

their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct.

Comment: The Ombudsman should be secure, but not absolutely untouchable. The proposed provision would adequately guard against casual threats. An alternative would be to provide simply that the Ombudsman shall serve out his term, unless "impeached by the [legislature] in accord with the procedures prescribed by the constitution." The likelihood of removal is extremely slim, in any event.

(b) If the office of Ombudsman becomes vacant for any cause, the Deputy Ombudsman shall serve as Acting Ombudsman until an Ombudsman has been appointed for a full term.

Comment: Whether the term of office should be more or less than five years is not demonstrable. Abroad, no term exceeds four years. Here, some persons believe that the detachment of the Ombudsman from the Chief Executive will be accentuated if a vacancy does not automatically coincide with the inauguration of a new mayor or governor. Some advocate an even longer term than five years. In my opinion, the length of the term is not very important. If the institution proves its worth, tinkering with the Ombudsman's independence would be so politically perilous as to be altogether unlikely. To guard against sudden attacks upon an incumbent, removability should be made difficult, as has been done in this draft. As for vacancies, I favor a stopgap until a permanent appointment can be made for a full term, rather than (as others have sometimes suggested) an appointment merely for the balance of the unexpired term.

In New Zealand the incumbent Ombudsman continues serving beyond the expiration of his term, unless and until a successor has qualified. Although this assures continuity of Ombudsman services, it means that the hold-over Ombudsman has no security of tenure, a circumstance that may at least theoretically expose him to undesirable pressures.

SEC. 7. SALARY.—The Ombudsman shall receive the same salary, allowances, and related benefits as the chief judge of the highest court of-----
[name of state].

Comment: Setting the Ombudsman's pay and perquisites at the level of the highest ranking judge will give the new office a desirably high prestige, will eliminate wrangling now and in the future about the appropriate dollar amount of the Ombudsman's salary, and will avoid the obsolescence that would soon occur if the desired salary were to be precisely stated. If the Ombudsman is connected with a governmental subdivision rather than with the state itself, some other comparison would be appropriate.

SEC. 8. ORGANIZATION OF OFFICE.—(a) The Ombudsman may select, appoint, and compensate as he may see fit (within the amount available by appropriation) such assistants and employees as he may deem necessary to discharge his responsibilities under this Act.

(b) The Ombudsman shall designate one of his assistants to be the Deputy Ombudsman, with authority to act in his stead when he himself is disabled or protractedly absent.

(c) The Ombudsman may delegate to other members of his staff any of his authority or duties under this Act except this power of delegation and the duty of formally making recommendations to administrative agencies or reports to the -----
[insert title of chief executive] or the -----
[insert name of legislative body].

Comment: This section gives the Ombudsman a free hand in staffing his office, without even the restraints of civil service and classification acts. The highly personal nature of the Ombudsman's work, coupled with its essentially experimental nature, justifies giving this leeway to so highly placed and, by hypothesis, responsible an official. For the same reasons the Ombudsman has been given a free choice about assigning duties and subdelegating powers, with the single limitation that when criticisms or proposals for change are to be voiced in a formal manner, only the Ombudsman himself may be heard (except when the Deputy Ombudsman is in full charge during the Ombudsman's disability or protracted absence).

SEC. 9 POWERS.—The Ombudsman shall have the following powers:

(a) He may investigate, on complaint or on his own motion, any administrative act of any administrative agency.

Comment: The power to investigate should be stated unqualifiedly, though later sections will indicate the grounds that justify action by him and will