



# FAIRNESS BY DESIGN:

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An Administrative Fairness  
Self-Assessment Guide



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# ROLE OF PROVINCIAL AND TERRITORIAL OMBUDSMAN/ OMBUDSPERSONS IN CANADA

In Canada, provincial and territorial Ombudsman and Ombudsperson Offices (“Ombuds”) are independent statutory bodies whose mandate is to

- ensure people are treated fairly by public bodies;
- promote fairness and accountability in public administration; and
- provide independent and impartial oversight of government services.

Ombuds offices fulfil this mandate by responding to complaints and enquiries from members of the public and by conducting investigations of complaints made about local and provincial public bodies. Ombuds offices are independent of government and act under the authority of provincial or territorial legislation.<sup>1</sup>

Independence, impartiality and confidentiality are key features of Ombuds work worldwide and differentiate our process from other types of reviews such as the public inquiry process or reviews undertaken by advocacy organizations.

The Office of the Ombudsman in Saskatchewan, Manitoba, Nova Scotia and Yukon and Ombudsperson in British Columbia developed this resource, *Fairness by Design: An Administrative Fairness Self-Assessment Guide*, for public bodies across Canada to use to build fairness into policies and processes from the start. If you need further information about how to use this guide, we encourage you to contact your provincial or territorial Ombuds office. This document will be updated periodically so please check back regularly to ensure that you are using the most up to date advice.

1. In British Columbia, this is the *Ombudsperson Act*; in Saskatchewan and Manitoba, *The Ombudsman Act*, in Yukon and Nova Scotia, the *Ombudsman Act*.

# FAIRNESS BY DESIGN: AN ADMINISTRATIVE FAIRNESS SELF-ASSESSMENT GUIDE

## ABOUT THIS PROJECT

How can you ensure that your public organization is delivering its programs and services in a fair and reasonable manner? The first step is to build fairness in from the start by designing systems to support fairness in decision making and service delivery.

Members of the public expect that government and the broader public sector will act in a fair, open and transparent manner when delivering public services and programs. There is also an expectation that public sector employees will be accountable to the people they serve by providing clear information and explanations for the decisions they make and actions they take.

Public bodies and their employees generally receive their authority and direction from legislation. To support and guide staff in exercising this authority, public bodies develop policies, procedures, rules and other guidance documents. These documents are typically the primary framework for administering public programs and services.

Because of the power that policies and other guidance documents have to affect peoples' rights, interests and privileges, it is important to build fairness in at the policy and program design stage to ensure services are delivered fairly. This guide is intended to assist public bodies in achieving this objective.

## WHAT IS THIS GUIDE?

This guide provides an opportunity for public sector organizations to proactively conduct a self-assessment to evaluate the fairness of its systems, policies and practices.

Self-assessment of fairness requires that public bodies critically examine both existing and proposed systems and policies, and take steps where needed to revise their processes to ensure that they are administratively fair.

The benefits of self-assessment are it

- Demonstrates a commitment to fairness, which can increase the public's confidence in government;
- Instills a sense of confidence in public sector employees that they are treating the people they provide services to fairly;
- May reduce the number of complaints received by the public body; and
- May enable public bodies to resolve issues more quickly and efficiently, saving time and money.

## HOW TO USE THIS GUIDE

Self-assessment of fairness is a continuous process. We encourage public bodies to consider using this guide when establishing new procedures, programs or policies, or when reviewing or enhancing existing programs. This guide can also be used to measure gaps and potential risks for the purpose of guiding future policy work. This includes the early stages through to the development of policy options, and on to final decision making.

The seven fairness standards in this guide, and their accompanying checklists, can be used by public bodies to ensure that their practices, policies and programs meet the fairness obligations set out in provincial and territorial Ombuds legislation, principles of administrative law and broader societal fairness standards.

For each fairness standard, we set out the specific criteria and responsibilities your public body should consider in order to meet that fairness standard. The checklists can be used to evaluate whether your program or service is meeting some, none or all of these fairness standards.

## WHAT IS FAIRNESS?

Although public sector employees may have an instinctive sense of what fairness is, it can be a difficult concept to define, and there are often different views of the requirements of fairness in any particular case.

In this guide, we focus on three aspects of fairness: Fair Process, Fair Decision and Fair Service, shown in the Fairness Triangle<sup>2</sup> below.

