



ombud

NEW BRUNSWICK • NOUVEAU-BRUNSWICK

Overview of the Office of the Ombud for New Brunswick

Presentation to the Standing Committee on Procedure, Privileges
and Legislative Officers

February 8, 2024

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Introduction

What is an ombud?

In New Brunswick, the Ombud is:

- An independent officer of the Legislative Assembly
- An impartial specialist in dispute resolution who:
 - receives complaints from the public involving public sector organization or those that may hold personal health information
 - attempts to resolve these complaints informally when possible
 - conducts investigations
- Our services are free and confidential

Did you know?

New Brunswick was the **second province in Canada** to create and appoint a provincial Ombudsman in **1967**.

An institution protected by international conventions

Venice Principles (2019)

- *“Principles on the Protection and Promotion of the Ombudsman Institution”* adopted by the Venice Commission of the Council of Europe
- Set a global standard to define, promote and protect the role of ombudsman institutions in strengthening democracy and promoting fundamental rights

UN Resolution (2020)

- Most recent version of the United Nations *“Resolution on the Role of the Ombudsman and Mediator Institutions”* adopted by the UN General Assembly
- Endorses the Venice Principles and key principles of ombudsman institutions, including: independence, objectivity, transparency, fairness, and impartiality



Our mandates

Our current mandates

Ombud NB has a broad jurisdiction in four main areas under six different Acts:

- Administrative Fairness (*Ombud Act*)
- Information and Privacy (*Right to Information and the Protection of Privacy Act, Personal Health Information Privacy and Access Act, Archives Act*)
- Wrongdoing (*Public Interest Disclosure Act* - also known as whistleblower legislation)
- Favouritism (*Civil Service Act*)

Administrative Fairness

Ombud NB receives and investigates complaints from individuals who have had difficulty or feel they have been treated unfairly in their interactions with public authorities. The Ombud's role is to ensure fairness in administrative processes and policies.

Information and Privacy

Ombud NB receives and investigates complaints involving public bodies or health care providers. Complaints may come from individuals who are not satisfied with the responses they have received concerning certain types of requests for information, or if they think their personal information and/or personal health information may have been mishandled. Ombud NB receives certain notifications by public bodies or custodians of personal health information, and reviews other types of requests made by public bodies to the Ombud. Ombud NB is also responsible for reviewing whether someone should be granted access to certain public records held in the Provincial Archives.

Wrongdoing

Ombud NB has the authority to investigate complaints from current employees of the public service respecting matters that are potentially unlawful, dangerous to the public or injurious to the public interest.

Favouritism

Ombud NB may investigate allegations of favouritism made by unsuccessful candidates in the hiring process for appointments to the civil service.



Our jurisdiction

Who we can investigate

Our Office can respond to enquiries, facilitate the resolution of issues and conduct investigations involving public sector organizations, such as:

- provincial government departments
- agencies, boards and commissions responsible to the provincial government
- local governments
- district education councils and school districts
- community colleges
- regional health authorities
- universities (for access to information and privacy complaints only)
- custodians of personal health information (for personal health information complaints only)

Who we can't investigate

Our Office does not have the authority to investigate complaints concerning:

- judges and the courts
- the federal government or its agencies (including the RCMP)
- private companies and individuals
- members or officers of the Legislative Assembly



Our Vision, Mission and Values

Our Vision

We are agents of positive change.

Ombud NB serves as a path towards a public sector where...

- people are treated fairly
- information is shared appropriately
- the public service is protected from favoritism and wrongdoing





OUR VISION, MISSION, AND VALUES

Our Mission

We help find solutions.

Ombud NB assists people and public sector organizations with their concerns by conducting impartial investigations, making recommendations, and providing guidance to ensure people are treated in a consistent, fair and reasonable manner and that their rights to information and privacy are protected.

Our Values

We are independent, impartial, and responsive.

