

ANNUAL REPORT OF THE



**OMBUDSMAN
OF BARBADOS
2023**

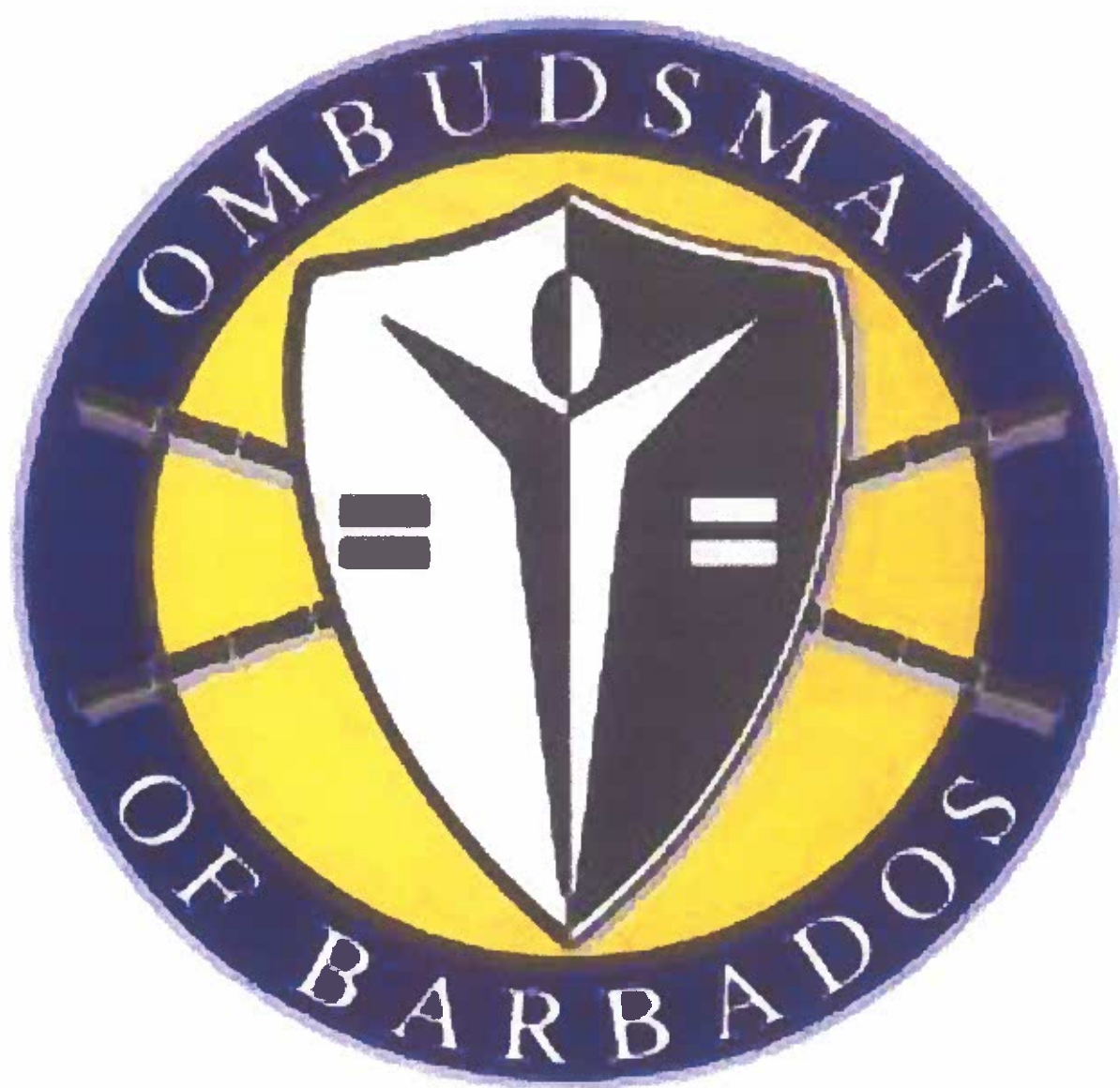


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LETTER OF TRANSMITTAL

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 01 to December 31, 2023. The Report is made pursuant to Section 13(6) of the Ombudsman Act, CAP. 8A of the Laws of Barbados to facilitate its laying before Parliament.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Nigel L. Taylor', with a long horizontal stroke extending to the right.

NIGEL L. TAYLOR
Ombudsman

THE MESSAGE OF THE OMBUDSMAN

The task of the Ombudsman's Office as outlined in the Ombudsman's Act is to investigate and report upon any allegation of improper, unreasonable, or inadequate conduct on the part of government officials. The Act provides that the Ombudsman, in the execution of his duties, is allowed to rely on his own independent judgment to reach a satisfactory conclusion to the matters at hand.

To be quite fair, it is extremely reasonable to expect the wheels of Government to turn rather quickly, but members of the public have been over the years exceedingly disappointed in this respect. Experience would have validated the premise that interfacing with a large governmental bureaucracy can be very intimidating, but the knowledge by the complainant that

the Ombudsman's impartiality during the investigation is present, can be a soothing balm especially when faced with what is deemed to be an impenetrable bureaucracy. My role in these cases is to find the truth and ensure openness and fairness in the decision process, especially as it can easily have an impact on the individual's life.

For the latter part of the year 2023 while working with the staff at the Ombudsman's Office, I can easily acknowledge that this small cadre of persons have worked strenuously and to date have continued to work assiduously to bring resolution to the many complaints from the public of Barbados.

The engagement of a collaborated approach to the problem solving of the cases before the office has been working extremely well, particularly with those institutions which were repeatedly noted in the complaints from the public over the years.

The Office of the Ombudsman will continue to engage the various departments of government for the members of the public to become satisfied that they are the recipients of quality service.



Dr. Nigel L. Taylor, Ombudsman

A handwritten signature in blue ink, appearing to read 'Nigel L. Taylor', with a long horizontal stroke extending to the right.

