



# The Ombudsman Institution - Evolution, Functions and Outlook

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# Concept of Ombudsman

▶ “Poor man’s court”?

# Concept of Ombudsman

- ▶ Actually not part of the judiciary
- ▶ Free of charge, accessible to all people, even **business tycoons**



無瑕

<https://podcast.rthk.hk/podcast/item.php?pid=1194&eid=90857&year=2017>

# Concept of Ombudsman

► Official whose role (according to IOI) is to seek to protect the people against:

- ❖ maladministration
- ❖ violation of rights
- ❖ unfairness



International Ombudsman Institute  
Institut International de l'Ombudsman  
Instituto Internacional del Ombudsman

# Concept of Ombudsman

- ❖ abuse ...or
  - ❖ any injustice caused by a public authority or officer
- ▶ Like an informal court for administrative matters

# Origin and History

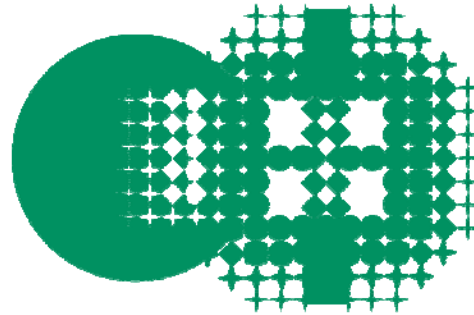
- ▶ Qin Dynasty in China 御史大夫
- ▶ Sweden 1809 – Parliamentary Ombudsman, independent of the executive, to safeguard the rights of citizens
- ▶ Part and parcel of democratic society
- ▶ British Commonwealth territories starting with New Zealand 1962

# Establishment of Ombudsman Institution in Hong Kong

- ▶ 1965 – Concept introduced at the Legislative Council
- ▶ After 1967 Riot – Growing political awareness and gradual move towards democratization
- ▶ 1989 – Office of “The Commissioner for Administrative Complaints” (COMAC) established
  - ❖ handling only public complaints referred by Legislative Councillors

# Establishment of Ombudsman Institution in Hong Kong

- ▶ 1994 – 2001 – Legislative amendments –  
COMAC Office evolved into Office of The Ombudsman in its present form, independent of the Government





# Jurisdiction, Roles and Functions

- ▶ Investigation of **maladministration** by Government departments and certain statutory public bodies:
  - ❖ Investigation of public complaints without need for referral
  - ❖ “Direct” or self-initiated investigation
- ▶ Recommendations for improvement and/ or compensation

# Jurisdiction, Roles and Functions

## ► Definition of **maladministration**

“inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes—

(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action which—

(i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

(ii) was based wholly or partly on a mistake of law or fact; or

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures”.

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# Jurisdiction, Roles and Functions

- ▶ Whether:
  - ❖ against the law
  - ❖ unreasonable, or
  - ❖ lacking in compassion
- ▶ 是否合乎 法、理、情

# Jurisdiction, Roles and Functions

- ▶ Mediation – where little or no maladministration is found
- ▶ Roles of:
  - ❖ Investigator
  - ❖ Prosecutor
  - ❖ Judge
  - ❖ Mediator
  - ❖ “Thinking partner”

# Jurisdiction, Roles and Functions

- ▶ Role of “thinking partner” –
  - ❖ Cf. the George Kneale-Dr Alice Stewart partnership
  - ❖ Constructive querying for **disconfirmation** or **confirmation**
  - ❖ “It was only by not being able to prove that she was wrong, that George could give Alice the confidence ... that she was right.”



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# The Ombudsman: Toothless Tiger?

- ▶ Cannot pass legally binding verdicts
- ▶ Can only make recommendations, exercising **persuasive power**
- ▶ Can report to the Chief Executive, resulting in report to the Legislative Council
- ▶ Key is **public (and media) support**

# The Ombudsman: Toothless Tiger?

## ► Examples of successful cases

- ❖ 2013 Direct investigation on conveyance of critical patients to public hospitals



[https://www.youtube.com/watchT70BdgQENs?v=&list=PL08TEngY8wxWtIPGXFeFmTI2M\\_kF1gleF](https://www.youtube.com/watchT70BdgQENs?v=&list=PL08TEngY8wxWtIPGXFeFmTI2M_kF1gleF)

# The Ombudsman: Toothless Tiger?

- ❖ 2013 Direct investigation on conveyance of critical patients to public hospitals
  - Fire Services Department (FSD)'s and Hospitals Authority (HA)'s system – ambulances must take patients to “**area hospital**”, which may **not** be the **nearest hospital**



# The Ombudsman: Toothless Tiger?

- ❖ 2013 Direct investigation on conveyance of critical patients to public hospitals
  - Investigation initiated in 2012 ; strong resistance from FSD and HA: *post-hospitalisation survival rate*
  - **But life for one day is life**

# The Ombudsman: Toothless Tiger?

- ❖ 2013 Direct investigation on conveyance of critical patients to public hospitals
  - Outcome of investigation:
    - 1) cardiac arrest or respiratory arrest patients to nearest hospital
    - 2) to extend by phases to other critical patients

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Two direct investigations on Hong Kong's regimes of access to information and public records management
  - Access to Government-held information is fundamental right
  - Outcome of investigation: recommended legislation

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Two direct investigations on Hong Kong's regimes of access to information and public records management
  - Resistance from Government; eventually agreed to ask Law Reform Commission (LRC) to conduct study
  - December 2018 – LRC started public consultation

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Complaint investigation concerning the Food and Environmental Hygiene Department (FEHD)'s allocation of columbarium niches by computer ballot
  - Complainant unsuccessful many times in FEHD's ballot

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Complaint investigation concerning the Food and Environmental Hygiene Department (FEHD)'s allocation of columbarium niches by computer ballot
  - Outcome of investigation: recommended giving higher priority to previously unsuccessful applicants

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Complaint investigation concerning the Food and Environmental Hygiene Department (FEHD)'s allocation of columbarium niches by computer ballot
  - FEHD's resistance: ballot system supported by ICAC

# The Ombudsman: Toothless Tiger?

- ❖ 2014 Complaint investigation concerning the Food and Environmental Hygiene Department (FEHD)'s allocation of columbarium niches by computer ballot
  - May 2019 – FEHD announced new measure of giving additional ballot to previously unsuccessful applicants



# The Ombudsman: Toothless Tiger?

- ▶ Improvement is **better late than never**

# Scope for Development

## ▶ Appointment mechanism

- ❖ Appointed by the Chief Executive; may be removed by resolution of the Legislative Council
- ❖ Cf. IOI principles - Elected or appointed by legislature or other elected body; should only be dismissed by legislature/ elected body

# Scope for Development

## ▶ Appointment mechanism

### ❖ Pros –

- Immune to politics
- Greater strength and security to the ombudsman

### ❖ Cons –

- Perception of being not entirely independent or impartial

# Scope for Development

## ▶ Review mechanism

- ❖ Investigation reports **approved** by Ombudsman/ Deputy Ombudsman, and **reviewed** by Deputy Ombudsman/ Ombudsman
- ❖ Cf. other jurisdictions – Investigation report issued by case officer and **reviewed by senior officer/ dedicated review team**

# Scope for Development

## ▶ Quality of investigations

### ❖ Achievements:

#### Financial Year 2018/19

- 2,502 inquiries
- 205 complaint investigations
- 205 mediations
- 12 direct investigations
- 92.1 % of recommendations accepted;  
7.9% under consideration

# Scope for Development

- ▶ More important are:
  - ❖ **rigour** of investigation; and
  - ❖ **merits** of investigation



Thank you