
MÉTIS VOICES. OTIPEMISIWAK MÉTIS GOVERNMENT.



OMBUDSMAN ACT

Journey to Otipemisiwak Métis Government

SEPTEMBER 2023

Otipemisiwak Métis Government Ombudsman Act

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PREAMBLE

WHEREAS section 23.3 of the *Otipemisiwak Métis Government Constitution* provides that all Citizens have the right to submit complaints to the Ombudsman regarding the actions, inactions, or decisions of the Otipemisiwak Métis Government, its elected leadership, officers, employees, or Institutions;

WHEREAS section 23.6 of the *Otipemisiwak Métis Government Constitution* provides that the Otipemisiwak Métis Government shall maintain a law enabling and protecting the work of the Ombudsman;

WHEREAS section 31.1 of the *Otipemisiwak Métis Government Constitution* provides that, prior to the coming into force of the *Otipemisiwak Métis Government Constitution*, the Métis Nation of Alberta Association's Provincial Council shall adopt by resolution all laws required by the *Otipemisiwak Métis Government Constitution*;

NOW THEREFORE the Otipemisiwak Métis Government enacts as follows:

PART I: INTRODUCTORY PROVISIONS

Short title

1 This Act may be cited as the *Ombudsman Act*.

Application

2 This Act applies to:

- (a) the authority, powers, and duties of the Ombudsman; and
- (b) the establishment of the Office of the Ombudsman.

Definitions

3 In this Act:

- (a) “**Otipemisiwak Métis Government authority**” means any branch, department, or office of the Otipemisiwak Métis Government or an Institution that is:
 - (i) named in the complaint; or
 - (ii) responsible for an elected official, officer, or employee of the Otipemisiwak Métis Government or an Institution that is the subject matter of a complaint;
- (b) “**complainant**” means a person who submits a complaint under section 26 of this Act;
- (c) “**complaint**” means a complaint submitted to the Ombudsman under section 26 of this Act;
- (d) “**Constitution**” means the *Otipemisiwak Métis Government Constitution*;
- (e) “**elected official**” or “**elected leadership**” means the President, Women’s Representative, Youth Representative, Citizens’ Representatives, District Captains and any additional District Councillors;
- (f) “**employee**” means an employee of the Otipemisiwak Métis Government or an Institution;
- (g) “**Institution**” means an Institution of the Otipemisiwak Métis Government as provided for under Otipemisiwak Métis Government Law;
- (h) “**Office of the Ombudsman**” means the Office of the Ombudsman of the Otipemisiwak Métis Government established under section 14 of this Act;
- (i) “**officer**” means an officer of the Otipemisiwak Métis Government or an Institution;

(j) “**Ombudsman**” means a person appointed to the office of the Ombudsman of the Otipemisiwak Métis Government under section 6 of this Act;

(k) “**Otipemisiwak Métis Government enactment**” means an Otipemisiwak Métis Government Law, bill, regulation or order, or a portion thereof; and

(l) “**parties**” means the complainant, any persons named in a complaint, the Otipemisiwak Métis Government authority, and any other person deemed appropriate by the Ombudsman.

PART II: THE OMBUDSMAN

THE OMBUDSMAN

The Ombudsman

4 (1) The Ombudsman is an arm’s length officer of the Otipemisiwak Métis Government.

(2) As an arm’s length officer of the Otipemisiwak Métis Government, the Ombudsman must make decisions and perform their duties in keeping with this Act and independently from political influence.

(3) The Ombudsman must not engage in political or campaign activity on behalf of any campaign, candidate or in favour or against an answer to a referendum question while the person is so appointed.

Qualifications of the Ombudsman

5 (1) The Ombudsman must:

(a) be a Citizen;

(b) understand Métis cultural context and values;

(c) demonstrate integrity and professionalism;

(d) have experience with dispute resolution;

(e) not have been convicted of a criminal offence for which they have not received a pardon or record suspension that has not been revoked or ceased to have effect; and

(f) not have caused a child to be in need of intervention within the meaning of the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12.

(2) The Ombudsman must not hold an elected position with the Otipemisiwak Métis Government.