NIGEL L. TAYLOR
Ombudsman

HISTORICAL BACKGROUND

The Office of the Ombudsman for Barbados was established in 1987 to provide quality service in an impartial and expeditious manner while investigating complaints by Barbadians or persons residing in Barbados who consider that the conduct of a Government Ministry, Department or Statutory Authority is unreasonable, improper, inadequate or unjust. The legislation was, however, enacted in 1981, six years earlier.

When one looks at the number of approaches which are enshrined in the legislative process of this country, one can note that the approach of the Ombudsman is not novel in addressing the complaints of the citizens occasioned by bad or illegal administrative practices. The words of former Ombudsman, the late Valton Bend in his 2007 Annual Report to Parliament stated:-

“ ... 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 a practice of 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 CAP 47 of the Laws of Barbados or the Town and Country Development Act CAP 240.”

The second Ombudsman for Barbados Mr. Cyril Clarke penned the task of the Ombudsman for Barbados most fittingly when he stated in his 2006 Annual Report to Parliament,

“ ...An Ombudsman is not a replacement for the normal judicial remedies in the court system, ...he has no power to reverse a decision once taken by a Government. However, the power which he has is the power of enquiry, the power of reporting and the power of persuasion, as well as exposing any act of Government which may amount to, not necessarily, a constitutional or legal infringement of the rights of the individual citizen, but what might amount to in some ways an injustice.”

PERSONS WHO SERVED AS THE OMBUDSMAN FOR BARBADOS

- | | |
|------------------------|----------------|
| 1. Sir Frank Blackman | 1987 - 1993 |
| 2. Mr. Carlton Browne | 1993 - 1996 |
| 3. Mr. Carl Ince | 1998 - 2002 |
| 4. Mr. Cyril Clarke | 2003 - 2007 |
| 5. Mr. Valton Bend | 2009 - 2022 |
| 6. Dr. Nigel L. Taylor | 2023 - Present |

THE OVERVIEW OF THE ROLE AND FUNCTIONS OF THE OMBUDSMAN

During the reporting period January to December 2023, it should be noted that there was not an appointed Ombudsman in the Office for the first five months of the calendar year, however, towards the end of May 2023, a new Ombudsman was sworn into office. During the period when the office was without the services of an Ombudsman, the general oversight of the office was performed by the Investigations Officer.

This Office has been operating with a clear vision over the years, that being, forging the path, through independent, objective, and impartial investigations with the primary aim of making sure that there is efficiency, along with fairness in the public administration. This is essential as one projects or even reiterate that the culture of the public service must be characterized by dedication, commitment and quality service.

The broad mission of the Office of the Ombudsman clearly is to serve the people of Barbados by expeditiously redressing grievances and addressing issues arising from perceived maladministration in the public service. This is achieved through impartial investigations which will ultimately deliver improvements in the quality and standard of fairness in the public administration.

THE VALUES OF THE OFFICE OF THE OMBUDSMAN

The officers in the Office of the Ombudsman are determined to make themselves accessible to those who stand in need of representation. The staff has repeatedly maintained impartiality and objectivity in the execution of their respective assignments while maintaining and upholding professionalism in the performance of their duties. Specifically, the Investigations Officer, although overburdened at times, continues valiantly with the monthly increasing caseload of people seeking the services of the Office of the Ombudsman.

RESPONSES FROM GOVERNMENT AGENCIES

The Ombudsman's task is to investigate complaints brought against government entities and to decide whether the decisions which are made are fair and proper. However, it has been noted over the years and with repeated complaints that some government entities take much too long to respond or to report on the cases brought before them from the Ombudsman's Office. It is the clear belief of the Ombudsman that the government departments should not take longer to resolve matters than is strictly necessary.

The Ombudsman recognizes that at times it is not entirely the fault of what is perceived as the offending department, as one department must await the results from another department before making a submission to the Ombudsman's office.

Government has a duty to provide the members of the public with relevant information which includes information about progress with their concerns and requests. This is needed to satisfy the provision of information and to rectify any or all breaches of an inordinate time lapse for decisions to be presented which can ultimately cause frustration to the complainant.

In the Ombudsman's Report 2020-2022 it was highlighted that the complaints were significantly lessened primarily owing to the numerous protocols which restricted the movement of persons and the physical spacing between persons. The challenging period of the Covid-19 pandemic saw some modifications in the complaint process. Some persons called and even requested that they be allowed to email and telephone their complaints. However, as the year 2023 dawned, the country immediately sought desperately to revert to some form of pre-Covid practice. People were now willing to continue to present their complaints via telephone calls, visits and emails to the Office of the Ombudsman. Some of them diligently sought to reactivate their cases which were at a standstill during the Covid-19 pandemic years.

During the year under review, there were some cases drawn from the previous years in which the Ombudsman discontinued the investigations because the complainants had reached a stage of frustration with the system and the responses from the various governmental departments on their cases. They had signaled to the Ombudsman that they no longer have any more desire to pursue their matter. Some persons on the other hand withdrew their cases after the intervention of the Office of the Ombudsman because the governmental department had resolved the cases to their satisfaction.

It is worth noting that the Ombudsman and the Office of the Ombudsman can only do its work efficiently if members of the public are aware of its existence and are equally aware of the existence and role of the Ombudsman, coupled with his terms of reference as outlined in the Ombudsman's Act Cap. 8A. This is true of all people, in all sections of society, but particularly those who are part of the structure of the institution and governance of the public administration.

Having been sworn in as the Ombudsman for Barbados on May 25, 2023, I conducted a limited private analysis of the prevailing public service climate in Barbados as it relates to efficiency of service to the public, the knowledge of issues which continued to plague members of the population and the logical responses to the situations. Most of the evidence for the review was gleaned from the many outstanding complaints from previous years which had not been resolved, the lack of serious responses from some of the governmental departments and the generic type responses when the Office of the Ombudsman was requesting information on complaints as mandated under the Ombudsman Act CAP 8A 9(4) et al.

