

ANNUAL REPORT OF THE



**OMBUDSMAN
OF BARBADOS
2020 - 2022**

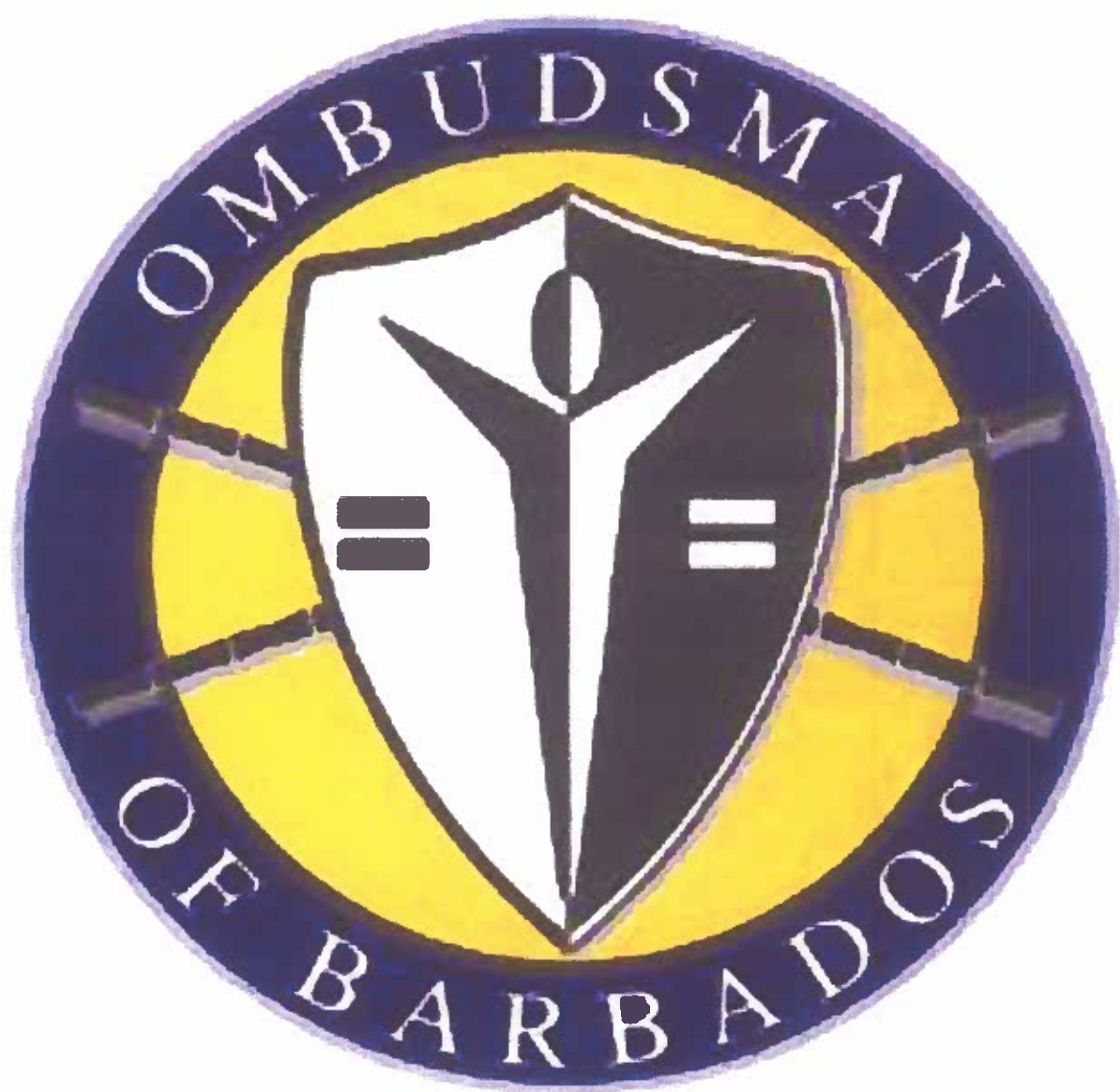


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LETTER OF TRANSMITTAL

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 years January 1, 2020 to December 31, 2020, January 1, 2021 to December 31, 2021 and January 1, 2022 to December 31, 2022 to facilitate it's laying before Parliament. The activities for the three-year period 2020, 2021 and 2022 were compiled into one document owing to the massive reduction in the number of visits and complaints made to the Office over said time period due primarily to the restricted movement associated with the Covid - 19 pandemic. The Report is made pursuant to Section 13(6) of the Ombudsman Act, Cap. 8A of the Laws of Barbados.

