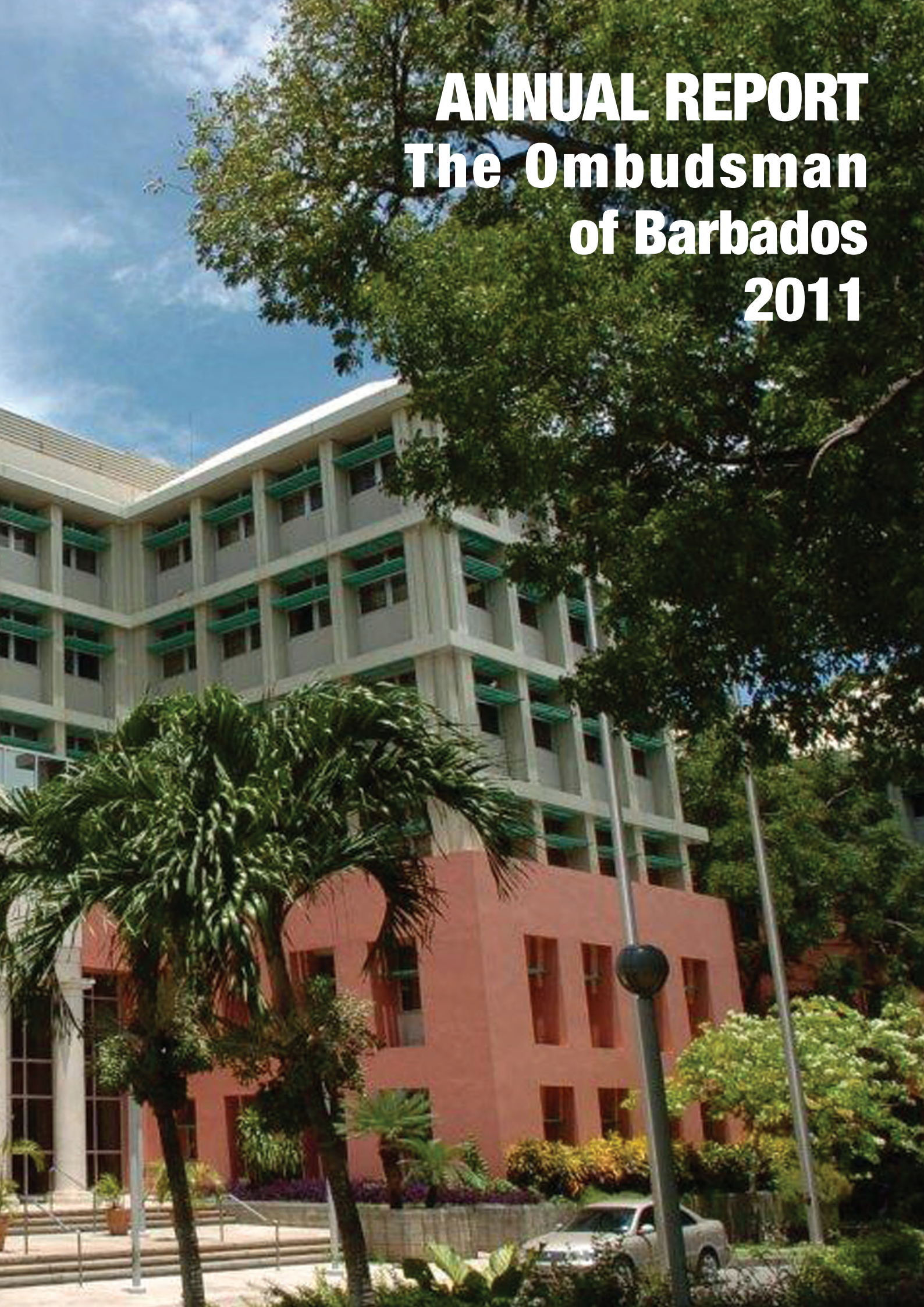


# **ANNUAL REPORT** **The Ombudsman** **of Barbados** **2011**







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## LETTER OF TRANSMITTAL

### ***His Honour The President***

The Senate  
Parliament Buildings  
Bridgetown

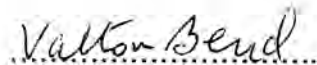
### ***His Honour The Speaker***

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 1, 2011 to December 31, 2011 to facilitate its 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,



