

## Questions and Answers – Alberta Ombudsman

**AUMA posed questions to the Alberta Ombudsman Office regarding processes for complaints to the Ombudsman’s Office. This document provides their written responses to our questions.**

### **What does the Alberta Ombudsman do?**

The Alberta Ombudsman responds to complaints of unfair treatment by provincial government authorities and designated professional organizations. Every Albertan has the right to be treated fairly in the provision of public services. The Ombudsman protects this right by promoting standards of fairness and has the authority to make recommendations if an investigation reveals unfairness.

The Ombudsman is an Officer of the Legislative Assembly of Alberta, reporting directly to the Assembly. The Ombudsman is impartial, operating independently from the Alberta government, political parties and individual elected officials. The Ombudsman is a neutral party and does not advocate for either the government or the complainant.

### **Will the Ombudsman’s office look at administration, council decisions, or both?**

The Ombudsman has the authority to investigate any decision or recommendation made relating to a matter of administration which affects any person. This would mean the Ombudsman would only look at the administrative branch of the municipal government. The Ombudsman does not have the authority to investigate or change policies enacted or decisions made by elected municipal councils.

The Ombudsman currently does not investigate Minister’s decisions related to their role in the executive branch of government. Under the proposed legislation it would be the same for elected members of council, the Ombudsman would not accept complaints related to decisions made in their elected role.

### **How does the complaint process work?**

The Ombudsman’s office is one of last resort. This means all other avenues of remedy must be exhausted prior to commencing an investigation. If the matter is before the courts or where legislation prescribes a remedy such as an appeal the Ombudsman would not consider a complaint until the time period for the remedy identified in legislation has expired.

The complaint must be made in writing to the Ombudsman. The Ombudsman does not accept anonymous complaints or complaints from parties not directly affected by the issue of complaint.

Once the Ombudsman has analyzed the complaint to ensure it is jurisdictional and all available avenues of remedy have been exhausted a formal investigation may be opened. The Ombudsman has discretion on determining if a matter should be investigated. The analysis of the complaint may involve inquiries with the Municipality to confirm details prior to consideration of opening an investigation.

As an alternative to a formal investigation the Ombudsman office may attempt to find an informal resolution through an Alternative Complaint Resolution (ACR) process. Both the complainant and the authority must be willing to participate in this process. If the ACR does not result in a mutually agreeable resolution a formal investigation may be considered.

### **What happens once an investigation is commenced?**

The Ombudsman will write to the chief administrative officer of the municipality to notify them of the investigation, the allegation and request pertinent information and a contact person for the investigator to work with.

The investigation may include interviews with any relevant persons, reviews of documents, legislation and policy. Any information provided to the Ombudsman is not shared with the other party of the complaint and is not compellable for use in any other process. The Ombudsman has the authority to compel documents and information. Providing documents or information compelled under the Ombudsman Act does not constitute a waiver of solicitor client privilege.

If the investigation results in a finding of an issue of administrative fairness the Ombudsman may make recommendations to resolve the fairness issue. Prior to making any final recommendations the Ombudsman will consult with the authority and allow opportunity for comment.

### **What happens once the recommendation has been made?**

The Ombudsman monitors the implementation of the recommendation and notifies the complainant of the recommendation. The Ombudsman also reports recommendations made to the Minister responsible for the jurisdictional authority, in the case of municipalities, the Minister of Municipal Affairs. Once the recommendations have been implemented the case is closed.

### **What would a recommendation be?**

Generally a recommendation would result in an action which directly impacts the complainant. As an example this might be providing more comprehensive reasons for a decision to address the key arguments of the complainant and allow them to understand how their points were considered in making the decision.

The Ombudsman Act provides the Ombudsman with the power to recommend a rehearing or reconsideration of a decision even when another legislation states the hearing or decision is final.

Sometimes the recommendation may be made to address a more systemic problem such as an incongruence between policy or legislation and the general practice at the municipality.

The objective of any recommendation is to ensure fairness in government and improve processes.

