

COMMONWEALTH COURT CASES IN WHICH THE OFFICE OF OMBUDSMAN WAS
DIRECTLY INVOLVED

(Citations are provided where available. Copies of the unreported decisions are available from the International Ombudsman Institute.)

AUSTRALIA

Victoria

RE: The Ombudsman Act, Victoria, Australia
Judgment Delivered October 8, 1975.
Booth v. Dillon 1 [1976] V.R. 291

The Director-General of the Department of Social Welfare initiated the application to determine whether or not the Ombudsman had jurisdiction to conduct an investigation where the complainant, a prison inmate, allegedly was subjected to an assault by a Prison Officer in the presence of the Prison Governor and the Chief Prison Officer. His Honour Mr. Justice Lush, Supreme Court of Victoria, Australia, stated:

"To determine jurisdiction, accordingly, I must examine the complaint and the definition of administrative action to ascertain whether the complaint disclosed an administrative action taken in the department ... If in fact all that was alleged in the complaint was that there had been an assault by Prison Officer X., in breach of the common law and of regulation 169, the complaint would have said nothing to indicate that the prison authorities had not taken all proper steps to deal with what happened. In such a situation I am inclined to think that it could not be said that the complaint was of an action relating to a matter of administration, despite the fact that breach of a departmental rule was involved. It is not, however, necessary for me to decide this. It is the allegation that the Governor and the Chief Prison Officer were present and were apparently silent witnesses of an assault which as described was not made upon provocation from which the implications I have listed numbered (2) and (5) emerge. These implications show that A. alleges not only that the regulations for the proper conduct of the prison were broken, but that they were wilfully ignored by all three officers present. In the course of investigation it may emerge that the assault did not occur, or that having occurred it was fully and properly dealt with. But my only task is to say whether the matter which the Ombudsman described in his letter of 1st July as the subject of his investigation involves an action relating to a matter of administration, and in my opinion it does."

AUSTRALIA

Victoria

RE: The Ombudsman Act, Victoria, Australia
Judgment Delivered February 3, 1976.
Booth v. Dillon #2 [1976] V.R. 434

The same Director-General of the Department of Social Welfare initiating the above case no. 5 initiated herein two further special cases relating to the same issue as to what constitutes the definition of "administrative action". The first complaint alleged a senior Prison Officer made false and injurious statements to the press concerning the complainant, an inmate. His Honour Mr. Justice Dunn, Supreme Court of Victoria, Australia, ruled that:

"... if a senior prison officer did make any statement to the press as alleged in the press article it was not made in the course of or for the purposes of his employment, it was an independent and departmentally-unauthorised act; it was not an action of a kind for which he was employed.

"It follows, in my opinion, that the making of such an unauthorised statement to the press by a senior prison officer does not fall within the definition of 'administrative action' and cannot therefore form the subject of a complaint for the purposes of the Act. Consequently, the respondent (Ombudsman) does not have jurisdiction to conduct the proposed investigation."

In the other special case brought to the court's attention on this occasion, the court concluded it was a matter of administration as to whether or not action of an administrative nature was or was not taken in dealing with the matter of alleged sexual assaults, and that it was not the present task of the court to attempt to define further the limits to which the investigation of the Ombudsman was permissible.

AUSTRALIA

Victoria

RE: The Ombudsman Act 1973, Victoria, Australia
Judgment delivered November 4, 1976
Booth v. Dillon #3 [1977] V.R. 143

The question raised in this case was whether the Ombudsman could conduct an investigation under the Social Welfare Act of 1970. The investigations in question had to do with a hearing and subsequent charge by the governor of a prison against a prisoner under the Social Welfare Act. The action under investigation must be an exercise of administrative action, but not an administrative action taken by a court of law. Mr. Justice Nelson found as follows:

