

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

Commonwealth

Re reference under Section 11 of the Ombudsman Act 1976 for an advisory opinion: Ex parte Director-General of Social Services  
(1979) 2 ALD 86 (Cwth. A.A.T.) 11 pages

OMBUDSMAN ACT 1976 S. Cwth. no. 181, s. 11 - REFERENCE TO THE COURT OF TRIBUNAL - OMBUDSMAN - JURISDICTION

(Background) Section 11 of the Ombudsman Act 1976 confers upon the Ombudsman the power to recommend to the principal officer of an organization concerned in an investigation, that a specified question relating to an action under investigation be referred to the Administrative Appeals Tribunal for an advisory opinion. The power arises only where the Ombudsman investigates a complaint which concerns the taking of action in pursuance of a discretionary power conferred by an enactment. This case is regarding a complaint about the refusal of the Director-General of the Department of Social Security to approve unemployment benefits. In issue was the legality of the manner of exercising the power of review. Brennan, J., President of the Tribunal gave the decision.

(Comments re Section 11) - The Tribunal requires the facts, and the principle (legal, administrative or otherwise) and access to the expertise needed to form a definitive opinion on the referred question. - The exercise of its advisory jurisdiction should be likely to produce a useful practical result. - There should be an area of controversy or uncertainty and the arguments before the Tribunal should present possible solutions. - The Ombudsman's investigation should be on a matter of importance. The opinion should allow completion of the investigation on a settled foundation. - If the referred question is principally one of law it should be before a court of law. The Tribunal expressed its doubt that a determination of eligibility for a social security payment was in fact an exercise of discretion within the meaning of section 11. However, the Tribunal was of the opinion that the purported review by the individual on the staff of the Director-General of Social Security was an invalid exercise of delegated powers and further stated that there was no justification as a matter of general administrative policy for a decision-maker not to reveal his identity.

AUSTRALIA

New South Wales

Boyd v. The Ombudsman and Another  
[1981] 2 N.S.W.L.R (N.S.W. S.C. A.L.D.) 7 pages (presently being appealed to the Court of Appeal).  
OMBUDSMAN - POWER TO REINVESTIGATE - OMBUDSMAN - JURISDICTION - POLICE REGULATION (ALLEGATIONS OF MISCONDUCT) ACT, 1978

A complainant alleged that a police car had turned into a street against a no-turn light. Another car travelling along the street turned into, had had to avoid a collision. The car's driver was charged with going through a red light. The provisions of the Police Regulation (Allegations of Misconduct) Act, 1978, were complied with and a copy of the complaint was forwarded to the Ombudsman. The Commissioner of Police later reported his findings from his investigation to the Ombudsman. The Ombudsman then wrote to the complainant advising him that the complaint had not been sustained. The complainant contacted the Ombudsman's office bringing forward additional information. The Ombudsman advised the Police Commissioner that a further investigation should be completed. The police officer commenced this proceeding for a declaration that the Ombudsman had no power to require or request the Commissioner of Police to further investigate because a determination had already been made. Rogers, J. held that the action be dismissed. At page 11 of the judgment, he states: "The Court should be slow to construe the Act [Police Regulation (Allegations of Misconduct) Act, 1978] in such a way that the powers

of investigation are circumscribed. There may be a multitude of reasons for wanting an investigation to re-open after a report is made under Section 27. The deficiency in an investigation may not at once be apparent. . . . There is no res judicata or issue estoppel of any kind created by the decision of the Ombudsman." In the Court's opinion, the interpretation of the Act by the Ombudsman was the only proper one since it provided the evident purpose and requirement of the Legislation.

## AUSTRALIA

### Victoria

Booth v. Dillon (No. 1), 1975  
(1976) V.R. 291 (Vict. S.C.) 7 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1973, S. Vic. no. 8414, ss. 2, 13, 14, 23, 27  
- ADMINISTRATIVE ACTION - PRISONER'S COMPLAINTS

The Ombudsman received a complaint from a prisoner in Pentridge of an assault on the prisoner by a prison officer in the presence of senior prison officials. Pursuant to s. 17 of the Ombudsman Act 1973, the Ombudsman gave written notice to the applicant, the Director-General of the Department of Social Welfare of his intention to conduct an investigation. By virtue of s. 13 of the Act the Ombudsman is empowered to "investigate any administrative action in any Government Department". Section 2 defines "administrative action" as "any action relating to a matter of administration". By a special case stated to the Supreme Court, the applicant sought to determine whether the Ombudsman had jurisdiction to conduct the investigation in question. Held: the complaint related to a matter of administration as it was not a complaint merely of assault but of facts concerning the enforcement of discipline governing both prisoners and staff and the proper hearing of complaints in the prison. Accordingly, the Ombudsman had jurisdiction to investigate the complaint.

