The background of the cover is a photograph of a large, leafy tree in front of a building. To the left, a white clock tower is visible. The building has a stone facade with purple and blue vertical accents around the windows. The sky is clear and blue.

ANNUAL REPORT

The Ombudsman of Barbados 2018

TABLE OF CONTENTS

Letter of Transmittal	2
Logo of the Ombudsman of Barbados	3
Map of Bridgetown	5
The Message from the Ombudsman	6
Historical Background	7
Functions of the Ombudsman	7
Analysis of Complaints Received in the Year 2018	8
Complaints against Her Majesty's Prisons – Dodds	9
Complaints against the Royal Barbados Police Force	10
Complaints against the School Meals Department	11
Complaints against Barbados Postal Service	12
Complaints against Barbados Revenue Authority	13
Complaints outside Jurisdiction	14
Report on conditions at the major Detention Centres in Barbados.....	15
Special Report on South Coast Sewage Problem.....	21
Special Report on LGBT Issues In Barbados	27
Sample Cases	29
Appendices	

LETTER OF TRANSMITTAL

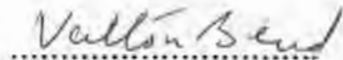
His Honour The President
The Senate
Parliament Buildings
Bridgetown

His Honour The Speaker
The House of Assembly
Parliament Buildings
Bridgetown

Dear Mr. President and Mr. Speaker:

I have the honour to submit the Annual Report of the activities of the Office of the Ombudsman covering the calendar year January 1, 2018 to December 31, 2018 to facilitate it's laying before Parliament. The Report is made pursuant to Section 13(6) of the Ombudsman Act, Cap. 8A of the Laws of Barbados.

Yours faithfully,



Ombudman

THE LOGO OF THE OMBUDSMAN FOR BARBADOS



The logo of the Office of the Ombudsman for Barbados was designed with a great deal of care and consideration; the symbolic significance of the logo's elements is as follows:

Colours: The colours of the Barbadian flag, ultramarine and gold, are the primary colours used in the rendering of the logo. The ultramarine reflects our sea and sky while the gold suggests the sand of our beaches.

Black and white: The central portion of the logo is rendered in black and white, with the left being the photographic negative of the right. These colours are representative of the Ombudsman's commitment to champion the cause of all Barbadians irrespective of colour, religion, class, gender, age or political persuasion.

Equal signs: The equal signs appear on both sides of the shield and are also photographic negatives of each other; they represent equality and the Ombudsman's commitment to act impartially and expeditiously in the handling of public grievances.

Shield: The Ombudsman is the advocate of the people and the principal aspect of his role is to shield the people of Barbados from injustice and maladministration at the hands of Government agencies.

Central figure: The abstracted form at the center of the shield represents the human and personal aspects of advocacy. The Office of the Ombudsman is not a faceless entity but a group of dedicated people committed to serve all Barbadians.

Sugar cane: Initially the source of our enslavement and subsequently the source of our economic independence; sugar cane has been central to our very existence as a nation and the foundation that we now build upon. The crossed sugar cane also provides a significant historical tie with the Barbadian coat of arms.

The logo of the Office of the Ombudsman for Barbados was developed in 1998 during the tenure of Mr. Carl Ince who was at that time the Ombudsman for Barbados. This logo was designed by the Design Services Section of the International Development Division of the Barbados Investment and Development Corporation (BIDC).

The records of the office tend to indicate that the principal officers of the BIDC with whom this office collaborated were Messrs Michael Piggott and Philip Marshal.

MAP OF BRIDGETOWN



THE MESSAGE OF THE OMBUDSMAN

The essence of the Ombudsman system is to hear and determine allegations of bias, unfair treatment and maladministration against government officials. The process involves laying a complaint which alleges an infringement of the civil rights of the citizen at the hands of a government agency. The department is informed of the complaint and is invited to respond. It may be settled quickly to the satisfaction of the parties. There are complex matters that require meetings, explanations and in-depth investigation. The relevant facts are discovered. Adjustments may be made and practices affecting the rights of the citizen may be abandoned. A fair hearing is the standard employ. Resolution to some matters are based on conciliation negotiation and mediation.

I am satisfied that departments generally follow acceptable standards in the delivery of service to the public. The areas giving rise to complaint are easily rectified. Members of the public seeking assistance often express thanks and satisfaction for the service rendered.

Public officials are reminded that they have a responsibility to provide excellent service to the public. The public also have a right to expect excellent service from agencies of government. The benefit of providing excellent service is the avoidance of litigation and costs against central government. A satisfied public is the yardstick of good administration. Good administration promotes democracy and ensures peace, order and good government in society.

The Office of the Ombudsman will continue to work with departments of government in a spirit of co-operation. It will assist each agency to live up to its creed and maintain its integrity. As a stakeholder, in the administration our focus is to ensure that genuine service is delivered to members of the public. Their overall satisfaction is a measure of our success. Our common purpose is to ensure that the principles of good governance are observed, maintained and upheld, confidence in our democracy and reliance on our institutional integrity would not be compromised.

VALTON D. BEND
Ombudsman

HISTORICAL BACKGROUND

The Office of the Ombudsman for Barbados was established in 1987 in spite of the fact that the legislation had been enacted some six years earlier. The Ombudsman's Office was established to provide a safeguard against maladministration and to protect its rights and interests of citizens. The Ombudsman approach is not new, since the redressing or resolving of complaints and or grievances of the people resulting from illegal or unfair administrative practices has long been the practice in this country. This fact may be best explained by an examination of many items of local legislation e.g. the National Insurance and Social Security Act and the regulations made pursuant to his act Cap 47 of the Laws of Barbados or the Town and Country Development Act Cap 240. These items of legislation clearly provide mechanisms by which the public who feel aggrieved by the action or inaction of state bureaucrats of such agencies at no financial cost to the state may appeal the decisions of these agencies.

FUNCTIONS OF THE OMBUDSMAN

Section 6(1) of the Ombudsman Act makes provision for the Ombudsman to investigate complaints from members of the public after he has received a written complaint.

In addition, this section of the legislation also provides that if he is of the opinion that, or if either House of Parliament resolves that there are reasons of special importance which made investigation (s) by the Ombudsman desirable in the public interest, he so does.

The main functions of the Ombudsman include:-

1. Investigation and the settling of grievances against government agencies.
2. Making recommendations for corrective measures when investigations reveal unlawful or unreasonable administrative procedures; and
3. Provide recommendations where appropriate for the improvement of administrative systems and their operations.

ANALYSIS OF COMPLAINTS RECEIVED IN THE YEAR 2018

During the calendar year 2018 sixteen (16) new complaints were made to the Ombudsman for Barbados by members of the Barbadian public. It should be noted that one (1) complaint was resolved eight (8) complaints were outside the jurisdiction while ten (10) unresolved complaints has been carried forward.