Each section of this guide describes one of these three dimensions of fairness and a subset of fairness standards that are consistent with Ombuds' expectations of administrative fairness in public service delivery.

As you apply the guide to your organizational framework, we invite you to think critically about the areas within your organization where gaps may result in unfairness, and use the checklists provided to help identify those gaps and seek improvement where needed.



2. The Fairness Triangle used in this guide was adapted from the Ombudsman Saskatchewan Fairness Triangle, developed 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.

# PART I: FAIR PROCESS

Fair process, also called procedural fairness, refers to the process public bodies follow when making decisions that directly affect people. It includes the steps public sector employees take before, during and after making decisions.

## FAIRNESS STANDARD I: PARTICIPATION

- ▶ Public bodies are responsible for ensuring there are pathways for people affected by a decision to participate meaningfully where the decision has the potential to affect their rights, privileges or interests.

**Ensure that your organization's decision making process provides opportunities for individuals to participate meaningfully when you are proposing actions or making decisions that affect them.**

**1.1 Advance notice of an action or decision**

This applies to actions or decisions that your organization routinely makes that have a direct impact on individuals. The details of the notice will depend on the nature of the decision and its potential consequences- the more serious the consequences, the more notice will generally be required. When notice periods are set by legislation, your policy must mirror the legislated notice period. Advance notice may not always be possible in more urgent circumstances, but must still be provided when required by law.

**1.2 Adequate information about the decision making process and criteria**

The decision making process and the legislation, policy and other rules being used to make the decision should be clearly explained to the person. This includes providing information necessary for the person to understand the nature of the decision being made and what information is required from them. The person should also be provided sufficient access to information the decision maker will be relying on to make the decision, particularly where it is adverse to their interests.

**1.3 Opportunity to be heard**

The person should have an opportunity to be heard in the decision making process. This includes an opportunity to present their views on the proposed action or decision and provide any supplemental or contrary information they believe is relevant to the decision. The scope of participation should reflect the importance of the issues involved, nature of the decision and potential impact on the person's rights, interests or privileges.

**1.4 Adequate appeal or review mechanism**

Ensure there are avenues available for people to challenge or seek a review of a decision that is adverse to them. Information about your organization's appeal or review process should be clearly communicated to the person at the time the decision is made, including any applicable time limits or other requirements for seeking review.

**Ensure that staff provide clear and meaningful reasons for decisions and consistently document the rationale for their decisions.**

**1.5 Document decisions**

Ensure that your organization has policies in place that require staff to record reasons for decisions, and your organization records these decisions in accordance with statutory obligations and/or organizational requirements.

**1.6** Ensure staff understand their delegated authority and document their decisions clearly, including information about how they reached their decision. This includes documenting what information they gathered and considered, any findings of fact they made and how they applied the rules to the information/facts to reach the decision. This also includes documenting how they weighed the evidence and relevant considerations in the decision making process, and why they may have assigned more weight to one piece of evidence or rejected certain information in reaching their conclusion.

**1.7 Communicate decisions**

Establish a consistent method for staff to communicate decisions to affected individuals, preferably in writing. The method of communicating decisions may vary depending on the nature of the decision and its impact on the person. However, in all cases, reasons for decisions should be communicated. For more information refer to the [BC Ombudsperson Fairness in Practice Guide](#).

**1.8** Develop template documents to assist staff in making and communicating decisions and for providing adequate reasons to people affected by these decisions. Reasons for decisions should include the following:

- The issue to be decided
- The facts and evidence considered
- The applicable law or policy
- An explanation of how the law or policy was applied to the facts
- The conclusion or decision reached
- Information about any review or appeal options

**1.9 Timely decision making**

Establish a clear and reasonable time frame in policy for your organization's typical decision making processes. The time frame may be set out in legislation. If not, it is best to set the expectation that staff will communicate a decision to an affected person as soon as is reasonably possible. If there is an unavoidable delay in the process, direct staff to advise the person of the reason for the delay and approximately when they can expect to receive the decision.

**1.10** Conduct regular education and training in procedural fairness, standards for documenting and communicating reasons, and other topics relevant to ensuring meaningful participation for those affected by your decisions.

## FAIRNESS STANDARD 2: INTEGRITY AND IMPARTIALITY

- ▶ Public bodies are responsible for ensuring that employees understand the requirement to be impartial and exhibit the highest standards of ethical conduct in the delivery of public programs and services.

