



**STATE OF ISRAEL**  
**PUBLIC COMPLAINTS COMMISSIONER**

**ANNUAL REPORT 23**  
**(1994-1995)**

**SELECTED CHAPTERS TRANSLATED**  
**FROM THE ORIGINAL HEBREW**

**JERUSALEM, 1996**

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### **EDITOR'S NOTE**

In the interest of style and brevity, the statutory name "Public Complaints Commissioner" is referred to as the "Commissioner."

The working year of the Commissioner corresponds to the Hebrew calendar, which starts approximately in September of each year.

With the submission to the Knesset of the Public Complaints Commissioner's Twenty-Third Annual Report, I would like to direct attention to several complaints which serve as an example of the great importance that the Office of the Public Complaints Commissioner and I, as its head, place on preserving the principles of justice in public administration.

a. El Al, the Israeli airline company, placed an advertisement calling for candidates, both male and female, to apply for pilot training and certification for civilian transport. The complainant, a woman, who had vast experience as a pilot in the United States, submitted an application which was dismissed *ab initio*, explaining that according to the policy of El Al the courses are only open to "graduates of the flight school of the Israeli Air Force." Regretfully, this school accepts only males.

I found that the policy itself is not unreasonable. However, it was proven that the company does not always insist on its implementation, as new immigrants are not required to comply with it. Consequently, I ruled that the complainant should be admitted to the course. The decision has not yet been implemented.

At a later date, unrelated to my decision in this case, the High Court of Justice heard another woman's petition against the Israel Defense Forces for refusing to admit her to the Air Force's flight school. The High Court of Justice ruled that these schools must be opened to women, albeit gradually and with due caution. Indeed, seven women have recently been admitted to such a course. It is hoped that on the basis of this judgment, El Al will reconsider its decision to reject the complainant's application. In any event, it is clear that in the future women who graduate from the Air Force's flight school will, as a matter of course, be accepted as candidates for training and certification to fly civilian transport.

b. The law prohibits favoritism, *inter alia*, concerning tenders for the supply of services and commodities to local authorities. The complainant who participated in a tender claimed that one of the other bidders was related to a member of the tenders committee which examined the bids. Judicial rulings indicate that the existence of such a family relationship and the participation of the relative in the deliberations are sufficient to invalidate the tender. The test is an objective one, irrespective of the question whether or not the relative actually affected the result of the tender.

c. The law stipulated that in a particular year, the municipality shall not raise the Municipal Property Tax in comparison to the preceding year. The complainant's house was built only in the current year, and on these grounds the municipality imposed on the property a higher tax than the tax imposed on similar properties which had existed in the previous year. I held that the proper interpretation of the law requires that similar properties be treated alike irrespective of the year in which the property was built. Based on this principle, I decided that the tax imposed on the complainant's house should not exceed that which was imposed on the other properties.

d. In two separate cases I decided to revoke the dismissal of teachers, without even discussing the substance of the other contentions raised by the parties, in view of the violation of their right to a hearing, one of the fundamental principles of natural justice.

As my report shows, the Commissioner's Office is motivated by the aspiration to inculcate in public administration the principles of justice and to demand that these principles be implemented.

A handwritten signature in black ink, appearing to read 'M. Ben-Porat', with a stylized flourish at the end.

**Miriam Ben-Porat**  
State Comptroller  
and Public Complaints Commissioner

Jerusalem, May 1996

## TABLE OF CONTENTS

### General Summary

Knesset deliberations on the Twenty-Second Annual Report .....	9
Data on the number of complaints and their outcome .....	9
Branch offices handling oral complaints .....	10
Effecting change beyond the individual case .....	11
International contacts .....	11

### SUMMARIES OF SELECTED CASES

#### Ministry of Finance

Dismissal for Exposing Corruption .....	15
---	----

#### Ministry of Education, Culture and Sport

Dismissal of Teacher Contrary to Natural Justice .....	23
--	----

#### Israel Police Force

Financial Expenditure Caused by Police Negligence .....	27
---	----

#### Ministry of the Interior

Tourist Visiting Relatives not Allowed to Enter Israel .....	30
--	----

#### Local Authorities

Failure to Remove a Squatter from Property Intended for Public Use ..	34
---	----

Lack of Cooperation of the Municipality in Investigating a Complaint - Helplessness in Dealing with a Dangerous Structure .....	35
--	----

Safe Transportation of Handicapped Students .....	38
---	----

Tenders for Childrens' Transport Services .....	40
---	----

Parent Whose Child Died in Military Service Exempt from Municipal Property Tax .....	43
---	----

<b>El Al Israel Airlines Ltd.</b>	
Denial of Possibility for Women to be Employed as Pilots .....	45

<b>Prazot, the Government-Municipal Housing Company, Jerusalem Ltd.</b>	
Evading Responsibility for Roof-Sealing Work .....	49

## **APPENDICES**

Table: Breakdown of Complaints by Agencies Complained Against .....	55
--	----

Basic Law: The State Comptroller .....	59
--	----

State Comptroller Law, 5718-1958 [Consolidated Version] .....	61
---	----

## **GENERAL SUMMARY**

### **1. KNESSET DELIBERATIONS ON THE TWENTY-SECOND ANNUAL REPORT**

Section 46 of the State Comptroller Law, 5718-1958 [Consolidated Version], stipulates that the Public Complaints Commissioner shall each year submit to the Knesset a report on his activities containing a general survey and an account of the handling of selected complaints. The State Audit Affairs Committee shall deliberate on the report and submit to the Knesset its conclusions and proposals for approval.

On May 24, 1995, the Twenty-Second Annual Report of the Public Complaints Commissioner was submitted to the Knesset.

The State Audit Affairs Committee's Sub-Committee for Public Complaints, chaired by Knesset member Avraham Herschson, deliberated on the report in the course of eighteen meetings between May and December, 1995.

On Monday, December 25, 1995, the State Audit Affairs Committee submitted to the Knesset its conclusions and proposals on the report, which were considered and approved by the Knesset on Monday, January 23, 1996. The text of the Conclusions and Proposals are annexed in Appendix 1.

### **2. DATA ON THE NUMBER OF COMPLAINTS AND THEIR OUTCOME**

1. During the year under review, 5755 (1994/1995), there was an increase in the number of complaints received by the Public Complaints Commissioner as compared to the previous year - 5754 (1993/1994).

In addition to the complaints that were submitted directly to the Public Complaints Commissioner, copies of hundreds of complaints that had been submitted to bodies subject to review were also received.

The Commissioner does not investigate these latter cases since it is assumed that the addressed bodies will respond directly to the complainant. Nevertheless, the information in these complaints is forwarded to the unit of the State Comptroller's Office charged with auditing the particular body, and the complainant receives notification that the information has been forwarded. If the body to which the complainant wrote does not reply, or the reply does not satisfy him, the complainant may complain directly to the Commissioner, and the complaint will be investigated as the law provides.

It should be noted, that in addition to the above, the Commissioner's branch offices for receiving oral complaints handled many complaints and requests submitted to them (see below).



2. Below are details of the number of complaints received by the Commissioner in the year under review and the outcome of the investigations of complaints completed during that period.

(a) In the year 5755 (1994/1995), 7,782 complaints were submitted directly to the Commissioner (as compared to 6,983 complaints submitted in the previous year).

Of the 12,506 complaints that were handled in the year under review (including 4,724 complaints remaining from the previous year), the investigation of 8,361 complaints was completed.

(1) Of the 4,404 complaints dealt with substantively, 1,638 (37.2%) were found to be justified (35% in the previous year).

(2) The investigation of 1,527 complaints was halted at various stages for a variety of reasons, primarily because the matter had been resolved or the complainant withdrew his complaint or did not reply to questions posed by the Commissioner's office.

(3) 2,430 complaints could not be investigated because they did not meet the criteria set by sections 36 and 37 of the State Comptroller Law, or because they fell into the category of items mentioned in sections 38 or 39 of that law (see the State Comptroller Law, 5718-1958 [Consolidated Version], appended to this report).

(b) 4,145 complaints were still being investigated at the end of the year under review.

3. Data on the breakdown of complaints according to the various bodies is presented in the table appended to this report.

### **3. BRANCH OFFICES HANDLING ORAL COMPLAINTS**

From the time of the establishment of the Public Complaints Commission, branch offices for receiving oral complaints were set up to meet the requirements of the law, as set forth in section 34, that the complainant's oral statement be recorded in instances where persons wish to submit complaints in this manner. As soon as the first complainants appeared, it became clear that the branch offices' activities could not be limited to recording and drafting complaints and forwarding them on for investigation. Reality dictates that branch office personnel be able and willing to assist complainants in various matters within the function of the Commissioner's Office as defined by the law, including matters whose handling requires rising above the routine and exercising resourcefulness.

Oral complaints that are not ultimately recorded as complaints are, in particular, those whose matters are subject to speedy, efficient, and simple resolution by the office's personnel, whether by telephone contact or a meeting, without the necessity of conducting an investigation - at the

Commissioner's Office or at the body against whom the complaint is made - by a professional and administrative apparatus, which would necessitate substantial expense.

In brief investigations like these, too, we must uphold the principle that the function of the Commissioner's Office is not simple mediation, but to support complainants in achieving just goals, without exerting pressure on the inspected bodies for other purposes.

In the year under review, as in previous years, hundreds of citizens submitted complaints at the offices that accept oral complaints. The primary activity of branch office personnel, particularly those working in the Tel-Aviv office, which serves the entire population of central Israel, involved preliminary investigation of complaints. In most instances these preliminary investigations made further handling unnecessary, including recording the matter as a complaint. Branch office personnel also advised citizens, and referred them to bodies intended to handle their problems.

#### **4. EFFECTING CHANGE BEYOND THE INDIVIDUAL CASE**

The Commissioner has always viewed her duties as not merely involving the investigation of specific complaints and the issuance of rulings to rectify defects where such complaints are found justified. Rather, the judgment of the Commissioner is exercised also with regard to the question whether the investigation has revealed defects of a more general nature, that extend beyond the particular complaint. The goal of the Commissioner's Office in such a case is to rectify the general defect so that it will not pose a basis for future complaints on the same subject matter. Indeed, a significant number of such general defects have been rectified as a result of the activities of the Commissioner's Office, and this is reflected in the descriptions of selected cases detailed in this report.

#### **5. INTERNATIONAL CONTACTS**

1. On March 15 and 16, 1995 the Meeting of the European National Ombudsmen was held in Paris at which some 50 representatives participated. The meeting took place at the Luxembourg Palace.

The following subjects were discussed: (a) the European Ombudsman; (b) conflicts relating to the application of European texts; (c) the Ombudsman and the different legal jurisdictions; (d) the Ombudsman's role in the social field.

Mrs. Mirella Bamberger, Senior Assistant to the Public Complaints Commissioner, represented Israel at the meeting.

It was decided that the next meeting, in April, 1996, would be held in Cyprus together with the Fifth Round Table of European National Ombudsmen and the Council of Europe. The following meeting will be held in Israel in 1997.

2. On March 17, 1995, in follow-up to the above meeting, the European National Ombudsmen held their first meeting with the National Ombudsmen from the African continent. Some 20 African Ombudsmen participated. The meeting was held under the auspices of UNESCO, and called for the renewal of European-African solidarity. The African Ombudsmen view their role as strengthening democracy in their countries. They requested assistance to increase awareness of the importance of their work in their countries in order to receive the financial support necessary to operate effectively.

The participants noted that clear definitions of their duties and authority were necessary to enable them to faithfully fulfill their functions.

3. On June 7, 1995, members of the Parliamentary Petitions Committee of Baden-Wurttemberg visited the Commissioner's Office. The Committee investigates public complaints against government ministries. All parties represented in Parliament are represented on the Committee. The Committee's chairperson is Mr. Josef Rebhahn. The Director of the Public Complaints Commissioner's Office, Mr. Avigdor Ravid, and the Senior Assistant to the Public Complaints Commissioner, Mrs. Mirella Bamberger, addressed the Committee members and described the institution of the Public Complaints Commissioner in Israel.

4. In June 1995, Mr. K. H. Yip, Chief Investigation Officer in the office of the Commissioner for Administrative Complaints, Hong Kong, participated in a week-long study program at the office of the Public Complaints Commissioner.

Mr. Yip met with the Public Complaints Commissioner, with the Director of the Commissioner's Office, Mr. Ravid, and with Mrs. Bamberger. They and other staff members explained the work of the Commissioner's Office, the scope of complaints handled in Israel, the protection granted to "whistle blowers", pursuant to section 45A of the State Comptroller Law, and the relations between the activities of the office of the Public Complaints Commissioner and those of the State Comptroller. Mr. Yip described the work of the office of the Commissioner for Administrative Complaints in Hong Kong.

5. On July 25, 1995, the State Comptroller and Public Complaints Commissioner, Justice Miriam Ben-Porat, met with Mrs. Ingrid Korosek, Ombudsman for Social Affairs in the Institution of the Austrian Ombudsman at the invitation of the Austrian Ambassador to Israel, Mr. Herbert Kroll. The Director of the Commissioner's Office, Mr. A. Ravid, and Mrs. M. Bamberger, Senior Assistant to the Commissioner, took part in the meeting.

## **SUMMARIES OF SELECTED CASES**

## **MINISTRY OF FINANCE**

### **DISMISSAL FOR EXPOSING CORRUPTION**

1. (a) The complainant has been employed in one of the auxiliary units of the Finance Ministry (hereafter: the Unit) since April 1988. For five years she was employed by a company that provides personnel services, and subsequently as an employee of the Unit.

On February 19, 1995, after seven years of employment, the Unit director advised her, in writing and without providing any reasons, that her employment at the Unit would end on February 28, 1995.

(b) Close to the date set for her dismissal, the complainant complained to the Commissioner against the Finance Ministry for dismissing her from her job in the Unit.

The complainant emphasized that according to a rumor she heard, she had been dismissed because she had failed the required tests held by the Civil Service Commission (hereafter: the CSC). In any event, she contended that her failure to pass the tests was not the real reason for her dismissal.

The complainant contended that she was dismissed in reaction to her exposing irregularities and corruption in the Unit: she discovered false reports of Unit employees and disclosed her findings to the Unit supervisors. As a result of her actions, premium payments to the employees, who were indeed found to have submitted false statements, were stopped.

2. The complaint was investigated pursuant to sections 45A-E of the State Comptroller Law, 5718-1958 [Consolidated Version], which deal with complaints of a public employee about an act committed by his superior in reaction to his reporting, in good faith and in accordance with proper procedure, acts of corruption committed in the body in which he is employed.

The Unit's administration complied with the Commissioner's Office's request and postponed the dismissal until completion of the investigation of the complaint.

3. (a) The investigation revealed that in 1993, after having employed the complainant for five years through a personnel service company, the Unit's administration decided to employ her as regular staff in the Unit. To obtain the status of a permanent employee, she took the CSC examinations twice, failing each time. On July 1, 1994, in spite of her failure to pass the tests, she was placed in a budgeted position that formally does not require passing the CSC tests, though she continued to perform the same tasks that she had performed from the time she first started to work in the Unit - computing incentive pay in the salary division of the Finance Department.

During the course of her work, the complainant discovered, from time to time, dubious reports of Unit employees and informed her supervisors accordingly. Simultaneously, at meetings of the Unit's administration, the chairperson of the Unit's Employees' Committee (hereafter: the Committee Chairperson), who is also the head of a department in the Unit, demanded that the complainant be dismissed.

(b) In April-May of 1994, the Unit carried out a project, which included field work, for which the employees were required to submit reports in order to receive incentive premiums. Employees of the department headed by the Committee Chairperson worked on the project.

