

# **ANNUAL REPORT**

## **The Ombudsman of Barbados 2012**





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## LETTER OF TRANSMITTAL

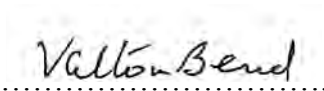
His Honour The President  
The Senate  
Parliament Buildings  
Bridgetown

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, 2012 to December 31, 2012 to facilitate it's laying before Parliament. The Report is made pursuant to Section 13(6) of the Ombudsman Act, Cap. 8A of the Laws of Barbados.

Yours faithfully,



**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 OF THE OMBUDSMAN**

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

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

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

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

**VALTON D. BEND**  
Ombudsman



## **HISTORICAL BACKGROUND**

The Office of the Ombudsman for Barbados was established in 1987 in spite of the fact that the legislation had been enacted some six years earlier. The Ombudsman's Office was established to provide a safeguard against maladministration and to protect its rights and interests of citizens. The Ombudsman approach is not new, since the redressing or resolving of complaints and or grievances of the people resulting from illegal or unfair administrative practices has long been the practice in this country. This fact may be best explained by an examination of many items of local legislation e.g. the National Insurance and Social Security Act and the regulations made pursuant to this 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 2012

During the calendar year 2012 fifty-eight (58) 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 2012

<u>Departments</u>	<u>Complaints</u>
Barbados Defence Force	1
Barbados Port Authority	1
Barbados Water Authority	11
Court Process Office	3
Her Majesty's Prisons	7
Immigration Department	2
Inland Revenue Department	2
Labour Department	1
Ministry of Education, Youth Affairs & Sports	2
Ministry of Foreign Affairs and Foreign Trade	1
Ministry of Health	3
Ministry of Housing, Lands & the Environment	1
Ministry of Public Works & Transport	1
National Insurance Department	3
Outside Jurisdiction	8
Personnel Administration Division	2
Police Department	5
Prime Minister's Office	1
Solicitor General's Office	1
Treasury	1
Total	58

**Fig 2**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Complaints Brought forward	186	153	101	28	61	107		
Complaints received	255	189	141	148	337	218	122	58
Withdrawn	3	5	2	2	6	---	---	---
Outside Jurisdiction	4	6	3	8	47	58	27	8
Resolved	281	230	209	105	238	---	---	---
Outstanding	153	101	28	61	107	---	---	---

**Fig 2** shows an analysis of the complaints in numbers received in the year 2011 compared with those for the years 2005 through to 2012.

### **BARBADOS WATER AUTHORITY**

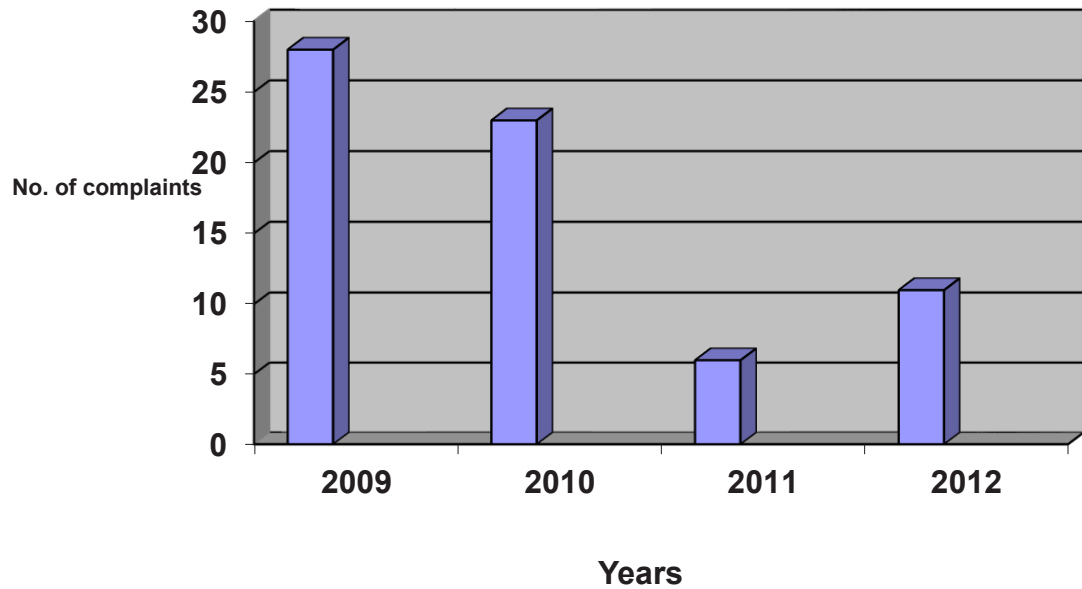
During the calendar year 2012 eleven (11) members of the public made complaints to this Office against the management of the Barbados Water Authority. Fig. 4 shows the number of complaints which have been made against this agency between the period for the years 2009 and 2012.