### Ensure the impartiality of your organization's employees in the conduct of their duty. Public sector employees are expected to provide advice, deliver services and make decisions in a manner that is free from personal interest, preference or prejudice.

- 2.1** Establish a conflict of interest policy to prevent and manage perceived, potential and actual conflicts. Ensure that all employees in the organization periodically review and sign off that they understand the expectations with regard to declaring a conflict.
- 2.2** Develop a system for assessing and responding to concerns raised by the public about conflict or bias<sup>3</sup> on the part of staff who are delivering your services. Establish procedures for assessing, resolving and mitigating such concerns.
- 2.3** Ensure staff who make decisions in your organization receive training on impartiality and bias, and are aware of their obligations to assess, disclose and respond appropriately to issues of actual or perceived bias on their part.
- 2.4** Establish a review or appeals policy that ensures that an independent decision maker is assigned to conduct any review or appeal of a previous decision.

### Ensure that your organization has systems and policies in place that promote ethical and professional conduct by your staff and organization, and that these expectations are clearly communicated to all employees.

- 2.5** Develop and regularly review a code of conduct policy that sets out the expectations for ethical conduct in your organization and creates a shared understanding of the standards your staff are expected to apply in their work.
- 2.6** Train staff in the ethical standards that are expected in your organization, and ensure all employees in your organization review and sign off that they understand these standards of conduct.
- 2.7** Develop systems to identify, disclose, investigate, record and monitor any ethical concerns or incidents of ethical misconduct that may arise. Ensure these systems comply with Public Interest Disclosure legislation in your province or territory.
- 2.8** Commit to upholding the public's trust in your public body and its use of public funds. This includes having systems in place that mitigate the risk of loss due to fraud.

3. Bias is defined as "a leaning, inclination, bent or predisposition towards one side or another or a particular result" *Wewaykum Indian Band v. Canada*, 2003 SCC 45. Fairness requires that decision makers remain objective, be open to persuasion, and are impartial about both the issues to be decided and the parties to the case.

# PART 2: FAIR DECISIONS

As part of delivering programs and services, public sector employees make decisions every day that affect individuals. A decision is a result, outcome, action or response by a public body that affects one or more people or organizations.

## FAIRNESS STANDARD 3: JUST AND LAWFUL

- ▶ To ensure programs, services and decision making processes operate fairly, public bodies must establish rules that are fair and just. Public bodies must also ensure programs, services and decision making processes comply with the law.

**The rules that your program operates under must be fair and just. Rules include legislation, regulation, policy, procedures, practice standards, guidelines and codes. A fair and just rule is:**

**3.1 Lawful**

All rules, including policies, procedures and eligibility criteria must be consistent with the legislation your program or service operates under, including its intended purpose.

**3.2 Not arbitrary**

To be arbitrary is to make a decision randomly, based on personal opinion or preference, or without regard to rules or standards. Rules must provide a basis for decision making that is logical and understandable. When the legislation or policy clearly spells out a test to apply, it should be applied consistently by staff so that similar cases are treated in a similar way. Otherwise, decisions may be considered arbitrary and therefore unjust.

**3.3 Not oppressive or unreasonably burdensome**

A rule is oppressive if it overburdens a person seeking access to a process or legal entitlement, imposes unreasonable requirements on a person, is punitive or harsh, or results in an exercise of power by the public body that places the person at an unreasonable disadvantage – for example, setting unreasonable preconditions to access a legal entitlement where there is no legal or practical basis for imposing such a requirement.

**3.4 Not improperly discriminatory**

When delivering public programs and services, public bodies are often required to discriminate, in the sense of making distinctions, between different people. For example, student loan programs typically only provide funding to applicants who are registered in some form of post-secondary education. Making distinctions between people becomes *improperly* discriminatory when it distinguishes between people based on personal characteristics that are protected under human rights legislation (e.g. race, disability or religious belief), or when the distinguishing criteria is not reasonably required for the overall purpose of the public program or service.