"The provisions to which I have referred, in my opinion, point

strongly to the conclusion that in exercising his powers under s. 131 the governor is exercising his administrative responsibility for the due order, management and discipline of the prison under his charge. The hearing of charges under the section is clearly related to the discharge of his administrative responsibility. He may remove the matter from the area of his administrative responsibility by referring the charge to a visiting magistrate, but insofar as the offence is a minor breach of rules or regulations and he deals with it himself, he is discharging an administrative function. He is bound to deal with the matter in a judicial way and the exercise of his duty is invested with features which have been referred to in the cases as judicial trappings, but even if there are elements of what could be described as the discharge of a judicial function in what he does, such elements are incidents only to the executive function he is discharging. The extended meaning of the expression "governor of a prison" which for the purposes of the section is provided by s. (3) may appear at first sight to reduce the significance I have attached to the administrative responsibility which under the Act and Regulations is placed upon the governor himself. But the ultimate responsibility for the care, charge and direction of all prisons duties is by s. 111(2) placed upon the Director-General, and the fact that the duties imposed upon the governor under s. 131 may be discharged by some senior officer of the Department appointed in writing by the Director-General, does not alter the nature of such duties or the administrative function to the discharge of which they are directed. In my opinion, action taken by a governor of a prison under s. 131 of the Social Welfare Act falls within the definition of administrative action in s. 2 of the Ombudsman Act, as an action relating to a matter of administration."

and later

"...the question whether a body is invested with judicial power and whether it constitutes a court of law is one of interpretation of the relevant legislation. Under the Commonwealth constitution, the judicial power of the Commonwealth is vested exclusively in certain courts of law. The Victorian legislature, however, is competent to confer judicial powers upon executive instrumentalities. Where such powers are conferred by a State legislature, upon an executive instrumentality solely to enable it to discharge its executive functions, it does not in my opinion convert the executive instrumentality into a court of law, nor require it to be regarded as a court of law for the purposes of any legislation which refers to such a court."

"The Ombudsman Act is clearly designed to invest the Ombudsman with jurisdiction to investigate the actions of administrative officers and tribunals, and in excluding from such jurisdiction the administrative actions of a court of law, the Act did not in my opinion intend to exclude from such jurisdiction the actions of a person or body primarily discharging an executive function but which as an incident

"that function had committed to it some judicial powers."

AUSTRALIA

Victoria

RE: The Ombudsman Act 1973, Victoria, Australia
Judgment delivered November 4, 1976
Glenister v. Dillon #2 [1977] V.R. 151

The question raised is one of jurisdiction. In this instance, whether the Ombudsman could conduct an investigation into an alleged administrative action by the Public Solicitor. The Public Solicitor allegedly failed to notify the accused's family that the accused would appear for sentencing on the day he was sentenced.

The Ombudsman was found to have no jurisdiction in this case because the actions of the Public Solicitor in the performance of his duties in representing accused persons are related to the discharge of the judicial function of the government and therefore, fall outside the definition of administrative action in s. 2 of the Act and the Ombudsman's investigative jurisdiction.

"If that action [to notify the accused's family] fell within the scope of the duty or employment of the Public Solicitor it was because it was incidental to his duty to represent the accused. If it was not so incidental, it was ... a matter extraneous to any duty he was required to perform and not related to a matter of administration."

Referring to his judgment in Booth v. Dillon, Mr. Justice Nelson also stated:

"1) Subject to the specific exclusions in the section, the Ombudsman may investigate any action taken in a government department which relates to a matter which arises in the performance of the executive function of the government, and

2) that the action relates to such a matter if it is taken in the discharge of that function of the government or if it can be properly said to be so incidental to the discharge of such a function that it forms a part of it."

AUSTRALIA

Victoria

RE: The Ombudsman Act, Victoria, Australia.
Judgment of the Full Court Delivered March 31,
1976.
Glenister v. Dillon [1976] V.R. 550

The permanent Head of the Law Department initiated this application relating to the Ombudsman's jurisdiction in two separate complaints.

It was held that the Ombudsman has no jurisdiction to investigate allegations concerning the failure of the Crown Law Department to bring a prisoner to trial within a reasonable time and the additional allegation by one of the complainants that there was a failure by the Crown Law Department to reply to a letter sent by the prisoner.