## AUSTRALIA

### Victoria

Booth v. Dillon (No. 2), 1976  
(1976) V.R. 434 (Vict. S.C.) 7 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1973, S. Vic. no. 8414, ss. 2, 13, 14,  
- DEPARTMENT OF SOCIAL WELFARE - PRISONER'S COMPLAINTS

Pursuant to s. 27 of the Ombudsman Act 1973 the Director-General of the Department of Social Welfare stated two cases to obtain determination of whether the Ombudsman had jurisdiction to conduct certain investigations. Held: a matter to be investigated by the Ombudsman must relate to administrative action not policy, it is limited to a specific decision or act, or the specific failure to decide or act, by a government department or public statutory body. The first case concerned statements allegedly made to the press by a senior prison officer, relating to a prisoner serving a life sentence and endeavouring to obtain release on parole. Any such statements were not made with the authority of the Director-General of the Department and the making of such statements would have constituted a breach of the Constitution Act Amendment Act 1958 and probably also of the Public Service (Governor-in-Council) Regulations. Any such unauthorized statements were not made in the course of or for the purposes of the prison officer's employment and therefore were not within the definition of "administrative action" in s. 2 of the Ombudsman Act, and could not form the subject of a "complaint" which the Ombudsman had jurisdiction to investigate. The second case concerned the action taken by the Department of Social Welfare subsequent to the Jenkinson report to ensure that prisoners in "J" Division of Pentridge are not subject to sexual attack by their fellow inmates. The action taken involved increasing the prison staff and seeking funds to convert dormitory accommodation to single cell accommodation. The Ombudsman had completed his investigation before his jurisdiction was challenged. The Ombudsman's investigation went beyond the scope of "administrative action" as defined: the sleeping arrangements of prisoners and the provision of funds for the particular purposes of a government department being matters of policy not administration. Whether any action of an administrative nature was to be taken to deal with the alleged sexual assaults was a matter of "administration" within the Ombudsman's jurisdiction.

## AUSTRALIA

### Victoria

Booth v. Dillon (No. 3), 1976  
(1977) V.R. 143 (Vict. S.C.) 8 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1973, S. Vic. no. 8414, ss. 2, 13, 27, - SOCIAL WELFARE ACT 1970, S. Vic. 8089, s. 131 - ADMINISTRATIVE ACTION

The question raised in this case was whether the Ombudsman could conduct an investigation under the Social Welfare Act 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 . . . 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." . . ."The Ombudsman Act is clearly designed to invest the Ombudsman with jurisdiction to investigate the actions of administrative officers and tribunals, 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 of that function has committed to it some judicial powers."

## AUSTRALIA

### Victoria

Glenister v. Dillon (No. 1), 1976  
(1976) V.R. 550 (Vict. S.C. Full Court) 19 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1973, S. Vic. no. 8414, ss. 2, 13, - LEGAL ADVISOR TO THE CROWN - BRINGING TO TRIAL WITHIN A REASONABLE TIME

The Ombudsman proposed to conduct investigations into written complaints by two persons in custody awaiting trial alleging a failure by the Crown Law Department to bring them to trial within a reasonable time and in one case, an alleged failure to reply to a letter. Held: that the Ombudsman had no jurisdiction to conduct investigations into the complaints because - per totam curiam - what the Ombudsman proposed to investigate was expressly excluded from his jurisdiction by s. 13 (3)(b). Per Gillard and Menhennitt, JJ., in the context "administrative action" in ss. 2 and 13 of the Act refers to some act or omission in the executive or administrative arm of government in contradistinction to the legislative and judicial arms of government.