My hypothesis has led me to think that the emerging work practices of some members of the public service need to be adjusted to ascertain what the quality standard of service is, their responsibility and accountability in the process.

Additionally, there should also be on the forefront of the minds of these officers that the public expects some measure of satisfaction if things go wrong and there must be someone who should accept the responsibility if that wrong is made public.

It is for this reason that the Ombudsman, after taking note of the misconceptions of his role and jurisdiction, realized that there must be concentrated activities and public awareness of his role and that of the office.

THE STATISTICAL OVERVIEW OF THE WORK OF THE OMBUDSMAN

In 2023, a total of 438 complaints were actioned, with 297 of these being reactivated as the Office of the Ombudsman sought to aggressively bring some degree of closure to these unresolved complaints. The complaints were in the written, telephone and email format. It should also be noted that there were a considerable number of individuals who were ‘walk-ins.’

From the statistical record, the greatest number of complaints which came under the scrutiny of the Ombudsman during the reporting year were attributed to the following departments and ministries. The top twelve are as follows:-

Figure 1 – Greatest Number of Complaints

	<u>No. of Complaints</u>
1. Ministry of Health and Wellness	40
2. National Insurance Department	36
3. Barbados Police Service	32
4. Barbados Revenue Authority	27
5. Ministry of Education, Technological and Vocational Training	25
6. Barbados Water Authority	19
7. Ministry of the Public Service	12
8. Barbados Immigration Department	12
9. Barbados Treasury Department	11
10. Barbados Prison Service	11
11. Ministry of Transport, Works and Water Resources	10
12. Outside of Jurisdiction	96

Analytical Statistics

Complaints brought forward from the year 2022	646
Complaints received in the year 2023	141
Total complaints to be processed during the year 2023	787
Complaints resolved during the year 2023	391 or 49.7%
Complaints which were not investigated	96 or 12.2%

These were outside the jurisdiction of the Ombudsman or were
Subject to the restrictions as set out in the Ombudsman Act CAP
8A, **Second Schedule, MATTERS NOT SUBJECT TO
INVESTIGATION.**

Withdrawn	8 or 1%
Complaints yet to be completed and will be traversed to the new year.	388 or 49.3%

During the year, the Office of the Ombudsman received some complaints which were not actionable and for which no formal investigation was carried out. There were in many cases anonymous complaints with no traceable identity or means of contact for the complainant. Some of them reflected areas of serious concern, which caused the office to review and prepare to respond to any formal signed complaint from a credible source.

The Top Five Government Departments / Ministries with the Highest Number of Repeated Annual Complaints

1. Ministry of Health and Wellness
2. National Insurance Department
3. Barbados Revenue Authority
4. Barbados Police Service
5. Ministry of Education, Technological and Vocational Training

In previous years and from records within the Office of the Ombudsman, there were two additional departments which were always on the “high” complaints list. These departments are the Immigration Department and the Barbados Licensing Authority.

During the year 2023 and with the determination to understand the tension which was always seemingly present between the public and these two departments, meetings were held with the head of most of the government departments and these two departments were a part of the process.

This was done especially as it was necessary to translate the individual's experiences into some improvement in the quality of service which was accessible in the government departments.

It is worth noting that the Immigration Department's complaint statistics are now in the single digit at the lower end of the spectrum, while the Licensing Authority has followed suit. Responses from the Immigration Department to the officers of the Office of the Ombudsman are always swift and courteous.

In reference to the Licensing Department and in all fairness to the Chief Licensing Officer and her staff, my investigations have unearthed some rather unfair accusations of the department. Case in point. Two government departments are located on the same premises, the Licensing Authority and the Barbados Revenue Authority, however, after conducting business with the Licensing Authority, one must traverse to the other building and make the necessary payments. Some of the complainants who accuse the Licensing Authority did not readily realize that they were now being facilitated with another branch of government, namely the Barbados Revenue Authority. As such, the complaints which included extremely poor customer service, the unwillingness of the staff to answer questions relative to their department or the business which was being transacted and even behavior which some complainants referred as rude were levelled erroneously at the members of the Licensing Authority instead of the Barbados Revenue Authority.

Figure 2 - Complaints Listed

Year	2019	2020, 2021, 2022	2023
Complaints B/F	607	621	646
Complaints Received	19	27	141
Total Complaints for the Year	626	648	787
Outside Jurisdiction	6	0	96
Withdrawn	0	0	8
Resolved	5	2	391
Outstanding	621	646	388

*The resolved 391 cases include some which were reactivated from the previous years.