**Fig. 4**

<b>Year</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
No. of complaints	28	23	6	11

This may be seen below graphically in the chart below:

### Barbados Water Authority



### NATIONAL HOUSING CORPORATION

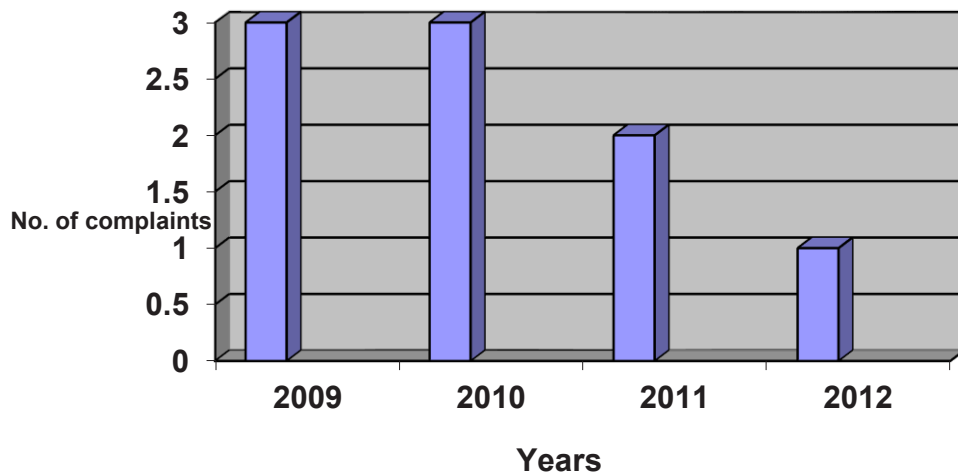
One (1) complaint was made to this Office during the year 2012 against the management of the National Housing Corporation. This was one less than the two (2) which were made against the agency in 2011.

Fig. 5 below graphically shows the complaints which have been made against this agency for the years 2009 to 2012.

Year	2009	2010	2011	2012
No. of complaints	3	3	2	1

This may be seen below graphically in the chart below.

### National Housing Corporation



### ROYAL BARBADOS POLICE FORCE

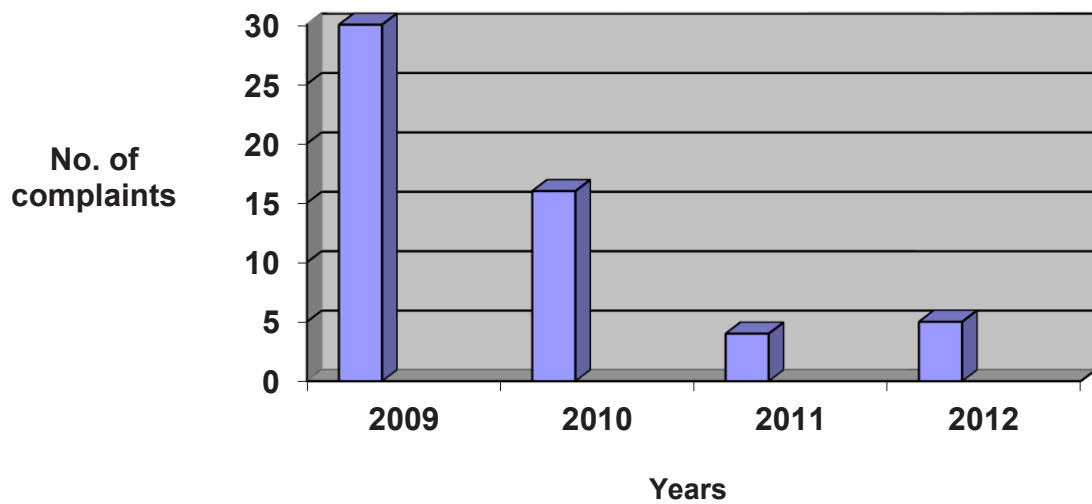
Five (5) complaints were made to this Office during the year 2012 against the Royal Barbados Police Force. This was one complaint more than the four (4) which had been made against the agency in the year 2011.

