



NZQA Assessment Support Material

Unit standard	27846				
Title	Evaluate litigation and dispute resolution processes in relation to challenging state power				
Level	3	Credits	4	Version	2

Note

The following guidelines are supplied to enable assessors to carry out valid and consistent assessment using this internal assessment resource.

Assessors must manage authenticity for any assessment from a public source, because students may have access to the assessment schedule or student exemplar material. Use of this assessment resource without modification may mean that students' work is not authentic. The assessor will need to change figures, measurements or data sources or set a different context or topic.

While this ASM lends itself to written assessments, there are other activities and approaches that could be taken.

See Generic Resources and Guidelines at <https://www.nzqa.govt.nz/providers-partners/assessment-and-moderation/assessment-of-standards/generic-resources/>

Assessor guidelines

Context/setting

It is envisaged that as part of their teaching programmes, assessors will work through a range of litigation and dispute resolution processes by which individuals or groups may challenge state power or attempt to solve problems that arise when dealing with various state organs and officials. Teaching will include the circumstances when each process would be appropriate and the advantages, disadvantages and effectiveness of the processes.

A W A R D O F G R A D E S



- For award with **Achieved**, two formal means by which individuals and groups challenge state power is evaluated, with supporting detail, in relation to a specific example. Supporting detail includes – the reason why each formal means could be used, describing the strength(s) and weakness(es) of each formal means.
- For award with **Merit**, the evaluation of the use of the formal means is developed by discussing the strength(s) and weakness(es) of each formal means with reference to any of:
 - legislation;
 - case law
 - media reports.
- For award with **Excellence**, the evaluation justifies a position about the litigation and disputes resolution process by using a well-reasoned and convincing argument of the effectiveness of two of the formal means, with reference to specific examples.

C O N D I T I O N S O F A S S E S S M E N T

Assessors will set the conditions of assessment as appropriate.

Assessment activity

The task requires students to select two of the listed litigation and dispute resolution processes, apply them to a specific example and evaluate their uses, strengths and weaknesses and effectiveness.

Two of the following litigation and dispute resolution processes:

- *administrative review*
- *judicial review;*
- *habeas corpus;*
- *court process*
- *an international law process;*
- *complaints to the: Ombudsman, Human Rights Commission, Privacy Commission, or Independent Police Conduct Authority;*
- *Waitangi Tribunal.*

Resource requirements

Assessors may find the following resources useful:

<http://www.justice.govt.nz/services/access-to-justice/civics-education-1/nz-court-system>
www.legislation.govt.nz

www.justice.govt.nz/courts

<http://www.parliament.nz/en-NZ>

<http://www.ombudsman.parliament.nz/>

Graham Taylor and Jessica Gorman, (2010) *Judicial Review: A New Zealand Perspective*. Wellington, LexisNexis.

Mai Chen (2012) *Public Law Toolbox: Solving Problems with Government*, Wellington, LexisNexis.

Assessment Schedule

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Judgements for achievement	Judgements for achievement with merit	Judgements for achievement with excellence
<p>Two formal means by which individuals and groups challenge state power are evaluated, with supporting detail, in relation to a specific example.</p> <p>Formal means may include but is not limited to two of – administrative review; judicial review; habeas corpus; court process; an international law process; complaints to the Ombudsman, Human Rights Commission, Privacy Commission, Independent Police Conduct Authority; Waitangi Tribunal.</p> <p>Supporting detail includes – the reason why each formal means could be used, describing the strength(s) and weakness(es) of each formal means.</p>	<p>The evaluation of the use of the formal means is developed by discussing the strength(s) and weakness(es) of each formal means with reference to any of:</p> <ul style="list-style-type: none"> • legislation; • case law; • media reports. 	<p>The evaluation justifies a position about the litigation and disputes resolution process by using a well-reasoned and convincing argument of the effectiveness of two of the formal means, with reference to specific examples.</p>