Figure 3 – Comparison of Complaints

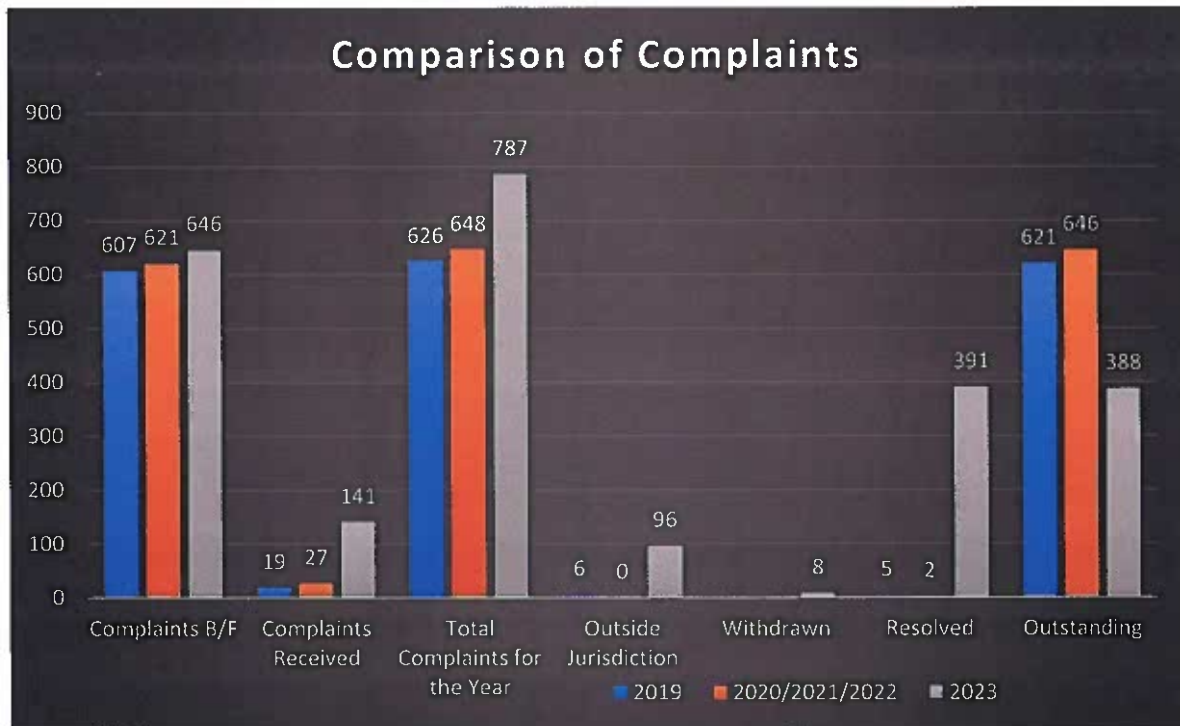


Figure 4 – Complaints Received

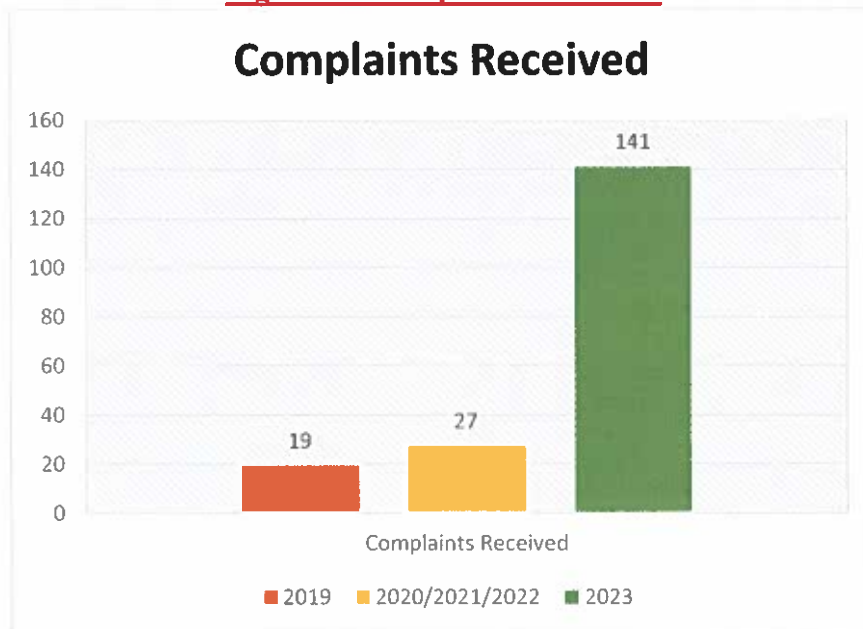


Figure 5 – Complaints Resolved



SUMMARY OF THE NATURE OF SOME OF THE COMPLAINTS 2023

Several complaints were made against Ministries and Departments. Outlined below are some of the challenges which were reported to the Office of the Ombudsman.

- i. Delay in the processing of the application for citizenship.
- ii. Complaints against the conduct of members of the Barbados Police Service.
- iii. Complaints relating to the creation of a post where an officer is currently fulfilling the duties, however after the creation of the post someone else was scheduled to assume the duties.
- iv. First Time Home owner's grant being rejected from the Barbados Revenue Authority.
- v. Difficulty in having questions affecting citizens answered.
- vi. Complaints about being overlooked for promotion, while still being given more responsibility.
- vii. Claim of being attacked by a patient of the Psychiatric Hospital while on duty. Claimant retired medically unfit. No compensation.
- viii. Claim of being awoken by the presence of police in their house. An individual was arrested and taken away. No arrest warrant was produced.

- ix. Supersession of an officer who acted for several years as a penal officer at one rank before being reverted to the less rank. He alleged he was superseded by a temporary officer.
- x. Complaint arising concerning health challenges from an inmate.
- xi. Complaints of the cessation of disability cheques along with the length of time to process claims.
- xii. Having to wait extremely long hours in the Accident and Emergency Department before being seen by a doctor. Time can range from several hours to days.
- xiii. Complaints arising from a government department disconnecting the water pipes and placing a temporary pipe due to road works. Upon completion, the flow of water returned to all house holders in the area except one individual. The challenge as articulated by the complainant referred to the repeated "passing of the buck" between two government agencies as neither was accepting responsibility for the error.
- xiv. Complaint against the Barbados Water Authority whose investigations revealed a faulty meter. The agency admitted liability but did not replace the meter. The complainant continued to receive monthly invoices for large sums of money with the expectation that all payments will be forthcoming to the company.
- xv. The non-payment of income tax refunds to the public.
- xvi. Complaint about paying monthly for piped water but not getting the supply on a regular basis. This challenge has been ongoing for years.
- xvii. Dissatisfaction with the level of pay given to invigilating staff for CXC Exams. It is not commensurate with the level of responsibility or the work load involved. Additionally, the payment was below the established minimum standard wage of the country.
- xviii. Discontinuation of disability allowance.
- xix. Non-payment of salary over an extended period after being assigned to a post.
- xx. Delay in the processing of complainant's application for pension.
- xxi. Complaint against the National Housing Corporation who advised complainant to secure her items into a container for two days.