Yours faithfully,



.....
NIGEL L. TAYLOR
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 who are 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.

THE MESSAGE OF THE OMBUDSMAN

The mandate of the Office of the Ombudsman is 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 or inadequate.

The role of the Ombudsman is both investigatory and advisory. In consequence of his investigations, the Ombudsman can make recommendations to Government departments and authorities aimed at the resolution of complaints and improvements in the delivery of public services.

The Office of the Ombudsman has a long history of protecting the interests of the Barbadian people and visitors alike. The protection of individual rights is at the core of its legal existence. In the same vein, its institutional memory is informed by how well it adapts to change, responds to challenges, and embraces innovation and creative thought. The Office is a non-political, independent, and impartial oversight institution.

I take this opportunity to express sincere gratitude to all those individuals, organisations and institutions which have rendered support to this Office so that it may provide quality service to the citizens of Barbados, affording the Office the opportunity to hold a key position in the vanguard of citizen's rights. This Office is in deep gratitude to those who have in the past, and who continue to respond to our call to recalibrate the standards of the services which this Office provides as well as the quality of our time-bound transactions into a more streamlined and efficient set of systems and procedures.

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

Dr. Nigel Taylor
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 the 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 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 Government 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 make investigation (s) by the Ombudsman desirable in the public interest, he so does.

The main functions of the Ombudsman include: -

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

OVERVIEW

During the calendar years 2020, 2021 and 2022, there was a drastic reduction in the number of visits and complaints made to the Ombudsman for Barbados by members of the Barbadian public. This reduction was in no small way due to the onset of the Covid-19 pandemic which saw lockdowns, an acute focus on physical distancing and a request where possible to remain at, and work from home. Hence, it was decided to compile the activities of the office for the years 2020, 2021 and 2022 into one document.

COVID-19 PANDEMIC

During the year 2020, Barbados was subjected to the following:-

- The declaration of a public health emergency;
- Curfews on selected days whereby persons were confined to their places of residence during curfew hours;
- There was restricted movement during the day and the practice of physical distancing of six feet between persons in public spaces was introduced.

During the COVID-19 Public Health Emergency, those agencies which were considered Essential Services were given permission to continue operation. These included:-

- Royal Barbados Police Force
- Barbados Defence Force
- Barbados Fire Service
- Barbados Prison Service
- Care Givers e.g. nurses, home helpers but NOT domestic workers
- Collection, storage, purification and distribution of water for public use
- Customs Department
- Disaster Management Services
- Hospitals, Clinics and Pharmacies
- Media and Broadcasting Services
- Medical and Paramedical Professions
- Operation of airport and seaports
- Removal, handling or burial of deceased persons or disposal of dead animals

- Sanitation Service Authority for the collection, storage, treatment, and disposal of sewage, garbage or refuse
- Security Services (Private)
- Staff of pharmaceutical agencies
- Telecommunications providers
- Transport Services – aircraft, ship, motor vehicle and PSVs
- Utility companies (water, electricity)

Selected Government Ministries, Departments and Statutory Corporations were allowed to be operated by a limited staff. Where possible, staff members were required to work from home. The government Ministries, Departments and Statutory Corporations which were allowed limited operation included:

- Barbados Agricultural Development and Marketing Corporation
- Barbados Agricultural Management Company
- Barbados Immigration Department
- Barbados Licensing Authority
- Barbados Meteorological Services
- Barbados Postal Service
- Barbados Revenue Authority
- Barbados Statistical Department
- Barbados Tourism Marketing Inc.
- Cabinet Office
- Central Bank of Barbados
- Central Purchasing
- Child Care Board
- Civil Aviation Department
- Commerce Department in the Ministry of Small Business, Entrepreneurship and Commerce
- Government Health Laboratories
- Ministry of Foreign Affairs and Foreign Trade
- Ministry of Information, Broadcasting and Public Affairs
- Ministry of Innovation, Science and Smart Technology
- Ministry of the Public Service
- National Assistance Board
- National Disabilities Unit

- National Insurance Department
- Office of the Attorney General, Registrar of the Supreme Court, and Department of Public Prosecutions
- Ministry of Agriculture's Plant Quarantine and Veterinary Services (work as needed)
- Prime Minister's Office
- Rural Development Commission
- The Treasury
- Urban Development Commission
- Welfare Department

Businesses in the private sector were also impacted with closure. However, as obtained in the Public Sector, certain Private Sector entities were allowed to operate on specified days during specified hours.