Fig. 6 below graphically shows the complaints which have been made against this agency for the years 2009 to 2012.

Year	2009	2010	2011	2012
No. of complaints	30	16	4	5

This may be seen below graphically in the chart below:

### Royal Barbados Police Force



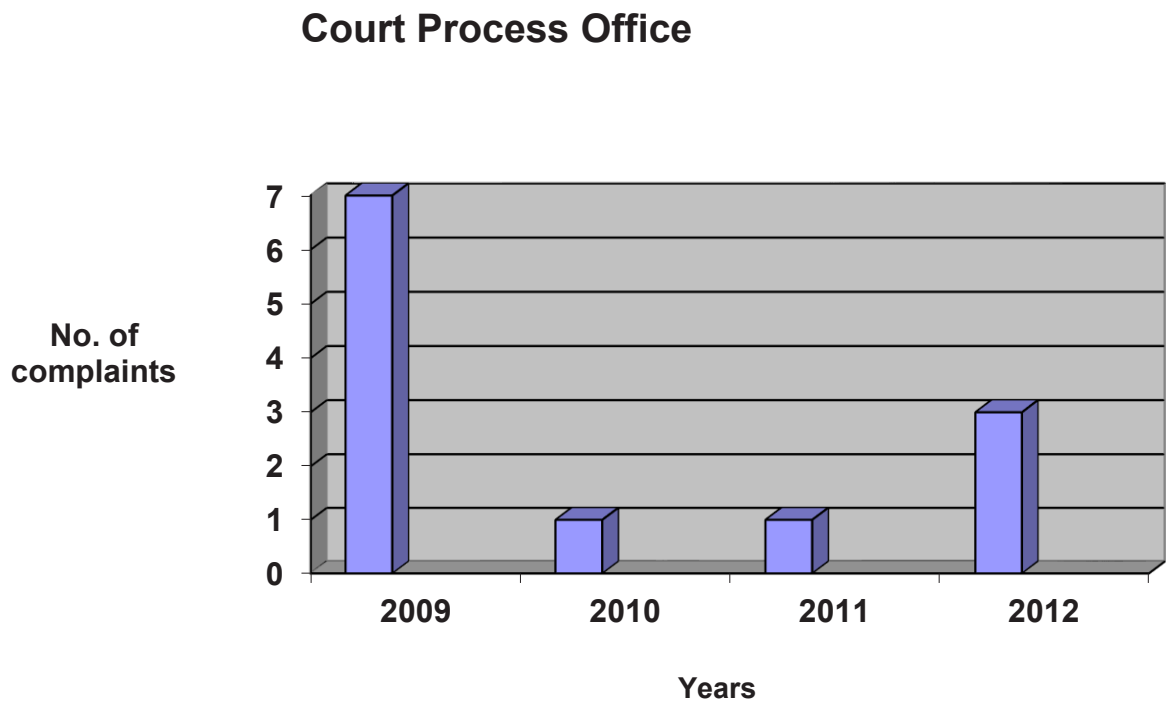
### COURT PROCESS OFFICE

During the year 2012 three (3) complaints were made to this Office against the Court Process Office. This was two complaints more than the one (1) which had been made against the agency in the year 2011.

Fig. 7 below graphically shows the complaints which have been made against this agency for the years 2009 to 2012.