Appointment of Ombudsman

6 Within 30 days following the certification of the results of a general election of the Otipemisiwak Métis Government:

- (a) a committee of the Citizens' Council must prepare a list of nominees for the role of the Ombudsman; and
- (b) the Citizens' Council must select a nominee from the list by resolution.

Term of Ombudsman

7 (1) The Ombudsman must be appointed for a term ending on the date:

- (a) a person is appointed to the office of Ombudsman following the next general election;
- (b) the Ombudsman resigns by submitting a written notification of their resignation to the Chair; or
- (c) they are removed from their office in accordance with section 12 of this Act.

(2) A person appointed as the Ombudsman may be re-appointed to the office of Ombudsman.

Oath of office

8 Before beginning their duties under this Act, the Ombudsman must take an oath of office that they will faithfully and impartially perform their duties and not divulge any confidential information received by them in the context of their duties, except in accordance with this Act.

Remuneration

9 (1) The Ombudsman is entitled to be remunerated at a rate set by the Citizens' Council.

(2) The Citizens' Council must determine the remuneration of the Ombudsman after considering a report on remuneration prepared by the Senior Executive Officer of persons having similar authority and responsibility elsewhere in Canada.

(3) The Ombudsman must be reimbursed for reasonable expenses incurred in performing their duties.

Acting Ombudsman

10 As soon as practicable after being appointed, the Ombudsman must designate an employee of the Otipemisiwak Métis Government who is a Citizen as acting Ombudsman to fulfill the duties of the Ombudsman in the event:

- (a) the Ombudsman is temporarily unable to fulfill their duties;

- (b) the Ombudsman is in a conflict of interest; or
- (c) of a vacancy in the office of the Ombudsman.

Suspension

11 (1) The Judicial Branch may order that the Ombudsman be suspended from their office if:

- (a) the Ombudsman is subject to an investigation under an Otipemisiwak Métis Government Law, for no longer than the duration of the investigation; or
- (b) the Ombudsman breaches an Otipemisiwak Métis Government Law that provides for the Ombudsman's suspension.

(2) Subject to an order of the Judicial Branch, the Ombudsman must cease all duties and activities related to their office during a suspension.

Removal

12 (1) The Ombudsman's appointment is automatically revoked, and their office is vacant if the Ombudsman is no longer a Citizen.

(2) The Citizens' Council may, by special resolution, revoke the Ombudsman's appointment for cause or incapacity.

(3) The Judicial Branch may order the Ombudsman be removed from office if:

- (a) the Ombudsman breaches an Otipemisiwak Métis Government Law that provides for the Ombudsman's removal;
- (b) the Ombudsman is convicted of an offence under the *Criminal Code* during their term; or
- (c) causes a child to be in need of intervention within the meaning of the *Child, Youth and Family Enhancement Act*, RSA 2000, c C-12.

Vacancy

13 In case of a vacancy in the office of the Ombudsman, the Citizens' Council must appoint a person as the Ombudsman no later than 30 days following the vacancy.

OFFICE OF THE OMBUDSMAN

Office of the Ombudsman

14 (1) The Office of the Ombudsman is hereby established.

(2) The Ombudsman must:

(a) administer and manage the Office of the Ombudsman and the general business of the Office; and

(b) oversee and direct the staff of the Office of the Ombudsman.

Staff of the Office of the Ombudsman

15 The Ombudsman may employ such employees that the Ombudsman considers necessary for the Ombudsman to exercise their powers and perform their duties effectively, including independent legal counsel to assist the Ombudsman in the performance of their duties under this Act.

Official Languages of the Otipemisiwak Métis Government

16 The Office of the Ombudsman must, upon request from a Citizen, take measures to provide the Citizen with the services of the Office of the Ombudsman in any official language of the Otipemisiwak Métis Government.

Delegation of powers

17 The Ombudsman may delegate, in writing, to any staff of the Office of the Ombudsman any of the Ombudsman's powers under this Act except the power of delegation under this section and the power to make a report and recommendation under sections 34 and 35 of this Act.