The agencies which complaints were made to this Office in 2018:

Figure 1

Departments	Complaints
Police Department	3
Court Process Office	1
Her Majesty's Prisons	3
School Meals Department	1
Barbados Revenue Authority	2
Outside Jurisdiction	6
Barbados Postal Service	<u>1</u>
Total	<u>17</u>

Figure 2

Year	2011	2012	2013	2014	2015	2016	2017	2018
Complaints Brought forward	267	362	412	503	529	554	585	597
Complaints received	122	58	125	29	28	37	21	17
Withdrawn	----	-----	-----	-----	-----	-----	----	---
Outside Jurisdiction	27	8	28	3	3	6	8	6
Resolved	-----	-----	6	-----	-----	-----	1	1
Outstanding	362	412	503	529	554	585	597	607

Figure 2 shows an analysis of the complaints in numbers received in the year 2017 compared with those for the years 2011 through to 2018.

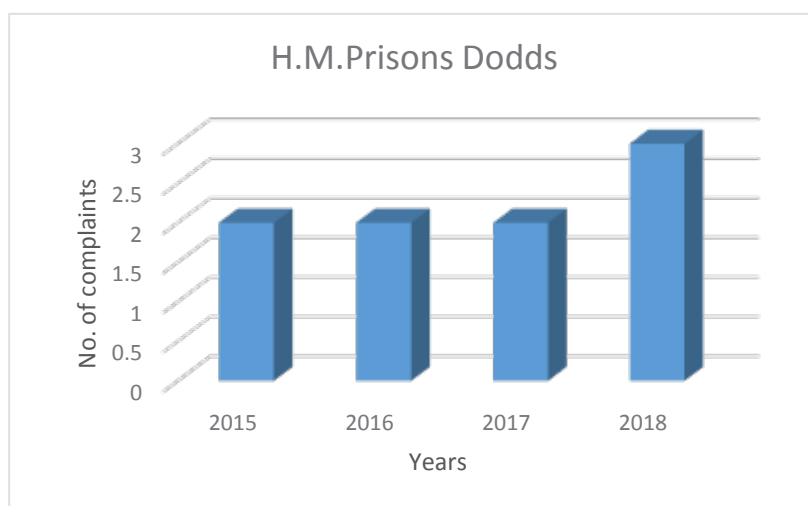
H.M. Prisons Dodds

During the year 2018 three (3) complaints were made to this Office against Her Majesty's Prisons, Dodds. This was one more complaint against the agency than in the year 2017.

Figure 3 below graphically shows the complaints, which have been made against this agency for the years 2015 to 2018:

Figure 3

Year	2015	2016	2017	2018
No. of complaints	2	2	2	3

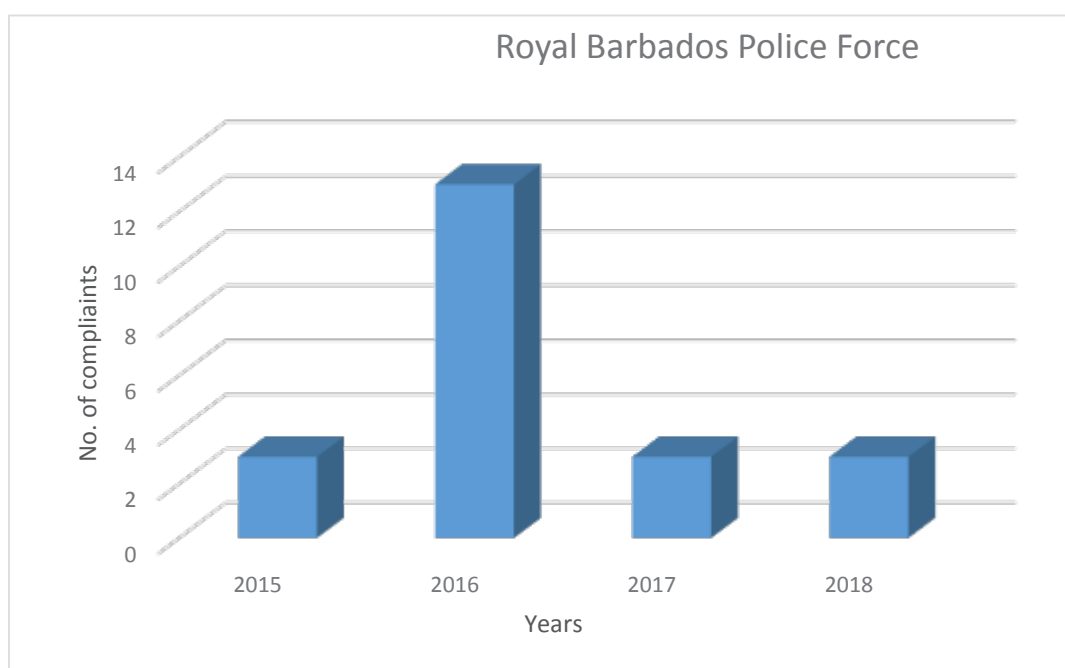


Royal Barbados Police Force

During the calendar year 2018, three (3) members of the public made complaints to this Office against the management of the Royal Barbados Police Force.

Figure 4 below graphically shows the number of complaints, which have been made against this agency between the period for the years 2015 to 2018:

Year	2015	2016	2017	2018
No. of complaints	3	13	3	3



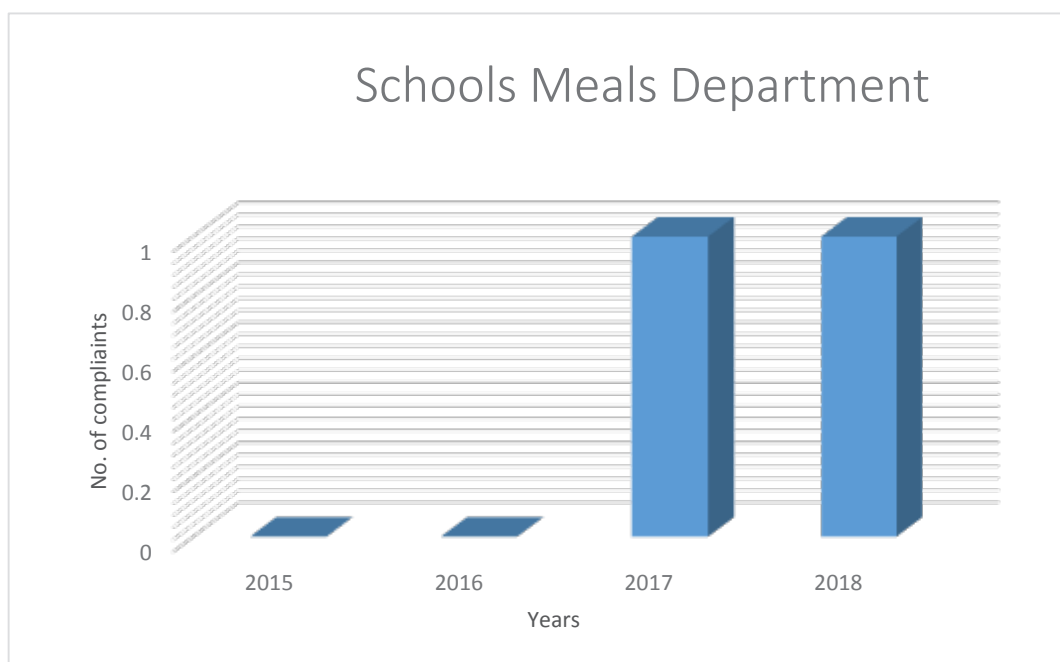
School Meals Department

During the calendar year 2018 one (1) complaint was made to this Office against the School Meals Department.

