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1965

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THE OMBUDSMAN

STATE OF HAWAII
DEC 13 1995
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November 1965

Legislative Reference Bureau
University of Hawaii

TABLE OF CONTENTS

	<u>Page No.</u>
The Need for an Ombudsman in a Democracy.	1
Distinctive Features of the Ombudsman	2
The Swedish Ombudsman	6
The Danish Ombudsman.	10
New Zealand's Ombudsman	16
An Appraisal of the Ombudsman Institution	20
Transplantation in a State.	22
Footnotes . . .	24

Appendices

A. Act No. 203 of 11 June 1954 on the Parliamentary Commissioner for Civil and Military Government Administration [as amended by Act No. 205 of 11 June 1959 and Act No. 91 of 16 March 1960]	A-1
B. Directives for the Parliamentary Commissioner for Civil and Military Government Administration.	A-5
C. Parliamentary Commissioner (Ombudsman) Act of 1962	A-11
D. The Ombudsman's Rules 1962.	A-29
E. H. B. 3194, 1965 Session, State of Connecticut.	A-30
F. A State Statute to Create the Office of Ombudsman	A-41

THE OMBUDSMAN

The Swedish word "Ombudsman" has broad meaning which embraces almost any kind of deputy, such as a commercial representative, a trade union business agent, or a Member of Parliament.¹ The word "Ombudsman", however, is used herein to denote:

...a law officer, appointed by a national parliament for the task of supervising the activities of certain categories of public service and of public authorities. His main concern is with the rights and liberties of the citizens. The supervision of the activities under his control has, on the whole, the observance of the laws as its primary objective, not the general suitability of decisions.²

The Office of Ombudsman was first created by the Swedish Constitution Act of 1809. The Ombudsman was "elected by parliament to control the activities of, and prevent abuses by, public officials, and in particular to prevent the Crown from exercising undue influence over the judiciary."³

Thereafter, the Ombudsman institution was adopted by Finland in 1919, Denmark in 1954, New Zealand in 1962 and Norway in 1963.⁴ This paper attempts to present the need for an Ombudsman in a democracy, the distinctive features of the institution of the Ombudsman, the institution as it exists within the governmental framework of Sweden, Denmark and New Zealand, an appraisal of the institution, and the feasibility of transplanting such an institution in a state.

The Need for an Ombudsman in a Democracy

The need for an Ombudsman's Office in a democracy has been well stated by Professor Henry J. Abraham:

One of the significant and enigmatic problems of the governmental process in a democracy has been how best to protect the citizen against abuses of governmental power, as interpreted and exercised by its officials, high and low, civilian and military. Safeguards do exist, of course, yet they are at best limited. There are the courts, the civil servant's superiors, and the threat of political reprisal at the polls, but these are often unsatisfactory--the courts not readily accessible nor with jurisdiction over most complaints, the hierarchy often hard to reach and sometimes banded together against outsiders, and elections difficult or impossible to direct to the level of government where the abuse against the citizen commonly takes place. And the constantly expanding role of government in today's society and the increasing complexities of the governmental process have brought with them ever greater discretion on the part of a good many public officials, focusing rising attention on the need for some readily accessible, effective, knowledgeable "watch-dog" on behalf of the people.

No such watchdog institution exists in the United States today, either on a formalized or informal basis--although, in a manner of speaking, the individual congressmen's extra-legal "contact" role on receiving a constituent's complaint is somewhat similar. However, both individual legislators and congressional committees, which sometimes are thought to deserve the title of watchdog, operate on an entirely different basis both politically and institutionally. Our small sister-democracy of Denmark--following, in part, examples set by her fellow Scandinavian states of Sweden (1809) and Finland (1918)--has instituted such an arrangement within the recent past and has grown to accept and cherish it as an apparatus vital to a healthy relationship between the governed and the governing....⁵

Distinctive Features of the Ombudsman

The distinctive features of the Office of Ombudsman has been succinctly discussed by Stanley V. Anderson:

The term of office of an Ombudsman is the duration of a Parliament. He is appointed by each new Parliament, is eligible for indefinite reappointment, and, except in Finland, may be discharged by Parliament at any time, though no

Ombudsman has ever been removed prematurely. While the Ombudsman is responsible to the legislature, the latter may not interfere with his handling of any individual case.

A key characteristic of the Ombudsman is his accessibility to the public. Anyone may file a complaint simply by writing a letter. This privilege is especially important to those who have been deprived of their freedom in jails, hospitals, sanatoria, etc.

Another salient feature of the Ombudsman is the breadth of his discretion in deciding which cases to investigate. The Ombudsman will not, of course, exceed his authority by investigating complaints concerning agencies which are not under his jurisdiction, but he is the sole judge of his own competence. He may refuse to investigate complaints which have been made to him, and he may take up matters on his own volition in the absence of a citizen's complaint. The latter sometimes arise out of the Ombudsman's scheduled and unscheduled inspection tours of government agencies and institutions, or may simply come to his attention through newspaper accounts.

The third distinctive quality of the Ombudsman is that he may not directly change the results of cases which he investigates. That is to say, he does not sit as a court of appeals with power to reverse or alter decisions made below.

While the Ombudsman may not change an administrative decision, his investigation may result in changes made by others, through the action of a higher authority within the agency in question, or by appeal to an appropriate court, whether civil or administrative.

In addition to expressing his views on the merits of individual complaints, the Ombudsman may also inform an agency of improvements which he thinks the agency could make in its procedures. The agencies usually implement the Ombudsman's proposals, even though they are not bound to do so. Finally, the Ombudsman includes suggestions for remedial legislation in his annual reports to Parliament.

The functions of the Ombudsman, then, are both specific and general, retrospective and prospective. He comments on individual instances of past injustice, and offers changes in law and procedure which will

prevent their recurrence. By serving as a grievance commissioner, he lightens the load of the individual Member of Parliament who might otherwise spend considerable time mediating between constituent and bureaucracy. Of course, not every problem which a voter might bring to his congressman is amenable to intervention by the Ombudsman. Conversely, an aggrieved person is free to take his complaint elsewhere, even though it does fall within the Ombudsman's purview.

The genius of the Ombudsman idea is that the holder of the office has full authority to investigate and pass judgment, but no power to enforce. The effectiveness of the Ombudsman lies in the respect in which he is held, and in the general acceptance of the reasonableness of his views.

The staff of an Ombudsman office is quite small, comprising no more than a half-dozen attorneys. When the Ombudsman decides to investigate a case, he solicits a statement of facts and views from the authorities involved. Often, this statement alone is enough to permit a conclusion to be drawn. If necessary, however, the Ombudsman may use the courts to compel the production of evidence. When the investigation is completed, the Ombudsman notifies the parties of his opinion and his recommendations. No government employee is censured without having been given an opportunity to present his side of the case.

Drawing a composite picture, a national Ombudsman office might take up a thousand cases a year, the majority arising out of citizens' complaints. On their face, about half of these would be found to lack merit. The complainants would be so notified, with an explanation designed to help them understand the reason for the particular administrative decision. Of the remaining cases, half would be found to be without merit after investigation and the complainants similarly notified.

Roughly a quarter of the cases, then, would result in a finding in favor of the private citizen who had been adversely affected. Not all of these, however, would result in Ombudsman censure of an individual civil servant. In some cases, the Ombudsman might declare the injustice to have arisen out of improper agency regulations or procedures which the government employee was bound to implement. The Ombudsman would then recommend that the rules be changed.

In importance, the cases range from trivial to earthshaking. Even petty grievances are important to the persons holding them. On one occasion, for example, the Danish Ombudsman looked into the charge of a school mistress that a bus driver had been impolite when she asked him to enforce the rule against smoking. As a consequence, the driver apologized, and the managing director promised that the smoking regulations would be enforced. At the other extreme, the Danish Ombudsman investigated the Foreign Office to see if there was negligence in retaining a debt-ridden diplomat who later sold state secrets. Upon receipt of the Ombudsman's recommendations, the Government instituted new security regulations facilitating the exchange of information between the Foreign Office, the Ministry of Justice, and the Paymaster-General, and the Foreign Office tightened its policy on the assignment of impecunious officials. Between these extremes have been cases dealing with rent control, business licenses, taxation, pensions, arrest, detention, and freedom of expression.

Most civil servants do not resent the Ombudsman. Indeed, they appreciate having a forum before which unjustified complaints can be identified as such. Government employees also welcome the ferreting out of inefficient, rude or dishonest officials who, though a small minority, damage the reputation of all. Then, too, the bureaucrat finds it easier to explain his position to the Ombudsman than to citizens who may be less familiar with the workings of government, or to persons who may be emotionally wrought. Finally, government employees themselves are among those who may appeal to the Ombudsman, an opportunity which is especially appreciated in the lower echelons.

The reason for the upsurge of interest in the Ombudsman idea, then, is that it mitigates against the evils of bureaucracy. An enormous bureaucracy seems to be an inescapable concomitant of modern industrialized mass society. In remedying the marginal defects of public administration, the Scandinavian Ombudsman has proved to be effective, non-disruptive, inexpensive, and cumulative to pre-existing safeguards. Another stylish and functional Nordic export has begun to penetrate the world market.⁶

The Swedish Ombudsman

Government

The Swedish government consists of a Parliament (Riksdag) of two chambers, the King and the Council of State. The upper house of the Parliament consists of 151 members who are elected in 19 constituencies for 8 years, 1/8th being elected yearly by the town councils. The lower house consists of 232 members who are elected by the populace for 4 years.

The executive power is in the hands of the King, who acts under advice of a Council of State. The Council of State is headed by the Prime Minister and its membership consists of members of Parliament. All members of the council are responsible for the acts of the government. The ministries within the council are not administrative agencies. They prepare bills for Parliament, issue general directives, make higher appointments, but are not, as a rule, authorized to make individual administrative decisions.

The administration of justice is entirely independent of the legislative branch. Two functionaries, the Chancellor of Justice and the Attorney General, both royal appointments, exercise control over the administration of justice. There is a Supreme Court of Judicature, 6 high court districts and 153 district court divisions.⁷

Creation of Office, Method of Selection and Qualifications

The Office of Ombudsman was created by the Swedish Constitution Act of 1809. The constitutional provisions are supplemented by instructions passed by Parliament and approved by the King.⁸

The Ombudsman and his deputy are elected to four-year terms by a special committee of forty-eight members of the Parliament. The Ombudsman may either resign or be dismissed by Parliament at any time during his term of office.⁹

The qualifications for the Ombudsman are described in the Constitution as "known legal ability and outstanding integrity." Many prominent judges have been chosen to serve as Ombudsman.¹⁰

Jurisdiction

Prior to 1915, the Ombudsman had jurisdiction over civil and military matters. However, in 1915, a military Ombudsman was created and the military jurisdiction was thereby assumed by that official.¹¹ Presently, the Ombudsman supervises "the observance of laws and statutes as applied in all other matters by the courts and by public officials and employees" in accordance with instructions received from Parliament.¹² The responsibility of the Ombudsman, also referred to as "JO", is:

...to exercise general supervision over courts and civil servants to ensure observance of the law, the constitution, and letters of instruction; he is to investigate charges of illegality, negligence, or gross disregard of the interests of their service in the performance of official duties. He can institute proceedings against officials in the courts on any of these grounds. He is to pay particular attention to those offences which involve fraud or abuse of power or which impede the course of justice. If he finds, however, that an administrative or judicial fault has been committed without any unlawful intention he need do no more than ask that the offending decision be corrected.

If a case involves a member of the supreme court, or a cabinet minister, it has to be referred to the Court of Impeachment. The JO acts as prosecutor in the proceedings before the Court of Impeachment. If the Riksdag [parliament] orders proceedings to be taken against one of its own members, the JO is again responsible for the prosecution. If the Riksdag committee of finance or Revisoren should decide to prosecute the Riksbank or a central administrative agency, this is also undertaken by the JO.¹³

In 1957 the Ombudsman's jurisdiction was extended to municipal governments. There are, however, two major

areas of governmental activity which are not within his jurisdiction, to-wit: government corporations which are not considered to be organs of government under Swedish law; and the ministers who do not supervise the various administrative departments of the government.¹⁴

Procedure

The procedure followed by the Ombudsman has been described as follows:

There are two means by which matters may come to the attention of the Ombudsman. First, he pays particular attention, in the course of his inspections of courts, prisons, and administrative authorities, to all matters which concern deprivation of liberty; similarly, he may hear of abuses through the public press. Second, in addition to those matters which he investigates sua sponte, the Ombudsman obtains information from complaints by dissatisfied members of the public. According to the applicable instructions, these complaints must be in writing and, whenever possible, accompanied by appropriate evidence.

Once the Ombudsman decides to investigate a complaint, he seeks information from the responsible officials or calls on them to explain their actions. Officials in positions of superior authority are obliged to express their opinions of subordinates to the Ombudsman, and every official is under a duty to give the Ombudsman accurate information in answer to his requests. In case of refusal, the Ombudsman may prosecute the official and demand the imposition of a fine. On the basis of the information which he gleans in his investigations, the Ombudsman may prosecute an official whose conduct has been faulty, criticize the official either directly or in his report to Parliament, or take no action at all. The only limitation on the Ombudsman's choice of sanctions is that he cannot prosecute an official for any offense without first giving him a chance to explain his conduct.¹⁵

Powers

In carrying out his duties, the Ombudsman is authorized to sit in on the deliberations of any Swedish court or any administrative board, but he may not express his opinion on these occasions. He has access to the records of all courts, administrative boards, and public offices. He has power to inspect prisons, hospitals and like institutions.¹⁶

The Ombudsman serves as prosecutor in two types of cases: (1) prosecutor of actions of impeachment brought by the Constitutional Committee of Parliament against members of the Supreme Court, the Supreme Administrative Court, or the Council of State--a function he has not performed since 1853; and (2) a prosecutor of judges and officials other than members of the Council of State for fault--a function he exercises on his own initiative.¹⁷

By far the most important and most frequently used sanction of the Ombudsman is his power to comment on the conduct of public officials and judges. He may inform the official that certain actions were faulty but that he would withhold prosecution if the official agrees to take adequate measures to correct the fault or he may express condemnatory opinions in his annual report to Parliament thereby subjecting the public official to reprimand in an official document.¹⁸

Contributions

Jagerskiold states that the contributions of the Ombudsman are as follows:

On many occasions, the Ombudsman has been a pioneer in the field of civil rights, sometimes at the expense of having his prosecutions dismissed by the more conservative courts. Nevertheless, he has continued to lay special stress on the development of rules about freedom of assembly, speech, and press, and about access to public documents....

