

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 this section 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. Item (5) permits him to investigate an agency's failure to explain its actions. This provision applies to administrative acts involving adjudication and promulgation of regulations, but its most frequent use will probably involve less 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. This section 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.

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. This section also 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 1410. Powers.

Since one of the basic functions of the Ombudsman is investigation, he must be able to compel information and testimony. Under Items (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, it does preserve the same evidentiary privileges in proceedings before the Ombudsman that witnesses have in the Island Court.

This section also gives the Ombudsman authority to sue in Island Court to enforce his powers listed foregoing. While this procedure might cause some delay, there are constitutional problems in allowing the Ombudsman to punish for contempt if his subpoena were ignored or a person refused to answer questions. Since courts usually give preference to cases involving such matter, delay should not prove serious.

#### Section 1411. Consultation with agency.

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

is not erroneous, for example, he may still recommend, under paragraph (1), that the agency further consider the matter or, under paragraph (5), 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 140C. 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 view 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 (3) 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 1413 and enables him to inform the complainant of the results of his investigation.

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 1413, 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 1414. 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.

Section 1415. 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 bill, the Ombudsman

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 1417. Judicial review.

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

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

This section also encourages 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. It is most likely used to enforce his subpoena power under Section 1410. He may also testify in regard to the penalty for obstruction under Section 1413.

Section 1418. 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