The members of the Full Court drew the distinction between the executive, the judicial and the legislative functions of Government and held that the word "administration" contained in the definition of administrative action in the Victorian Ombudsman Act (which reads "Administrative action" means any action relating to a matter of administration,...) denotes the performance of the executive function of Government and was never intended to comprehend any activity or inactivity in the area of the performance of the judicial or legislative functions. Concerning the particular facts, the court held that the delay in bringing the complainant to trial was something that had occurred in the area of the judicial process, that the complaint made of the delay was not concerned with any activity or inactivity relating to the performance of any executive power or the observance of any executive obligation, that so far as the Crown Solicitor was concerned, he primarily became involved as the legal practitioner to the Crown and to the extent that he could be involved in delay, that involvement would not be concerned with the executive function of Government at all.

The members of the court added that even if the inactivity of the Crown Solicitor complained of could be characterised as an administrative action as defined in the Act, that inactivity must have been "taken by a person acting as legal adviser to the Crown... in proceedings" and would accordingly fall within the exemption contained in Section 13 (3) (9b) of the Act, which specifically denies the Ombudsman jurisdiction to investigate any administrative action taken by a person acting as legal adviser to the Crown or as Counsel for the Crown in any proceedings.

AUSTRALIA

Western Australia

RE: Parliamentary Commissioner Act (no. 64 of 1971)
Western Australia.
An application for a Writ of Prohibition
against the Parliamentary Commissioner for
Administrative Investigations.
Judgment delivered May 9, 1978.
Prince and Oliver v. Dixon [1979] W.A.R. 116

It was admitted that the Ombudsman has jurisdiction to enter upon the inquiry in question however the conduct of the inquiry was under question, that is, it was submitted that the Ombudsman violated the principles of natural justice.

Chief Justice Burt discharged the order nisi for a writ of prohibition. The functions of the Commissioner were likened to those of a Royal Commissioner. The Chief Justice stated "The

commissioner is not required to show the complaint he is investigating to people who are brought before him to give evidence, and it may well be that the secrecy provisions to be found within the Act prevent him from doing so." The Chief Justice also dismissed the ground that the Commissioner disclosed bias once he stated that the evidence disclosed through the inquiry "is such to 'entitle' him to make comments referable to each of the applicants which in the ordinary sense of the word might be defamatory to you or at least adverse to you, and then being so... the Commissioner was giving each applicant an opportunity to be heard. It is absurd to say that once the Commissioner is in the position he discloses bias and for that reason he loses his jurisdiction to continue with the inquiry and to make a report."

Nothing which the Commissioner does affects the rights of the applicants, nor does it affect any matter which may condition the rights of the applicants.

(Note also that the Commissioner cannot make any report containing a comment defamatory or adverse to a person unless that person has been given an opportunity to be heard in the matter and his defense is fairly set forth in the report.)

CANADA

Alberta

RE: The Ombudsman Act, Alberta, Canada
Judgment Delivered January 6, 1970
(1970) 72 WWR 176; (1970) 10 DLR (3d) 47

The Honourable Chief Justice J.V.H. Milvain, Trial Division, Supreme Court of Alberta, Canada, fully supported the jurisdictional position argued on behalf of the Ombudsman. This case established that the Alberta Provincial Planning Board was an agency of Government, and, therefore, subject to investigation by the Provincial Ombudsman. It further established that the Ombudsman was authorised to investigate a complaint directed against the merits of a formal decision by that Board. What made that case helpful to the Ombudsman institution in general was the definitive guidelines enunciated by the Chief Justice who ruled:

"I am satisfied that the basic purpose of an Ombudsman is provision of a 'watch-dog' designed to look into the entire workings of administrative laws ... the Ombudsman has no power of reversing any decision, or of compelling an action or prohibition of any action. His function is to investigate and report, with the necessary recommendations ... the Ombudsman can bring to the Legislature his observations on the misworking of administrative legislation. He can also focus the light of publicity on his concern as to injustices and needed change. It must, of course, be remembered that the Ombudsman is also a fallible human being and not necessarily right. However, he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those

"who would draw the blinds. If his scrutiny and observations are well-founded, corrective measures can be taken in due democratic process, if not, no harm can be done in looking at that which is good."