The complainant's tasks included reviewing the reports and the accompanying documentation that the employees submitted. She found that the reports were dubious and contained many inconsistencies, such as non-conformity between the reports on work and accompanying performance documents; duplicate reports for performing the same work; a report on performance of work by employee X, while the accompanying documents indicated the work was performed by employee Y; and the signing of an employee's work card by another employee.

The complainant forwarded her findings to the production engineer, the person in charge of incentive pay in the Unit. The report that the engineer submitted, on June 30, 1994, to the Unit's production board, included the complainant's findings. Following the engineer's report, payment of the premium for the work reported by the employees was postponed.

At a meeting of the Unit's management held on July 3, 1994, shortly after the findings were forwarded as described above, the Committee Chairperson demanded the immediate dismissal of the complainant, arguing that she had failed the CSC tests.

(c) In a letter to the Unit's director dated July 20, 1994, the Committee Chairperson repeated his demand to dismiss the complainant, arguing once again that she had failed the CSC tests. In the same letter he mentioned the names of two other employees who should be dismissed for the same reason.

(d) On July 24, 1994, the State Employees' Labor Federation sent a letter to the Unit director concerning "employees who fail the CSC tests twice"; one of the signers was the Committee Chairperson. Although the title of the letter mentioned "employees," only the dismissal of the complainant was demanded in the body of the letter. As regards the other employee, the letter stated: "We certainly favor helping her to remain in a full-time position."

Moreover, in a letter that the Committee Chairperson wrote to the Unit's administration some two weeks later, concerning the other two employees, he suggested "looking for a way to absorb them in the production department, which does not require entrance exams."

(e) On October 16, 1994, the Committee Chairperson wrote to the CSC concerning "the (Unit) management's ignoring and not complying with provisions of the civil service regulations in the matter of employing persons who twice failed to pass the CSC entrance examinations." In this letter too he mentioned the three employees he had referred to in his previous letter. However, he mentions dismissal only in reference to the complainant, noting that as regards the other two, the employees' representatives suggested that they be transferred to a department in which no entrance exams are required.

On November 1, 1994, following this letter of the Committee Chairperson, the sector manager (personnel) (hereafter: the sector manager) at the CSC and the Unit's director and deputy director met to discuss the three employees who were mentioned in the Chairperson's letter. They agreed that the complainant and one other employee would be dismissed within three months of December 1, 1994, and that the third would be employed in a department that does not require entrance exams. However, contrary to the agreement, and only one day after the meeting, the Unit management offered the other employee the option of transferring to the department in which the third employee works, so that he too would not be dismissed. He refused the offer, and consequently was informed on December 2, 1994 that he would be dismissed, effective December 15, 1994.

(f) In a letter dated November 23, 1994 to the Civil Service Commissioner, the sector manager expressed his amazement that the Committee Chairperson, whose task is customarily to protect employees, was the one who demanded that the complainant be dismissed.

(g) On December 27, 1994, the Civil Service Commissioner wrote to the Unit director that he found acceptable the agreement reached at the meeting on November 17 as regards "employment of the three employees and their dismissals, and that now is the time to finally arrange the computerization (of the Unit)."

(h) The Unit's accountant, who supervised the complainant, wrote to the Unit's director on February 3, 1995 concerning the complainant. He wrote, inter alia, the following:

1. When and who made the decision to dismiss (the complainant) without consulting or speaking with her supervisor?
2. What reasons will be given to the employee for dismissing her after almost 7 years (!) in which she performed her tasks with dedication, with exemplary skill, and great success, and to the total satisfaction of all those who supervised matters with which she is involved.

In a letter, dated February 6, 1995, written to the Unit's accountant, her direct supervisor wrote that he could not understand how decisions could be made without involving the person directly in charge of the employee. Much training had been invested in the complainant, and during the period she was employed in the department, she had learnt her work properly and had performed her assignments to his total satisfaction. The supervisor vigorously opposed the suggestion to

replace her with another employee. In addition to the personal injustice to the complainant, who devotedly performed her tasks over the years, the work that she performs would suffer greatly.

(i) In a letter to the Deputy Civil Service Commissioner of February 13, 1995, the head of the Production Engineering Unit of the CSC noted that the Committee Chairperson and the deputy for administration in the Unit had harassed the complainant since July of 1994, following the report issued at the time by the Unit's production engineer. The report was based on the complainant's discoveries concerning the irregularities in reporting and recording the number of hours worked and the illegal payment of premium wages. After the report was submitted, the Committee Chairperson and the deputy for administration suddenly remembered that the complainant had failed the tests for entry into the Civil Service. The letter also mentioned that her supervisors and professionals involved with her work praised her performance capabilities.

(j) On February 26, 1995, the Accountant-General of the Finance Ministry wrote to the Civil Service Commissioner concerning the complainant's dismissal, noting that there was a suspicion that the dismissal was based on irrelevant considerations and on the involvement of persons in the Unit having an interest in her being dismissed. The Accountant General recommended that before dismissing the complainant, an urgent investigation be made by a team that would include an internal auditor, as a representative of the Accountant General, and a representative of the CSC.

On February 28, 1995, the Civil Service Commissioner responded to the Accountant General, informing him that he had reexamined the matter of the dismissal of the complainant, and had concluded that it should not be revoked. He asserted that the dismissal was based on relevant considerations, based primarily on her twice failing to pass the service entrance exams. He believed there was no basis to the contention that the dismissal was based on extraneous considerations.

(k) The Unit's management argued before the Commissioner that the decision to dismiss the complainant was based primarily on her failure to pass the CSC tests, but also on the need to cutback personnel in the branch in which she works, and because of the plan to computerize a substantial portion of the data processing of incentive pay. Another argument raised was the intent to train an employee who would replace, in due time, the branch head, who would soon be retiring.

#### **4. The Public Complaints Commissioner ruled that the complaint was justified.**

(a) Investigation of the complaint showed that the findings that the complainant forwarded to her supervisors were ostensibly reliable material. She exposed these findings while performing her duties, and forwarded them to those who were authorized to receive them, and she acted, therefore, properly, in good faith, motivated by relevant considerations.



(b) As mentioned previously, from the beginning the complainant has worked in the salaries section calculating incentive pay. The investigation showed that she was the only employee in the section specializing in this area, and that she performed her work independently, *vis-a-vis* the Unit's administration and external professionals.

All the professional supervisors, those directly in charge of the complainant and those indirectly supervising her, including external professionals, rated the complainant as a dedicated top-rate employee, who performed her work excellently and faithfully, even in areas beyond the job description.

(c) As regards the reasons given by the Unit's management for dismissing the complainant:

(1) The complainant twice failed the CSC tests. However, in spite of her failing the first test, she was hired as a temporary state employee on July 1, 1993, and afterwards, on July 1, 1994, after which she was placed in a budgeted position in the Unit even though she had failed the second test. The Unit treated her in this manner because all those involved were very satisfied with the quality of her work and the way she had performed her duties over the years.

Indeed, in order to employ her as a permanent employee in a budgeted position of the section in which she worked, she had to first pass the test, but the Unit's management knew about the CSC custom that had developed over many years, which provided that the management of a ministry or adjoining governmental unit could request exemption from taking the test, or could request permission from the CSC to employ a person, in spite of failure to pass exams or tests, on the basis of the employee's favorable performance of his or her duties, accumulated experience, or proven skills.

Indeed, several times the Unit's accountant requested that the Unit's management submit such a request to the CSC concerning the complainant based on her outstanding skills and her work performance throughout the years that she worked in the Unit. But the Unit's management ignored his requests.

(2) The Commissioner does not accept the argument concerning the cutback in personnel.

The section in which the complainant works has four employees. The investigation showed that the Unit's management intended to hire, following the complainant's dismissal, a new employee who would perform the very same work, meaning that even after her dismissal, the number of employees in the section would remain at four employees, just as it was. This fact undermines the basis for the contention that dismissal of the complainant was intended to reduce personnel.

In addition, the intention to hire a person to replace the complainant without an overlap period also shows that the best interests of the Unit and its work needs were not the guiding principles of the Unit's management.

For this reason, the third reason given by the Unit's management is not persuasive. Even if it were the intention to train an employee to replace the section head, reason dictates that such a person would start his or her work during an overlap period with the complainant to take advantage of her experience in operating the incentive pay method, and to acquire with her assistance, the knowledge required to perform the tasks of section head.

The decision to dismiss the complainant at the time and in the manner it was done, as described above, reinforces the conclusion that the reason for the dismissal was neither the cutback in personnel nor the need to train a new section head, who could supposedly replace the section head at some time.

(d) The agreement with the CSC dated November 17, 1994 concerning dismissal of the complainant provided that the three-month period, December 1, 1994 to February 28, 1995, is the time "to finally arrange the matter of computerization (of the Unit)."

The investigation showed that this matter had not been finally settled, and the professionals involved believe that even when it would be arranged, a skilled and experienced employee would be required to check and confirm the computerized results. Moreover, if computerization would make the complainant's work superfluous, there was no need to hire another person to do her tasks, even if it were with the expectation that he or she would fill the position of the section head when he retires.

Dismissal of the complainant under these circumstances indicates that this was not the reason for the dismissal.

(e) (1) The production engineer's report, based on the findings discovered by the complainant during her examination, relates to the unreliability of the reports of the employees of the department headed by the Committee Chairperson. The Committee Chairperson initiated the project to increase the employees' income, and as their supervisor, he also approved the accuracy of the reports dealing with the project. This was the reason for his grievance against the complainant following the findings she made.

As mentioned previously, during the course of performing her duties, the complainant discovered inconsistencies and lack of accuracy in employee reports also prior to the project which is the subject of the report issued by the production engineer. It is not impossible that these discoveries led the Committee Chairperson to try already then to have the complainant dismissed.

(2) Each correspondence of the Committee Chairperson concerning the three Unit employees, among them the complainant, who failed to pass the CSC tests recommended ways to continue to employ the two other employees. As regards the complainant, not only did he not recommend a solution that would allow her to remain, he vociferously demanded that she be dismissed.

Immediately after the production engineer submitted his report, the Committee Chairperson increased his requests and continued to place pressure on the Unit's management to dismiss the complainant. The pressure reached its peak in the request stated in his letter to the Civil Service Commissioner.

(3) At first, the Unit's management rejected the pressure of the Committee Chairperson: Ultimately, particularly after his request to the Civil Service Commissioner, the management consented to dismiss the complainant for irrelevant reasons.

(4) The Unit's management did not consult with the complainant's supervisors concerning the decision to dismiss her. It did not inform them of their intention, but rather informed them only after the aforementioned agreement with the CSC to dismiss her, although it knew that her supervisors vigorously opposed her dismissal.

(5) The CSC should have returned the letter that the Committee Chairperson wrote to the Civil Service Commissioner, and explained to him that it was improper to send a request to dismiss employees directly to the Civil Service Commissioner, and not through the supervisor in the Unit. Because of the letter, the CSC acted to dismiss the complainant.

(6) The CSC, contrary to its contentions, did not properly examine the arguments presented to it concerning the relation between the complainant's dismissal and exposure of acts of corruption, and did not prevent the complainant's dismissal.

5. For these reasons, **the Public Complaints Commissioner decided to order as follows:**

### **ORDER**

Being convinced that there is a direct causal relationship between the disclosures by the complainant of acts of corruption in the Unit, disclosures that were provided in good faith and according to proper procedure, and between the dismissal of the complainant, I hereby order, pursuant to my authority under section 45C of the State Comptroller Law, 5718-1958 [Consolidated Version], as follows:

1. The agreement with the Civil Service Commission as regards dismissal of the complainant from the Unit, mentioned in the letter of the Civil Service Commissioner of December 27, 1994, is hereby null and void, and shall not be implemented.

2. The letter, dated February 12, 1995, of the administration coordinator in the Unit to the complainant regarding her dismissal is also null and void.

The Unit will continue to employ the complainant in the position in which she worked at the time of the aforementioned notice of her dismissal, and/or in any other position to which she shall properly be transferred, pursuant to law, agreement, custom, or proper and binding

procedure, and in accordance with the rules of the Civil Service Regulations, and other provisions applying to her employment.

3. Under the binding provisions concerning employment of the complainant in her current position or in a similar position, she was required to pass a test or exam of the CSC; therefore, in light of her proven skills and the opinion of her supervisors, the Unit's management shall submit to the CSC a request to exempt her from a test or exam, or to receive authorization to employ her although she did not pass them.

4. The Unit's management and any person supervising the complainant will do whatever is necessary to enable the complainant to perform her duty properly and without any hindrance in accordance to any directive that will be lawfully given by the supervisors.

5. Pursuant to my authority under section 43(d) of the State Comptroller Law, 5718-1958 [Consolidated Version], I directed that the matter be brought to the knowledge of the Attorney General.

6. The CSC and the Unit's management notified the Commissioner that they will comply with the Order and act pursuant thereto.

## **MINISTRY OF EDUCATION, CULTURE AND SPORT**

### **DISMISSAL OF TEACHER CONTRARY TO NATURAL JUSTICE**

1. The complainant, a music teacher, immigrated from Ukraine and worked in Israel in elementary education for three years. In August, 1994, he complained to the Commissioner against the Ministry of Education, Culture and Sport (hereafter: the Ministry) concerning his dismissal as follows:

(a) During the 1991/1992 and 1992/1993 school years, the complainant taught in elementary schools in a district in central Israel, and in 1993/1994 in an elementary school in Eilat. In a letter dated May 22, 1994, the Ministry's Director General informed him of his dismissal for pedagogic reasons. The dismissal was to take effect at the end of the 1993/1994 school year, August 31, 1994.

(b) The complainant claimed that he was dismissed "behind his back," and that he was not told the basis for the decision to dismiss him.

(c) The complainant requested that the Commissioner investigate his complaint and nullify his dismissal.

2. The Commissioner's investigation raised the following findings:

(a) The teacher service regulations contains rules and directives concerning the hiring and dismissal of teachers. Concerning dismissal of a teacher for pedagogic reasons during his trial period, the regulations require two supervisors to visit six classes during the relevant school year.

(b) The complainant, who holds a music-teacher's certificate from Ukraine, was certified on December 13, 1993 to teach music in Israel. In the 1993/1994 school year, he was still in his trial period.

(c) In that year, the professional supervisor for music in the Southern District (hereafter: the music supervisor) visited four classes, and the general supervisor of the school in which the complainant taught visited three times. The two supervisors prepared detailed reports of these visits.

(1) The reports of the music supervisor were negative as regards all aspects of instruction.

(2) The general supervisor's report, dated March 1, 1994, contained the following conclusion: "The difficulties arising in the teacher's work were not noticeable during the visit." On the other hand, the supervisor concluded in her report of May 1, 1994, following two additional visits: "I recommend he be dismissed."

(d) (1) The complainant claimed that he was given only one report of the general supervisor, the report dated March 1, 1994. He contended that he received no other report of the general supervisor, and if such a report was submitted to someone, he does not know its contents.

(2) In her response to the Commissioner, the general supervisor stated that she always forwards her reports on teachers through the school at which they teach. She sends two copies of the report: one for the school and one for the teacher. She contended that this is what she did in this case.

(3) The school's principal informed the Commissioner that the complainant's personal file at the school contains reports of the supervisors' visits to the complainant's classes. However, his file does not contain a copy of the May 1, 1994 report.