Figure 5 below graphically shows the complaints, which have been made against this agency for the years 2015 to 2018:

Figure 5

Year	2015	2016	2017	2018
No. of complaints	0	0	1	1



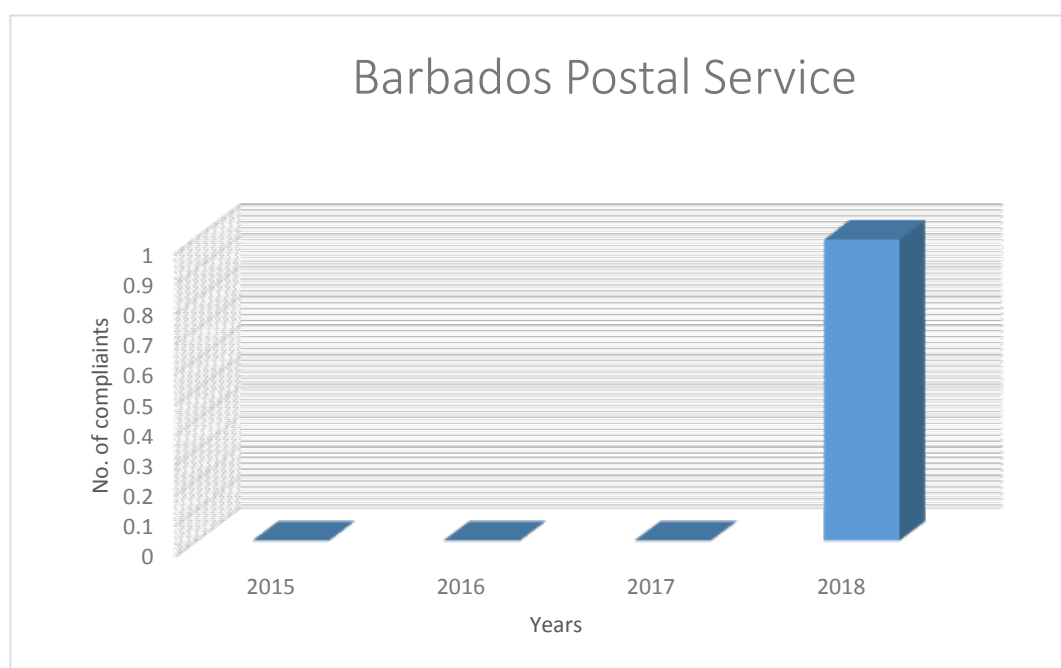
Barbados Postal Service

During the calendar year 2018 one (1) complaint was made to this Office against the Barbados Postal Service.

Figure 6 below graphically shows the complaint, which have been made against this agency for the years 2015 to 2018:

Figure 6

Year	2015	2016	2017	2018
No. of complaints	0	0	0	1



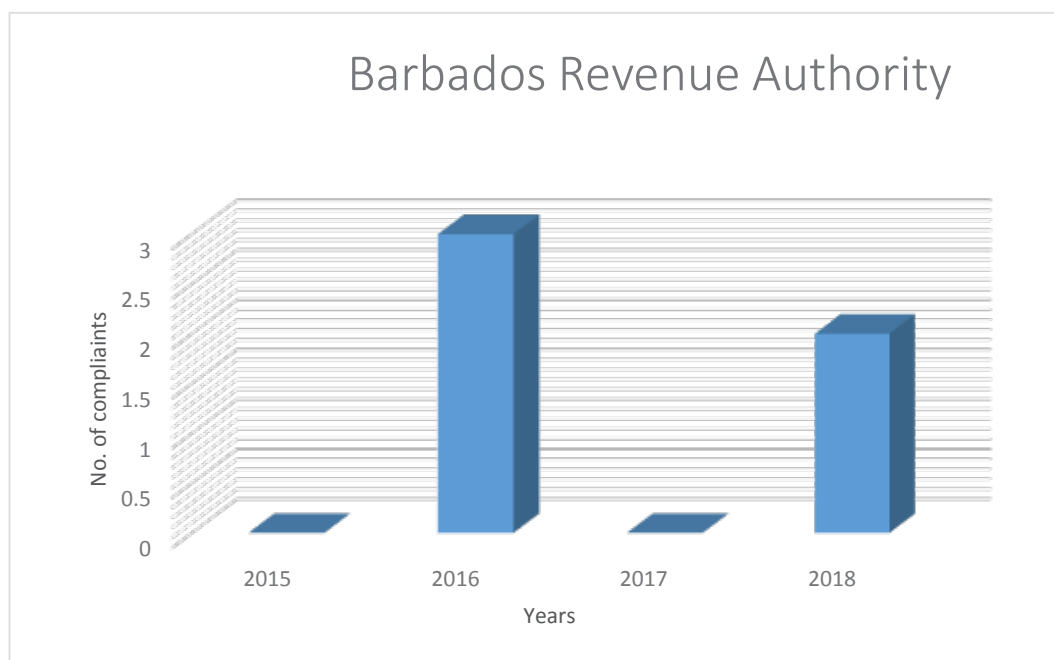
Barbados Revenue Authority

During the calendar year 2018 two (2) complaints were made to this Office against the Barbados Revenue Authority.

Figure 7 below graphically shows the complaints, which have been made against this agency for the years 2016 to 2019:

Figure 7

Year	2015	2016	2017	2018
No. of complaints	0	3	0	2



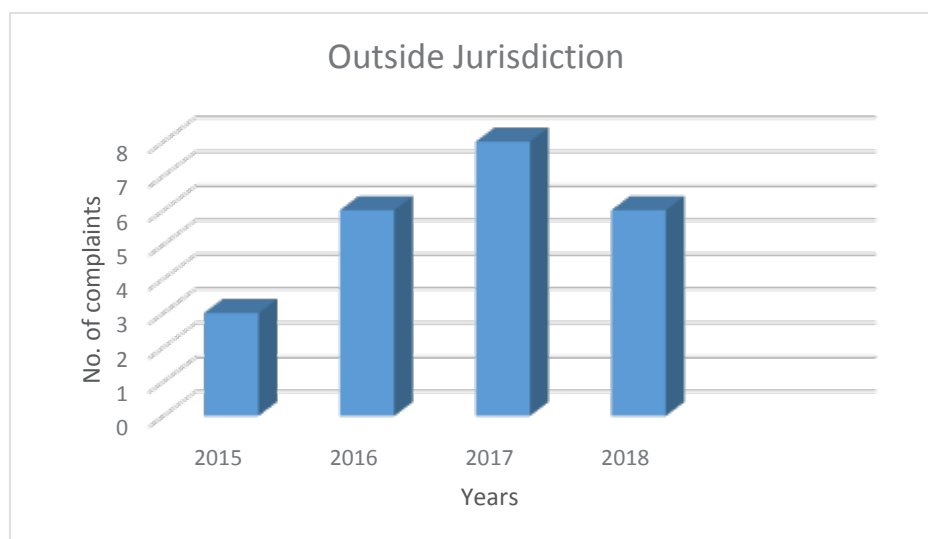
Outside Jurisdiction

During the year 2018, there were six (6) complaints made to this Office which were Outside Jurisdiction.