CANADA

Manitoba

RE: The Ombudsman Act, Manitoba, Canada
Judgment Delivered November 20, 1974

A District Advisory Planning Commission was held by the court to be an agency of Government and, therefore, subject to the jurisdiction of an investigation by the Manitoba Ombudsman. The complaint concerned a developer who wanted to build a service station and motel on a parcel of land near a particular community and the Commission had refused permission. The Ombudsman became concerned when it appeared the Commission had improperly granted permission to another applicant.

The Manitoba Planning Scheme referred to the "responsible authority" as being the Minister for Northern Affairs and in that capacity, the Minister, on the advice of the Attorney General, disagreed with the jurisdictional position taken by the Ombudsman. The Court of Queen's Bench agreed with the submission made on behalf of the Ombudsman that the Planning Commission was an agency of the Provincial Government.

CANADA

Newfoundland

RE: The Ombudsman Act, Newfoundland, Canada
Judgment Delivered April 26, 1976

The Honourable Mr. Justice Noel, Trial Division, Supreme Court of Newfoundland, ruled the Ombudsman had no jurisdiction to investigate the Waterford Hospital Board, as it was not "an agency of the Government" within the meaning of The Ombudsman Act, and His Lordship stated:

"The fact that the Board was created by statute, and that its powers are subject to the qualifications, modifications, limitations and restrictions which are contained in the statute and regulations made thereunder does not detract from its capacity to act independently when exercising its corporate powers."

There were references to the Provincial Mental Health Review Board, yet no determination was made with respect to its agency status or otherwise, as it was not made party to the application.

CANADA

Nova Scotia

RE: Ombudsman Act 1970-71, Nova Scotia, Canada
Judgment delivered November 2, 1976
The Ombudsman of Nova Scotia v. Sydney
Steel Corporation and the A.G. of Nova
Scotia

The Supreme Court of Nova Scotia Appeal Division found that the Ombudsman did not have the power (i.e. it was not within his jurisdiction) to investigate the allegedly unfair dismissal of an employee of the Sydney Steel Corporation, a Crown Corporation.

Although the corporation was a "department" of the government, it was not engaged in the administration of any law of the province. The second criterion would necessitate it being engaged in a governmental function designed to serve some public or governmental need. The corporations' function was found to be not governmental but entirely industrial and commercial -- that of making and selling steel. It did not administer any law of the Province of Nova Scotia in the sense intended by the Legislature. Accordingly its activities were held to be immune from investigation by the Ombudsman.

CANADA

Ontario

RE: Ombudsman of Ontario and Health
Disciplines Board of Ontario et al.
Ontario Court of Appeal.
Judgment delivered July 31, 1979

The Health Disciplines Board and the Attorney General of Ontario appealed from an order of Mr. Justice Lebrosse under Section 15(5) of the Ombudsman Act, 1975 determining two questions in favour of the Ombudsman ((1979) 95 DLR (3d) 716), relating to his jurisdiction to investigate a review and decision of the Health Disciplines Board.

The two questions were:-

1. Is the Health Disciplines Board of the Province of Ontario a governmental organisation of the Province of Ontario within the meaning of the Ombudsman Act?
2. Does the Ombudsman have jurisdiction pursuant to s. 15(1) of the Ombudsman Act to investigate a review and decision made by the Health Disciplines Board of Ontario in respect of the care in issue and other cases within the same class?

The trial judge refused to answer the part of question 2 contained in the last seven words, however he answered both questions in the affirmative. The appeal court upheld the lower court decision.

CANADA

Ontario

RE: Ombudsman Act and the Minister of
Housing of the Province of Ontario
Judgment delivered October 12, 1979

This was an application by the Ombudsman pursuant to the Ombudsman Act and the rules of practice for an order:-

(a) Determining the jurisdiction of the Ombudsman to further investigate complaints notwithstanding that he has already delivered a report pursuant to Section 22 of The Ombudsman Act, regarding the subject matter of the said complaints and more particularly in respect of the complaint of some of the former landowners as described in a written agreement between the Minister of Housing and the Ombudsman made October 1, 1976.