There were, however, persons who were able to communicate with the Office concerning their areas of concern via telephone on those days when members of staff of this Office were allowed to physically attend work.

COMPLAINTS FOR THE YEAR 2020

During the calendar year 2020, fifteen (15) complaints were recorded in the Office of the Ombudsman by members of the Barbadian public. The majority of these complaints came via the telephone and, for the most part, these complaints were against the National Insurance Department. The Government, however, communicated its policy as to unemployment benefits claimed during this period to the wider populace which resulted in a huge reduction in the number of calls received by the Office. It should be noted that of these fifteen (15) complaints, two were resolved in the year under review.

SAMPLE COMPLAINTS FOR THE YEAR 2020

Listed below are two (2) sample complaints:-

1. A complainant alleged that as a consequence of some procedural errors on the part of members of the Royal Barbados Police Force, they were issued with serious but fictitious charges and have been on remand for a period in excess of three years awaiting trial.

The complainant further indicated that a plea deal had been made which was not later honoured by the authorities.

The complainant had however retained the services of an Attorney-at-Law in the matter which rendered this Office unable to intercede on behalf of the complainant.

2. A complainant indicated that he was experiencing difficulty receiving payment from the Central Bank of Barbados in respect of matured Government Savings Bonds.

The agency was contacted and the matter was subsequently resolved.

COMPLAINTS FOR THE YEAR 2021

During the year 2021, Barbados remained gripped in the vice of the Covid-19 pandemic. Interaction between individuals continued to be at the barest minimum. This office continued to remotely look into the complaints which could be advanced via the telephone. Visits by and to complainants did not resume during the year 2021, again due to the Covid-19 pandemic protocols and ensuing restrictions on movement. Most of the year was spent conducting extensive research on issues which directly affect Public Servants, like for example, the issue of overdrawn salaries.

Consideration was also given to the issue of internal governance to investigate whether there existed any weaknesses in the current financial security systems in the office which would allow for exploitation. There are a number of techniques used by those less given to fiscal prudence. Asset misappropriation fraud constitutes one of those techniques.

Asset Misappropriation Fraud is fraud involving theft or misuse of company assets. It remains the most common type of fraud although it is not as expensive as the less frequent but much more costly Financial Statement Fraud. It may occur in every type of organization from nonprofit to for profit, from private businesses to those administered by government, and from small to large organisations. Unfortunately, it can occur repeatedly unless steps are taken to prevent it from happening and the controls put in place for so doing are maintained.

Corruption and Bribery is another technique which also plagues many an institution and may take a variety of forms within an organization. Factors may include such items as vendors paying “gratuities” to buyers to secure sales, buyers paying premiums to vendors because of a buyer’s personal relationships, payments to “shell companies” for soft services that are not actually rendered, payment terms being “structured” to avoid proper approval signatures, or the same vendor may appear in the payables system in numerous ways as a method of making duplicate payments. Schemes may also involve preferred service providers who are willing to pay kickbacks to individuals for the company’s business.

The issue of Payment Fraud is another such technique which was also researched. Payment Fraud includes:-

- Vendor fraud schemes
- Creating false customer accounts to generate false payments
- Altering payee details on cheques and payables
- Self-authorizing payments
- Colluding with others to process false claims for benefits or payments

In the case of a company, a duty to investigate indications of irregular accounting practices can arise from statutes, regulations, contracts, or common law duties. For example, a corporation’s directors and officers owe a common law duty of care to their organization and shareholders, therefore, when suspicions of fraud arise, it might be necessary for them to commission an investigation to ensure that they have full knowledge of such issues affecting the company.

In the case of a Government entity, recourse for irregular accounting practices can be had through the intervention of the Auditor General’s Department. That department is equipped with personnel who are qualified to conduct fraud examinations.

Fraud examination is a methodology of resolving signs or allegations of fraud from inception to disposition. The fraud examination methodology establishes a uniform, legal process for resolving signs or allegations of fraud on a timely basis. It provides that fraud examinations

should move in a linear order, from the general to the specific, gradually focusing on the perpetrator through an analysis of evidence.