## AUSTRALIA

### Victoria

Glenister v. Dillon (no.2), 1976  
(1977) V.R. 151 (Vict. S.C.) 3 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1973, S. Vic. no. 8414, ss. 2, 13, 27 - PUBLIC SOLICITOR - REPRESENTATION OF ACCUSED

The question raised in this case is one regarding jurisdiction. The Ombudsman was found to have no jurisdiction in this case because the actions of the Public Solicitor in the performance of his duties representing accused persons are related to the discharge of the judicial function of the government. Therefore, they fall outside of the definition

of administrative action in s. 23 of the Ombudsman Act. "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 (No.3), Mr. Justice Nelson also stated: "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 that the action relates to such a matter if it is taken in the discharge of the 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

### Western Australia

R. v. Dixon ex parte Prince and Oliver, 1978  
(1979) W.A.R. 116 (W. Aust. S.C.) 8 pages

PARLIAMENTARY COMMISSIONER ACT, S.W.A. 1971, no. 64, s. 25 - OMBUDSMAN - RULES OF NATURAL JUSTICE, APPLICABILITY - PREROGATIVE WRIT - PROHIBITION - APPLICANTS - STANDING

The Parliamentary Commissioner for Administrative Investigations (the Commissioner) investigated a complaint by one F. against the City of Stirling. No copy of the complaint was given to the applicants who were called to give and gave evidence before the Commissioner. By their own choice they were not legally represented when testifying. Thereafter the Commissioner indicated in writing to them that he intended to make findings adverse to their characters. The applicants sought an order prohibiting further investigation by the Commissioner and publication of any report on the complaint. They averred want of natural justice in the hearing of the complaint. Held, refusing the order: The question whether the applicants had standing to obtain a writ and the associated but not entirely separate question whether the Commissioner's power to investigate and report were conditioned by dictates of natural justice must be answered by construction of the Act. Nothing done by the Commissioner affected the rights of persons appearing before him as witnesses. Insofar as s. 25 (1), which enjoins the Commissioner from making any comment defamatory of or adverse to a person unless he has been given an opportunity to be heard, could be said to affect the rights of that person, the procedure to be followed was expressly prescribed and left no room to import other requirements by way of implication. Thus, the want of regard for principles of natural justice, if such there was, gave the applicants no standing. In any event, the Commissioner had not acted unfairly.

## CANADA

### Alberta

Re: Alberta Ombudsman Act  
(1970) 72 W.W.R. 176 (Alta. S.C.)  
(1970) 10 D.L.R. (3d) 47 (Alta. S.C.) 14 pages

OMBUDSMAN - JURISDICTION - PROVINCIAL PLANNING BOARD  
OMBUDSMAN ACT, R.S.A. 1970, c. 268, s. 2, 11, 12

By virtue of s. 11 (1) of the Ombudsman Act, 1967 (Alta.), c. 59, the Ombudsman is empowered to investigate any decision of any department or agency. Section 2 of the Act defines an agency as "an agency of the Government of Alberta" and includes the Workmen's Compensation Board. In determining whether the Ombudsman has jurisdiction to investigate a decision of the Provincial Planning Board it cannot be said that the specific inclusion of the Workmen's Compensation Board in the definition of agency impliedly recognizes that other provincial boards are not agencies as defined by s. 2. In order to determine the jurisdiction conferred by s. 11, the reason for the Act must be ascertained. The Court, in determining this reason, may have recourse to the report of the committee established by the Legislature that eventually led to the passing of the Act. From this report it is apparent that the reason for the Act is the necessity for scrutiny of the vast body of administrative laws that now exist. The Ombudsman, therefore, does have jurisdiction to investigate a decision of the Provincial Planning Board. Chief Justice

J.V.H. Milvain states: "I am satisfied that the basic purpose of an Ombudsman is provision of a 'watchdog' 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 misworkings of administrative legislation. He can also focus the light of publicity on his concern as to injustices and needed change. . . he can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who draw the blinds. If his scrutiny and observation 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

### British Columbia

British Columbia Development Corporation et al v. Karl A. Friedmann Ombudsman et al  
[1982] B.C.D. Civ.62.2-02 (B.C. C.A. (CA 811218))  
[1982] B.C.D. Civ.62.2-01 (S.C.B.C.) (A 813557)

OMBUDSMAN - JURISDICTION  
ADMINISTRATIVE AGENCY

B.C.D.C. is appealing this decision to the Supreme Court of Canada.