**VALTON D. BEND**  
Ombudsman

## 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 FROM 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 2011

During the calendar year 2011 one hundred and twenty-two (122) complaints were made to the Ombudsman for Barbados by members of the Barbadian public. It should be noted that of these, no complaints were resolved in the year under review

Fig. 1

### The agencies which complaints were made to this Office in 2011

Departments	Complaints
Attorney General's Chambers	1
Barbados Agricultural Management & Dev.	1
Barbados Community College	2
Barbados Defence Force	2
Barbados Postal Service	2
Barbados Water Authority	6
Caves of Barbados	1
Court Process Office	2
Customs Department	2
Geriatric Hospital	1
Her Majesty's Prisons	5
Immigration Department	2
Inland Revenue Department	1
Licensing Authority	1
Ministry of Agriculture & Rural Development	2
Ministry of Education	3
Ministry of Family, Culture, Sports and Youth	1
Ministry of Foreign Affairs and Foreign Trade	1
Ministry of Health	5
Ministry of Housing, Lands & the Environment	3
Ministry of International Transportation	1
Ministry of Public Works & Transport	4
Ministry of Renewable Energy & Energy Conservation	1
National Housing Corporation	4
National Insurance Department	4
National Library Service	1
Sanitation Service Authority	2
Supervisor of Insurance	1
Town and Country Development Planning Office	1
Urban Development Commission	3
Office of the Public Counsel	1
Outside Jurisdiction	27
Personnel Administration Division	14
Police Department	4
Psychiatric Hospital	5
Registration Department	3
Rural Development Commission	1
Total	<u>122</u>

**Fig 2** shows an analysis of the complaints in numbers received in the year 2011 compared with those for the years 2004 through to 2010:

**Fig 2**

<b>Year</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Complaints Brought forward	132	186	153	101	28	61	107	
Complaints received	226	255	189	141	148	337	218	122
Withdrawn	0	3	5	2	2	6	---	----
Outside Jurisdiction	6	4	6	3	8	47	58	27
Resolved	166	281	230	209	105	238	-----	-----
Outstanding	186	153	101	28	61	107	-----	-----

## **ANALYSIS OF COMPLAINTS**

One hundred and twenty-two (122) complaints were made to this Office during the year 2011. These complaints were received from one hundred and twenty-two complainants.

No gender based analysis was made of the 122 complaints made during 2011.

A more detailed analysis will now be made of those seven (7) public service agencies against which the greatest number of complaints were made to this Office. This is being done to determine whether or not there are any conclusions to be made from an analysis of this data.

## **BARBADOS WATER AUTHORITY**

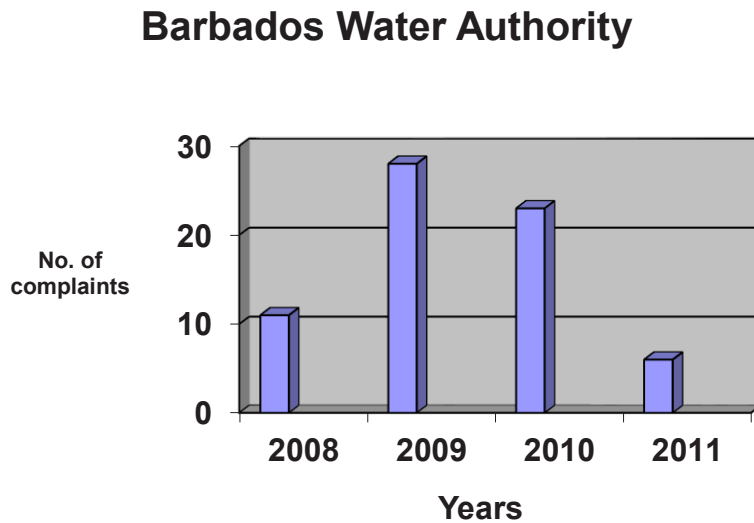
During the calendar year 2011 six (6) members of the public made complaints to this Office against the management of the Barbados Water Authority. Fig. 3 shows the number of complaints which have been made against this agency between the period 2008 and 2011.

