

Motto



To Champion the Rights of the
People to ensure that Justice always
prevails.



Mission Statement

The Office of the Ombudsman pledges with God's guidance to faithfully serve the Nation of Antigua and Barbuda by impartially and efficiently investigating complaints of members of the public against unjust administrative decisions of officers of Government or Statutory Bodies with a view to righting wrongs and so contribute to good governance and the further development of the democratic process in the Country.

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1. INTRODUCTION

I am pleased to be able to present this my ninth report since assuming office in 1995. I regard this as a duty which gives me the opportunity to inform Parliament and the people in general of my activities throughout the year. This is also an important means of publicizing our work. We will continue to use other methods such as periodic media reports, lectures and distribution of brochures to create public awareness. We are, however, acutely aware that our best advertisement will, to a large extent, be done by persons who have come to our office and have received satisfactory service. This is evidenced by the many complainants who have said that they came because someone who had previously received assistance from us had recommended our office as one that could assist in solving their problems. Clearly, it is impossible for us to solve all problems but when we cannot, we usually try to direct persons to those whom we consider to be in a position to do so.

2. SUMMARY OF ACTIVITIES

i. **Investigations of Complaints**

During the period under review, the Office received 88 written complaints and 114 verbal complaints making a total of 202 complaints, an overall decrease over the previous year. Of course, statistics do not tell the whole story as far as the workload was concerned in that some cases required more in-depth investigations than others. In any case the numbers dealt with were in keeping with what the present staff could have reasonably handled. As mentioned elsewhere we were without the services of our Investigations Officer during the year.

A summary of complaints received and analysis of the complaints made against various Ministries appear in Tables I and II respectively.

Table I
Complaints Received in 2003 Compared with 2002 and 2001

	2003	2002	2001
Number of written complaints	88	148	88
Number or verbal complaints	114	129	146
Total Number of complaints	202	277	234
Number of written complaints investigated	88	138	87
Number of written complaints awaiting processing	0	10	01
Number of cases completed	74	113	77
Number of written cases still under investigation	14	25	10
Number of written cases found justified	51	57	52

Table II
Analysis of Complaints Made Against Various Ministries and Departments

	2003	2002	2001
Ministry of Agriculture, Lands & Fisheries	08	14	10
Ministry of Education, Culture & Technology	05	10	08
Ministry of Finance	06	10	02
Ministry of Health	10	07	08
Ministry of Information	-	01	03
Ministry of Justice & Legal Affairs	30	35	16
Ministry of Labour	06	04	04
Ministry of Planning & Civil Service Affairs	-	-	03
Ministry of Public Utilities and Housing	09	15	08
Ministry of Public Works & Communications	03	02	04
Ministry of Trade	-	02	01
Prime Minister's Ministry	04	13	06
Ministry of Sports & Youth Development	-	02	-
Ministry of Tourism & The Environment	-	02	-
Miscellaneous	07	31	15
Total	88	148	88

ii. **Preparation of 2002 Annual Report**

The 2002 report was completed and sent to the Government Printers in August 2003. Unfortunately up to the end of the year printing had not yet been completed. The delay was reported to be due to pressure of work coupled with a lack of modern equipment resulting from a shortage of financial resources. This opportunity is taken to urge the responsible Ministry to do everything possible to upgrade the Printery so that it will be able to produce work in a timely manner and of a quality at least as good as that produced by private printeries. I did explore the possibility of getting the report printed privately but the cost was significantly more than our budget would allow.

It should be mentioned that we receive Annual Reports from countries all over the world. We, in turn, send reports to as many countries as possible.

iii. **Public Awareness Campaign**

We continued with our efforts to keep the work of the Ombudsman in the eye of the public. This was done by means of the following:-

- a) Regular distribution of our pamphlet entitled “Questions and Answers about the Ombudsman for Antigua and Barbuda” (Appendix I).
- b) Periodic press releases.
- c) A lecture to senior Forms of Christ the King High School.
- d) Lecture to Police Recruits at the Police Training School.
- e) Discussion with students at all levels who require information from time to time on the Role of the Ombudsman. In many instances this was required for preparation of research papers.
- f) Wide distribution of our annual reports.

We have also been in discussion with experts with a view to establishing an appropriate website where we can publish information on a regular basis.

iv. **Mediation / Conciliation**

I was particularly pleased to play a role along with two members of the Antigua Christian Council in getting members of the Electoral Commission to resume their work after it had virtually come to a standstill due to disagreements and/or misunderstandings. This had threatened the completion of a new Voters' List in preparation for the 2004 General Elections. There was clearly a need for ensuring the speedy continuation of the process and we were satisfied that our intervention facilitated discussion which enabled members to air their grievances and then arrive at an amicable solution. This certainly contributed to "the further development of the democratic process in the Country."

v. **Meetings Attended**

a) **Caribbean Ombudsman Association (CAROA)**

As president of CAROA, I chaired two meetings of the Executive Committee which were held in Antigua. They were primarily to plan the following:-

- (a) A workshop in St. Lucia in June/July, 2003 for Ombudsmen and the media.
- (b) A meeting in St. Kitts in January, 2004 for Caribbean countries who do not yet have an Ombudsman.
- (c) CAROA's Biennial Meeting to be held in Jamaica in May 2004.