Year	2009	2010	2011	2012
No. of complaints	7	1	1	3

This may be seen below graphically in the chart below



## **H.M. PRISONS DODDS**

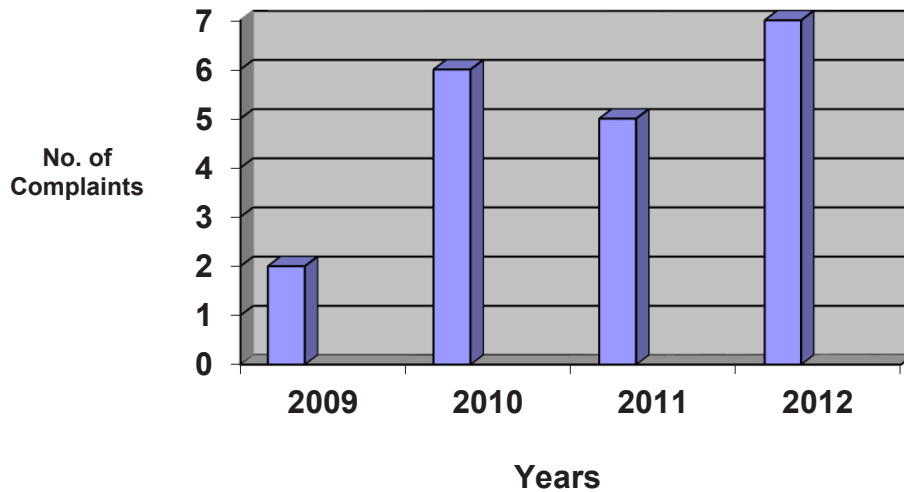
During the year 2012 seven (7) complaints were made to this Office against Her Majesty’s Prisons, Dodds. This was two complaint more than the five (5) which had been made against the agency in the year 2011.

Fig. 8 below graphically shows the complaints which have been made against this agency for the years 2009 to 2012

Year	2009	2010	2011	2012
No. of complaints	2	6	5	7

This may be seen below graphically in the chart below:

### H.M. Prisons Dodds



### IMMIGRATION DEPARTMENT

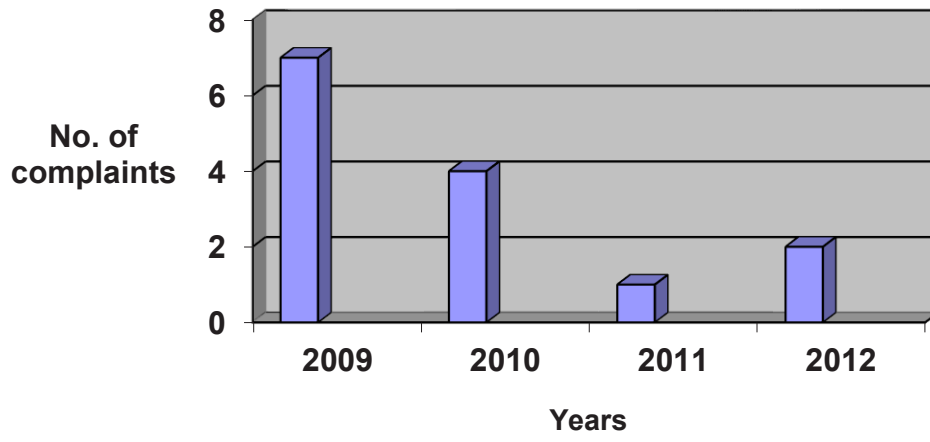
During the year 2012 two (2) complaints were made to this Office against The Immigration Department. This was one complaint more than the one (1) which had been made against the agency in the year 2011.

Fig.9 below graphically shows the complaints which have been made against this agency for the years 2009 to 2012.

Year	2009	2010	2011	2012
No. of complaints	7	4	1	2



## Immigration Department



## **Report on Effects of Electromagnetic Radiation in Offices**

Mr. Ronald S. Kennedy, former Telecommunications Inspector with the Barbados Telecommunications Unit, reported to this Office that he was in receipt of reports from persons who, in his professional opinion, had been disadvantaged by the effects of what could possibly be Electromagnetic Radiation. He explained that he had been requested under the provisions of the Telecommunications Act 2001-36, sections 75 and 76, to investigate the possibility of harmful levels of Electromagnetic Radiation that might be emitting from equipment within Departments in the Public Service as well as the Private Sector.