(e) (1) The Commissioner found, in the complainant's personal file at the Ministry, a letter dated April 25, 1994 from the music supervisor to the district supervisor of the Southern District (hereafter: the district supervisor). Enclosed was a negative report, dated April 24, 1994, of the musical education supervisor for the Central District relating to the years the complainant had worked there. The report, written almost one year after the complainant had ceased working in the District, was prepared in response to the request of the music supervisor to receive information about the complainant's work in the Central District. The music supervisor noted in that letter that the report shows that the complainant provided false information to the supervisor of music education for the Central District. At the end of the letter, the music supervisor writes: "Considering the fact that the teacher's work is and was rated negatively, I recommend dismissal for pedagogic reasons."

(2) In her response to questions posed by the Commissioner, the Central District's music education supervisor stated that she had visited his classes when the complainant had worked in the Central District, but did not write reports about the visits. She also indicated that she did not send the complainant a copy of her report of April 24, 1994.

(f) (1) On April 17, 1994 and May 3, 1994, the Board of Supervisors of the Southern District deliberated on the complainant's matter. The Board decided to recommend to the Ministry's Director General that he dismiss the complainant for pedagogic reasons.

(2) On May 5, 1994, the head of the Southern District submitted the Board's recommendation to the Director General. On May 22, 1994, the Director General decided to adopt the recommendation, prepared a letter of dismissal, and sent it to the complainant the same day.

(3) On May 25, 1994, the complainant appealed to the Minister of Education, Culture and Sport against the Director General's decision. The Minister denied the appeal on September 4, 1994.

(g) (1) During the investigation, the Commissioner's representative spoke with the general supervisor and with the district supervisor, and requested explanations. The general supervisor indicated that she favored giving the complainant another chance. She contended that she would be very happy if the Commissioner's investigation would bring about that result, since from her experience, new immigrant teachers who do not succeed when they first start out in Israel ultimately adapt to local conditions.

(2) The district supervisor indicated to the Commissioner's Office that the supervisors who participated in the deliberations of the Board of Supervisors wanted very much to help the complainant on a personal level; they do not enjoy dismissing a teacher. However, they relied on the opinion of the music supervisor that was supported by the evaluation of the music education supervisor for the Central District in her aforementioned report of April 24, 1994. He stated that this evaluation undoubtedly influenced him and the other participants in the deliberations of the Board of Supervisors.

(3) The comments made to the Commissioner's Office during the investigation show that the inability to find him a teaching position elsewhere in the Southern District also contributed to his dismissal.

(h) The complainant emphasized to the Commissioner's Office that he aspires to teach music. He comes from a family for which music has been their whole life for many generations. He was the sole Jew who headed a music school in Ukraine, in spite of the authorities' hostility. The Ministry's determination that he is not suitable to teach music is like notification that there is no place for him in Israel.

### **3. The Commissioner ruled that the complaint was justified.**

(a) The decision to dismiss the complainant for pedagogic reasons means that the complainant will not receive a teaching license, which would eliminate the possibility for him to find work in Israel in his life's profession, music instruction in the educational system.

(b) Since the complainant was neither provided with a copy of the general supervisor's report of May 1, 1994, nor with a copy of the April 24, 1994 evaluation of the Central District's music education supervisor, the complainant was not given the opportunity to respond to the contents of the report and evaluation. In addition, he was denied the right to be heard prior to his dismissal. These acts violate the principles of natural justice, and constitute a defect that goes to the roots of the dismissal process.

(c) For these reasons, the dismissal shall be considered null and void.

4. In light of the above, the Commissioner pointed out to the Ministry of Education, Culture and Sport the necessity to return the complainant to teaching, and to pay his salary beginning from the day payment was stopped, less any amounts the complainant received for that period in wages or unemployment compensation.

5. The Ministry informed the Commissioner's Office that it would act in accordance with the ruling of the Public Complaints Commissioner: the complainant was given a position as a music teacher in the Tel-Aviv District beginning January 1, 1996, and the Ministry is handling the matter of payment of his salary for the period from the date he stopped working until his reinstatement.



## **ISRAEL POLICE FORCE**

### **FINANCIAL EXPENDITURE CAUSED BY POLICE NEGLIGENCE**

1. The complainant, a resident of Ra'anana, was stopped for a routine check while driving his car on May 24, 1993. He did not have his insurance certificate or driver's license (hereafter: the documents) in his possession. A traffic policeman gave him a "summons and indictment" to appear for trial on November 21, 1993 for driving without the documents, but he was given an extension to present them, within five days, at the police station or the police department's traffic bureau.

On May 28, 1993, the complainant presented the documents at the Sharon traffic bureau and received confirmation that he had presented them. As a result of negligence, the Sharon traffic bureau did not report, as it was required to do, to the regional traffic bureau that the documents had been presented. Consequently, the trial summons was not revoked. The complainant, who had presented valid documents to the traffic bureau within 5 days as demanded, assumed that the trial had been cancelled, and consequently did not appear in court on November 21, 1993. The court found him guilty, in his absence, for driving without a driver's license and without valid insurance, suspended his driver's license for 12 months and fined him NIS 750.

On November 30, 1993, notification of the court's sentence was sent to the complainant. The notification did not detail the violation for which he was sentenced, and only mentioned the punishment imposed, demanding that he pay the fine and immediately forward his driver's license to the court clerk.

The complainant, shocked to receive the aforementioned notification, retained an attorney to investigate the meaning of the sentence and to act to revoke it. The attorney discovered that although the complainant presented the documents at the traffic bureau as mentioned above, the "summons and indictment" were not revoked, and that he was judged in his absence. The attorney applied to the court, and on February 26, 1994, the traffic court revoked the judgment that had been given in the complainant's absence. At the same time, the indictment was amended, and the judge sentenced the complainant to a fine of NIS 100 for failure to carry the car documents while driving.

The complainant requested that the Police compensate him for his expenses in retaining the attorney, which amounted to NIS 1,375. The Police Department refused.

2. In early 1994, the complainant requested the Commissioner's assistance in the matter.

3. In the past, the Commissioner received various similar complaints that judgements had been given in the absence of the complainants because the police stations where valid car documents had been timely presented had been negligent in not reporting this fact to the regional traffic bureaus.

In 1991, the Commissioner's Office pointed out to the Police the need to find a way to resolve the problem.

The Ministry of Transportation and the Police began to discuss the matter in August, 1992.

As a result, new regulations were instituted for the handling of persons who do not have car documents in their possession when they drive. The new regulations took effect on May 2, 1993.

According to the new regulations, when it is clear that the person driving a car does not have in his possession the documents that he is required by law to have in his possession when driving, the police officer does not issue, as in the past, a "summons and indictment," but rather issues a notification of driving without the documents. The notification explains to him that the details of the incident will be fed into the computer and will be checked. If, according to the data on the computer, the documents were valid at the time of the incident, the driver will receive in the mail a notice to pay a fine for not carrying the documents while driving. If the computer shows that the driver did not have the car documents or that their validity had expired at the time of the incident, the driver would only then receive, by mail, a "summons and indictment." This procedure eliminates the need to go to the police station to present the documents; the only thing the driver must do is wait for additional notification from the Police, which is supposed to be sent to him after the aforementioned check.

4. The incident in the present complaint occurred, as previously mentioned, on May 24, 1993, a short time after the new regulations took effect. The police officer did not act according to the new regulations, but rather in the previous customary manner. He gave the complainant a "summons and indictment," and notified him that he could present the documents at a police station within five days, after which the summons and indictment would be exchanged for a notice to pay a fine.

The complainant went to the Sharon traffic bureau on May 28, 1994, within the allotted time, presented the documents and received confirmation that he had done so. But the bureau did not act as required, i.e. to report to the regional traffic bureau that the documents had been presented, which would have led to the revocation of the summons and indictment. The malfeasance resulted in the complainant being tried in his absence and sentenced to revocation of his driver's license for 12 months and a fine of NIS 750.

This complaint joins a series of complaints whose handling ultimately led to the issuance of the new regulations.

5. As to the complainant's request that the Police compensate him for his expenses, the latter informed the Commissioner's Office that the complainant, by himself, could have clarified the matter, and achieved the same result of revocation of the sentence, and that the Police Force is not willing, therefore, to grant his request. It is willing, however, *ex gratia*, to compensate the complainant in the amount of NIS 200, the amount an attorney charges for preparing an affidavit and sending a letter.

6. **The Public Complaints Commissioner ruled that the complaint was justified.**

There is no dispute that the Sharon traffic bureau was negligent in not reporting that the complainant had presented the documents. That failure resulted in actions against the complainant that caused him injustice, mental anguish, and monetary expenditures. An ordinary individual is involved here, one who is not familiar with legal matters, who received notification of a judicial sentence, without knowing about what or why.

When the complainant retained an attorney, therefore, he acted reasonably and as expected, and the legal fees that he paid are not unreasonable. The Police must expect that innocent citizens who are convicted because of blatant police negligence will expend monies to retain an attorney to quash the conviction.

7. In light of the circumstances mentioned above, the Commissioner ruled that the Police must reimburse the complainant all his expenses, a total of NIS 1375 at their value on the day of payment, and must apologize to him.

The Police complied with the Commissioner's ruling.

## **MINISTRY OF THE INTERIOR**

### **TOURIST VISITING RELATIVES NOT ALLOWED TO ENTER ISRAEL**

1. A resident of Afula, a new immigrant, complained, in September, 1993, to the Commissioner as follows:

(a) In March, 1993, the complainant invited her granddaughter, a student living in Russia, to visit Israel. The granddaughter received approval for the visit from the Israeli consulate in Moscow, and on March 10, 1993 arrived at Ben Gurion airport.

(b) The complainant waited in vain at the airport for her granddaughter for five hours. The next day, she called her daughter in Russia to learn what happened. She was told that her granddaughter had arrived in Israel as planned, but that she was delayed and questioned at the airport, her entry permit had been revoked, and without any explanation, she was taken to the airplane that brought her to Israel and was returned to Russia. The granddaughter stated that she had told the clerk who revoked her entry permit that her grandmother was waiting for her at the airport, but no one had informed the complainant that her granddaughter had arrived at the airport and had not been allowed to enter Israel.

(c) The complainant and her granddaughter, who also submitted a complaint to the Commissioner, requested that the matter be investigated, and that they be paid monetary damages and be compensated for the great mental anguish they had suffered.

2. The investigation revealed the following:

(a) The granddaughter, holder of a Russian passport, reached Ben Gurion airport with a passport stamped with a tourist visa she had received at the Israeli consulate in Moscow. The Israel Police unit in charge of border control (hereafter: border control) prevented her and three other young women who had arrived on the same flight from entering Israel. The complainant was questioned by female border control officers and by the head of the Population Administration Office at the airport (hereafter: the Interior Ministry representative). When the questioning was completed, the permit that had been stamped in the granddaughter's passport was revoked, and she was flown back to Russia.

(b) The records of the border control state that the four were refused entry into Israel because "when they entered it was learned that they had arrived without means of subsistence, without an address, and were suspected of having come to work." The report also stated that entry was refused in coordination with the Interior Ministry representative.

The head of the border control office explained to the Commissioner that the unit operates according to its internal procedures, titled "questionable travellers." This procedure provides that entry shall not be allowed to a visitor who does not possess sufficient financial means to sustain him or her; or whose sustenance is not ensured by a person or institution; who does not have a host's address, and does not have a ticket to leave Israel. In addition, entry is not to be allowed to a visitor if, in the opinion of the border control officer, the visitor came to Israel, not for a visit, but rather to find work.

The border control explained that it prevented entry of the complainant into Israel on the basis of the said procedure since the granddaughter had arrived without means of subsistence, without the address of a host, and it was suspected that she came to work in Israel. The border control contended that the Interior Ministry representative, who was called to decide whether to allow the complainant to enter Israel, was the one who decided to revoke the permit.

(c) In the course of investigating the complaint, the granddaughter immigrated to Israel. The version that she gave to the Commissioner's Office was different. She said that she had \$300 when she arrived at the airport and a round-trip ticket. In addition, she had her grandmother's complete address. According to her, when she was questioned at the airport by the Interior Ministry representative, she was asked if somebody was waiting for her at the airport. She responded that her grandmother was waiting for her. She was not asked if she knew the full address of her grandmother. The granddaughter added that when she realized she was going to be sent back to Russia, she tried to explain once again to the Interior Ministry representative that her grandmother was waiting for her at the airport, but to no avail.

A border inspector who was present and an employee of Ben Gurion airport, who acted as a translator during questioning of the granddaughter, confirmed to the Commissioner that they heard the granddaughter make these comments.

(d) The Interior Ministry representative contended that he was not the one who decided to revoke the permit, and that he is not authorized to do so. He stated that the border control revoked the permit, and that he supported the decision based on the questioning that had been conducted. He explained that the considerations that led him to affirm the decision of the border control were that the granddaughter did not know to provide the address where she would be staying in Israel, did not have financial means in her possession, and that she was not employed in her country of origin.

The Interior Ministry representative also explained that in the form that the granddaughter completed at the airport, she did not write the name and address of the person who had invited her to visit and his full address; she only gave a partial address, "Givat Hamoreh." These led him to suspect that she had not spoken truthfully, and that the reason she had come to Israel was to work. He also said that had he been told that somebody was waiting for the granddaughter at the airport, he would have checked to make sure that she indeed came to Israel to visit relatives and not to seek work.

3. The Commissioner's investigation showed that neither the border control nor the Interior Ministry representative were authorized to revoke the entry permit into Israel.

The authority to revoke an entry permit into Israel is given, pursuant to the Entry into Israel Law, 5712-1952, to the Minister of the Interior, or to one whom the Minister delegated this authority. The Interior Ministry representative and the border control officers are not among those whom the Minister of the Interior delegated the power to revoke entry permits.

However, for years border control customarily revoked entry permits on the false assumption shared by it and the Interior Ministry that it had been delegated this power by the Minister of the Interior.

4. **The Public Complaints Commissioner ruled that the complaint was justified.** No basis existed to revoke the granddaughter's entry permit, and the revocation was illegal.

(a) Even if it is impossible to determine what was said during the questioning, there being no precise recording of the questions and answers, it seems that the granddaughter's version is more probable. She is a young woman who came to Israel to visit her grandmother, who waited for her at the airport to welcome her; and the granddaughter had a round-trip ticket. It is unreasonable to assume that she did not raise at least one of these points, unless she was not asked.

Therefore, whether or not she was questioned as aforementioned, it seems that the decision was erroneous.

(b) The handling of the granddaughter's case was negligent, and the decision to revoke the permit was made without authority and lacked any basis supporting the suspicions against her. Even though she had all the information to verify her contention that she had come to Israel to visit relatives and not to work, no attempt was made to check the information.

(c) The permit of the granddaughter was "revoked" on the basis of section 11(a) of the Entry into Israel Law (hereafter: the Law). According to section 16(b) of the Law, "one who considers himself harmed by a decision under section 11... that is given pursuant to delegation of authority from the Minister, may apply to the Minister for his final determination."

Even though the Interior Ministry representative affirmed that he was aware of the provisions of section 16(b) of the Law, the granddaughter was deported from Israel without the Interior Ministry representative having informed her of the aforementioned provisions of section 16(b).

5. In light of the above, the Commissioner determined that the complainants were entitled to be compensated for their monetary damages and mental anguish, and indicated to the Interior Ministry and Police Ministry that they must compensate them.

The Commissioner determined that the Interior Ministry and the Police, jointly and severally, must pay the complainants a total amount of NIS 2,000 for monies they expended (airfare, telephone calls, travel, etc.) and NIS 5,000 in compensation for the mental anguish they had suffered.

6. The Interior Ministry informed the Commissioner's Office that following the complaint, and after the matter of delegation of authority had been examined, powers of the Minister have now been delegated, pursuant to the Entry into Israel Law, to various officials, including border control officers. The Interior Ministry representative has been delegated the authority to revoke tourist visas and border control officers have been given the limited authority to prevent entry.