Figure 8 below graphically shows the complaints which have been made against this agency for the years 2015 to 2018:

Figure 8

Year	2015	2016	2017	2018
No. of complaints	3	6	8	6



REPORT ON CONDITIONS AT THE MAJOR DETENTION CENTRES IN BARBADOS

Officials from the Office of the Ombudsman made a series of visits to Her Prison Dodds in St. Philip for the purpose of investigating prison conditions in relation to the human rights aspects of imprisonment at that facility. No interviews were conducted with actual inmates, or relatives of current inmates. All discussions were held with the prison authorities concerning matters related to the national prison population.

There has been a steep rise in the prison population, which in itself seriously affects prison conditions. The rules governing behaviour within the prison have been posted on the cell blocks for the information of all inmates.

International human rights law is binding on all States and their agents, including prison officials. United Nations guidelines indicate that all persons deprived of their liberty shall be treated at all times with humanity and with respect for the inherent dignity of the human person. It stipulates that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Torture is defined as any act by which severe physical or mental pain or suffering is intentionally inflicted on a person, other than that which is inherent in or incidental to lawful sanctions. Ill-treatment is defined as other acts of cruel, inhuman or degrading treatment or punishment, which do not amount to torture.

Law enforcement officials may use force only when it is strictly necessary.

Right to an Adequate Standard of Living

United Nations guidelines stipulate that all persons deprived of their liberty shall have the right to an adequate standard of living, including adequate food, drinking water, accommodation, clothing and bedding.

The Barbados Prisons at Dodds provide for an adequate standard of living. There is running water from the national supply for all domestic uses. The cells meet international standards where bedding and clothing are kept clean with the use of a laundry, which reaches commercial standards.

Health Rights of Prisoners

UN guidelines stipulate that every prison should have proper health facilities and medical staff to provide for a range of health needs, including dental and psychiatric care. Sick prisoners who cannot be treated in the prison, such as prisoners with mental illness, should be transferred to a civilian hospital or to a specialized prison hospital.

The medical facilities at the Dodds Prison are more than adequate and health professionals provide medical, dental and psychiatric services. When issues are beyond the scope of the Dodds Facility, the national Ministry of Health is utilised. This includes the Psychiatric Hospital. That Ministry collaborates with the Barbados Prison Service in maintaining a high standard of health conditions at the prison. There is a team of officers who deal specifically with health and safety at the prison.

Making Prisons Safe Places

UN guidelines stipulate that prisons should be safe environments for all who live and work in them, in other words for prisoners and staff, and for visitors. No one in a prison should fear for his or her physical safety.

The Prison utilizes policies to minimize threats to all and any persons. These include classification and separation of inmates based on security assessment and deployment of security staff.

Making the Best Use of Prisons

UN guidelines stipulate that the purpose of the prison regime should be to help prisoners to lead law-abiding and self-supporting lives after their release. All sentenced prisoners who are medically fit shall be required to work. As far as possible, this work should give them skills that will enable them to earn an honest living after their release. National legislation

regarding health and safety at work shall apply in prison in the same way as it does in the community.

The guidelines further stipulate that prisoners should be remunerated for the work they do, and should be allowed to spend at least a part of their earnings, to send a part to their families and to save a part.

The Regimes Programme at Dodds caters to educating inmates in various skills that enable them to live useful and law-abiding lives. This programme addresses the vocational, educational, life skills, sports, and faith based needs of the inmates.

Contacts with the Outside

UN guidelines stipulate that all prisoners shall have the right to communicate with the outside world, especially with their families. Foreign prisoners shall be allowed to communicate with their diplomatic representatives.

The Human rights guidelines also recommend that Prisons should encourage access to prisons for inmates' relatives or friends, as maintaining these bonds gives inmates a better chance of staying out of trouble upon their release. . Exceptions should be made only when a specific determination has been made that such visits are hazardous, or have been abused in the case of a particular prisoner.

Visits

At Dodds, inmates are allowed several contact visits a month but conjugal visits are not allowed.

Phone Calls

The Human rights guidelines recommend that all inmates should have access to phones. Given the distances relatives must travel to visit, telephones are often a necessity in maintaining bonds.

There is a phone system called “*Free Phone*” in operation at Dodds whereby inmates are allowed to contact their families on a routine basis. No restrictions are imposed on calls made to Attorneys-at-Law and family members. Each person is allowed to compile a list of up to seven telephone numbers which they are permitted to call (not including legal or consulate calls).

Complaints and Inspection Procedures

UN guidelines stipulate that every prisoner shall have the right to make a complaint regarding his or her treatment and, unless the complaint is evidently frivolous, to have it dealt with promptly and, if requested, confidentially. If necessary, the complaint may be lodged on behalf of the prisoner by his or her legal representative or family.

If a complaint is rejected or not responded to in a timely manner, the complainant shall be entitled to bring it before a judicial or other authority.

At Dodds, inmates are permitted to make complaint to the authority of their choosing either directly themselves or through their Attorneys-at-Law.

PRE-TRIAL DETENTION

Persons charged with crimes and awaiting trial may be released on bail or on their own recognizance before trial. As at December 31, 2014, there were three hundred and fifty-six (356) persons on remand. UN guidelines stipulate that untried prisoners shall be allowed to wear their own clothing if it is clean and suitable. If an untried prisoner wears prison clothing, it shall be different from that supplied to convicted prisoners.

At Dodds, such persons are not permitted to wear their own clothing as has been recommended by the Human Rights guidelines and are required to wear prison issued attire. It was explained that such regulation has been imposed for security reasons.

The facility does not have single person cells for persons on remand hence accommodation sharing exists for all inmates. Remand persons can be allowed to bring their own food as has been recommended by the Human Rights guidelines but such a practice is not encouraged.

Women in Prison

UN guidelines stipulate that women prisoners shall not suffer discrimination and shall be protected from all forms of violence or exploitation, be detained separately from male prisoners, and, supervised and searched only by female officers and staff.

At Dodds, female prisoners are protected from all forms of violence or exploitation, detained separately from male prisoners, and, supervised and searched only by female officers and staff.

Prisoners under Sentence of Death

UN guidelines stipulate that In countries which have not abolished the death penalty, it shall be imposed only for the most serious crimes and after a final judgement rendered by a competent Court.

Barbados has abolished the mandatory death penalty for murder. The death penalty per se however will remain available under the Laws of Barbados. It should also be pointed out that there is no official or unofficial moratorium on the death penalty in Barbados despite the fact that the Government of Barbados has not carried out any executions since 1983.