The facts and circumstances of this office, for example, its organizational structure and general economic conditions, were examined in order to decipher whether any of our current practices match with any of the identified financial infelicities and the formulation of methods to tailor appropriate antifraud programs and controls accordingly. This entire exercise was occasioned by the fact that there was time available to carry out such forensics due to the gross reduction in complainants occasioned by the Covid-19 pandemic.

The Office of the Ombudsman is such an institution whereby the risks of fraud or any type of corruption would extend beyond the loss of the organization's financial assets. Such an occurrence would have the potential of damaging the Office's public reputation. Hence, it was felt that internal introspection should be carried out and a resulting plan of action crafted before the onset of any financial wrongdoing.

A preliminary internal inspection into this Office's practices at the time under inspection revealed that the process for preserving relevant records and evidence, including emails, handwritten notes, files, calendar entries, cheques, financial statements, and related documents was deficient. Access to these documents had not been carefully evaluated. Preliminary investigation indicated that there was too much dependency on the integrity of the individual.

Due to this perceived shortcoming, it was thought that the Office of the Auditor General should be invited to conduct the regular audit as well as to provide advice on any corrective measures which should be implemented to combat any shortcomings which might have appeared in our current accounting procedures as a result of the audit.

COMPLAINTS FOR THE YEAR 2022

During the year 2022, Barbados experienced a slight resumption in normalcy in respect of the movement of persons. Though interaction between individuals continued to be at a minimum, it was not as acute as during the previous year 2021. Visits to homes and workplaces of complainants however did not resume during the year 2022. Most of the complaints received

during the year 2022 came via telephone, but persons did venture out to complain in person as there appeared to be a significant reduction in the fear of contracting Covid-19 stemming from personal interaction.

There were two main entities against which the majority of the complaints received for the year under review were made, and those were the Barbados Police Service and the Ministry of Health. Contact was made with the relevant departments in respect of the complaints received.

The bulk of the effort during the year 2022 was devoted to attempting to reduce the backlog of cases brought forward from previous years.

ENGAGEMENT WITH THE AUDITOR GENERAL'S DEPARTMENT

The Auditor General acceded to the invitation of the previous year to conduct the regular audit within the Office of the Ombudsman as well as advising of any shortcomings which were discovered in our current accounting procedures.

The Auditor General's Department sought to carry out an audit of the accounting records of the Office of the Ombudsman to investigate the handling and management or mismanagement of Government's moneys during the Financial Years 2021/22 and 2022/23 up to July 31, 2022.

On the first occasion that officers of the Audit Department visited the Office of the Ombudsman for the purpose of collecting the information for audit purposes, which was sometime during the month of April 2022, their effort was stalled by an officer from the Ombudsman's office who claimed on that occasion to be using the requested information.

The Auditor General subsequently indicated via communications with the Permanent Secretary, Prime Minister's Office that his officers would be visiting the Office of the Ombudsman at a specified time and date seeking to gain custody of any books, accounts, vouchers, payment requests, papers or any information in whatever form for the purpose of conducting an audit. This information was communicated to the Office of the Ombudsman.

On the date and time as indicated by the Auditor General, access to the requested information was again denied due to the locking away of said documentation by the officer who was absent from work on the date and time at issue, and who was the holder of the key to the room in which the requested information was stored.

Entry to the locked room was, however, gained and the officers from the Auditor General's Department were able to access the said office which housed the sought-after information. After an in-depth search, the team from the Auditor General's Department reported being unable to find, inter alia, any information related to expenditure of the Office of the Ombudsman for the period April 2021 to March 2022.

The Auditor General promised a detailed report of his investigative findings.

MEETINGS HELD

April 8, 2022 - Meeting with the Auditor General concerning issues within the Office of the Ombudsman.

June 8, 2022 - Meeting with members of the Criminal Investigations Department concerning issues within the Office of the Ombudsman.

August 03, 2022 - Meeting with the Permanent Secretary, Prime Minister's Office concerning issues within the Office of the Ombudsman.

August 12, 2022 - Meeting with the Permanent Secretary, Prime Minister's Office concerning issues within the Office of the Ombudsman.

August 15, 2022 - Meeting with Minister Ryan Straughn, Prime Minister's Office concerning issues within the Office of the Ombudsman.

August 17, 2022 - Meeting with the Permanent Secretary, Prime Minister's Office concerning issues within the Office of the Ombudsman.

August 26, 2022 - Meeting with Technical Officers from the Ministry of Housing concerning issues within the Office of the Ombudsman.