Ombud NB strives to live up to the following values in the accomplishment of our work:

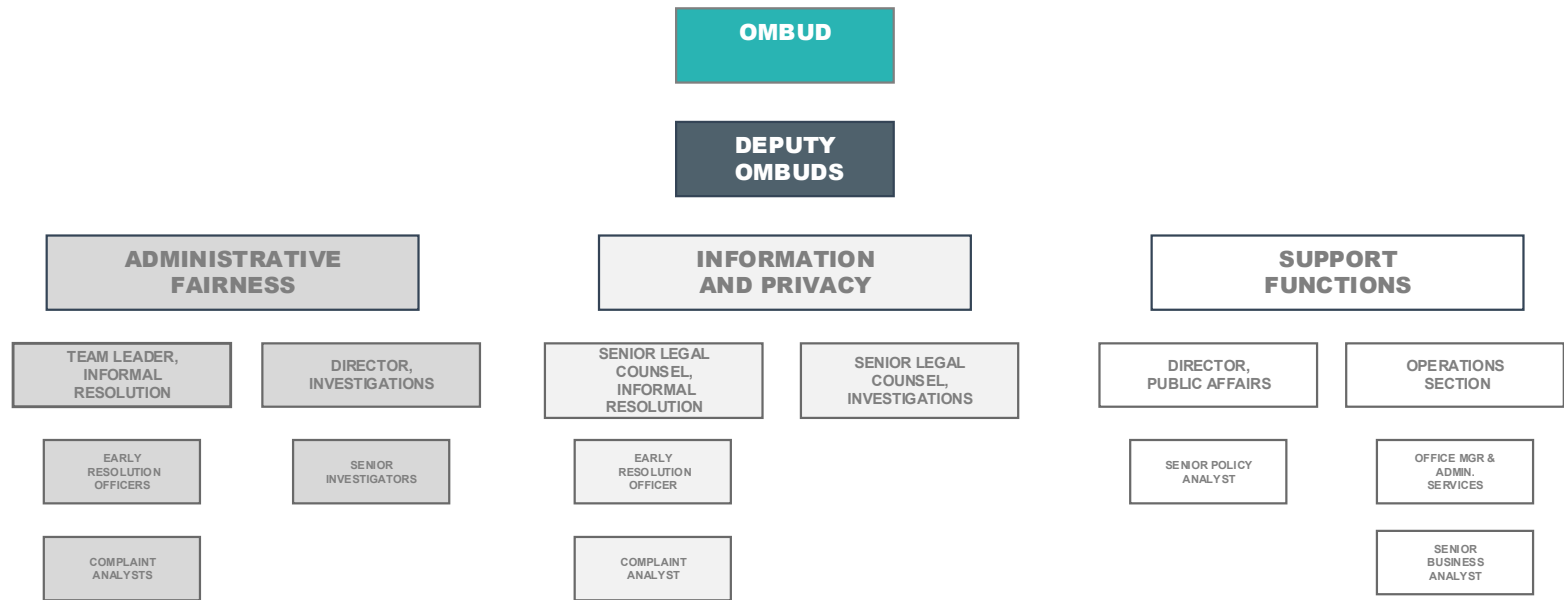
- Confidentiality
- Fairness
- Impartiality
- Independence
- Respect





How we work

Organizational chart



Administrative Fairness Section
 Responsible for complaints and investigations under the *Ombud Act* and *Civil Service Act*. Assists with complaints under the *Public Interest Disclosure Act*.

Information and Privacy Section
 Responsible for complaints, notifications, investigations or audits under the *Right to Information and Protection of Privacy Act*, the *Personal Health Information Privacy and Access Act* and the *Archives Act*. Assists with complaints under the *Public Interest Disclosure Act*.

Public Affairs Section
 Responsible for communications, awareness, outreach, public education, strategic planning, and policy analysis.

Operations Section
 Responsible for administration services, business processes and case management systems.

How we work

Our objective is to try to resolve complaints informally and as early as possible.

We believe everyone benefits from a complaint process that is genuinely geared to finding practical solutions to resolve the problems people have encountered.

The complaint process will go through different stages that may include:

- Initial assessment
- Informal resolution
- Investigations
- Recommendations
- Reports

Initial Assessment

The initial assessment is also known as the Intake or Early Resolution stage.

