

THE House of Assembly Debates

(OFFICIAL REPORT)

SECOND SESSION 1976 – 81

HOUSE OF ASSEMBLY

Tuesday, 4th November, 1980.

Pursuant to the adjournment, the House of Assembly met at 12.20 p.m. o'clock.

PRESENT

His Honour W. C. B. HINDS, J.P., (Speaker); Mr. R. St. C. WEEKES, J.P.; Rt. Hon. J. M. G. M. ADAMS, Q.C., M.A., (Prime Minister and Minister of Finance and Planning); Hon. H. deB. FORDE, Q.C., M.A., LL.B., (Attorney General and Minister of External Affairs); Mr. L. E. SANDIFORD, M.A., (Econ.); Hon. Miss B. A. MILLER, (Minister of Health and National Insurance); Mr. J. G. ODLE, B.Sc., (Chairman of Committees); Mr. V. L. JOHNSON, M.A.; Hon. L. R. TULL, M.A., (Minister of Education and Culture); Mr. DeL. O. BRADSHAW; Mr. L. L. SISNETT, and Dr. R. L. CHELTENHAM, M.Sc. (Econ.).

Prayers were read.

MINUTES

Mr. SPEAKER: I am advised that there are no Minutes ready for confirmation.

MESSAGES

Hon. H. deB. FORDE: Mr. Speaker, I have the honour to lay a Message from His Excellency the Governor-General, which is Message No. 10/1980 advising of the appointments of Messrs. D. O. Bradshaw M.P., and L. L. Sisnett, M.P., as temporary Ministers for the periods 3rd to 7th November, 1980 and 4th to 9th November, 1980 respectively.

Dr. HAYNES and Mr. TAITT entered the Chamber and took their seats.

PAPERS LAID

Hon. H. deB. FORDE: Mr. Speaker, I have the honour to lay the following:

The Annual Report of the Child Care Board for the period April 1979 – March 1980.

Hon. Miss B. A. MILLER: Mr. Speaker, I have the honour to lay the following:

Report of the National Insurance Board on the National Insurance and Social Security Scheme for the period January – December 1979.

GOVERNMENT NOTICES

Rt. Hon. J. M. G. M. ADAMS: I beg to give notice of the following Resolution on my own behalf:

Resolution to grant the sum of \$1,600,000 from the Consolidated Fund and to place it at the disposal of the Government to supplement the Estimates 1980-81, Part II – Capital, as shown in the Supplementary Estimates 1980-81, No. 15, which form the Schedule to the Resolution.

On behalf of the Hon. Minister of Housing, Lands and the Environment, I beg to give notice of the following:

Resolution to approve the compulsory acquisition of land at Sharon, St. Thomas for the purpose of erecting a New Primary School.

Resolution to approve the compulsory acquisition of land at Trents, St. James for the purpose of constructing a pumping station.

Resolution to approve the compulsory acquisition of land at Bay Street, St. Michael for the purpose of

extending the accommodation of the Barbados Family Planning Association.

GOVERNMENT BUSINESS

Mr. SPEAKER: Government Business is the instant order of the day.

COMMITTEE OF SUPPLY

Mr. SPEAKER: Order No. 1 stands in the name of the Hon. Acting Leader of the House, to move the House into Committee of Supply to consider the grant of sums of money for the service of the country.

Dr. CADDLE entered the Chamber and took his seat.

Hon. H. deB. FORDE: Mr. Speaker, I beg to move that Your Honour do now leave the Chair and the House go into Committee of Supply to consider the money Resolution under Order No. 1.

Hon. D. O. BRADSHAW: I beg to second that.

The question was put and resolved in the affirmative without division, and Mr. SPEAKER left the Chair and the House went into Committee of Supply, Mr. ODLE in the Chair.

Mr. GREAVES entered the Chamber and took his seat.

SUPPLEMENTARY ESTIMATES 1980-81 No. 14

Head 73 – Ministry of Finance and Planning – was called.

Rt. Hon. J. M. G. M. ADAMS: Mr. Chairman, this is really a very simple matter fully explained by the Addendum. This relates to the West Indies Shipping Corporation.

Some years ago Government agreed to make annual payments towards capital cost of equipment for the Corporation and to put it on a sound footing. It appears that it was informally agreed that this might continue for as much as 15 years. The last occasion upon which an item was included in the Estimates for the continuance of this service was in 1979-80 when an amount of \$126,000 was included under Capital Item 15 of the Ministry of Finance's estimates. An amount of \$111,230.19 is now due, so we are asking for \$111,231 to be paid towards further equity contributions to support the West Indies Shipping Company.

I beg to move that Head 73 – Ministry of Finance and Planning stand part.

Hon. H. deB. FORDE: I beg to second that.

The question was put and resolved in the affirmative without division.

12.30 p.m.

Rt. Hon. J. M. G. M. ADAMS: Mr. Chairman, Sir, a further Resolution is necessary under Head 73 relating to the Explanatory Note. The Explanatory Note at the moment relates only to the establishment of the Air Cargo Service and, therefore, it is necessary to add the words "To WISCO and" in the middle of that note, Sir, as set out in the Resolution.

I therefore beg to move that the Explanatory Note to subhead 3 of Head 73 be amended to read "Provides for a contribution to WISCO and to the establishment of an Air Cargo Service on joint venture basis with the Government of Trinidad and Tobago".

Hon. H. deB. FORDE: I beg to second that.

The question that the Note be so amended was put and resolved in the affirmative without division.

HEAD 78 – MINISTRY OF COMMUNICATIONS AND WORKS

Rt. Hon. J. M. G. M. ADAMS: Again, Sir, this is a very simple matter. Perhaps we are asking for a little more than we may need since certain events have supervened that cast some doubt upon the need for supplies and materials because since this Resolution was prepared, the Project Office burnt down but hon. members will be assured that the amount will not be applied to any other purchase.

The Addendum sets out exactly what we want, Sir. Originally at the time of the Estimates the Spring Garden Polytechnic Project had only three officers and a number of other officers have had to be recruited. I can give the list, Sir. The whole amount that should have been included should have been provided for a Project Manager, a Project Engineer, an Assistant Secretary, a Senior Accountant, a Secretary, a Clerical Officer, a Messenger, a Maid and two watchmen and the whole amount should have been in the region of \$148,000. We voted only \$71,000 and I am asking that the vote be supplemented by the required balance.

It may very well be, of course, Sir, since this Supplementary passed through the machinery before the wage increases that at some stage a Supplementary might be called for if the whole staff is recruited but it is not likely that the whole staff will be recruited, Sir, and there maybe a savings on the salaries of some officers which may be off-set by the need to pay other officers more.

The second item relates to Utilities, Sir.

I beg to move that Head 78 stand part.

Hon. H. deB. FORDE: I beg to second that.

The question was put and resolved in the affirmative without division.

Rt. Hon. J. M. G. M. ADAMS: I beg to move that Your Honour do now report to his Honour the Speaker, the passing of one Resolution in Committee.

Hon. H. deB. FORDE: I beg to second that.

The question was put and resolved in the affirmative without division and Mr. SPEAKER, resumed the Chair and reported accordingly.

On separate motions of Rt. Hon. J. M. G. M. ADAMS, seconded by Hon. H. deB. FORDE, the Resolution was read a first and second time and passed.

Mr. SPEAKER: Item No. 3.

OMBUDSMAN ACT, 1980

Item No. 3 was called – To move the Second Reading of a Bill to provide for the establishment of the office of Ombudsman.

Hon. H. deB. FORDE: Mr. Speaker, Sir, in its 1976 Election Manifesto, the Barbados Labour Party proposed the establishment of the Office of Ombudsman or Parliamentary Commissioner with powers and duties to investigate alleged official abuses against the citizen, to report publicly on his findings and to take steps that would alleviate particular grievances and to obtain satisfaction for the citizen.

The 1978/79 Constitution Review Commission also heard submissions from the public on the necessity to establish such an office in Barbados. Those submissions were both oral and written and as a result of those submissions, the Constitution Review Commission came to the conclusion that such an office may be necessary and should be created although it recommended against its creation by an amendment to the Constitution.

This Bill which is before Parliament, therefore, seeks to carry out the undertakings given by the Barbados Labour Party to the public in its Manifesto and at the same time to implement one of the recommendations of the Constitutional Commission.

Mr. Speaker, Sir, the term Ombudsman although it has now become an accepted word in most languages

and certainly in the English Language the Scandinavian word means simply "Officer or Commissioner".

12.40 p.m.

In fact, as long ago as, the early nineteenth century, in Sweden, such an office was first established and its success, the success of that post in the jurisprudence, in the constitutional and in the parliamentary life of Sweden has led countries throughout the democratic world to have adopted that precedent. I believe that the Swedish precedent was subsequently adopted by other Scandinavian countries, Denmark particularly and subsequently, it came and was accepted by countries who operate a Westminster form of democracy.

In 1967, for instance, the Government of the United Kingdom passed its Parliamentary Commissioners' Act. The new Commonwealth States, particularly those in the Caribbean have found the office of Ombudsman a very useful one and thus, the Constitutions of Guyana and Trinidad and Tobago have provided for the establishment of such an office. Recently, St. Lucia and I believe, St. Vincent as well have also provided for the establishment of an office of ombudsman. I could go on to cite other countries, in the Commonwealth and particularly, I should wish to advert to the success in New Zealand, which such an office has had and also, of course, in Australia.