The Court of Appeal held that the British Columbia Development Corporation (B.C.D.C.) is a provincial government agency and that the act in question (refusal to renew a lease on land purchased by B.C.D.C.) was an administrative act. B.C.D.C. was held to be carrying out the implementation of government policy, therefore its decision was within the jurisdiction of the Ombudsman to investigate.

## CANADA

### Manitoba

In the Matter of Section 20 of the Ombudsman Act, R.S.M. 1970, c. 0-45  
Unreported. Judgment delivered November 20, 1974 (Man. Q.B.) 5 pages

OMBUDSMAN - JURISDICTION - DISTRICT ADVISORY PLANNING COMMISSION  
OMBUDSMAN ACT, R.S.M. 1970, c. 0-45, s. 20

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

Parliamentary Commissioner v. Waterford Hospital Board, 1976 (1976) 13 Nfld. & P.E.I. R. 519 (Nfld. S.C.T.D.) 4 pages

OMBUDSMAN - JURISDICTION - PARLIAMENTARY COMMISSION (OMBUDSMAN) ACT, R.S.N. 1970, c. 285, s. 14 - WATERFORD HOSPITAL BOARD - HOSPITALS ACT, S.N. 1971, c. 81

This case arose out of an application by the Parliamentary Commissioner for a declaratory order respecting his jurisdiction over complaints of patients or persons detained in the

Waterford Hospital. The Newfoundland Supreme Court, Trial Division, held that the Parliamentary Commissioner had no jurisdiction over complaints respecting the Waterford Hospital, because the hospital was not an "agency" or a Department of the provincial government within the meaning of s. 14 (1) of the Parliamentary Commissioner (Ombudsman) Act, R.S.N. 1970, c.285.

## CANADA

### Nova Scotia

OMBUDSMAN OF NOVA SCOTIA v. SYDNEY STEEL CORPORATION AND THE ATTORNEY GENERAL OF NOVA SCOTIA, 1976 17 N.S.R. (2d) 361 (C.A.) 8 pages

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT 1970, S.N.S. 1970, c. 3, s. 11 (1) - SYDNEY STEEL CORPORATION - WRONGFUL DISMISSAL

This case arose out of a complaint made to the Office of the Ombudsman by an employee of the Sydney Steel Corporation. The employee alleged that he was wrongfully dismissed. The Ombudsman questioned his jurisdiction to investigate the complaint and referred the question to the Nova Scotia Court of Appeal pursuant to s. 11 (3) of the Ombudsman Act. The Nova Scotia Court of Appeal held that the Ombudsman did not have jurisdiction to investigate the complaint. The Nova Scotia Court of Appeal interpreted s. 11 (1) of the Ombudsman Act which granted to the Ombudsman the power to investigate a grievance with respect to the "administration . . . of any law" by a department of the Province of Nova Scotia. The Nova Scotia Court of Appeal stated that although the Sydney Steel Corporation was a Crown agency it did not administer any laws related to any governmental or public function. The Nova Scotia Court of Appeal stated that the function of the Sydney Steel Corporation was to make and sell steel and was distinguishable from a private manufacturing corporation only in that it was owned and financed by the Province of Nova Scotia. The Nova Scotia Court of Appeal stated that the Sydney Steel Corporation was not a public utility charged with a public interest.

## CANADA

### Ontario

Cossette v. The Ombudsman for Ontario  
(1980) 28 O.R. (2d) 92 (Ont. H.C.) 5 pages.

THE PUBLIC AUTHORITIES PROTECTION ACT, R.S.O. 1970, c. 374 - THE OMBUDSMAN ACT, S.O. 1975, c. 42, s. 24, 25 - OMBUDSMAN - PROTECTION FROM CIVIL SUIT

This application was for the determination of a point of law raised in pleadings as to whether or not an action lies as against the Ombudsman in light of section 11 (1) of the Public Authorities Protection Act, R.S.O. 1970, c. 374 as am., or in the alternative as to whether the plaintiff's claim is barred by virtue of section 24 and subsection 25 (1) of the Ombudsman Act, S.O. 1975, c. 42, in the absence of an allegation that the defendant Ombudsman was acting other than in the exercise or intended exercise of his functions under the Ombudsman Act. Mr. Justice Osler states that ". . . it is unnecessary for me to consider the effect of sections 24 and 25 [of the Ombudsman Act] and the extent of their scope will be left to be decided on some more appropriate occasion. It is declared therefore that no action lies as against the defendant [the Ombudsman] 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

### Ontario

Re: Ombudsman of Ontario and Health Disciplines Board of Ontario et al., 1979  
(1980) 26 O.R. (2d) 105 (Ont.C.A.) 21 pages  
(1979) 23 O.R. (2d) 485, 95 D.L.R. (3d) 716 (Ont. H.C.)