The Interior Ministry also indicated that following the incident, it is now preparing a questionnaire to serve as a basis for questioning visitors who arrive in Israel. The form will contain questions that border examiners will ask during questioning and will record the responses that will be given. On the basis of the results of the questioning, the Interior Ministry will consider whether or not to allow the visitor to enter Israel.

## **LOCAL AUTHORITIES**

### **FAILURE TO REMOVE A SQUATTER FROM PROPERTY INTENDED FOR PUBLIC USE**

1. The complainant is a resident of Kiryat Haim, which is located in the jurisdiction of the Municipality of Haifa (hereafter: the Municipality). At the end of August of 1994, he submitted the following complaint to the Commissioner regarding the Municipality.

On the street where the complainant lives lies a vacant area designated, according to the zoning plan, for public use (hereafter: the lot). A few of the street's residents set up a car park on the lot. At the entrance to the lot, they erected an electric barrier, and at the exit, a barbed barrier. Anyone wanting to park his car in the lot had to pay NIS 600 as his share in erecting the barriers at both sides of the lot. The complainant contacted the Municipality and requested it to return the situation to the way it was previously, but the Municipality failed to take any action.

2. The investigation of the Commissioner's Office revealed the following:

(a) The area involved is indeed designated, pursuant to the zoning plan, as a path and as an open public area. The land is recorded in the land registry on the name of the Israel Lands Administration (hereafter: the ILA).

(b) Those holding the land have no legal right to it.

(c) In its response to the Commissioner's Office, the Municipality stated that under the zoning plan, the Municipality could have registered the property in its name. However, since there was no dispute between the ILA and the Municipality concerning the intended use of the property, the Municipality did not consider registration to be necessary.

3. (a) According to the provisions of section 4 of the Public Land (Removal of Squatters) Law, 1981, if a person seizes public lands within their meaning in the Basic Law: State Lands, and the director of the ILA believes that the seizure was illegal, the director may, within three months from the time he became aware that the seizure was illegal, and no later than twelve months from the date of the seizure, demand that the said person vacate the public land. Under section 5 of the law, the order will be filed at the Execution Office, which shall be responsible to execute it.

(b) The Commissioner's Office requested, therefore, that the ILA investigate why it does not act according to the aforementioned provisions of law. The ILA responded that it considers the property to belong to the Municipality even though the Municipality had not yet registered the property in its name. For this reason, it would be improper for the ILA to implement the aforementioned law against the squatters. However, the ILA noted that there was nothing preventing it from assisting the Municipality, if the Municipality would request help.



(c) The Commissioner informed the Municipality of the possibility of coordinating efforts with the ILA in order to remove the squatters. In response, the Municipality informed the Commissioner's Office that resolution of the problem by it requires expropriation. Since expropriation is a lengthy process, it is preferable that the ILA, the registered owner, act to remove the squatters.

**4. The Commissioner ruled that the complaint was justified.**

(a) The Municipality did not act as required to register the property in its name immediately after it could have been done so under the law.

(b) The Municipality did not contact the ILA to remove the squatters, pursuant to the Public Land (Removal of Squatters) Law, 5741-1981.

5. The Commissioner pointed out to the Municipality, therefore, that it should immediately contact the ILA to issue an Evacuation Order under section 4 of the Public Land (Removal of Squatters) Law, 1981. The order should direct the squatters' attention to their right under the law to apply to the court within the period set for them to vacate the property in order to prove that they have the right of possession of the land.

6. (a) The Municipality acted in accordance with the ruling of the Commissioner, and the ILA issued an Evacuation Order.

(b) The ILA informed the Commissioner that the recipients of the order did not apply to the court, but also did not comply with the order and that consequently, the matter was forwarded to the Execution Office.

(c) Following actions taken by the Executions Office, the squatters vacated the property.

**LACK OF COOPERATION OF THE MUNICIPALITY IN INVESTIGATING A COMPLAINT - HELPLESSNESS IN DEALING WITH A DANGEROUS STRUCTURE**

1. The complainants, residents of Hadera, complained to the Commissioner about the Hadera Municipality (hereafter: the Municipality). The details of the complaint are as follows:

(a) Since 1971, the complainants have lived in an apartment they own on the ground floor of a three-story building.

(b) The owners of the two top stories do not properly care for their apartments. Several of the balconies are dilapidated and dangerous. Because of these owners' failure to act, the complainants have had a prolonged dispute with them. During the period of six years prior to filing their complaint with the Commissioner, the complainants had often complained to the Municipality. In response, the Municipality only sent warning letters, signed by the City Engineer and his deputy, to the owners. In a warning letter drafted by the Deputy City Engineer

on December 9, 1992, he noted that a visit to the premises showed balconies in poor condition, that there were major leaks which cause construction problems to the floor on pillars, and a dangling drainage pipe. The Municipality did not take measures necessitated by the situation described.

(c) The complainants requested that the Commissioner investigate their complaint and induce the Municipality to properly deal with the dilapidated portions of the dangerous building.

2. The following are provisions of the Hadera Municipal By-Law (Demolition of Dangerous Structures), 5729-1968, which empowers the Municipality to act in cases of a dangerous structure:

2. (a) A building owner must maintain his building in a condition that ensures the safety of those occupying it and of the public.

(b) If an owner or a person occupying it suspects that the building constitutes a danger to those occupying it or to the public, he shall immediately so notify the mayor.

(c) The mayor shall direct the engineer to conduct, from time to time, and in the event that he received notification, immediately upon its receipt, a survey of the buildings that are likely to constitute a danger as aforesaid in sub-section (b); the engineer who made the examination shall submit a report to the mayor within 2 hours of the examination.

3. (a) If upon his review of the report prepared pursuant to section 2, the mayor believes that the building constitutes a danger to those occupying it or to the public, he may demand, by written notice, that the building owner perform the works detailed therein within the period of time and in the manner that is stated in the notice.

(b) A building owner who received such notice shall comply with its provisions.

(c) If the building owner does not comply with the demand of the mayor under sub-section (a) or did not perform the works in the manner set forth in the notice, the municipality may perform the works and collect, from the building owner, the monies it expended for that purpose.

4. If the engineer confirms, after examination, that the building is in a condition that constitutes an immediate danger to those occupying it or to the public, the mayor may, with the approval of the district head, perform the works necessary to demolish the building and to collect the monies that it expended for that purpose from the building owner.

5. ....

6. (a) The mayor or the engineer may enter, at any reasonable time, any building in order to determine the condition of the building or to perform works in accordance with the provisions of this municipal by-law.

3. (a) Investigation of the complaint was prolonged due to the Municipality's lack of cooperation with the Commissioner's Office.

The Commissioner's Office repeatedly contacted the Municipality and even summoned the Mayor and the City Engineer to meet with the Director of the Commissioner's Office. However, these actions did not lead to any progress in the investigation. The municipality did not address the complaint substantively or appropriately.

(b) Under these circumstances, the Commissioner determined that investigation of the complaint, as described above, and its partial findings, ostensibly showed that the Municipality, particularly the City Engineer, was guilty of prolonged failure to implement municipal powers under the Hadera Municipal By-Law (Demolition of Dangerous Structures), 5729-1968, insofar as the dangerous parts of the structure to which the complaint referred are concerned.

4. In light of the above, the Commissioner pointed out to Hadera's Mayor that the City Engineer must act firmly and speedily in accordance with the powers granted him by law.

Moreover, the failure of the City Engineer to act under the circumstances of this case ostensibly constitute abuse of public trust, and raises the suspicion that he is guilty of breach of trust under section 28 of the Penal Law, 5737-1977. If the City Engineer does not act as aforementioned, the Commissioner will consider bringing the matter to the knowledge of the Attorney General under section 43(d) of the State Comptroller Law, 5718-1958 [Consolidated Version].

5. (a) Following the above ruling of the Public Complaints Commissioner, the Municipality, for the first time, responded substantively to the matters raised in the complaint. The Municipality argued that at the time, a civil suit between the complainants and their neighbors had been filed dealing, *inter alia*, with the subject of the complaint.

Taking that into consideration, it had been decided that until the court made its ruling, the Municipality would take no steps against the neighbor concerning the dangerous balconies.

(b) Already at the commencement of the Commissioner's Office's investigation, the Municipality knew about the suit between the parties and the decision to wait until the suit was resolved. The Municipality did not explain why the information was not forwarded then to the Commissioner's Office. This omission greatly and unnecessarily prolonged the investigation of the complaint.

The Municipality expressed its regret that it did not immediately provide all the relevant information to the Commissioner's Office and added that if it had done so at the time, it probably would have prevented the Public Complaints Commissioner from ruling as she did.

The Municipality also indicated that the court had given its judgment in the civil suit between the complainants and the neighbors, and that the judgement indeed requires the neighbor to repair the dangerous balconies.

Consequently, the Municipality informed the Commissioner's Office that it had sent the neighbor notice pursuant to the municipal by-law concerning dangerous structures, indicating that he must immediately perform the repairs as demanded.

6. In light of the above, **the Public Complaints Commissioner ruled that the Municipality acted in a manner contrary to proper administration** in that it did not cooperate with the Commissioner's Office in investigating the complaint. This conduct thwarts the purposes of the law under which the Commissioner acts.

### **SAFE TRANSPORTATION OF HANDICAPPED STUDENTS**

1. (a) The complainant, a resident of Safed, is the mother of a daughter with Down's Syndrome. The child studies in an institution for special education outside of Safed, in a neighboring settlement.

(b) At the end of August, 1995, she filed a complaint with the Commissioner against the Municipality of Safed. Her complaint was as follows:

The Municipality of Safed provides transportation for her daughter, together with other handicapped children aged four and above, to and from the educational institution. The complainant believes that since no adult accompanies the children in the vehicle other than the driver, the safety of the children is compromised. The Municipality informed her that in the 1995/1996 school year, which was scheduled to commence in several days, no adult would accompany the children. The complainant contended that not only does this compromise the safety of the children, it also, in her opinion, violates the law.

(c) The complainant requested that the Commissioner act to ensure that the children travel to and from the educational institution accompanied by an adult.

2. The Safe Transportation of Handicapped Children Law, 5754-1994 (hereafter: the Law) stipulates:

2. (a) A disabled child is entitled to transportation from his place of residence... to and from the educational institution...

(b) The aforementioned transportation of handicapped children will be accompanied by an adult in addition to the driver.

(c) ....

3. The local authority in whose jurisdiction the handicapped child resides shall ensure his transportation to and from the educational institution...

10. This law shall commence at the beginning of the 1995/1996 school year.

On 24 July 1995, the Minister of Education, Culture and Sport enacted the "Regulations for the Safe Transportation of Handicapped Children (Rules and Criteria for Eligibility for Transportation and Accompaniment), 5755-1995" (the Regulations were published in the Compilation of Regulations on August 8, 1995), which stipulate:

2. (a) Accompaniment under section 2(b) of the Law will be by a person employed as an escort by the local authority, or a volunteer who is approved for such by a public organization.

(b) The local authority in whose jurisdiction the handicapped child lives shall be responsible for implementing the accompaniment.

3. The Director of the Department of Education of the Safed Municipality informed the Commissioner that the Municipality is indeed aware of the problem whereby no adult accompanies handicapped children being transported and of the Law and the Regulations that require that an accompanying adult, in addition to the driver, be present. However, since the Municipality is in financial difficulty, it cannot finance the employment of an accompanying adult. According to the Municipality, the State, which bears the burden of financing the transportation of these children, must also finance the employment of a person to accompany the children.

4. The Commissioner's investigation showed that for years the Ministry of Education, Culture and Sport had subsidized the transportation of students to educational institutions outside the jurisdiction of the local authorities. The Ministry generally paid 50%, and not all the expenses, as contended by the Municipality. The Ministry expressed willingness also to share the expenses of employing a person to accompany the children during transport, if it receive budgetary approval for it. The Ministry requested, in the proposed budget of 1996, an allocation for this expenditure. However, until it receives the approval, the Ministry is prohibited from paying even part of the expenses necessary to employ adults to accompany the children.

5. **The Commissioner ruled that the complaint was justified.**

The Law imposes on the local authority the responsibility for transporting handicapped children and to provide an adult, in addition to the driver, to accompany each transport vehicle. The authority is not at liberty to evade this lawful obligation, not even on the grounds that it does not have a budget for it, and that the State, namely the Ministry of Education, Culture and Sport, must cover the expenditure. In addition, the law, which was published in 1994, took effect, as mentioned above, only in the 1995/1996 school year, so that the local authorities, among them Safed, were given sufficient time to prepare themselves for the implementation of the Law's provisions and to ensure, within the necessary time, the funds needed to finance it.

Careful distinction must be made between the claim of the right to have the State share the expenditure and the obligation of the Municipality, incorporated into law, whose purpose is to ensure the safety of children being transported to and from an educational institution. One thing has nothing to do with the other.

6. The Commissioner ruled that the Municipality of Safed must comply, without delay, with the provisions of the Law and provide an adult other than the driver to accompany the children on the transport vehicle.

7. The Mayor informed the Commissioner that he had acted in accordance with the ruling.

## **TENDERS FOR CHILDRENS' TRANSPORT SERVICES**

1. The complainant owns a transport company. In January, 1993, he filed the following complaint with the Commissioner against the B'nei Ayish Local Council (hereafter: the Council):

(a) Shortly before the 1992/1993 school year, the Council published a public tender for the provision of transport for students to schools outside its jurisdiction. The tender requested bids for several transport lines.

The complainant submitted a bid to provide transport services on one of the lines listed (hereafter: the *Ma-as* line). The complainant was present when the bids were opened on September 15, 1992.

According to the complainant, the Tenders Committee decided that his bid won because it was the lowest. Nevertheless, the Council did not enter into a contract with him, but rather with the brother of the deputy head of the Council (hereafter: the brother). The complainant contended that the brother had not even submitted a bid for this line, though he had submitted bids for all the other lines. The complainant further claimed that the deputy head of the Council was a member of the Tenders Committee and was present when the committee deliberated on the bids, contrary to principles of proper administration.

(b) The complainant contacted the head of the Council numerous times about the matter, but received no response. He requested the Commissioner's assistance.

2. Investigation of the complaint was prolonged because of the failure of the head of the Council to cooperate with the Commissioner, as required.

In the course of the investigation, the complainant filed with the Commissioner, on January 27, 1994, an additional complaint against the Council. This time, the complaint concerned another tender that the Council had published, in which it called for bids for the provision of transport for children during the 1993/1994 school year. His contentions in this additional complaint were as follows:

(a) The complainant submitted a bid for several transportation lines, including the *Ma-as* line. The brother submitted a bid for several lines, including the *Ma-as* line.

(b) The complainant was present when the bids were opened on August 19, 1993.

(c) The Tenders Committee accepted the brother's bid for the *Ma-as* line, since it was the lowest, and the complainant admitted that his bid for this line was higher.

His complaint concerned the fact that the committee did not accept his bids for the other lines even though they were, according to him, the lowest.

(d) The deputy head of the Council was once again a member of this Tenders Committee, despite the fact that this time too the brother submitted bids for several lines, and even won, as already mentioned, the *Ma-as* line contract.

3. As stated above, investigation of the complaints was prolonged because the head of the Council did not cooperate: the Council delayed in responding to the Commissioner's letters, and not all the documents that were requested to enable the Commissioner to investigate the matter were submitted.

The Commissioner did ultimately succeed in investigating the complaints, which produced the following findings:

(a) As regards the tender for the 1992/1993 school year:

(1) As mentioned, the complainant's bid was only for the *Ma-as* line.