The purpose of an ombudsman really is to investigate and report to Parliament on citizens' complaints against the Government and therefore, if one looks at the powers given to Ombudsman, normally they do not require many legal powers, other than the power of enquiry and reporting. An Ombudsman is not therefore, a replacement for the normal judicial remedies available in the court and they have not to be considered, as in any way, a court of appeal, nor indeed, does the Ombudsman have any power to reverse a decision, once taken by a Government. But, the power which he does have is the power of enquiry, the power of reporting and the power of persuasion, as well as, the power of exposing any act of Government which may amount to not necessarily a constitutional, or legal infringement of the rights of the individual citizen, but what might amount to, in some way, an injustice, or an act which can be considered unfair, although not necessarily illegal.

Mr. Speaker, the Government has tried, in the time that it has been in power, to bring before the Legislature, legislation which would widen the avenues of redress available to the citizen against discriminatory, unfair acts, on the part of any officials of the Government, or of the Civil Service. Only last week, we were considering the Administrative Justice Bill which was a way of improving the machinery for moving the court to deal with illegal actions by Administrative Tribunals

and also ministerial and other decisions. Mr. Speaker, we have also considered the Commission of Enquiry Bill, which was updating the legal remedies available for investigating matters, which affect the public at large and which may be significant either for guiding future policy, or for exposing past abuse of rights, or abuse of office. We intend to bring to Parliament as well, hopefully, before the end of the year, another major Bill rationalising administrative tribunals, which sit on appeals from the citizen to various administrative boards, whether it be the National Insurance Board, or the Valuation Board, or the decision of the Comptroller of Customs, or indeed, the Income Tax Commissioner. We will rationalise that system and improve the machinery for legal redress, in respect of administrative tribunals.

But here, we consider this Bill to be an important step towards widening the extra legal forms of redress. Admittedly, Mr. Speaker, a citizen can go to his Hon. Member of Parliament, in order to get a question raised in Parliament, as to any action which affects the citizen's rights, and the Parliamentary question and the use of the Member of Parliament's time, in support of a citizen's right is, of course, a necessary prop for democracy and for redressing grievances suffered by the citizen. But, the limitations of that form of remedy are also well known and indeed wherever it is used, in democratic countries, its advantages and disadvantages have been well listed. I do not propose to go through them in this debate and because there are some limitations therefore, on the existing legal remedies as well as, the existing extralegal remedies, it has been found, that setting up this office and providing it with the facilities for acting has proved beneficial to improving fundamental freedoms and to widening the area of the citizen's rights.

I said, Mr. Speaker, that the technique of the Ombudsman is to receive the complaint and complainant informally, to do investigations, through the Government Department, to get hold of the files, have access to them, to see whether there has been negligence, or dilatoriness not amounting to negligence, to see if all of the considerations which ought to have been taken into account were adequately taken into account and therefore, either by persuasion, to get reconsideration of the matter and where circumstances justify, also to get compensation for the citizen, although, again, compensation is not necessarily the major factor involved.

Mr. Speaker, I do not anticipate, in this debate, any argument that the establishment of such an office would lead to a derogation from the principal of ministerial responsibility. That argument, I think has been adequately disposed of in other jurisdiction, where such an office was set up and indeed, it was found that, rather than undermining the concept of ministerial re-

sponsibility, it assisted and underpinned this concept and it was found therefore, that Ministers themselves have come to welcome, in other jurisdictions, the establishment of such an office. Mr. Speaker, wherever the office has been established, it has been sought to give Parliament some substantial say in the method of appointment and in the method of being kept up-to-date with the work of the Ombudsman.

In this Bill, we seek to do likewise. The person who is to be appointed to the office is normally appointed by the Governor-General, acting on the recommendation of the Rt. Hon. Prime Minister, after consultation with the Leader of the Opposition.
12.50 p.m.

The reason for this is to try to obtain the maximum level of agreement on the office so that the purely partisan political considerations will not surface in the appointment of the office, but more important, since an Ombudsman is seen as really a Parliamentary Commissioner, it is sought in the Bill to ensure that Parliament would have some say in the approval of such an appointment, and therefore you will note, Mr. Speaker, that in clause 3(2) of the Bill we have sought to provide that before the Governor General appoints the person to this office the proposed appointment must receive the approval of each House of Parliament.

It is also necessary, Mr. Speaker, to give the office the sort of tenure which is normally conferred on the Judiciary in order to insulate the office from capricious action on the part of any Government of the day, and in section (3) subclause 3 we have sought to provide that the same provisions which govern the appointment and removal of such persons from office as in section 105 of the Constitution should also apply in this case, and once again for the relevant resolution to be moved to Parliament to set up a special enquiry, one has to get the Prime Minister consulting with the Leader of the Opposition.

Mr. Speaker, we have taken into account the existing age limit for judges and we have provided that the person could remain holding the office until 65 with the possibility of appointment for only one other period of five years. Some statutes which have dealt with this matter have on occasions appointed a person only for five years or for a set period, a fixed period, with the right of reappointment taking place. In this case we have followed precedence in some of the other jurisdictions and have made the provision along these lines.

Mr. Speaker, the officers appointed to the service of the office of Ombudsman will be public servants, and of course the charges for the office will be charged on the Consolidated Fund. I do not want to go through every

provision in this Bill in the second reading of the Bill but merely to highlight some of the areas that deal with wide areas of policy, and of course one would wish to take special notice of the matters which can be investigated by an Ombudsman, and in this respect clause 5 is of great importance. He has scope to investigate any action of maladministration, to determine whether an injustice was caused by improper, unreasonable or inadequate administrative conduct on the part of the Government, Ministry, Department or other authority subject to the Act.

These are very wide powers. The scope of these powers has been commented on in various distinguished journals, and in fact I believe that hon. members may have read the discourse on this subject in Professor H. R. Wade's book on administrative law in which he discusses in great worth some of the matters which come under those broad terms. I cannot discuss every such situation because of course the terms are general terms covering a wide range of subjects, and perhaps I may merely quote from page 82 of the Third Edition of H. W. R. Wade on administrative law and adopt this as my submission on this part of the Bill. He is dealing here with the provisions in the 1967 British Act, and this is what he says:

The key provision of the Act of 1967² is that the Commissioner may investigate action taken 'in the exercise of administrative functions' by or on behalf of any of the scheduled central government departments where

- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
- (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.³

Maladministration is a new term in the law, though not in the language.³ The Act does not explain or define it, as is perhaps natural since it requires only that the complainant should *claim* that maladministration has occurred. Parliament was told that the word would cover 'bias, neglect, inattention, delay, incompetence, ineptitude, arbitrariness and so on', and that 'it would be a long and interesting list.'⁴ In fact no legal definition seems to be required. Once duly seized of a complaint, the Commissioner may investigate and report. He can be relied upon

to criticise any lapse from the high standards expected of the public service.

But in one sole respect his freedom to criticise is restricted. The Act 'declares' that he is not authorised to 'question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority.'⁵ For the purposes of this provision he may need to know what maladministration legally means.

He goes on thereafter, Sir, to discuss in a broad way some of the matters which are listed under that term. In our Bill we have sought to take up as well some of the criticisms made of the British legislation and we have therefore framed section 5 in a way to include not only what may be *per se* essentially maladministration but what also amounts to improper, unreasonable and inadequate administrative conduct, and to that extent I believe there is a greater certainty as well as a greater comprehensive approach to this question.

Mr. Speaker, it is obvious that the Constitution of Barbados does not allow review in certain instances and we have sought to save that condition as well. We have also sought to deal with matters that are normally subject to investigation, and on this we have been guided to a large extent by the list followed not only in the United Kingdom but in places like New Zealand and Australia and in Scandinavian jurisdictions, and hence you will see in clause 2 there is a list of matters which are of such a nature that normally there are not referred for consideration.

1.00 p.m.

I will be moving in Committee some slight amendment not only to correct typographical and printing errors which have occurred in the Bill but also to exclude from investigations actions taken by the Director of Public Prosecutions or the Commissioner of Police with the investigation of crime, etc. The reason for this is that under our Constitution the constitutional authority dealing with matters of crime, the investigation and prosecution of crime rest not with a Government Minister, but with the Director of Public Prosecutions and the Commissioner of Police, and therefore it is necessary for us to make sure that their constitutional position is respected in the relevant legislation which is before this House.