November 21, 2022 - Meeting with Inter-American Commission on Human Rights (IACHR) on the Inter-American human rights standards and the use of IACHR mechanisms.

The Inter-American Commission on Human Rights (IACHR) is aimed principally at promoting and protecting human rights in the Americas. It exercises these functions by visiting the countries, drawing up reports about the human rights situation of a given country or on a specific theme, adopting precautionary measures or requesting provisional measures with the Inter-American Court of Human Rights, processing and reviewing petitions and cases through the system of individual cases, providing technical cooperation, and carrying out promotional and training activities.

The IACHR asserted that participation of the public in the cycle of public policymaking would make it possible for the identification of problems, the drafting of the policy, its implementation and evaluation to incorporate the experiences, perspectives, and viewpoints of the persons and groups who are the holders of the rights that are being targeted for safeguarding.

In relation to its dealings with the Ombudsman's office in Barbados, the IACHR is seeking to promote the adoption of constitutional amendments, laws, public policy with a human rights approach, and judgments in line with inter-American norms and standards.

Decisions of the Inter-American Court were discussed at the meeting. It was stated that the Court had ruled that States have the responsibility of enshrining in their regulatory frameworks, and ensuring due implementation of, effective remedies and guarantees of due process of law with the competent authorities, which protect all persons under their jurisdiction against actions that violate their basic rights or that lead to the determination of the rights and obligations of these persons.

Pretrial detention was also highlighted as an area for concern. The IACHR concluded that the non-exceptional use of this measure was one of the most serious and widespread problems faced by Member States in respecting and guaranteeing the rights of persons deprived of

liberty. The IACHR advanced the position that the excessive use of pretrial detention was one of the clearest signs of failure in the justice administration system and constituted an unacceptable structural situation in democratic societies that strive to uphold the right of all citizens to be presumed innocent.

PROJECTED INITIATIVES FOR THE FINANCIAL YEAR 2022-2023

- Expansion of the public relations programme to educate the Barbadian public and at-risk groups about the role and functions of the Office of the Ombudsman. At least one targeted information, education and communication initiative on the functions of the Office of the Ombudsman in a changing world will focus on the human rights issues affecting the LGBT community. The Office of the Ombudsman has remained in active discussion with members of the LGBT community on issues of concern to that grouping.

A one-day Seminar was held with members of the LGBT Community on November 14, 2022 at the Savannah Hotel, Hastings, Christ Church. The concerns of the Community were raised at the Seminar.

- Initiating the necessary next steps towards broadening the scope and mandate of the Office of the Ombudsman to transform it to an 'A' status National Human Rights Institution.

The Office of the Ombudsman remains unaware of the current status of the legislation which would provide for the transformation of the current Office into an accredited National Human Rights Institution. There has however been no official indication of a change in the Government's trajectory on this issue and it is therefore still anticipated that the Office would be charged with this new role.

- The continued execution of an initiative targeted at Barbados' student population from the Secondary Schools. The Office of the Ombudsman in collaboration with UNICEF has in the pre-covid years hosted a number of one-day seminars focusing on Human Rights relating to children. This initiative involved participation amongst Barbados' student population whereby two (2) senior students from seventeen Secondary Schools were invited to participate in the exercise. These seminars were conducted at UNICEF Headquarters, UN House, Marine Gardens, Hastings, Christ Church.

It was felt that due to the climate around activities involving secondary school youths, Ombudsman initiatives involving participation by Barbados' student population should be postponed sine die.

- Revival of meaningful collaboration between the Office of the Ombudsman, Barbados, the Caribbean Ombudsman Association (CAROA) and the International Ombudsman Institute (IOI).

The IACHR conducted an introductory training module on the Inter-American human rights standards and mechanisms on November 21st, 2022. Following this introductory training session, the IACHR proposed to set up a Permanent Roundtable Dialogue for members of CAROA as well as with National Human Rights Institutions (NHRIs) in the region, to facilitate the identification and exchange of best practices on human rights issues in the sub-region, with the aim of encouraging institutional strengthening and regional interaction.

RETIREMENT

Mr. Valton Bend, Ombudsman of Barbados since the year 2009, demitted office during the month of July 2022. The role of Ombudsman was performed by Dr. Michael Sabazan, Investigations Officer for the remainder of the year.

1 L.R.O. 1995

Ombudsman

CAP. 8A

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.

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



OMB 1

ID Number

- Signature _____ Date _____

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

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