Juveniles in detention

Officials from the Office of the Ombudsman also made a series of visits to the Government Industrial Schools, both at Dodds in St. Philip for the boys and at Benthams in St. Lucy for the girls. These visits were made for the purpose of investigating conditions in relation to the human rights aspects of detention at these facilities. No interviews were conducted with actual inmates, or relatives of current inmates. All discussions were held with the authorities in charge of the day-to-day management of the facilities.

UN guidelines concerning juveniles in detention stipulate, inter alia, as follows:

- 1) Children who are detained shall be treated in a manner which promotes their sense of dignity and worth, facilitates their reintegration into society, reflects their best interests and takes their needs into account.
- 2) Children shall not be subjected to corporal punishment, capital punishment or life imprisonment without possibility of release.
- 3) Special efforts shall be made to allow detained children to receive visits from and correspond with family members.
- 4) Juveniles of compulsory school age have the right to education and to vocational training.
- 5) Weapons shall not be carried into institutions which hold juveniles.
- 6) Parents are to be notified of the admission, transfer, release, sickness, injury or death of a juvenile.

At the Government Industrial Schools, both at Dodds in St. Philip for the boys and at Benthams in St. Lucy for the girls, it was observed that the UN guidelines concerning juveniles in detention had been fully met.

The need for further staff training was however expressed at both of the Juvenile detention facilities.

SPECIAL REPORT ON SOUTH COAST SEWAGE PROBLEM

The Office of the Ombudsman received a complaint requesting, inter alia, “an independent investigation of the current administration’s handling of the ongoing South Coast Sewage Crisis and what was Government’s liability in the matter”.

Public officials are charged with a responsibility to provide excellent service to the public. The public also has a right to expect excellent service from agencies of Government. The benefit of providing excellent service is the avoidance of litigation and costs against central government. A satisfied public is the yardstick of good administration. Good administration promotes democracy and ensures peace, order and good government in society.

The mandate of the Office of the Ombudsman has been to deal mainly with cases of maladministration. The functions of the Ombudsman for Barbados, as laid out in the Ombudsman Act, Laws of Barbados CAP. 8A are “to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct on the part of a Government Ministry, Department or other Authority subject to this Act.”

Section 6(1) of the Ombudsman Act makes provision for the Ombudsman to investigate complaints from members of the public after he has received a written complaint, and further, if he is of the opinion that there are reasons of special importance, which makes the investigation into any matter desirable in the public interest.

The matter under consideration has been considered to be of national import. Investigations into this matter revealed that in early November 2017, the Barbados Water Authority (BWA) realized that there was a major block in the sanitary sewer line. Attempts at clearing the blockage proved futile, resulting in the BWA adopting a bypass method to enable work to be carried out on clearing the blockage in the sanitary sewer. The blockage caused water to be restricted upstream.

Sometime in mid-November 2017, the BWA realized that the effluent pumps whether on or off at the plant affected the water levels in the manholes. Dyes that were placed in the effluent pumps were found to turn up in the manholes along the south coast area, thereby confirming that there were breaches in the force main recycling effluent into the influent line.

That also restricted the flow and contributed to a backup on properties in the affected areas and overflows in the manholes.

In response, the BWA increased the pumping power at the front of the plant because the argument was, if you could pull down faster what was coming in and what was recycling, then that should result in the lowering of the levels in the network.

The aim was to keep the roads and properties free of sewage and to repair the crumbling network.

The fundamental argument however, was that the deterioration of the network was due to flaws in the original design of the facility. Comments were also made that the land might have shifted because of the two earth tremors which Barbados experienced on November 29, 2007.

The recommendation that the BWA intended to operationalize was the creation of a bypass in the breeched force main. However, that raised the question as to where the BWA would put the effluent during the connection of the bypass.

It has been reported that persons have been contacting the BWA in greater numbers, informing that the problem was getting progressively worse. More customers were complaining of backups which were lasting for longer times. The current situation was that manholes had been overflowing for longer periods and, manholes which were dry previously, were experiencing overflows.

From November 14, 2017 until January 24, 2018, the technical persons at the Wastewater Division were able to have a reducing measure of control over the overflows on the streets.

What the BWA had been doing was increasing the pumping capacity at the plant. The idea was to keep the influent pump down below the inlet pipe in order to allow the sewer feed line to drain.

The BWA also embarked on a plan of holding wastewater at the lift stations when the line was high so as to reduce the amount in the lines. When the levels of wastewater in the lines

were lower, the BWA would then slowly feed the wastewater at the lift stations into the network. The method was that you reduced the inflow at peak time and put in wastewater at low times.

The BWA also pulled excess wastewater off affected business entities on a nightly basis to allow the use of the toilets on these properties. This practice whereby Haulers were employed to remove the excess wastewater mainly from the larger business enterprises and take it to the Bridgetown plant was started at the end of November 2017 but had now increased exponentially. This practice was however proving to be extremely expensive, and was reported to be having a negative impact on the Bridgetown plant.

On January 24, 2018, BWA personnel discovered that they could no longer determine with any measure of accuracy what was going on under the streets by observation or by manipulating the levels at the plant. **Temporary control of the situation had therefore been lost.** BWA personnel were of the view that in addition to the further crumbling of the existing lines, there were increased breaches bringing excessive amounts of water into the sewer lines at an uncontrollable rate.

Due to the super charging of the manholes, that is, the manholes being constantly full and exerting pressure on the manhole covers, the BWA could no longer examine them. BWA personnel were unable to state either the extent of the possible damage that was occurring, or the time line before total collapse.

The BWA was however continuing on its course of action outlined previously of doing the force main bypass which was a long-term solution and also, creating injection wells to divert effluent. The wells were a more transient supportive action to enable the building of the bypass and to help reduce the increasing overflows. BWA personnel could not state how much effluent the wells would be able to hold. The alternative to the creation of injection wells would be to dump the effluent in the swamp at Greame Hall, a most untenable alternative.

The plant at Greame Hall was originally designed with an emergency feature whereby in the event of an overflow, the influent would be dumped into the stream of the Graeme Hall

swamp. That feature of the original design would prove catastrophic to the ecosystem in that area if ever employed, and was therefore not viable.

Further, it would appear that the plant was designed only to filter wastewater and not subject to any treatment. It was noted that the original design of the plant would not have met present standards as set by the Fair Trading Commission (FTC). The BWA was therefore liable to incur penalties for not maintaining FTC standards for effluent quality.

What had been done was to repair the pumping power of the SCSTP which failed originally in December 2016 and was the cause of the then overflows. The outfalls were not cleaned for many years and no sampling occurred since 2014. In 2017, the outfalls were cleared, repaired and had three maintenance cleanings since.

BWA workers worked for long periods of time trying to reduce the impact of uncontrolled overflowing occurring on the streets and in properties on the South coast. Those workers were constantly exposed to high levels of sewage. The stress of constantly working under those conditions resulted in illness to many of them. Prolonged exposure to such an environment had proven a deterrent to wanting to eat. Many of the personnel were constantly sick and affected with gastroenteritis.

There were a number of illegal connections which had impacted negatively in the system. There was an admission by an entity which claimed to have been responsible for dumping cement in a manhole in one of the major affected areas. Liability could be placed on illegal dumpers and persons or businesses, which made illegal connections to the system.