The Minister responsible for Telecommunications, through the Telecommunications Unit, has the responsibility of ensuring that all Radio Frequency (RF) emissions are at a safe level and, therefore, would not endanger the health and safety of the general population of Barbados. Devices such as cell phones, two-way radios, radio and TV broadcast transmitters, communications transmitters and radar transmitters emit RF energy and, therefore, are strictly regulated by the Telecommunications Unit to ensure that the radiation emanating from these transmissions are well within the safety limits.

Electromagnetic Fields (EMFs) are a type of low-frequency electromagnetic radiation emitted from virtually everything electrical and electronic in our modern world – power lines, transformers, electrical panels, building wiring, computers, lights, clocks, appliances, televisions, hairdryers, cell phones, cordless phones, microwave ovens, Wi-Fi, wireless routers and other devices, Tv/radio/cell towers, etc. In general, the term “EMF” is used to refer to the wide range electromagnetic frequencies slower than visible light, called “non-ionizing” radiation.

Electromagnetic interference (EMI) is a common problem in which electromagnetic fields (EMFs) interfere with the proper functioning of a complex electronic or computer system, or one of its components. These interference problems can range from an annoying jitter of the image on a TV or computer screen or disruptive static on a radio station, to very serious and costly problems with the loss of data, malfunction or complete shutdown of sensitive computer and electronic equipment. For example, there is great care taken in the

assignment of frequencies and power outputs for radio and television stations, cell towers and various wireless devices to make sure that the EMF signal from one station or device does not overlap and interfere with the EMF signal from another device or station. This is very important for the proper operation of all electronics and wireless devices.

While there still is great controversy, studies suggest that EMFs may be linked to a variety of health problems including leukemia, lymphoma, brain and nervous system cancers, melanoma, breast cancer, miscarriage, birth defects, Alzheimer's disease, Lou Gehrig's disease, depression and suicide. Anecdotally, EMFs have been associated with systems such as nausea, headache, fatigue, anxiety, dizziness, mental confusion, memory loss, sleep disturbance, itchy or burning skin sensations, and skin rashes. Anecdotally, there are increasing numbers of people who report "hypersensitivity" to electromagnetic fields (EMFs), similar to the way that some individuals have become "hypersensitive" to chemicals, often as the result of over-exposure in the past. Mr. Kennedy reported that within the Public Sector, there had been a number of cases where persons who had been positioned to operate for extended periods within their workplace in close proximity to devices which emit such radiation, had manifested some of the symptoms as outlined above.

### **Case #1**

On Thursday April 21, 2011 at 09:45 hrs a test was conducted in the office of Miss X at a Statutory Corporation to check the level of exposure to which she was exposed on a daily basis while performing her duties. It was discovered that high levels of radiation was being emitted from the Computer Monitor on her desk. An Excessive Magnetic Field Reading (EMFR) (in excess of thirty (30) milli gauss) was measured around the Server Cabinet located less than three (3) feet from where Ms. X was stationed. A level of three (3) mg is generally considered to be safe. This reading forced those conducting the test to abandon any further readings in that room as it was not safe for them to be exposed to that level of radiation. Ms. X worked in this environment for a continuous period of over eleven (11) years. She suffered mental confusion and memory loss.

## **Case #2**

At a Statutory Corporation, no test had been yet been conducted. However, Ms. Y worked in close proximity to a large photo copying machine for a period of over fifteen years. Ms. Y has presented with breast cancer. Ms. Y had to undergo a single mastectomy.

## **Case #3**

At a banking institution, Ms. Z who was working in a similar potentially dangerous situation for a period of years, suffered memory loss and a miscarriage.

## **Case #4**

A test was conducted in the office of Miss W at another banking institution. Ms. W who was working in a similar potentially dangerous situation for a period of years, suffered hair loss and scalp damage in what seemed at the time to be strange circumstances. Excessive Magnetic Field Readings (EMFR) were measured in the office where Ms. W was stationed.