* * * *

The Ombudsman has kept up a constant defense of the rules guaranteeing personal security from abuse of the police power. Thus an illegal arrest is likely to lead to prosecution of the policeman. This concern for the individual extends to prisoners as well as to citizens-at-large.. .

The problems facing the Ombudsman during his 150 years in office have varied greatly, but his approach to them has remained a remarkably constant concern for the principles of legality and the rights of individuals.... The Ombudsman has worked continually to defend the integrity of the administration against abuses of official position for political ends--against, for example, political propaganda by clergymen and military officers, corruption, abuse of power for personal favors and gain, and the setting aside of the rules of evidence.¹⁹

The Danish Ombudsman

Government

The legislative power in Denmark is vested in the King and the Parliament (Folketing), jointly. The Folketing consists of one chamber of 179 members--135 members are elected by the method of proportional representation in 23 districts; 40 seats are divided among such parties which did not obtain sufficient returns at the district elections; 2 members are elected for the Faroe Islands; and 2 are elected for Greenland. The term of the legislature is for four years but the King has the power to dissolve the Folketing.

The executive power is vested in the King, who exercises his authority through the ministers. The ministers have free access to the house but can vote only if they are members. The ministers are individually and collectively responsible for their acts and, if impeached or found guilty, cannot be pardoned without the consent of the Folketing.

The judicial power is exercised by the courts. There are a Supreme Court, superior courts and tribunals.²⁰

Creation of Office, Method of Selection and Qualifications

In 1953, the Danish Constitution was amended to provide for the appointment by Parliament of one or two persons, not members of Parliament, to supervise the civil and military administration of the State. In 1954, the Ombudsman Act was passed and the King gave his assent. (See Appendices A and B) On March 29, 1955, Professor Stephan Hurwitz, an eminent professor of criminal law, was elected as the first Ombudsman.²¹

The Ombudsman is elected by Parliament after every general election (every 4 years) and may be reelected indefinitely. He may be dismissed at any time and another elected to his position. His powers stem from Parliament and he exercises control over the government services in behalf of that body.²²

The Ombudsman may not be a member of Parliament but he must be a graduate in law. He is compensated according to the salary scale of judge of the Supreme Court and may be granted an additional allowance. He may not engage in any other public or private employment without the consent of a special parliamentary committee. He engages his own staff. Presently, he has one deputy chief, one senior staff officer, three junior staff officers, all members of the legal profession, and necessary clerical employees.²³

Jurisdiction

The jurisdiction of the Ombudsman includes supervision of the civil and military services of the state including all central and local services, whether exercised by civil servants or not. Thus, members of the numerous administrative tribunals and regulatory commissions of the government are supervised although technically they are not civil servants. He also supervises the universities, other

institutions of higher education, cultural institutions, museums, the postal service and railways when operated by the State. His power extends to the supervision of government contract for goods and services.

The Ombudsman's jurisdiction does not extend to Parliament or the Courts of Law nor to the municipalities. Ministers, however, come under the supervision of the Ombudsman when they function as heads of the government departments.²⁴

Although the Ombudsman is elected by Parliament, it does not mean that he is subordinate to the legislature. The Act provides that he shall be independent of the Parliament in the exercise of his duties. Parliament may not order the Ombudsman to consider a case or to drop a case under consideration, nor can it dictate the outcome of any investigation by him. The only authority of Parliament, other than dismissing him, is the power to set general regulations regarding his functions.²⁵

The Danish Ombudsman differs from his Swedish counterpart in two important respects:

In two particulars, the scope of authority of the Danish Ombudsman differs substantially from that of the Swedish archetype. As a result of a theory of the independence of the courts, court personnel have been entirely excluded from the concern of the Danish Ombudsman, while in Sweden, control over certain court functions plays quite an important part in the office. On the other hand, the authority of the Danish Ombudsman does extend to the ministers, whose activities are beyond the competence of his Swedish counterpart. This difference is due to the fact that the Danish government, like most systems of central administration on the European continent, but unlike the Swedish one, has developed in as many hierarchical pyramids as there are ministers. The authority of the Danish Ombudsman would have been ineffective had the ministers been left outside his control, since a minister could always have insulated any matter from the Ombudsman's authority by making a decision or giving an order personally.²⁶

Procedure

The Ombudsman may take up any matter for investigation on his own initiative because of discussion in the press or as a result of his inspections of prisons or other institutions. Complaints may be lodged by any person (including civil servants directly to the Ombudsman), subject to the limitations that the complainant must state his name, that the complaint must be in writing and accompanied by evidence where this is possible and it must be filed with the Ombudsman within one year after the occurrence of the incident. The one-year limitation for complaints and the form of complaints are not as restrictive as it appears since the Ombudsman, through his wide discretion, may investigate on his own initiative.

The Act gives the Ombudsman wide discretion to decide whether a complaint affords sufficient grounds for the institution of an inquiry. The statute authorizes him to find that the complaint is immaterial, or without foundation but he must inform the complainant that he finds no reason to take any action in the matter.

The Act provides that the Ombudsman should inform the person or agency about which a complaint is registered as soon as possible after he has decided to consider the complaint on the merits unless the action is absolutely incompatible with an investigation of the matter. Normally, the inquiry is conducted in writing with little formality. Informal personal interviews with the parties is an important device. Both parties are given the opportunity to present their arguments and frequently the evidence of one party is submitted to the other for comment.²⁷

Since Danish law provides citizens with a general right to bring decisions of subordinate government authorities before higher authorities, the ultimate agency of appeal

normally being the competent minister or an administrative tribunal, the Ombudsman Act prohibits the lodging of complaints with the Ombudsman against any decision which is subject to variation by a higher administrative agency. This limitation is subject to two exceptions:

...First, notwithstanding the new provision, the Ombudsman may take up the conduct of a subordinate agency on his own initiative at any time, without waiting for resort to administrative remedies by the victims of the possible administrative abuse. Second, the right of appeal to the Ombudsman does not depend upon the exhaustion of administrative remedies when the complaint is against the faulty handling of a citizen's business with a government agency rather than the substance of the agency's decision. The idea is that administrative superiors are the proper organs initially to determine the substantive law within their spheres of competence, whereas the Ombudsman should be able to investigate allegedly improper conduct of subordinate officials at any time....²⁸

Powers

All persons are required to supply any information requested by the Ombudsman for use in his inquiries, subject to the qualifications that apply to the duty of giving evidence in the courts. Reluctant witnesses may be summoned to court to give information under oath on any matter relevant to his investigation.

The sanctions available to the Ombudsman appear small. Even if the Ombudsman finds that an unlawful decision has been made or that an error has been committed in the handling of a case, he cannot vary the decision, remand the case for reconsideration, award damages to the complainant, or impose a penalty on the civil servant who has been at fault. He may only order public authorities to institute criminal proceedings and may direct an administrative agency to begin disciplinary action against a civil servant.

He has never used either sanction but has relied on a sanction peculiar to his office--that of stating his view of the case. Where, however, his investigation has revealed faults of major importance, he must inform Parliament and the competent minister of his findings and conclusions. He may also propose measures as he deems useful to correct inadequacies he discovers but he may not prepare bills or make statements on political questions.

Inclusion of a case in the annual report of the Ombudsman gives special weight to his statement. The Ombudsman may also recommend that a citizen be granted free legal aid for any action that he may wish to bring against the state as a consequence of a fault committed.²⁹

Contributions

Christensen gives the reader the following observation:

It is the general consensus in Denmark that the control exercised by the Ombudsman during the past six years has been satisfactory. Civil servants, who had raised a strong protest through their organization against the introduction of the institution, now appear to have accepted it, and the Ombudsman has established good personal relations with the highest administrative officials. It is also obvious that the institution commands remarkable confidence in Parliament, with the press, and, so far as can be ascertained, among the populace. A large factor in this success has been the personal qualities of the present Ombudsman, who is cut out for the post to an exceptional degree. In addition, the institution has won support from the fact that it has been capable of combining an inclination toward the citizen's point of view with a great understanding for the conditions of administrative work.

The Ombudsman's investigations have not revealed any serious flaws in Danish public administration--no cases of gross political abuse, pronounced favoritism, corruption, or consistent slackness have been reported. As is noted above, the majority of the cases considered on their merits have afforded no grounds for criticism, and the faults criticized, however objectionable they

may have been, have not been of the kind likely to compromise the public administration. Indeed, it is quite possible that the easy access to the Ombudsman and the wide publicity surrounding his inquiries have contributed to strengthening confidence in the public administration ³⁰

New Zealand's Ombudsman

Government

Executive and legislative powers in New Zealand are exercised through the Governor-General, who is appointed by the Queen of England with the advice of the New Zealand Ministers, the Executive Council and the Parliament (General Assembly). The Parliament consists of one house composed of 80 members, including 4 Maori members, who are popularly elected for three-year terms. Laws must be passed by Parliament and assented to by the Governor-General.

After an election, the Prime Minister (the leader of the Majority Party) selects the members of the Executive Council. Each of the members of the council is entrusted by the Prime Minister with responsibility for the administration of a specified field or aspect of government. The Executive Council is composed of the Governor-General and selected members of Parliament.

The judiciary consists of the Chief Justice, 3 judges of the Court of Appeals and 12 Supreme Court judges, 2 judges of the Court of Arbitration and one judge each for the Courts of Compensation and Land Valuation.³¹

Creation of Office, Method of Selection and Qualifications

The Office of Ombudsman was created by the Parliamentary Commissioner (Ombudsman) Act of 1962. (See Appendices C and D) The Ombudsman is appointed by the Governor-General on

the recommendation of Parliament. He may resign or be dismissed by Parliament for disability, bankruptcy, neglect of duty or misconduct at any time. He shall hold office until his successor is appointed and may be reappointed from time to time.

The Ombudsman may not be a member of Parliament and shall not, without the approval of the Prime Minister, hold any office of trust or profit or engage in any occupation for reward outside the duties of his office. The salary of the Ombudsman is fixed by the Governor-General by Order in Council.³²

Jurisdiction

The jurisdiction of the Ombudsman is to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown) or any act done or omitted relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the departments or organizations named in the Schedule to the Act. The Schedule names practically all of the government administrative departments and agencies but omits special statutory corporations such as the New Zealand Broadcasting Corporation and the National Airways Corporation. The jurisdiction of the Ombudsman extends to matters of administration but not to matter of policy. Although the Ombudsman may not inquire into the decisions of the Ministers themselves, he may inquire into and report on any recommendation made to a Minister by a department or agency, even if the Minister has already acted upon it.

The Ombudsman's jurisdiction does not extend to cases which may be appealed on the merits to a court or tribunal, whether or not the right is exercised. Nor does it extend to acts performed by government officials as trustees, to

matters concerning the armed forces, to decisions of the Crown Law Office, or to the actions of local governments and their servants.³³

The New Zealand Ombudsman differs from his Danish counterpart in that:

...the office in New Zealand has been regarded as established for the purpose, not only of checking administrative abuses and of righting of wrongs, but also of actually reviewing administrative decisions--of securing the making of changes. This is wider than the original purpose of the well known Danish institution of this name, which was earlier thought of as more of a following control and only developed into a review authority in the course of practice.³⁴

Procedure

The Ombudsman may take up any matter for investigation either on a complaint or on his own motion. The Act requires that every complaint be in writing and be accompanied by a fee of one pound, unless waived by the Ombudsman due to special circumstances. Complaints must be made within twelve months after the complainant has knowledge of the action or inaction complained about.

The Ombudsman is given wide discretion in deciding whether to investigate a complaint. He may refuse to entertain a complaint if he considers it to be trivial, frivolous, vexatious, not made in good faith, or one in which the complainant has not a sufficient personal interest.

In processing complaints, the Ombudsman is required to inform the head of the department or agency affected. If during his investigation it appears that there may be grounds for an adverse report, he is required to give the department or agency an opportunity to be heard. He cannot make an adverse comment on any person unless such person has been given an opportunity to be heard. The procedure is usually

informal with the Ombudsman communicating with the department head and the complainant by letter which is later followed up by personal discussions.³⁵ He is obliged to notify each complainant of the result of his investigation.

Pow rs

The Ombudsman is given complete powers to summon and examine persons on oath, if necessary, and a complete right of access to departmental records and departmental premises. Documents or information may be withheld on the ground of public interest only if the Attorney General certifies that the disclosure might prejudice the security of New Zealand or the investigation of offenses, or might involve the disclosure of any cabinet deliberations which might be injurious to the public interest. The Ombudsman is required to maintain secrecy in respect to all matters coming before him except so far as disclosures may be necessary to enable him to carry out his duties and to support his recommendations.

The Ombudsman can only make a recommendation to a department and if the recommendation is not acted upon, he can go to the Prime Minister and then to Parliament. The procedure is made effective by publicity, parliament and public opinion. The Ombudsman may make a recommendation or a report if the action or inaction by the administration is contrary to law, is based on a mistake of law or fact, is unreasonable, unjust, oppressive or is improperly discriminatory or if the decision was in accordance with a rule or law or a provision of any enactment or practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory. Thus, the Ombudsman is authorized to actually review administrative decisions and no proceeding of the Ombudsman, except for lack of jurisdiction, shall be challenged, reviewed, quashed, or called in question by any court.

The Ombudsman has wide freedom as to the type of recommendation he may make--that a matter be referred for further consideration, that the error be rectified, that the decision be cancelled or varied, that the practice on which the decision was based be reconsidered or that any other steps be taken.