Mr. Speaker, there may be a fear that such a Bill make civil servants believe that people are peeping over their shoulders at them. That argument was also advanced in all of the countries where such an office has been established, and it has been found to be an invalid argument not based on substantial grounds. In fact I said earlier that civil servants who have had to function under

an Ombudsman as properly appointed and sagacious, sensitive and wise have found that the fact that he is there has helped them at times to be better rather than be worse administrators, and I have no doubt there here in Barbados the Public Service, like its counterpart in other countries, have nothing to fear from the establishment of such an office in Barbados. I believe that it is a blow for freedom, I believe that it is a step towards widening the means of redress of citizens, I believe that the post, if properly established, and if the officer functions properly, can go a good way towards improving administration in this country and make the citizen feel that he has not only legal but extralegal remedies for seeking redress for any grievances he may have. Sometimes these grievances are really unfounded and yet the citizen maintains doubt in his mind because he believes that for other than proper constitutional reasons a particular decision has been taken administratively against him, and it is good in such a case as well and in the interest of the administration both of the Government, the Ministers as well as the Public Service, that an independent and impartial person with undoubted authority and with undoubted powers to enquire and report to Parliament and investigate and bare the facts and help produce if not remove completely the fears of the citizen. There may be bona fide fears, but there may likewise be unfounded, and to this extent the office can go a tremendous way towards assisting in improving the relationship between the Public Service and the public at large as well.

I have sought to set out some of the advantages which flow from such an office. The cost of such an office need not be onerous. Now I do not anticipate that it would add too much or at all to the current expenditure of this country, and in any event even if the cost of the office including salary as well as the day to day cost of public persons appointed to run the office should amount to \$100,000 to \$150,000, I believe that that is a small charge to be paid for improving citizens' rights of redress.

I therefore have much pleasure in moving that this Bill be now read a second time.

Hon. D. O. BRADSHAW: I beg to second that.

Mr. TAITT: Mr. Speaker, in moving this Bill before this Honourable House, the Hon. Attorney General indicated in terms with which we have come to associate him that this Bill would strike, I think the words

he used were, a blow for freedom, and he sought to suggest it would improve administration in this country and that the availability of extralegal redress, his words I believe, would assist in making the citizen in the community feel safer because an independent and impartial authority with undoubted ability to investigate would be available for the citizen to find such a redress.

Mr. Speaker, let me say at the outset that there is not much in this Bill as there was not much in the Administrative Justice Act, 1980, to approve or disapprove. It seems, Sir, that once again we in Barbados, like other Caribbean territories, will be sticking true to form in that once it has been applied somewhere else, we feel we should have it too. No one can contest the office of Ombudsman; the difficulty in pronunciation is an indication that the concept is foreign to this system. No one will quarrel *per se* with the concept for if that is another rung in the so-called administrative ladder, it will at least provide a palliative where one may appear to be necessary in certain circumstances, but, Mr. Speaker, I think that it would be unfortunate if the impression is put abroad that somehow with the establishment of this office something wonderful, some remarkable change will occur in the administrative machinery in Barbados. I think that particular possibility needs to be laid to rest, and Mr. Speaker, I make that statement not in a spirit of petulance, but in an attempt to bring the perspectives which are cast on this particular issue within the ambit of reality so that ordinary persons are not misled into believing that they were getting a Sir Grantley when in fact it was no more than a sixpence.

Mr. Speaker, I believe that the Attorney General indicated the origin of the concept of the Ombudsman as coming from Sweden in the early Nineteenth Century; 1809 to be exact. What the Attorney General did not do was to indicate that the system which operates in Sweden, which has always operated in Sweden is an entirely different legal and administrative system from that which operates in say the United Kingdom and that which by definition has been inherited into these Caribbean territories, not the least of which is Barbados. Now today, Sir, everybody wants it, but when it is analysed in its entirety, there are large misconceptions which have been brought to light, and if you will pardon the expression, Mr. Speaker, we must refrain from giving it what has been described as the archangelic approach. The Swedish administrative setup is more open, it is more law control. Ministers are seen more as administrators than as political bosses. Their political input in the administrative system is considerably less than it is in the system we have come to know. Responsibility to Parliament is less. Civil Servants in Britain work for the Minister and so forth, but in Sweden civil servants work directly to the people as it were.

1.10 p.m.

In Sweden each civil servant, including Judges, is directly responsible for what he does to the body politics so an Ombudsman can complain against a Magistrate if he makes a legal mistake. He can complain against the Magistrate if the Magistrate makes a legal mistake because an Ombudsman concludes that the Magistrate ought to know the law and ought not to have made that mistake and furthermore on the basis of the Ombudsman Report, that Magistrate can be fired.

In our system that situation does not obtain for a number of reasons which this debate does not require us to explain in great detail but certainly the Swedish system in that regard is foreign to the British system.

The Ombudsman as applied by Parliament in Great Britain took on the form of a Parliamentary Commissioner and there has been ever since the appointment of the first Parliamentary Commissioner some question and controversy as to what precisely is his role but in Sweden, Mr. Speaker, the Ombudsman goes around seeing that people do what they are supposed to do and so I hope you begin to see the difference between the office in Sweden and the office as it has been applied in the British system.

Mr. Speaker, there are several values why that society — and to give an example, Sir — the dereliction of duty by the Director of Civil Aviation in Sweden resulted in the Ombudsman coming to the conclusion that he was derelict in his duties and he was punished. That is theoretically impossible under the concept of this Act. I shall get to that in a few moments as I look at the broad outline of our own Act in perspective.

In Sweden, the concept of Ombudsmen has been so developed that there is almost now an Ombudsman in every area of administrative arrangements. For example, there is an Army Ombudsman. It means that people who are functioning within the Army can go to the Army Ombudsman and report their superior officers for dereliction of duty as opposed to what has been described in the Crossman's Catalogue.

Perhaps, Mr. Speaker, I should explain that the Crossman's Catalogue arose out of the efforts made by the then Minister when introducing a similar Bill in the United Kingdom and faced with the sort of difficulty which our own Attorney General is faced with, trying to decide precisely what the Ombudsman would do, Mr. Crossman, then Minister, outlined the words which were earlier quoted by the Attorney General as his understanding of the areas which would be investigated by the Ombudsman and they have come to be known as the Crossman's Catalogue but, Mr. Speaker, in the British system it has been strongly argued that the concept of Ministerial responsibility, Ministerial discretionary power does not attend to the

kind of investigation which the Ombudsman had first supposed for, as soon as the decision reaches beyond the Administrative Officer in a Department, the decision is then in the area of discretion.

Now, Sir, while discretionary acts by certain Ministers have been questioned in the Courts, they have been questioned specifically with regard to failure on the part of the Minister to observe a set of criteria which were required under the specific Act and in the context of broad administrative responsibility of a Minister in our system, his responsibility operates in the sphere of discussion and hence it would be found in all of the reports that have been laid before the British Parliament and indeed all of the Reports which have been published on the Office of Ombudsman in the Caribbean. It will be seen that at the level of Permanent Secretary is where the administration has tended to stop.

I would refer this Honourable House to a Report called Wyatt's Report in which these matters were explained and gone into in great detail and indeed the British Conservative Party, a Party not unfamiliar to the hon. members on the other side since they too bear the same kind of Conservative philosophies as the British Conservative Party and hon. members on that side would know that the British Conservative Party rejected the concept of the Ombudsman precisely because they felt that it interfered and would continue to interfere with, if implemented in its pure form, the concept of Ministerial responsibility hence when the Parliamentary Commissioner was introduced into the British system, the Parliamentary Commissioner was introduced in terms outlined earlier and thus the Parliamentary Commissioner in Britain is distinct in his approach to administrative investigation, is distinguished from the approach which is prevalent in Sweden.

The Ombudsman, put very bluntly, cannot question a Minister. According to our Act, as I understand it, he may require the Minister to send information but he cannot question the Minister on the basis on which he, the Minister, or she, the Minister, arrived at a particular decision.

Now, Sir, when you are about to establish such an extra-legal investigator, it has to be assumed that there is some breakdown or some fault somewhere where the normal Courts have not been able to remedy and for those reasons some extra-legal remedy has to be sought.

I make bold to say, Sir, that in Barbados the administrative machinery is functioning fairly well and that where there has been question, such question has tended to be in the domain of a Ministerial decision and not in the area of the administrative decision. If

that is so, Sir, it must mean that precisely in the area where questions are raised, where investigation might be carried out in the interest of improved administration and to give the citizen what the Attorney General presumes a citizen would get from this Bill, that is at the level of the Minister, that is precisely the area that is not being tackled by the introduction of the concept of the Ombudsman in Barbados. If we are not tackling the Minister, then all we are doing, if you will pardon the expression, is "follow pattern or following pattern."

If you bear in mind, Sir, the Ministerial role in Sweden as I outlined earlier, it may be termed a very open role. When one looks at the role of the Minister in our system, it is a very closed role which the Minister has to play. Now, Sir, in Britain the Parliamentary Commissioner tends to work through the members of Parliament.
1.20 p.m.

The way in which he tends to work is that the citizen who has a complaint who writes to his Member of Parliament gets that complaint sent to the Ombudsman, by the Member of Parliament. We, in Barbados, have such a small constituency arrangement and no tradition of persons writing to their MP, that it seems unlikely, that there will be large numbers of complaints forwarded by citizens, through their MPs to the Commissioner. But, even so, it was only when the Crichton case, sometime in the 1930's, I believe in 1937... (*Asides*) 1950's, it was only in the Crichton case, where there was a tremendously clear miscarriage of justice, in relation to a citizen's rights, by the administrative machinery, that the call in Britain, for some extralegal investigation of the civil servants took on some impetus and it was arising out of that, that the concept of the Ombudsman was brought across to the United Kingdom.