Confidentiality

18 The Ombudsman and staff of the Office of the Ombudsman must maintain confidentiality in respect of all matters that come to their knowledge in the exercise of their duties under this Act, except that the Ombudsman may disclose in a report any matters that in the Ombudsman's opinion ought to be disclosed to establish the grounds for the Ombudsman's recommendation.

Financing of operations

19 The Citizens' Council must ensure that the Office of the Ombudsman is allocated the funds required for the Ombudsman to perform their duties under this Act.

Annual report

20 Within 60 days following the end of each fiscal year, the Ombudsman must submit a report to the Citizens' Council on the Ombudsman's activities and operations during the preceding fiscal year. The Ombudsman or other designated person must present that report at the following Citizens' Gathering.

AUTHORITY OF THE OMBUDSMAN

Authority of the Ombudsman

21 (1) The Ombudsman has the authority to:

- (a) investigate complaints;
- (b) mediate disputes;
- (c) make recommendations to the Otipemisiwak Métis Government or any Institution regarding possible resolutions of complaints;
- (d) dismiss complaints; and
- (e) perform any other duty assigned to them under an Otipemisiwak Métis Government Law or regulation.

(2) The Ombudsman may become involved in public education for the purpose of informing the public about the powers and duties of the Ombudsman and the *Code of Ethics Act*.

(3) The Ombudsman has all the powers necessary to perform their duties under this Act.

Jurisdiction of the Ombudsman

22 The Ombudsman may investigate any actions, inactions, or decisions by:

- (a) the Otipemisiwak Métis Government or an Institution with respect to a matter of administration; or
- (b) elected leadership, officers, or employees of the Otipemisiwak Métis Government or an Institution in the exercise of any power or duty conferred on such persons by Otipemisiwak Métis Government Law.

Restriction of jurisdiction

23 (1) The decisions of the Judicial Branch are not reviewable by the Ombudsman.

(2) The Ombudsman may not investigate an action, inaction, or decision:

- (a) of a person acting as a legal counsel to the Otipemisiwak Métis Government or an Institution;
- (b) in respect of which there is under an Otipemisiwak Métis Government Law a right to apply for a review:
 - (i) until after that right has been exercised; or

(ii) until after the time limit for the exercise of that right has expired, except if the Ombudsman is satisfied that it would have been unreasonable to expect the complainant to exercise that right.

Question of jurisdiction

24 If a question arises about the Ombudsman's jurisdiction to investigate a complaint under this Act, the Ombudsman may apply to the Judicial Branch for an order determining the question of jurisdiction.

PART III: COMPLAINT PROCEDURE

Initiating a complaint

25 The Ombudsman may initiate an investigation on:

- (a) a complaint under section 26 of this Act;
- (b) the Ombudsman's own initiative; or
- (c) a referral by the Citizens' Council, District Council, Citizens' Gathering, the Judicial Branch, an officer, or an Institution.

Complaint

26 A complaint submitted to the Ombudsman must:

- (a) be in writing;
- (b) set out the nature of the complaint;
- (c) include the complainant's name, contact information, signature, and the date; and
- (d) be completed in accordance with any policies or prescribed forms issued by the Office of the Ombudsman.

Refusal to investigate

27 (1) The Ombudsman may refuse to investigate a complaint if:

- (a) having regard to any and all information or related evidence, further investigation is not necessary to consider the complaint;
- (b) if it relates to any actions, inactions, or decisions of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman;
- (c) the complaint is frivolous, vexatious, not made in good faith, or concerns a trivial matter;

(d) the complainant does not have a material interest in the subject matter of the complaint;
or

(e) the complaint is abandoned.

(2) The Ombudsman must refuse to investigate a complaint if the subject matter of the complaint is beyond the Ombudsman's jurisdiction.

(3) The Ombudsman must provide written notice to the complainant of the Ombudsman's refusal to investigate under subsection (1) stating their reasons for the refusal.

Notice and submissions

28 (1) Before investigating a complaint under this Act, the Ombudsman must notify the parties, and any other person the Ombudsman considers appropriate, of the Ombudsman's intention to investigate.

