



[L.S.]

I Assent,

J.B. Carlisle,
Governor-General.

11th August, 1994.

ANTIGUA AND BARBUDA

No. 5 of 1994

AN ACT to provide for an Ombudsman to investigate administrative decisions and acts of officers of the Government and Statutory bodies; and otherwise to give effect to section 66 of the Constitution and for other matters connected with or incidental to the foregoing.

[18th August, 1994]

ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Ombudsman Act, 1994 and comes into operation on such date as the Governor-General may by proclamation appoint. Short title.

2. In this Act — Interpretation.

"House" means the House of Representatives;

"Ombudsman" means an officer of Parliament appointed under section 66 of the Constitution;

"Statutory body" means any local government, commission, a body corporate established by an Act of Parliament and a company limited by liability of which the Government is the majority shareholder or any other body as may be prescribed by Parliament.

Appointment and terms and conditions of service of Ombudsman.

3. (1) The Ombudsman shall be appointed by resolutions of each House of Parliament.

(2) The terms and conditions of his service shall be specified in the resolution.

(3) The salary of the Ombudsman shall not be reduced while he is in office.

Disqualification.

4. A person shall not be qualified to be appointed as an Ombudsman if he has served as a **member** of Parliament for two consecutive terms or more **immediately** preceding the appointment.

Functions of Ombudsman.

5. (1) The functions of the Ombudsman is to investigate any complaint relating to any decision or recommendation made or any act done or omitted by any officer of the Government or Statutory body in any case in which a member of the public claims to be aggrieved, or appears to the Ombudsman to have sustained injustice as a result of the exercise of the administrative function of that officer or body.

(2) The Ombudsman may make any such investigation on a complaint made to him by any aggrieved person or by any member of Parliament to whom a complaint is made by any aggrieved person.

(3) The powers conferred upon the Ombudsman by this Act may be exercised notwithstanding any provision in any Act to the effect that any such decision, recommendation, act or omission is final, or that no appeal lies in respect thereof, or that no proceeding or decision of the officer or body whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called in question.

(4) Nothing in this Act empowers the Ombudsman to investigate any **complaint** relating to a decision, recommendation, act or omission of an officer or body —

- (a) in respect of which there is, under any Act, a right to appeal or objection, or a right to apply for a hearing or review, or a right to appeal on the merits of the case, to any court or to any tribunal constituted by or under any Act, until that right of appeal or objection or application has been exercised in the particular case, or until after time after the exercise of that right has **expired**;
- (b) in respect of which the person aggrieved has or had a remedy by way of proceedings in any court established under any Act;
- (c) in respect of any person acting as legal adviser to the Crown or acting as Counsel to the Crown in relation to any proceedings;
- (d) in respect of any other matter as is specified in the **Schedule.**

(5) If any question arises whether the Ombudsman has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the High Court for a declaratory order determining the question.

6. (1) All **complaints** to the Ombudsman and requests for investigation by him shall be made in writing. **Mode of complaint.**

(2) Notwithstanding anything provided by or under any written law, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the **Ombudsman** by the **person** for the time being in charge of the place where the writer is **detained**.

7. (1) Where the Ombudsman proposes to conduct an investigation he shall afford to the principal officer of the government department or division or statutory body concerned an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make the representations. **Procedure in respect of investigation.**

(2) Every such investigation shall be conducted in private.

(3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person is entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such person and in such manner, and make such inquiries as he thinks fit.

(4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or violation of a criminal offence on the part of any officer or employee of any government department or division or statutory body, the Ombudsman may refer the matter to the authority competent to take such disciplinary or other proceedings against him as may be appropriate.

(5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.

(6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person, out of moneys provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those that are for the time being prescribed for attendance in the High Court, so, however that the functions as are so prescribed and assigned to the Registrar of the High Court shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.

(7) For the purpose of this Act a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorised to represent him.

Evidence.