At this stage, an **Early Resolution Officer (ERO)** will:

- screen and respond to general inquiries
- determine if our Office has the authority to respond to the complaint
 - if not, the ERO will assist the complainant in finding the places where they might get additional help
- determine if the complainant has other recourses available to them such as appeals processes, human rights commission etc.
 - if so, the ERO will refer the complainant to those sources
- when the ERO determines that our Office is the best place for a complainant to get help, they will begin to attempt to resolve the complaint



Informal resolution

If a complaint cannot be easily resolved or if the issues are complex, the file will be escalated for further analysis.

At this stage, a **Complaint Analyst (CA)** will:

- conduct more in-depth analysis of the complaint, such as:
 - gather more information from the complainant and/or the organization involved
 - review documentation (legislation, standards, policies, procedures, correspondence, reports etc.)
- identify and facilitate opportunities to continue to attempt to resolve the complaint



Investigations

- If a complaint cannot be resolved informally, the Ombud *may* decide to proceed with a formal investigation of the complaint.
- Unresolved complaints do not automatically result in investigations.
- The Ombud will consider a number of factors before proceeding with an investigation, such as but not limited to:
 - does the complaint involve a number of people or organizations
 - are the issues serious in nature
 - do they point to a systemic issue, pattern or trend
 - do they involve a new legal interpretation of an issue (especially for right to information or privacy complaints)
 - more information, representations from the parties or analysis are required



Investigations process

When the Ombud decides that an investigation is warranted, they must advise the head of the public sector organization(s) involved. The complainant is also informed of the investigation.

At this stage, a **Senior Investigator (SI)** will:

- develop an investigation plan
 - determine the additional information required and conduct additional research
 - determine if interviews are warranted and conduct those interviews
 - report back to the Ombud on the progress and potential outcomes for the investigation
-
- Depending on the nature of the investigation, the Ombud may participate in one of more steps in the investigation.

Recommendations

- Once an investigation is completed, the Ombud determines if formal findings and recommendations may be required.
- Recommendations could include:
 - changes to policies or procedures
 - disclosure of records and/or measures to protect information
 - improvements to communications with the public or other organizations
 - adopting generally accepted best practices in other provincial organizations or other jurisdictions
- The Ombud does not have the power to force public organizations to comply with their recommendations, but most respond favourably to them.

Consider this...

“The inability to force change may be the central strength of the office. It requires that its recommendations be based on a thorough investigation of all facts, scrupulous consideration of all perspectives and vigorous analysis of all issues. This application of reason produces results that are more powerful than could be achieved through coercion. A coercive process may produce reluctant change in a particular instance, but it creates a “loser” who will be unlikely to embrace change in the future. By contrast, change that results from a reasoning process changes a way of thinking and the result endures, to the benefit of future users.”

Stephen Owen, former BC Ombudsman

Reports



- While all investigations are conducted on a confidential basis, in certain circumstances, the Ombud **may** decide to publish the results of an investigation in a public report.
- Any public report **will not** disclose the identity of the complainant(s) or details that could identify them.
- The reasons for making a public report may include:
 - recommendations have been issued as a result of an investigation
 - other organizations may benefit from the lessons learned through the investigation
 - it is in the public's interest to be informed of the results of the investigation
 - the investigation resulted in a new legal interpretation of an issue (especially for right to information or privacy complaints)

Other types of work

- While our office’s main focus is to resolve individual complaints, the Ombud also has the authority to conduct other types of work, such as:
 - “own motion” investigations: these are initiated directly by the Ombud and not as a result of an individual complaint
 - compliance audits: this involves measuring whether organizations are complying with their privacy obligations under certain legislation
 - monitoring: this involves examining whether an organization has implemented the recommendations made following an investigation or audit
 - awareness, outreach and public education: this involves reaching out to the general public, stakeholders and public sector organizations to make sure they are aware of our office’s services and to share our office’s expertise in certain areas