(b) Determining and declaring whether the said agreement between the Ombudsman and the Minister of Housing would be breached by further investigation of the complaints of some of the former landowners having regard to the conclusion of the Commission of Inquiry into the Acquisition by the Minister of Housing of Certain Lands in the Community of North Pickering that it was unable to consider, recommend, and report on the overall merits of the claims for additional compensation by the former landowners.

The court stated:

"I have come to the conclusion that the Ombudsman implicitly has a continuous function and has the power to further investigate subject to certain restrictions. In considering the provisions of The Ombudsman Act, I have been driven to this conclusion by the nature of his function, the broad discretionary powers to investigate and to report and the freedom granted to the Ombudsman to act of his own motion."

The court granted the first ground of relief but dismissed the second further stating that the agreement between the Ombudsman and the Minister of Housing was not legally enforceable.

CANADA

Ontario

RE: Cossette v. The Ombudsman
Judgment delivered March 10, 1980

This was an application by the defendant as to whether or not an action lay against the defendant in light of section 11(1) of The Public Authorities Protection Act R.S.O. 1974, c. 374, or whether the plaintiffs claim was barred by virtue of sections 24 and 25(1) of The Ombudsman Act.

The plaintiff's claim was for damages for wrongful dismissal.

The court held that no action lay against the defendant as a matter of law by virtue of the fact that the action was not commenced within the limitation period set out in subsection 11(1) of The Public Authorities Protection Act and the action is therefore dismissed.

CANADA

Saskatchewan

RE: The Ombudsman Act, Saskatchewan, Canada
Judgment Delivered May 13, 1974
(1974) 5 WWR 176

The Royal Canadian Mounted Police serving in the Province of Saskatchewan, Canada, was considered not "an agency of the Government" within the meaning of the Saskatchewan Ombudsman Act, and for that reason, the Ombudsman had no jurisdiction to investigate any complaints directed against that organisation. The Honourable Mr. Justice Bayda, Saskatchewan Queen's Bench, stated:

"The R.C.M.P. occupy an anomalous and unique constitutional position in our structure of government and if their acts are to be amenable to the investigatory duties and powers of the provincial Ombudsman, the legislative enactment (assuming the legislature has competence in this field -- a question still at large) prescribing those duties and powers should so state in unequivocal terms."

Prior to this court case, the Canadian Provincial Ombudsman took the position that the agreement entered into between the Federal and Provincial Governments with respect to the operations of the R.C.M.P. meant that the Police organisation became a Provincial Police Force, with the exception of the R.C.M.P. investigations under Federal Narcotics legislation and other Federal legislation.

CANADA

Saskatchewan

RE: The Ombudsman Act, Saskatchewan, Canada
Re Board of Police Commissioners for the
City of Saskatoon et al. v. Tickell
Judgment Delivered January 3, 1979
(1979) 95 DLR (3d)473.

The Board of Police Commissioners for the City of Saskatoon, Saskatchewan sought an Order of Prohibition to prevent the Saskatchewan Ombudsman from proceeding with the examination of certain persons and an Order quashing the subpoenas issued by the Ombudsman. A Raymond Quarg had complained to the Saskatchewan Police Commission that the Saskatoon Police Department had not provided him with proper medical treatment. Quarg was dissatisfied with the manner

in which the Commission handled the matter complained to the Ombudsman. The Ombudsman, unable to conclude whether an adequate investigation had been conducted or not, issued subpoenas to the secretary of the Commission and a superintendent of the Police Force. The applicants alleged that the Ombudsman lacked jurisdiction for the inquiry.

After examining the appropriate legislation the Court stated: "While I am of the view, in the circumstances of the case before me, that the Ombudsman may examine personnel connected with the Saskatoon Board relative to the inquiry it conducted on behalf of the Saskatchewan Commission, I wish to make it abundantly clear that this must not be interpreted in any way to mean that the Ombudsman has any authority to investigate police boards as such. He has no such jurisdiction.

