
- (a) anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsperson under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
 - (b) a report made by the Ombudsperson 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 Ombudsperson were the order of a court.

Delegation of powers

- 30** (1) The Ombudsperson may in writing delegate to a person or class of persons any of the Ombudsperson's powers or duties under this Act, except the power
- (a) to delegate under this section,
 - (b) to make a report under this Act, and
 - (c) to require a production or disclosure under section 19 (1).
- (2) A delegation under this section is revocable at will and does not prevent the Ombudsperson from exercising the delegated power at any time.
- (3) A delegation may be made subject to terms the Ombudsperson considers appropriate.
- (4) If the Ombudsperson 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 Ombudsperson.
- (5) A person purporting to exercise power of the Ombudsperson through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

Annual and special reports

- 31** (1) The Ombudsperson must report annually on the affairs of the Ombudsperson's office to the Speaker of the Legislative Assembly.
- (2) The Speaker must lay the report before the Legislative Assembly as soon as possible.
- (3) If the Ombudsperson considers it to be in the public interest or in the interest of a person or authority, the Ombudsperson may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsperson's duties under this Act or to a particular case investigated by the Ombudsperson.

Offences

- 32** A person commits an offence who does any of the following:
- (a) without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsperson 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 Ombudsperson or another person under this Act;
 - (c) intentionally makes a false statement to or misleads or attempts to mislead the Ombudsperson 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 section 16.

Other remedies

- 33** The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which
- (a) a remedy, right of appeal or objection is provided, or
 - (b) a procedure is provided for inquiry into or investigation of a matter,
- and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

Rules

- 34** (1) On its own initiative or on the recommendation of the Lieutenant Governor in Council the Legislative Assembly may make rules for the guidance of the Ombudsperson in exercising the powers and performing the duties of the office.
- (2) Subject to this Act and any rules made under subsection (1), the Ombudsperson may determine the Ombudsperson's procedure and the procedure for the members of

the Ombudsperson's staff in exercising of the powers conferred and performing the duties imposed by this Act.

Additions to Schedule

35 The Lieutenant Governor in Council may, by order, add authorities to the Schedule.

Schedule

Authorities

1 Ministries of the government.

2 A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are,

(a) appointed by an Act, minister, the Lieutenant Governor in Council,

(b) in the discharge of their duties, public officers or servants of the government, or

(c) responsible to the government.

3 A corporation the ownership of which or a majority of the shares of which is vested in the government.

4 Municipalities.

5 Regional districts.

6 The Islands Trust established under the *Islands Trust Act*.

7 Improvement districts as defined in the *Local Government Act*.

8 [Repealed 2014-1-12.]

9 Boards, committees, commissions or similar bodies established under the *Community Charter*, the *Local Government Act* or the *Vancouver Charter*.

10 The Resort Municipality of Whistler and the Whistler Resort Association.

11 A local trust committee, the Trust Council, the Islands Trust Conservancy and the executive committee and persons to whom their powers are delegated under the *Islands Trust Act*.

12 Library boards as defined in the *Library Act*.

13 The Cultus Lake Park Board.

14 A greater board as defined in the *Community Charter*.

15 Water users' communities as defined in section 1 (1) of the *Water Users' Communities Act*.

15.1 Development districts, the comptroller and water managers under the *Water Sustainability Act*.

16 The commissioners of a district defined in section 58 of the *Drainage, Ditch and Dike Act* and an engineer, commissioner, inspector of dikes, land settlement board, municipality or regional district

acting under that Act.

17 The British Columbia Diking Authority and a diking authority under the *Dike Maintenance Act*.

18 The Okanagan Kootenay Sterile Insect Release Board.

19 Regional transit commissions established under the *British Columbia Transit Act*.

20 A corporation

(a) more than 50% of the issued voting shares of which are owned by one or more of the authorities listed in section 4 to 19 or this section, or

(b) that is controlled by one or more of the authorities listed in section 4 to 19 and, for the purposes of ascertaining control, a corporation is controlled by one or more of these authorities if a majority of the members of the corporation or of its board of directors or board of management consists of either or both of the following:

(i) persons appointed as members by the authorities;

(ii) officers or employees of an authority acting as such.

21 Schools and boards as defined in the *School Act*.

21.1 Francophone education authorities as defined in the *School Act* and francophone schools operated by francophone education authorities.

22 Universities as defined in the *University Act*.

23 The University of Northern British Columbia.

23.1 The Thompson Rivers University.

24 Royal Roads University.

25 Institutions as defined in the *College and Institute Act*.

26 Hospitals and boards of management of hospitals as defined in the *Hospital Act*.

27 Governing bodies of professional and occupational associations that are established or continued by an Act.

28 Regional Health Boards established under the *Health Authorities Act*.

29 Regional Hospital Districts under the *Hospital District Act*.

30 [Repealed 2002-35-11.]

31 The South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act*.

32 The Business Practices and Consumer Protection Authority established under the *Business Practices and Consumer Protection Authority Act*.

33 The Municipal Pension Board of Trustees.

34 The Teachers' Pension Board of Trustees.

35 The Public Service Pension Board of Trustees.

36 The College Pension Board of Trustees.

37 The British Columbia Safety Authority established under the *Safety Authority Act*.

38 The Land Title and Survey Authority established under the *Land Title and Survey Authority Act*.