### **What if the municipality disagrees with the Ombudsman recommendation?**

The Ombudsman does not have the power to enforce recommendations, but relies on the power of persuasion and if that fails has the option of publicity. In addition to the Minister, the Ombudsman has the power to report to the Lieutenant Governor in Council, and ultimately to the legislature. These avenues are seldom relied on as the Ombudsman's approach is collaborative with the aim of improving service delivery.

## How will the proposed changes to the MGA regarding the Ombudsman's jurisdiction affect Municipalities?

Currently in approximately 70% of the Ombudsman's formal investigations the outcome is the authority was fair in dealing with the individual. So in these instances it will re-affirm the good work being done by the administration.

It is not known how many complaints the Ombudsman will receive if municipalities are added to the jurisdiction. In the past, the Ombudsman has not tracked the inquiries they receive related to municipalities.

If a complaint is made to the Ombudsman and an investigation is commenced and the complainant then decides to take the matter to court the Ombudsman investigation would be concluded as they do not investigate matters before the courts or review decisions made by the court.

Even though an individual complained to the Ombudsman and the Ombudsman investigated and made a recommendation the individual may complain again if they believe they were still being treated unfairly. As an office of last resort the Ombudsman is careful to not exclude people just because they are querulous.

## How many complaints does the Ombudsman's office get in a typical year?

In 2014-15, the Alberta Ombudsman received 1,125 written complaints. This is an increase of 12 per cent from the previous year, and only the second time the office passed the 1,000 mark since 1995. Telephone complaints were down 15 per cent from the previous year at 3,252.

In terms of overall inquiries from the public, the following were received from April 1, 2014 to March 31, 2015:

- 3,252 telephone inquiries
- 1,125 written complaints
- 1,182 cases closed in reporting year (includes cases carried over from previous years)
  - 189 Formal Investigation cases
  - 28 Alternative Complaint Resolution cases
  - 965 Non-jurisdictional complaints or premature for Ombudsman investigation and referred to alternate appeal process
- Of the 1,125 written complaints received, the most common complaints are:
  - Justice and Solicitor General (includes Correctional Services): 139
  - Human Services: 126
  - Workers Compensation Board: 61
  - Health Professions (includes the College of Physicians and Surgeons @ 36): 49
  - Appeals Commission for Alberta Workers' Compensation Board: 39

On average, the Alberta Ombudsman receives about 4,500 complaints a year; about 60 per cent have nothing to do with the provincial government and can't be dealt with by their office.

About 200 of the complaints end up in a full-blown investigation. Of those 200, about 70 per cent of those were complainants who the investigation found were treated fairly, and in about 30 per cent, the Alberta Ombudsman made recommendations because the investigation found a level of unfairness in the decision-making process.

### **What kinds of recommendations does the Ombudsman's office make?**

The Alberta Ombudsman is authorized to comment if any administrative decision or action was contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, a mistake of fact or law, or was wrong. Similarly, the Alberta Ombudsman may comment if in his opinion the decision or recommendation was for an improper purpose, was based on irrelevant grounds, took into account irrelevant considerations, or if reasons ought to have been given.

The Alberta Ombudsman can then make recommendations to the appropriate authority head:

- the omission should be rectified
- the decision should be cancelled or varied
- the practice should be altered
- the law should be reconsidered
- the reasons should have been given
- the matter should be reheard or reconsidered, or
- any other steps that should be taken to resolve the administrative error

### **Will the Ombudsman's office be responsible for dealing with council Code of Conduct issues?**

Under the Ombudsman Act, it is clear the actions of elected officials in their capacity as elected representatives are outside the Alberta Ombudsman's jurisdiction; accordingly, the Ombudsman is not responsible for investigating the actions of elected officials such as school board trustees and municipal councils. However, as wording in Codes of Conduct could vary from municipality to municipality, there may be administrative matters included in these Codes that do fall within the Ombudsman's jurisdiction. In these cases, the Ombudsman would first assess whether the matter falls within their jurisdiction before proceeding to an investigation.

### **How will the Ombudsman's office deal with matters that are time sensitive? (e.g. planning or development issues)?**

The Ombudsman's office will make best efforts to bring forward recommendations in a timely way so that if processes can be improved or changes need to be made, that it will be done in a manner that can still be impactful and relevant.