- xxii. The repairs took 4 years by which time some of her items were damaged. She sought compensation from National Housing Corporation which was challenging.
- xxiii. There was structural damage to a house purchased from the NHC. The National Housing Corporation offered a sum to the owner to repair the house. The house owner declined the offer because he was unsure of the total expenses needed to adequately repair the home to a livable standard. Subsequent attempts to get the matter resolved failed.
- xxiv. The complainant fell after being tripped by a drain cover while at work resulting in injuries to the right knee. The Ministry failed to entertain any liability. This resulted in a very lengthy intervention with an unresolved settlement.
- xxv. Complainant identified major damage to their car tyres due to potholes. The Ministry of Transport and Works promised to pay in the first instance but subsequently refused stating that there was not enough evidence to support the claim.

MATTERS OUTSIDE THE OMBUDSMAN'S JURISDICTION

The Office of the Ombudsman has noticed a steady buildup of complaints against many organizations. The complaints which are brought to the Office of the Ombudsman are at times not subject to investigations and are matters which are outside its jurisdiction.

Although these matters were outside the general authority of the Ombudsman, it is noted that on occasions as Ombudsman, it was explained to the complainant the reasons why the matter cannot be investigated by the office. Additionally, and where appropriate, the complainants were supplied with information about the avenues available for them to pursue their complaints.

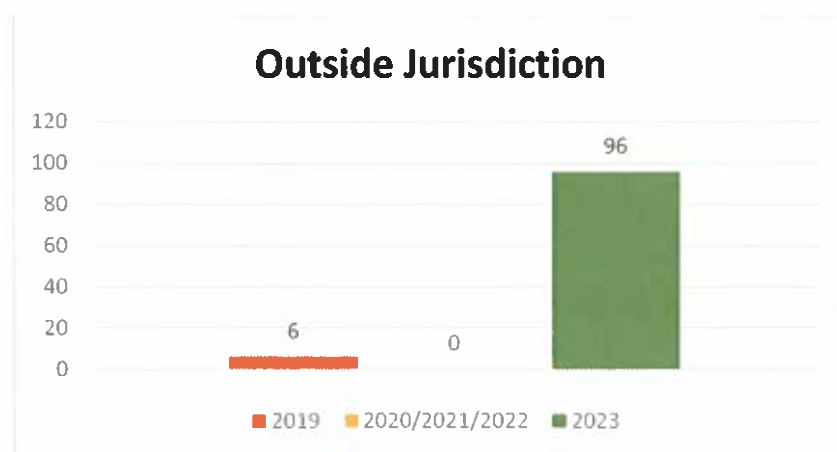
When one listens to the persons so aggrieved by the system, there is a misconception that the Ombudsman is vested with the power to rescind or halt an action which has been taken by a department of government against which the complaint has been lodged.

The Ombudsman Act CAP 8A clearly states that ***“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 the Ombudsman Act”***.

In cases where the Ombudsman finds reasons that maladministration has occurred, he can recommend by way of remedy or compensation for the injustice.

The analysis glaringly suggests that there is the need for more public information and general awareness of the Office of the Ombudsman and its functions. One cannot say that the public's awareness of what is done is satisfactory, even though those people who stand most in need of the assistance of the Ombudsman seek such.

Figure 6 – Complaints Outside of Jurisdiction



MEASURES TAKEN BY THE OMBUDSMAN DURING THE YEAR 2023

Decisions leading to specific measures on the part of the Ombudsman:-

A. Decisions leading to measures being taken on the part of the Ombudsman

- i. Recommendations to reach conclusions between government entities and complainants
- ii. Recommendations to reach agreed settlements
- iii. Recommendation to redress an error or to rectify an issue
- iv. Opinions for guidance

B. Complaints were not investigated because of the following reasons

- i. They were not within the Ombudsman's remit
- ii. The event occurred many years prior, with some of the complaints being submitted more than 10 years prior

- iii. No responses when the complainants were contacted
- iv. Complaints were amicably settled by the government entities

C. Redress through personal meetings with the Head of various Departments

- i. Meeting with the Revenue Commissioner and some of her senior staff to present the numerous complaints from the public
- ii. Meeting with the Chief Immigration Officer to discuss the complaints lodged within the Office of the Ombudsman
- iii. Meeting with the then Acting Commissioner of Police to highlight some of the complaints lodged within the Office of the Ombudsman
- iv. Meeting with the Chief Licensing Officer
- v. Meeting with the Comptroller of Customs
- vi. Meeting with the acting Chief Medical Officer, Ministry of Health
- vii. Meeting with the Head of the Accident and Emergency to address some of the complaints lodged in the Office of the Ombudsman
- viii. Meeting with the Director of the National Insurance Scheme and Social Security and members of her senior staff to address the many complaints which had surfaced repeatedly over many years
- ix. Meeting with the Chief Archivist to discuss some of the complaints which were submitted to the Office of the Ombudsman

D. It should be noted that there were additional aspects of communication with other Heads of Departments through other means. There were telephone calls to Permanent Secretaries, Registrars and other Departmental Heads as a means to encourage collaborative bonds with the Office of the Ombudsman as well as to gather information during the process of investigations.

E. It should be stated that there was always a readiness from the Heads of the Departments to assist the Office of the Ombudsman in its investigations.