8. (1) The Ombudsman may from time to time require any officer, employee or member of any government department or division or statutory body who, in his opinion is able to give any information relating to any matter that is being investigated by the Ombudsman, to provide him with any such information, and to produce any documents or things which in the Ombudsman's opinion relate to any such matter and which may be in the possession or under the control of that person.

(2) The Ombudsman may summon before him and examine on oath —

- (a) any person who is an officer or employee or member of any government department or division or statutory body and who in the Ombudsman's opinion is able to give any relevant information;
- (b) any complainant; or
- (c) any other person who in the Ombudsman's opinion is able to give any relevant information,

and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury Act.

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(3) Subject to subsection (4) no person who is bound by the provisions of any written law, other than the **Official Secrets Act, 1911 to 1939** of the United Kingdom in so far as it forms part of the Laws of Antigua and Barbuda or any Act **replacing** the same, to **maintain** secrecy in relation to, or not disclose any matter, shall be required to supply any **information** to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or **non-disclosure**.

(4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.

(5) Except on the trial of any person for an offence under the Perjury Act in respect of his sworn testimony, or for an offence under section 22, no statement made or answer given by that or any person in the course of any inquiry by, or any proceedings before, the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

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(6) No person shall be liable to prosecution for an offence against the Official Secrets Act 1911 to 1939 of the United Kingdom, or any Act replacing the same, or any written law, other than this Act by reason of his compliance with any requirement of the Ombudsman under this section.

Disclosure of
certain matters not
to be required.

9. (1) Where the Attorney General certifies that the giving of any information or the answering of any question or the production of any document or paper or thing —

- (a) might prejudice the security, defence or international relations of Antigua and Barbuda (including **Antigua and Barbuda relations** with the **Government** of any other **country** or with any international **organisations**);
- (b) will involve the disclosure of the deliberations of Cabinet; or
- (c) will involve the disclosure of **proceedings** of Cabinet, or any committee of **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, as the case may be, the document or paper or thing to be produced.

(2) Subject to subsection (1), no rule of law which **authorises** or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall apply to **any** investigation by or **proceedings** before the Ombudsman.

Ombudsman may
refuse to investi-
gate.

10. (1) If, in the course of the investigation of any complaint within his **jurisdiction**, it appears to the Ombudsman —

- (a) that **under** the law or existing administrative practice there is an adequate remedy for the complainant, whether or not he has availed himself of it: or
- (b) that, having regard to all the circumstances of the case, any further investigation is unnecessary,

he may in his discretion refuse to investigate the matter further.

(2) Without limiting the generality of the powers conferred on the Ombudsman by this Act, the Ombudsman may in his discretion decide not to investigate, or, as the case may require, not to further investigate, any complaint if it relates to any decision, recommendation, act or omission of which the complainant has had knowledge for more than twelve months before the complaint is received by the Ombudsman, or, if in his opinion,

- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.

(3) In any case where the Ombudsman decides not to investigate or further investigate a complaint, he shall inform the complainant in writing of that decision, and may if he thinks fit state his reason therefor.

11. (1) This Act does not apply to any decision or **recommendation** made or any act done or omitted by any officer or body prior to the coming into force of this Act. Application of Act.

(2) Notwithstanding subsection (1) the Ombudsman may request a department, or a division of the Government or any Statutory body to re-examine any complaint which relates to a decision, recommendation, act or omission to which this Act does not apply but which in the opinion of the Ombudsman continues to affect any person adversely in his personal capacity.

(3) Any department, division of government or statutory body which is requested to re-examine any complaint mentioned in subsection (2) may submit a **report** of its findings to the Ombudsman **within** the time specified in the request.

12. (1) This section applies in every case where, after **making an investigation** under this Act, the Ombudsman is of the opinion that the decision, recommendation, act or omission which was the subject-matter of the investigation — Procedure after investigation.

- (a) appears to have been contrary to law;
- (b) was **unreasonable**, unjust, oppressive, or improperly discriminatory, or was in accordance with a rule of law or a provision of any Act or a practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory;
- (c) was based wholly or partly on a mistake of law or fact; or
- (d) was wrong.