<b>Year</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
No. of complaints	11	28	23	6



Fig. 3:

This may be seen below graphically in the chart below:



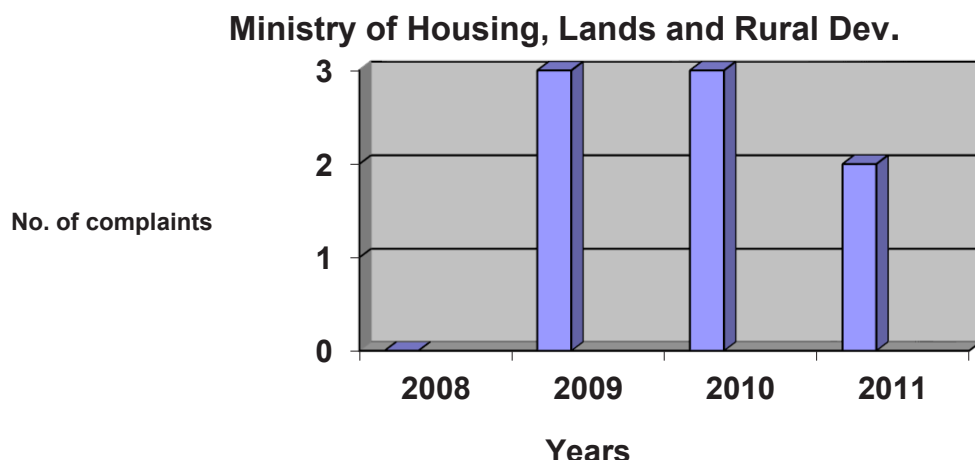
#### **MINISTRY OF HOUSING, LANDS AND RURAL DEVELOPMENT**

Two (2) complaints were made to this Office during the year 2011 against the management of the Ministry of Housing, Lands and Rural Development.. This was one less than the three (3) which were made against the agency in 2010.

Fig.4- below graphically shows the complaints which have been made against this agency for the years 2008 to 2011.

Year	2008	2009	2010	2011
No. of complaints	0	3	3	2

This may be seen below graphically in the chart below:



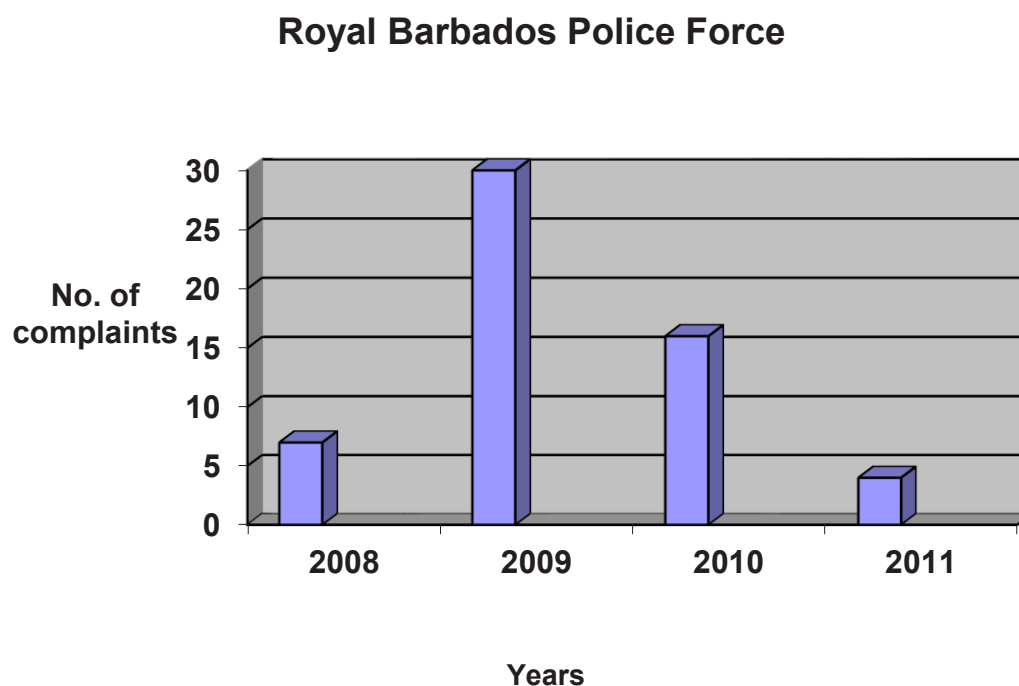
## ROYAL BARBADOS POLICE FORCE

Four (4) complaints were made to this Office during the year 2011 against the Royal Barbados Police Force. This was twelve complaints less than the sixteen (16) which had been made against the agency in the year 2010

Fig. 5 below graphically shows the complaints which have been made against this agency for the years 2008 to 2011.

Year	2008	2009	2010	2011
No. of complaints	7	30	16	4

This may be seen below graphically in the chart below:



## **NATIONAL INSURANCE DEPARTMENT**

The National Insurance Department manages the Social Security payments for all Barbadians in respect of: –

Old Age Non-Contributory Pension  
Old Age Contributory Pension  
Sickness Benefits  
Survivors Benefits  
Maternity Benefits  
Funeral Grants  
Unemployment Benefits  
Invalidity Benefits  
Employment Injury Benefits  
Disablement Benefits  
Duplication of Benefits  
Prescribed Degree of Disablement

This Office also plays a key function in the management of the Severance Payments to all those persons who qualify for such payments.

### **National Insurance Department**

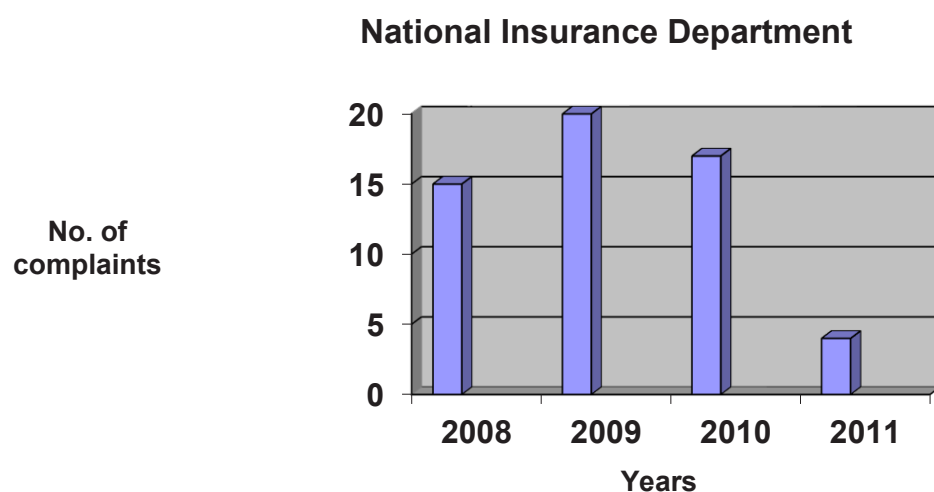
During the calendar year 2011 a total of four (4) complaints were made to this Office against the management of the National Insurance Department from members of the public. This number of complaints is thirteen less than the seventeen (17) which were made against the agency in the year 2010

Fig. 6 below shows a breakdown of the numbers of complaints received against the management of this agency for the years 2008 to 2011.