OMBUDSMAN - JURISDICTION - HEALTH DISCIPLINES BOARD OF ONTARIO - OMBUDSMAN ACT, S.O. 1975 c. 42, s. 1, 15, 22 - HEALTH DISCIPLINES ACT, S.O. 1974, c. 47 - PROVINCIAL AGENCIES

Appeal from the decision of Mr. Justice Labrosse wherein it was found that the Health Disciplines Board was a government organization although its decisions were not subject to governmental control.

The High Court answered the following questions in the affirmative:

"(1) Is the Health Disciplines Board of the Province of Ontario a governmental organization of the Province of Ontario within the meaning of the Ombudsman Act, 1975?  
(2) Does the Ombudsman have jurisdiction pursuant to Section 15(1) of the Ombudsman Act, 1975 to investigate the review and decision made by the Health Disciplines Board of Ontario in respect of the case in issue [the original question which was not answered by the High Court concluded with these words 'and other cases within the same class?']"

Mr. Justice Morden in his judgment for the Court of Appeal dismissed the appeal.

1. The Health Disciplines Board is an administrative unit of the Government of Ontario. The Board is established under the Health Disciplines Act, 1974 (Ont.) c.47. Its members are appointed by the Lieutenant-Governor-in-Council on the recommendation of the Minister of Health and its employees are part of the Public Service of the Province of Ontario. An annual report must be submitted to the Minister of Health. The Health Disciplines Board protects the public interest by, for example, hearing appeals from decisions of the complaints committees of the various health disciplines covered by the Act, and by reviewing licensing. Government policy is implemented by the Board.

2. The Health Disciplines Board is not a court within the meaning of s.14(a) of the Ombudsman Act, 1975. The term 'court' does not embrace 'administrative tribunals', even those exercising powers with a substantial judicial component." (at p.120).

3. The phrase "in the course of the administration of a governmental organization", in s.15(1) is not to be given a narrow meaning which would exclude particular decisions which were, for example, quasi-judicial in nature. Instead the Court states that 'administrative' is used in the sense of a "compendious description of a wide range of governmental activity carried on by bodies other than the Legislature and the regular Courts." (at p.123).

## CANADA

### Ontario

Re: Ombudsman of Ontario and the Queen in right of Ontario.

(1981) 30 O.R.(2d) 768 (Ont. C.A.) 9 pages; (1979) 26 O.R.(2d) 434, (1979) 103 D.L.R. (3d) 117 (Ont. H.C.) 25 pages.

OMBUDSMAN ACT, S.O. 1975, c.42, ss.9, 15(5) - OMBUDSMAN - JURISDICTION - OMBUDSMAN - POWER TO REINVESTIGATE

An application by the Ombudsman to the Court as provided for in s.15(5) of the Ombudsman Act, 1975 is not precisely the same as the Court's power to give declaratory relief. Section 15(5) should not be given a narrow or restrictive construction.

Section 15(4)(a) which requires exhaustion of remedies does not apply to this factual situation as the report of the Royal Commission was a final report even though it was incomplete. Therefore, the Ombudsman was not barred from making a further investigation subsequent to December 5, 1977 [the date of the Royal Commission's Report]. The Court also held that the Chief Justice had not erred in concluding that the power of the Ombudsman to conduct a further investigation was not hindered by the existence of the agreement between the Ombudsman and the Minister of Housing.

The new facts given in the Minister's reply to the Ombudsman's report qualify to warrant further investigation by the Ombudsman. The Ombudsman is not required to have "new evidence" before proceeding to investigate a matter that he has previously made some investigation of.

CANADA

Saskatchewan

Re: Ombudsman Act

Unreported. Judgment delivered August 29, 1979, 5 pages.