It goes without saying that the Saskatoon Board personnel will be under no obligation to answer any questions or produce any documents which relate to general board activities, including any inquiry which the Saskatoon Board may have made on its own initiative relative to the Quarg complaint. The authority of the Ombudsman is limited in this respect to determining what was done by the Saskatoon Board for the Saskatchewan Commission in investigating the complaint in question.

I can see no prejudice to the Saskatoon Board as a consequence of the Ombudsman having a limited right to examine its personnel. As Milvan, C.J.T.D., stated, "no harm can be done in looking at that which is good".

I turn now to deal with the contention of the applicant, Irwin, that as solicitor to the Saskatoon Board, he cannot be compelled to answer questions relative to the Board's activities because of the solicitor-client privilege. A short answer to this objection is that the Ombudsman seeks only to examine Irwin in his capacity as former secretary to the Saskatoon Board. Inquiries directed to him in his position as solicitor can be readily objected to.

On behalf of the applicant, Hession, it is suggested that because he was a police officer at the relevant time, he cannot be examined by the Ombudsman. Again, the objection can be disposed of on the same basis as Irwin's. That is, Hession cannot be examined in regard to his general duties as a member of the Saskatoon police force, but he can be examined on the restricted basis of his involvement in the investigation which was conducted by the Saskatoon Board as agent for the Saskatchewan Commission. Although Hession may not have been directly connected with the Saskatoon Board, he is subject to being summonsed by the Ombudsman as he is 'any other person... able to give any information relating to any matter being investigated..' as contemplated by section 22(2) (c) of the Ombudsman Act."

CANADA

Saskatchewan

RE: Ombudsman Act, Saskatchewan, Canada
Judgment Delivered, August 29, 1979

The Ombudsman sought a declaratory order under Section 16(1) of the Ombudsman Act concerning a question of jurisdiction. The Ombudsman's jurisdiction was questioned over a complaint filed by an inmate of the Pine Grove Correctional Centre. The Ombudsman advised the Deputy Minister of Social Services that he wished to conduct a formal hearing. The Department objected.

After considering Sections 12(1) and 12(2) of the Ombudsman Act the court stated that subsection (2) could not be read exclusive of section (1). To do otherwise would permit the Ombudsman to investigate whether the complaint related to an administrative matter or not. This would lead to an overabundance of complaints and would ignore the accepted line of authority within a government department. In this particular instance the director or person in charge of the facility should be given the first opportunity to investigate and correct the complaint if necessary.

ENGLAND

RE: The Parliamentary Commissioner Act, England
February 16, 1970
[1970] 2 All E.R. 527

The applicant, Mr. S.W.P.V. Fletcher, wanted a court order requiring the Ombudsman to hear his allegations of neglect of duty. The Law Lords concluded that they had no jurisdiction to order the Parliamentary Commissioner for Administration (Ombudsman) to investigate any complaint. Lord Reid stated, "We are bound by the Act and if we take the view that he has a discretion whether to investigate a complaint or not there is nothing we can do about it."

ENGLAND

RE: Local Government Act 1974, England
Queen's Bench Division Judgment February
15, 1977
In re Investigation into Complaint against
Liverpool City Council
[1977] 2 All E.R. 650

The Liverpool City Council had removed a child from the foster parents to different foster parents. The foster parents complained to the Local Commissioner who decided to investigate. Council issued a notice under section 32(3) of the Local Government Act 1974 stating that disclosure of relevant case records would not be in the public's interest. The Commissioner sought production of the documents and subsequently issued a subpoena requiring the disclosure

of the records.

The subpoena was set aside. The information could only be disclosed if the Secretary of State discharged the Council's notice.

"It seemed, therefore, that when the notice was served there was at once an embargo on "any person" including the Commissioner. The Secretary of State had not discharged the notice, and so it seemed there was no answer to the council's argument. The Council were entitled to succeed in having the subpoena set aside because at the present moment, with the section 32 notice undischarged, there was no obligation on Mr. Egan to produce the documents."