<b>Year</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>No. of complaints</b>	<b>15</b>	<b>20</b>	<b>17</b>	<b>4</b>



This may be seen below graphically in the chart below:



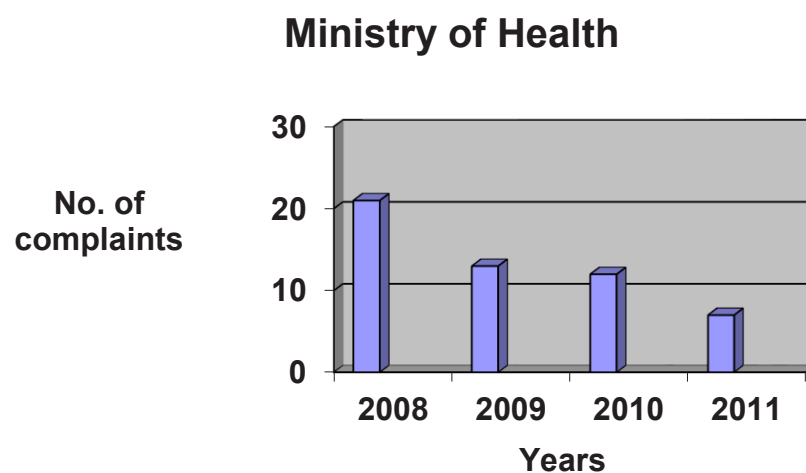
## MINISTRY OF HEALTH

During the year 2011 seven (7) complaints were made to this Office against the Ministry of Health. This was five complaints less than the twelve (12) which had been made against the agency in the year 2010.

Fig. 7 below graphically shows the complaints which have been made against this agency for the years 2008 to 2011.

Year	2008	2009	2010	2011
No. of complaints	21	13	12	7

This may be seen below graphically in the chart below:



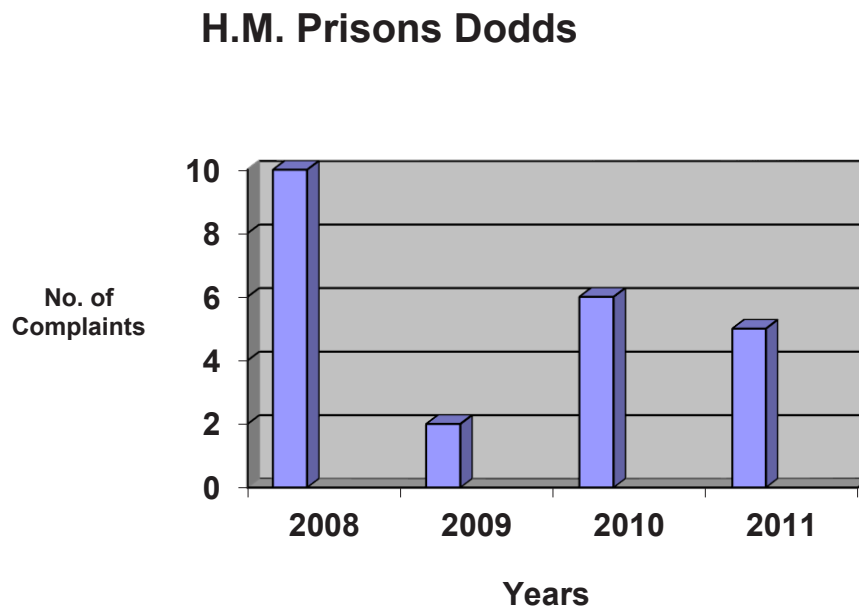
## H. M. PRISONS DODDS

During the year 2011 five (5) complaints were made to this Office against Her Majesty's Prisons, Dodds. This was one complaint less than the six ( 6) which had been made against the agency in the year 2010..

Fig. 8. below graphically shows the complaints which have been made against this agency for the years 2008 to 2011

Year	2008	2009	2010	2011
No. of complaints	10	2	6	5

This may be seen below graphically in the chart below:

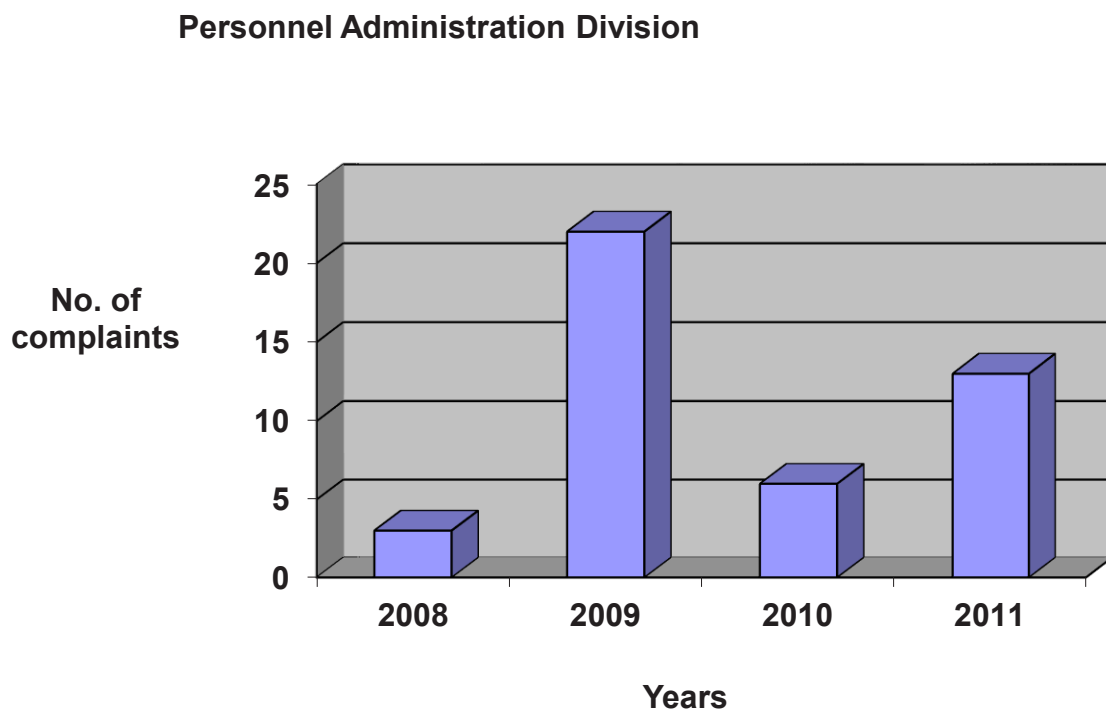


## PERSONNEL ADMINISTRATION DIVISION

During the year 2011 thirteen (13) complaints were made to this Office against The Personnel Administration Division. This was seven complaint more than the six ( 6) which had been made against the agency in the year 2010..

Fig. : 9 below graphically shows the complaints which have been made against this agency for the years 2008 to 2011

Year	2008	2009	2010	2011
No. of complaints	3	22	6	13





## **REGIONAL WORKSHOP(S)**

The Ombudsman attended the Regional Workshop on the Establishment of National Human Rights Institutions in Compliance with the Paris Principles in the Caribbean Region which was held in Port of Spain, Trinidad & Tobago, March 21 – 23, 2011. The invitation to attend the workshop was extended by Dr. Purna Sen, then Head of the Human Rights Unit of the Commonwealth Secretariat. The main objective of the Regional Workshop was to develop and strengthen the national human rights protection system in the Caribbean States with the long term goal of developing the establishment of Paris Principles compliant human rights institutions within the region.

### **KEY OUTCOMES OF MEETING:**

1. Consensus on need to establish Human Rights Institute in each territory.
2. These institutions would give efficacy to the Paris Principals.
3. Sensitizing participants to the need for reporting on Human Rights.

## **LOCAL WORKSHOP(S)**

1. The Office of the Ombudsman attended the Commonwealth Seminar on Universal Periodic Review Follow-up and Implementation in the Caribbean held at the Savannah Hotel, Christ Church, Barbados June 28-29, 2011. This seminar was hosted by the Commonwealth Secretariat in collaboration with the Ministry of Foreign Affairs and Foreign Trade. On that occasion, it was stated by Senator the Hon. Maxine McClean, Minister of Foreign Affairs and Foreign Trade at the official opening ceremony that it was Government's intention to upgrade the Office of the Ombudsman to function as Barbados' National Human Rights Institution.

National Human Rights Institutions (NHRIs) generally refer to bodies established by governments to aid in the promotion and protection of human rights within their respective jurisdictions through, for example, handling complaints, conducting research, advocacy and educational programmes. In some countries, the Constitution has provided for the establishment of a NHRI and in other cases, such institutions are created by

legislation or decree. The common guiding principle of National Human Rights Institutions is that they are founded on the Paris Principles.