During one of our Executive meetings we were pleased to be able to pay courtesy calls on His Excellency the Governor-General, The Hon. Prime Minister and the Hon. Speaker of the House of Representatives. Visits were also scheduled for the Hon. Leader of the Opposition but he was at the time out of the Country and the Hon. Attorney General but she was away from office attending an emergency

meeting at the scheduled time. There was appropriate media coverage by way of Press releases as well as a TV interview on the role of the Ombudsman.

I am happy to report that the Commonwealth Secretariat in London graciously funded the workshop in St. Lucia and agreed to sponsor those scheduled for 2004. This opportunity is taken to express our profound gratitude to the Secretariat for their substantial financial support and especially to Professor Victor Ayeni, Director of the Governance and Institutional Development Division for the lead role he has played.

b) **Workshop on Ombudsman and the Media**

This was held in St. Lucia June 29 to July 5 under the theme “Enhancing the Public Profile of the Ombudsman.” Antigua and Barbuda was represented by the Ombudsman, the Assistant Investigations Officer (Mrs. Gloria Samuel) and a representative from Observer Radio (Mr. Chelston Lee). It should be mentioned that an invitation was extended by me to all the media houses to attend a meeting to select a participant to the workshop but only Observer Radio responded. Representatives of Ombudsman’s offices and the media were also present from St. Lucia, Jamaica, Barbados, Guyana and Trinidad and Tobago. In addition, there were representatives from Nigeria, Botswana and the Commonwealth Secretariat in London. The main facilitator was Mr. Roy Saatchi an expert from the United Kingdom who had worked for several years at the B.B.C. in London. He was assisted by facilitators from Trinidad and Tobago, Barbados and St. Lucia. The Workshop was enhanced by visits to TV and Radio Stations as well as a Newspaper publishing house in St. Lucia.

c) **International Ombudsman Institute (IOI)**

I attended a Board of Directors Meeting in Quebec City, Canada during the period October 1-3, 2003. An important item on the Agenda was the Finalizing of Plans for the VIIIth International Meeting to be held in Quebec City in September, 2004.

It was confirmed that a Board Meeting would be held in Antigua and Barbuda in November, 2005. Every effort will be made to ensure that it is a resounding success.

d) **Meeting of Special Fund for Ombudsman and National Human Rights Institutions in Latin America and the Caribbean**

I attended two meetings of the Special Fund in Copenhagen, Denmark in June and December respectively in the capacity of Vice-Chairman. The Chairman is the Ombudsman of Venezuela. The Fund was established following a conference hosted by the Danish Government in 2001 on the Work and Cooperation of Ombudsman and National Human Rights Institutions of Europe, Latin America and the Caribbean with the aim of strengthening bi-regional cooperation within the area of democracy and human rights.

The Special Fund will be used to fund activities aimed at supporting the creation, consolidation and strengthening of Ombudsman and National Human Rights Institutions in Latin America and the Caribbean.

e) **Meetings on Reproductive Rights sponsored by the Inter-American Institute on Human Rights and on National Human Rights Institutions in the Americas**

These were both held in Jamaica March 18 – 23, 2003 and they proved to be quite informative. The first covered not only Reproductive Rights but

the Rights of Women generally.

In the case of the second meeting Caribbean Ombudsmen attended only as Observers as our offices do not exclusively or explicitly have a Human Rights mandate. We were, however, invited since it was recognized that some of our work involves aspects on Human Rights. One of the main aims of the Network is to establish, maintain, and promote a culture of respect for Human Rights in the region. A paper (Appendix II) was presented by me on “Ombudsman and Human Rights – Steps Forward to Embracing a Human Rights Mandate; Recent Developments.” The opportunity was also taken to hold a CAROA meeting with members present.

f) **OMBUDSNET**

A technical seminar on OMBUDSNET – An integrated information and communication system for Ombudsman offices in Latin America and the Caribbean – was held in Costa Rica April 2-4, 2003 under the auspices of the Inter-American Institute of Human Rights. It was attended by our Assistant Investigations Officer Mrs. Gloria Samuel. OMBUDSNET aims to strengthen the technical capacity of the Ombudsman’s offices in the region. As a result our office has been the beneficiary of a computer. CAROA’s office in St. Lucia also received a laptop computer under the programme. The opportunity is taken to publicly express our thanks and appreciation to the Inter – American Institute of Human Rights for their tangible assistance.

g) **United States Ombudsman Association (USOA)**

I attended this meeting which was held this year in Honolulu, Hawaii in my personal capacity as a member of the Association. Subscriptions are paid personally by me so as not to burden the Government Treasury.

Membership affords me the opportunity to interact periodically with fellow Ombudsmen from the U.S.A. and Canada. This has been of mutual benefit.

vi. **Staff Matters**

The staff list is shown in Appendix III.