### When drafting rules, ensure the following standards are met:

- 3.5** Ensure your rules are reasonable, fair and just. Seek legal, policy and any other advice as necessary to achieve this objective.
- 3.6** The policies and procedures for decision making processes must be consistent with the principles of procedural fairness as outlined in the previous section of this guide.
- 3.7** Rules or eligibility criteria set out in policy must not be more restrictive or burdensome than the governing legislative scheme.
- 3.8** Ensure there are no unreasonable preconditions or requirements that unnecessarily burden a person seeking access to your service or organization or a legal entitlement.
- 3.9** Ensure your policies and procedures are designed to be flexible and equitable. Fairness requires public bodies to recognize that people differ in their life circumstances and experiences. Rules should allow some flexibility for staff to consider individual needs when making decisions that impact a person's rights, interests or privileges.

### Ensure your program, service and decision making process complies with all federal, provincial and territorial legislation, as well as local bylaws.

- 3.10** Determine what legislation applies to your program or service and ensure your program's policies and procedures comply with these laws, including administrative law, human rights legislation and the *Canadian Charter of Rights and Freedoms*. If necessary, seek legal advice.
- 3.11** Ensure policies and procedures reference and explain the statutory framework that your program or service operates under. The authority for decision making should be clearly defined and linked to statutory authority.
- 3.12** Make sure your policies and procedures identify who has legal authority to make specific decisions or take certain actions within your organization. This includes ensuring there is a process in place for the proper delegation of statutory decision making power and making clear the scope and limits of that authority.

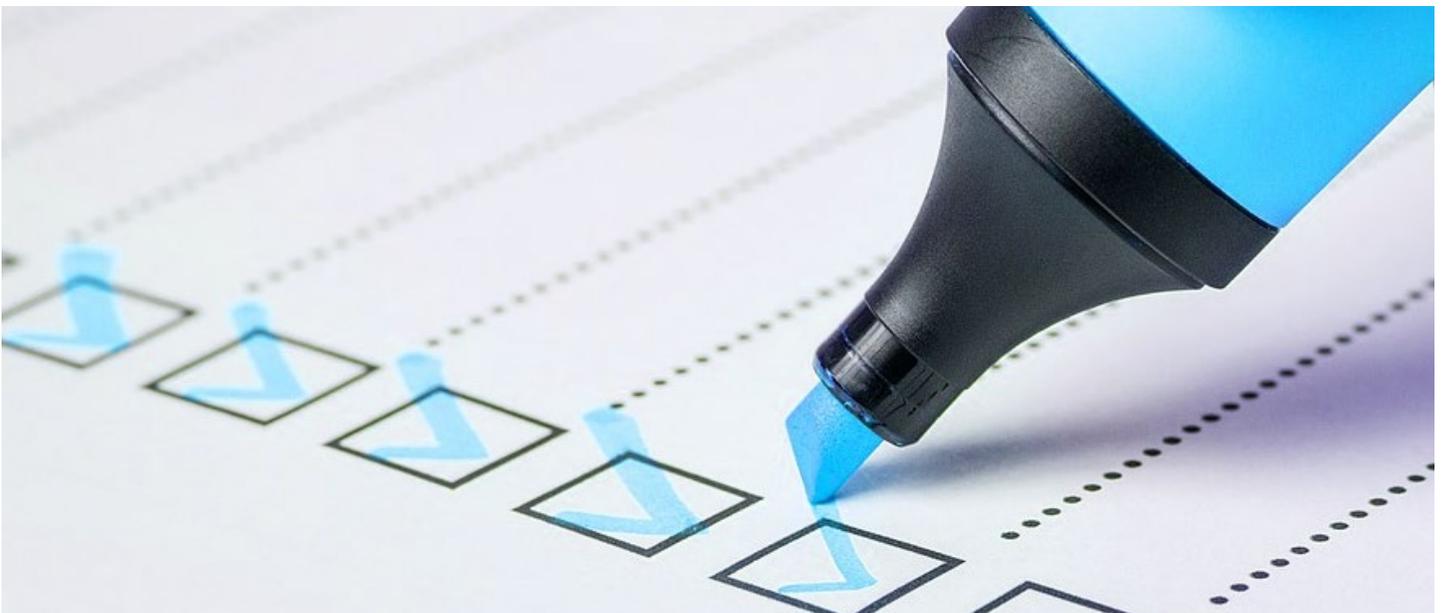


## FAIRNESS STANDARD 4: EQUITABLE

- ▶ To ensure fair decision making by staff, public bodies must establish processes that support decisions that are based on complete and relevant information, reflect an appropriate exercise of discretion, and reasonably consider the specific case and people's individual circumstances.