The Ombudsman is required to make an annual report to Parliament on the exercise of his functions. He is also authorized, from time to time, to publish reports relating generally to the exercise of his functions or to any particular case investigated by him. This power enables him to make periodic statements to the press.³⁶

An Appraisal of the Ombudsman Institution

Kenneth Culp Davis, an outstanding authority in the field of public administration, gives the following overall appraisal of the Ombudsman institution:

The fundamental idea behind the institution of the Ombudsman seems to me thoroughly sound. That idea is that governmental processes can be improved significantly through continuing criticism by an officer who focuses on problems of administrative action but who is not involved in making the substantive decisions and who is not limited to one field of administration. The idea rests heavily upon the cardinal principle of check which has played such an important role in the historical development of protections against unfair governmental action. The check is all the more effective because it is made by an officer with a different focus from that of the administrator whose action is criticized, and by one who has a much broader perspective. The check can be aimed not merely at unfairness but also at inefficiency; an Ombudsman can protect against procedure which is excessively cumbersome, as neither the parties nor the courts can ordinarily do. An Ombudsman can provide a check against unfairness not merely in adjudication and rule making but also in ordinary administration, in prosecuting, in supervising, and in informal dealing. An Ombudsman can prod agencies

to give attention to underlying policies not merely to decide each case as it arises; he can push an agency toward clarifying vague statutory standards through earlier development of agency standards or through use of a rulemaking power to round out and fill gaps in law made by case-to-case adjudication. An Ombudsman can protect parties against undue delay; he can dig into the various causes of delay, he can prod and publicize, and he can make recommendations to the legislative body, including recommendations about appropriations and administrative organization. An Ombudsman can learn from one agency and can make that learning available to another agency, agencies without this kind of outside help characteristically fall into ruts of their own making and seldom think to inquire how the same jobs are done elsewhere in the same government. An Ombudsman can combine the two major tasks of investigating complaints in specific cases and making sustained inquiries into possible ways to strengthen the administrative process; these two tasks belong together for they interact on each other.

Neither codes of uniform administrative procedure nor laws prescribing minimum procedural safeguards can accomplish the single objective of devising better protections against unfairness and at the same time increasing the effectiveness of the administrative process. What is needed are sustained, continuing inquiries, embracing all kinds of governmental processes in all the myriad agencies. No one should dissent from Dean Landis's assertion: "No single mind and no group of minds can in any short period of time grapple with all the complexities of administrative procedure and bring forth a reasonably definitive code. This is a problem which has to be tackled piece by piece and year by year by men who had a continuing concern with its ever changing phases."

The basic idea of the Ombudsman is exceedingly attractive. Even though Americans have not yet carried the idea as far as the Scandinavians have, at least a dozen American groups, contemplating the fundamentals of our American arrangements, have independently come up with the essential idea of the Ombudsman or something resembling it. American ingenuity can adapt this basic idea to our institutions and can develop it further.³⁷

Transplantation in a State

Stanley V. Anderson, in discussing the attempted adoption of the Ombudsman in Connecticut (see Appendix E for H. B. 3194, 1965 Session), stated:

Confrontations on the general issue of transplantation met at too high a level of abstraction to be useful. The dispute could be brought to earth by cataloguing similarity and differences between and among Ombudsman countries and non-Ombudsman countries, in an attempt to discover necessary, sufficient, or preclusive conditions for the functioning of the office. In the last analysis, one might have to conclude that there are too many independent variables, one of these being the personality of the Ombudsman himself. Before that, however, one might be able to identify some factors as non-determinative.

To illustrate the latter, take the argument that all Ombudsman countries (Denmark, Finland, New Zealand, Norway, Sweden) have parliamentary forms of government (fusion of powers in a Cabinet resting upon the support or toleration of Parliament), while the states of the Union have separation of powers (Governor and legislature separately elected to fixed terms). The dichotomy collapses in the face of the following facts: 1) Finland has a mixed system of parliamentarism and presidentialism; and, 2) the office of Ombudsman instituted in Sweden in 1809 as part of a new Constitution in which power was divided between King and Parliament--the Ombudsman was a makeweight against royal control of the judiciary.

Historically, then, the Ombudsman is consistent with fusion of powers and equally consonant with checks and balances. The same is true analytically.

Under the Cabinet form of government, the Ministers propose and implement laws, subject to the continued confidence of Parliament. It has been argued that the intrusion of an Ombudsman violates the principle of ministerial responsibility. The logic of the argument is strained, because the Ombudsman has no power to change administrative

decisions, but only to investigate and report. Thus, he does not disrupt the monopoly of power vested in the Government.

Under the Presidential form of government, the legislature has the power to make laws and to supervise their proper execution by the chief of state. Again, the Ombudsman does not interfere directly with the administrative function, but does assist the legislature in carrying out its watchdog function. The Ombudsman is intended to increase the efficiency of legislative check on the executive, and to help maintain the balance between these two branches.

In both systems, the Ombudsman is an adjunct to the legislature. Many State legislatures already have comparable adjuncts for the bill drafting, bill analysis, and post-audit functions. The assistance which the Ombudsman provides to the lawmaking and supervisory functions is in addition to the primary purpose of the Ombudsman in fostering the ad hoc correction of individual wrongs. Here one might suspect that the Ombudsman is usurping the judicial function. This is not so, because the Ombudsman normally takes up complaints not suitable for judicial cognizance, and, anyway, does not sit as a court of appeals with power to impose judgment.

The conclusion emerges that the office of Ombudsman is designed to remedy shortcomings which are common to parliamentary and presidential systems. All industrial democracies have experienced burgeoning bureaucracy. The legislators of these prosperous nations find it increasingly difficult to supervise administration, and the courts are often powerless to entertain charges of rudeness, delay, failure to communicate, or partiality.³⁸

FOOTNOTES

1. Stanley V. Anderson, "The Scandinavian Ombudsman," reprinted from The American-Scandinavian Review, Vol. 12, No. 4 (December, 1964), 403-409, at p. 1 of reprint.
2. Nils Andren, "The Swedish Ombudsman," Anglo-Swedish Review (May, 1962), quoted in Albert H. Rosenthal, "The Ombudsman--Swedish 'Grievance Man'," Public Administration Review, Vol. 24, No. 4 (December, 1964), 226-230, at p. 227.
3. Brian Chapman, The Profession of Government (London: Purnell and Sons, Ltd., 1959), p. 246.
4. Anderson, pp. 1-4 of reprint.
5. Henry J. Abraham, "A People's Watchdog Against Abuse of Power," Public Administration Review, Vol. 20, No. 3 (Summer, 1960), 152.
6. Anderson, pp. 6-8 of reprint.
7. The Statesman's Yearbook, 1965-1966, 102d ed. (New York: St. Martin's Press, 1965), pp. 1433-1434, 1437.
8. Stig Jagerskiold, "The Swedish Ombudsman," U. of Pa. L. Rev., Vol. 109, No. 8 (June, 1961), 1077, 1080-1081.
9. Ibid., p. 1081.
10. Ibid.
11. Chapman, pp. 247-248.
12. Jagerskiold, p. 1082.
13. Chapman, p. 248.
14. Jagerskiold, pp. 1082-1083.
15. Ibid., pp. 1084-1085. See also Rosenthal, pp. 228-229.
16. Jagerskiold, p. 1082.
17. Ibid., p. 1087.
18. Ibid., p. 1087-1089.
19. Ibid., pp. 1097-1099.
20. The Statesman's Yearbook, 1965-1966, pp. 930, 933-934.

21. Bent Christensen, "The Danish Ombudsman," U. of Pa. L. Rev., Vol. 109, No. 8 (June 1961), 1100. See also Stephan Hurwitz, "Denmark's Ombudsman: The Parliamentary Commissioner for Civil and Military Government Administration," Wis. L. Rev., (1961), 169.
22. Christensen, p. 1103.
See also Hurwitz, p. 174.
23. Christensen, p. 1104.
24. Ibid., pp. 1106-1107.
25. Ibid., p. 1104.
26. Ibid., p. 1106.
27. Ibid., pp. 1110-1111.
28. Ibid., p. 1112.
29. Ibid., pp. 1110-1115.
30. Ibid., pp. 1125-1126.
31. New Zealand, Department of Statistics, The New Zealand Official Year-Book 1960, 65th issue (Wellington: Government Printer, 1960), pp. 28-37. See also The Statesman's Yearbook 1965-1966, pp. 355-356, 362. See also The Canadian Bar Association, Transcript of a Panel Discussion on the Ombudsman held on Tuesday, September 1, 1964...during the 49th Annual Meeting of the Canadian Bar Association, p. 5.
32. Sections 2-7 of the Parliamentary Commissioner (Ombudsman) Act 1962.
33. Guy Powles, "A Citizen's Rights Against the Modern State, and, Its Responsibilities to Him," The New Zealand Journal of Public Administration, Vol. 26, No. 2 (March, 1964), 15-17.
34. Ibid., p. 15.
35. Ibid., pp. 17-19. See also The Canadian Bar Association, pp. 8-9.
36. Powles, pp. 19-21. See also The Canadian Bar Association, pp. 9-13.
37. Kenneth Culp Davis, "Ombudsmen in America: Officers to Criticize Administrative Action," U. of Pa. L. Rev., Vol. 109, No. 8 (June, 1961), 1057, 1075-1076.
38. Stanley V. Anderson, "Connecticut Ombudsman," Case and Comment, Vol. 70, No. 2 (March-April, 1965), 4-6.

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APPENDIX A

ACT NO. 203 OF 11 JUNE 1954
ON THE PARLIAMENTARY COMMISSIONER FOR
CIVIL AND MILITARY GOVERNMENT ADMINISTRATION
[as amended by Act No. 205 of 11 June 1959
and Act No. 91 of 16 March 1960]

Sect. 1. After every general election the Folketing [Parliament] will elect a parliamentary commissioner who, on behalf of the Folketing, shall supervise the civil and military government administration (hereinafter called the "Parliamentary Commissioner"). The jurisdiction of the Parliamentary Commissioner shall not include that part of the administration which is performed by judges, chief administrative officers of the courts of justice, the Head of the Probate Division of the Metropolitan Court of Copenhagen, clerks of the Supreme Court, and assistant judges.

If the Parliamentary Commissioner no longer has the confidence of the Folketing, the latter may dismiss him and elect a new Parliamentary Commissioner.

Sect. 2. The Parliamentary Commissioner, who shall not be a member of the Folketing, shall have legal education.

Sect. 3. The Folketing shall lay down general rules for the Parliamentary Commissioner's activities. Subject to such rules he shall, in the performance of his duties, be independent of the Folketing.

Sect. 4. The Parliamentary Commissioner's jurisdiction shall comprise ministers, civil servants and all other persons acting in the service of the State, except as provided by Sect. 1, para. 1.

Sect. 5. The Parliamentary Commissioner shall keep himself informed as to whether the persons mentioned in Sect. 4 commit mistakes or acts of negligence in the performance of their duties.

Sect. 6. Complaints against the persons mentioned in Sect. 4 may be lodged with the Parliamentary Commissioner by anybody. Complaints against decisions which may be set aside by a superior administrative authority cannot be lodged with the Parliamentary Commissioner. The complainant shall state his name and lodge his complaint not later than one year after the date on which the subject matter of the complaint was

committed. In cases where the subject matter of a complaint has been placed before a superior administrative authority, the one-year time limit shall begin from the date when that authority's decision was made. The Parliamentary Commissioner will decide whether the complaint gives sufficient grounds for an investigation. The Parliamentary Commissioner may also take up a matter for investigation on his own initiative. Any person deprived of his personal liberty is entitled to address written communications in sealed envelopes to the Parliamentary Commissioner.

Sect. 7. The persons mentioned in Sect. 4 shall be under obligation to furnish the Parliamentary Commissioner with such information and to produce such documents and records as he may demand by virtue of his office.

Demands for information made by the Parliamentary Commissioner in pursuance of sub-sect. 1 shall be subject to limitations similar to those laid down by the Administration of Justice Act, Sect. 169, sub-sects. 1 and 3, Sect. 170, sub-sect. 1, the principal rule in Sect. 170, sub-sect. 4, and Sect. 749.

If the Parliamentary Commissioner wants to take action on a complaint against any of the persons mentioned in Sect. 4, the complaint shall, as soon as possible, be communicated to the person concerned, unless this is absolutely incompatible with the investigation of the matter. The person concerned may, if he is a civil servant, demand at any time that the matter shall be referred to treatment under the provisions of the Civil Servants Act, Sect. 17, cf. Sect. 18.

The Parliamentary Commissioner may subpoena persons to give evidence before a law court on any matter which has bearings on his investigation. This procedure shall be subject to the rules governing examination of witnesses for investigation purposes, cf. the Administration of Justice Act, Chapter 74. Such court sessions are not open to the public. The person whom a complaint concerns is entitled to attend such examinations himself and to bring a counsel. The rules in force at any time governing the payment of costs for a counsel, etc., in disciplinary prosecution of civil servants shall be applicable by analogy.

Sect. 8. The Parliamentary Commissioner shall observe secrecy in any matter coming to his knowledge in the performance of his duty, provided that such secrecy is necessary ipso facto. The obligation to observe secrecy shall not lapse when he resigns his office.

Sect. 9. The Parliamentary Commissioner may order the prosecuting authorities to institute preliminary proceedings or to bring a charge before the ordinary law courts for misconduct in public service or office, subject to Sects 16 and 60 of the Constitution (The Court of the Realm).

The Parliamentary Commissioner may order the administrative authority concerned to institute disciplinary proceedings.

In any case, the Parliamentary Commissioner may always state his views on the matter to the person concerned.

Sect. 10. If any mistake or act of negligence of major importance, committed by any of the persons mentioned in Sect. 4, comes to the knowledge of the Parliamentary Commissioner, the latter shall inform the Folketing and the minister concerned hereof.

The Parliamentary Commissioner shall submit an annual report on his activities to the Folketing. The report shall be printed and published.

If the Parliamentary Commissioner informs the Folketing or a minister of a case, or if he brings out the case in his annual report, he shall, in such information or in his report, state what the person concerned has pleaded by way of defence.

Sect. 11. If the Parliamentary Commissioner becomes aware of any defects in existing laws or administrative regulations, he shall inform the Folketing and the minister concerned about them.

Sect. 12. The Parliamentary Commissioner shall receive remuneration at the same rate as a judge of the Supreme Court. In addition, he may be granted a personal allowance in such amount as circumstances may warrant. He is entitled to "waiting money" [Compensation payable to government officials who are temporarily out of office] and to a pension according to provisions corresponding to those laid down in the Act on Remuneration and Pensions, etc., for Ministers, Sects. 3-6.

The Parliamentary Commissioner shall not hold any office in public or private firms, enterprises or institutions, except with the consent of a committee which the Folketing has instructed to decide on this question.

Sect. 13. The Parliamentary Commissioner shall engage and dismiss his staff. The number, salaries and pensions of his staff members shall be fixed in the same manner as that prescribed in the Folketing's Rules of Procedure for its own officials, etc. The expenditure incidental to the Parliamentary Commissioner's Office shall be charged to the budget of the Folketing.