We are at present in consultation with the Chief Establishment Officer with regard to the recruitment of a suitable officer to replace our Investigations Officer Mr. Haynesworth Buckley who is now attached to the Passport Section of the Ministry of Foreign Affairs. His departure meant that the workload of the staff particularly of the Assistant Investigations Officer and myself increased significantly. Let me take this opportunity to publicly thank Mr. Buckley for the efficient and dedicated service which he gave during his tenure of office.

This opportunity is also taken to sincerely thank all of the other Members of Staff for their hard work throughout the year. Their dedication to duty was commendable. Every effort will be made to bring the level up to the required strength so that cases will be handled with even greater speed and efficiency.

We will continue to seek training opportunities wherever possible locally as well as overseas.

vii. **Training**

- a) Our Senior Clerk Ms. Joycelyn Richards attended a training course in New Delhi, India on “Office Technologies and Internet Applications” November 9th – December 19th 2003. She also attended a Stress Management Workshop organized by the Training Division, Antigua.

- b) I attended a six-week Labour Management Relations Course organized by the Training Division, Antigua. It gave insights into present labour practices and on the whole proved to be quite informative. The course had been previously attended by our Investigations Officer and Assistant Investigations Officer.

viii. **Visit to Her Majesty's Prison**

The Assistant Investigations Officer and I paid a visit to Her Majesty's Prison and had discussions with the Superintendent and other members of staff as well as with some of the inmates who requested to see me. There was an improvement in some parts of the physical environment but there is still much room for further improvement. We will follow-up with more visits in due course.

ix. **Miscellaneous**

a) **Discussions with Commonwealth Observer Group**

As part of the monitoring process for the preparation of the 2004 General Elections, a Commonwealth Team visited Antigua and Barbuda. I was invited officially by the Group to participate in discussions with them pertaining to the registration process. Views were exchanged on the subject which contributed to a better understanding of what was involved.

b) **Talk**

I was pleased to be given the opportunity to give the feature address at the 33rd Annual Caribbean Public Service Association Conference held in Antigua under the theme "Putting Quality Public Services at the Centre of a Caribbean Vision." It was well received.

c) **Visitors**

The Office was honoured with a visit of Ms. Jean Sharpe, British High Commission Representative Antigua and Barbuda and Mr. Rob Holland Deputy British High Commissioner in Barbados. Useful discussions were held particularly with regard to possibilities for staff training in the future. It is anticipated that assistance will be forthcoming in due course.

d) **In Memoria**

On a sad note, the passing is recorded of Mr. Selwyn Vincent, late Parliamentary Commissioner (Ombudsman) of St. Lucia and Mr. Justice Vincent Meerabux, late Judge of the Supreme Court of Bermuda who drafted the CAROA Constitution. They both contributed significantly to Ombudsmanship in the region. I represented CAROA at Mr. Vincent's funeral in the capacity of President and paid tribute on CAROA's behalf.

3. SUMMARY OF SELECTED CASES

As is customary I include here a few of the typical cases received and dealt with during the year.

1. **CENTRAL HOUSING AND PLANNING AUTHORITY (C.H.A.P.A.)**

A person who obtained land from the Central Housing and Planning Authority (C.H.A.P.A.) produced a receipt which showed that final payment was made since February 1997. She said that she had been trying since that time to obtain a Certificate of Title but despite several enquiries she had not been able to have the process finalized. She mentioned that there was a debate as to whether the responsible authority should have been C.H.A.P.A. or the Ministry of Agriculture. C.H.A.P.A. accepted the responsibility but according to the complainant had been “dragging its feet.”

A complication, however, subsequently arose in that antennae had since been placed on the land by telecommunications companies and the complainant said that she no longer wished to build on the site. New lands have since been cleared and allocated but C.H.A.P.A. said that the lands were in the name of the Crown and would need to be transferred to C.H.A.P.A. They promised to solve the problem as soon as possible and inform the complainant accordingly.

I have had cause in previous reports to comment adversely on problems associated with the sale, purchase and transfer of Government lands and again call for the matter to be dealt with urgently in the interest of Government and citizens alike.

2. **DEVELOPMENT CONTROL AUTHORITY (D.C.A.)**

A complainant reported to me that the Development Control Authority (D.C.A.) had to knock down a fence which was protruding in a road next to her property. She said that after doing this, they left much garbage on the site which was an eye sore. She had since tried on several occasions to get D.C.A. to organize the removal of the garbage but although promises were made, these were not fulfilled. The matter was subsequently reported to the Public Works Department and also to the Central Board of Health. Still, there was no success. She felt compelled, therefore, to seek our intervention.

The site was visited and we observed the bad state in which the property was left. We contacted the Public Works Department and I am pleased to report that the premises were cleaned up to the satisfaction of the complainant within a few days. She subsequently telephoned us to express her thanks.

3. **MEDICAL BENEFITS SCHEME / HOLBERTON HOSPITAL**

An elderly person who is an out-patient at the Holberton Hospital attends clinics periodically. He said that he has had to purchase certain medical supplies when the Hospital and Medical Benefits pharmacies were out of stock. He complained that he had been having problems in dealing with the bureaucracy at these institutions in getting refunds for the purchases made even though his ailment is one of those approved for medical assistance.