It was noted that while the BWA had settled on remedial action in the form of the bypass and the injection wells, those solutions were put forward to address the realities of the crisis as it stood in November 2017. Since then, the south coast problem had significantly worsened. It may well have reached a point where the suggested solutions might prove ineffective.

It was suggested that the Government of Barbados be alerted as to the gravity of Barbados' situation without delay. It was felt by some that the situation was so dire, that a state of emergency should be declared whereby funds should be diverted to addressing this issue and

international experts asked to immediately action the force main bypass and to effect immediate repair to the sanitary sewer.

It was felt that the BWA should be asked to identify international expertise to undertake the immediate required repair of the sanitary sewer and force main and also, conduct examination of the existing plants in order to identify and repair any discovered issues.

LIABILITY

In the first place, a man is expected to have that degree of common sense or knowledge or everyday things which a normal adult would possess. For instance, a reasonable person knows that gasoline is highly flammable; that solid objects sink in water; and that gas is poisonous when inhaled. Furthermore, where the defendant holds a particular position, he will be expected to show the degree of knowledge normally expected of a person in that position. Thus, for example, in *The Wagon Mound (No. 2)*, the Privy Council took the view that shipowners were liable for a fire caused by discharging oil from their ship into Sydney Harbour, because their chief engineer ought to have known that there was a real risk of the oil catching fire. Similarly, it is clear that an employer is required to know more about the dangers of unfenced machinery than his workmen.

Secondly, with regard to the facts and circumstances surrounding him, the defendant is expected to observe what a reasonable man would notice. The occupier of premises, for example, will be negligent if he fails to notice that the stairs are in a dangerous state of disrepair or that a septic tank in the garden has become dangerously exposed, so that lawful visitors to his property are put at risk. Moreover, a reasonable occupier is expected to employ experts to check those installations which he cannot, through his lack of technical knowledge, check himself, such as electrical wiring or a lift.

Lastly, a related point is this: where the defendant has actual knowledge of particular circumstances, the standard or care required of him may be increased.

Septic system failure is a problem that is becoming better known, and there is little doubt that a lot of work needs to be done to address the existing problem, especially where maintenance of septic systems has been particularly lax.

The South Coast Sewage System is operated by the BWA. Persons who have sustained property damage due to this faulty sewer system, may be entitled to relief. Damages related to sewage issues can present many challenges concerning safety and health hazards.

If a claimant believes that the sewage problem at issue caused property damage or physical injury, the claimant could seek compensation for the property damage or physical injury from the BWA if the claimant showed that all of the following existed at the time of the event:

- (a) the BWA was the 'appropriate agency';
- (b) the sewage disposal system had a defect;
- (c) the BWA knew, or in the exercise of reasonable diligence should have known, about the defect;
- (d) the BWA, having the legal authority to do so, failed to take reasonable steps in a reasonable amount of time to repair, correct, or remedy the defect; and,
- (e) the defect was a substantial proximate cause of the event and the property damage or physical injury.

The amount of monetary recovery claimed must be reasonable. The amount claimed can only cover expenses associated with damaged property and lost usage. Claimants may also be entitled to recover for illness incurred by sewer damage. Compensation may also take the form of a court decree instructing the defendant to take some sort of action.

Under the prevailing circumstances, it would be difficult for the BWA to escape liability in this matter as that is the agency charged with the responsibility for the maintenance of the now defective sewage system at issue.

SPECIAL REPORT ON LGBT ISSUES IN BARBADOS

The Office of the Ombudsman received a number of complaints from representatives of the Lesbian Gay Bisexual and Transgender community concerning treatment meted out to members of that community.

The following issues were raised as a result of that investigation:

- 1) Access to health services at Polyclinics
- 2) Reports to the Royal Barbados Police Force
- 3) Treatment from Government Institutions
- 4) In 2007 the murder of Andrew Browne. The deceased was threatened in court by the assailant but not enough protection was given.
- 5) The Court System does not give the complaints of LGBT individuals enough respect.
- 6) The members of the LGBT sometimes engendered negativity from the wider community.
- 7) Even though Agencies had anti-discrimination policies in place, persons within the institutions follow their own prejudices. Their mindset seemed fixed.
- 8) Some of the policies were vague. Sexual harassment law needs to be further refined.
- 9) Bathrooms used by Transgender Persons was an issue. Transgender issues of bathroom use needed a set policy.
- 10) There was no recourse for certain types of harassment in the workplace.
- 11) Transgender issues are not fully vented, for example passport issues when travelling.
- 12) Some Transgender women were searched or placed in a holding cell.
- 13) Immigration Officers needed to be sensitized on Transgender issues.
- 14) There was need for further meetings on Transgender issues.
- 15) There is no problem at the UWI concerning Transgender issues.
- 16) There was no place to house Transgender persons in Hospitals, Prison, Mental Institution. Its traumatizing for Transgender Persons to be housed in areas with which there are not comfortable.
- 17) Transgender issues should be raised at the policy level.
- 18) LGBT persons accessing work in Barbados was an issue.
- 19) Same sex marriage was raised as an issue by not one that was being actively pursued.

- 20) Persons in the LGBT community were sometimes forced to have secret lives in order to work.
- 21) Persons have violence committed against them due to being part of the LGBT community.
- 22) Social pressures have forced members of the LGBT community to resort to certain types of jobs, for example, sex work.
- 23) Violent acts against LGBT members were for the most part not reported to the relevant authorities.
- 24) There were children who did not receive proper parental care due to being perceived as being sexually different.
- 25) Some organizations do not look beyond existing policies to deal with prevailing problems affecting the LGBT community.
- 26) The Buggery law affects much of the LGBT community as an issue.
- 27) The LGBT is sometimes victimize like name calling.
- 28) Cannot even get access to a taxi as some taxi men refused to carry Transgender Persons.
- 29) The Inter-American Court has asked Barbados to remove laws related to buggery.
- 30) There is need for further recognition of Transgender needs.

SAMPLE CASES

1. A major local producing company requested the assistance of the Office of the Ombudsman in mediation with the Barbados Revenue Authority (BRA) to have outstanding VAT refunds for that company either paid or netted against Corporation Tax payable by the company. The amount in dispute was in excess of \$5M.

Meetings were held with the BRA and an agreement was reached between the two parties satisfactory to both sides.

2. The Office of the Ombudsman received a complaint from an incarcerated individual who complained of mistreatment by members of the Royal Barbados Police Force.

An investigation was carried out by this office, involving the assistance of senior Officers of the Police Force. After the matter had reached an advanced stage, it was agreed that from that point, the matter would be handled internally by the Force.

3. The Office of the Ombudsman received a complaint from an incarcerated individual who complained of mistreatment by members of the Royal Barbados Police Force. The main issue however turned on the admissibility of the confession statement which formed part of the Prosecution's case against the complainant.

This matter could not be advanced by the Office of the Ombudsman as matters of forced confession statements would be dealt with during the Voir Dire at trial.