## **Case #5**

Tests were conducted in the offices located in a major business entity in Christ Church. Excessive Magnetic Field Readings (EMFR) were measured in some of the offices there with affected persons experiencing a thickening of the blood. Some of the microwaves tested at that location had radiation levels above 30 mg and were therefore considered to be unsafe. The engineers therefore recommended that these units should no longer be used and should be discarded.

## **Recommendation**

It was recommended that all offices and control rooms be tested for existing radiation level

## **BROADENING THE MANDATE OF THE OFFICE OF THE OMBUDSMAN**

### **INTRODUCTION**

Barbados submitted its first national report under the Universal Periodic Review (UPR) process to the Human Rights Council in December 2008. The Review of Barbados was held at the fifth meeting, on 3 December 2008. Barbados' delegation was headed by the Honourable Christopher Sinckler, MP, in his then capacity as Minister for Social Care, Constituency Empowerment, Urban and Rural Development.

In response to the report, the Office of the High Commissioner for Human Rights (OHCHR) advised that Barbados should consider working towards the establishment of an independent National Human Rights Institution (NHRI) in accordance with international principles relating to the status of National Institutions known as the Paris Principles.

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 Government of Barbados accepted the recommendation of the OHCHR regarding the establishment of an independent National Human Rights Institution. It was stated by Senator the Hon. Maxine McClean, Minister of Foreign Affairs and Foreign Trade at the official opening of the Commonwealth Seminar on Universal Periodic Review Follow-up and Implementation in the Caribbean held in Barbados June 28-29, 2011 that it was Government's intention to upgrade the Office of the Ombudsman to function as Barbados' National Human Rights Institution.

The Ombudsman Institution has been in existence in the Caribbean sub-region for several years. The Constitution Review Commission in its March 1979 Report recommended the establishment of an Office of Ombudsman by an Act of parliament. The Ombudsman Act, No. 68 of 1980 was accordingly enacted and came into effect by Proclamation in January 1981. The Commission was of the view that an accountable and transparent government was an important milestone on the path to creating the most prosperous and productive economies, economies which allowed individuals, businesses, and governments to create the highest possible standard of living for the largest possible number of people.

## **THE ROLE OF THE OMBUDSMAN**

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

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.

Though not specifically stated in the Act, maladministration would include delay, bias, unfair discrimination, failure to give proper advice, discourtesy, harassment and failure to follow recognized procedures.

The Ombudsman has the power to investigate, criticize, recommend and publicize but not to reverse administrative action. Recommendations and decisions of the Ombudsman are made on the basis of illegality, breach of natural justice or due process, tardiness in reply or action and/or lack of information.

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.

Enshrined in most if not all of the constitutions is the protection of Fundamental Rights and Freedoms of the individual. Included in the Barbados Constitution Chapter II for example are the following provisions: -

- Protection of right to life
- Protection of right to personal liberty
- Protection from slavery and forced labour
- Protection from inhuman treatment
- Protection from deprivation of property
- Protection against arbitrary search or entry
- Provisions to secure protection of law
- Protection of freedom of conscience
- Protection of freedom of expression
- Protection of freedom of assembly and association
- Protection of freedom of movement
- Protection from discrimination on grounds of race, etc.
- Protection of persons detained under emergency laws.

Where there is an alleged breach of any of the provisions stated above, the person may apply to the High Court for redress.

Barbados is also a signatory to a number of United Nations Human Rights Conventions.

These include:-

1. International Convention on the Elimination of all forms of Racial Discrimination.
2. Convention on the Elimination of all forms of Discrimination against Women.
3. Convention on the rights of the Child (1989).

In some countries there is a Human Rights Commission as well as an Ombudsman. Others, such as Barbados, have an Ombudsman only. Our sub-region in the main has Ombudsmen,

also known as Parliamentary Commissioner (Saint Lucia) or Public Defender (Jamaica) and Protecteur du Citoyen in Haiti.

In considering the recommended system to be adopted, it would be necessary for States to consider the size of the country as well as financial constraints. For very small States such as Barbados, the ideal situation in the future might be the consideration of a “Hybrid” system where the same institution deals with both classical Human Rights issues and Maladministration.

In Namibia and Ghana, the Ombudsman has incorporated the portfolio human rights through the establishment of a National Human Rights Institution.