I discussed the matter with the Hospital Administrator and the Superintendent of the Medical Benefits Board of Control who advised of the procedures for obtaining refunds. The information was passed on to the complainant who said that the situation had since improved.

4. **MINISTRY OF HEALTH**

An Antiguan and Barbudan citizen resident in England made a complaint against a “private service provider of nursing care services” following a return visit to Antigua.

She wrote on what she considered to be a matter of great concern - that of non accountability and monitoring of nursing care providers. She stated that she had come home specifically to visit an elderly relative in a nursing home to ensure that she was receiving the best care in relation to her state of health and circumstances. She said that she was dissatisfied and therefore made certain statements with regard to the relative’s general welfare and as a result she was asked by the proprietor not to return and/or enter the private institution in question. She was of the opinion that the ban was unjustified and could not be allowed to continue to the disadvantage of herself or others who happen to question the type and level of care provided to persons within these homes.

The complainant said that in order to obtain some redress, she did some research which led to the following findings:-

- “(a) Private Nursing Homes are not accountable to the Ministry of Health.
- (b) No form of monitoring exists in these homes.
- © These small service providers are neither regulated nor periodically assessed on the level or standard of care provided and delivered to persons within them” - persons who are vulnerable and at risk.

I was asked to take up the matter with the appropriate government Bodies on her behalf. I therefore wrote a letter to the Hon. Minister of Health and Social Improvement on the subject of “Regulation of Nursing Care Homes for the Elderly” and copied it to the Permanent Secretary of the said Ministry and the Commissioner of Health and Social Improvement.

In my correspondence (a) I attached a copy of the complainant's letter and (b) referred to a recent parliamentary debate on legislation dealing with Child Care. I wrote:-

“I agree with the complainant that there should be some monitoring and evaluation of providers (both Private and Public) of Nursing Care Services for such a vulnerable group as the elderly in our country. Standards should be set by legislation, a licensing regime should be in place and the Ministry of Health and Social Improvement should be in a position to monitor and regulate generally.

It should be pointed out that there exists in some countries a Long term Care Ombudsman specifically for dealing with the elderly. On the other hand in order to minimize costs consideration could be given to expanding the scope of the Ombudsman to assist in monitoring such facilities for the elderly and child care.

With respect to (b) above it was heartening to hear of legislation now being put in place to monitor child care. Unfortunately I have not so far seen a copy of the Bill which it is understood has been passed by the House of Representatives and will now go to the Senate. I would be willing to have an input if required in any discussion re proposals for monitoring Nursing Care Homes for the Elderly. Your early attention and reply would be greatly appreciated.”

The receipt of my letter was acknowledged verbally and a promise was made to draft appropriate legislation. I should also point out that I had also discussed the matter with the proprietor. She gave a slightly different version of the events from those reported by the complainant. All agreed, however, that there was need for legislation to allow for the proper monitoring of these homes in order to ensure the well-being of inmates.

I shall monitor the position with regard to enactment of the legislation.

5. **MINISTRY OF FOREIGN AFFAIRS**

A complaint was received from an Antiguan citizen who was born in the Dominican Republic but whose father and grandfather were citizens of Antigua and Barbuda by birth. He said that an application was submitted for his daughter's passport but he had been having much trouble in obtaining it.

He mentioned that with his application he had left a copy of relevant pages of his passport plus birth certificates of himself and his father. He mentioned that each time he had gone to check at the Passport Office a request was made by the authorities for other documents to be submitted. For example, he was asked to present new photographs and was told to return on a certain day. On return he was told that he should bring a copy of his father's passport. Later, the Passport Office requested his Baptismal Certificate. He submitted a copy of a certificate of his adult baptism. They however wanted his certificate of Infant baptism but he pointed out that he was not baptized as an infant. A request was therefore made for an affidavit from someone who knew him well to vouch that he was the son of his father. Subsequently he was advised that all the necessary documents were in order and that he should check back by a certain date. When he returned he was told that the documents appeared to be in order but that they were passed on to the Legal Consultant for verification. He since checked again but he still did not receive his daughter's passport. He came to see me in frustration.

One of the main problems appears to be the manner in which official information is requested from applicants in a piecemeal fashion. I am of the view that the Passport Office should, for each case, have a check list of the requirements so that everything could be requested at the same time instead of requesting something new each time the office is visited which has the effect of delaying the process. This would minimize the frustration experienced from time to time by applicants for citizenship. I must emphasize that I understand the need for thorough scrutiny of documentation provided to minimize the possibility of fraud especially bearing

in mind recent incidents. On the other hand, everything should be done to reduce the sort of frustration reported.

6. **MINISTRY OF AGRICULTURE, LANDS AND FISHERIES / MINISTRY OF HEALTH**

A complainant wrote to me in frustration concerning nuisance problems she had been experiencing at her residence.