I am not sure what is the great issue, or moment in Barbados, which has led to the bringing across of the concept of the Ombudsman to Barbados. But, Sir, perhaps in his reply, the Hon. Attorney-General will give us some details of some of the things, which have occurred in this community, which have led to the feeling that an Ombudsman is a necessity. It was first introduced in the Commonwealth in New Zealand and it must be recalled, Mr. Speaker, that in spite of the fact, that there are other Scandinavian countries around Sweden, that this concept of the Ombudsman did not reach a country like Denmark until 1954 and indeed, it reached Norway much later, so you can see, Mr. Speaker, it took from 1809, until 1954, to move from Sweden to Denmark and even later, to move to Norway. But Sir, once we have a piece of Law somewhere in the Commonwealth Caribbean as night followeth the day, you can expect that we will see it, in Barbados, no matter if all it does is succeeds in filling the Law books, or filling up the Legislation, or

providing sinecure for some undeserving, or even deserving person, Mr. Speaker.

It reached the West Indies in a very strange way. In Guyana and Mr. Speaker, it is interesting to see — look at those countries which have an Ombudsman, Guyana, Mr. Speaker, a country that it is now accepted, on all sides, does not stand out, as a paragon of virtue, so far as, human rights are concerned — Guyana was the first place that it was introduced to and it was introduced in Guyana, with a view to eradicating racial discrimination in the Civil Service in Guyana. You will recall, Mr. Speaker, that in the 1950's, there was tremendous racial strife in Guyana and among the persons who came out to do the usual colonial service investigation, after natives have desecrated one another in one form, or another, the usual investigative report was done, by people from the colonial office and they recommended, that since in Malta a similar system of the Ombudsman had been created, that one way in which you could avoid racial strife in the administration in Guyana was to create an Ombudsman. Well Sir, the Ombudsman was created in Guyana and in its Constitution, I believe, in one of the many Constitutions which Guyana has boasted, and you could judge for yourself, Sir.

Indeed, this Honourable House and all of Barbados can judge for itself, how specifically successful, the office of Ombudsman has been in Guyana. What I can say is that according to the reports from the Ombudsman himself precisely because the area of maladministration has not been defined in a specific way and precisely because ministerial decision cannot be questioned, or Ombudsmen have deemed ministerial decisions to be unquestionable, all of the cases, which have tended to come before the Ombudsman, or the vast majority of them have had to do with delay in the courts, persons who apply to get a divorce and who have had to wait a long time and most of the recommended provisions by the Ombudsman were letters to the Administration in the Justice Department and that is where he had exercised his power.

In Jamaica, they tried to stretch the matter a little further and they attempted to provide for some questioning of ministerial decision, but an examination of the Jamaica provision will show, that if like that in Trinidad and like that in Guyana, it stops short of the crucial factor which ought to be available, if we are to have an office such as Ombudsman, neither in this Bill, which now comes before us, nor in the provisions in any of the Constitutions in the Caribbean is there any provision for the investigation of corruption.

Mr. Speaker, what persons in this community are concerned with primarily, insofar as Government is concerned is to know that the Government is doing to the best of its ability, that which the citizens expect it

to do. When we have, as we have in Barbados today, forms of corruption which define any normal investigation, if that Government, or other Government comes up with extralegal provision to investigate such areas, one could applaud and say that they are taking steps. But, in Barbados today, this Bill which we are considering will make no changes whatever on the question of corruption, in high places. It will make no provision whatever for some matters which are being discussed daily in the streets in this country to be investigated by the Ombudsman. In fact, in the Constitutions in Dominica, in Guyana, in Trinidad and in Jamaica and now, by exclusion in Barbados, there is provision that the Ombudsman does not Mr. Speaker, investigate corruption and any examination of the details of Clause Five will show, that no provision is made therein for other than, what is called maladministration, in the administrative arrangements in the community.

Mr. Speaker, I believe that I have made the point and there is no need to press on with more detail merely to weight it. I would merely quote from a paper which has been produced by one of the Law Lecturers, a Miss DeMaria who has written extensively on this subject of the Ombudsman. She said Sir; just bear with me, Mr. Speaker, I do not wish to quote at length:

"In recommending the creation of the office of Ombudsman, the Trinidad and Tobago Constitution Commission observed, 'we have also developed a tradition of hyper secrecy in decision making. Usually reasons for decisions are not given. This makes administrative decision-making quite unpredictable.'"

She goes on:

"The ultimate implication of the word unpredictable, it is submitted in arbitrariness. Again, arbitrariness in decision-making processes is always attendant on the rushed implementation of policies aimed at so-called development."

The passage quoted therefore, states succinctly, the case for the office in the territories of the Commonwealth Caribbean.

1.30 p.m.

Later she goes on to question whether in the setting up of the office in the Caribbean if the decision not to interfere with the discretionary aspects of decision making does not in fact make the setting up of the office a still born project. In the context of the Constitution where the office has been placed in three or four territories in the Caribbean it might be asked whether the Ombudsman can be a watch dog of the Constitution, and I will end by quoting here again:

"The answer depends not only on the powers and character of the office holder, not only on the willingness of Parliaments to make the office work, but in this where restraints on parliamentary control go beyond that inherent in a system of majority party rule on the willingness of the Executive to let the office flourish."

Sir, in the end, despite the words which may be used to introduce or to promote the concept of the Ombudsman, how successful it is in relation to the limited area of responsibility will be determined and will depend on the character and the integrity of the person who is appointed to this office. The willingness of that person to stretch the interpretation of his duties into areas that will truly allow for investigation of real rather than imagined ills. Mr. Speaker, while we are not going to be against this Bill we feel that in allowing the Bill to pass that we ought not to allow the public of Barbados to be given the impression that a Daniel has come to judgement in the bringing to Parliament of a Bill called the Ombudsman. We cannot accept that the mere passage of legislation such as this piece of legislation of an Ombudsman will go anywhere toward raising the quality of life of the people of this community, for that which now deters them from a higher quality of life first has to be removed.

Mr. Speaker, in due course we will discuss other aspects of the removal of those difficulties. Thank you, Mr. Speaker.

Dr. CHELTENHAM: Mr. Speaker, I do not think any useful purpose will be served by my attempting to trace the history and the development of this office in Sweden or by commenting on the migration of the concept to the United Kingdom and the older Commonwealth, and its introduction into the Commonwealth Caribbean in which we live. I can think of several pieces of social legislation more urgent than the introduction of a Bill dealing with the creation of an Ombudsman, nevertheless I welcome the measure as an added institution for the structure of the administration of justice generally, and I particularly applaud the learned Attorney General for investing it with powers very much wider than the powers with which the Parliamentary Commissioner was invested in the United Kingdom.

The big difficulty which we have in Barbados is to get the existing institutions to work, Mr. Speaker. Quite often there is no need to create more institutions. I can think, for example, of the courts themselves, and I very much understand though I regret there is no way in which many delay that cause great injustice to citizens of this country could not be investigated by an Ombudsman. There are in this country persons who have appealed against Magistrates' decisions for as long as three years. I am myself involved in cases in which citizens have

appealed for over three years from Magistrates' decisions and those cases have not yet reached the Divisional Court, which tends more not to function than to function, and that is very unfortunate, but here is a classic case where there is an institution in place to bring justice to people and the big problem is not that there is need for additional institutions but how to get the existing institution to function energetically and effectively.

The first point, Mr. Speaker, which I wish to make relates to the holder of the office. With every passing day in public life I am satisfied that it is not so much the institutions themselves that matter but the men who man them. The important thing in the creation of the office of Ombudsman is that the man who is appointed should care little about the Barbados Labour Party or about the Democratic Labour Party, but should care a lot about justice and the people who complain. There are yet a few of those men, there are still a few of those men around, and I very much hope that we will not in the end — I see the Hon. Leader of the Opposition indicating that he is one such man and I am not disposed to disagree — I think it is very important that we do not create just another position for a Barbados Labour Party supporter when we are in office and a Democratic Labour Party supporter when they are in office. This person must genuinely care little about these two great parties as such, not to be afraid to embarrass the Government of the day, if necessary a dozen times in one year say that the Ministry of Finance is not carrying out its duties expeditiously, notwithstanding the fact that the Prime Minister is the Minister responsible for Finance. I must repeat, Mr. Speaker, but I earnestly hope that this will not be regarded as a job for any yardfowl, to use an expression which is very current and which I think has gained some respectability in the language.

I am also concerned, though I understand the reasons which have led the Hon. Attorney General to omit the police from this area of investigation, as it were, but if there is one area in which there is great scope for abuse and trespass on the right of the citizen, it is in the area of the police relations with the citizen. That is not to make any criticism about the police in this country, it is that there are few institutions in the country that come into more vigorous contact with the rights of the citizen than the Police Force, and to that extent I feel that we should somehow have found the formula where the police in their relations to the ordinary citizen, their conduct should have been subject to review. Much as the learned Attorney General has pointed out that this is an area which rightly and more properly perhaps belongs to the Director of Public Prosecutions, it seems to me that that is not strictly how the Director of Public Prosecutions interprets his role, it is more concerned with the commenting on the propriety of investigations whether there is enough evidence and generally giving advice in that area.