Ombud NB by the numbers

Financial and human resources information

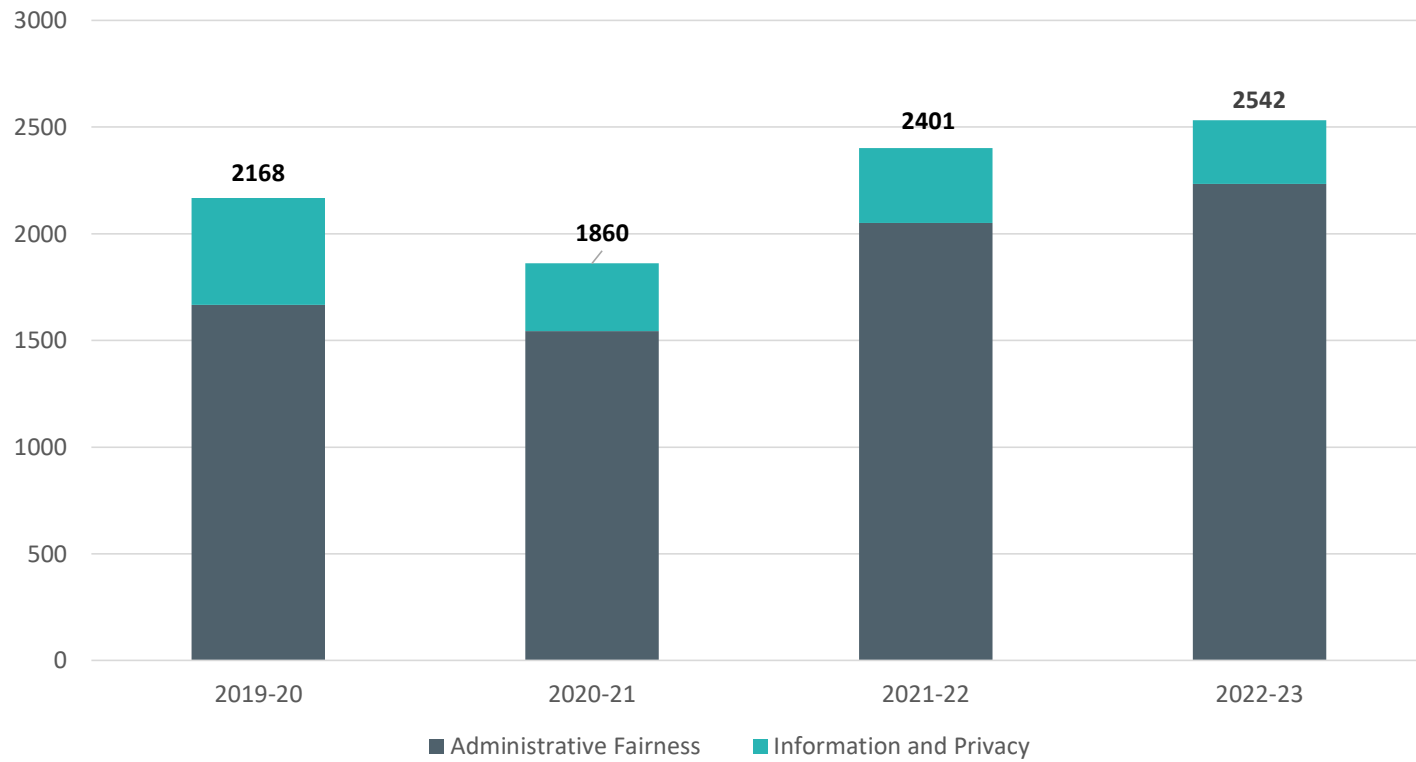
2021-2022

- Budget = 1,712,000\$

2022-2023

- Budget = 1,858,000\$
- Number of employees = 19

Total Number of New Files





Key initiatives and accomplishments to date

Strategic Objectives

In 2022, the office adopted its first Strategic Roadmap where it identified the main areas of focus it would pursue for the next three years, in keeping with the following four strategic objectives:

1. Mandate consolidation
 2. Improving services
 3. Improving awareness
 4. Knowledge-sharing
- At the end Year 1 (2022-2023), the Office had completed 26% of the action items identified in the plan; 16% were in progress; 26% were initiated; and 32% were not started.