She said that she purchased land since 1992 from the Ministry of Agriculture, Lands and Fisheries with the belief that it was a residential area. After a while, however, she noticed the establishment of a “Fowl farm” immediately east of her land. She realized the nuisance that this would cause and therefore brought the matter to the attention of the Permanent Secretary, Ministry of Agriculture by way of a letter which was also copied to the Lands Officer and the Chief Health Inspector.

In a second letter to the Permanent Secretary the complainant wrote:-

“In brief here is a description of what has become the norm of life. From since I have taken up residence 95% of my windows remain closed (all on the eastern/northern and southern sides), the window on the kitchen door is also kept closed. I have to run a fan in my bedroom constantly whenever I am at home. Turning off the fan at anytime only leaves me in great discomfort, not only from the heat, but the scent which lingers throughout the inside of what is supposed to be my proud accomplishment. I also burn scented candles on a regular basis (friends that stop by usually wonder aloud as to if I am working obeah), the traditions of the candles of course. Also I do not attempt to sit on my verandah, for in this case it is something for the brave. I love gardening (my stress reliever), but performing this childhood hobby for me is a task.

Having to stay outside for long periods is rather unbearable. I can go on and on.

There is another who hurts more in all of this. I have a son who is asthmatic and I have to limit the hours that he spends at our home not because I enjoy being at home alone but there are times when the atmosphere is too intense for him to stay there. This is the most painful of all.

My writing you once more is to get some sort of relief and justification from this situation. I have been informed in the past that the appropriate action will be taken by your department. Mr. Burleigh, it is nine months and I am asking that something be done, and of course it needs to be rather soon. Our health is at a greater risk now, we are now subjected to frequent burning of dead fowls and exposed manure which not only attracts flies but also any moisture in the atmosphere creates a horrible odour.

I have sought some advice on the matter from various sources and I do not think that I should have to turn this matter into a legal battle. I have come to the conclusion that my responsibility is to bring grievances to the ones who sold me the property. And the duty of the vendor is to solve those grievances by doing the right thing. The right thing is to enforce the land covenants, which in the long run should be of benefit to all concerned whether directly or indirectly.

I trust that my pleas will not go unattended and that an end to this situation will be forthcoming.”

In her letter to me the complainant emphasized the following:-

1. The farm is being operated in a residential area.

2. There is regular burning of fowl parts (inclusive of intestines) with resulting emission of offensive odours.
3. Faeces from the birds are not properly stored and treated.
4. An alternative plot of land in another area has been allocated to the proprietor of the farm but although it has been cleaned several times in order to accommodate her, she has not moved in spite of being given several deadlines.
5. The proprietor was told by the Chief Health Inspector in a meeting not to bring anymore new chickens to the present location but this has been breached.

It should be noted that (a) other residents in the area have been also complaining and (b) the Ministry of Agriculture has involved the Chief Veterinary Officer and the Town and Country Planner in the discussions. I visited the site and observed the problem first hand.

I intervened by writing to the Minister of Agriculture and copying the letter to all of the various officials involved stressing the need for urgent attention, bearing in mind the health and financial implications. To date I have received official replies from the Chief Health Inspector who has reiterated all of the actions so far taken but which have not led to a solution. He promised to continue his efforts.

7. **MINISTRY OF AGRICULTURE, LANDS AND FISHERIES**

A complainant wrote to this office concerning great difficulty she had been experiencing in obtaining a road leading to her house.

She said that she had been trying for some ten years but to no avail even though she had met with various officials in the Ministry of Agriculture, Lands and Fisheries and also with her constituency representative. Lack of a public access road meant that she had to trespass on her neighbours' private lands in order to get to and from her home. The neighbours have been raising objection and the

matter came to a head when a path which she normally used was fenced in.

I held discussions with all concerned - the neighbours, Chief Lands Officer, Chief Surveyor, Permanent Secretary, Ministry of Agriculture, Lands and Fisheries and the Constituency Representative. It became necessary for Government to acquire the portion of land needed to make a public road. The road was subsequently built to the satisfaction of the complainant as well as the neighbours.

8. **ANTIGUA PUBLIC UTILITIES AUTHORITY (A.P.U.A.)**

A complaint was received from a resident at Cades Bay pertaining to problems she was having in accessing a supply of electricity and water from the Antigua Public Utilities Authority (A.P.U.A.).

She reported that she purchased a plot of land over a year ago through the Ministry of Agriculture and it was her understanding that utility costs would have been met by that Ministry. When she tried to get the services from A.P.U.A., they insisted that the installation costs would have to be first met by Agriculture. She said that she was dealing with the Chief Lands Officer on the matter but up to the time of reporting it to this officer the problem remained the same, hence her request for my assistance.

The complainant was particularly concerned about the lack of electricity since the place was lonely and dark. She was therefore worried about the security of herself and family.

I wrote to solicit the assistance of A.P.U.A. and the Ministry and I am happy to report that electricity was supplied within 18 days. I expressed my thanks for the kind cooperation of all concerned.