Task	Evidence for achievement	Evidence for achievement with merit	Evidence for achievement with excellence
<p>One</p> <p>Outcome 1</p> <p>PC 1.1</p>	<p>Two processes are selected.</p> <p>A different specific example is identified for each process</p> <p>The following could be a part answer for Achieved</p> <p><i>Chosen Process: <u>Making a complaint to the Ombudsman.</u></i></p> <p><i>Specific example: Prisoners complaining about prison conditions and treatment.</i></p> <p><i>Appropriate because the Ombudsman can investigate complaints against government departments and other state bodies. This includes the Corrections Department, (which is in charge of running prisons). The Ombudsman's office has been involved in investigating prisoners' complaints in lots of previous cases. For example a case in which a prisoner applied for day parole, and it was granted but they were not informed.</i></p> <p><i>[Give details of various ways in which you can make a complaint to the Ombudsman;</i></p>	<p>The following could be a part answer for Merit</p> <p><i>The Ombudsmen Act 1975 sets up office of the Ombudsmen and sets out its functions. The Office can investigate complaints against acts/decisions/ recommendations of government departments and other state bodies, local councils, Boards of Trustees (but there are some exceptions, e.g. courts, police).</i></p> <p>Strength: it is free and a relatively easy process; The Ombudsman's Office is experienced in investigating complaints by prisoners. *</p> <p><i>*TV 3 News Article November 2009 – over 3000 complaints from prisoners in a 12 month period so the Ombudsman's Office has appointed a staff member to deal exclusively with complaints from prisoners. http://www.3news.co.nz/Prisoners-making-9-complaints-to-Ombudsman-per-day/tabid/423/articleID/128302/Default.aspx#ixzz1xZFpMT</i></p>	<p>The following could be a part answer for Excellence</p> <p><i>In light of how easy is to make a complaint, this process is by far the best course of action in these circumstances. It costs nothing, so it is well worth making complaint.</i></p> <p><i>The Ombudsman doesn't have the power to force Government departments to take any action. They can only make recommendations, they can't fine or prosecute people directly. However, the position of the Ombudsman carries great prestige - in practice, recommendations are virtually always followed, so the Corrections Department would almost certainly follow the recommendations if the Ombudsman found in your favour.</i></p> <p><i>For example, the Ombudsman's Office 2010/11 contains reference to the office's investigation into disposable razor practices in prisons. Recommendations made were followed by prisons, and numbers of incidents of such razors being used to self-harm were reduced accordingly (Report of Ombudsmen for the year ended 30 June 2011).</i></p>

<p><i>information you would put in complaint. Mention cases the Ombudsmen can refuse to investigate].</i></p> <p><i>The Ombudsmen’s office will want to make sure you have tried to sort out your problem through normal channels first eg the prisoner had tried to sort it out with prison authorities.</i></p> <p><i>[Say what the Ombudsman will actually do in course of investigation. Say what the Ombudsman will do if doesn’t uphold complaint. Say what the Ombudsman will do if the complaint is upheld and what they can and can’t do].</i></p> <p><i>Strength: is a free and relatively easy process; The Ombudsman’s Office is experienced in investigating complaints by prisoners.*</i></p> <p><i>Weakness: There have been complaints that investigations by the Ombudsman can take a long time. There is not enough Government funding to provide the staffing levels needed to investigate all complaints**.</i></p>	<p><i>Weakness: There have been complaints recently that investigations by the Ombudsman can take a long time. There is not enough Government funding to provide the staffing levels needed to investigate all complaints**.</i></p> <p><i>** Article In <u>Herald</u> February 2012 quoting Ombudsman Beverley Wakem on underfunding – funding only for investigations of 800 – 1000 complaints at any one time, but actually handling 1854. So short funded, 300 cases couldn’t be investigated because of lack of available investigators.</i></p> <p>http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10785726</p> <p>Note – this sample answer only includes one process and associated specific example. Evaluation of two different processes is required.</p>	<p><i>Another example is a case where prisoner applied for day parole. It was granted but they were not informed, so they missed out on the day anyway. When they complained to prison authorities, they told him it was his responsibility to ask them. They then complained to the Ombudsman, who investigated and upheld the complaint. After the Ombudsman discussed the case with prison authorities, they agreed to change procedures in future so any prisoner applying for day parole or a similar privilege will always be notified of the outcome, whether successful or not.</i></p> <p><u>Case Notes [W42261]</u> http://softlinkhosting.co.nz/OMBliberty3/gateway/gateway.qbw</p> <p><i>Ombudsman investigators take common sense, low-key approach that generally works. Investigation into the role of the Ombudsman’s Office carried out by Mai Chen, one of New Zealand’s top public lawyers, concluded the Ombudsman was very effective at getting satisfaction for complainants, more so than courts, because of respect in which the office is held and because of work behind the scenes, which was much more subtle than courts, and considerably faster.</i></p> <p><i>".. many of the Ombudsmen’s triumphs are necessarily achieved behind closed doors, and without gloating over “wins,” so that officials do not feel like scapegoats or the subject of a witch-hunt. A significant factor in</i></p>
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	<p>Note – this sample answer only includes one process and associated specific example. Evaluation of two different processes is required.</p>		<p>the Ombudsmen’s success in resolving complaints is their personal standing and skills in utilising their numerous statutory discretions at the right time, in the right way " (p.52).</p> <p><i>“Does New Zealand’s Ombudsmen Legislation Need Amending After (Almost) 50 Years?” Mai Chen, Partner, Chen Palmer. Retrieved from http://www.chenpalmer.com/assets/Uploads/News-PDFs/OMBUDSMEN.pdf.</i></p> <p>Note – this sample answer only includes one process and associated specific examples. Evaluation of two different processes is required.</p>
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Final grades will be decided using professional judgement based on a holistic examination of the evidence provided against the criteria in the unit standard.