**For a decision to be fair, the decision maker must fully consider and decide each case on its own merits. Develop policy and other guidance documents that clearly set out and guide the decision making process for staff to follow, including:**

- 4.1** The applicable legislation, policy and other rules that must be followed, including the scope of staff's decision making power and how to act within this grant of authority. This includes providing information on how to interpret and apply the applicable rules.
- 4.2** The decision making steps to follow for the decisions your organization makes. This may take the form of a checklist and include the information required to make a decision, and how staff should gather this information.
- 4.3** Guidance on exercising discretion fairly and the requirement to decide each case on its own merits. Fairness requires discretion be exercised in good faith, based on relevant considerations and consistent with the applicable legislation and its intended purpose. Provide staff with guidance on how to consider individual circumstances, when exceptions to policy may be considered, and what information should factor into the exercise of discretionary power.
- 4.4** Establish a level of independence in decision making under policy that does not fetter or restrict the exercise of discretion and is not more rigid than the enabling legislation. Where applicable, expectations to seek supervision or consultation with senior staff should be identified in policy.
- 4.5** Develop guidelines for staff to follow when they determine the standard application of the policy would lead to an unreasonable or unfair result in a specific case.



# PART 3: FAIR SERVICE

Fair service, also called relational fairness, refers to how public bodies treat members of the public who access their programs and services. While public bodies must create and apply policy in a way that is consistent with applicable legislation and ensure a fair process is followed when making decisions that impact people, fairness also requires a public body attend to fair service.

## FAIRNESS STANDARD 5: ACCESSIBILITY

- ▶ Public bodies are responsible for ensuring their programs and services are easily accessible to a diverse range of people.

**Information relating to your organization's programs, policies and services should be made publicly available and written in accessible language that is easy for the general public to understand.**

- 5.1** Have information about your policies, programs and services clearly accessible on your website, including information about how to raise a concern about your organization. Your public information should clearly explain the strategic intent and key principles and objectives that underpin your programs and services. Ensure this information is accurate, complete, written in clear and understandable language, and kept up to date.
- 5.2** Develop other forms of literature and materials that explain your organization's services for people who do not have electronic access to such information (i.e., brochures, pamphlets, fact sheets). Keep in mind that individuals must be able to obtain information about your organization without unreasonable effort.
- 5.3** If decisions made by your organization can be appealed or challenged, the process for doing so should be clearly laid out on your website and in your other print materials.
- 5.4** Follow a plain language style guide to ensure your public body's communication is consistent, clear and easily understandable.

**Ensure your programs and services are accessible to a diverse range of people.**

- 5.5** Develop and implement a service model that incorporates accommodation standards and is accessible to a diversity of service users.
- 5.6** Offer access to your organization's services in a variety of ways, including online, in-person, by mail, fax and toll-free telephone line.
- 5.7** Ensure that translation and interpreter services are available to people who need it.
- 5.8** Minimize any unnecessary regulatory or administrative burdens associated with accessing your programs and services.
- 5.9** Create accessible, culturally safe and inclusive workspaces for your service users and staff.
- 5.10** Ensure your programs and services are designed in a manner that reflects and adheres to the governing principles in your province or territory relating to the Truth and Reconciliation Commission of Canada's *Calls to Action* and the United Nations *Declaration on the Rights of Indigenous Peoples*.
- 5.11** Conduct regular reviews of your organization's program and service delivery model to ensure you are addressing any barriers and providing an accessible service to the public.



## FAIRNESS STANDARD 6: PEOPLE-CENTERED

- ▶ Public bodies are responsible for training employees and establishing processes that ensure respectful treatment and fair consideration of peoples' needs and circumstances in the delivery of services and programs.

### Your organization must be responsive to the individual needs and privacy rights of people accessing your programs and services.

- 6.1** Ensure your public body sets clear expectations and standards for staff to treat the people accessing your service with courtesy and respect.
- 6.2** Set reasonable service delivery standards, including timelines for responding to an enquiry or concern, and ensure these standards are clearly communicated to staff and the public.
- 6.3** Set expectations that staff will keep people informed about the progress or status of their application, request or complaint.
- 6.4** Ensure your records management system reflects the privacy and information management laws in your province or territory. Make appropriate arrangements to secure and protect all personal information that is collected by your organization, and ensure staff are informed of the requirement to treat personal information of service users confidentially.

