

INTRODUCTION TO ADMINISTRATIVE LAW

TOPIC 4: REMEDIES FOR UNLAWFUL & IRREGULAR ADMINISTRATIVE ACTION

Lesson 4.3 Remedies for Maladministration



Lesson 4.3: Learning Outcomes

- At the end of this topic, students should be able to:
 - Define maladministration.
 - Demonstrate the basic knowledge of remedies for maladministration.
 - Develop communication, verbal and written skills, which play an important part in administrative law.
 - Describe about remedies for maladministration.

What is maladministration?

- Maladministration is administrative action or inaction based on or influenced by improper considerations or conduct.
- Maladministration is the actions of a government body which can be seen as causing an injustice.



Examples of maladministration

- Delay
- Incorrect action or failure to take any action
- Failure to follow procedures or the law
- Failure to provide information
- Inadequate record-keeping
- Failure to investigate
- Failure to reply
- Misleading or inaccurate statements
- Inadequate consultation
- Broken promises

Causes of maladministration in administrative agencies

- Low pay/ wages
- Greed
- Lack of strict supervision/ monitoring
- Lack of transparency in government agency
- Political factor/ bias
- Corruption
- Wide discretionary power



Effects of maladministration

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Mechanisms to address maladministration

- There are various mechanisms to deal with maladministration in Malaysia including:
 - a. Dewan Rakyat and Dewan Negara (Parliament)
 - b. Malaysian Anti-Corruption Commission
 - c. Public Complaints Bureau
 - d. Auditor General Office
 - e. Public Account's Committee



a. Dewan Rakyat and Dewan Negara

- Parliament is the legislative authority for the Federation and it enacts laws to be enforced nationwide.
- The components of Parliament in Malaysia:
 - Yang di-Pertuan Agong
 - Senate (Dewan Negara)
 - House of Representatives (Dewan Rakyat)



a. Dewan Rakyat and Dewan Negara

- Parliament prevents maladministration in the following ways:
 1. Budget to implement government policies must be presented in the Parliament.
 2. Debates of Bills.
 3. Question time during parliamentary proceedings.
 4. Select Committee (members are from government and opposition) can be appointed to look into specific matters. Examples: Special Select Committee on Electoral Reform & Select Committee on the Lynas Advanced Materials Plant Project (LAMP)

a. Dewan Rakyat and Dewan Negara

- Parliament prevents maladministration in the following ways:
 5. Prime Minister and Cabinet members must resign if he loses the confidence of majority of the members of Dewan Rakyat [Article 43(4) FC]
 6. A Bill cannot become law unless debated and approved by Dewan Rakyat, Dewan Negara and received royal seal.
 7. Taxes cannot be raised and government money cannot be spent without the authority of Parliament.



b. Malaysian Anti-Corruption Commission (MACC)

- MACC was formerly known as Anti-Corruption Agency, ACA or Badan Pencegah Rasuah, BPR.
- It is a government agency in Malaysia that investigates and prosecutes corruption in the public and private sectors.
- The powers of MACC come from the Malaysian Anti-Corruption Commission Act 2009.



b. Malaysian Anti-Corruption Commission (MACC)

- Examples of offences under MACC Act 2009:
 - S 16: Offence of accepting gratification
 - S 17: Offence of giving or accepting gratification by agent
 - S 20: Corruptly procuring withdrawal of tender
 - S 21: Bribery of officer of public body
 - S 22: Bribery of foreign public officials
 - S 23: Using office or position for gratification

b. Malaysian Anti-Corruption Commission (MACC)

- Examples of penalties under MACC Act 2009:
 - Imprisonment for a term not exceeding 20 years
 - A fine of not less than 5 times the sum or value of the gratification, or RM10,000, whichever is higher.



c. Public Complaints Bureau

- Public Complaints Bureau (PCB) was set up in 1971 to deal with complaints made by citizens against the civil service.
- Objectives:
 - To resolve complaints efficiently, fairly, and effectively
 - To provide advisory services to agencies in order to improve the effectiveness
 - To detect issues than can lead to complaints made by the public
 - To obtain public opinion to ensure the success of the Governments' development programmes
 - To provide and improve facilities for the public to lodge complaints

c. Public Complaints Bureau

- Types of complaint:
 - Delay
 - Unfair action
 - Lack of public amenities
 - Inadequacy of policy implementation and law
 - Abuse of power
 - Misconduct of civil servant
 - Failure to follow procedures
 - Failure to provide good maintenance services
 - Failure of enforcement

