



John Nero, BAC MBA
Ombudsman Commission of PNG

Roles and Functions of the
Ombudsman in PNG



Content

- Primary and complementary functions
- Leadership code enforcement
- Section 27(4) directions
- Special Supreme Court References
- Integrity Law
- Commission's independence & Impartiality
- Judicial Legal Services Commission
- Public Services Commission

PRIMARY FUNCTIONS

The primary functions are summarised in the table below.

PRIMARY FUNCTIONS OF THE OMBUDSMAN COMMISSION	
FUNCTION	SOURCE OF POWER
1 Investigation of alleged wrong conduct and defective administration by governmental bodies.	<i>Constitution, Sections 219(1)(a) & (b); Organic Law on the Ombudsman Commission.</i>
2 Investigation of alleged discriminatory practices, by any person or body.	<i>Constitution, Section 219(1)(c); Organic Law on the Ombudsman Commission.</i>
1. Investigation of alleged misconduct in office under the Leadership Code.	<i>Constitution, Section 219(1)(d); Organic Law on the Duties and Responsibilities of Leadership.</i>

COMPLEMENTARY FUNCTIONS

In addition to its primary functions the Commission has a number of subsidiary or complementary functions.

COMPLEMENTARY FUNCTIONS OF THE OMBUDSMAN COMMISSION	
FUNCTION	SOURCE OF POWER
1. Power to make special references to the Supreme Court on questions of constitutional interpretation.	<i>Constitution, Section 19.</i>
1. (Implied) power to enforce the Basic Rights.	<i>Constitution, Section 57.</i>
1. Power to advise (jointly with the NEC) the Queen and Head of State, to consent to the Governor-General holding another office or position or engaging in another calling.	<i>Constitution, Sections 87(3) & (4).</i>
1. Power to partly supervise enforcement of the Organic Law regulating political parties, political donations and the protection of elections from outside or hidden influences, i.e. the "Integrity Law".	<i>Constitution, Sections 129 & 130.</i>
1. Power given to Chief Ombudsman to participate in judicial appointments etc, by virtue of his membership of the Judicial and Legal Services Commission.	<i>Constitution, Section 183; Organic Law on the Judicial and Legal Services Commission.</i>
1. Advisory function – give advice to leaders and other persons on the proper discharge of their functions	Informal
1. Education and public awareness – through the external relations program	Informal
1. Chief Ombudsman's power to bring constitutional questions to the Supreme Court	<i>Constitution, Section 18.</i>



Leadership code enforcement role

- Leaders includes elected (politicians) and appointed (Dept Heads, Board members, etc) persons and Judges.
- “a moral and ethical code” to ensure integrity in leadership
- system of enforcement – a team effort – Commission, PP, Chief Justice & Chief Magistrate
- An elaborate and consultative system that ensures accountability.
- 89 referrals to date.



Section 27(4) Directions

- 1 Where the Ombudsman Commission conducts investigations under the Leadership Code and the *Organic Law on the Duties and Responsibilities of Leadership* relating to misconduct in office by persons to whom that Law applies.
- 2 The person being investigated is a person to whom Division III.2 (*leadership code*) of the *Constitution* applies.
- 3 The person being investigated is subject to Section 26 of the *Constitution*.
- 4 A matter being investigated relates to a leader's conduct to whom the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations of the *Constitution*, and in particular the duty to act in the spirit of the *Constitution*, apply.
- 5 The Ombudsman Commission determines that it is necessary to issue the Direction for the purpose of ensuring the attainment of the objects of Section 27 of the *Constitution*, in particular, protecting the integrity of leaders.



Special Supreme Court reference

- Reference challenges
Constitutionality of Acts passed by Parliament
- Commission, an Authorized body to seek reference
- "some what a guardian role to the constitution"
- regularly refers so keeps a good check on parliament



examples of references made

- *tested the constitutionality of the increase in the nomination fee for candidates to the national elections from K100.00 to K1,000.00 (Supreme Court Reference No 1 of 1992 [1992] PNGLR 73);*
- *tested the jurisdiction of leadership tribunals in the situation where leaders resign from office (Supreme Court Reference No 2 of 1992 [1992] PNGLR 336);*
- *tested the constitutional validity of the Internal Security Act 1993 (Supreme Court Reference No 3 of 1993, [1994] PNGLR 341;*
- *challenged the long (222 day) adjournment of the Parliament in 1998–1999 (Supreme Court Reference No 3 of 1999, unreported, 25 June 1999, SC 628);*
- *tested the constitutionality of the Parliament's nomination of Governor-General on two occasions in 2003 (Supreme Court Originating Summons No 2 of 2003; Supreme Court Originating Summons No 3 of 2003).*



Integrity law

- Intended to ensure that MPs conduct themselves appropriately in accordance with their political parties' rules and constitution a breach of which can be referred to the Commission by the Registrar for investigation.



Independence & Impartiality

- Not subject to direction and control
- Resource constraints to stifle work
- Gov't compelled to provide funding and resources
- Strength in bipartisan appointment process



JLSC, PSC

- Complementary functions
- Important contributions in ensuring meritorious appointment in the Judiciary and PSC
- Significantly contributes to good governance and administration aspects



End of presentation

Thank you

Questions, Discussions.