Sect. 14. This Act shall enter into force on 1 November 1954.

Sect. 15. This Act shall be submitted to the Folketing for revision not later than the parliamentary year 1960/61.

Source: Stephan Hurwitz, "Denmark's Ombudsman: The Parliamentary Commissioner for Civil and Military Government Administration," Wis. L. Rev., Vol. 169 (1961), 194.

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APPENDIX B

DIRECTIVES FOR THE PARLIAMENTARY COMMISSIONER FOR CIVIL AND MILITARY GOVERNMENT ADMINISTRATION

The following directives for the Parliamentary Commissioner for Civil and Military Government Administration (hereinafter called the "Parliamentary Commissioner") are issued in pursuance of Act No. 203 of June 11, 1954, Sect. 3.

Article 1. The Parliamentary Commissioner shall, on behalf of the Folketing [Parliament] keep himself informed of the civil and military government administration.

Article 2. (1) The Parliamentary Commissioner's jurisdiction shall comprise ministers, civil servants and all other persons acting in the service of the State, except as provided in paras. 2 and 3.

(2) Judges shall, in their conduct of office, be entirely outside the jurisdiction of the Parliamentary Commissioner. Deputy judges, on the other hand, come within the Parliamentary Commissioner's jurisdiction in so far as complaints against their conduct of office cannot be brought before the New Trials Court. [Confer, however, Sect. 1, sub-sect. 1 in the Act on the Parliamentary Commissioner as amended by Act No. 205 of June 11, 1959.]

(3) The civil servants of the Established Church come under the Parliamentary Commissioner's jurisdiction, except in matters which directly or indirectly involve the tenets or preachings of the Church.

Article 3. (1) The Parliamentary Commissioner shall keep himself informed as to whether any person comprised by his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties.

(2) The Parliamentary Commissioner shall be entitled to examine, by request or on his own initiative, any civil and military action performed in the service of the State and coming within his jurisdiction.

(3) The Parliamentary Commissioner shall be entitled to inspect any State agency, subject to limitations similar to those laid down in the Administration of Justice Act. Sect. 749, sub-sect 1, he shall have access to all premises.

(4) Any person acting in the service of the State shall be under obligation to furnish the Parliamentary Commissioner with such information and to produce such documents and records as he may demand for the performance of his duties.

(5) Demands for information made by the Parliamentary Commissioner in pursuance of para. 4 shall be subject to the limitations involved by Article 2, paras. 2 and 3, and to limitations similar to those laid down by the Administration of Justice Act. Sect. 169, sub-sects. 1 and 3, Sect. 170, sub-sect. 1, the principal rule in Sect. 170, sub-sect. 4, and Sect. 749.

Article 4. (1) Any person deprived of his or her personal liberty is entitled to address written communications in sealed envelopes to the Parliamentary Commissioner.

(2) Complaints about the treatment of persons deprived of their personal liberty through any procedure other than administration of criminal justice, shall be referred to the Supervisory Board appointed by the Folketing in pursuance of the Constitution, Sect. 71, sub-sect. 7; the Supervisory Board may invoke the assistance of the Parliamentary Commissioner in the consideration of such complaints if the latter are made against any person acting in the service of the State.

Article 5. (1) Any person may complain directly to the Parliamentary Commissioner against persons or about subject matters which come within his jurisdiction; any such complaint should, as far as possible, be submitted in writing and be accompanied by the complainant's evidence.

(2) The complainant's name and address must be stated in the complaint which must be lodged not later than one year after the date on which the subject matter of the complaint was committed.

Article 6. If a complaint concerns persons or subject matters which do not come within the Parliamentary Commissioner's jurisdiction, or if the complaint has been lodged too late, the Parliamentary Commissioner shall inform the complainant that he can take no action on the complaint. The

Parliamentary Commissioner may, however, refer any such complainant to the appropriate authority and give the complainant reasonable guidance.

Article 7. (1) If the Parliamentary Commissioner finds that a complaint which comes within his jurisdiction is unfounded or that the subject matter of the complaint is quite insignificant, he shall as soon as possible inform the complainant that he finds no reason to take action in the matter

(2) In cases where the subject matter of a complaint may be referred to a special authority, the Parliamentary Commissioner should take steps to have the matter referred to that authority before he takes any further action.

(3) If the Parliamentary Commissioner finds that the examination of the subject matter of a complaint comes within the jurisdiction of the law courts, he may give guidance to the complainant with that possibility in view. In cases where the complainant intends to bring an action against a State authority or against any person acting, or having acted, in the service of the State, in respect of alleged mistakes or negligence in such service, the Parliamentary Commissioner may, subject to the stipulations of the Administration of Justice Act, Chapter 31, recommend that the complainant be granted free legal aid.

Article 8. (1) If the Parliamentary Commissioner finds that a complaint should be taken up for examination, the party involved shall, as soon as possible, be informed of the complaint, possibly through the appropriate administrative authority, and asked to make a statement on the complaint, unless this procedure will be absolutely incompatible with the investigation of the matter.

(2) Subject to the rules in Article 3, para. 5, the Parliamentary Commissioner may demand written declarations and other information from the person against whom a complaint has been lodged, and from his superior.

(3) The Parliamentary Commissioner may subpoena persons to appear and give evidence before a law court about matters which have bearings upon his investigations. This procedure shall be subject to the rules governing examination of witnesses for investigation purposes, cf. Chapter 74 of the Administration of Justice Act. Such court sessions are not open to the public. The Parliamentary Commissioner may attend such examinations in person or by proxy. The person whom a complaint concerns is

entitled to appear with a counsel, and he shall be advised to that effect in the writ of subpoena for the first sitting of the court. The writ of subpoena shall be served at an adequate notice. The Minister of Justice will issue rules as to who may act as counsel.

(4) The rules in force at any time governing the payment of costs for a counsel, etc., in disciplinary prosecution of civil servants shall be applicable by analogy.

Article 9. (1) If the Parliamentary Commissioner has indicated that he will take action on a complaint against a civil servant, the latter may at any time demand that the matter be referred to disciplinary investigation under the provisions of the Civil Servants Act, Sect. 17, cf Sect. 18. The Parliamentary Commissioner will then discontinue his investigation and transmit the case to the appropriate administrative authority, stating what has happened and enclosing the information obtained.

(2) This shall apply also if the administrative authority concerned initiates a disciplinary investigation or if a police investigation is instituted to ascertain if a punishable offence has been committed.

(3) In the cases referred to in paras. 1 and 2 the Parliamentary Commissioner is entitled to demand that copies of records of examinations held in disciplinary investigation as well as copies of police reports and court records be sent him immediately and that he be informed about the outcome of the investigations made.

Article 10. (1) If the Parliamentary Commissioner, on having made an investigation, finds that a minister or a former minister should be held responsible, under civil or criminal law, for his conduct of office, he shall submit a recommendation to that effect to the Folketing's Committee on the Parliamentary Commissioner's Office.

(2) If the Parliamentary Commissioner deems that other persons coming within his jurisdiction have committed crimes in public service or office (Penal Code, Chapter 16), he may order the prosecuting authorities to institute preliminary investigations and to bring a charge before the ordinary law courts.

(3) If the Parliamentary Commissioner finds that the misconduct of a civil servant is of such a nature as to warrant disciplinary prosecution, he may order the administrative authority concerned to institute disciplinary investigations.

(4) Even if the subject matter of a complaint gives the Parliamentary Commissioner no occasion for action, he may always state his views on the matter to the person whom the complaint concerns.

Article 11. (1) The Parliamentary Commissioner shall call the attention of the Folketing's Committee on the Parliamentary Commissioner's Office and the appropriate minister to cases where he deems existing laws and administrative regulations to be inadequate. At the same time he may propose such measures as he deems useful to promote law and order or to improve the State administration.

(2) The Parliamentary Commissioner may request the Folketing's Committee on the Parliamentary Commissioner's Office to transmit to the Folketing his communications to the Committee.

Article 12. If the Parliamentary Commissioner's investigations of a case reveal that any person coming within his jurisdiction has committed mistakes or acts of negligence of major importance, he shall inform the Folketing's Committee on the Parliamentary Commissioner's Office and the appropriate minister of the matter.

Article 13. (1) By the end of September each year, the Parliamentary Commissioner shall submit to the Folketing a report on his activities in the preceding calendar year. The report shall be printed and published. In that report, he will, inter alia, bring out decisions in individual cases which may be of general interest; he will also mention the cases referred to in Articles 11 and 12 about which information has been transmitted to the Folketing's Committee on the Parliamentary Commissioner's Office, and to the ministers concerned.

(2) If any case which is mentioned in the report, or about which information has been transmitted to the Folketing's Committee on the Parliamentary Commissioner's Office or to a minister, contains criticism of any person or administrative sector, such report or such information shall show what the person or the sector concerned pleaded by way of defense.

(3) If in his report the Parliamentary Commissioner mentions cases where he found a complaint unfounded, the name or address of the person whom the complaint concerns shall not be mentioned unless he has expressed a desire for such mention.

Article 14. The Parliamentary Commissioner shall engage and dismiss his staff, whose number, salaries and pensions shall be fixed in the same manner as that prescribed in the Folketing's Rules of Procedure for its own officials, etc.

Article 15. (1) The Parliamentary Commissioner shall observe secrecy about any matter coming to his knowledge in the performance of his duty, provided that such secrecy is necessary ipso facto. The staff engaged by the Parliamentary Commissioner shall be bound by the same obligation.

(2) The obligation to observe secrecy shall exist also after resignation or retirement.

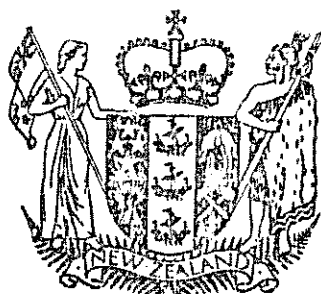
Article 16. (1) The Parliamentary Commissioner shall not be a member of the Folketing.

(2) The Parliamentary Commissioner shall not, except with the consent of the Folketing's Committee on the Parliamentary Commissioner's Office, hold any office in public or private firms, undertakings, or institutions.

(3) Subject to the limitations laid down in these Directives, the Parliamentary Commissioner shall, in the performance of his duties, be independent of the Folketing.

Adopted by the Folketing, 22 March 1956.

Source: Stephan Hurwitz, "Denmark's Ombudsman: The Parliamentary Commissioner for Civil and Military Government Administration," Wis. L. Rev., Vol. 169 (1961), 196.



ANALYSIS

Title	
1. Short Title	15. Proceedings of Commissioner
<i>Parliamentary Commissioner (Ombudsman)</i>	16. Evidence
2. Parliamentary Commissioner (Ombudsman)	17. Disclosure of certain matters not to be required
3. Commissioner to hold no other office	18. Commissioner and staff to maintain secrecy
4. Term of office of Commissioner	19. Procedure after investigation
5. Removal or suspension from office	20. Complainant to be informed of result of investigation
6. Filling of vacancy	21. Proceedings not to be questioned or to be subject to review
7. Salary and allowances of Commissioner	22. Proceedings privileged
8. Oath to be taken by Commissioner	<i>Miscellaneous Provisions</i>
9. Staff of Commissioner	23. Power of entry on premises
10. Superannuation or retiring allowances of Commissioner and staff	24. Delegation of powers by Commissioner
<i>Functions of Commissioner</i>	25. Annual report
11. Functions of Commissioner	26. Offences
12. House of Representatives may make rules for guidance of Commissioner	27. Money to be appropriated by Parliament for purposes of this Act
13. Mode of complaint	28. Power to amend Schedule by Order in Council on abolition or creation of Department, etc.
14. Commissioner may refuse to investigate complaint	29. Savings Schedule

1962, No. 10

An Act to provide for the appointment of a Commissioner to investigate administrative decisions or acts of Departments of State and certain other organisations, and to define the Commissioner's functions and powers

[7 September 1962]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

Public—10

1. Short Title—This Act may be cited as the Parliamentary Commissioner (Ombudsman) Act 1962.

Parliamentary Commissioner (Ombudsman)

2. Parliamentary Commissioner (Ombudsman)—(1) There shall be appointed, as an officer of Parliament, a Commissioner for investigations, to be called the Ombudsman.

(2) Subject to the provisions of section 6 of this Act, the Commissioner shall be appointed by the Governor-General on the recommendation of the House of Representatives.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment as Commissioner.

3. Commissioner to hold no other office—The Commissioner shall not be capable of being a member of Parliament, and shall not, without the approval of the Prime Minister in each particular case, hold any office of trust or profit, other than his office as Commissioner, or engage in any occupation for reward outside the duties of his office.

4. Term of office of Commissioner—(1) The recommendation for the appointment of the Commissioner shall be made in the first or second session of every Parliament.

(2) Unless his office sooner becomes vacant, every person appointed as Commissioner shall hold office until his successor is appointed. Every such person may from time to time be reappointed.

(3) The Commissioner may at any time resign his office by writing addressed to the Speaker of the House of Representatives, or to the Prime Minister if there is no Speaker or the Speaker is absent from New Zealand.

5. Removal or suspension from office—(1) The Commissioner may at any time be removed or suspended from his office by the Governor-General, upon an address from the House of Representatives, for disability, bankruptcy, neglect of duty, or misconduct.

(2) At any time when Parliament is not in session, the Commissioner may be suspended from his office by the Governor-General in Council for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the

Governor-General; but any such suspension shall not continue in force beyond the end of the next ensuing session of Parliament.

6. Filling of vacancy—(1) If the Commissioner dies, or retires, or resigns, or is removed from office, the vacancy thereby created shall be filled in accordance with this section.

(2) If any vacancy in the office of Commissioner occurs at any time while Parliament is in session, it shall be filled by the appointment of a Commissioner by the Governor-General on the recommendation of the House of Representatives:

Provided that if the vacancy occurs less than two months before the close of that session and no such recommendation is made in that session, the provisions of subsection (3) of this section shall apply as if the vacancy had occurred while Parliament was not in session.

(3) If any such vacancy occurs at any time while Parliament is not in session, the following provisions shall apply:

(a) The Governor-General in Council may appoint a Commissioner to fill the vacancy, and the person so appointed shall, unless his office sooner becomes vacant, hold office until his appointment is confirmed by the House of Representatives:

(b) If the appointment is not so confirmed within two months after the commencement of the next ensuing session, the appointment shall lapse and there shall be deemed to be a further vacancy in the office of Commissioner.