The third point which I want to make, Mr. Speaker, relates to the departments which in my view have been omitted in the Schedule. In Barbados, to take a well known example, the National Housing Corporation is an area under both Governments in which many citizens of this country can claim legitimate cause for complaint. 1.40 p.m.

There are many people maybe running into thousands, in this country, who have qualified for years for loans and for houses too, have applied through the normal channels, have witnessed others come years after without qualification and get houses when they themselves have been overlooked repeatedly. I can think myself of other statutory corporations where there is considerable scope and considerable evidence of abuse of the citizens' rights. (A VOICE: The IDC?) I think you will find that has been one of the model institutions among the para-state in this country. That Mr. Speaker, is unfortunate, the fact that we have not added the para-state organisations or the statutory corporations as they are called to the list of departments and ministries which the Ombudsman will have the power to investigate.

I want to return just briefly to say that the big problem in Barbados is to get the existing institutions to work effectively. I just want to comment in welcoming the Bill on the human rights clauses in our constitutions in the West Indies. Trinidad has changed its constitution in recent years and they have the due process clauses which are found in the American constitution which afford far more scope, but in those constitutions like ours which have not been altered and which came into being between 1962 and 1966, the Privy Council has been giving such a narrow interpretation of the rights of the citizens as expressed in the Constitution, that it has fully well become a very meaningless document and we lawyers have got to recognise that. It is a source of considerable worry to many of us that you have the Lord Diplocks and others in the United Kingdom trained in the common law and who, with great respect to them, have little experience in understanding written constitutions interpreting the human rights provisions so narrowly as in truth and in fact to deny the citizens of these countries their rights, and it is in that context that I welcome an institution which will be cheaper, swifter and which I hope will afford some measure of redress to many citizens in this country who have good legitimate ground for complaint against the working of public officers and the bureaucracy. I want to end, Mr. Speaker, where I began, to emphasise that the holder of the office will make the office, and if we indulge in appointments for appointments sake, or if we bring the wrong consideration into account in relation to the appointment of the person who will be the Ombudsman, we will just ensure that this will be another public institution serving little or no good.

MR. JORD: Mr. Speaker, this Ombudsman we are discussing is one that certainly will not meet with opposition from this side because really there is nothing to oppose in this particular measure, and as my colleague, the hon. member for St. Michael South West has indicated, we do hope that there will be something positive coming out of it, but in fact we may find that there is more hullabaloo about this than any positive effectiveness as a result of what we may be doing here.

Now I believe that the Swedes themselves might be pleasantly surprised at the way in which this particular office has spread throughout the world, because when it was introduced in 1809 and when the first holder of the office was appointed in the year 1810 on Sweden, it was over 100 years before any other country adopted the office of Ombudsman; that was Finland in 1919, and then several years elapsed before any other country took the step to set up an Ombudsman which was Denmark between 1953 and 1955 when the actual first holder took up office in 1955, and Norway was in 1963 with New Zealand, I believe, in 1962, according to my researches.

Now exactly what are the functions and purposes of this Ombudsman? I myself would like to approach this matter from a slightly different view point from those of the three speakers who have contributed to this debate, and I would like to look at it from the point of view of the role and function of Parliament and the role and function of parliamentarians because basically one of the major functions of Parliament has been or should be the address of grievances.

Now what we are discussing here today is not a measure to make Parliament more effective or to make parliamentarians more effective in this major task of the redress of grievances. What we are doing is setting up another institution, albeit the holder of the office to be appointed to make reports to Parliament, but I will come back to that particular point. We are dealing with a measure here which should very well make Parliament an even less effective body, because whereas before redress of grievances was in sense or in one aspect through the member of Parliament, as a result of this particular measure now there will be another area for the redress of grievances. I would really like to hear the Attorney General address his mind to this particular problem as to what conflicts he may see or in what way the role and function of Parliament may be affected positively or adversely as a result of the establishment of this Ombudsman.

I know that in the United Kingdom there has been a matter of concern with the appointment of the Parliamentary Commissioner. I do not quite know what the hon. member for Christ Church East was getting at with his very mild shafts of criticism at the Attorney General. He indicates that there are many more pressing pieces of

legislation which should be brought to the Statute Book. I do not know exactly what he has in mind, but I may very well agree with him on the general principle I believe that on the Order Paper of this House is a measure for the setting up of Select Committees or Parliamentary Committees or Joint Committees particularly relating to foreign affairs. (A VOICE: It is no longer on the Order Paper.)

1.50 p.m.

By the attrition of time it has apparently left the Order Paper or they have withdrawn it. Now that would have been a measure which would have given this Parliament greater capacity and greater scope to bring the administration to justice in this country but for one reason or another the Government has not proceeded with that particular measure nor has it proceeded with any other measure to set up effective Standing Committees in this Parliament to hold the administration to account and where the grievances of the people of this country might be aired and might be given some consideration.

We could think of the area of military affairs where a Committee to look into any problems in this area might be a useful means of probing and finding out and insuring that the rights of the citizens are in no way affected so what we are talking about here is first of all the question of priority that we should make an existing institution, to which the member for Christ Church East quite rightly referred, make your existing institutions more effective in order to carry out these fundamental tasks which were always there to be carried out before we go to create new institutions. I will have more to say on this when we go into Committee stage.

I find myself also in agreement with the hon. member for Christ Church East. I must say that he seems to be getting back his old fire because when once before we could get some very stinging comments coming from that back bench but they have now lost that particular sting and he has given the Attorney General a little chiding today. Last week it was the member for St. Philip North. This week it is now the member for Christ Church East.

Hon. H. deB. FORDE: If the hon. member would give way.

Mr. SPEAKER: On what does the hon. member rise?

Hon. H. deB. FORDE: On a point of elucidation. I did not understand any hon. member trying to make the point which is constructive as chiding. I would think it is positive and once the hon. member is positive, I will respond positively.

Mr. SPEAKER: That is only a matter of opinion.

Mr. SANDIFORD: That is only a matter of opinion. I agree with you, Mr. Speaker. Now the main question I would like to raise is the question of the omission, the very narrow lines in which the jurisdiction of the Ombudsman have been drawn. As has been said, I believe arising out of the work done by the Select Committee on the Parliamentary Commissioner in the United Kingdom because there is a Select Committee which sat or which sits on that particular matter, there were definite proposals made for extending.....(ASIDES - I thought it was 2 o'clock, Mr. Speaker.)

In the Select Committee on the Parliamentary Commissioner in the United Kingdom, there were definite and positive recommendations that the scope and work of that office should be extended and I believe that some of the areas in this Bill that are before us take into account some of these recommendations but not all we would like to know. I would like to know why, for instance, and I would like to hear the Attorney General explaining why the areas of personnel have been excluded. I would like him to explain to this Honourable Chamber why the area of Personnel Administration in this country has been excluded.

There is perhaps no area in the administration of this country which creates more problem than that particular area and I believe he may have a good reason for excluding it but I believe that this House is in duty bound to hear an explanation from the Attorney General as to why personnel matters have been excluded from the area of the jurisdiction of the Ombudsman.

SUSPENSION OF SITTING

Mr. SPEAKER: The time is now 2 o'clock. This Sitting stands suspended until 2.45 p.m. today. 2.00 p.m.

On Resumption:

QUESTION TIME

Mr. SPEAKER: This Sitting is now resumed. It is now Question Time.

Parliamentary Question Number 54, standing in the name of the Hon. Member for St. Philip South whom I do not now observe in his place. Let the reply be laid. I am advised that there are no further replies to questions, so, that brings us to the end of Question Time.

PRIVATE MEMBERS' BUSINESS

Mr. SPEAKER: It is now time for Private Members' Business. There is no Private Members' Business on the Order Paper.

GOVERNMENT

Mr. SPEAKER: Government.
Order of the day. When the Hon. Member for St. Michael South, Chair, he might continue to do so.

Mr. SANDIFORD: Mr. Speaker, I resume my contribution on this Bill, by stating there are certain positive aspects to this Bill, to which I like to give some acknowledgement. First, to the manner in which the Ombudsman is appointed and I am referring specifically, not on the proposal that the appointment will be on the recommendation of the Rt. Hon. Prime Minister, after consultation with the Leader of the Opposition, but that the Governor-General, before appointing a person to be Ombudsman, shall submit the proposed appointment to each Honourable House of Parliament for approval. Now, I think, Mr. Speaker, that this is a breath of fresh air, in terms of major national appointments in this country and I would like to welcome this, I believe it is an innovation because I do not remember any major public officer appointed in this particular way. By public officer, I do not necessarily mean any person in the Civil Service, or the Public Service, and I would like to congratulate the Hon. Attorney-General for including this forward looking provision in the measure.

Of course, it is a method of appointment which persons like the Hon. Member for Christ Church West, whom I understand got some warm lashes on Sunday night would appreciate, from his United States experience, that before major appointments are made in that country, a number of them must be done by and with the advice and consent of the Senate.