The Paris Principles are a set of core minimum recommendations adopted by the United Nations General Assembly relating to the status and functioning of National Institutions for the protection and promotion of human rights. These Principles outline the following:

1. A national institution shall be vested with competence to protect and promote human rights.
2. **A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.**
3. A national institution shall, inter alia, have responsibility to submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them.
4. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
  - (a) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

- (b) Any situation of violation of human rights which it decides to take up;
- (c) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
- (d) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;
- (e) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- (f) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- (g) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- (h) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
- (i) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- (j) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

At this Seminar, the Commonwealth Secretariat and the Office of the United Nations High Commissioner for Human Rights both expressed a willingness to offer support to the transition programme through the provision of funding and technical assistance.

It was noted that although a human rights mandate is not mentioned explicitly in the Ombudsman Act of Barbados, human rights issues are dealt with by the Ombudsman from time to time resulting from complaints made, for example, by the public against the police and/or prison authorities. It is important to note, however, that many cases involving maladministration are indeed concerned with the abuse of human rights. The Office of the Ombudsman therefore may be regarded as a particular type of human rights institution.

## **RECOMMENDATIONS**

It was noted during the Seminar that while the Ombudsman had power under the present Act to certify an offence to the High Court for necessary action, the Ombudsman would need to be provided with further judicial authority so as to allow for the more effective execution of his powers and functions. Achievement of the human rights mandate by the Office of the Ombudsman would therefore necessitate the following actions being undertaken:

- a) Legislative amendments would have to be made to the Ombudsman Act, Laws of Barbados CAP. 8A giving the Office a human rights mandate and specifying its sphere of competence in such matters;
- b) Legislative amendments would have to be made to the Ombudsman Act, Laws of Barbados CAP. 8A giving the Ombudsman specific powers similar to that of a Judge of the Supreme Court in respect of the attendance and examination of witnesses, the production of documents and the ability to for contempt. In England, the Ombudsman is seized of the status of Judge and operates with full judicial power. The Ombudsman in the Cayman Islands has been sworn in as a Judge in England;
- c) An addition to the present staff compliment by two persons, one Accountant and possibly, one Administrative Officer II.



2. The Office of the Ombudsman in collaboration with UN Women hosted a workshop in Barbados on “Strengthening the Response of the Administration of Justice for Victims of Gender-based Violence” to strengthen functional cooperation and partnership for the purpose of improving the institutional response to persons who report being a victim/survivor of gender-based violence. this workshop was held July 25-26, 2011 at Divi Hotel, St. Lawrence , Christ Church in Barbados.

Participants included representatives from the Caribbean Ombudsman Association throughout the region, UN Women, the Royal Barbados Police Force, Civil Society, including women’s NGOs, and human rights activists.

At the workshop, it was stated by participants that because of the sensitive nature of sexual violence and relationship violence, many victims/survivors do not report the crimes. A victim/survivor’s reluctance to report persists partly due to the myths that erroneously place blame and responsibility for the crime on the victim/survivor rather than the perpetrator. Victims/survivors of gender-based violence also carry feelings of guilt and shame, fear others will blame them and minimize their trauma.

It was agreed that the assembled parties would work within their individual States to reaffirm its international human right commitments, including those under the Convention on the Elimination of All Forms of Discrimination against Women as well as the Belem do Para Convention. They also have an important role on monitoring state action to ensure compliance with national and international human rights norms.

In this context, the Offices of the Ombudsman, the Police and civil society organizations have agreed to develop common strategies to ensure victim responsiveness in cases of violence against women.

Out of this workshop, the following principles were developed to promote fair and equitable treatment of victims:

- Victims of crime should be treated with courtesy, compassion and respect
- The privacy of victims should be considered and respected to the greatest extent possible.