OMBUDSMAN - JURISDICTION - OMBUDSMAN ACT, S.S. 1972, c. 87, s. 12

The Ombudsman for Saskatchewan sought a declaratory order pursuant to s. 16(1) of the Ombudsman Act to resolve the question respecting his jurisdiction to investigate a case arising from a complaint received as to the conduct of an employee of the Pine Grove Correctional Centre. The Ombudsman received a complaint in writing from an inmate of the conduct of a member of the male staff of the Centre towards female inmates. The Ombudsman instructed the Deputy Minister indicating that his staff had interviewed a number of inmates of the Centre and that the Ombudsman now proposed to "investigate the matter in a formal way by taking evidence under oath." The Deputy Minister, through his counsel, advised the applicant that the Department of Social Services was objecting to his jurisdiction to conduct a formal hearing into the matter. The Court held that s. 12(1) "It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a Minister, 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 a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved." and s. 12(2) "The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1)." of the Ombudsman Act must be read together. In this particular instance, the inmate should have complained to the director of the facility and only to the Ombudsman if the director failed to act accordingly. The issue of whether the complaint was, in fact, administrative was not dealt with. The application was dismissed.

CANADA

Saskatchewan

Re: Ombudsman for Saskatchewan, 1974

46 D.L.R. (3d) 452 (Sask. Q.B.) 7 pages

OMBUDSMAN - JURISDICTION - R.C.M.P. - ROYAL CANADIAN MOUNTED POLICE ACT (Can.)  
OMBUDSMAN ACT 1972, S.S. 1972, c. 87, ss. 2 (a), 12 (1) - SASKATCHEWAN PROVINCIAL POLICE  
ACT, R.S.S. 1965, c. 114

The Saskatchewan Division of the Royal Canadian Mounted Police is not "(a) body of persons . . . all the members of which . . . in the discharge of their duties are public officers . . . of the Crown" (which in the context of the Act means the Crown in right of Saskatchewan), and as such an "agency of the government" of that Province within the meaning of s. 2 (a) of the Ombudsman Act, 1972 (Sask.), c. 87, so as to entitle the Saskatchewan Ombudsman to investigate any acts done or omitted by its members under s. 12(1) of the Act which empowers him to "investigate any . . . act done or omitted . . . by (an) agency of the government. . .". There is no provision in the Royal Canadian Mounted Police Act, R.S.C. 1970, c. R-9, that makes its members public officers of the Crown in right of any province. Moreover, the agreement entered into between the Government of Canada and the Government of Saskatchewan, dated July 12, 1966, under which the Government of Canada agreed to supply part of the force for law enforcement in the Province of Saskatchewan provides in para. 4 that the Saskatchewan Division of the force shall remain under the control of Canada notwithstanding the fact that by para. 6 of the agreement the commanding officer of the Saskatchewan Division acts under the direction of the Attorney General of the Province of Saskatchewan. Finally, there is no attempt in the Saskatchewan Provincial Police Act, R.S.S. 1965, c. 114, to make members of the R.C.M.P.'s Saskatchewan Division public officers of the Crown in right of the province.

## CANADA

### Saskatchewan

Re: Board of Police Commissioners for the City of Saskatoon et al. and Tickell, 1979  
95 D.L.R. (3d) 473 (Sask. Q.B.) 7 pages

OMBUDSMAN - JURISDICTION - EXTRAORDINARY REMEDIES - PROHIBITION - OMBUDSMAN - SUBPOENA  
POWERS - OMBUDSMAN - JUDICIAL FUNCTION - OMBUDSMAN ACT 1972, S.S. 1972, c. 87, ss. 12,  
15, 22 - POLICE ACT, S.S. 1974, c. 77, s. 12 - POLICE COMMISSION - PROVINCIAL

The Saskatchewan Ombudsman is precluded by s. 15 (1) (g) of the Ombudsman Act, 1972 (Sask.), c. 87, from inquiring into any decision of any government agency, such as the Saskatchewan Police Commission, in relation to any matters arising between it and, inter alia, a municipality, but he can investigate any decision of a Government agency under s. 12 (1) of the Act. Accordingly while the Ombudsman has no power to investigate decisions of a local police commission, he can inquire into the manner in which an investigation, delegated to a local commission by the Saskatchewan Police Commission, was conducted, such delegation being authorized under s. 12 of the Police Act, 1973 (Sask.), c. 77. For this purpose the Ombudsman may examine the personnel of the local board.