As I said, this is an innovation in our appointment procedures and it is one which, while I welcome as fortifying the position and the role of Parliament in public affairs, in this country because it gives parliamentarians an added area of interest and influence in such public affairs, I would wish to see this particular method for the confirmation of appointments to certain public offices extended. For instance, I see no reason why persons who occupy national positions, on behalf of this country, such as ambassadors, why their appointments should not be subject to confirmation by the Honourable House of Assembly. I see no reason why such appointments should not be subject to positive confirmation by the Honourable House of Assembly, or by Parliament depending on what agreement there is on this particular matter. (Asides). I do not think that the Government can claim that that is in their Manifesto, they cannot claim that that is in their Manifesto, so they cannot raise the old bogey of 50 years on that because they have not been thinking in these terms.

But, I believe that this Parliament and this Assembly must be given a much greater and positive role, not only ceremonial, but a more positive role in the meaningful execution of public affairs in this country and I would like to see such posts, subject to the confirmation of Parliament.

Secondly, Mr. Speaker, I would like to look also at another positive aspect of this measure. I believe that the very fact that we will have an ombudsman should lead to the improvement of administrative procedures and practices in this country. The very fact, that there is an officer, to whom grievances, or complaints can be made, might result in the administrative officials taking a greater care in the way they arrive at decisions and the types of factors which they take into account.

In many instances, it may be, that senior personnel may not know of the actions taken by junior personnel. In many instances, it may be that actions are taken on inadequate, or insufficient grounds, or they may not take all of the factors into consideration, but the fact that there is a positive check may lead to greater care in the administration of this country, by the public officers. I think that that would be one of the advantages for having this particular measure. I think further, that it would be welcomed by those citizens who have grievances and who may have their grievances redressed, or who may be reconciled to the rightness of the decision taken, even if they had a grievance before, they may be reconciled to the rightness of the decision taken, when the grounds on which the decisions were taken are explained to them.

2.55 p.m.

Having mentioned some of the positive aspects, I would like to throw out a few caveats. We have some very widely drawn terms for the object of the investigation of the Ombudsman. I believe it is said that the Ombudsman will investigate, and in clause 5 which is drawn in some very wide terms, "in order to ascertain whether injustice has been caused by improper, unreasonable or inadequate administrative conduct." Now those are some very wide terms. No doubt those words may carry very ordinary dictionary meaning but the fact is that nowhere in this Act is there any specific guideline given or any definition as to what constitutes improper, unreasonable or inadequate administrative conduct. I am not getting into any deep waters, I will leave that for the members of the legal fraternity, like the Attorney General, the member for St. George South, the member for St. Philip North, and on this side my colleague, the learned member for St. Michael South West. I leave those legal matters to them, but I would however say that to my way of thinking as a layman you are setting up this office and you are giving some very wide powers here, to investigate improper, unreasonable or inadequate administrative conduct, and I would have thought that in the absence of any explanation in the definition clause

that at least the Attorney General would have set out in some detail what are the guidelines to be followed in this particular area. I believe he mentioned three areas, I think I heard the word "dilatatory" but that seemed to be an off-hand method of dealing with it and I believe that it should be dealt with substantively as a major point in this particular measure, because the powers of the Ombudsman are limited to investigating and to reporting by and large, and I believe some guidelines should be set out at least in the address of the hon. member.

Neglect, bias, inattention, delay, incompetence, I could go on, but what is involved in this area? I would be very pleased if the Attorney General could expatiate or dilate on these particular matters when he comes to speak again.

I have already referred to the omission of the Personnel Department from the areas that may be investigated by the Attorney General and I would merely underline that I would wish to the Attorney General to explain why the Personnel Department has been excluded. Is this merely an arbitrary omission or are there some substantial reasons why the Personnel Department has been excluded? I am certain there are a number of public servants who would like to place some matters before the Ombudsman. I believe there are certain personnel in the School Meals Department who have been in that Department for a long time and they have found that a number of persons who only recently came into the service have been appointed over their heads. These persons who have given many years of service to the School Meals Department then find that persons who have come in only for a few years have been appointed before them. I do not know, I heard something about supervisors, but I am not too familiar with that, and if there is a problem with the appointment of supervisors, I am certain that there are areas of grievances here. I believe there were some persons in the Parks and Beaches Commission who were dismissed and other persons a little later on taken on, but the persons who were dismissed earlier on have not been given back their positions in the Parks and Beaches Commission.

Now I am wondering if this is a matter which would fall under personnel matters. Why would this be excluded from the purview of the Ombudsman? I have made this point that the appointment of this Ombudsman may lead to a diminution in the role of a member of Parliament. I see no reference at all to the position of the member of Parliament as far as this particular measure is concerned. It was not without sound reason that in Britain — I believe it must have been about 1967, I stand corrected if I am wrong — that the Parliamentary Commissioner Act or however it was styled....(Hon. H. deB. FORDE: 1967). Well at least on one thing in legal history I am correct. When that was placed on the Statute Book it had been stated that complaints had to

be made through the member of Parliament to the Parliamentary Commissioner. This was in acknowledgement of the role of a member of Parliament as a key and major person and avenue through whom redress and grievances for the citizen could take place.

In this particular measures here we have passed that stage. I am not saying that the avenue to the Ombudsman should only be through the member of Parliament, but at least the status and position of the member of Parliament should be given some recognition, and I am wondering if the Attorney General would give some consideration to this particular matter to ensure that the member of Parliament can make on behalf of constituents or others making complaints to him, that he would be in a position on behalf of his constituents to pass those complaints and grievances on to the Ombudsman. I believe he may be excluded under this present legislation. I am told that clause 8 may refer to that particular matter and I will read that again to see if that is really so. If it is so I would welcome that particular measure.

3.05 p.m.

I would hope that in the usual way the report of the Ombudsman will be laid in Parliament which means that they will be available for each member of Parliament to scrutinize, and the other area to which I would wish to draw attention is that area in which statutory bodies seem to be excluded from the investigatory procedures of the Ombudsman. I believe that the Statutory Corporations are excluded from the areas of investigation by the Ombudsman.

Now I believe that the major work on behalf of Government is done by Statutory Corporations in this country, whether it is in the area of housing, whether it is in the area of industrial development, whether it is in the area of education, whether it is in the area of trade and commerce or whether it is in the area of public information and broadcasting. A significant amount of work is done in this country on behalf of the Government and a significant amount of work is done for citizens of this country which may call into question their own civil liberties or human rights. Where those civil liberties or human rights may be infringed, yet this broad area seems to be excluded from the purview of the Ombudsman. I am wondering why that has been so, and I wish that the Attorney General would explain the rationale for the exclusion of the Statutory Corporations from the Investigatory eye of the Ombudsman, because it would seem that a major area of interest to the citizen has been bypassed, and if in fact there is not a good explanation, the warning given by the hon. member for St. Michael South West might very well have even more validity because the Act may not be as effective as might be thought on the surface of it.

A couple of weeks ago, last week or the week before we had some legislation, I would not call it hurried legislation, but I believe it was legislation brought down in order to be able to say in this particular debate that we have taken steps to improve the other areas of redress to the citizen. I refer to the Administrative Justice Bill in which certain terms, I believe they are called prerogative orders, but I stand corrected on the legal explanation of it, the prerogative terms orders of mandamus and prohibition, and I believe there is another one which I call *certiorari*. I will not speak in any mediaeval old-fashioned legal latin. I will speak in the pure classical latin, not the latin of the lawyers. *Certiorari* is mediaeval latin suited only for the Inns of Court and their origin in the Middle Ages. I go back to the pure form of Latin. Those are areas for the redress of grievances which in order to give meaning to this particular Bill you had to come and put on the Statute Book.

Mr. SPEAKER: You have now come to the end of your time.

Mr. SANDIFORD: Therefore as I wind up, I will welcome this Bill generally as an improvement for the citizen. It maybe that citizens do need some form of redress against the actions of this Government, and we on this side will have the problem of dealing with the setting up and provisions for this particular office. We will thank the out-going Government for having set it up and we will ensure that the provisions are improved and that the rights of the citizens will be given due protection under the next Democratic Labour Party administration.

Hon. H. deB. FORDE: Mr. Speaker, if there is no other hon. member who wishes to speak, I will reply to the points made by hon. members. Let me first thank the three hon. members who have spoken for the comments which they have made in respect of this Bill, both the positive comments and the negative ones, and the failure to comment positively on some parts of the Bill. I want to congratulate particularly the non-legal member of the House, the hon. member for St. Michael South who despite the fact that he is not learned in the law has spoken so learnedly about the law in this case. I think his contribution was a positive one and a very good one; the points he made are points of substance and I wish to reply to him to allay his fears about some of them and to answer his queries on others of them.

Mr. Speaker, let me begin by saying that it was not the intention of the Government when I introduced this Bill that this Bill would set right all the wrongs in the community. There are several ways of approaching the wrongs in the community and putting those wrongs right, and there is varied machinery both established and to be established for putting right some of the

wrongs, some of the injustices and some of the omissions in our community. I do not think that anyone can gainsay the fact that this Bill is a positive contribution, I want to stress that point, a positive contribution in widening the area of redress available to a citizen to deal with injustices, and unfair and unreasonable administration in matters concerning his rights.