7. Salary and allowances of Commissioner—(1) Subject to the provisions of subsection (2) of this section, there shall be paid to the Commissioner out of the Consolidated Fund, without further appropriation than this section, a salary at a rate to be fixed by the Governor-General by Order in Council.

(2) Whenever a Royal Commission is appointed to make recommendations for the purposes of section 27 of the Civil List Act 1950 (which relates to the fixing of salaries and allowances payable under Parts II, III, and IV of that Act), that Commission shall also inquire into and report upon the salary of the Commissioner under this Act, and may make such recommendation as it thinks fit thereon. On any such recommendation, the Governor-General may from time to time, by Order in Council, fix the salary of the Commissioner, but so that the salary shall be at a rate not less than that fixed

Inset

under subsection (1) of this section. The provisions of subsection (2) of the said section 27 shall apply to any Order in Council made under this subsection; and while the Order in Council is in force the salary fixed thereunder shall be payable to the Commissioner in every year out of the Consolidated Fund without further appropriation than this section, instead of the salary fixed under subsection (1) of this section.

(3) There shall be paid to the Commissioner, in respect of time spent in travelling in the exercise of his functions, travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly as if the Commissioner were a member of a statutory Board and the travelling were in the service of a statutory Board.

8. Oath to be taken by Commissioner—(1) Before entering upon the exercise of the duties of his office the Commissioner shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with section 18 of this Act, divulge any information received by him under this Act.

(2) The oath shall be administered by the Speaker or the Clerk of the House of Representatives.

9. Staff of Commissioner—(1) Subject to the provisions of this section, the Commissioner may appoint such officers and employees as may be necessary for the efficient carrying out of his functions under this Act.

(2) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the Prime Minister.

(3) The salaries of persons appointed under this section, and the terms and conditions of their appointments, shall be such as are approved by the Minister of Finance.

(4) No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1912 or the Superannuation Act 1956 by reason of his appointment under this section.

10. Superannuation or retiring allowances of Commissioner and staff—There may from time to time be paid sums by way of contributions or subsidies to the National Provident

Fund or any Fund or scheme approved by the Governor-General in Council for the purpose of providing superannuation or retiring allowances for the Commissioner and any officer or employee appointed under this Act.

Functions of Commissioner

11. Functions of Commissioner—(1) The principal function of the Commissioner shall be to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the Departments or organisations named in the Schedule to this Act, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment.

(2) The Commissioner may make any such investigation either on a complaint made to him by any person or of his own motion; and where a complaint is so made he may commence any such investigation notwithstanding that the complaint may not on its face be against any such decision, recommendation, or act as aforesaid.

(3) Without limiting the provisions of subsection (1) of this section, it is hereby declared that any Committee of the House of Representatives may at any time refer to the Commissioner, for investigation and report by him, any petition that is before that Committee for consideration, or any matter to which the petition relates. In any such case, the Commissioner shall, subject to any special directions of the Committee, investigate the matters so referred to him, so far as they are within his jurisdiction, and make such report to the Committee as he thinks fit. Nothing in section 14 or section 19 or section 20 of this Act shall apply in respect of any investigation or report made under this subsection.

(4) The powers conferred on the Commissioner by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(5) Nothing in this Act shall authorise the Commissioner to investigate—

- (a) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any enactment, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:
- (b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee within the meaning of the Trustee Act 1956:
- (c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown pursuant to the rules for the time being approved by the Government for the conduct of Crown legal business, or acting as counsel for the Crown in relation to any proceedings.

(6) Nothing in this Act shall authorise the Commissioner to investigate any matter relating to any person who is or was a member of or provisional entrant to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, so far as the matter relates to—

- (a) The terms and conditions of his service as such member or entrant; or
- (b) Any order, command, decision, penalty, or punishment given to or affecting him in his capacity as such member or entrant.

(7) If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question in accordance with the Declaratory Judgments Act 1908, and the provisions of that Act shall extend and apply accordingly.

12. House of Representatives may make rules for guidance of Commissioner—(1) The House of Representatives may from time to time, if it thinks fit, make general rules for the guidance of the Commissioner in the exercise of his functions, and may at any time in like manner revoke or vary any such rules.

(2) Any such rules may authorise the Commissioner from time to time, in the public interest or in the interests of any person or Department or organisation, to publish reports relating generally to the exercise of his functions under this Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to Parliament under this Act.

(3) All rules made under this section shall be printed and published in accordance with the Regulations Act 1936.

13. Mode of complaint—(1) Every complaint to the Commissioner shall be made in writing.

(2) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or after conviction of any offence, or by any inmate of any institution within the meaning of the Mental Health Act 1911, is addressed to the Commissioner it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.

(3) On every complaint to the Commissioner there shall be paid to the Commissioner, on behalf of the Crown, a fee of one pound, unless, having regard to any special circumstances, the Commissioner directs that no fee shall be payable.

(4) The Commissioner shall cause all fees paid to him under this section to be paid into the Public Account.

14. Commissioner may refuse to investigate complaint—

(1) If in the course of the investigation of any complaint within his jurisdiction it appears to the Commissioner—

(a) That under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, for the complainant (whether or not he has availed himself of it); or

(b) That, having regard to all the circumstances of the case, any further investigation is unnecessary—

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Commissioner by this Act, it is hereby declared that the Commissioner may in his discretion decide not to

investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Commissioner, or if in his opinion—

- (a) The subject-matter of the complaint is trivial; or
- (b) The complaint is frivolous or vexatious or is not made in good faith; or
- (c) The complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where the Commissioner decides not to investigate or further investigate a complaint he shall inform the complainant of that decision, and may if he thinks fit state his reasons therefor, and may also, if he thinks fit, direct that the fee paid by the complainant under this Act be refunded to him.

15. Proceedings of Commissioner—(1) Before investigating any matter under this Act, the Commissioner shall inform the Permanent Head of the Department affected, or, as the case may require, the organisation affected, of his intention to make the investigation.

(2) Every investigation by the Commissioner under this Act shall be conducted in private.

(3) The Commissioner may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit. It shall not be necessary for the Commissioner to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner:

Provided that if at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds for his making any report or recommendation that may adversely affect any Department or organisation or person, he shall give to that Department or organisation or person an opportunity to be heard.

(4) The Commissioner may in his discretion, at any time during or after any investigation, consult any Minister who is concerned in the matter of the investigation.

(5) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commissioner shall consult that Minister after making the investigation and before forming a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 19 of this Act.

(6) If, during or after any investigation, the Commissioner is of opinion that there is evidence of any breach of duty or misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority.

(7) Subject to the provisions of this Act and of any rules made for the guidance of the Commissioner by the House of Representatives and for the time being in force, the Commissioner may regulate his procedure in such manner as he thinks fit.

16. Evidence—(1) Subject to the provisions of this section and of section 17 of this Act, the Commissioner may from time to time require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any Department or organisation.

(2) The Commissioner may summon before him and examine on oath—

(a) Any person who is an officer or employee or member of any Department or organisation named in the Schedule to this Act and who in the Commissioner's opinion is able to give any such information as aforesaid; or

(b) Any complainant; or

(c) With the prior approval of the Attorney-General in each case, any other person who in the Commissioner's opinion is able to give any such information—and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 108 of the Crimes Act 1961 (which relates to perjury).

(3) Subject to the provisions of subsection (4) of this section, no person who is bound by the provisions of any enactment, other than the Public Service Act 1912 and the Official Secrets Act 1951, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any question put by the Commissioner in relation to that matter, or to produce to the Commissioner

any document or paper or thing relating to it, if compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) of this section applies may be required by the Commissioner to supply information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any Court.

(6) Except on the trial of any person for perjury within the meaning of the Crimes Act 1961 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

(7) No person shall be liable to prosecution for an offence against the Official Secrets Act 1951 or any enactment, other than this Act, by reason of his compliance with any requirement of the Commissioner under this section.

(8) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court, and the provisions of any regulations in that behalf made under the Summary Proceedings Act 1957 and for the time being in force shall apply accordingly. For the purposes of this subsection the Commissioner shall have the powers of a Court under any such regulations to fix or disallow, in whole or in part, or increase the amounts payable thereunder.

17. Disclosure of certain matters not to be required—

(1) Where the Attorney-General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing—

(a) Might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences; or

- (b) Might involve the disclosure of the deliberations of Cabinet; or
- (c) Might involve the disclosure of proceedings of Cabinet, or of any committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest—

the Commissioner shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(2) Subject to the provisions of subsection (1) of this section, the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Commissioner.

18. Commissioner and staff to maintain secrecy—(1) The Commissioner and every person holding any office or appointment under him shall be deemed for the purposes of the Official Secrets Act 1951 to be persons holding office under Her Majesty.

(2) The Commissioner and every such person as aforesaid shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.

(3) Every person holding any office or appointment under the Commissioner shall, before he begins to perform any official duty under this Act, take an oath, to be administered by the Commissioner, that he will not divulge any information received by him under this Act except for the purpose of giving effect to this Act.

(4) Notwithstanding anything in the foregoing provisions of this section, the Commissioner may disclose in any report made by him under this Act such matters as in his opinion ought to be disclosed in order to establish grounds for his conclusions and recommendations. The power conferred by this subsection shall not extend to any matter that might prejudice the security, defence, or international relations of New Zealand (including New Zealand's relations with the Government of any other country or with any international organisation) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of Cabinet.

19. Procedure after investigation—(1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Commissioner is of opinion that the decision, recommendation, act, or omission which was the subject-matter of the investigation—

- (a) Appears to have been contrary to law; or
- (b) Was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or
- (c) Was based wholly or partly on a mistake of law or fact; or
- (d) Was wrong.

(2) The provisions of this section shall also apply in any case where the Commissioner is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Commissioner is of opinion—

- (a) That the matter should be referred to the appropriate authority for further consideration; or
- (b) That the omission should be rectified; or
- (c) That the decision should be cancelled or varied; or
- (d) That any practice on which the decision, recommendation, act, or omission was based should be altered; or
- (e) That any law on which the decision, recommendation, act, or omission was based should be reconsidered; or
- (f) That reasons should have been given for the decision; or
- (g) That any other steps should be taken—

the Commissioner shall report his opinion, and his reasons therefor, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Commissioner shall also send a copy of his report and recommendations to the Minister concerned.

(4) If within a reasonable time after the report is made no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, in his discretion, after considering the comments (if any) made by or on behalf of any Department or organisation affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit.

(5) The Commissioner shall attach to every report sent or made under subsection (4) of this section a copy of any comments made by or on behalf of the Department or organisation affected.

(6) Notwithstanding anything in this section, the Commissioner shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

20. Complainant to be informed of result of investigation—

(1) Where, on any investigation following a complaint, the Commissioner makes a recommendation under subsection (3) of section 19 of this Act, and no action which seems to the Commissioner to be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.

(2) The Commissioner shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

21. Proceedings not to be questioned or to be subject to review—No proceeding of the Commissioner shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

22. Proceedings privileged—(1) Except in the case of proceedings for an offence against the Official Secrets Act 1951,—

(a) No proceedings, civil or criminal, shall lie against the Commissioner, or against any person holding any office or appointment under the Commissioner, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act, unless it is shown that he acted in bad faith:

(b) The Commissioner, and any such person as aforesaid, shall not be called to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

(3) For the purposes of clause 5 of the First Schedule to the Defamation Act 1954, any report made by the Commissioner under this Act shall be deemed to be an official report made by a person holding an inquiry under the authority of the legislature of New Zealand.

Miscellaneous Provisions

23. Power of entry on premises—(1) For the purposes of this Act, but subject to the provisions of this section, the Commissioner may at any time enter upon any premises occupied by any of the Departments or organisations named in the Schedule to this Act and inspect the premises and, subject to the provisions of sections 16 and 17 of this Act, carry out therein any investigation that is within his jurisdiction.

(2) Before entering upon any such premises the Commissioner shall notify the Permanent Head of the Department or, as the case may require, the organisation by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Commissioner exclude the application of subsection (1) of this section to any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence, or international relations of New Zealand, including New Zealand's relations with the Government of any other country or with any international organisation.

24. Delegation of powers by Commissioner—(1) With the prior approval in each case of the Prime Minister, the Commissioner may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.

(2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner.

(4) Any such delegation may be made subject to such restrictions and conditions as the Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases.

(5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Commissioner by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.

(6) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

25. Annual report—Without limiting his right to report at any other time, but subject to the provisions of subsection (6) of section 19 of this Act and to any rules for the guidance of the Commissioner made by the House of Representatives and for the time being in force, the Commissioner shall in each year make a report to Parliament on the exercise of his functions under this Act.

26. Offences—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding fifty pounds who—

- (a) Without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act:
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act:
- (c) Wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act.

27. Money to be appropriated by Parliament for purposes of this Act—Except as otherwise provided in this Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

28. Power to amend Schedule by Order in Council on abolition or creation of Department, etc.—Where any Department or organisation named in the Schedule to this Act is abolished, or its name is altered, or where any new Department of State is created, the Governor-General may by Order in Council make such amendments to the said Schedule as may be necessary to give effect to the abolition or alteration, or to include the name of the new Department therein.

29. Savings—The provisions of this Act are in addition to the provisions of any other enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy or right of appeal or objection or procedure as aforesaid.

SCHEDULE

Section 11 (1)

DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT APPLIES*Part I—Government Departments*

The Air Department.
The Army Department.
The Audit Department.
The Crown Law Office.
The Customs Department.
The Department of Agriculture.
The Department of Education.
The Department of External Affairs.
The Department of Health.
The Department of Industries and Commerce.
The Department of Internal Affairs.
The Department of Island Territories.
The Department of Justice.
The Department of Labour.
The Department of Lands and Survey.
The Department of Maori Affairs.
The Department of Scientific and Industrial Research.
The Department of Statistics.
The Government Life Insurance Office.
The Government Printing Office.
The Inland Revenue Department.
The Law Drafting Office.
The Legislative Department.
The Maori Trust Office.
The Marine Department.
The Mines Department.
The Ministry of Works.
The Navy Department.
The New Zealand Electricity Department.
The New Zealand Forest Service.
The New Zealand Government Railways Department.
The Office of the Public Service Commission.
The Police Department.
The Post Office.
The Prime Minister's Department.