(2) This section also applies in any case where the Ombudsman is of opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.

(3) If in any case to which this section applies the Ombudsman is of opinion —

- (a) that the **matter** should be referred to the appropriate authority for further consideration;
- (b) that the omission should **be rectified**;
- (c) that the decision or **recommendation should be cancelled or varied**;
- (d) that any practice on which the decision, recommendation, act or omission was based should be altered;
- (e) that any law on which the decision, recommendation, act or omission was based should be **reconsidered**;
- (f) that reasons should have been given for the decision or recommendation; or
- (g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons therefor, to the appropriate government department or division or statutory body, and may make such recommendations as he thinks fit and he may request the government department or division or statutory body to notify him, within a specified time, of the steps, if any, that it proposes to take to give effect to his recommendations and the Ombudsman shall also send a copy of his report and recommendations to the Minister concerned.

(4) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, shall, after considering the comments, if any, made by or on behalf of any government department or division or statutory body affected, send a copy of the report and recommendations to the Prime Minister, and if the Prime Minister fails to provide the Ombudsman with a satisfactory explanation within a reasonable time, the Ombudsman shall make a report to the Speaker who shall cause the report to be laid before the House of Representatives.

(5) The House shall examine the report and after hearing from the Prime Minister and the Minister concerned resolve to accept or reject the report.

(6) The Ombudsman shall attach to every report sent or made under subsection (4), a copy of any comments made by or on behalf of the government department or division or the statutory body concerned.

13. (1) Where, upon any investigation following a complaint, the Ombudsman makes a recommendation under section 12 (3) and no action which seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation, and make such comments on the matter as he thinks fit.

Complainant to be informed of result of investigation.

(2) The Ombudsman shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

14. No proceedings of the Ombudsman shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman is liable to be challenged, reviewed, quashed or called in question in any court.

Proceedings not to be questioned or to be subject to review.

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Proceedings
privileged.

15. (1) No proceedings lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman, for anything he may do or report or say in the course of the exercise of his functions under this Act, unless it is shown that he acted in bad faith.

(2) The Ombudsman, and any such person as aforesaid shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

(3) Anything said or any information supplied or any document or thing produced by any person in the course of any inquiry by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Power to visit
premises.

16. (1) For the purposes of this Act, the Ombudsman may at any time enter upon any premises occupied by any government department or division or statutory body and inspect the premises and conduct interviews or examine any document specifically relevant to the complaint.

(2) Before entering any premises under subsection (1), the Ombudsman shall notify the head of the government department or division or statutory body occupying the premises of his purpose.

(3) The Attorney General may by notice to the Ombudsman exclude the application of subsection (1), to any specified exercise of the powers mentioned in subsection (1), if in his opinion the application of subsection (1) might be prejudicial to the public interest.

(4) Where a notice is given under subsection (3) and in the opinion of the Ombudsman, it is necessary to take an action apparently prevented by the notice, the Ombudsman may apply to a judge of the High Court for an Order, setting aside the notice in respect of such action and, where the judge is satisfied that such action would not be prejudicial to the public interest, he may make the order.

Delegation of
powers.

17. (1) The Ombudsman may, in writing, delegate to any person holding any office under him, any of his powers under this

Act except the power of delegation under this section and the power to make report under this Act.

(2) Every delegation under this section is revocable at will and no such delegation prevents the exercise by the Ombudsman of any power so delegated.

(3) Every such delegation may be subject to such **restrictions** and conditions as the **Ombudsman** thinks fit.

(4) In the event that the Ombudsman, by whom any such delegation is made, ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until the delegation is revoked by a succeeding Ombudsman.

(5) Any person **purporting** to exercise any power of the Ombudsman by virtue of a delegation under this section shall, when required so to do, produce evidence of his authority to exercise the power.