The final date for submitting bids was 10 September 1992. When the complainant went, on this date, to the Council to deliver his bid, the Council's secretary told him that the *Ma-as* line, the subject of his bid, was mistakenly included among the lines listed in the tender, and that the tender should be considered cancelled as regards that line. She also said that notice of the cancellation had been forwarded to all the other bidders. Notice of the cancellation had been sent, it was later found out, to all the bidders except for the complainant (who was notified as described above).

As mentioned, the bids were opened on September 15, 1992, and the Tenders Committee deliberated on them. The complainant's bid on the *Ma-as* line was the lowest, and the Tenders Committee decided that his was the winning bid. However, following the cancellation, the Council did not award him the contract to operate the line.

(2) The Council awarded the operation of the *Ma-as* line to the brother of the deputy head of the Council, even though he did not even submit a bid for this line.

(3) The deputy head of the Council indeed served as a member of the Tenders Committee, as the complainant contended, and even participated in its deliberations.

(b) As regards the tender for the 1993/1994 school year:

The Commissioner's investigation verified the complainant's contentions as mentioned above. It was found that once again, the deputy head of the Council served as a member of the Tenders Committee when it determined that the brother's bid for the *Ma-as* line was the lowest.

Concerning the other lines, where the complainant's bid was the lowest of all the bids, the Tenders Committee indeed declared that the complainant's bid won. However, the Council did not grant operation of these lines to anyone, neither to the complainant nor to any other, since, it contended, there was no demand for transportation along these lines.

4. On the basis of the findings of the investigation, **the Public Complaints Commissioner ruled as follows:**

(a) As regards the tender for the 1992/1993 school year:

(1) The Council was entitled to cancel a portion of its tender prior to the final date set for submitting bids. There was no reason, therefore, for the tenders committee to deliberate on bids to operate the *Ma-as* line and to accept the complainant's bid.

(2) However, since it notified the complainant of the cancellation of part of the tender so close to the final date for submitting bids, the Council acted to the detriment of the complainant in that it caused him to incur expenses in purchasing the tender documents, pay for the bank guarantee and attorney's fees, and waste time and money in preparing the bid and applications to the Council. For all these losses he was entitled to compensation, detailed below.

(b) As regards the tender for the 1993/1994 school year, the Public Complaints Commissioner ruled that the tender was void since it violated the provisions of the law and the principles laid down in case law.

(1) Section 103 of the Local Council Order (b), 5713-1953 prohibits a Council member from participating in Council deliberations or in those of one of its committees on matters concerning a contract or transaction with the Council in which the member has, directly or indirectly, himself or through a family member, agent or partner, or their family members, any part or benefit, and prohibits the member from voting on any question relating to them.

(2) The Supreme Court has ruled more than once that the principle of equality is breached when a family member, as in the case under discussion, influences the considerations which are the basis for determining the winning bid in a tender. The discretion of the Tenders Committee must be independent, based on relevant matters, and objective. Extraneous considerations are forbidden, and a member of the Tenders Committee must not have personal involvement or a personal interest in the subject of the tender, either directly or through a family member.

(c) When the Council publishes a tender for the transportation of school children, it must strictly comply with the relevant provisions of law.



(d) The Council must compensate the complainant, in the amount of NIS 2,500, for expenses and losses which he incurred as a result of the two tenders.

(e) The Council informed the Commissioner that it would act in accordance with the ruling.

5. (a) The Commissioner ruled before the Council that its failure to respond to letters the complainant had sent to the Council violated the Administrative Procedure Amendment (Decisions and Statement of Reasons) Law, 5719-1958.

(b) The Public Complaints Commissioner also pointed out to the Council that its failure to cooperate with the Commissioner in investigating the complaint was unacceptable conduct, and was contrary to provisions of law.

### **PARENT WHOSE CHILD DIED IN MILITARY SERVICE EXEMPT FROM MUNICIPAL PROPERTY TAX**

1. The complainant lost a son in the "Peace for Galilee" war.

In August of 1993, she filed a complaint with the Commissioner against the Lod Valley Regional Council (hereafter: the Council). The complainant contended that although she had lost her son in 1982, only in 1993 did the Council first exempt her from paying property taxes.

2. (a) The right of a parent of a fallen soldier to a partial exemption from municipal property tax (hereafter: tax) imposed by local authorities is provided by the Local Authorities (Exemption of Soldiers, War Sufferers, and Police Officers from Municipal Property Tax) Law, 5713-1953 (hereafter: the Law).

Section 3 of the Law stipulates:

The following shall, during the periods stated below, be exempt from two-thirds of a tax to which they would be liable but for this Law:

...

(6) Such relative of a fallen soldier as is entitled to a pension under the Fallen Soldiers' Families (Pensions and Rehabilitation) Law, 5710-1950 [hereafter: the Pensions Law], as long as he is so entitled;

...

(b) The Commissioner's investigation showed that the complainant has been entitled to compensation under the Pensions Law since June 1, 1982. Consequently, she is exempt from the tax according to section 3(6) of the Law.

(c) Moreover, the investigation showed that since 1984, the complainant's name has been included in the list of bereaved parents that the Rehabilitation Division of the Ministry of Defense provided the Council.

(d) The Council explained that it first granted the exemption to the complainant in 1993 because only then was the matter of exemptions and reductions from taxes provided by statute.

**3. The Commissioner ruled that the complaint was justified.**

Since the exemption from taxes is set by law, the entitlement to it is not dependent on the bereaved parent's filing a request to the local authority; rather, it is dependent only on the parent being entitled to compensation under the Pensions Law. This means that one who falls within the definition of the Law is automatically exempt from payment as provided by law. As mentioned previously, the complainant has been entitled to compensation under the Pensions Law since 1982, and the Ministry of Defense sent a notice of this entitlement to the Council. Tax payments collected by the Council from the complainant were, therefore, overpayments that were unlawfully collected.

4. The Commissioner ruled that the Council must reimburse the complainant the overpayments for taxes it had collected from her during the seven years prior to the date of submission of the complaint to the Commissioner, plus linkage differentials and interest according to the Local Authorities (Interest and Linkage Differentials on Compulsory Payments) Law, 1980.

5. The Council informed the Commissioner that it had acted in accordance with her ruling.

## **EL AL ISRAEL AIRLINES LTD.**

### **DENIAL OF POSSIBILITY FOR WOMEN TO BE HIRED AS PILOTS**

1. The complainant (a woman) is an Israeli citizen who worked as a pilot in the United States. In December of 1994, she filed a complaint with the Commissioner against El Al Israel Airlines Ltd. (hereafter: El Al) for refusing to employ her as a pilot, even though she had some 3,600 hours piloting experience. Her major contentions were as follows:

(a) At the end of 1993, El Al published an advertisement inviting candidates, both male and female, to apply for the position of pilot. The complainant applied; in spite of her flying experience, which exceeded the advertisement's requirements, El Al rejected her application without even interviewing her.

(b) The complainant contended that El Al's summary rejection of her application results from a policy of intentional discrimination against women taken by El Al in everything relating to the position of pilot in the company.

(c) The complainant requested that the Commissioner investigate her complaint and determine whether it was justified.

2. The findings of the Commissioner's investigation are as follows:

(a) El Al advertised that it was preparing a reserve of candidates [both male and female] to train and qualify as civil transport pilots and invited applications. The advertisement listed the requirements that the candidates had to meet as regards citizenship, age, education, and knowledge of languages. An additional requirement was that the candidates be "graduates of the Israeli Air Force Flight School..."

The candidates were requested to submit a pilot's license as well as documents verifying the following facts: "experience as a certified fighter pilot of at least 1,500 hours flight time or experience as a pilot - commander of a transport plane, helicopters and light aircraft of at least 1,500 hours flight time." The wording of the advertisement expressly indicated that it was directed to both male and female candidates.

(b) The complainant submitted her candidacy, but it was, as already mentioned, summarily rejected, without her even being called for an interview.

3. (a) In its response to the Commissioner, El Al contended that it does not discriminate between women and men concerning any position or profession, and that the complainant's candidacy was rejected solely on the grounds that she did not meet the criteria. As mentioned, these criteria stipulate, inter alia, that candidates must be "a graduate of the Israeli Air Force

Flight School." The complainant is not a graduate of that school. Consequently, her candidacy was summarily rejected, without her other credentials being checked.

(b) El Al explained that the requirement that the candidate be a graduate of the Israeli Air Force Flight School was essential since it enabled the company to hire the best pilots. El Al is among the top airlines in the world as regards standards of safety, thanks to the high level of proficiency of its pilots, graduates of the Flight School of the Israeli Air Force, since there the pilots undergo an advanced selection process. El Al is not large enough to conduct a similar selection and training system of its own, and cannot, therefore, waive this criterion.

4. (a) The investigation found that while the complainant's application was summarily rejected because she was not a graduate of the Israeli Air Force Flight School, El Al did not require new immigrants to comply with this condition, and had for a long time allowed them to submit their candidacy according to different criteria since they could not comply with the aforementioned condition.

(b) The Commissioner contended before El Al that the requirement that a candidate be a "graduate of the Israeli Air Force Flight School," as a criterion for being employed by the company unjustifiably discriminates against women in Israel, and is a requirement that a woman, like new immigrants, cannot comply with for the simple reason that the Israeli Air Force Flight School does not accept women.<sup>1</sup>

Moreover, waiving the requirement that new immigrants be graduates of the Air Force Flight School as a condition for submitting their candidacy indicates that this requirement - important as it is to the company because of the advanced selection process mentioned above - is not such an indispensable requirement that it cannot be waived in appropriate cases.

(c) The Commissioner therefore asked El Al if it should not act towards women in Israel as it does towards new immigrants, since women are also unable to comply with the aforementioned requirement.

(d) El Al responded that it had decided to revoke the "exception" for new immigrants, who are few in number in any event, and that it adheres to the principle which obligates, as an absolute rule, that a candidate be a "graduate of the Israeli Air Force Flight School."

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<sup>1</sup> While the complaint was being investigated, the Supreme Court ruled the IDF must open the doors of the Flight School to women meeting the customary preliminary requirements set for male candidates.

This judgment does not resolve the problem, which also lies in the essence of the complaint before us, concerning women who were not allowed to attend the Air Force Flight School.

**5. The Commissioner ruled that the complaint was justified.**

(a) The terms of acceptance of candidates for the positions of pilot at El Al unacceptably discriminate against women who wish to submit their candidacy as pilots.

One of the preliminary requirements laid down by El Al for selecting candidates for the position of pilot is completion of the Flight School of the Israeli Air Force. Needless to say, this school is closed to women, and consequently, they are unable to comply with this preliminary requirement. This requirement thus discriminates against women solely because they are women.

(b) The position taken by the Commissioner is that the reasons given by El Al are insufficient to justify discrimination against women as regards the position of pilot, this being proven by its waiving, over the years, the aforementioned requirement in cases of new immigrants because they are unable to comply with this requirement. Consequently, this condition is not absolute if the candidate has the appropriate qualifications for the position.

(c) The Commissioner also ruled that summarily rejecting the complainant's application violates the provisions of section 2 of the Equal Employment Opportunities Law, 1988.

This section stipulates:

2. (a) An employer shall not discriminate against his employees or applicants for employment on the grounds of their sex, sexual preference, personal status, or their being parents, in each of the following:

(1) employment;

(2) ...

(b) As regards sub-section (a), the setting of irrelevant conditions shall be considered discrimination.

(c) It shall not be considered discrimination under this section when it is required because of the nature and quality of the job or position.

The preliminary requirement mentioned above, which El Al laid down in the knowledge that a woman cannot comply with it, is sexual discrimination in "employment", and section 2(c) of the Law does not apply in this case: insofar as the company previously waived this requirement for new immigrants, it cannot now contend, that concerning women, this preliminary requirement is necessitated by the nature and quality of the job or position.

El Al's recent revocation of the exception for new immigrants, such that they are now also required to meet this preliminary requirement, does not detract at all from the fact that until recently the condition was not considered indispensable.

6. The Commissioner ruled, therefore, that summary rejection of the complainant's candidacy was unlawful.

The Commissioner holds that there is no dispute that the quality of pilots and flight safety must be the most important consideration, and that this consideration must not be waived for any reason whatsoever. However, in her opinion, El Al can find another appropriate way to test the ability and suitability of a woman candidate for a pilot's position without setting a requirement that she can never meet. If the company were to act in this manner, the principle of equal opportunity would be ensured, and simultaneously, the quality of pilots and flight safety would be preserved.

7. These determinations were presented to El Al and to the complainant.

After she was so informed, the complainant filed a suit, on February 4, 1996, in the District Labor Court in Tel-Aviv, against El Al for its refusal to employ her as a pilot.

## **PRAZOT, GOVERNMENT-MUNICIPAL HOUSING COMPANY, JERUSALEM LTD.**

### **EVADING RESPONSIBILITY FOR ROOF-SEALING WORK**

1. The complainant lives in the Ir Ganim neighborhood of Jerusalem. In May of 1994 he filed a complaint with the Commissioner against Prazot, the Government-Municipal Housing Company, Jerusalem Ltd. (hereafter: Prazot). The details of the complaint are as follows:

(a) In December, 1992, the complainant purchased an apartment on the top floor of one of the buildings in the aforementioned neighborhood.

A month earlier, sealing work had been done on the building's roof as part of a neighborhood rehabilitation project initiated by the Ministry of Construction and Housing and Prazot (hereafter: the "project"). The project engineer, who was paid by Prazot, supervised the project.

The parties to the contract to execute the sealing were the contractor doing the work and the Tenants Committee. In the warranty that the contractor gave to the "project", he undertook responsibility for the quality of the work for five years. This undertaking stipulated that the warranty would not apply to damage intentionally done to the roof.

(b) In January of 1993, signs of moisture began to appear on the ceiling of the apartment.

The complainant contacted Prazot. In May of that year, Prazot demanded that the contractor make the necessary repairs, as he had promised. The contractor made repairs, but the complainant was not satisfied, and he warned Prazot that in his opinion, the work was of poor quality. Prazot suggested that they wait until the winter of 1993/1994. In January of 1994, moisture again appeared in the apartment. The supervisor-engineer checked the roof, and according to the complainant, he too believed that the sealing work had been performed negligently, but refused to accede to the complainant's request to record that fact in his report of the visit.

(c) Because of the poor quality of the contractor's sealing work, and the miserable repair work he had performed after the moisture had appeared, the moisture damage in his apartment remained.

(d) The complainant claimed that Prazot was evading all responsibility, and he requested that the Commissioner investigate the complaint and determine if it is justified.

2. During the course of the investigation, as the winter of 1994/1995 was approaching, the complainant had no choice but to repair the tar to prevent rainwater from penetrating into his apartment. He paid NIS 5100 for the repairs.

3. In its response to the Commissioner, Prazot stated that the roof-sealing work had indeed been done in the framework of the project and under the supervision of the supervisor-engineer, but the contract for the work was between the Tenants Committee and the contractor. The complainant should not, therefore, complain against Prazot or even against the project.

4. (a) The Commissioner's investigation showed that Prazot assists the tenants in financing the roof-sealing work that is executed in the project framework, giving each Tenants Committee a grant to cover a major share of the expenses. Prazot pays the grant monies only after the supervisor-engineer confirms that the work was done properly. This process occurred also in the present case.

(b) The investigation also showed that Prazot or the project prepared the tender and the technical specifications to execute the roof-sealing work, forwarded them to the contractors to receive price estimates, and dictated to the Tenants Committee with which contractor it should contract, based on the estimate he submitted.

(c) The investigation further showed that in accordance with the technical specifications, the supervisor-engineer of the project was to serve as the inspector of the sealing work. The same supervisor-engineer certified that the roof work was executed. The warranty given by the contractor was directed to the project director.