Now if only the Bill is that and it achieves those purposes, it is my humble submission to this House that it would be a significant advance on existing machinery. It does not matter whether in this regard we are taking precedent followed in Scandinavia, the United Kingdom or Dominica. The point is that we are taking a precedent that is worthwhile, and indeed, Mr. Speaker, this very House of itself is based on the Caribbean taking a precedent which is worthwhile, the precedent of Parliamentary democracy in the United Kingdom, and therefore I make no apologies for the fact that other countries have adopted the concept of the Ombudsman before and that Barbados is now adopting it. Let me say that we are late in adopting it because as long ago as 1966 when we were getting our own independence Constitution we should have used that occasion to have established the office then.

3.15 p.m.

So I want to reply to the hon. member for St. Michael South West to say that unlike him I do not follow those few articles written by a limited number of academics particularly in the Caribbean who seemed to merely have to find something to say about the office by saying that we need not bring it here. The point is that there are circumstances existing which make the office worthwhile in this community.

Let me give you one example that I have found out in administration. I am sure there are many others. There have been instances where a citizen has applied for a Scholarship which would be awarded by an Overseas Institution and through dilatoriness, sometimes through negligence, even going beyond mere dilatoriness, the part of somebody in the administration, civil servant if you like, that application has either gone unacknowledged or it does not get to the appointed authority in time in circumstances where the young person in this community will not get a Scholarship and his chance of improving himself or acquiring a profession is lost.

Now there is at law no redress to any citizen under those circumstances. I say this because I can document this. I can document such a matter for investigation, Sir, and this is only one of the areas of bad administration that I have seen. I can cite several other areas particularly in the experiences of other countries which are also relevant in Barbados in which through abuse of priorities, through red tape, a citizen

cannot get his grievances redressed adequately and it is a mistake to assume that the difficulties which at present exist are merely difficulties caused by existing institutions not functioning properly. It is a mistake, Sir.

I want to come eventually to the role of Parliament and the role which the M.P. can play, Sir. We have had in this country certain areas of matters confined to the jurisdiction of the Courts. Many citizens do not know their full rights. Some of them are tardy about their rights and others cannot afford the expenses to pursue their rights at law. Despite the fact that we have the Courts established, and I humbly submit impartial Courts and independent Judges in this country, they have not been able to pursue their remedies adequately.

More than that, Mr. Speaker, it is a fact that some of the procedures for moving the Court tend to be outdated. I think it was Maitland who said "the forms of action rule us from the grave" and one of the things Government has been trying to do is to reform those procedures in order to give people their substantive rights.

Last week we passed the Administrative Justice Bill. That, in my view, was also a significant advancement. We are so near a General Election that my friend on the other side — any year away from an election is near election. Whenever it is, but this is my second term in the House and I know that with a year to go every member of Parliament tries either to score his point or if he thinks that the other person is doing something positive, he tends to throw a little cold water on it. It is understandable and I judge the remarks from my friend for St. Michael South West in that light, I know that he is such an astutely aspiring lawyer that he covered his legal tracks somewhat to give a little praise but giving it grudgingly because the politician as he is because he would not like legal history to judge him too harshly in not welcoming this as a significant contribution to the promotion of fundamental rights in this country.

Mr. TAITT: If my honourable and well learned friend will give way on a point of elucidation. I explained very carefully that I did not consider the Bill to have the significance which the hon. member sought to place on it as he introduced it for precisely the reason that in the areas which he alluded to, the Bill would not cover the redress which the citizen may be led to feel he would get.

I have no compunction of going on record as saying that there is nothing particularly significant about this or the predecessor Bill, the Administrative Justice Act. Let the records so show.

Hon. H. deB. FORDE: That is my friend's statement, Sir. I believe that when legal historians judge him, he would be clearly criticised for faulty judgment in that regard but, Sir, I will deal with his statement in a little detail because he joined my other friend from Christ Church East or my friend from Christ Church East joined him by saying that they could think of other priorities in social legislation. I want to deal with that.

It is my contention that this is social legislation. That is the point because the purpose of the Bill is to improve the social rights of the large section of the community and it is a mistake to assume that social legislation is limited to legislation of a welfare type and that both my friends, despite their undoubted competence in the law, have shown a certain myopic approach in trying to look at the full comprehensive concomitance of the term "social legislation" and that instead of making that point, they should be commending this as a valuable and worthwhile bit of social legislation with significant constitutional concomitance and also areas of wide legal import for the continuing development of fundamental rights in Barbados.

I will deal with every argument that they give because this is an important debate for the citizens and I think we have a duty to lead citizens in these areas although the term Ombudsman is strange. I make bold to say that as happened in England and in other places, once the office functions properly and I welcome the statement that it must not be a partisan office, that people will in future come to recognise the valuable role which this office can play and will play in the lives of citizens.

3.25 p.m.

In particular, I wish to refer to the experience in England, where the office has now developed to a stage, that it is welcomed by members of Parliament and the citizens as one which ought to have been established a long time. Mr. Speaker, I will again like to refer to Professor Wade's Administrative Law at page 80 and that is what he says Sir:

"Britain was the first large country to adopt an Ombudsman and there were thus good grounds for giving him a limited sphere of operation at the outset. The volume and the productivity of his work can be seen from the table opposite which is derived from his Annual Reports. The number of complaints within the Commissioner's jurisdiction has actually proved to be moderate,"

and this is the point Sir, for the Hon. Member for St. Michael South as well:

"but it is extraordinary that members of Parliament send him so many complaints, well over half the

total, which, under their own legislation has no power to deal with. The theory behind the requirement that complaints must be submitted through MPs was that the MPs would act as a filter and eliminate futile cases. In fact, it seems that they prefer to let complaints be rejected by the Commissioner, rather than to reject them themselves.

Another notable statistic is the rising percentage of the cases, where some maladministration is found. To some extent, this is attributable to the large number of complaints made against the Inland Revenue and to cases such as those of court line and television licences which bring in numerous complaints on the same subject. Nevertheless, it seems fair to infer that the commissioner's power of penetration has been growing. At the same time, it should be emphasised that his investigations which discover no maladministration are by no means wasted in explaining that the department's action was justified. He is enabling the aggrieved citizen to understand what the department may have failed to make intelligible to him and this by itself, happens to eliminate friction in the work of Government.

More often than not, the Commissioner justifies the Civil Service to the citizen on a broad view. The Civil Service undoubtedly emerges with credit from its ordeal, by self examination."

I believe that that last point was the point made by the Hon. Member for St. Michael South, as well.

But, in this Bill, we have made it possible for the citizen to approach the Ombudsman on his own, or where he is unable to do so, he can apply through anyone including his Member of Parliament. What is more, under 8, Clause 2 does not state the Member of Parliament, but, by any other person Sir:

"A complaint shall be made by the person aggrieved, except where he has died or for any reason unable to act for himself the complaint may be made on his behalf by his personal representative or by such other suitable person."

Mr. TAITT: On a point of order, Sir. It would seem that the copy from which I am reading and trying to follow the Honourable Attorney General would be faulty. It says:

"A complaint shall be made by the person himself," in my copy,

"except that where he has died, or is for any reason unable to act for himself."

Now, unless he has died, or unable to act for himself imports an incapacity. It is a specific interpretation which would be put on that, Sir and I think that the Hon. Attorney-General may intend what is not here.

Hon. H. deB. FORDE: With respect, Sir, my friend is seeking to construe those words *eiusdem generis*, but they are not to be construed that way, in those circumstances. There are various reasons by which a person might be unable to act for himself and not necessarily through death. This is the only point which I am making and furthermore, Sir, another section of the Bill also enables Parliament itself to investigate certain matters where he has not necessarily received a written complaint, in accordance with the Act because Parliament resolves that there are reasons of special importance, which make investigation by the Ombudsman desirable in the public interest and that is under Clause Six, I believe of the Bill. So that, Parliament is given a role that this Parliament can resolve any Member of Parliament to come in and resolve that this is a matter worthy of being referred to the Ombudsman, under Clause Six of the Bill and there is no need for the Ombudsman in those circumstances, to first have a written report. That is the point which I am making, Sir.

I am not going at the level of the individual member writing in the first case, I am going at the level of an individual member raising the matter for Parliament and Parliament resolve that it should be dealt with in that way.

Mr. Speaker, I was very happy to hear the Hon. Member for St. Michael South speaking so well and so complimentary on the Provision of the Bill dealing with the appointment of the Ombudsman. He made the point Sir and if I may quote him, he says that:

"The section of the Bill which provides for the Ombudsman to be appointed by the Governor-General on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition showed some of the good features"

and he cited the feature, where that appointment cannot be made, unless it has first received the approval of Parliament. My friend said:

"It is a breath of fresh air in terms of major national appointments in this country, it is an innovation"

and he went on to say that:

"It fortifies the role of Parliament in this country and gives the parliamentarian's position an added status."