18. (1) Subject to the approval of the Governor-General, the Ombudsman may employ such officers and other employees as the Ombudsman considers necessary for the efficient operation of his office, and may determine their salary and remuneration and terms and conditions of employment. **Staff.**

(2) Any officer employed under subsection (1), shall be a public officer subject to the laws relating to public servants.

19. The funds of the office of the Ombudsman shall be from moneys appropriated for the purpose by Parliament. **Funds.**

20. (1) Before commencing the duties of his office, the Ombudsman shall take the oath administered by the Speaker of the House of Representatives in accordance with section 66 (3) of the Constitution. **Oath and Secrecy of information.**

(2) Any person who performs the functions appertaining to the office of the Ombudsman or of any office of employment thereunder —

(a) shall regard as secret, classified and confidential all documents, information and things *which have been disclosed* to any such person in the execution of any

of the provisions of this Act, except that no disclosure made by any such person in proceedings for an offence under section 8 (2), or which the Ombudsman considers requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions or the provisions of section 7 (4) or section 22, shall be deemed inconsistent with any duty imposed by this paragraph;

- (b) shall not be called upon to give evidence in respect of, or produce any such documents, information or things in any proceedings, other than proceedings mentioned in the exception to paragraph (a).

Annual report.

21. (1) The Ombudsman shall report annually upon the affairs of his office to the President of the Senate and the Speaker of the House of Representatives, who shall respectively cause the report to be laid before each House of Parliament if it is in session or, if not, at the next ensuing session.

(2) The Ombudsman may, from time to time in the public interest, publish reports relating generally to the exercise of his functions or to a particular case or cases investigated by him, whether or not the matters to be dealt with in such reports may have been the subject of a report to Parliament.

Offences and penalties.

22. A person is liable on summary conviction to a fine of one thousand dollars or to imprisonment of six months who —

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;
- (b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or

- (d) in a manner inconsistent with his duty under section 20 (2) (a), deals with any documents, information or things mentioned in that paragraph.

23. The provisions of this Act are in **addition** to the provisions of any **other** Act or rule of law under which any remedy or right of appeal or objection **is** provided for any person, or any procedure is provided for **the** inquiry into or investigation of any matter, and nothing in this Act limits or affects any such remedy or right of appeal or objection or **procedure**.

Rights under Act do not affect other rights, etc.

24. (1) **The Ombudsman** may make Regulations for the proper carrying into effect of this Act, including, in particular, for **prescribing anything** required or authorised to be **prescribed**.

Regulations.

(2) The Ombudsman may make the contravention of any regulation made **under** this section an offence punishable by a **fine** of two thousand dollars or by imprisonment for six months or both such fine and imprisonment

(3) Any regulation made by the Ombudsman under this section shall be laid before the House as soon as may be after the making thereof and shall be subject to negative resolution.

SCHEDULE

(Section 5 (4))

Matters not subject to investigation by the Ombudsman

1. The exercise of the powers **conferred on** the Governor-General by **the Constitution**.
2. Any action taken by the public **officer** responsible for the extradition of any person.
3. Any action taken with respect to orders or directions to Antigua and Barbuda Defence Force or members thereof, or any proceedings under the Defence Act.
4. Any decision or action of the Public Service Commission relating to appointment, removal and disciplinary control of **any** person.
5. Any decision or action of the Public Service Board of Appeal.
6. Any decision or recommendation made or action taken by the Director of Public Prosecutions.

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7. Any decision or action of the Police Service Commission relating to the appointment, removal and disciplinary control of any person.

8. Any decision by the Supervisor of Elections in the exercise of his functions under the Constitution or any Act.

9. Any decision in respect of the functions of the Director of Audit under section 97 (2), (3), (4), (5) and (6) of the Constitution.

Passed the House of Representatives
this 23rd day of June, 1994.

Passed the Senate this 12th day of
July, 1994.

S.C. Benjamin,
Deputy Speaker.

M. Percival,
President.

S. Walker,
*Acting Clerk to the House of Represen-
tatives.*

S. Walker,
Acting Clerk to the Senate.

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