4. The Office of the Ombudsman received a complaint from an individual living outside of the jurisdiction complaining that the National Insurance Department was tardy in processing her mother's NIS pension.

A meeting with the National Insurance Department revealed that monies were sent to the mother of the complainant via draft to the overseas address which had been submitted by the complainant. The matter was therefore considered as resolved.

5. The Office of the Ombudsman received a complaint from an individual who complained of mistreatment by members of the Royal Barbados Police Force. The complainant presented as a transgender female, and complained of being arrested by Police Officers and mistreated and insulted while at the Police Station. A series of insulting and derogatory remarks were alleged to have been made by the officers present at the Station.

The complainant alleged that when a request was made for a glass of water, the response was given that there were no cups to drink from, but recourse could be had by going into the shower and drinking water from the shower head.

The matter was investigated and eventually resolved.

CHAPTER 8A

OMBUDSMAN

An Act to provide for the establishment of the office of Ombudsman.

1980-68.
1988-5.

[5th January, 1981] Commence-
ment.
S.I. 1980/
191.

1. This Act may be cited as the *Ombudsman Act*.

Short title.

2. (1) There shall be an Ombudsman for Barbados who shall, in accordance with this Act, investigate and report upon allegations of improper, unreasonable or inadequate administrative conduct.

The Ombuds-
man.

(2) The Ombudsman shall perform his functions in accordance with his own independent judgment but shall be responsible to Parliament for the general discharge of his duties.

(3) The Ombudsman shall not enter upon the duties of his office until he has taken and subscribed the oath of office in the form set out in the First Schedule.

First
Schedule.

(4) The Ombudsman shall not be a member of the Senate or of the House of Assembly and shall not hold any other office of emolument or engage in any other occupation for reward.

3. (1) Subject to subsection (2), the Ombudsman shall be appointed by the Governor-General, by instrument under the Public Seal, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

Appoint-
ment and
removal.

(2) The Governor-General shall before appointing a person to be the Ombudsman, submit the proposed appointment to each House of Parliament for approval.

(3) The Ombudsman may be removed from office in accordance with the provisions of section 105 of the *Constitution* which shall apply to his office as if enacted by this Act and the

prescribed authority for that purpose shall be the Prime Minister acting after consultation with the Leader of the Opposition.

(4) The Ombudsman shall vacate office on attaining the age of 65 years but may be re-appointed by the Governor-General in the same manner as under subsection (1) for one further period not exceeding 5 years.

(5) The Ombudsman may resign office at any time by written notice to the Governor-General.

Salary.
1988-5.

3A. (1) There shall be paid to the Ombudsman a salary at such annual rate as the Governor-General specifies by order.

(2) An order made under this section shall be subject to negative resolution.

(3) An order made under this section may contain such supplementary provisions as the Governor-General may consider necessary or expedient for the purposes of the order.

Administra-
tive pro-
visions.

4. (1) Any function of the Ombudsman under this Act may be performed by any officer of the Ombudsman authorised by him for that purpose.

(2) The officers of the Ombudsman shall be public officers appointed in accordance with section 94 of the *Constitution*.

(3) The Ombudsman may charge such fees in connection with his functions in such amounts and subject to such conditions as the Governor-General may prescribe.

(4) All fees received by the Ombudsman pursuant to subsection (3) shall be paid to the Accountant General.

Powers
of investi-
gation.

5. (1) The purpose of an investigation by the Ombudsman shall be to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct on the part of a government ministry, department or other authority subject to this Act.

1988-5.

(2) The Ombudsman may investigate any course of conduct or anything done or omitted by any person in the exercise of administrative functions respecting any business of the Government, including the administration of any statutory board or department of the Government responsibility for which has

been assigned to the Prime Minister or any other Minister pursuant to section 72 of the *Constitution*, not being functions concerned with a matter specified in the Second Schedule.

Second
Schedule.

(3) The Governor-General may, by order, amend the Second Schedule; but any such order shall be subject to affirmative resolution.

(4) An investigation by the Ombudsman shall not be prevented by any provision in any enactment, other than the *Constitution*, to the effect (howsoever expressed) that any matter or thing shall be final or conclusive or shall not be disputed, reviewed or called in question.

(5) If any question arises whether the Ombudsman is empowered to make an investigation or to exercise any power under this Act he may, if he thinks fit, apply to the High Court which may determine the question by declaratory order.

6. (1) The Ombudsman shall not make an investigation without first receiving a written complaint in accordance with this Act, unless he is of opinion or either House of Parliament resolves that there are reasons of special importance which make investigation by the Ombudsman desirable in the public interest.

Conditions
of investi-
gation.

(2) In deciding whether to make, continue or discontinue an investigation authorised by this Act the Ombudsman shall in all cases act in accordance with his own discretion which shall not be questioned; and in particular he may refuse to investigate any matter on the ground that it is trivial or that the complaint is frivolous or vexatious or not made in good faith, or that the complainant has not a sufficient interest therein.

7. (1) Subject to subsection (2), the Ombudsman shall not investigate any case where, in his opinion, the complainant would at any time have had a remedy or right of appeal in a court of law, tribunal or similar body established by the *Constitution* or by or under any enactment or by or on behalf of Her Majesty.

Legal
remedies.

(2) Notwithstanding subsection (1), the Ombudsman may investigate such a case if he is satisfied that for special reasons the complainant could not fairly be expected to have had recourse to such remedy or right of appeal.

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Complaints.

8. (1) A complaint under this Act may be made by any person or body of persons, whether incorporated or not, other than a government department, public authority or body constituted for purposes of the public service or for managing any industry or undertaking in public ownership.

(2) A complaint may be made by the person aggrieved or his duly authorised agent; and where the aggrieved person has died, the complaint may be made on his behalf by his personal representative or by such other suitable person as the Ombudsman determines.

(3) A complainant shall be a citizen or a resident of Barbados (or shall have been such at the time of his death) or shall have been in Barbados or on a ship or aircraft or installation registered in or belonging to Barbados at the time of the act or omission of which he complains.

(4) A complainant who is no longer in Barbados shall, if the Ombudsman so directs, be permitted to re-enter and remain in Barbados, subject to such conditions as the Minister responsible for immigration may direct, for the purposes of the investigation.

(5) A complaint may not be made later than 12 months from the day on which the complainant first knew of the facts giving rise to his complaint; but the Ombudsman may extend this time if in his opinion there are special circumstances which justify such extension.

(6) The Ombudsman shall determine any question whether a complaint is duly made to him.

Procedure of investigation.

9. (1) The procedure of an investigation by the Ombudsman shall, subject to this Act, be such as he shall determine.

(2) An investigation by the Ombudsman shall be held in private and he may make such inquiries from such persons and in such manner as he may think fit.

(3) The Ombudsman may determine whether any person may be represented by an attorney-at-law or otherwise in an investigation.

(4) The Ombudsman shall, before making an investigation give to the principal officer of the department or authority concerned, and to any other person against whom the complaint is made, an opportunity to comment upon the complaint.

(5) No person shall be entitled, as of right, to be consulted or heard by the Ombudsman, except in the manner provided by this Act.