ENGLAND

RE: Local Government Act 1974
Bradford City Metropolitan Council
Judgment Delivered July 31, 1978
[1979] 2 All E.R. 881

The Bradford Council appealed from a decision refusing to grant a declaration that the Local Commissioner for Administration for the North and North East Area of England was not entitled to investigate complaints made of the council by the mother of two young children who were taken into council care under a child care order. This appeal was dismissed. An appeal by the commissioner against the decision that he could not investigate the complaint that the two young children were separated against the complainants' wishes and assigned to two different foster parents was allowed. The court declared that the commissioner could inquire into all four grounds of the complaint.

The council alleged that the investigation was contrary to section 26(6)(c) of the Local Government Act, 1974, because the complainant had a remedy by way of proceedings in the local juvenile court and on appeal, had exercised these remedies.

Parliament had been at pains to ensure that the commissioner should not conduct an investigation which might trespass in any way on the jurisdiction of the courts or of any tribunal (section 26(6)). Here the commissioner had made it clear that he proposed only to investigate the matters in complaints (1) and (3) so as to cover matters arising before August 1975 when the circumstances of the children came before the courts. Complaints (2) and (4) involved no conflict.

Had there been a sufficient claim of maladministration to justify investigation by the commissioner (section 34(3))? Maladministration was not defined. The Ombudsman, Sir Edmond Compton, had said that he gained much assistance by looking in Hansard at the debates in Parliament, in particular at the 'Crossman catalogue'.

It was suggested that there must be specific complaint of maladministration. It is not sufficient merely to complain that a decision was unjust. But in the nature of things a complainant only knows that he has suffered injustice. It is too heavy a burden for the complainant

to specify what the injustice was. The local commissioner was entitled to investigate all the complaints. The appeal was dismissed and the cross-appeal allowed."

INDIA

RE: India. Bihar Lokayukta Ordinance 1973
Civil Writ Jurisdiction Case nos. 1317,
1366, 1390 of 1974.
In the High Court of Judicature, at Patna

The validity of the Lokayukta's appointment was questioned in this case. The challenge was made on the basis that the Lokayukta was appointed by the Governor without the aid and advice of the Council of Ministers, a procedure which is not legally and constitutionally permissible.

The court in its interpretation of Article 163(30) of the constitution decided that it was not necessary to find out whether any advice was actually given by the Council of Ministers to the Governor. There was also effective consultation as defined by Section 3 of the Bihar Lokayukta Ordinance no. 3 of 1973.

MAURITIUS

RE: The Ombudsman Act, Mauritius
Judgment Delivered July 10, 1975
(Record # 18526 127)

The Supreme Court of Mauritius held it was not competent to consider and pronounce upon the questions raised by the petitioner seeking to challenge the validity of the appointment by the Governor General of the Ombudsman. It was argued that the Governor-General has omitted to consult the leaders of the parties of the Legislative Assembly as required by the Constitution. Two sections of the Constitution were involved and considered, namely:

S.96(2) -- The Ombudsman shall be appointed by the Governor-General acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the Governor-General, acting in his own deliberate judgement, to be leaders of parties in the Assembly.

S.64(2) -- Where the Governor-General is directed by this constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the the advice of that person or authority.

(3) - Where the Governor-General is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

Their Lordships, The Honourable Acting Chief Justice H. Garrioch, Judge M. Rault and Judge C. I. Moollan, stated:

"The question which is excluded from the Court's jurisdiction by the subsection consequently is, with respect to consultation, whether the Governor-General has acted after consultation with the person or authority concerned, that is, whether he has actually consulted that person or authority before acting, which is in fact the question here sought to be submitted to this Court. That construction of section 64(3) flows irresistibly and unequivocally from its very wording and no more would need to be added to support it. We may, however, observe that if the alternative intendment proposed by the petitioner were accepted, section 64(2) would be redundant in its effect. Since by virtue of that provision, the Governor-General, where he is directed by the Constitution to exercise a function after consultation with any person or authority other than the Cabinet, (which is the case with the appointment of the Ombudsman under section 96(2)) is not bound to act in accordance with the advice of that person or authority, it would be purposeless to ask the Court to decide the question whether the Governor-General has followed the advice tendered or not. In other words, the question which, according to the petitioner, is made non-justiciable by section 64(3) would be the one which by section 64(2) a person will have no ground to bring to court."