9. **ANTIGUA PUBLIC UTILITIES AUTHORITY (A.P.U.A.)**

A complainant reported to me that he was concerned about high electricity bills which he had been receiving from the Antigua Public Utilities Authority (A.P.U.A.). He felt that his metre was being read incorrectly by the metre readers. I contacted the A.P.U.A. but the responsible Supervisor did not agree with the complainant's claim.

I decided to visit the site along with our Assistant Investigations Officer to check on the metre reading myself in order to determine the justification or otherwise of the complaint. My check revealed that the metre was being incorrectly read by the claimant and that my method was in keeping with that used by A.P.U.A. He understood after I was able to explain it to him.

I therefore had to rule that his complaint was unjustified.

10. **MINISTRY OF JUSTICE AND LEGAL AFFAIRS**

A complainant wrote to me with a concern that he has had a matter at the Industrial Court since 1999. There were various delays but eventually the hearing was completed in April 2003. The complainant subsequently wrote to me stating that he was having difficulty in obtaining the Court's decision.

I informed the chairman of the concerns expressed and was told that certain difficulties were being experienced with her computer and the general work load. Although she understood the concerns the complainant, she said, needed to wait. Unfortunately the report was still outstanding up to the time of writing this report.

It is necessary for me to point out that I refrain from commenting on procedures of the Courts since these are not within my jurisdiction. It is a well known maxim however, that "Justice delayed is Justice denied" and everything should be done

as far as possible to facilitate hearings and the submission of judgements in a timely manner.

4. GENERAL COMMENTS

1. **Child Maintenance Cases**

Our Office continues to receive several complaints concerning child maintenance arrears – some 14 cases this year. It is felt by some that the police and bailiffs could act more quickly in dealing with the delinquent fathers. On the other hand, the police have explained that they often experience a great deal of difficulty in finding the individuals concerned. This opportunity is again taken to recommend to Parliament the enactment of appropriate legislation which would allow for the withdrawal of monies owed, from the pay packets of the fathers in question.

2. **Land Issues**

Over the years I have had to comment adversely on matters pertaining to the sale of government lands. This has been as the result of the number of complaints which led me to the conclusion that the sale and management of Crown Lands need to be properly regulated. There is need for urgent attention to be paid to this problem.

3. **Parliamentary Debate on the Ombudsman's Report**

This office has taken its responsibility seriously in submitting its annual report to Parliament pursuant to Section 21 (1) of the Ombudsman Act. However, although it is laid before each House of Parliament as is mandated, the reports have never been debated. Perhaps this should be

considered in the future.

4. **Revision of the Ombudsman Act**

Having gained experience in Ombudsmanship over the years I intend to make recommendations to Government for revision of the Ombudsman Act so as to strengthen the effectiveness of the role of what all agree is a very important institution.

5. **CONCLUSION**

The Office of the Ombudsman has done everything possible to carry out its mandate within the limits of its resources in the interest of all citizens and residents. I am happy to have been able to date to contribute in some way to the development of the Ombudsman system not only nationally but also regionally through collaboration with the Caribbean Ombudsman Association (CAROA) and internationally through the International Ombudsman Institute (I.O.I). We look forward with God's help to achieving even greater success in the coming year.

6. **ACKNOWLEDGEMENTS**

I must reiterate my thanks to members of staff for all assistance rendered throughout the year especially in light of our limitation in numbers. Special thanks to Miss Richards who did the computer work involved in printing this report. Thanks are also expressed to the Government of Antigua and Barbuda and in particular to the Ministry of Finance for the financial resources provided in order to meet most of our commitments. The cooperation given by the Police, Public Works Department, Establishment Division and the Antigua Public Utilities Authority when requested must also be acknowledged.

I have mentioned earlier the close collaboration had with various institutions including CAROA, the Commonwealth Secretariat, the International Ombudsman Institute, the United Nations High Commission, the Special Fund for Ombudsman and National Human Rights Institutions in Latin America and the Caribbean and the Inter-American Institute on Human Rights. Gratitude is hereby extended to all. It has been great working with them.

Last, but by no means least, my thanks are expressed to the people who are the main reason for our presence. They have brought their complaints from time to time with high expectations. We, in turn, have done everything humanly possible to address their grievances with the knowledge that in so doing we have contributed to the development of the democratic process in the country.

Appendix I

Questions and Answers about the Ombudsman for Antigua and Barbuda

*** Who is the Ombudsman?**

The Ombudsman (Pronounced **OM'BOODZ-MAN**) is an independent officer of Parliament appointed under Section 66 of the Antigua and Barbuda Constitution which states *inter alia*:-

“There shall be an officer of Parliament who shall be known as the Ombudsman who shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his office.”

“The Ombudsman shall, in the exercise of his functions under this Constitution, not be subject to the direction or control of any other person or authority.”

The Ombudsman is a protector of citizens against abuse of power. He is a protector of Human Rights. He operates in complete independence of Government and Parliament except in so far as funds and staff are concerned. It is important to note that the Ombudsman is non-partisan.

****What are the functions of the Ombudsman?***

The main function is laid down in Section 5(1) of the Ombudsman Act, 1994 No. 5 of 1994:-

It 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 functions of the officer or body.”