SCHEDULE—*continued*DEPARTMENTS AND ORGANISATIONS TO WHICH THIS ACT
APPLIES—*continued**Part I—Government Departments—continued*

The Public Trust Office.
The Social Security Department.
The State Advances Corporation of New Zealand.
The State Fire and Accident Insurance Office.
The Tourist and Publicity Department.
The Transport Department.
The Treasury.
The Valuation Department

Part II—Other Organisations

The Air Board.
The Army Board.
The Board of Management of the State Advances Corporation of New Zealand.
The Board of Maori Affairs.
The Earthquake and War Damage Commission.
The Government Stores Board.
The Government Superannuation Board.
The Land Settlement Board.
The Maori Purposes Fund Board.
The National Parks Authority.
The National Provident Fund Board.
The National Roads Board.
The New Zealand Naval Board.
The New Zealand Army.
The New Zealand Naval Forces.
The Police.
The Public Service Commission.
The Rehabilitation Board.
The Royal New Zealand Air Force.
The Social Security Commission.
The Soil Conservation and Rivers Control Council.
The State Fire Insurance Board.

This Act is administered in the Legislative Department.

WELLINGTON, NEW ZEALAND: Printed under authority of the New Zealand Government, by R. E. OWEN, Government Printer—1962

Price 1s. 6d.

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1962/208



THE OMBUDSMAN'S RULES 1962

PURSUANT to section 12 of the Parliamentary Commissioner (Ombudsman) Act 1962, the House of Representatives, on the 28th day of November 1962, made the following rules for the guidance of the Ombudsman in the exercise of his functions.

RULES

1. These rules may be cited as the Ombudsman's Rules 1962.
2. In these rules, the term "the Act" means the Parliamentary Commissioner (Ombudsman) Act 1962.
3. The Ombudsman may from time to time, in the public interest or in the interests of any person or Department or organisation, publish reports relating generally to the exercise of his functions under the Act or to any particular case or cases investigated by him, whether or not the matters to be dealt with in any such report have been the subject of a report to Parliament.

H. N. DOLLIMORE,
Clerk of the House of Representatives.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 13 December 1962.
These regulations are administered in the Legislative Department.

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Appendix E

Form L-101

STATE OF CONNECTICUT,

Bill No. 3194

Page 1 of 11

Introduced by Rep. Eddy

Date _____

Ref. to Committee on Judiciary

General Assembly,

January Session, A. D., 1965

AN ACT CONCERNING THE APPOINTMENT OF AN OMBUDSMAN TO
INVESTIGATE ADMINISTRATIVE DECISIONS OR
ACTS OF DEPARTMENTS, AGENCIES, INSTITUTIONS
AND CERTAIN OTHER ORGANIZATIONS, AND TO
DEFINE THE OMBUDSMAN'S FUNCTIONS AND POWERS
AND MAKE APPROPRIATION THEREFOR.

Be it enacted by the Senate and House of Representatives in
General Assembly convened:

Section 1. This act is known and shall be cited as the
Ombudsman Act of 1965.

Sec. 2. (a) There shall be appointed, as an officer of the
general assembly, a commissioner of investigations, to be called
the Ombudsman.

(b) One or more candidates for this office shall be
selected by the judiciary committee and reported to the general
assembly.

(c) The Ombudsman shall be elected by a vote of
either a majority of each major political party or a two-thirds
majority of the general assembly.

Sec. 3. The Ombudsman shall: (1) Be learned in the processes
of law and government and have a distinguished intellectual standing
in his profession; (2) shall not be a member of the general assembly,
cannot be elected to it during his tenure or for three years after
leaving office, nor shall he have been a member of the general
assembly for two years prior to his appointment; (3) shall not hold
any office for reward or profit under the state or subordinate
governments during his tenure or for two years thereafter:

(4) shall not engage in any occupation for reward outside the duties of his office during his tenure.

Sec. 4. The Ombudsman shall hold office for six years from the first day in July in the year of his appointment and until his successor has been appointed and has qualified. Every such person may from time to time be reappointed but in no case shall any Ombudsman hold office for more than three six-year terms. The Ombudsman may at any time be removed from his office by a two-thirds vote of the general assembly for neglect of duty, misconduct, or disability.

Sec. 5. If the Ombudsman dies, or retired, or resigns, or is removed from office, the first assistant to the Ombudsman shall become the acting ombudsman until a new Ombudsman is appointed by the general assembly and qualifies for office.

Sec. 6. The compensation of the Ombudsman shall equal that of the chief judge of the Supreme Court of Errors.

Sec. 7. (a) Subject to the provisions of this section, the Ombudsman shall appoint a first assistant to the Ombudsman and such officers and employees as may be necessary for the efficient performance of his functions.

(b) The number of persons that may be appointed under this section, whether generally or in respect of any specified duties or class of duties, shall from time to time be determined by the general assembly.

(c) The salaries of persons appointed under this section and the terms and conditions of their appointments shall be such as are approved by the general assembly.

Sec. 8. (a) Before entering upon the exercise of the duties of his office the Ombudsman shall take an oath that he will faithfully and impartially perform the duties of his office, and that he will not, except for the purpose of giving effect to this act, divulge any information received by him under this act such matters as in his opinion should be disclosed in order to establish grounds for his conclusions and recommendations.

(b) Every person holding any office or appointment under the Ombudsman shall, before he begins to perform any official duty under this act, take an oath, to be administered by the

Ombudsman, that he will not divulge any information received by him under this act except for the purpose of giving effect to this act.

Sec. 9. (a) The Ombudsman may from time to time, by writing over his signature, delegate to any person holding office under him any of his powers under this act, except this power of delegation and the power to make any report under this act.

(b) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.

(c) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Ombudsman.

(d) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit and may be made either generally or in relation to any particular case or class of cases.

(e) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Ombudsman by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.

(f) Any person purporting to exercise any power of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

Sec. 10. (a) The principal function of the Ombudsman shall be to investigate any decision, recommendations, or any act done or omitted relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any of the scheduled bodies, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment.

(b) The Ombudsman may make any such investigation either on a complaint made to him by any person or on his own motion and where a complaint is made he may investigate any decision, act, or omission, whether or not mentioned in the complaint, which he finds relevant or related.

(c) The powers conferred on the Ombudsman by this act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organization whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.

(d) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this act, he may, if he thinks fit, apply to the Supreme Court of Errors for a declaratory opinion to determine the question.

Sec. 11. Where any of the departments, agencies, institutions, or organizations named in the schedule to this act is abolished or its name altered, or where any of the aforesaid bodies subdivided or new bodies created, the Ombudsman shall have jurisdiction unless the next ensuing session of the general assembly disaffirms the inclusion of the altered, subdivided, or new bodies under the schedule to this act.

Sec. 12. (a) Every complaint to the Ombudsman shall be made in writing and should contain information sufficient to inform the Ombudsman of the nature of the decision, recommendation, act, or omission that forms the basis of the complaint.

(b) Notwithstanding any provision in any enactment, where any letter written by any person in custody on a charge or after conviction of any offense, or by any inmate of any institution named in the schedule to this act, is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is an inmate.

Sec. 13. (a) Without limiting the generality of the powers conferred on the Ombudsman by this act, it is hereby declared that the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to further investigate any complaint if:

(1) Under the law or existing administrative practice, there is presently available an adequate remedy or right of appeal for the complainant's particular complaint and circumstances, whether or not he has availed himself of it,

(2) the complaint relates to any decision, recommendation, act or omission, of which the complainant has had knowledge for more than twenty months before the complaint is received by the Ombudsman;

(3) the subject matter of the complaint is trivial;

(4) the complaint is frivolous, or vexatious;

(5) the complaint is not made in good faith; or

(6) having regard to all the circumstances of the case, it is the opinion of the Ombudsman that any further investigation is unnecessary.

(b) In any case where the Ombudsman decides not to investigate or not to further investigate a complaint he shall inform the complainant of that decision and state his reasons therefor.

Sec. 14. Investigation Procedure.

(a) When initiating any investigation under this act, the Ombudsman shall inform the head of any department, agency, institution or organization affected, of his intention to make the investigation.

(b) Every investigation by the Ombudsman under this act shall be conducted in private.

(c) The Ombudsman may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit.

(d) It shall not be necessary for the Ombudsman to hold any hearing, and no person shall be entitled as of right to be heard by the Ombudsman, provided that if any time during the course of an investigation it appears to the Ombudsman that

there may be sufficient grounds for his making any report or recommendation that may adversely affect any department, agency, institution, or organization or person, he shall give to that department, aforesaid bodies, or persons, an opportunity to be heard.

(e) Where the head of any scheduled body concerned with an investigation so requests, or in any case where an investigation relates to any recommendation made to the head of a scheduled body, the Ombudsman shall consult with that head after making the investigation and before forming a final opinion on any of the matters referred to in subsection (a) or subsection (b) of section 17 of this act.

(f) If, during or after any investigation, the Ombudsman is of the opinion that there is any evidence of any breach of duty or misconduct on the part of any officer or employee of any department, agency, institution, or organization, he shall refer the matter to the appropriate authority.

(g) Subject to the provisions of this act the Ombudsman may regulate his procedure in such manner as he thinks fit.

Sec. 15. (a) Subject to the provisions of this section and of Section 16 of this act, the Ombudsman may from time to time require any person to furnish to him any information, and to produce any documents or papers or things which in the Ombudsman's opinion relate to any matter under investigation under this act and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any scheduled bodies and whether or not such documents, papers, or things are in the custody or under the control of said bodies.

(b) The Ombudsman shall have the power to compel the attendance and testimony, by subpoena and capias, and examine on oath any person who is an officer or employee or member of any of the bodies named in the schedule to this act and who in the Ombudsman's opinion is able to give any such information as aforesaid, or any complainant, or any other person who in the Ombudsman's opinion is able to give any such information. The Ombudsman may bring suit in the appropriate State court to enforce these orders.

Bill No. 3194 - Page 7

(c) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and things as witnesses have in any court of this State.

(d) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Ombudsman shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(e) No person shall be liable to prosecution for an offense against any enactment, other than this act, by reason of his compliance with any requirement of the Ombudsman under this section.

Sec. 16. (a) Where the attorney general certifies that the giving of any information or the answering of any question or the production of any document or paper or thing might prejudice the security or defense of the state, the various states or the United States, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

(b) Subject to the provisions of subsection (1) of this section, section 1-20 of the general statutes shall not apply in respect of any investigation by or proceedings before the Ombudsman.

Sec. 17. (a) The provisions of this section shall apply in every case where, after making any investigation under this act, the Ombudsman is of the opinion that the decision, recommendation, act, or omission which was the subject matter of the investigation

(1) appears to have been contrary to law; or

(2) was unreasonable, unjust, oppressive, or improperly discriminatory, or was in accordance with a regulation, an enactment or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; or

Bill No. 3194 - Page 8

(3) was based wholly or partly on a mistake of law or fact; or

(4) was wrong.

(b) The provisions of this section shall also apply in any case where the Ombudsman is of the opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(c) If in any case to which this section applies the Ombudsman is of the opinion:

(1) that the matter should be referred to the appropriate authority for further consideration: or

(2) that the omission should be rectified: or

(3) that the decision should be cancelled or varied: or

(4) that any practice on which the decision, recommendation, act, or omission was based should be altered: or

(5) that any law or regulation on which the decision, act, or omission was based should be reconsidered: or

(6) that reasons should have been given for the decision: or

(7) that any other steps should be taken: the Ombudsman shall publicly report his opinion, and his reasons therefor, to the appropriate department, agency, organization or institution, and may make such recommendations as he deems advisable. In any such case he may request the department, agency, institution or organization to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations. The Ombudsman shall also send a copy of his report and recommendations to the department head concerned.

(d) After a reasonable time, if no action is taken which the ombudsman deems adequate and appropriate, he may, in his discretion, after considering the comments, if any, made by or on behalf of any scheduled body affected, send a copy of the report and recommendation to the governor and may thereafter make such report to the general assembly on the matter, including proposed corrections in the existing laws and administrative practices and regulations involved in the case, as he deems advisable. All such reports and recommendations shall be made public by the Ombudsman simultaneously with their transmission to the governor or the general assembly.

(e) The Ombudsman shall attach to every report sent or made under subsection d of this section a copy of any comments made by or on behalf of the scheduled body affected.

(f) Notwithstanding anything in this section, the Ombudsman shall not, in any report made under this act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard as provided in the procedures of section__.

Sec. 18. Whether or not the Ombudsman acts under section 17 or any other section of this act, he shall inform the complainant, at such time and in such manner as he deems appropriate, of his decision or recommendation or remedial action taken, if any, and make such other comments as he deems advisable.

Sec. 19. No proceeding or decision of the Ombudsman shall be challenged, reviewed, quashed or called into question in any court, except as they contravene the provisions of this act, or on the grounds of lack of jurisdiction.

Sec. 20. (a) No proceedings, civil or criminal, shall lie against the Ombudsman, or against any person holding any office or appointment under the Ombudsman, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this act, unless it is shown that he acted in bad faith. The Ombudsman and any such person as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial investigation of his functions.

Bill No. 3194 - Page 10

(b) Any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

(c) Any report made by the Ombudsman under this act shall be deemed an official report made by a person holding an inquiry under the authority of the general assembly as in section 2-46 of the general statutes.

Sec. 21. The provisions of this act are in addition to the provisions of any other enactment under which any remedy or right of appeal or objection is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this act shall limit or affect any such remedy or right of appeal or objection or procedure as aforesaid.

Sec. 22. Any person who, without lawful justification or excuse, willfully obstructs, hinders, or resists the Ombudsman or any other person in the exercise of his powers under this act, refuses or willfully fails to comply with any lawful requirement of the Ombudsman or any other person under this act or willfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this act, shall be fined not more than one thousand dollars.

Sec. 23. The sum of \$85,000 is appropriated for the business ending June 30, 1964 for the purpose of defraying the salaries, expenses and other expenditures of the administration of this act.