AREAS OF CONCERN FROM THE PUBLIC

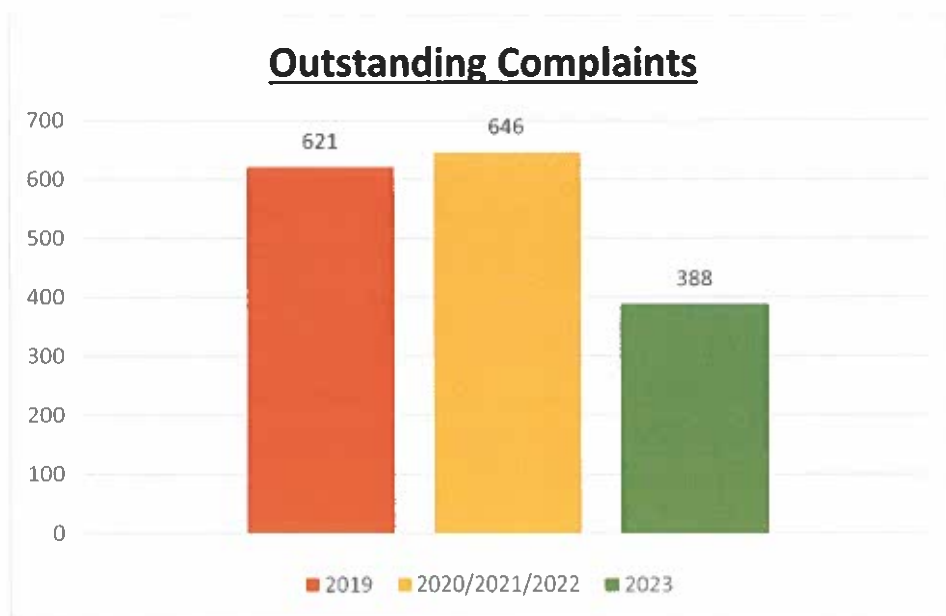
Members of the public complained, as is their right when they perceive that an injustice has been meted out to them. The Office of the Ombudsman must analyze the subject areas of the complaints and then process them.

When a complaint is filed, the interpretation is clearly posited that a serious unresolved grievance has been identified at least by the complainant. Every complaint is fully examined before the path for resolution is sought.

It should be borne out that there are some matters which are not subject to an investigation by the Ombudsman as outlined in the **Ombudsman Act CAP 8A**. Nonetheless, there are some complaints which are capable of a speedy resolution after the initial examination.

The office continues to respond to a diversity in the complaints against the various departments of government.

Figure 7 – Outstanding Complaints



THE INVESTIGATING PROCESS



Dr. Michael Sabazan, Investigations Officer

The categories of complaints received by the Ombudsman are wide and varied and do encompass almost every department of government within the country. The complaints are addressed fully, irrespective of the nature of the complaint. One of the main aims of the intervention from the Ombudsman and the Office of the Ombudsman is to seek a resolution to the said complaint. The 'turnaround' time for the resolution of some of the complaints is short while other complaints are complex in nature and would require careful examination and investigation.

The complexity of the complaints makes it extremely difficult for the office to initially state the completion time for any complaint.

The reasoning is axiomatic as the Ombudsman and the Investigator must await reports from persons connected to the source of the complaint, namely the authorities within the Ministries, Departments and Statutory Boards.

The speed and rate of completion is therefore dependent on the speed at which the administrative bodies provide the information which is requested and partly on the limited manpower which is at the disposal of the Ombudsman.

In trying to expedite the resolution of many of the cases, the Ombudsman has on occasions sought to obtain written evidence and comments from both sides as opposed to using only oral presentations.



Miss Rosetta Gibbons, Executive Officer (ag)

The Executive Officer is one of the staff members of the Office of the Ombudsman. In addition to her daily assignments, she is always ready and willing to assist with any task as assigned by either the Ombudsman or the Investigations Officer. These tasks can range from the research of the complaints to the policy of the government on the specific area being investigated.

CONCERNS RAISED BY MEMBERS OF THE PUBLIC EVEN WHEN LISTED AS “OUTSIDE JURISDICTION.”

1. No Provision of Bathroom facilities for Customers

Within the past six months, the comfort level of appealing to the Ombudsman for assistance was in evidence. The Office of the Ombudsman has been receiving calls and emails from frustrated persons who have raised questions and were dis-satisfied as to the reasons why the respective agencies of government would allow businesses to operate in circumstances when they, the public, are being treated with disrespect in matters relating to their health. They complained that in some cases, the Ministry of Health was informed and there was no seeming action or response from that Department.

The case in point.

One complainant stated that he is over sixty years of age with many medical co-morbidities, among them being hypertension. He stated that his regimen of drugs which he must take every day consist of a diuretic. It is noted that diuretics are medicines that help reduce fluid buildup in the body. Most diuretics help the kidneys remove salt and water through the urine.

The complainant shared that while awaiting service in a leading bank in this country, he had the very strong urge to use the bathroom.

He asked the teller for directions to the bathrooms and was given the emphatic response that there were no bathrooms for the customers. At this stage it was critical that he use the bathroom, or he would involuntarily embarrass himself. On this occasion he asked to use the staff bathroom and it was denied.

Complaints have also been made to the Ombudsman namely of the practice of some business places in the heart of commercial Bridgetown which are actively traversed by customers and clients on a regular basis where there are also no provisions for the said customers to have access to bathroom facilities.

Recommendation

The Government, through the Ministry of Health and Wellness should investigate the veracity of this complaint and if found to be as the complainant certifies then the appropriate discussion should be engaged with the banking institutions to seek ways to correct this.

It is only fair and reasonable that if there is a plurality of persons frequenting any establishment then the minimum standard should be the provision of access to bathroom facilities.

Government should insist that the provision for bathrooms for customers / patrons be a part of the legal requirement for them to operate.

The consistent argument of not providing bathroom facilities is one of security. In researching this subject broadly from outside jurisdictions, it is realized that coupled with the argument of security is that of limited space. However, after being in a queue for a lengthy time it might necessitate the use of a bathroom. The administrators of these institutions and all people centered institutions must strike a balance between security and customer service and as such recognize that customers are all humans and should be treated humanely.

2. Awaiting Written Judgments from Judicial Officers

The records and complaints within the Office of the Ombudsman, some dating as far back as 2014, speak of frustrated persons awaiting written judgments from judicial officers. It is to be noted that **the Ombudsman Act CAP 8A, the Second Schedule** speaks of **“Matters Not Subject to Investigation”** by the Ombudsman. In this Second Schedule there are fifteen points.