(d) The project director argued to the Commissioner's Office that although the project and Prazot are not parties to the contract, they are interested that the contractor execute the work at a high standard of quality. He stated that even if they do not have legal responsibility, they have public responsibility.

(e) The supervisor-engineer noted to the Commissioner's Office that the damage to the complainant's apartment resulted from negligent installation of a solar-heated boiler on the roof, which damaged the sealing layers. The terms of the aforementioned warranty provide that in such a case, the contractor is not obligated to make repairs.

(f) The complainant maintained that the contention of the supervisor-engineer is baseless. He claimed that the moisture in his apartment occurred before the solar-heated boiler was replaced. The complainant provided the Commissioner's Office with photographs to substantiate his version that the source of the moisture is not where the boiler was placed. He wished to conclude from this that the moisture resulted from the poor quality of the contractor's sealing work.

5. The Commissioner consulted her engineering advisor (hereafter: the advisor).

(a) The advisor maintained that the defects in the roof-sealing layers extend over a broad area and are not defects at particular places on the roof. This finding undermines the supervisor-engineer's contention that the damage resulted from placement of the boiler, and reinforced the complainant's conclusion. (See 4(f) above).



(b) The advisor was of the opinion that the building's roof is intended, *inter alia*, as a place for ongoing maintenance of the appliances stationed on it, including repairs and replacement of solar-heated boilers. The replacement of the boiler on the roof is an expected and customary occurrence, which should not damage roof-sealing that was properly executed. The advisor believed, therefore, that the supervisor-engineer's contention, that the replacement of the boiler caused the moisture marks was unacceptable.

6. In light of the findings of the investigation and the advisor's expert opinion, **the Public Complaints Commissioner ruled that the complaint was justified.**

(a) Prazot and the "project" did not serve only as brokers between the Tenants Committee and the contractor, since they were the professionals who set the technical specifications for the work, and were responsible for selecting the contractor and requesting him to do the work. They also supervised the work, and the contractor's warranty was even sent to the "project".

(b) Indeed, the contractor's warranty states that it will not apply in cases in which the roof is damaged "intentionally". But such a contention never arose. Only negligence was mentioned, which is different in nature and essence from intention. It is clear to the Commissioner that there was no intentional damage done in this case, and that the replacement of the solar-heated boiler on the building's roof is expected and usual, and should not damage the roof-sealing.

7. Insofar as the warranty was delivered, as mentioned, to Prazot and the "project", and since no intentional act is involved, Prazot should have demanded that the contractor comply with the warranty. When it did not do so, Prazot had the obligation to compensate the complainant and reimburse him for the monies he expended on the repairs, that is NIS 5,100 plus linkage differentials and interest until the date of payment.

8. After Prazot was informed of the Commissioner's decision, it contended, through its legal advisor, that it only provided assistance, and under the contract with the contractor, to which it was not a party, it did not have any responsibility, either concerning the quality of the work or the responsibility resulting from execution of the work. Prazot could not, therefore, act in compliance with the Commissioner's ruling to compensate the complainant.

9. As a result of the aforementioned refusal, the Commissioner brought the matter, pursuant to section 43(b) of the State Comptroller Law, 5718-1958 [Consolidated Version], to the Minister of Construction and Housing. In her request to the Minister, the Commissioner pointed out the case law of the Supreme Court, which holds that "proper administration requires that substantive audit by the State Comptroller as regards a body subject to his review shall not remain a dead letter."

The Commissioner repeated the grounds, mentioned in section 6 above, for rejecting the position of Prazot and the project, and requested that the Minister of Construction and Housing direct the persons involved at Prazot and the project to comply with her ruling.

10. Following the request of the Commissioner to the Minister of Construction and Housing, her ruling to compensate the complainant was implemented.

## **APPENDICES**

**Breakdown of Complaints by Agencies Complained Against, 1994/1995**  
(6 September 1994 - 24 September 1995)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total <sup>1</sup> Subjects	Number of Complaints	Number of Subjects	Subjects Resolved Substantively	Complaints Found Justified
Prime Minister's Office	13	12	21	21	10	2
Ministry of Finance <sup>2</sup>	447	488	531	582	472	200
Income Tax	131	147	126	139	128	64
Property Tax and Compensation Fund	84	96	94	109	99	25
Land Appreciation Tax	34	37	33	35	30	13
Customs and V.A.T.	61	67	65	74	58	27
Civil Service Commission	29	32	22	23	16	3
Office for Rehabilitation of the Handicapped	51	51	74	76	54	31
Ministry of the Environment	34	37	33	33	31	19
Ministry of Energy and Infrastructure	4	4	9	9	7	5
Ministry of Defense <sup>2</sup>	134	147	145	161	107	41
Rehabilitation Department	84	92	100	115	88	33
Israel Defense Forces	194	197	200	207	53	17
Ministry of Construction and Housing	296	304	259	267	207	86
Ministry of Health	212	228	159	175	139	37
Ministry of Religious Affairs	115	120	114	119	65	28
Rabbinical Courts	33	36	27	28	9	2
Ministry of Foreign Affairs	15	17	24	26	20	9
Ministry of Education, Culture & Sport	157	165	187	197	136	65
Ministry of Agriculture and Rural Development	29	30	27	31	10	3
Ministry of Science and the Arts	5	5	4	4	1	--
Ministry of Justice <sup>2</sup>	332	352	333	352	165	70
Courts Administration	111	115	108	115	25	9
Execution Office	101	108	108	114	50	18
Ministry of Labor and Social Welfare <sup>2</sup>	186	200	211	228	118	37
Labor	52	56	53	57	30	12
Social Welfare	36	38	40	43	27	8
Employment Services	77	84	84	91	41	12
Ministry of Police <sup>2</sup>	650	731	743	841	453	122
Israel Police Department	579	648	644	722	388	110
Prison Service	71	83	98	118	65	12
Ministry of the Interior	218	236	273	295	167	62
Ministry of Immigrant Absorption	135	148	203	222	193	89
Ministry of Transportation <sup>2</sup>	164	184	157	179	147	51
Licensing Division	77	93	74	89	79	35
Ministry of Tourism	18	22	13	14	8	1
Ministry of Industry and Commerce	30	33	24	27	15	8
Ministry of Communications	25	26	31	34	24	7

(continued)

(continued)

Agency	New Cases		Cases Resolved During Report Year (Including Cases Received Previously)			
	Total Complaints	Total <sup>1</sup> Subjects	Number of Complaints	Number of Subjects	Subjects Resolved Substantively	Complaints Found Justified
Bezeq, Israel Telecommunications Corporation Ltd.	200	224	171	195	121	55
Postal Authority	95	112	71	81	48	30
Bank of Israel	47	53	67	76	64	22
National Insurance Institute	461	511	464	504	295	100
Israel Lands Administration	173	186	282	295	195	37
Broadcasting Authority	120	121	140	141	89	53
Local Authorities <sup>3</sup>	1,627	1,802	1,839	2,027	1,029	415
Jerusalem	157	177	145	156	88	35
Tel Aviv-Jaffa	121	133	137	151	100	22
Haifa	103	113	175	190	134	49
Ramat Gan	58	64	69	74	34	11
Bnei Brak	55	65	77	88	30	18
Petach Tikva	51	53	53	56	54	17
Netanya	43	46	46	49	11	6
Holon	37	40	35	39	15	6
Rishon Le-Tzion	35	37	25	26	11	2
Beer Sheba	32	36	35	37	21	10
Others	935	1,038	1,042	1,161	531	239
Other Agencies <sup>3</sup>	733	804	573	623	409	131
Amidar, National Company for Housing in Israel Ltd.	210	234	89	97	75	20
Sick Fund of the General Labor Federation	71	83	61	70	31	7
Israel Electric Corporation Ltd.	64	74	53	61	51	14
Israel Bar Association	49	51	41	43	31	6
Others	333	353	329	352	221	84
Agencies Not Subject to Ombudsman Inspection <sup>4</sup>	913	916	1,053	1,059	11	8
<b>Total</b>	<b>7,782</b>	<b>8,415</b>	<b>8,361</b>	<b>9,025</b>	<b>4,809</b>	<b>1,810</b>

1. Many of the complaints refer to more than one subject.
2. Detailed data have been presented only on units particularly subject to complaint.
3. Data have been presented on local authorities and other bodies against whom 30 or more complaints were filed.
4. Some complaints, because of their public interest, were investigated by the supervising bodies over the areas to which the complaints referred.

**BASIC LAW: THE STATE COMPTROLLER**

**STATE COMPTROLLER LAW, 5718-1958  
[CONSOLIDATED VERSION]**

## BASIC LAW: THE STATE COMPTROLLER

- |   |                               |
|---|-------------------------------|
| 1. State audit is vested in the State Comptroller.  | Substance                     |
| 2. (a) The State Comptroller shall inspect the economy, the property, the finances, the obligations and the administration of the State, of Government offices, of all enterprises, institutions or corporations of the State, of local authorities and of the other bodies or institutions made subject by law to the inspection of the State Comptroller. | State Audit                   |
| (b) The State Comptroller shall examine the legality, moral integrity, orderly management, efficiency and economy of the inspected bodies, and any other matter which he deems necessary.   |                               |
| 3. A body subject to the inspection of the State Comptroller shall at his request, without delay, provide the State Comptroller with information, documents, explanations, or any other material which the Comptroller deems necessary for the purposes of inspection.  | Duty to provide information   |
| 4. The State Comptroller shall investigate complaints from the public about bodies and persons, as provided by or under law; in this capacity the State Comptroller shall bear the title "Public Complaints Commissioner".  | Complaints from the public    |
| 5. The State Comptroller shall carry out other functions as provided by law.  | Other functions               |
| 6. In carrying out his functions, the State Comptroller shall be responsible only to the Knesset and shall not be dependent upon the Government.  | Responsibility to the Knesset |
| 7. (a) The State Comptroller shall be elected by the Knesset in a secret ballot; the election procedures shall be prescribed by law.  | Election and term of office   |
| (b) The term of office of the State Comptroller shall be five years.  |                               |

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Passed by the Knesset on February 15, 1988.

<b>Eligibility</b>	8. Every Israeli citizen, resident in Israel, is eligible to be a candidate for the office of State Comptroller; additional qualifications may be prescribed by law; a person who has served two consecutive terms as State Comptroller shall not be a candidate for election to the next consecutive term.
<b>Declaration of allegiance</b>	9. The State Comptroller-elect shall make and sign before the Knesset the following declaration of allegiance:  "I pledge myself to bear allegiance to the State of Israel and to its laws, and faithfully to carry out my functions as State Comptroller".
<b>Budget</b>	10. The budget of the State Comptroller's Office shall be determined by the Finance Committee of the Knesset, upon the proposal of the State Comptroller, and shall be published together with the budget of the State.
<b>Salary and benefits</b>	11. The salary of the State Comptroller and other payments payable to him during, or after, his term of office, or to his survivors after his death, shall be determined by law or by a resolution of the Knesset or of a committee of the Knesset authorized by the Knesset for this purpose.
<b>Contact with the Knesset and submission of reports</b>	12. (a) The State Comptroller shall maintain contact with the Knesset, as prescribed by law.  (b) The State Comptroller shall submit to the Knesset reports and opinions within the scope of his functions and shall publish them, in the manner and subject to the restrictions prescribed by law.
<b>Removal from office</b>	13. The State Comptroller shall not be removed from office except by resolution of the Knesset carried by a two thirds majority of those voting; procedures for removal from office shall be prescribed by law.
<b>Acting Comptroller</b>	14. If the State Comptroller is unable to carry out his functions, an acting Comptroller shall be appointed, in a manner and for a period prescribed by law.

# STATE COMPTROLLER LAW, 5718-1958

## [CONSOLIDATED VERSION]

### CHAPTER ONE: THE COMPTROLLER

1. (a) The State Comptroller (hereafter – the Comptroller) shall be elected by the Knesset in a secret ballot, at a session convened exclusively for that purpose.

Election of  
Comptroller

(b) The candidate for whom a majority of Members of the Knesset vote – is elected; if no candidate receives such a majority – a second ballot shall be held; if again no candidate receives such a majority, another ballot shall be held; in the third and every subsequent ballot, the candidate who received the smallest number of votes in the previous ballot, shall no

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The original State Comptroller Law, 5709-1949, was passed by the Knesset on May 18, 1949. It was amended in 1952, in 1954, and in 1958. The amended law was then consolidated in 1958.

This version contains the following amendments: State Comptroller (Amendment) Law, 5722-1961; State Comptroller (Amendment No. 2) Law, 5722-1962; State Comptroller (Amendment No. 3) Law, 5724-1964; Holders of Public Office (Benefits) Law, 5729-1969; State Comptroller (Amendment No. 5) Law, 5731-1971; State Comptroller (Amendment No. 6) Law, 5732-1972; State Comptroller (Amendment No. 7) Law, 5734-1974; State Comptroller (Amendment No. 8) Law, 5735-1975; State Comptroller (Amendment No. 9) Law, 5738-1978; Police Ordinance (Amendment No. 7) Law, 5740-1980; State Comptroller (Amendment No. 11) Law, 5741-1981; State Comptroller (Amendment No. 12) Law, 5744-1983; State Comptroller (Amendment No. 13) Law, 5744-1984; State Comptroller (Transitional Provisions) Law, 5748-1988; State Comptroller (Amendment No. 15) Law, 5750-1990; State Comptroller (Amendment No. 16) Law, 5751-1990; State Comptroller (Amendment No. 17) Law, 5752-1992; State Comptroller (Amendment No. 18) Law, 5753-1993; State Comptroller (Amendment No. 19) Law, 5754-1993; State Comptroller (Amendment No. 20) Law, 5754-1994; State Comptroller (Amendment No. 21) Law, 5754-1994; State Comptroller (Amendment No. 22) Law, 5754-1994; State Comptroller (Amendment No. 23) Law, 5755-1995; State Comptroller (Amendment No. 24) Law, 5755-1995; State Comptroller (Amendment No. 25) Law, 5755-1995.



longer be a candidate; the candidate who receives a majority of the votes of the Members of the Knesset present and voting in the third or subsequent ballots – is elected; if two candidates receive an equal number of votes, the ballot shall be repeated.

Date of  
election

2. (a) The election of the Comptroller shall take place not earlier than ninety days and not later than thirty days before the expiration of the serving Comptroller's term of office; if the office of the Comptroller falls vacant before the expiration of his term, the election shall be held within forty-five days from the day the office fell vacant.

(b) The Chairman of the Knesset, in consultation with his deputies, shall set the date of the election and shall give notice of it in writing to all the Members of the Knesset at least twenty days before the election.

(c) If the date of election falls at a time when the Knesset is not in session, the Chairman shall convene the Knesset for the election.

Nomination of  
candidates

3. (a) When the date of the election has been set, ten or more Members of the Knesset may nominate a candidate; the nomination shall be in writing and shall be delivered to the Chairman of the Knesset not later than ten days before the date of the election; the candidate's consent, in writing or by telegram, shall be attached to the nomination; no Member of the Knesset shall sponsor the nomination of more than one candidate.

(b) The Chairman of the Knesset shall notify all Members of the Knesset, in writing, not later than seven days before the date of the election, of every candidate nominated and of those Members of the Knesset who nominated him, and shall announce the names of the candidates at the opening of the election session.

Comptroller's  
address in  
the Knesset

4. On the occasion of his declaration of allegiance, in accordance with section 9 of the Basic Law: The State Comptroller, the Comptroller may, in coordination with the Chairman of the Knesset, address the Knesset.

4A and 5. (Repealed).