### Ensure staff are appropriately trained and supported to provide people-centered service. When drafting rules, ensure the following standards are met:

- 6.5** Hire front line staff who are skilled in customer service, and develop policies and procedures that empower staff to respond efficiently to enquiries, requests and complaints.
- 6.6** Direct staff to provide timely service and to explain the reason for any delay to the affected individual. Staff must take care to ensure any delay in providing a response does not create hardship for the person affected.
- 6.7** Conduct regular education and training in issues relating to people-centered service delivery, ranging from employee orientation to subsequent training activities. Training may include areas such as conflict resolution, respectful communication, dealing with vulnerable persons, cultural fluency, mental health and responding to challenging behavior.
- 6.8** Ensure staff receive training and education to develop an understanding of the service standards, rules and decision making processes they are expected to follow in their work.
- 6.9** Ensure any policy and procedure changes are clearly and immediately communicated to staff.

# FAIRNESS STANDARD 7: ACCOUNTABILITY AND CONTINUOUS IMPROVEMENT

- ▶ Public bodies are responsible for demonstrating accountability by developing a robust and accessible complaints process, and fostering a culture of ongoing quality review and continuous service improvement.

**Develop and advertise your complaint resolution policy and process, and encourage service users to provide feedback on your programs and services by establishing an organizational culture of welcoming complaints.**

## **7.1 Develop a complaint resolution policy that is clearly articulated, publicized and accessible to a wide range of people who need it. Include the following in the policy:**

- reason for the complaint resolution policy;
- definition of a complaint;
- guiding principles of the complaints process;
- standard timelines for responding to complaints;
- confidentiality of complaint information;
- safeguards against retribution; and
- reporting and review obligations.

## **7.2 Develop an effective, accessible and flexible complaints process that**

- explains how complaints can be made to your organization, and who is responsible for handling and responding to complaints;
- clearly delineates what is in scope and what is out of scope, if there are only certain matters that may be the subject of a complaint;
- uses forms that clearly indicate to people making a complaint what information they need to provide when lodging their complaint;
- ensures that complaints are acknowledged quickly, and responses are personal and specific to the issues the person raised;
- provides an opportunity for informal resolution;
- explains the typical time frames for resolution;
- provides a second chance and an opportunity for independent investigation/review;
- explains how anonymous complaints are handled;
- describes how complaints and outcomes will be recorded, and the types of remedies or outcomes that could reasonably be expected; and
- outlines any review mechanisms available if the person who made the complaint is not satisfied with the process or outcome of their complaint.

**Ensure that your public body demonstrates accountability by openly accepting responsibility for its mistakes, providing apologies where appropriate and committing to continuous quality and service improvement.**

- 7.3** Develop an apology policy that details the procedure to be followed and the events and circumstances in which the public body believes apologies should be given.
- 7.4** Include practical training to staff at all levels on the importance of apologies, and empower them by providing information about when and how to make an apology. For more information refer to the [BC Ombudsperson's Guide On Apologies](#).
- 7.5** Develop and implement a system for tracking complaints, reviews and appeals in order to capture feedback about your organization's systems and processes. Regularly review and share this complaint data internally with a view to seeking improvement in your organization's service delivery.
- 7.6** Conduct regular reviews of your public body's processes, including policy, procedures and guidelines to assess how everything is working. These reviews should include seeking the views of stakeholders on how well your program is operating and how it could be improved. Following each review, your public body should develop an implementation plan that identifies what actions are to be taken, by whom and under what timeframe.
- 7.7** Keep staff informed of your organization's new initiatives relating to its programs and services, including any policy or practice changes that result from a review of a complaint.





## BRITISH COLUMBIA

[www.bcombudsperson.ca](http://www.bcombudsperson.ca)



## QUÉBEC

[www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca)



## ALBERTA

[www.ombudsman.ab.ca](http://www.ombudsman.ab.ca)



## NEW BRUNSWICK

[www.ombudnb.ca](http://www.ombudnb.ca)



## SASKATCHEWAN

[www.ombudsman.sk.ca](http://www.ombudsman.sk.ca)



## NOVA SCOTIA

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## MANITOBA

[www.ombudsman.mb.ca](http://www.ombudsman.mb.ca)



## NEWFOUNDLAND AND LABRADOR

[www.citizensrep.nl.ca](http://www.citizensrep.nl.ca)



## ONTARIO

[www.ombudsman.on.ca](http://www.ombudsman.on.ca)



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