FLOW CHART

RESPONSIBILITIES

INTERFACE

DG/ D-DG/
SAD/ AD/ AAO

AD/ AAO

SAD/ AD/ AAO

D-DG/ SAD/
AD/ AAO/ DG

DG

D-DG

PK /D-DG

DG

SAD/ AD/ AAO

Customer

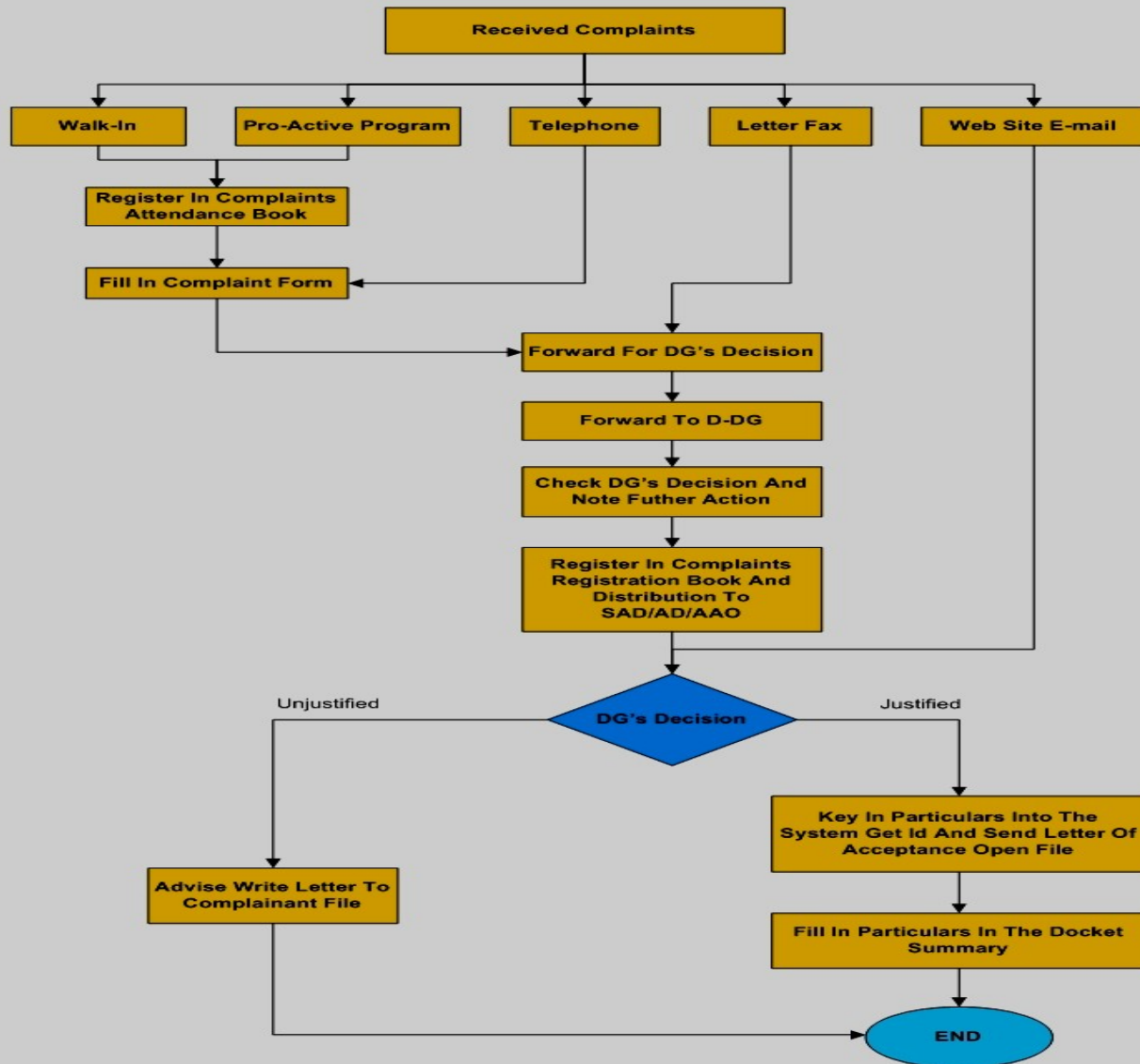
DG

D-DG

D-DG

D-DG

Customer



d. Auditor General Office

- The role of the Auditor General of Malaysia is to aid accountability by conducting independent audits on the account of Federal Government, State Government and Federal Statutory Bodies as well as the activities of the Ministry/ Department/ Agency and Companies under the Federal and State Government.
- The powers of the Attorney General are provided under the Audit Act 1957.



d. Auditor General Office

- The Auditor General may make examination to ascertain:
 - a. whether all reasonable precautions have been taken to safeguard the collection and custody of public moneys
 - b. whether issues and payments of moneys were made in accordance with proper authority and payments
 - c. whether due care has been taken to account for and to ensure proper use, control, maintenance and disposal of all public stores



d. Auditor General Office

- The Auditor General may make examination to ascertain:
 - d. whether all accounts and other records have been and are properly and faithfully maintained
 - e. Whether activities were carried out with due regard to economy and avoidance of waste or extravagance



d. Auditor General Office

- S 7(1) Audit Act 1957 – Powers of Auditor General:
 - a. To call upon any person for any explanations and information which the Auditor General may require;
 - b. To cause search to be made in and extracts to be taken from any book, document or record in any public office;
 - c. To have access to all records, books, vouchers, documents, cash, stamps, securities, stores or other property subject to his audit;



d. Auditor General Office

- S 7(1) Audit Act 1957 – Powers of Auditor General:
 - d. To examine upon oath or affirmation any person whom he may think fit to examine respecting all matters and things whatever necessary for the due performance of his functions;
 - e. To authorize any public officer on his behalf to conduct any inquiry, examination or audit and to report thereon to him; and
 - f. To obtain the advice of a law officer upon any question of law.

e. Public Accounts Committee

- The Committee consists of a Chairman and Vice-Chairman to be appointed by the House, and not less than 6 and not more than 12 members to be nominated by the Committee of Selection.
- The Chairman must not be a Minister.
- The PAC consists of both government and opposition members.



e. Public Accounts Committee

- The PAC may examine:
 - a. the accounts of the Federation and the appropriation of the sums granted by Parliament to meet the public expenditure.
 - b. such accounts of public authorities and other bodies administering public funds as may be laid before the House of Representatives.



e. Public Accounts Committee

- The PAC may examine:
 - c. reports of the Auditor-General laid before the House of representatives in accordance with Article 107 of the Federal Constitution.
 - d. such other matters as the Committee may think fit, or which may be referred to the Committee by the House of Representatives.