The Committee

6. (a) The Comptroller shall carry on his activities in contact with the State Audit Affairs Committee of the Knesset

(in this Law referred to as "the Committee") and shall report to the Committee on his activities whenever he thinks fit or is required to do so by the Committee.

(b) A person who served as a Minister, as a Deputy Minister or as a Director-General or Deputy Director-General of any of the Government offices shall not be Chairman of the Committee within two years from the day of termination of his tenure of such office.

(c) A member of the Committee who served in one of the posts specified in subsection (b) or in the Schedule to the State Service (Appointments) Law, 5719-1959, shall not participate in the discussions of the Committee relating to his area of responsibility during the period in which he served as aforesaid.

7. (a) During his term of office, the Comptroller shall not be actively engaged in politics and shall not –

Prohibited  
activities

(1) be a member, or a candidate for membership of the Knesset, or of the council of a local authority;

(2) be a member of the management of a body of persons carrying on business for purposes of profit;

(3) hold any other office or engage, either directly or indirectly, in any business, trade or profession;

(4) participate, either directly or indirectly, in any enterprise institution, fund or other body holding a concession from or assisted by the Government or in the management of which the Government has a share or which has been made subject to the control of the Government or the inspection of the Comptroller, and shall not benefit, either directly or indirectly, from the income thereof;

(5) buy, rent or hire, accept as a gift, use, or hold in any other manner, any State property, whether immovable or movable, or accept from the Government any contract or concession or any other benefit, in addition to his remuneration, except land or a loan for the purpose of settlement or housing.

(b) A person who has been Comptroller shall not, for three years from the termination of his tenure, be a member of the management of a body of persons carrying on business for purposes of profit and being an inspected body within the meaning of section 9(3), (5), (6), (7), (8) and (9).

Termination  
of tenure of  
office

8. The Comptroller's tenure of office terminates –

- (1) upon expiration of his term of office;
- (2) upon his resignation or death;
- (3) upon his removal from office.

Removal of the  
Comptroller  
from office

8A. (a) The Knesset shall not remove the Comptroller from office, except upon the demand of at least twenty Members of the Knesset, submitted in writing to the Constitution, Law and Justice Committee of the Knesset, and upon the proposal of that Committee.

(b) The Constitution, Law and Justice Committee of the Knesset shall not propose removing the Comptroller from office before he has been given an opportunity to be heard.

(c) The proceedings of the Knesset under this section shall be held at a session, or successive sessions, devoted exclusively to this matter; the proceedings shall begin not later than twenty days after the decision of the Constitution, Law and Justice Committee; the Chairman of the Knesset shall notify all the Members of the Knesset, in writing, at least ten days in advance, of the date on which the proceedings are to begin; if that date falls when the Knesset is not in session, the Chairman shall convene the Knesset to hold the proceedings.

## CHAPTER TWO: SPHERE OF INSPECTION

Inspected  
bodies

9. The following bodies (hereafter referred to as "inspected bodies") shall be subject to the inspection of the Comptroller:

- (1) every Government office;
- (2) every enterprise or institution of the State;

(3) every person or body holding, otherwise than under contract, any State property or managing or controlling any State property on behalf of the State;

(4) every local authority;

(5) every enterprise, institution, fund or other body in the management of which the Government has a share;

(6) every person, enterprise, institution, fund or other body made subject to inspection by law, by decision of the Knesset or by agreement between him or it and the Government;

(7) every enterprise, institution, fund or other body in the management of which one of the bodies enumerated in paragraphs (2), (4), (5) and (6) has a share; but the inspection of such a body shall not be actually carried out unless and in so far as the Committee or the Comptroller so decides;

(8) every enterprise, institution, fund or other body assisted, either directly or indirectly, by the Government or by one of the bodies enumerated in paragraphs (2), (4), (5) and (6) by way of a grant, a guarantee or the like; but the inspection of such a body shall not be actually carried out unless and in so far as the Committee or the Comptroller so decides;

(9) every general employees' organization, and every enterprise, institution, fund or other body in the management of which such employees' organization has a share, provided that the inspection shall not be carried out on their activities as a trade union; but the inspection of such a body shall not be actually carried out unless and in so far as the Comptroller so decides and subject to international conventions to which the State of Israel is party; if the Comptroller decides to carry out such inspection, the Comptroller shall have all the powers granted him in respect of an inspected body, even in respect of the activities of such general employees' organization, enterprise, institution, fund or body, as a trade union, provided that the Comptroller deems that necessary for the purposes of the inspection of their other activities.

In this paragraph –

"activities as a trade union" means representation of employees with regard to the advancement, realization or protection of their rights as employees;

"general employees' organization" means a national employees' organization, operating as a trade union in more than one branch of employment.

Extent of  
inspection

10. (a) Within the scope of his functions the Comptroller shall, as far as necessary, examine –

(1) [a] whether every expenditure has been incurred within the limits of the legal appropriation and for the purpose for which it has been assigned;

[b] whether the income has been received in accordance with law and is authorized by law;

[c] whether there are sufficient vouchers in respect of all expenditure and income;

[d] whether every act within the sphere of his inspection has been done in accordance with law and by the person competent to do it;

[e] whether the keeping of accounts, the drawing-up of balance-sheets, the checking of the cash-in-hand and the stock, and the voucher system are efficient;

[f] whether the method of keeping moneys and safeguarding property is satisfactory;

[g] whether the state of the cash-in-hand and the stock tallies with the accounts.

(2) whether the inspected bodies within the meaning of section 9(1), (2), (4) and (5) have operated economically, efficiently and in a morally irreproachable manner; this examination shall also comprise bodies supervised under section 9(6) unless the law, decision or agreement referred to in that paragraph otherwise provides, and bodies inspected

under section 9(7), (8) and (9) if and to the extent that their inspection thereof is actually carried out;

(3) any such other matter as he may deem necessary.

(b) The Committee may, upon the proposal of the Government or the Comptroller, prescribe from time to time, in respect of an inspected body or an item of its budget, special or limited forms of inspection.

### CHAPTER THREE: INSPECTION PROCEDURE

11. (a) An inspected body shall, within such time as the Comptroller may prescribe, but not later than four months after the expiration of its financial year, submit a report on its income and expenditure during that year.

Inspected  
body to submit  
report,  
balance-sheet,  
survey and  
information

(b) The Comptroller may require of an inspected body, within such time as he may prescribe –

(1) a balance-sheet showing its assets and liabilities as at the expiration of the year;

(2) a detailed survey factually describing the economic and administrative operations carried out by the body during that year.

(c) The report and balance-sheet shall be accompanied by any such document as the Comptroller may require for the purpose of verification.

(d) The Comptroller may require a report and balance-sheet as aforesaid of any enterprise, institution, fund or other body which is an inspected body within the meaning of section 9(7), (8) or (9) even though the inspection thereof, in respect of the year to which the report or balance-sheet relates, may not have been actually carried out.

(e) (Repealed).

Minister of  
Finance to  
submit  
comprehensive  
report and  
balance-sheet  
of the State

12. The Minister of Finance shall, within such time as the Comptroller may prescribe, but not later than six months after the expiration of the financial year of the State, submit a comprehensive report on the income and expenditure of the State during that year together with any document which the Comptroller may require for the verification of the report; moreover, the Minister of Finance shall, within such time as the Comptroller may prescribe, but not later than nine months after the expiration of the financial year of the State, submit a balance-sheet showing the assets and liabilities of the State as at the expiration of that financial year, together with any document which the Comptroller may prescribe for the verification of the balance-sheet.

Inspection of  
associations

13. The following provisions shall apply to inspected bodies within the meaning of section 9(5), (7) and (8) (in this section referred to as "associations") in addition to the other provisions of this Law and the provisions of any other law;

(1) the Comptroller may, after consultation with the  
• Minister of Finance, lay down directives for associations with regard to their accounting system and the drawing up of their balance-sheet;

(2) the Comptroller may lay down directives for the auditor who audits the accounts of an association with regard to the scope and mode of the checks to be carried out by him, and of his report, in respect of that association, and with regard to the circumstances under which he is to report direct to the Comptroller;

(3) the Comptroller may require every association to draw up an annual plan of operations, based on the financial-economic situation during the current year and containing a forecast of its future financial and economic operations, and to submit that plan to him within such period as he may prescribe; he may also lay down directives for the drawing up of the said annual plan.

Modes of  
dealing with  
results of  
inspection

14. (a) Where an inspection has revealed defects which have not been explained, or infringements of any law, of the principles of economy and efficiency or of moral standards, the Comptroller shall communicate to the inspected body the results of the inspection and his demands for the rectification of the

defects and, if he deems it necessary to do so, shall bring the matter to the knowledge of the Minister concerned and of the Minister of Economy and Planning.

(b) Where an inspection has revealed defects or infringements which the Comptroller, in view of their bearing upon a fundamental problem or in the interests of upholding moral standards or for any other reason, deems worthy of consideration by the Committee prior to the submission of a report under section 15 or 20, he shall submit a separate report to the Committee; and upon his doing so, the Committee may, of its own motion or upon the proposal of the Comptroller, decide upon the appointment of a commission of enquiry; if the Committee so decides, the President of the Supreme Court shall appoint a commission of enquiry to investigate the matter; the provisions of the Commissions of Enquiry Law, 5729-1968, shall apply, mutatis mutandis, to the commission of enquiry.

(c) Where an inspection has revealed that an inspected body has operated in a manner arousing suspicion of a criminal act, the Comptroller shall bring the matter to the knowledge of the Attorney-General.

#### CHAPTER FOUR: REPORTS AND OPINIONS OF THE COMPTROLLER

15. (a) Not later than the 15th of February each year, the Comptroller shall present a report for the consideration of the Minister of Economy and Planning and of the Chairman of the State Audit Affairs Committee of the Knesset on the results of the inspection of the inspected bodies, within the meaning of section 9(1) and (2), carried out during the course of the past financial year.

Comptroller's  
report on  
Government  
offices and  
State  
institutions

(b) In a report under subsection (a) the Comptroller shall summarize his activities in the field of inspection and –

- (1) specify any infringement of moral standards;
- (2) specify any such defect and any such infringement of a law or of the principles of economy and efficiency as in his opinion deserve to be included in the report;



(3) make recommendations for the rectification and prevention of the defects.

Observations  
by Minister of  
Economy and  
Planning and  
laying on the  
table of the  
Knesset

16. (a) The Minister of Economy and Planning shall make his observations within ten weeks from the day on which he received the report, and upon the expiration of that period the report shall be laid on the table of the Knesset.

(b) The Comptroller, on his own initiative or upon the proposal of the Committee, may determine, in consultation with the Committee, that in a certain year the period stipulated in subsection (a) shall be shorter or longer by not more than fourteen days; such decision shall be made and brought to the notice of the Committee and the Minister of Economy and Planning not later than the 15th of February of that year.

Safeguarding  
security and  
foreign  
relations of  
the State

17. (a) Within the ten weeks referred to in section 16(a), or within the period determined under section 16(b), the Committee may, upon the proposal of the Comptroller, decide that certain parts of the report shall not be laid on the table of the Knesset if it deems it necessary to do so in the interests of safeguarding the security of the State or in order to avoid an impairment of its foreign relations or its international trade relations.

(b) The provisions of sections 15 and 16 shall apply also to such part of the report as deals with the Defense Establishment, but the Comptroller shall submit that part to the Committee at the same time as he submits it to the Minister of Economy and Planning, and the Committee, after consultation with the Comptroller and having regard to the necessity of safeguarding the security of the State and of avoiding an impairment of its foreign relations, shall decide whether to lay the whole of that part of the report on the table of the Knesset or to dispense with the tabling of certain chapters thereof.

(c) Having regard to the necessity of safeguarding the security of the State, the Comptroller may, if the Government so requests on grounds which he is satisfied are reasonable, give a limited report, or refrain from giving a report, on a branch or unit inspected by him; the Comptroller shall intimate to the Committee, orally and in such form as he may think fit, on what unit or branch inspected by him, he has given a limited report or refrained from giving a report.

18. (a) When the report has been laid on the table of the Knesset, the Committee shall consider it and submit its conclusions and proposals for the approval of the Knesset, and it may submit them chapter by chapter.

Procedure in  
the Committee  
and in the  
Knesset

(b) If the Committee does not submit its conclusions and proposals as aforesaid in subsection (a), the Knesset shall consider the report when the subsequent report is laid on the table of the Knesset.

(c) The conclusions and proposals of the Committee in respect of those parts of the report which, in pursuance of section 17(a) or (b), have not been laid on the table of the Knesset shall also not be laid on the table of the Knesset and shall be deemed to have been approved by the Knesset.

18A. (a) For the purpose of preparing the conclusions and proposals of the Committee in accordance with sections 18 and 20 with respect to a certain inspected body, the chairman of the Committee may invite any person, who held office or fulfilled a function in the inspected body during the period covered by the Comptroller's report, to appear before the Committee in order to respond to the report in regard to matters with which the said person is connected; he may also invite any person who holds such office or fulfills such a function at the time or who held such office or fulfilled such a function in the past in order to respond to the report; the chairman of the Committee must invite such a person if he is requested to do so by the Committee or by at least three of its members; in this subsection, "held office or fulfilled a function" in an inspected body including the exercise of a power with respect to it by law, or by virtue of being a member of its management or an employee.

Appearance  
before the  
Committee  
of the  
inspected  
body

Comptroller's  
report on  
other  
inspected  
bodies

(b) Whenever a person who was invited according to subsection (a) did not appear, the Committee may, by a majority of its members, demand that he appear before it, as aforesaid; the demand shall be in writing, signed by the chairman of the Committee, and attached to it shall be a copy of the Comptroller's report or that part of it to which the demand is directed; the demand shall be submitted at least ten days before the time stipulated for his appearance.

(c) A person required to appear before the Committee by invitation or demand shall submit to it at least two days before the time stipulated for his appearance, a written summary

of his response, together with copies of the documents which he intends to submit to the Committee.

(d) Any person who received a demand to appear as aforesaid in subsection (b) and did not do so, and did not show a justifiable reason for such, is liable to a fine.

(e) A demand to appear according to this section shall not be sent to –

(1) The President of the State or the Chairman of the Knesset;

(2) In a matter under judicial consideration – a person holding judicial office.

Comptroller's  
report on  
balance-sheet  
of the State

19. The Comptroller shall submit the report on the balance-sheet showing the assets and liabilities of the State, for the consideration of the Minister of Finance, not later than the end of the month of March following the submission of the balance-sheet by the Minister of Finance, and shall lay it on the table of the Knesset at the same time as the report under section 15.

Comptroller's  
report on  
other  
inspected  
bodies

20. (a) Upon completion of the inspection of the inspected bodies within the meaning of section 9(3), (4), (5), (6), (7), (8) and (9), the Comptroller shall prepare a report on the result of such inspection.

(b) The Comptroller shall submit each report on the inspection of an inspected body within the meaning of section 9(4) to the head of the local authority inspected, together with copies for all the members of such local authority; a copy of the report shall be submitted by the Comptroller to the Committee, to the Minister of Economy and Planning and to the Minister of the Interior.

(c) Each report on the inspection of an inspected body within the meaning of section 9(3), (5), (6), (7), (8) and (9) shall be submitted by the Comptroller to the Committee; a copy of the report shall be submitted by the Comptroller to the Minister of Economy and Planning, to the Minister concerned and to the inspected body; but a copy of such a report on an inspected body within the meaning of section 9(9) shall only be submitted by the Comptroller to the inspected body itself.

(d) After publication under section 27 of a report submitted to the Committee under subsection (b) or (c) or of an opinion under section 21, the Committee may lay its conclusions and proposals as to the report or opinion on the table of the Knesset and, if it deems it necessary to do so in view of the special importance of the matter, may ask the Knesset's approval for such conclusions and proposals.