To date, the Courts have dealt mainly with alleged Human Rights abuses involving Freedom of Expression, Freedom of Assembly, land matters as well as the right to life. At present the Caribbean Court of Justice (CCJ) is the highest Court for some territories within the region, with jurisdiction over both Criminal and Civil matters.

### **The Role of the Ombudsman as a National Human Rights Institution**

Commenting on this role, Linda Reif in a paper entitled “Ombudsman and Human Rights Protection and Promotion in the Caribbean: Issues and strategies” quoted the United Nations as follows:

“Many long established offices of the Ombudsman do not concern themselves directly with human rights in so far as they relate to their principal function of overseeing fairness and legality in public administration. Others, particularly the more recently created offices, have been given specific human rights protection mandates, often in relation to rights set forth in national constitutions or other legislation.”

Moreover “while underlining the different core roles of the Ombudsman and human rights commission, the U.N has stated that distinctions are becoming more and more blurred as Ombudsman offices engage in a wider range of activities for the promotion and protection



of human rights. Increasingly, offices of the ombudsman are assuming responsibilities in the area of promoting human rights, particularly through educational activities and the development of information programmes.”

It is possible that administrative conduct may be illegal in that it has breached a human rights obligation of the state. A variety of government department and agency activities may have the potential to violate human rights – indeed of violating any one of a number of civil, political, economic, social and cultural rights obligations incumbent on the state. Discriminatory treatment on the basis of race, gender, interference into private affairs, improper police treatment, sub-standard treatment of prisoners, denial of certain social service benefits and ill treatment of children in state care are some of the examples of public administration that may be the subject of a jurisdictional complaint to the Ombudsman, and which involve the consideration whether the Government has violated its human rights obligations as translated into domestic law.

Human Rights complaints which have been made to this Office include:

1. A case in which a mother complained that her child was administered corporal punishment by her teacher in a public school.
2. A complaint that a policeman tortured the complainant while treating him as a suspect.
3. Other cases of police brutality.
4. Inhuman treatment in prison.
5. Tardiness of the Chief Marshall's Department in enforcing Court Orders in cases involving arrears of child maintenance.

The Office of the Ombudsman in Barbados and other members of the Caribbean Ombudsman Association (CAROA) have been represented at several meetings concerned with the promotion and protection of human rights. These include:

1. A conference held in Copenhagen on the Work and Co-operation of Ombudsman and National Human Rights Institutions sponsored by the European Union and hosted by the Danish Ministry of Foreign Affairs.

2. Commonwealth Meeting in Cambridge, England dealing with the Ombudsman and Human Rights. In this regard Ms. Lawrence Laurent represented CAROA on a task force which produced a booklet on Best Practices for Ombudsman and Human Rights Institutions.

CAROA was conceived at a meeting held in Antigua in 1998, sponsored by the Commonwealth Secretariat in collaboration with the International Ombudsman Institute. It was entitled Strengthening Ombudsman and Human Rights Institutions in the Commonwealth Small and Island States. The CAROA Constitution clearly reflects the importance placed on the human rights aspects of our work. It is to be noted that the Ombudsman of Barbados once held the position of President of CAROA.

## **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.

## **RECOMMENDATIONS**

While the Ombudsman has 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.

## **LISTED BELOW ARE FIVE (5) SAMPLE COMPLAINTS**

1. A complaint was made by an officer in the Public Service who stated that he was first appointed in the Public Service by the Governor-General to the temporary post with effect from September 16, 1974. Prior to the constitutional amendments of 1974, all appointments to temporary posts were made by the Governor-General. It should be noted that according to the said letter dated September 16, 1974, ***'CONFIRMATION MAY BE DELAYED AT THE CONVENIENCE OF THE CHIEF MEDICAL OFFICER WITHIN A MONTH OF THE DATE OF THIS LETTER'***.

There was no evidence that the Chief Medical Officer ever delayed that officer's confirmation.

By letter dated May 22, 1986, that officer was subsequently appointed to a post within the Public Service with effect from June 1, 1986. The penultimate paragraph of the letter states, in part:

**“I confirm that according to our records you have been employed continuously in a temporary capacity from September 16, 1974 to May 31, 1986”.**

By letter dated December 23, 2008, that officer wrote to the Chief Personnel Officer (CPO) seeking permission for early retirement from the Public Service on September 30, 2009 at age 55, opting for a gratuity and reduced pension.