For this particular cause, reference is made to the extract which states under **“Matters not subject to Investigation”** that there is to be no investigation on *“the commencement or conduct of civil or criminal proceeding before any court of law in Barbados”* and the all-embracing point which states, *“any judicial function not specifically excluded by paragraphs 1-14”*.

Many of the complainants are aware that the Ombudsman and the Office of the Ombudsman have no jurisdiction over the courts or its officers, nonetheless, the fact that they are willing to present themselves to the Office of the Ombudsman to complain bitterly about their perceived injustices from these judicial officers should raise many red flags which should also suggest directly that there are persons who are frustrated with the judicial system and would like some immediate resolutions.

SPECIFIC SAMPLE COMPLAINTS OF 2023

1. Complaint against a Statutory Board

A complainant indicated that he had not received any unemployment benefits since the date of his retirement. When contacted, the employer asserted that the company had been experiencing several challenges updating employees' information in the National Insurance (NIS) portal. The root of the problem stemmed from the fact that the classification of the complainant needed to be changed from 'P' to 'R' on the NIS portal in order that the complainant could receive his benefits. Due to the challenges encountered on the NIS portal, the company was unable to manually adjust the categorization of the complainant.

The company had, in breach of an amendment to the National Insurance Act which changed the contribution classification for State Owned Enterprises from 'PP' or 'T' to 'R' effective January 1, 2019, continued to report earnings at an incorrect rate.

In order to correct the error which had been made, the company was required to amend the contribution schedules for the period when the incorrect rate had been used. What was discovered was the fact that the error had affected more individuals than just the complainant.

The matter was finally resolved to the satisfaction of all parties.

2. Denial of Non-contributory Old Age Pension

A complainant lamented that an individual who suffered spastic quadriplegic cerebral palsy due to premature birth and intraventricular hemorrhage, currently over 27 years, had been denied Non-Contributory Old Age Pension as that individual was by definition not considered a "deaf mute" on the grounds of having had normal hearing.

This was in accordance with Regulation 6(4) (b) of the National Insurance and Social Security (Non-Contributory Old Age Pensions) Regulations, 1982, which states:-

(4) For the purpose of this regulation,

a) "blind person" means a person whose eyesight is so defective that he is incapable of performing any work for which eyesight is essential; and

b) “deaf mute” means a person whose hearing is so defective that he is incapable of receiving or making verbal communication and of performing work.

At a meeting between representatives from the National Insurance and Social Security Services (NISSS) and the Office of the Ombudsman, it was however agreed that based on the pronouncement of the Prime Minister of Barbados, The Hon. Mia Amor Mottley, during the 2024 Budgetary Proposals, Regulation would be enacted whereby the anomaly making it inequitable for persons severely disabled, like the individual on whose behalf the complaint had been made, to be denied non-contributory benefit would be corrected. It would however be necessary for a fresh application to be submitted to the NISSS under the newly enacted Regulation.

3. Complaint against the Court System

A complaint was made to this office against the Court system. The issue which confronted the Complainant was that the passage of approximately twenty-four (24) months and continuing had elapsed between the applicant being charged and the start of the actual trial. The Complainant was of the view that such action constituted excessive delay amounting to a breach of the Complainant's right to a fair hearing within a reasonable time as guaranteed by section 18(1) of the Constitution of Barbados.

The continuing period of delay could not be disputed.

Research into the matter brought awareness of the Canadian case of *R v. Askov [1990] 2 S.C.R 1199*. In that case, there was a delay of almost two years in bringing the case to trial following committal. Mr. Askov had been in custody for six months before being released on bail.

By way of background, appellants Askov, Hussey and Gigliotti were initially charged with conspiracy to commit extortion and related offences in November 1983.

A date early in July 1984 was agreed on for the preliminary hearing, but the hearing was not completed until September 1984.

A trial date was set for October 1985, but the case could not be accommodated during that session. The trial was delayed until September 1986, nearly two years after the conclusion of the preliminary hearing.

When the trial began, the accused moved for a stay of proceedings on the grounds of unreasonable delay. The trial judge, Michael George Bolan, granted the stay, finding longstanding, uncorrected institutional problems were the major cause of the delay.

In considering whether the delay, which was the result of mainly institutional problems, infringed the applicants' right to be tried within a reasonable time pursuant to section 11(b)

of the Canadian Charter of Rights and Freedoms, (which is similar to section 18 (1) of the Barbados Constitution), the Supreme Court of Canada in a unanimous decision, determined that the delay was a breach of the applicants' said right, and further ordered that there be a stay of the proceedings.

The considerations for the right to a fair trial within a reasonable time as enshrined in the Canada Bill of Rights Charter, are in my view, also applicable to Barbados.

The circumstances of the Complainant, when contrasted with those of the other accused persons whose litigation gave rise to the authorities hereinbefore cited, are qualitatively different. The delay being addressed in the case of the Complainant is seemingly far more egregious than that in the cited case of *Askov*. In *Askov*, the appellants were all released on bail within six months of their respective arrests.

The delay in the commencement of the Complainant's trial was reportedly due to a misplaced file. Though not resonating with the appearance of fairness, this office is not empowered to investigate matters relating to the Court process.

4. Complaint against a specific Department of Government

A complaint was made to this office by a Complainant who was requesting retroactive payments.

The Complainant had been appointed at a particular post but was allowed to perform in a higher post for which the Complainant did not possess the requisite qualifications.

The Complainant operated under an extra contractual arrangement at the level of the higher post under the direction and seemingly at times, instruction of the Head of Department for a given period. The proof submitted was satisfactory.

The issue which confronted us was whether the action of the Head of Department in allowing the Complainant to operate in the higher position gave rise to an obligation to pay a responsibility allowance which was enforceable.

This factor would change that dynamic as to whether any payment made to the Complainant could be termed ex-gratia or legal entitlement.

It should be borne in mind that an employer is under no obligation to make an ex-gratia payment, it is usually a goodwill gesture. If a payment is offered in lieu of a sum an individual is owed, then it is not an ex-gratia payment.