21. The Comptroller shall, if requested to do so by the Knesset, the Committee or the Government, prepare an opinion as to any matter within the scope of his functions.

Opinion

## CHAPTER FIVE: THE COMPTROLLER'S OFFICE

22. (a) The staff of the Comptroller's Office shall have the same status as other State employees, but as regards the receipt of instructions, and as regards dismissals, it shall be under the sole authority of the Comptroller.

Staff of the  
Comptroller's  
Office

(b) The prohibitions applying to the Comptroller under section 7(a) shall apply also to such members of the staff of his Office as are employed in inspection work; a staff member as aforesaid who leaves his post shall not, save with the approval of the Comptroller, be employed by an inspected body within two years from the day of leaving.

(c) In carrying out his functions, the Comptroller may, to the extent that he deems it necessary to do so, avail himself of the assistance of persons who are not members of the staff of his Office.

23. The staff of the Comptroller's Office and any person with whose assistance the Comptroller carries out his functions shall keep secret any information obtained by them in the course of their work and shall give a written undertaking to such effect upon starting work.

Duty of  
secrecy

24. The budget of the Comptroller's Office shall be determined by the Finance Committee of the Knesset, upon the proposal of the Comptroller, and shall be published together with the budget of the State. The Finance Committee may, upon the proposal of the Comptroller, approve changes in the budget of his Office.

Budget of the  
Office

Financial  
report to  
Committee

25. After the expiration of the financial year, the Comptroller shall submit the financial report of his Office for the approval of the Committee.

## CHAPTER SIX: MISCELLANEOUS PROVISIONS

Powers of  
commission of  
enquiry

26. The Comptroller and any person appointed by him for that purpose with the approval of the Committee shall, *mutatis mutandis*, have all the powers referred to in sections 8 to 11 and 27(b) and (d) of the Commissions of Enquiry Law, 5729-1968.

Publication

27. (a) Reports of the Comptroller and an opinion under section 21 may be published at the expiration of the financial year in which they were given; provided that the Comptroller, the Minister of Economy and Planning or the Committee may permit them to be published before then.

(b) Notwithstanding the provisions of subsection (a), the Committee may, having regard to the necessity of safeguarding the security of the State or in order to avoid an impairment of its foreign relations or its international trade relations, decide, after consultation with the Comptroller, that the whole or a part of any report or opinion as aforesaid shall not be published.

(c) At the expiration of every financial year, the Comptroller shall lay on the table of the Knesset a list of the reports and opinions given by him during the financial year and permitted for publication under the provisions of this section.

(d) In this section, "report" does not include the annual report under section 15.

Penalties

28. (a) The following are liable to imprisonment for a term of one year or to a fine of 600 pounds(\*) or to both such penalties:

(1) a person who publishes the annual report or a part thereof or of the contents thereof before it is laid on the table of the Knesset;

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(\*) Updated periodically.

(2) a person who publishes any report or opinion or a part thereof or of the contents thereof in contravention of the provisions of section 27;

(3) a person who without obtaining the Comptroller's permission publishes the results of an inspection carried out by the Comptroller.

(b) The provisions of this section shall not release a person from criminal responsibility under any other law.

29. If the Comptroller is temporarily unable to carry out his functions, the Committee shall appoint an Acting Comptroller for a period not exceeding three months; the Committee may extend the appointment for additional periods, provided that the sum total of all the periods served by the Acting Comptroller shall not exceed six months; if the Comptroller is unable to carry out his functions for a period of six consecutive months, he shall be considered to have resigned.

Acting  
Comptroller

30. (a) No reports, opinions or other documents issued or prepared by the Comptroller in the discharge of his functions shall serve as evidence in any legal or disciplinary proceeding.

Material not  
to serve as  
evidence

(b) A statement received in the course of the discharge of the Comptroller's functions shall not serve as evidence in a legal or disciplinary proceeding, other than a criminal proceeding in respect of testimony on oath or affirmation obtained by virtue of the powers referred to in section 26.

## CHAPTER SEVEN:

### INVESTIGATION OF COMPLAINTS FROM THE PUBLIC

31. (Repealed).

32. (a) The Public Complaints Commissioner (hereafter in this translation - "the Commissioner") shall carry out his functions with the assistance of a special unit in the State Comptroller's Office, to be known as the Office of the Public Complaints Commissioner. The Director of the Commissioner's Office shall be appointed by the Committee upon the proposal of the Commissioner and shall be directly responsible to him. The duty of announcing the vacancy under section 19 of the State Service

Unit for  
investigation  
of complaints

(Appointments) Law, 5719-1959, shall not apply to the appointment of the Director of the Commissioner's Office.

(b) If the post of Director of the Commissioner's Office falls vacant or if the Director is for any reason unable to carry out his functions, the Commissioner may entrust the carrying out of such functions to another person for a period not exceeding three months.

Complaint by  
whom

33. Any person may submit a complaint to the Commissioner.

Modes of  
submitting a  
complaint

34. A complaint submitted in writing or taken down according to the complainant's oral statement shall be signed by the complainant and shall indicate his name and address.

Complaint by  
prisoner

35. A complaint by a prisoner within the meaning of the Prisons Ordinance [New Version], 5732-1971, shall be submitted in a closed envelope, and the Commissioner of Prisons or a person empowered by him in that behalf shall forward it unopened to the Commissioner.

Complaint  
against whom

36. A complaint may be submitted against one of the following:

(1) an inspected body within the meaning of paragraphs (1) to (6) of section 9;

(2) one of the bodies referred to in paragraphs (7) and (8) of section 9, to the extent that the Committee or the Commissioner has decided that this chapter shall apply in respect thereof and notice to such effect has been published in Reshumot;

(3) an employee, office-holder or bearer of any function in any such body as referred to in paragraphs (1) or (2) of this section.

Complaint  
about what

37. The subject of a complaint may be –

(1) an act directly injurious to, or directly withholding a benefit from, the complainant and –

(2) if the complainant is a Member of the Knesset – also an act directly injurious to, or directly withholding a benefit from, another person,

such act being contrary to law or done without lawful authority or contrary to good administration or involving a too inflexible attitude or flagrant injustice; for this purpose, "act" includes an omission or delay in acting.

38. The following complaints shall not be investigated:

Complaints  
not to be  
investigated

- (1) a complaint against the President of the State;
- (2) a complaint against the Knesset, a Committee of the Knesset or a Member of the Knesset in respect of an act done in, or for the purpose of, the discharge of his functions as a Member of the Knesset;
- (3) a complaint against the Government, a Committee of Ministers or a Minister as to his activity as a member of the Government, except his activity as the person in charge of a Ministry or sphere of activity;
- (4) a complaint against a judicial act of a court or a judge, of a tribunal or a member thereof or of a committee constituted by enactment or a member thereof;
- (5) a complaint as to a matter pending in a court or tribunal or in which a court or tribunal has given a decision with regard to the substance thereof;
- (6) a complaint by a person serving on regular service, or on active service in the reserves, under the Defense Service Law [Consolidated Version], 5746-1986, with regard to service arrangements, terms of service, or discipline;
- (7) a complaint by a police officer or prison officer with regard to service arrangements and terms of service or discipline in the Israel Police or the Prison Service;
- (8) a complaint by a State employee, or by an employee of a body referred to in section 36, in a matter relating to his service as an employee; but there shall be investigated an act alleged to be contrary to the provisions of any law or regulations, the State Service Regulations, a collective agreement



or general arrangements prescribed on behalf of the State Service Commissioner or, in the case of a body referred to in section 36, similar general arrangements.

Complaints  
only to be  
investigated  
for special  
reason

39. The following complaints shall not be investigated unless the Commissioner finds that there is a special reason justifying the same:

(1) a complaint in a matter, other than of the class of matters referred to in section 38(5), in which a decision has been given against which a contestation, objection or appeal can be, or could have been filed under any law;

(2) a complaint filed after a year has elapsed from the date of the act to which it relates or the date on which such act became known to the complainant, whichever is later.

Opening of  
investigation

40. (a) When a complaint has been filed, the Commissioner shall open the investigation thereof unless it appears to him that it does not comply with section 34, or that it does not come within the scope of section 36 or 37, or that it should not be investigated for one of the reasons enumerated in sections 38 and 39, or that it is vexatious or intended merely to annoy.

(b) In the cases referred to in subsection (a), the Commissioner shall notify the complainant in writing that he will not deal with the complaint, stating his reasons.

Modes of  
investigation

41. (a) The Commissioner may investigate a complaint in any manner he thinks fit and shall not be bound by rules of procedure or rules of evidence.

(b) The Commissioner shall bring the complaint to the knowledge of the person or body complained against and, if such person is an employee as specified in section 36(3), also to the knowledge of his superior (hereafter referred to as "the superior") and shall give him, it or them a suitable opportunity to answer it. The Commissioner may require the person or body complained against to answer the complaint within the period specified in his request.

(c) The Commissioner may hear the complainant, the person or body complained against and any other person if he deems it useful so to do.

(d) For the purpose of the investigation, the Commissioner may require any person or body to give him, within such period and in such manner as he shall prescribe in the request, any information or documents likely, in his opinion, to assist in the investigation of the complaint. A person or body required to deliver information or a document as aforesaid shall comply with the request. The provisions of this subsection shall not derogate from the provisions of sections 47 to 51 of the Evidence Ordinance [New Version], 5731-1971.

42. The Commissioner may discontinue the investigation of a complaint if he is satisfied that one of the grounds justifying the non-opening of an investigation exists or that the matter to which the complaint relates has been rectified or that the complainant has withdrawn the complaint. In this case, he shall notify the complainant, the person or body complained against and the superior, in writing, that he has discontinued the investigation, stating his reasons.

Discontinuance  
of  
investigation

43. (a) Where the Commissioner finds that the complaint is justified he shall notify the complainant, the person or body complained against, and if he so deems fit, the superior, to such effect, stating his reasons. He may set out a summary of his findings in his reply, and may point out, to the person or body complained against and to the superior, the need to rectify a defect revealed by the investigation and how and by what time it is to be rectified.

Consequences  
of  
investigation

(b) The person or body complained against or the superior shall, within the time referred to in subsection (a), inform the Commissioner of the steps which have been taken. If he or it fails to do so, or if the information does not satisfy the Commissioner, the Commissioner may bring the matter to the knowledge of the Minister concerned or of the Committee.

(c) Where the Commissioner finds that the complaint is not justified, he shall notify the complainant, the person or body complained against and, if he so deems fit, the superior, to such effect, stating his reasons. He may set out a summary of his findings in his reply.

(d) Where the investigation of the complaint gives rise to the suspicion that a criminal offence has been committed, the Commissioner shall bring the matter to the knowledge of the Attorney-General; and he may do so where the investigation of a complaint gives rise to the suspicion that a disciplinary offence has been committed under any law.

Restrictions  
on  
notification

44. (a) A notification by the Commissioner under section 43(a) or (c) shall not contain or disclose any material or information which in the opinion of the Prime Minister or the Minister of Defense is a matter of State security or which in the opinion of the Prime Minister or the Minister of Foreign Affairs is a matter of foreign relations or international trade relations of the State.

(b) Where it appears to the Commissioner that his notification is likely to contain or disclose any material or information as referred to in subsection (a) and neither the Prime Minister nor the Minister of Defense or the Minister of Foreign Affairs has expressed an opinion as specified in that subsection, the Commissioner shall ask the opinion of the Prime Minister or the Minister of Defense or the Minister of Foreign Affairs, as the case may be, before making his notification.

(c) The Commissioner shall be exempt from stating his findings or reasons –

(1) where the complaint relates to an appointment to a particular post or the assignment of a particular function;

(2) where in his opinion the material or evidence may unlawfully prejudice the right of any person other than the complainant;

(3) where in his opinion the disclosure of the material or evidence will involve the disclosure of a professional secret, or of secret information, within the meaning of any law.

Rights and  
relief

45. (a) The decisions and findings of the Commissioner as to a complaint –

(1) shall not grant to the complainant or any other person any right or relief in any court or tribunal which he did not previously have;

(2) shall not prevent the complainant or any other person from exercising any right or applying for any relief to which he is entitled; but where a time-limit is set thereof by any enactment, the submission or investigation of the complaint shall not entail an extension of time.

(b) No court shall entertain an application for relief against the decisions or findings of the Commissioner in the matter of a complaint.

**45A. Notwithstanding anything contained in section 38(8) –**

Complaint by  
public servant  
who has  
exposed acts  
of corruption

(1) a complaint by an employee referred to in section 36(3), other than a police officer, prison officer or soldier (such an employee hereafter in this chapter referred to as "the employee"), about an act referred to in section 37 by which his superior reacted to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed, shall be investigated under the provisions of this chapter, subject to sections 45B to 45E.

(2) a complaint by an employee, who is an internal auditor in a body referred to in section 36(1) or (2), other than a police officer, prison officer or soldier, relating to his removal from that post or to an act contrary to the provisions of any law or regulations, the State Service Regulations, a collective agreement, or general arrangements prescribed on behalf of the State Service Commissioner, or similar general arrangements, which is directly injurious to or directly withholds a benefit from the complainant and which was committed by his superior in reaction to his activities in fulfilling his function as internal auditor – shall be investigated under the provisions of this chapter, subject to sections 45C to 45E.

Complaint only to be investigated for special reason	45B. Where the Commissioner finds that there is a reason justifying it, he may investigate a complaint under section 45A(1) even if the employee reported the acts of corruption otherwise than in accordance with proper procedure.
Relief	<p>45C. (a) The Commissioner may make any order he deems right and just, including a provisional order, to protect the rights of the employee, having regard to the proper functioning of the body in which he is employed.</p> <p>(b) Where the complaint relates to the dismissal of the employee, the Commissioner may order revocation of the dismissal or the award of special compensation to the employee, in money or in rights.</p> <p>(c) The Commissioner may order the transfer of the employee to another post in the service of his employer.</p> <p>(d) An order under this section shall be binding on any superior of the employee and on the employee himself, and a person who contravenes it commits a disciplinary offence. But their responsibility for a disciplinary offence, shall not detract from their criminal responsibility for the contravention of that order.</p>
Reconsideration	45D. The Attorney-General may request the Commissioner to reconsider a decision given under section 45C. The State Service Commissioner may so request in the case of a complaint by a State employee; in the case of a complaint by someone who is not a State employee, the head of the inspected body may also so request.
Submission of complaint otherwise than in good faith	45E. The submission of a complaint under section 45A or 45B otherwise than in good faith, or vexatiously, shall be a disciplinary offence.
Report	<p>46. (a) The Commissioner shall each year submit to the Knesset, at the beginning of its session, a report on his activities, containing a general survey and an account of the handling of selected complaints.</p> <p>(b) The Commissioner may, prior to the submission of the annual report, submit to the Knesset a special report.</p>

(c) When a report has been tabled in the Knesset, the Committee shall consider it and shall submit to the Knesset its conclusions and proposals for approval.

(d) A report under this section shall not be published before being tabled in the Knesset.

(e) The provisions of section 44 shall also apply, mutatis mutandis, to a report under this section.

47. (a) Sections 22, 23, 26, 28 and 30 shall apply, mutatis mutandis, for the purposes of this chapter.

Application  
of provisions

(b) The provisions of this chapter shall not derogate from the power of the State Comptroller to make use in his other activities of material which reached him in connection with a complaint, whether or not he has investigated it.

48. The provisions of any law according to which there shall be appointed in an inspected body a person, whose function is to investigate complaints against that body, shall not derogate from the powers and status of the Public Complaints Commissioner under this law.

Priority of  
powers and  
status