The CPO contended that the letter of appointment by the Governor-General dated September 16, 1974 was NOT a valid appointment to the Public Service and responded by letter dated May 19, 2009 informing that the officer would become eligible for retiring awards upon reaching the age 60, in accordance with section 13A (1) and (2) of the Pensions Act Cap. 25.

Section 13A applies to persons who were first appointed to the Public Service after July 15, 1985. That section increased the retirement age from 55 early and 60 compulsory to 60 early and 65 compulsory. The CPO was relying on that section to say that the officer was eligible for retirement at age 60 because of regarding the 1986 appointment as the first appointment, refusing to acknowledge the 1974 appointment.

By letter dated January 24, 2011 the Workers Union working on behalf of the officer wrote to the Permanent Secretary, Ministry of the Civil Service seeking a ruling on the matter. There has been no response.

The officer was contending that, contrary to the opinion of the CPO, the letter of appointment by the Governor-General dated September 16, 1974 constituted a valid appointment to the Public Service and as such, rendered that officer eligible for early retirement on reaching the age of 55 years.

The officer subsequently decided to refer the matter to an Attorney-at-Law for further action.

2. A complaint was made to this office against the state-owned water company. The complainant stated that he received a letter from the Barbados Water Authority stating that he had owed six thousand and eight dollars and fifty-four cents (\$6,008.54) for water for the period June 2011 to June 2012.

He admitted that he owned a set of apartments. However, he said that the apartments were not fully tenanted during the period he was billed for and there were no leaks.

Information received from the Barbados Water Authority indicated that the charges were indeed for the period 2011-06-16 to 2012-06-15 during which time the meter had stopped registering and the account was billed for minimum charges.

This office later contacted the complainant and was informed that the situation was under control and that he was satisfied with the way things were going since he had received some satisfaction from the Barbados Water Authority.

3. A complaint was made to this office by a householder against the Barbados Water Authority. The complaint was that she had received a water bill for seven hundred and nine dollars and eighty-six cents (\$709.86) in November, 2012.

In December 2012, she received a water bill marked due for disconnection. When she enquired from the Barbados Water Authority why the bill was so high, she was told that there were leaks on the property. She checked and found none.

When this office contacted the complainant sometime afterwards, it was informed that the matter was closed. She had made an agreement with the Barbados Water Authority to pay the outstanding monies owed.

4. The Office of the Ombudsman received a complaint from a complainant who stated that on or about December 3, 2007 at approximately 8:30 a.m., work was being carried out by private contractors on behalf of the Ministry of Transport and Works on the stretch of highway known as Orange Hill in St. James. The complainant purported that as a result of the said work, depressions were left in the roadway on the aforementioned stretch of highway.

The complainant added that whilst driving along the said stretch of highway on the left and proper side in a section of road going uphill and around a corner, both tyres and rims on the left side of the vehicle became damaged in one of the depressions left unattended and without notice or any form of warning in the roadway. The complainant further stated that an Inspector with the Ministry who visited the scene had given the assurance that full compensation would be granted in respect of the incident. At the time of submitting the complaint, no settlement has been made.

When contacted by this office, the Ministry stated that the claim of the complainant had been statute barred as the incident had occurred as long ago as 2007.

5. The Office of the Ombudsman received a complaint from a complainant who stated that sometime during the period July to August 2011, a request had been made to the Accounts Department within the Prime Minister's Office to stop the remittance of monies from their salary to a local bank in respect of a commitment made with that entity.

The complainant stated that the Accounts Department within the Prime Minister's Office had continued to make the salary deductions to satisfy the aforementioned commitment despite multiple requests that such payments be stopped.



When contacted by this office, the PMO stated that permission from the bank to stop the payments would first have to be secured by the complainant as that was a conditionality, which PMO had undertaken with the bank in respect of the deductions from the complainant's salary.

**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 investigation.

(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

- (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.

Com-  
munications  
privileged.

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.

<b>For official use only</b>
.....
.....
.....