(2) At any time during or after an investigation, the Ombudsman may consult with the Otipemisiwak Métis Government authority to attempt to settle the complaint.

(3) On the request of the Otipemisiwak Métis Government authority, the Ombudsman must provide the Otipemisiwak Métis Government authority with an opportunity to make submissions and provide information before the Ombudsman forms a final opinion respecting the matter being investigated.

Conduct of investigation

29 (1) Every investigation under this Act must be conducted in private unless the Ombudsman is satisfied that special circumstances exist in which public knowledge is essential to further the investigation.

(2) During an investigation, the Ombudsman may:

(a) make inquiries and receive and obtain information from any person, and in any manner, that the Ombudsman considers appropriate;

(b) summon and examine, under an oath prescribed by the Ombudsman, any Citizen, elected official, officers, or employees of the Otipemisiwak Métis Government or an Institution that the Ombudsman believes can give information relevant to an investigation;

(c) receive and accept, under oath or otherwise, evidence the Ombudsman considers appropriate, whether or not that evidence would be admissible in a court;

(d) after giving an authority a reasonable notice, enter any premises occupied by an Otipemisiwak Métis Government authority, talk in private with any person on the premises, and otherwise investigate;

(e) require a person to provide information or produce a document or thing relevant to an investigation in any Citizen, elected official, officer, or employee of the Otipemisiwak Métis Government or Institution's possession or control that relates to an investigation, whether or not that person is a past or present Citizen, elected official, officer, or employee of the Otipemisiwak Métis Government or an Institution; or

(f) take possession of any document or thing and make copies of information provided or a document or thing produced under this section.

Opportunity to make representations

30 (1) If the Ombudsman determines that sufficient grounds exist to make a report or recommendation, the Ombudsman must, before deciding the matter:

(a) inform the parties of the grounds; and

(b) give the parties the opportunity to make representations, either orally or in writing, at the discretion of the Ombudsman.

(2) The Ombudsman may hold hearings at the Ombudsman's own discretion.

(3) If the Ombudsman holds a hearing under this section, the Ombudsman must offer the parties the same opportunity to be heard.

Representation

31 (1) A party or a person summoned and examined by the Ombudsman under section 29 of this Act may be represented by any person, including a lawyer, at their own expense.

(2) A non-lawyer representative must take an oath prescribed by the Ombudsman before representing a party.

Evidence at investigation

32 (1) Subject to subsection (2), 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 in a proceeding in a court.

(2) 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, thing or the disclosure of the matter to the Ombudsman.

(3) Except in a proceeding for perjury or for an offence under this Act, evidence given by a person in an investigation under this Act and evidence of the existence of the investigation is inadmissible against that person in a proceeding before the Judicial Branch or in any other proceeding of a judicial nature.

Mediation

33 On consent of all parties, the Ombudsman may attempt to resolve the complaint through mediation or any other alternative dispute resolution procedure.

Report

34 (1) If, on completing an investigation, the Ombudsman determines that the complaint has not been substantiated, the Ombudsman must, as soon as practicable, notify, in writing, the parties of the decision and the reasons for the decision.

(2) If, on completing an investigation, the Ombudsman determines that one of the following circumstances exists, they must report that determination and the reasons for that determination in writing to the Otipemisiwak Métis Government authority:

(a) the action, inaction, or decision that was the subject matter of the investigation is:

(i) contrary to Otipemisiwak Métis Government Law;

(ii) unjust, unreasonable, oppressive, or improperly discriminatory;

(iii) made, done, or omitted under an Otipemisiwak Métis Government Law or other rule of law or practice that is unjust, unreasonable, oppressive, or discriminatory;

(iv) based wholly or partly on a mistake of law or fact or on irrelevant grounds or considerations;

(v) related to the application of arbitrary, unreasonable, or unfair procedures; or

(vi) otherwise wrong;

(b) in taking an action, inaction, or making decision, the Otipemisiwak Métis Government 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 by the Otipemisiwak Métis Government authority in dealing with the subject matter of the complaint.