## INDIA

### Bihar

Re: Bihar Lokayukta Ordinance 1973

Civil Writ Jurisdiction Case nos. 1317, 1366, and 1390 of 1974. High Court of Judicature at Patna 27 pages

LOKAYUKTA - APPOINTMENT - OMBUDSMAN - APPOINTMENT - BIHAR LOKAYUKTA ORDINANCE 1973, no.3

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 (3) 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

OMBUDSMAN - APPOINTMENT - MAURITIUS. CONSTITUTION s. 96, 64

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 had omitted to consult the leaders of the parties of the Legislative Assembly as required by the Constitution. S. 64 (3) states: "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." Therefore the Court held that this question before the Court was precisely the question excluded from the Court's jurisdiction.

## UNITED KINGDOM

Re: A complaint against Liverpool City Council, 1977  
(1977) 2 All E.R. 650 (Q.B.) 8 pages

COMMISSIONER FOR LOCAL ADMINISTRATION - LOCAL OMBUDSMAN - OMBUDSMAN - SUBPOENA POWERS  
PRIVILEGED INFORMATION - LOCAL GOVERNMENT ACT 1974 (U.K.), c. 7, s. 32 (3)

A complaint was made to the Local Commissioner appointed under s. 23 of the Local Government Act 1974, by foster parents of a child who was in the care of the local authority, about the alleged maladministration of the local authority in removing the child from the foster parents to different foster parents. For the purpose of investigating the complaint, the Commissioner requested the local authority to produce the case records in respect of the child kept by the local authority in accordance with statutory regulations. The local authority refused to produce the records and the Commissioner issued a subpoena requiring the authority to produce them. Pursuant to s. 32 (3) of the 1974 Act, the local authority gave written notice to the Commissioner that in its opinion the disclosure of the case records would be contrary to the public interest. The local authority then applied to have the subpoena set aside.... Held: The provision in s. 32 (3) that where notice had been given thereunder the 1974 Act should not be construed so as to authorize or require any person to communicate to 'any other person' the document or information specified in the notice, placed an embargo on transmission to the Local Commissioner of the document or information specified in the notice since the Commissioner was included in the words 'any other person'. Accordingly, where a notice under s. 32 (3) had been served, the Commissioner was not entitled to require production of the documents or information specified in the notice. It followed that the subpoena would be set aside and the application allowed.

As a result of this case Section 32 (3) of the Local Government Act, 1974 has now been amended by Section 184 of the Local Government, Planning and Land Act, 1980. The amendment ensures that Local Commissioners have a right of access to information and documents relevant to their investigations by allowing the disclosure of local authority records to a Local Commissioner and only enabling an authority to claim that in the public interest publication should be restricted.

#### UNITED KINGDOM

Re: Fletcher's Application, 1970  
(1970) 2 All E.R. 527 (C.A.) 1 page

PARLIAMENTARY COMMISSIONER ACT 1967 (U.K.), c. 13, s. 5 - PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION - MANDAMUS - OMBUDSMAN - DISCRETION

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 (the 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."

#### UNITED KINGDOM

R. v. Local Commissioner for Administration for the North and East Area of England, ex parte Bradford Metropolitan City Council, 1978  
(1979) 2 All E.R. 881 (QBD and CA) 22 pages

COMMISSIONER FOR LOCAL ADMINISTRATION - OMBUDSMAN - COMPLAINANT, STANDING OF - LOCAL GOVERNMENT ACT 1974, ss. 26, 34 - ACTS OF MALADMINISTRATION - LOCAL OMBUDSMAN - BRADFORD METROPOLITAN CITY COUNCIL - CHILDREN AND YOUNG PERSONS ACT 1963, s. 1

The Bradford Council appealed from a decision refusing to grant a declaration that the Local Commissioner for Administration for the North and East Area of England was not entitled to investigate complaints made regarding the council by the mother of two children who were taken into council care under a child care order. This appeal was dismissed. An appeal was also made by the Commissioner against the decision that he could not investigate one of the grounds of the complaint. The council alleged that the investigation of this ground 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 had exercised these remedies. The court declared that the Commissioner could inquire into all four grounds to the complaint. The Commissioner had proposed that his investigation only cover acts of alleged maladministration prior to any court proceedings therefore there was no conflict between the remedies, and the Local Commissioner had jurisdiction to deal with any maladministration which may have occurred in the council's handling of the children.