Sec. 24. This act shall apply to the following:
Architectural Examining Board; Banking Department; Board of Chiropractic Examiners; Board of Examiners of Barbers; Board of Examiners of Chiropody; Board of Examiners of Embalmers and Funeral Directors; Board of Examiners of Hypertrichologists; Board of Examiners for Nursing; Board of Examiners in Optometry; Board of Healing Arts; Board of Parole; Board of Registration for Professional Engineers and Land Surveyors; Civil Service Commission; Commission on Civil Rights; Commission on Forfeited

Rights; Commission for Opticians; Commissioners of Steamship Terminals; Connecticut Agricultural Experiment Station; Connecticut Development Commission; Connecticut Labor Department; Connecticut Prison Association; Connecticut Reformatory; Connecticut School for Boys; Connecticut State Farm and Prison for Women; Dental Commission; Department of Aeronautics; Department of Agriculture and Natural Resources; Department of Consumer Protection; Department of Health; Department of Motor Vehicles; Department of Mental Health and State Hospitals; Examiners for Hairdressers and Cosmeticians; Examiners for Public Accountants; Examiners for Physical Therapists; Examiners of Psychologists; Highway Department; Industrial Building Commission; Insurance Department; Liquor Control Commission; Long Lane School; Medical Examining Board; Personnel Appeal Board; Personnel Department; Public Utilities Commission; Public Works Department; Secretary of State; Soldiers', Sailors' and Marines' Fund; State Board of Education; State Jail Administration; State Pharmacy Commission; State Police Department; State Prison; State Traffic Commission; State Welfare Department; Tax Department; Teachers' Retirement Board; Tree Protection Examining Board; Unemployment Commission; Veterans' Home and Hospital Commission; and Workmen's Compensation Commission.

Sec. 25. The effective date of this act shall be July 1, 1965.

STATEMENT OF PURPOSE: To establish an office of the Ombudsman accountable to the general assembly with the authority to investigate, either on a complaint by a citizen or on his own motion, decisions, acts and other matters of state departments, agencies and certain other organizations so as to promote higher standards of competence, efficiency and justice in the administration of state laws.

APPENDIX F

A STATE STATUTE TO CREATE THE OFFICE OF OMBUDSMAN*

THE STATUTE

PART I. SHORT TITLE AND DEFINITIONS

SECTION 101. Short title.

This Act may be called "The Ombudsman Act of 1965."

SECTION 102. Definitions.

(a) "Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of his official duties, except

- (1) a court;
- (2) the Legislature, its committees, and its staff;
- (3) a political subdivision of the state or an entity thereof;
- (4) an entity of the federal government;
- (5) a multistate governmental entity; and
- (6) the Governor and his personal staff.

(b) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure, but does not include the preparation or presentation of legislation.

PART II. ORGANIZATION OF THE OFFICE

SECTION 201. Establishment.

The office of Ombudsman is hereby established.

*Harvard Journal on Legislation, Vol. 2, No. 2 (June 1965) 221-238.

SECTION 202. *Appointment of the Ombudsman.*

The Governor, with the advice and consent of the Senate, shall appoint the Ombudsman.

SECTION 203. *Qualifications.*

No person may serve as Ombudsman

(a) within two years of the last day on which he served as a member of the Legislature,

(b) while he is a candidate for or holds any other state office, or

(c) while he is engaged in any other occupation for reward or profit.

SECTION 204. *Term of Office.*

The term of office of an Ombudsman is six years. An Ombudsman may be reappointed but may not serve more than three terms.

SECTION 205. *Removal.*

The Legislature, by a two-thirds vote in each house, may remove or suspend the Ombudsman from office, but only for neglect of duty, misconduct, or disability.

SECTION 206. *Vacancy.*

If the Ombudsman dies, resigns, becomes ineligible to serve, or is removed or suspended from office, the First Assistant to the Ombudsman becomes the Acting Ombudsman until a new Ombudsman is appointed for a full term.

SECTION 207. *Compensation.*

The Ombudsman is entitled to compensation equal to that of the chief judge of the highest court of the state.

SECTION 208. *Staff and delegation.*

(a) The Ombudsman shall appoint a First Assistant and such other officers and employees as may be necessary to carry out the provisions of this Act.

(b) The Ombudsman may delegate to his appointees any of his duties except those specified in sections 502 and 503.

SECTION 209. *Procedure.*

The Ombudsman may establish procedures for receiving and process-

ing complaints, conducting investigations, and reporting his findings. However, he may not levy fees for the submission or investigation of complaints.

PART III. JURISDICTION AND INITIATION OF INVESTIGATIONS

SECTION 301. *Jurisdiction.*

(a) The Ombudsman has jurisdiction to investigate the administrative acts of agencies.

(b) The Ombudsman may exercise his powers without regard to the finality of any administrative act.

SECTION 302. *Investigation of complaints.*

The Ombudsman shall investigate any complaint indicating an appropriate subject for investigation under section 401, unless he believes that

(a) there is presently available an adequate remedy for the grievance stated in the complaint;

(b) the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;

(c) the complaint relates to an administrative act of which the complainant has had knowledge for too long a time before the complaint was submitted;

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

(e) the complaint is trivial or made in bad faith;

(f) the facilities of the Ombudsman's office are insufficient for adequate investigation; or

(g) there are other complaints more worthy of the Ombudsman's attention.

SECTION 303. *Investigation on the Ombudsman's motion.*

The Ombudsman may investigate on his own motion if he reasonably believes that an appropriate subject for investigation under section 401 exists.

SECTION 304. *Notice to complainant.*

(a) If the Ombudsman decides not to investigate, he shall inform the complainant of that decision and shall state his reasons unless he reasonably believes it is inappropriate to do so.

(b) If the Ombudsman decides to investigate, he shall notify the complainant of his decision.

SECTION 305. *Notice to the agency.*

If the Ombudsman decides to investigate, he shall notify the agency of his intention to investigate.

PART IV. INVESTIGATIONS

SECTION 401. *Appropriate subjects for investigation.*

(a) An appropriate subject for investigation is an administrative act of an agency which might be

- (1) contrary to law;
- (2) unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
- (3) based on a mistake of fact;
- (4) based on improper or irrelevant grounds;
- (5) unaccompanied by an adequate statement of reasons;
- (6) performed in an inefficient manner; or
- (7) otherwise erroneous.

(b) The Ombudsman may investigate to find an appropriate remedy.

SECTION 402. *Investigation procedures.*

In an investigation, the Ombudsman may

- (a) make inquiries and obtain information as he thinks fit;
- (b) enter without notice to inspect the premises of an agency; and
- (c) hold private hearings.

SECTION 403. *Powers.*

(a) Subject to the privileges which witnesses have in the courts of this state, the Ombudsman may

- (1) compel at a specified time and place, by a subpoena, the appearance and sworn testimony of any person who the Ombudsman reasonably believes may be able to give information relating to a matter under investigation; and
- (2) compel any person to produce documents, papers, or objects which the Ombudsman reasonably believes may relate to a matter under investigation.

(b) The Ombudsman may bring suit in an appropriate state court to enforce these powers.

PART V. PROCEDURE AND REPORTS AFTER INVESTIGATION

SECTION 501. *Consultation with agency.*

Before giving any opinion or recommendation that is critical of an agency or person, the Ombudsman shall consult with that agency or person.

SECTION 502. *Procedure after investigation.*

If, after investigation, the Ombudsman finds that

- (a) a matter should be further considered by the agency;
- (b) an administrative act should be modified or cancelled;
- (c) a statute or regulation on which an administrative act is based should be altered;
- (d) reasons should be given for an administrative act; or
- (e) any other action should be taken by the agency;

he shall report his opinion and recommendations to the agency. He may request the agency to notify him, within a specified time, of any action taken on his recommendations.

SECTION 503. *Publication of recommendations.*

After a reasonable time has elapsed, the Ombudsman may present his opinion and recommendations to the Governor, the Legislature, the public, or any of these. The Ombudsman shall include with this opinion any reply made by the agency.

SECTION 504. *Notice to the complainant.*

After a reasonable time has elapsed, the Ombudsman shall notify the complainant of the actions taken by him and by the agency.

PART VI. MISCELLANEOUS

SECTION 601. *Misconduct by agency personnel.*

If the Ombudsman thinks there is a breach of duty or misconduct by any officer or employee of an agency, he shall refer the matter to the appropriate authorities.

SECTION 602. *Annual report.*

The Ombudsman shall submit to the Legislature and the public an annual report discussing his activities under this Act.

SECTION 603. *Judicial review.*

No proceeding or decision of the Ombudsman may be reviewed in any court, unless it contravenes the provisions of this Act.

SECTION 604. *Immunity of the Ombudsman.*

The Ombudsman has the same immunities from civil and criminal liability as a judge of this state.

SECTION 605. *Ombudsman's privilege not to testify.*

The Ombudsman and his staff shall not testify in any court with respect to matters coming to their attention in the exercise or purported exercise of their official duties except as may be necessary to enforce the provisions of this Act.

SECTION 606. *Agencies may not open letters to Ombudsman.*

A letter to the Ombudsman from a person held in custody by an agency shall be forwarded immediately, unopened, to the Ombudsman.

SECTION 607. *Penalty for obstruction.*

A person who willfully hinders the lawful actions of the Ombudsman or his staff, or willfully refuses to comply with their lawful demands, shall be fined not more than one thousand dollars.

COMMENT

PART I. SHORT TITLE AND DEFINITIONS

SECTION 102. *Definitions.*

The Ombudsman's jurisdiction, under section 301(a), extends to the investigation of the administrative acts of any agency. Since "administrative act" and "agency" are often referred to in the statute, they are defined in this section for convenience. There are several ways to define the included agencies. One could name in the act those agencies which the draftsmen desire to include. However, unless amended, the list would become obsolete when old agencies were altered and new ones created; and it is an imposition upon a busy state legislature to require it to update the list whenever an agency is changed or created. In addition, it would be relatively easy for an agency, through either inadvert-

ence or political influence, to be excluded from the Ombudsman's jurisdiction by having its name omitted from the list.

A second course would be to include those agencies that perform any one of various functions such as issuing licenses, regulating economic activity, or dispersing public funds. However, since the intent is to include all state agencies, listing criteria is a circuitous route to that objective. Inadvertent omission of agencies and frequent litigation over jurisdiction would be the likely result. Thus, the alternative chosen was to define "agency" in a general fashion and to specify the exclusions.

Six governmental entities have been omitted from the Ombudsman's jurisdiction so that it will encompass only state administrative agencies. Giving the Ombudsman jurisdiction over courts serves no useful purpose and might interfere with the functioning of the legal system. The Governor and the legislature are excluded to avoid the intrusion of the Ombudsman into the political process. Also, since he will need the cooperation of both to perform his duties, investigating them might prejudice his working relationship with them. Federal and multistate entities have been excluded since the interests of other sovereign governments are involved. Allowing a state official to investigate such bodies might create constitutional and practical difficulties, particularly in light of the novelty of the Ombudsman in an American environment. Thus, all federal agencies are excluded, even those with many local offices, such as Social Security, Selective Service, and Internal Revenue Service. However, the fact that federal funds may partially or entirely support a state activity, such as highways, welfare, or unemployment compensation, does not mean that such an agency is excluded from the Ombudsman's jurisdiction. "Multi-state governmental agencies" includes, for example, transportation authorities created by more than one state. The considerations that apply to excluding federal governmental agencies are also applicable here, though to a lesser extent.

The sixth exclusion, political subdivisions of the state or entities thereof, is the most significant and controversial. The basic reasons for exclusion are political and cautionary. Including municipalities would bring forth far too many complaints for the Ombudsman to investigate. It would also severely hamper the bill's chance of passage: Its fate would become intertwined with such present

political controversies as police civilian review boards and remedies for housing code violations, both vital concerns if the Ombudsman were to operate on the local level. By narrowing the area of the Ombudsman's jurisdiction, it is easier to evaluate the institution in an American environment and to observe what modifications may be required. However, since supervision is needed at least as much on the local as the state level, the successful functioning of the Ombudsman institution might lead to the inclusion of municipalities within its jurisdiction. For example, when the Danish Ombudsman was elected in 1955, his jurisdiction did not include localities. However, in 1961, the governing statute was amended to give him power to investigate localities on his own initiative if the matter involved a violation of material legal interests.

Finally, the definition of agency includes personnel of those agencies acting or purporting to act in the exercise of their official duties. The purpose is to ensure that the Ombudsman does not investigate such personnel, even in cases of grave misconduct, unless official duties are involved.

The definition of "administrative act" covers the entire spectrum of agency activity. It includes not only agency action or omission, but also agency processes—the manner in which an agency performs its functions and arrives at decisions. Since the purpose of the Ombudsman is to investigate the implementation of policy through the administrative process, and not the wisdom of the basic policies themselves, the preparation and presentation of legislation have been excluded from the definition of "administrative act." Thus, whether the agency prepares legislation on its own initiative or at the request of the Governor or the legislature, this activity is outside the Ombudsman's jurisdiction. Though he cannot investigate the process of formulating legislation, after an investigation he can, under sections 502 and 503, recommend that a statute on which an administrative act is based be altered.

PART II. ORGANIZATION OF THE OFFICE

SECTION 202. *Appointment of the Ombudsman.*

This section provides for the appointment of the Ombudsman by the Governor. This is the generally accepted American pro-

cedure for the appointment of administrative officers. There is some argument for appointment by the legislature since the Ombudsman will be investigating executive agencies. However, the check of Senate confirmation should provide sufficient safeguards. The draft can be altered if legislative appointment is preferred.

SECTION 203. *Qualifications.*

Subsection (a) provides that no person may serve as Ombudsman if he has been a member of the legislature at any time during the two preceding years. The provision covers present members of the legislature as well as those recently retired or defeated. This deters the Governor and the legislature from using the office as a payment for past political favors and detaches the office from politics to that extent.

Subsection (b) makes the Ombudsman ineligible to serve while he is a candidate for or holds any other state office. Thus, if the Ombudsman ever becomes a candidate, he must leave office at that time, and cannot await the outcome of the election. Subsection (c) does not prohibit the Ombudsman from engaging in sporadic activities such as writing articles and giving lectures, as long as they do not conflict with the duties of his office. Since he cannot function effectively unless people know of his existence, such activities can be viewed as pertaining to his office.

SECTION 204. *Term of office.*

A six-year term gives sufficient time for the Ombudsman to become acquainted with the office, provides a measure of independence from politics, and is long enough to interest qualified persons in the position. The three-term limitation prevents an individual from becoming so identified with the office that it will not be able to function effectively after his departure. In view of its experimental nature, the limitation will also give people with new ideas and new conceptions of the office a chance to become the Ombudsman.