(6) The Ombudsman may, in the manner prescribed, reimburse the complainant and any other person who assists in an investigation for expenses incurred and time lost.

10. (1) Subject to subsection (3), the Ombudsman may, for the purpose of an investigation, require any Minister, officer or member of the department or authority concerned or any other person (including the complainant) to supply any information, produce any document or thing, attend for examination, or allow access by the Ombudsman to any premises of the department or authority.

Power to
obtain in-
formation.

(2) The Ombudsman shall, for such purposes, have the same powers as the High Court (including the power to administer oaths and affirmations) but subject to the same rules relating to immunity and privilege from disclosure as apply in the High Court and subject also to the following provisions of this section.

(3) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or thing or the allowing of access to any premises

(a) might prejudice the security, defence or international relations of Barbados or the investigation or detection of offences;

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- (b) might involve the disclosure of deliberations of the Cabinet; or
- (c) might involve the disclosure or proceedings of the Cabinet or of any committee of the Cabinet relating to matters of a secret or confidential nature and would be injurious to the public interest,

the Ombudsman shall not require the information or answer to be given or the document or thing to be produced or access to the premises to be allowed.

(4) Subject to subsection (3), no information, answer, document or thing shall be withheld from the Ombudsman on the ground that its disclosure would be contrary to the public interest.

Secrecy of
information.

11. (1) Information obtained by or on behalf of the Ombudsman in the course of an investigation shall not be disclosed in legal proceedings or otherwise except

- (a) for the purposes of the investigation and any report thereon under this Act;
- (b) for the purposes of proceedings (or possible proceedings) for an offence of perjury connected with an investigation under this Act; or
- (c) for the purposes of proceedings under section 12.

(2) The Attorney General may give written notice to the Ombudsman that disclosure by the Ombudsman of any specified information or document, or of any class of information or document, would, in his opinion, be prejudicial to the safety of Barbados or otherwise contrary to the public interest; and in that case the Ombudsman and his officers shall not communicate such information or document to any person or in any manner.

Obstruction
and
contempt.

12. (1) If any person without lawful excuse obstructs the Ombudsman or any officer of his in the performance of his functions under this Act or fails to act as lawfully required by the Ombudsman, the Ombudsman may certify the offence to the High Court.

(2) Where an offence is so certified the High Court may, after hearing any person properly desiring to be heard, punish the offender in the same manner as for contempt of court.

13.(1) The Ombudsman shall make a report to each ^{Reports.} complainant explaining the result of his investigation, or his reasons for not investigating or partially investigating the complaint.

(2) Where the Ombudsman makes an investigation on his own initiative or pursuant to a resolution of either House of Parliament he shall make a report thereupon to that House of Parliament.

(3) In the case of a completed investigation the report of the Ombudsman shall state whether he finds that injustice has been sustained by reason of improper, unreasonable or inadequate conduct on the part of any person, government ministry or department or other authority subject to investigation under this Act and, in any case where he so finds, what action, if any, he recommends by way of remedy or compensation for the injustice.

(4) The Ombudsman shall, before making any report, afford an opportunity to be heard to any person, government ministry or department or other authority upon whose conduct he proposes to make adverse comment.

(5) A copy of each report made by the Ombudsman on a particular case shall be sent by him to the principal officer of the relevant government ministry or department or authority and also, if the Ombudsman thinks fit, to any other person whose conduct is the subject of the complaint or of comment in the report.

(6) The Ombudsman shall, in each calendar year, prepare for laying before each House of Parliament a general report on his functions under this Act.

(7) The Ombudsman may, from time to time, prepare for laying before each House of Parliament such other reports as he may think fit, including

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- (a) a report on the inequitable or unreasonable nature or operation of any enactment or rule of law, and
 - (b) a report on any case where in his opinion injustice has been sustained as aforesaid and the injustice has not been or will not be remedied or compensated.
- (8) In making any report the Ombudsman may name or refrain from naming any person as he may think fit.
- (9) The Ombudsman shall submit his reports made under subsections (6) and (7) to the Speaker of the House of Assembly and to the President of the Senate (or, if the office of Speaker or President is vacant or the Speaker or President, as the case may be, is for any reason unable to perform the functions of his office, to the Deputy Speaker or Deputy President) who shall cause them to be laid before the House of Assembly and the Senate respectively.

Com-
munications
privileged.

14. For the purposes of the law of defamation

- (a) any communication made by or to the Ombudsman for the purposes of a complaint or investigation shall be privileged in the same manner as if it were made in the course of proceedings in the High Court;
- (b) any report of the Ombudsman under this Act shall be deemed to be authorised to be published by both Houses of Parliament;
- (c) any communication between the Ombudsman and a member of either House of Parliament for the purposes of the Ombudsman's functions shall be deemed to be a proceeding in Parliament.

Regula-
tions.

15. (1) The Governor-General may make regulations generally for the administration of this Act and, in particular, for prescribing any thing required to be prescribed under this Act.

(2) Regulations made under this Act shall be subject to affirmative resolution.

16. All expenses incurred by the Ombudsman in connection with his functions under this Act or the regulations shall be defrayed out of moneys voted for the purpose by Parliament. Expenses.

FIRST SCHEDULE

Section 2(3)

OATH FOR THE DUE EXECUTION OF THE OFFICE
OF OMBUDSMAN

I, _____, appointed Ombudsman of Barbados in accordance with the Ombudsman Act, Cap. 8A, do swear that I will faithfully and impartially perform the duties of my office.

SECOND SCHEDULE

1988-5.

Section 5(2)

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Minister responsible for Foreign Affairs or other Minister of the Crown to affect relations or dealings between the Government of Barbados and any other Government or any international organisation of States or Governments.

2. Action taken, in any country or territory outside Barbados, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of Barbados or any other public officer of the Government of Barbados.

3. Action taken by the Attorney General under the *Extradition Act*. Cap. 189.

4. Action taken by or with the authority of the Attorney General or any other Minister of the Crown, the Director of Public Prosecutions or Commissioner of Police for the purposes of investigating crime or protecting the security of Barbados, including action taken with respect to passports.

5. The commencement or conduct of civil or criminal proceeding before any court of law in Barbados, or proceedings under the *Defence Act*. Cap. 159.

6. Action taken in connection with the exercise or possible exercise of the prerogative of mercy under the *Constitution* or otherwise.

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- 1988-5. 7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or a statutory board not being transactions relating to
- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal of surplus land acquired compulsorily or in circumstances in which it could be acquired compulsorily.
8. Any action or advice of a qualified medical practitioner or consultant involving the exercise of professional or clinical judgment.
9. Any matter relating to any person who is or was a member of the armed or police forces of Barbados in so far as the matter relates to
- (a) the terms and conditions of service of such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of the *Constitution* may not be enquired into by any court.
11. The grant of honours or awards.
- 1988-5. 12. Matters relating to the grant of liquor licences.
13. Matters relating to the regulation of public utilities.
- Cap. 190. 14. Any function of the Minister under the *Immigration Act* or the regulations made thereunder.
15. Any judicial function not specifically excluded by paragraphs 1 to 14.