- All reasonable measures should be taken to minimize inconvenience to victims.
- The safety and security of victims should be considered at all stages of the criminal justice process and appropriate measures should be taken when necessary to protect victims from intimidation and retaliation.
- Information should be provided to victims about the criminal justice system and the victim's role and opportunities to participate in criminal justice processes.
- Victims should be given information, in accordance with prevailing law, policies, and procedures, about the status of the investigation; the scheduling, progress and final outcome of the proceedings; and the status of the offender in the correctional system.
- Information should be provided to victims about available victim assistance services, other programs and assistance available to them.
- The views, concerns and representations of victims are an important consideration in criminal justice processes and should be considered in accordance with prevailing law, policies and procedures.
- The needs, concerns and diversity of victims should be considered in the development and delivery of programs and services, and in related education and training.
- Information should be provided to victims about available options to raise their concerns when they believe that these principles have not been followed.

Concerning the role of the Office of the Ombudsman, participants were informed that the Ombudsman was an independent officer with responsibility to investigate complaints of maladministration on the part of public authorities, and that the Ombudsman's office had three principal functions, which were:

- Resolving complaints about the decision making practices of public authorities
- Improving the standard of public administration through investigations initiated by the Ombudsman about significant public sector issues; making suggestions and recommendations to improve public administration; and
- Providing advice and guidance to public authorities.

## **SAMPLE COMPLAINTS**

1. A complaint was made to this office against the Barbados Water Authority on behalf of a ninety-six (96) year old immobile pensioner. The complaint was the pensioner received a high water bill, which reflected a high water usage way above that which is used by the pensioner who lives alone.

The property was checked for leaks and none was found. A form was also filled out to have the water meter checked, however no one came to look at it.

This office wrote the agency and explained the case as made out by the complainant and invited its comments.

The agency responded that the Welfare Department paid the outstanding water bill and reconnection fees on behalf of the pensioner.

2. A complainant lodged a complaint to this office against the Barbados Water Authority. Her complaint was that her interim water bill is usually thirty-two dollars (\$32.00) per month. However, she noticed that there had been a sharp increase in the water bill.

She made inquiries to the Barbados Water Authority as concerning the increase and was told that the water meter needed to be regularized.

A short while after, the complainant called the office and stated that her case had been resolved

- 3, An officer who has retired from the Public Service made a complaint to this office against the Personnel Administration. Her complaint was that she had applied for pension in 2000 and had forwarded all the relevant information to the Personnel Administration Division to which she did not received a reply.

She stated that she even made calls to the Division and was told that the file had been forwarded to the Attorney General's Office.

This office wrote the relevant agency and explained the matter as made out by the complainant and invited its comments.

A short time after, the agency responded that the matter had been closed since the complainant had received her pension benefits.

- 4 A complaint was made to this office against the National Insurance Department. Her complaint was that she worked for a company from 1978 to 2008 when it burn down. She went back to work in early 2009 and finished in December 2009.

However, when the building was reopened, she was not given the opportunity to work there, since she was over the age of 65 years. Neither did she received any benefits.

This office contacted the National Insurance Department and investigations revealed that the complainant was indeed receiving benefits at the time of her retirement and therefore was not entitled to any other benefits from the National Insurance Department.



## **APPENDIX 1**

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### **Appendix**

### **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.

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#### **FIRST SCHEDULE**

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#### **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 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.

**Appendix - Cont'd**

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.

## Appendix – Cont'd

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.

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.

Complaints.

(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.

## **Appendix – Cont'd**

(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.

Power to  
obtain in-  
formation.

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.

(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;

**Appendix - Contd**

- (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.

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 Secrecy of information.

- (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.

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. Obstruction and contempt.

(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.



## Appendix - Cont'd

### Reports.

13.(1) The Ombudsman shall make a report to each 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

- (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.

## **Appendix – Cont'd**

(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.

### **14. For the purposes of the law of defamation**

Com-  
munications  
privileged.

- (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.

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.

Regula-  
tions.

(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.

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## **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.

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## Appendix – Concl'd

1988-5.

### SECOND SCHEDULE

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.
- Cap. 189. 3. Action taken by the Attorney General under the *Extradition Act*.
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.
- Cap. 159. 5. The commencement or conduct of civil or criminal proceeding before any court of law in Barbados, or proceedings under the *Defence Act*.
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**

**For official use only**