SECTION 205. *Removal.*

The legislature may wish to reserve the right to remove or suspend the Ombudsman for neglect of duty, misconduct, or dis-

ability. However, further grounds such as "other sufficient cause" should not be included, since they present too great a threat to the desired independence of the Ombudsman from political control. The legislature should have the sole removal power in spite of the gubernatorial method of appointment, since the Ombudsman, in the exercise of his investigatory powers, may at times act counter to the interests of the Governor.

SECTION 206. *Vacancy.*

If the Ombudsman leaves office or becomes ineligible to serve, the First Assistant becomes Acting Ombudsman until a new Ombudsman is appointed for a full six-year term. The same reasons that support a long term for the Ombudsman are applicable here. The added problem of finding a qualified individual to take the office for only the unexpired term of the old Ombudsman is alleviated by this section.

SECTION 207. *Compensation.*

Setting the Ombudsman's compensation equal to that of the chief judge of the highest court of the state increases the prestige of the office and provides sufficient remuneration to attract qualified persons.

SECTION 208. *Staff and Delegation.*

Within the limits of available appropriations, the Ombudsman shall appoint a First Assistant and other necessary employees. No provision regarding civil service requirements is included in the statute, since state provisions vary. In any case, because of the flexible and experimental nature of the office and the close relationship inherent in a small staff, the Ombudsman should be able to appoint his First Assistant and others with important duties without regard to civil service.

Paragraph (b) allows the Ombudsman to delegate any of his duties except his duty to make recommendations to the agency, the Governor, the legislature, or the public. These are the Ombudsman's only means for securing changes in administrative acts, and this section assures that such reports will be his responsibility. Within this limitation, flexibility requires that the Ombudsman be given wide freedom to delegate as he sees fit.

SECTION 209. *Procedure.*

This section gives the Ombudsman broad discretion in regulating his office and complaint procedures, although he may not charge a complaint fee. One of the purposes of the Ombudsman is to aid people who through ignorance or limited finances cannot seek their own redress through the agency. This objective would be defeated by permitting fees, since even a nominal amount discourages some people from filing bona fide complaints.

PART III. JURISDICTION AND INITIATION OF INVESTIGATIONS**SECTION 301. *Jurisdiction.***

Subsection (a) specifies that the jurisdiction of the Ombudsman extends to the investigation of all administrative acts of agencies. Section 102 should be consulted for definitions of those terms. Subsection (b) allows the Ombudsman to investigate even though the agency action is deemed final by statute or case law. However, as will be seen in the discussion of section 502, the Ombudsman has no power to revise any agency action or impose any sanction on an agency that disagrees with his recommendations. He can only send his opinion, along with the agency's reply, to the Governor or the legislature, and make it public.

SECTION 302. *Investigation of complaints.*

In general, the Ombudsman has the duty to investigate any complaint which discloses the existence of an appropriate subject for investigation under section 401. He may decline to investigate only for certain reasons, stipulated in section 302. However, these reasons are broadly stated and leave much to the Ombudsman's discretion. He may consider the degree of the complainant's interest in the problem disclosed, the seriousness of the grievance, whether the resources of his office permit an adequate investigation, and whether there are other complaints more worthy of his attention. He may also decline to investigate if another remedy is available to the complainant. Since the number of complaints an Ombudsman in an American state would receive is an unknown quantity, such provisions are necessary to enable him to make the most effective use of his powers. They in no way preclude

the Ombudsman from investigating any agency under his jurisdiction. Often the Ombudsman will prefer to investigate in a case where the statute permits him to refuse. For instance, if he believes that recourse to a legal remedy would be futile or overly burdensome to his client, he might wish to render assistance. He might also want to proceed on a complaint from a public-spirited citizen who discloses administrative inefficiency even though the complainant is not personally injured. These examples are not exhaustive. However, in the vast majority of cases, the Ombudsman can be expected to rely on the standards implicit in section 302.

SECTION 303. *Investigation on the Ombudsman's motion.*

The Ombudsman has power to investigate on his own motion. However, since he must have reason to believe an agency action comes within section 401, he does not have power to conduct a "fishing expedition" through agency files. An implied corollary of this power is the right of the Ombudsman to continue on his own motion if he discovers another agency action not mentioned in the complaint which he believes justifies investigation.

SECTION 304. *Notice to complainant.*

This section requires the Ombudsman to inform the complainant when he decides whether or not to investigate. With one limited exception, paragraph (a) requires that notification of a decision not to investigate be accompanied by a statement of the reasons for the Ombudsman's decision. In cases where the Ombudsman declines to investigate because the complaint shows on its face that the agency's action was proper, this explanation could lead to better relations between the agency and the complainant in any future dealings between them. However, there may be cases when an explanation will serve no useful purpose or might even cause harm. In such cases, the Ombudsman is authorized to omit the reasons for his decision. However, the language of the statute is designed to inform the Ombudsman that his duty to give reasons extends to all but the extraordinary case. Paragraph (b) applies to notification that an investigation will be conducted. This is included primarily to insure that members of the public will be aware of the work the Ombudsman is doing on their

behalf. Section 504, discussed below, provides for notifying a complainant of the outcome of an investigation.

SECTION 305. *Notice to the agency.*

Whenever the Ombudsman decides to investigate, he shall so inform the agency. This gives the agency an opportunity to supply the Ombudsman on its own initiative with information it considers relevant to the case. It also avoids the problem of agency personnel feeling that the Ombudsman is investigating behind their backs.

PART IV. INVESTIGATIONS

SECTION 401. *Appropriate subjects for investigation.*

Paragraph (a) states what administrative acts are appropriate subjects for investigation by the Ombudsman, whether he proceeds on his own motion or by complaint. Item (1) permits the Ombudsman to investigate if a complaint discloses that administrative acts of an agency might be contrary to law. However, he has no power to revise any decision. Where a minor matter is involved and an agency has clearly acted without legal authority, the Ombudsman may be very effective in persuading the agency to remedy the wrong, thus saving the complainant the delay and inconvenience of going to court.

The remaining provisions of paragraph (a) cover every type of maladministration. Item (2) authorizes the Ombudsman to investigate agency actions performed according to statute. Item (3) is self-explanatory. Item (4) permits the Ombudsman to investigate when he suspects that an otherwise unimpeachable agency action was taken for improper reasons.

In some cases, the Ombudsman may believe that an agency's only mistake is failure to explain its action. Item (5) permits him to investigate in such a case. This provision applies to administrative acts involving adjudication and promulgation of regulations, but its most frequent use will probably involve less important administrative matters, such as those where an individual is refused information or assistance without being told the reasons.

Item (6), dealing with administrative inefficiency, relates to every aspect of an agency's practices or procedures. This provision

permits the Ombudsman to be of service to many agencies. In his work, he will have an opportunity to observe many agencies in action. The knowledge he obtains about the operation of the successful agencies should be shared with others that need improvement. Item (7) permits the Ombudsman to investigate when he suspects that an agency has made a mistake, even though the agency action is not so invidious as to come within item (2).

Paragraph (b) makes it explicit that the Ombudsman's power to investigate does not come to an end at the moment he satisfies himself that an agency has been remiss. He can continue to investigate in order to determine what remedial action would be most appropriate.

SECTION 402. *Investigation procedures.*

Paragraph (a) gives the Ombudsman broad authority to make inquiries and to obtain relevant information. Paragraph (b) gives him authority to enter and inspect the premises of an agency without notice, since in some situations advanced notice might thwart an investigation. This is most likely to be true of agencies holding persons in custody. However, since the goodwill and cooperation of agencies are necessary to the Ombudsman's effectiveness, as a practical matter he is unlikely to use this power except in extraordinary circumstances. Paragraph (c) permits the Ombudsman to hold private hearings. He is given no power to hold public hearings because publicity is reserved as the Ombudsman's ultimate sanction to be used only after investigation has established the existence of a wrong and after all other attempts at obtaining agency cooperation have failed.

SECTION 403. *Powers.*

Since one of the basic functions of the Ombudsman is investigation, he must be able to compel information and testimony. Under subparagraphs (a)(1) and (2) the Ombudsman may subpoena and obtain sworn testimony, documents, papers, and objects from any person if the Ombudsman believes they relate to a matter under investigation. This section applies whether or not the witness is affiliated with an agency over which the Ombudsman has jurisdiction. Since an investigation often will involve persons other than the complainant and agency personnel, limiting

the Ombudsman's powers to obtain information to those persons would severely hamper his effectiveness. However, paragraph (a) does preserve the same evidentiary privileges in proceedings before the Ombudsman that witnesses have in the state courts.

Paragraph (b) gives the Ombudsman authority to sue in state courts to enforce his powers under paragraph (a). While this procedure might cause some delay, there are state constitutional problems in allowing the Ombudsman to punish for contempt if his subpoena were ignored or a person refused to answer questions. Since state courts usually give preference to cases involving such matters, delay should not prove serious.

PART V. PROCEDURE AND REPORTS AFTER INVESTIGATION

SECTION 501. *Consultation with agency.*

This section assures that the Ombudsman will have the views of an investigated agency before he issues any adverse report.

SECTION 502. *Procedure after investigation.*

The Ombudsman is not required to notify an agency of his findings unless he has a recommendation to make. However, he may not take any coercive action, such as appealing to the public, unless the agency is first notified and thus given a chance to respond. In some cases he will recommend a modification of an agency action or procedure even though no act of the agency is clearly erroneous or otherwise defective under the standards of section 401. Even if an agency act is not erroneous, for example, he may still recommend, under paragraph (a), that the agency further consider the matter or, under paragraph (e), that other action be taken.

However in the vast majority of cases, the Ombudsman would recommend further action only if in his opinion the administrative act is subject to criticism under the standards of section 401. However, this provision does not change the doctrine of finality as applied to administrative agencies. What action is available to the agency when the Ombudsman recommends a change of decision will depend on its procedures as to when a decision can be reopened. Where the agency is free to reconsider the matter, or where no one would be adversely affected if it did so, the views of

the Ombudsman may often be of direct help to the complainant. However, even in the case where the agency cannot or will not reopen the question, it will frequently consider the Ombudsman's comments on the matter when future cases arise.

Paragraph (c) requires the Ombudsman to report to the agency if he believes a statute or regulation on which an administrative act is based should be altered. He is not a law revision commission, however; he can make recommendations relating only to a case he has investigated. This advisory function of the Ombudsman may often work to the advantage of an agency. For example, if an agency needs support for a proposed change in its governing statute, the Ombudsman's opinion will be persuasive evidence from an impartial source that such a modification is desirable. This section further provides that the Ombudsman may request the agency to notify him of any action it will take pursuant to his recommendations. This gives him an opportunity to take into consideration the agency's action if he proceeds under section 503 and enables him to inform the complainant of the results of his investigation.

SECTION 503. *Publication of recommendations.*

A reasonable time after his report to the agency, the Ombudsman may present his opinion and recommendation, with comments, to the Governor, the legislature, or the public—any or all of them. This section applies even if the agency complies with the Ombudsman's recommendations. In many cases, the Ombudsman may desire to publish a favorable report, if the agency has shown itself willing to acknowledge mistakes or reconsider past practices. Conversely, even though the agency has followed the particular recommendation, the Ombudsman's investigation may have revealed matters which should be made known. Furthermore, it is important to the Ombudsman to be able to demonstrate his success, to justify his office to the legislature, and to convince the public that it is worthwhile to file complaints with him.

The Ombudsman must allow a reasonable time to elapse before proceeding under this section. This allows the agency to consider the matter and take remedial action if it desires. As a protection for the agency, the Ombudsman must attach any reply it makes, when submitting any report under this section. This guarantees

that whoever reads the Ombudsman's opinion and recommendations will have the agency's response as well.

After the Ombudsman has made use of section 503, his ability to influence the administrative act of an agency is at an end. His success in accomplishing his goals will depend not upon naked power but on his ability to convince the Governor, the legislature, or the public, that a change is required.

SECTION 504. *Notice to the complainant.*

Within an appropriate time, the Ombudsman shall notify the complainant of the actions taken by him and by the agency. This does not preclude the Ombudsman from keeping a complainant informed during a long investigation, or from answering requests from individuals about the status of their complaints. The section states only the minimum required of the Ombudsman.

PART VI. MISCELLANEOUS

SECTION 601. *Misconduct by agency personnel.*

This section has much less force than the provisions found in the Scandinavian acts. In Sweden, the Ombudsman himself can prosecute misconduct, while the Danish Ombudsman has power to order prosecution. Under this statute, the Ombudsman can only refer the matter to the appropriate authority, usually the agency itself, the civil service commission, or the attorney general. Giving the Ombudsman greater power has political disadvantages and interferes with the discretion traditionally lodged in prosecuting officials.

SECTION 602. *Annual report.*

The annual report keeps the legislature and the public informed about the Ombudsman's activities. It also gives the Ombudsman an opportunity to call problems to their attention, and to suggest that the legislature broaden or reduce his powers if experience proves that such a change is needed.

SECTION 603. *Judicial Review.*

This section prevents an agency or official from securing judicial review of the Ombudsman's recommendations. Since the Ombuds-

man has no power to revise agency actions, it is unlikely that anyone would be held to have standing to object to his recommendations. However, since the institution is new in this country, one cannot be certain how the law will develop. This provision is included to guarantee that the Ombudsman will not be frequently involved in litigation when an agency disagrees with his appraisal of its actions.

SECTION 604. *Immunity of the Ombudsman.*

The Ombudsman is given the immunities from civil and criminal prosecution that are enjoyed by a state judge. The most significant of these is immunity from liability for defamation arising out of statements made in the exercise of his duties.

SECTION 605. *Ombudsman's privilege not to testify.*

The purpose of this section is to encourage people to cooperate with the Ombudsman, without fear that he will divulge information disclosed to him in confidence. This section also protects the Ombudsman and his staff from the embarrassment and interruption of having to testify in regard to cases they have investigated. However, since the Ombudsman may need recourse to the courts to perform his duties under this act, this privilege is not withheld from him. Its most likely use is to enforce his subpoena power under section 403. He may also testify in regard to the penalty for obstruction under section 607.

SECTION 606. *Agencies may not open letters to Ombudsman.*

The Danish and New Zealand acts have provisions similar to this section. The purpose is to prevent prisons and other agencies that hold people in custody from opening or delaying complaints to the Ombudsman. Those in custody must be able to speak without fear of reprisal.

SECTION 607. *Penalty for obstruction.*

This section penalizes only willful obstruction of the Ombudsman.