N.B. Statutory Body includes organizations such as A.P.U.A., D.C.A., CHAPA., Port Authority, St. John’s Development Corporation, Central Marketing Corporation, Social Security and Medical Benefits Scheme.

The Ombudsman investigates, mediates, advises and reports his findings and recommendations after considering faults such as delays, bias, unfair discrimination, discourtesy, failure to give reasons for action, harassment and so on.

**** How can one make a complaint?***

One can make a complaint by calling or visiting the Office of the Ombudsman situated at the corner of Dickenson Bay Street and Deanery Place, St. John’s, P.O Box 2049, Email **ombudsman29@hotmail.com** or **ombudsman@antigua.gov.ag** (Telephone No. **462-9364/562-1763** Fax No. **462-9355**) but would finally need to put the complaint in writing in order for it to be investigated officially.

**** Who can make a complaint?***

- a) Any aggrieved person or if he is dead or for any reason unable to act for himself, any person duly authorized to represent him.
- b) Any member of Parliament on behalf of any aggrieved person.
- c) Detainees or convicts.

**** What happens after the complaint is made?***

In some cases the complaint is settled informally. If not, an impartial investigation is

conducted thoroughly to decide if an injustice has taken place.

**** How is the Investigation Conducted?***

The Investigation is conducted in private. The Ombudsman affords 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. No report or recommendation is made which may adversely affect any person without his having an opportunity to make the representations.

**** What happens after the investigation is over?***

After the investigation the Ombudsman may decide whether an official action or decision was fair. If the complaint was found to be justified, the Ombudsman may make recommendations for corrective action to the various levels of government e.g. the Head of Division, Minister, Prime Minister and finally to Parliament. The Ombudsman may also make his recommendations public.

If the complaint is found to be unjustified the Ombudsman may dismiss the case.

**** Will the Ombudsman investigate every complaint?***

No. The Ombudsman, for example, by law cannot investigate complaints pertaining to powers conferred on the Governor-General by the Constitution or to any decision or recommendation made or taken by the Director of Public Prosecutions or any decision in respect of the Director of Audit. The Ombudsman may also decide not to investigate if:-

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

On the other hand, the Ombudsman can sometimes help even if the complaint is not strictly within his jurisdiction by providing information as to who can help.

Our Motto

To Champion the rights of the people to ensure that justice always prevails.

Our Mission Statement

The Office of the Ombudsman pledges with God's guidance to faithfully serve the Nation of Antigua and Barbuda by impartially and efficiently investigating complaints of members of the public against unjust administrative decisions of officers of Government or Statutory Bodies with a view to righting wrongs and so contribute to good governance and the further development of the democratic process in the Country.

Appendix II

**Ombudsman and Human Rights - Steps forward to embracing a
Human Rights Mandate; recent Developments.**

By

Hayden Thomas

Ombudsman for Antigua and Barbuda

INTRODUCTION

The Ombudsman Institution has been in existence in the Caribbean sub-region for several years. Indeed, Guyana was the first country in the Developing World to embrace the Ombudsman concept when it established an office in 1966. Since then offices have been set up in Trinidad and Tobago (1976), Jamaica (1978), Saint Lucia (1979) Barbados (1980), Antigua and Barbuda (1995) and Belize (1999). The matter is still under discussion in the Commonwealth of Dominica, the Dominican Republic and Bermuda.

THE ROLE OF THE OMBUDSMAN

To a large extent, the mandate of the Offices of the Ombudsman has been to deal mainly with cases of maladministration. The functions of the Ombudsman for Antigua and Barbuda, for example, as laid out in the Ombudsman Act 1994, No. 5 of 1994 are “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.” Complainants may be:-

- a) Any aggrieved national or resident or if he is dead or for any reason

- unable to act for himself, any person duly authorised to represent him.
- b) Any member of Parliament on behalf of an aggrieved person.
- c) Detainees or convicts.

Maladministration includes delay, bias, unfair discrimination, failure to give proper advice, discourtesy, harassment and failure to follow recognized procedures.

It should be pointed out that the Public Defender of Jamaica has additional responsibilities which will be elaborated during the Conference.

Jamaica also has a Political Ombudsman who deals mainly with problems arising between political parties especially near election time.

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

Although a human rights mandate is not mentioned explicitly in many of the Ombudsman Acts, 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. Some of these will be dealt with later in the paper. It is important to note, however, that many cases involving maladministration are indeed concerned with the abuse of human rights. This fact was clearly brought out by Miss Lawrence Laurent, former Parliamentary Commissioner of Saint Lucia in a paper "The Promotion and Protection of Human Rights in the Caribbean – a case study" in the book *Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States* edited by Victor Ayeni, Linda Reif and Hayden Thomas. The Ombudsman's Office 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 Antigua and Barbuda 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 freedom of movement
- Protection from deprivation of property
- Protection of person or property from arbitrary search or entry
- Protection of freedom of conscience
- Protection of freedom of expression including freedom of the press
- Protection of freedom of assembly and association
- Protection from discrimination on grounds of race, sex etc.
- Provision to secure protection of the law
- Protection of persons detained under emergency laws.