This office held the view that engaging in work above one's paygrade, where the Head of Department required an individual to take on or acquiesced in the taking on of additional responsibilities at work of greater complexity with more responsibility and less oversight, was typically an indicator that one was working outside the scope of one's employment. That was the case of the Complainant.

It was considered that to hold fast to the position that no matter how much work was assigned to the Complainant outside the Complainant's job description, that person would be estopped from receiving any financial benefit for that work based on the contractual obligation under the particular post to which appointed would be untenable.

This office held the view and therefore recommended that the Complainant had a legal entitlement to a responsibility allowance.

5. Complaint against National Insurance and Social Security Services

The Office of the Ombudsman had received a complaint from a Complainant who complained of a lack of Invalidity Benefits for a period of over twelve (12) years. The case of the Complainant was presented before the Director of National Insurance and the Appeals Tribunal who all ruled against the submission of the Complainant.

The Complainant further appealed to the NIS Commissioner.

The appeal in respect of invalidity benefit for the period at issue was dismissed by the NIS Commissioner who is the final level of appeal for matters relating to Benefits.

The Complainant however remained dissatisfied.

The Office of the Ombudsman took the firm view that the matter was closed as a final legal action was taken as noted in the law, the National Insurance and Social Security (Determination of Claims and Questions) Regulations, 1967, Section 12(1). As such, no further action would be attempted by the Office.

6. Complaint against a Government Department

The Office of the Ombudsman received a complaint from a Complainant who stated that there had been a delay in correcting the inaccuracy of certain assertions contained in an Agreement made between herself and a State-Owned Enterprise. Examination of the documentation as presented to this office by the Complainant had on the face of it revealed a manifest error.

The offending clause in the Agreement stated that the Complainant was NOT the owner of a certain parcel of land which was in fact owned by the Complaint as evidenced by the production of the relevant Conveyance.

The Agency, after being contacted on the matter, made the necessary correction to the document as requested.

THOUGHTS FOR CONSIDERATION

Information to show how effectively the Ombudsman can work with and ultimately strengthen Government Departments

The Ombudsman has found it practical to use that which is referred to as an Alternative Dispute Resolution (ADR) mechanism. This method of resolving conflicts can easily cover arbitration, conciliation and mediation. The Ombudsman is and should be seen as the embodiment of democratic tenets, principles, practices, values and norms.

In all matters which are before him, he must be seen as the impartial mediator and one who reflects the aura of being citizen friendly. If the Ombudsman and the officers within the Office of the Ombudsman must be more effective, all persons, whether in government or otherwise must recognize any and all areas which can aid in the improvement and yet strengthen the institutions of government.

Some of these are as listed below:-

- The Ombudsman must be seen as an independent person, thoroughly neutral who can assist with the promotion of those principles and actions which will show that the country continues to adhere to and practice true democracy.
- National leadership should see the importance of having the Ombudsman and the office play an integral part in policy interpretation. It can also be a vital part in the process which will make sure that it protects and promotes equal and benevolent treatment for all citizens' rights and privileges in all circumstances.
- The Office of the Ombudsman can continue to promote probity, accountability and transparency in the administration within the public service.
- Recognizing the litany of complaints which are brought to the Office of the Ombudsman, this Department can continue more aggressively to lead in its corrective approach to governance issues by fostering the establishment of being a strong institution which is results oriented.
- The Office of the Ombudsman can and must engender public confidence in government and governance through the affirmation that governmental actions can be questioned, and where appropriate, remedied.
- The Office of the Ombudsman must reflect that organization which will keep the government and its Ministries / Departments ever vigilant with the knowledge that its actions are subject to public probity. The Ombudsman can be seen as that type of authority who has the authority of an independent institution which is not subject to

the direct control of government, where an independent and apolitical view can be engaged.

- The Ombudsman and the Office of the Ombudsman should continue to bridge the gap between the citizens and the leaders as they assuage citizens' grievances and acrimony before they fester into widespread discontent and a breakdown of law and order in a society.
- The Ombudsman and the Office of the Ombudsman should seek to broaden its tentacles in the area, not only on the matter of human rights and human rights violations but also in the area of formally advocating that such an entity be a formal part of the said office with all the authority pertaining thereto.
- Critically important is the fact that the Ombudsman is cost-free and easily accessible to the less privileged in the society.

In summary, every country strives or should strive for that unique principle which embodies the Ombudsman and his philosophy. That principle is the embodiment of delivering that type of service and fair play which is rooted in truth, justice and transparency.

A well-functioning Ombudsman's office can easily mitigate those obdurate indices of administrative injustices while leaving no stones untouched in the execution for fair play.

CHAPTER 8A

OMBUDSMAN

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. The Ombudsman.
3. Appointment and removal.
- 3A. Salary.
4. Administrative provisions.
5. Powers of investigation.
6. Conditions of investigation.
7. Legal remedies.
8. Complaints.
9. Procedure of investigation.
10. Power to obtain information.
11. Secrecy of information.
12. Obstruction and contempt.
13. Reports.
14. Communications privileged.
15. Regulations.
16. Expenses.

FIRST SCHEDULE

SECOND SCHEDULE

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

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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 investi-
gation.

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.

- 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.



COMPLAINT FORM

ID Number

1. NAME
2. ADDRESS
3. TELEPHONE NUMBER (*Home*) (*Work*)
4. *What Ministry, Department or Statutory Board are you complaining against?*
.....
5. *Have you complained to the Ministry, Department or Statutory Board about this matter?*
- If so, on what date did you complain?
 - Was your complaint in writing?
 - Have you received a written reply?
6. *What are you complaining about?*

(If there is not enough space please continue on a separate sheet)

Signature: Date:

Form to be returned to:

The Office of the Ombudsman
2nd Floor, Trident House,
Lower Broad Street,
BRIDGETOWN.

For official use only





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