



September 2019

The Ombud's Office is Calling – Now What?

A guide for public authorities¹

About the Office of the Ombud

The Office of the Ombud was established in 2019 under the *Ombud Act* (referred to in this document as “the Act”).

The Ombud's mandate is to look into and attempt to resolve concerns about administrative unfairness in territorial public authorities. The mandate also includes public education about the principles of administrative fairness and the Ombud's role.

We are:

Independent. The Ombud is appointed by the Legislative Assembly, but our work is independent of government and MLAs.

Impartial. We do not take sides. We do not advocate for either complainants or public authorities. Our role is to speak up for fairness.

An office of last resort. Before accepting a complaint, we will usually require that the complainant try to address their concerns directly with the public authority, and/or use any available reviews or appeals.

Confidential. Investigations are conducted in private, and the Office is required to maintain secrecy. We cannot be compelled to give evidence in other proceedings with respect to information that we have as a result of our work for the Office. Statistics and redacted examples of complaints may be published in annual reports.

Free of charge. We do not charge fees to complainants.

About Administrative Fairness

Every day, government organizations take actions and make decisions that affect people's lives. Administrative fairness is the standard of conduct that government organizations in a democratic society owe to people.

¹ This document was prepared to assist authorities subject to the *Ombud Act* understand how the Office of the Ombud will work and manage complaints. The document is for administrative purposes only and is not intended, nor is it, a substitute for legal advice. For the exact wording and interpretation of the *Ombud Act*, please read the Act in its entirety. This document is not binding on the Ombud.



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Government organizations are expected to treat people fairly and reasonably. For example, they need to follow rules, provide clear information about processes and decisions, and deal with people with honesty and respect.

Although there is no single definition of fairness, there are some basic principles and practices that can help to describe it.

The Fairness Triangle: Three Aspects of Fairness²



Decision

What was decided?

- Did government have the legal authority to make the decision?
- Was the decision based on relevant information?
- Was the decision oppressive or unjust?
- Was the decision wrong in fact or law?

Process

How was it decided?

- Was the person given enough information to know what was required?
- Was the person given an appropriate chance to present their views?
- Did government take the time to listen?
- Did government provide reasons for decisions?
- Was the decision made within a reasonable time?
- Was the decision-maker unbiased?

²This section is based on materials developed by Ombudsman Saskatchewan. The Fairness Triangle was developed by Ombudsman Saskatchewan from the concept of the satisfaction triangle, in: Moore, Christopher (2003). *The Mediation Process: Practical Strategies for Resolving Conflict* (3rd ed.). San Francisco: Jossey-Bass Publishers.



How was the person treated?

- Was government approachable?
- Was confidentiality respected?
- Was government honest and forthright?
- Did government offer an apology if a mistake was made?

Fairness is not always simple. Context is important in deciding whether something is fair. Fairness does not mean that government has to agree to every request, or treat everyone exactly the same.

The Complaint Process

Intake and Initial Assessment

When the Office receives an enquiry, we will begin by making every effort to fully understand the individual's concerns.

The next steps are to determine whether the matter is within the Ombud's jurisdiction, and if so, whether there is any obvious reason we should not look into it further at that time (e.g., if the individual has not made any effort to contact the authority about the issue and there is no reason why not).

As part of the initial assessment of the complaint, the Office may contact the public authority to:

- Confirm information provided by the complainant;
- Obtain information about the authority's general process or programs and the complainant's options;
- Request clarification about the authority's program policies, regulations or procedures;
- Facilitate resolution by bringing the complainant's concerns to the attention of the authority;
- If appropriate, facilitate direct communication between the complainant and the public authority that might resolve the situation without further intervention;
- Describe the role of the Office and explain our processes.

This does not mean that the Office has begun an investigation. Before beginning an investigation, the Office will send a formal notice in writing to the administrative head of the authority (see below).

Early Resolution

The Act authorizes the Ombud to try to resolve problems through negotiation, conciliation, mediation or other non-adversarial approaches.

The Office will consider all complaints for early resolution. Examples that might be suitable for early resolution are matters that:

- Involve a single issue where the resolution seems straightforward; or



- Could likely be resolved through improved communication alone.

Early resolution is voluntary for both the complainant and the authority.

If the Office determines that early resolution may be appropriate, the Office will contact the complainant and the designated contact for the authority to determine whether and how the parties would like to proceed with an informal resolution process.

If the process results in a settlement, the Office will prepare a letter to the parties confirming the agreement, and will follow up as necessary to ensure that the terms are being met. If the process does not result in a settlement, the Office may close the file, or proceed to an investigation.

Investigations

An investigation may be initiated as the result of:

- A complaint
- A referral from the Legislative Assembly, a Standing Committee, a municipality or an Aboriginal government
- On the Ombud's own initiative

Serious and/or complex complaints will usually go directly to an investigation. Where a complaint has been referred to investigation because initial attempts at early resolution have failed, efforts to resolve the complaint informally may continue throughout the investigation process.

Investigation Process

The following is the procedure for investigations:

1. The Ombud or delegate sends notice in writing of the investigation to the head of the administrative authority.
2. The Ombud or delegate gathers relevant evidence, analyzes the evidence, and arrives at preliminary conclusions about whether there is administrative unfairness. Investigation powers are set out in the Act and include the powers to enter the premises of the authority, interview people in private, and require people to produce documents and other evidence.
3. If the Ombud or delegate determines the complaint is unsubstantiated, the Ombud or delegate will notify the parties in writing.
4. If the Ombud or delegate finds administrative unfairness, the Ombud provides a preliminary report to the Minister and administrative head of the authority to verify facts, consider any recommendations, and provide comments for consideration by the Ombud. After considering the authority's response, the Ombud finalizes the report and recommendations and sends it to the administrative head of the authority and the Minister.
5. If the authority accepts the recommendations, the Ombud or delegate follows up to ensure they have been implemented.



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6. If the authority does not take adequate or appropriate action within a reasonable time, the Ombud may submit a report to the Premier and the Legislative Assembly.
7. The complainant is notified in writing of the results of the investigation and informed if no action is taken in respect of a recommendation.
8. Investigation statistics and redacted summaries of investigations may be published in the Ombud's annual report.

Results

The following are some potential outcomes of an intervention and/or investigation by the Office:

- A finding that the authority acted appropriately and there has been no unfairness;
- An ongoing working relationship between a client and an authority is improved;
- The authority reconsiders a decision with new information and/or principles;
- The complainant receives a better explanation for a decision;
- The complainant receives a refund;
- The complainant receives an apology;
- The authority makes changes to its policies and procedures

The Ombud does not have the authority to make binding orders.

Working with the Office of the Ombud

The Office is here to work toward fair solutions to problems and to help improve government services and relationships between authorities and citizens. Although we will need to gather evidence in the course of investigations, our intent is not to unduly burden authorities. If a request for information seems too onerous, let us know, and we will work with you to try to find alternatives.

Please remember that there is no need to wait for an investigation to seek the advice of the Office. We would rather prevent unfairness than investigate it! We are developing our own education and awareness resources on administrative fairness, and in the meantime can refer you to similar resources already available from our provincial/territorial colleagues.