

The Ombudsman's Role: a Judicial Perspective

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Abstract

The ombudsman's role is one of the many elements operating in unison to ensure that administrative powers are exercised according to law and in the public interest. Originating in Scandinavia, the office of ombudsman entered the common law sphere in the early sixties. It has since spread across the globe. The strength of the ombudsman's procedural powers are to be contrasted with the relative weakness of his substantive powers. This weakness is ameliorated by executive desire to avoid adverse publicity. As illustrated by the New Zealand, British and Hong Kong models, the ombudsmen's independence is protected by a proper appointment mechanism and security of tenure. In some cases maladministration requires a judicial remedy, but sometimes the best course is an investigation by the ombudsman. The courts will judicially review the ombudsman's functions as necessary, but respect the ombudsman's role, and can usefully emulate some of the qualities of his procedures.

Introduction

A defining characteristic of any developed system of governance is a network formed by a collection of powers and the institutions tasked to exercise those powers according to law and in the public interest. What goes towards ensuring that these powers are so exercised? There are many elements at work. They operate in unison. And this concord is both underlined and facilitated by a growing body of scholarly research and analysis. The frontline element is perhaps a responsible civil service ethos made up of professionalism and dedication to duty. And the ultimate element is perhaps the rule of law upheld by the judicial

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