Objective 1 - Mandate consolidation examples

- ✓ Develop new Vision, Mission and Values Statements
- ✓ Revise organizational structure
- ✓ Develop new position descriptions
- ✓ Assess classification levels
- ✓ Conduct comparative analysis of funding and workloads

Redressing chronic underfunding

In the Fall of 2022, an analysis of the office's funding levels and workload compared with other Ombuds' and Commissioners' offices in other provinces and territories, as well as other legislative officers in New Brunswick demonstrated that Ombud NB had been chronically underfunded for over a decade. This underfunding impacted the office's ability to fully fulfill certain of its roles and responsibilities (ex. timely investigations, privacy conformity audits, offence investigations, public education and outreach).

- The Legislative Administration Committee recommended a significant funding increase for our office, which was approved with the adoption of the provincial budget in March 2023
- The majority of the increase is committed to hiring several new positions: Deputy Ombud and General Counsel; Senior Investigator; Complaint Analyst; Director, Public Affairs; Senior Policy Analyst; Senior Business Analyst; among others
- This funding will allow us to improve our services and take a more proactive role in communicating information about our mandates

Objective 2 - Improving services examples

- ✓ Revise complaint forms
- ✓ Begin development of internal standardized processes and procedures
- ✓ Invest in employee training
 - annual professional development session
 - webinars
 - investigators conference
 - language training
- ✓ Internal performance targets

Eliminating the backlog of information & privacy files

Prior to 2022, an important backlog of files had accumulated in the Information and Privacy Section. Some files dated as far back as 2018.

- All files in the backlog (pre-2023) have been completed
- All active file inventory is current to the present fiscal year
- Quarterly tracking approach implemented where most files are expected to be completed within six months of receipt
- Working towards being able to meet all legislated deadlines consistently

Objective 3 - Improving awareness examples

- ✓ Revamp annual reports
- ✓ Update website with additional content
 - Information on all mandates more prominent
- ✓ Begin to conduct outreach activities
 - Site visits and meetings with officials in selected provincial correctional and health facilities
 - Right to Know Week workshop with RTI coordinators
- ✓ Begin preparation for 60th anniversary of the Office of the Ombud in 2027
 - Compilation of legislative debates and highlights from annual and other reports

Reports and Resources

We have been working on making information about our office more readily available to the public.

- All new and historical Reports of Findings (1995 to 2023) have been published on the CanLII website that provides access to court judgments and decisions by administrative bodies, with search functions
- Our new website contains links to publications and other resources from national and international organizations
 - Canadian Council of Parliamentary Ombudsman publications and podcasts
 - FPT Information and Privacy Commissioners joint statements

Objective 4 – Knowledge-sharing examples

- ✓ Moderated session at the assembly of the *Association des Ombudsmans et Médiateurs de la Francophonie*
- ✓ Delivered webinar through Canadian Council of Parliamentary Ombudsman webinar series
- ✓ Moderated session at the FPT Information and Privacy Commissioners Investigators Conference
- ✓ Participating in FPT IPC Health Information Working Group

RTIPPA legislative review

Our office produced a submission as part of the RTIPPA legislative review consultation process in the Fall of 2022.

- Conducted a jurisdictional scan of key provisions in right to information and privacy legislation in other provinces and territories to compare with NB legislation
- Submission contained 16 recommendations in three main areas:
 - Substantive amendments
 - Housekeeping amendments
 - Public policy issues
- We will continue to engage in discussions with OCIO and monitor the introduction of legislative amendments

Privacy considerations regarding Policy 713

Our office produced a submission as part of the Child and Youth Advocate's Review of Policy 713 consultation process.

- The submission provided an overview of privacy rights protection in New Brunswick legislation, the Canadian Charter of Rights and Freedoms and privacy rights of the child in international law, as well as provided an analysis of some of the privacy related questions emanating from Policy 713

Upcoming initiatives

- Continue to work on revising and documenting internal procedures to improve our processes and develop service standards for the office
- Develop a new case management system to improve data collection, reporting, and trend analysis
- Continue to refine our monitoring function to track implementation and compliance with recommendations issued as a result of our reports
- Develop an outreach strategy to improve awareness about our office
- Update existing guidance documents, develop new ones and continue to improve our ability to communicate information about our mandates in plain language



Questions?

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