Recommendation

35 In making a report pursuant to section 34 of this Act, the Ombudsman may recommend that:

- (a) a matter be referred to the Otipemisiwak Métis Government 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 Otipemisiwak Métis Government enactment be reconsidered; or
- (h) any other steps be taken.

Procedure after recommendation

36 (1) If a recommendation is made under section 35 of this Act, the Ombudsman may request that the Otipemisiwak Métis Government authority respond to the Ombudsman:

- (a) within a specified time, regarding the steps that were taken or are proposed to be taken by the authority to give effect to the recommendation; or
- (b) if no steps are proposed to be taken by the authority, regarding the reasons for not following the recommendation.

(2) On receiving a recommendation under section 35 of this Act, the Otipemisiwak Métis Government authority may:

- (a) reconsider a decision or action made by the Otipemisiwak Métis Government authority or an elected official, officer, or employee; and
- (b) quash, confirm, or vary that decision or action or any part of it.

(3) For greater certainty, the Otipemisiwak Métis Government authority's response to the Ombudsman's recommendation is not subject to appeal.

(4) If, within a reasonable time after a recommendation is made under section 35 of this Act, no action is taken that in the opinion of the Ombudsman is adequate or appropriate, the Ombudsman may, after considering any reasons given by the Otipemisiwak Métis Government authority under subsection (1), submit a report to the Citizens' Council or a District Council, as appropriate, on the Ombudsman's recommendation.

(5) The Ombudsman must inform the complainant within a reasonable time of the recommendation under section 35 of this Act.

PART IV: APPEALS

Review of Ombudsman decision

37 (1) No proceeding of the Ombudsman is invalid because of any defect in form or technical irregularity.

(2) No proceeding or decision of the Ombudsman may be reviewed by or appealed to the Judicial Branch or to any court except on the grounds of:

(a) lack of jurisdiction; or

(b) violation of the principles of procedural fairness or natural justice.

(3) A party must file an appeal under subsection (1) with the Judicial Branch no later than 30 days following the date of the notice of the Ombudsman's decision that is being appealed.

PART V: CONTRAVENTION

38 (1) A person contravenes this Act if they:

(a) willfully obstruct, hinder, or resist the Ombudsman or any other person in the exercise or performance of their duties under this Act;

(b) refuse or willfully fail to comply with any requirement of the Ombudsman or any other person pursuant to this Act;

(c) willfully make any false statement to, or mislead or attempt to mislead, the Ombudsman or any other person in the exercise or performance of their duties under this Act;

(d) violate an oath taken under this Act; or

(e) without lawful justification or excuse, evict, discharge, suspend, expel, intimidate, coerce, impose a financial or other penalty on or otherwise discriminate against a person because that person has, in good faith:

(i) made or attempted to make a complaint;

(ii) assisted another person in making or attempting to make a complaint; or

(iii) given evidence or otherwise co-operated in an investigation under this Act.

(2) If the Judicial Branch determines that a person contravened this Act, the Judicial Branch may impose sanctions in accordance with the *Judicial Branch Act*.

PART VI: GENERAL

Immunity

39 No proceedings lie against the Ombudsman, staff of the Office of the Ombudsman, or a person acting for or under the Ombudsman's direction, for anything done, or omitted to be done:

- (a) in accordance with Otipemisiwak Métis Government Law; and
- (b) in good faith in the exercise or performance or the intended exercise or performance of a power, duty, or function under this Act.

Non-compellability

40 The Ombudsman, any employee of the Office of the Ombudsman, or any person acting under the authority of the Ombudsman is not competent or compellable to give evidence before the Judicial Branch, or in any court or in any proceeding of an administrative, judicial, or quasi-judicial nature, with respect to anything coming to that person's knowledge in the exercise or performance of that person's powers and duties under this Act.

Powers to make regulations

41 The Cabinet may make regulations it considers necessary or advisable for the purposes of this Act, including:

- (a) the expenses to which a person examined by the Ombudsman under this Act may be entitled; and
- (b) the reimbursement of expenses a person incurs as a result of complying with a request of the Ombudsman for production of documents or other information.

Commencement

42 This Act comes into force on the date the Constitution comes into force.