Antigua and Barbuda is also a signatory to several United Nations Human Rights Conventions. These include:-

International Convention on the Elimination of all forms of Racial Discrimination.

International Convention on the suppression and Punishment of the Crime of Apartheid.

ILO Convention (No. III) concerning Discrimination in respect of Employment and Occupation. (1958) United Nations Treaty Series, Vol. 362 p. 31 (Entered into force on 15 June 1960.)

International Convention against Apartheid in Sports (1985) A/RES/40/64 G. (Entered into force on 3 April 1988.)

Convention on the Prevention and Punishment of the Crime of Genocide.

Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.

Protocol amending the Slavery Convention.

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to slavery.

ILO Convention (No.29) concerning Forced Labour.

Convention relating to the Status of Refugees.

Convention relating to the Status of Stateless Persons.

ILO convention (No. 87) concerning Freedom of Association and Protection of the Rights to Organise.

Convention on the Political Rights of Women.

Convention on the Nationality of Married Women.

Convention on the Elimination of all forms of Discrimination against Women.

Convention on the rights of the Child (1989).

Where there is an alleged breach of any of the provisions stated above, the person may apply to the High Court for redress. A few human rights cases have actually reached as far as the Privy Council and have been reported in the Commonwealth Human Rights Law Digest (1,2) (September 2000 and December 2001).

Now it is known that in some countries there is a Human Rights Commission as well as an Ombudsman. Others have a Human Rights Commission or 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. As far as it is known, only in Bermuda is there a Human Rights Commission established.

In considering the recommended system to be adopted it will be necessary for States to consider the size of the country as well as financial constraints. For very small States such as ours 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.

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 Privy Council in the U.K. is the highest Court. Plans are, however, in progress to establish a Caribbean Court of Justice which will be the final Court of jurisdiction over both Criminal and Civil matters.

The Role of the Ombudsman as a National Human Rights Institution

Commenting on this role, Linda Reif (3) 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 – respectively, legality and fairness in public administration versus human rights protection, 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.”

I fully agree with Reif’s comments that “the traditional ombudsman deals with complaints from members of the public alleging that government administration is unfair or illegal. 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, etc., 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 cases dealt with in my office.

These include: -

- a) A case in which a mother complained that her child was administered corporal punishment by her teacher.
- b) A complaint that a policeman tortured the complainant while treating him as a suspect.
- c) Other cases of police brutality.

- d) Inhuman treatment in prison.
- e) Inordinate delay in releasing a detainee after he was bailed.
- f) Improper treatment of a minor at a Boys' Reform School.
- g) Tardiness of the Police in enforcing Court Orders in cases involving arrears of Child maintenance.

Our office 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 – to mention two of them:-

- a) 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.
- b) 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.

Actually 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.

CONCLUSION

You will observe that I have only spoken generally on Ombudsman and Human Rights in keeping with the topic given to me. I have not for instance dealt specifically with women's reproductive rights – the main focus of the conference. In this regard my office to date has not done much on the topic except in so far as it relates to problems dealing

with women's rights generally and the Rights of the child including child maintenance. The topic is so far mainly under the purview of the Division of Gender Affairs and also by an NGO in my country known as the Antigua Planned Parenthood Association. I expect however that as a result of attending this Conference the various offices of Ombudsman in the Caribbean will be able to play a more meaningful role.

I take this opportunity in my role as President of CAROA to express to the Inter-American Institute of Human Rights our sincere thanks and appreciation for inviting us to attend this Conference and for sponsoring our travel. I am confident that this will contribute to further cooperation and collaboration in the areas of Human Rights. We hereby also express our thanks for giving CAROA the opportunity to meet as a group at the end of this Conference.

Thanks to all for your very kind attention.

REFERENCES

1. Attorney General of Antigua and Barbuda and ORS V Lake, Commonwealth Human Rights Law Digest, September '2000, Issue 3 PP 405 – 406.
2. Observer Publications Limited V. Matthew and ORS, Commonwealth Human Rights Law Digest, December 2001, Issue 3 PP 158 – 160.
3. Strengthening Ombudsman and Human Rights Institutions in Commonwealth Small and Island States: The Caribbean Experience, by Victor Ayeni, Linda Reif and Hayden Thomas PP 198 – 213, Commonwealth Secretariat 2000.

Appendix III

Staff List

Ombudsman

Dr. Hayden Thomas

Investigations Officer

Mr. Haynesworth Buckley

*(On secondment to Passport Office, transferred officially
with effect from November 27, 2003)*

Assistant Investigations Officer

Mrs. Gloria Samuel

Administrative Assistant

Miss Persephone Birkett

Senior Clerk

Miss Joycelyn Richards

Petty Officer III

Mrs. Renee Patrick

Driver

Mr. Carl Samuel

Cleaner

Miss Olan Pelle

Security

Mr. Stanley Knight (Part-time)

Gardener

Mr. Emmanuel Gordon (Part-time)