I agree with every word that he said, Sir and I think that that is a very astute judgement. I will go further, Sir, I am not committed to Government, or anything of the

sort, I believe that his suggestion, that this type of Provision should be extended to other areas of appointments to offices of a national nature is a very worthwhile and valuable suggestion and it is one that we should seriously consider, particularly, if we are at any time revising the whole of the Constitution which governs Barbados. I believe that Parliament should be given an adequate role in these respects and that is why in drafting this Bill, we have gone out of our ways, to make Parliament have a say in the appointment to allow the Ombudsman to report to Parliament and for Parliament to consider his reports, from time to time, and to minimise any area in which there will be individual, partisan considerations. Whilst on this point, I want to answer another point made by my Honourable friend. He said that Parliament could be made a more effective Body, than it is today. I agree with that, Sir. I certainly agree with that and wherever possible, in Legislation, we will seek to give Parliament that role.

But, let me too express a regret, that Select Committees, even when they are established do not always function, or if they function, do not function adequately. Let me make that point. I have sat on Select Committees. We have had difficulties at times in making a Quorum. I have taken the suggestion of the Opposition for instance on Land Law and I think that the record would show, Mr. Speaker, that some of the Members attended once, I think that one attended twice, and not more than that. You chaired that Committee and you were present at every meeting of the Committee. This is the experience that we have, that I certainly have on such Select Committees. But, I promise the Hon. Member, that he will get a Select Committee on Foreign Affairs, in due course, Sir. I think that the fact that Parliament is not meeting, Select Committees must be laid at the door of all of us who are on those Committees.

I want to reply to a point made by the Hon. Member in his rather pixied point, the Hon. Member for St. Michael South West, that the views of the Barbados Labour Party are similar to those of the Conservative Party in England, Sir. I think that that was a political point. The Hon. Member for St. Michael South West.

Mr. SANDIFORD: On a point of elucidation, Mr. Speaker. (ASIDES). You mean that I cannot elucidate a point. On a point of elucidation, but I heard about the Conservative Labour Party from a BBC commentary, only a couple of days ago. I heard about Conservative Labour Party in Barbados.

Hon. H. deB. FORDE: We are conservative about maintaining high standards in this country, Sir. Conservative about seeing that what is right is carried out. But, we are democratic socialists in the measures which we take, in order to achieve the maintenance of high standards in this country. So, it is nothing to worry about on that, Sir.

3.35 p.m.

I want to deal with my friend when he had the full House of school children and what not, trying to bring in his most sonorous terms and take on the sort of pontifical look, the pontifical expression which normally he reserves for his appearance at St. Leonard's, but on this occasion he was at his greatest pontifical exhibition, and with his full height of six feet four inches, Sir, and talked about this Bill having no provision for the investigation of corruption. A lofty statement, Sir, but there have been various measures which we have been seeking to bring before this Parliament to deal with issues of corruption and the investigation of corruption. One was a Bill passed only some weeks ago, Mr. Speaker, updating the law of corruption. That is so, Sir. There is still pending a Corruption Act. Now, the other side were invited to join a Select Committee on that Bill and the other side refused to join this Select Committee on the Bill, so what am I hearing now? At one stage they are telling me that I should not bring this Bill, we should improve existing Commissions, we should have more Select Committees, then they say they want to improve corruption, to get rid of corruption. I bring down a Bill dealing with corruption and improving the law on corruption and the machinery for stamping out corruption and I invite the Opposition to join the Select Committee to improve it, the Opposition declined and run away. I cannot take the Opposition seriously on these points, I really cannot take the hon. member seriously, because he should never join in that one.

Mr. TAITT: If the hon. member will give way, on a point of elucidation, Sir. Debating this specific Bill which is before the House, bearing in mind the hon. member's pontifications when he introduced the Bill suggesting that it was the most significant step in the administration of justice, and as he called it, Sir, a leap for freedom, it was in that context that I pointed out that this Bill did not make provision, contrary to the belief persons could gather, for any extralegal investigation of corruption, and I went on to quote from a learned paper, albeit by a West Indian writer, Margaret De Merrieux, who has been a lecturer in the universities in the United Kingdom, so dear to the hon. member, this woman has pointed out in her paper a learned piece that will appear in one of the journals in North America soon, that none of the Constitutions which have made provision for an Ombudsman, nor any of the legislation subsequently passed in the Caribbean had dealt with the issue of corruption, indeed they had made provision that the Ombudsman should not investigate corruption. That was the point I made, Sir.

Hon. H. deB. FORDE: Now, my friend has explained himself, let me tell my friend that I have read the article. Normally when I am coming down to the House with legislation on legal matters of this nature I usually read every article that would have been given to the classes at the Cave Hill Campus, because I am sure my friend would read them. (Mr. TAITT: This has nothing

to do with Cave Hill). I am not going to be fobbed off by my friend's explanation, I have accepted his explanation. The point I am making, and he was seeking to make a very strong political point, and I want to reply to him in strong political terms on this, you see, Sir.

The point I am making is that the Opposition is saying that there is nothing in this Bill to deal with investigation of corruption. They are saying that it is not necessary to bring the Bill because, according to him, there is no big thing, we should make existing institutions work, and one of those is the Select Committees. I am saying that we brought to this House.....

Mr. TAITT: On a point of order, Sir, the hon. member is misleading the House. He says that the Opposition stated something, when in fact as you will recall, Mr. Speaker, it was the hon. member for Christ Church East who made that point, Sir.

Hon. H. deB. FORDE: Mr. Speaker, two members of the Opposition who spoke referred specifically to making existing institutions work, they referred also to the fact — one member at least — to the need for Select Committees to function, and the hon. member referred to the Bill not dealing with corruption. I assume that the first two members spoke on behalf of the Opposition, Sir. I am going to answer the hon. member politically, Sir, and the political point is that we brought legislation here not only to investigate corruption, but to minimise corruption, to stamp out corruption, and we invited the Opposition to join a Select Committee to improve that legislation and the Opposition declined. That is a fact, Sir. They refused to sit on the joint Select Committee on the Corruption Bill, just as they refused to sit on the joint Select Committee dealing with integrity of members of Parliament. That is the record, and I am not going to be put off politically, because I am going to repeat it a million times till it is understood by the public at large, that if the Opposition is serious about the need to investigate corruption, they ought to be equally serious about the need to minimise corruption and to prevent corruption occurring, and that would have called for proper Opposition participation in the legislation dealing with corruption, the Corruption Act, and the legislation dealing with the integrity of members of Parliament.

I would welcome a positive statement now from the Opposition benches to the effect that the Opposition will support the Bill for the integrity of parliamentarians and that in the Senate they will support the Corruption Act which we have brought down to this House, and I would welcome them telling the public at large that both of these bits of legislation are worthwhile bits of legislation.

Mr. SIMMONS: On a point of order, Sir. The hon. Attorney General must not challenge the Opposition on this legislation, their candidate for St. Philip South two

Sunday nights ago said that politics is a dirty business and people go into it to get what they can out of it. Their candidate, Mr. Blackman, said that.

Hon. H. deB. FORDE: It is because of that attitude that I am inviting them, Sir, to join in. The hon. member for St. Michael South gave some caveats. He said that the term "injustice" is a wide term. I agree, Sir, it is not possible in this legislation to characterise every act that amounts to an injustice, etc. I believe that this must be left to the discretion to be investigated, but clause 6 of the Bill goes somewhat towards answering this point in that it provides in a way for the Ombudsman to ask the High Court whether he has the power to investigate a particular case or not.

The hon. members took the opportunity to refer to the question of personnel. Now, Sir, there are quite a few methods of constitutional redress already available on personnel questions, and hence one of the reasons why we did not think it necessary to make this point, and in any event we have tried not to tamper with existing constitutional provisions unless we brought down constitutional reform including provisions on provisions which have affected the entrenched clauses.
3.45 p.m.

We have been at pains in this Bill to so draft the Bill as not to affect any of the existing entrenched clauses in the Constitution I think it is important that we bear that in mind particularly where it affects the Civil Service at large, and hence a little bit of caution. I think one member said the police is one area in which there will be great scope for injustices. I can give the arguments on the other side why certain acts of Government and certain departments of Government are kept out of this. Whenever one is drafting legislation you have to balance the rights of the individual subject against the overall public interest which also includes the rights of that individual subject. This is not always easy to do, but it is always recognised that the area of crime and the area of security are two areas in which sometimes actions have to be taken that may appear to affect the individual right whilst at the same time it is safeguarding the wider public interest and one has to draft that balance very carefully, and in all of the legislation in parliamentary democracies and in the Commonwealth that we have looked at, they have made the point that the area of investigation of crime by the Police and the area of defence are the two areas which are exempted from investigation and we have followed those in this case.

Sir, I could not agree with my honourable friend more that the person who is appointed to the office will make all the difference between this legislation being merely a paper Act and this legislation functioning and attracting the support from the public that it deserves and also getting the respect for the office which it deserves. I

think this is important, and I believe that if one looks at those countries where the office has proved to be most successful and the legislation its worth, I think we can conclude that it has as much been due to the status and the stature of the first holder of the office as to anything else.

I am happy to say that in Trinidad today the Ombudsman in one of his most recent reports made the point that he is crowded out with a number of complaints under the Act, because people are now using the machinery effectively, and I hope that the same will occur in Barbados. I believe that the points made by hon. members have been valuable points, some of substance. I regret that at the moment statutory bodies are not fully brought under the Bill, but we do have a clause which makes it easy for the Governor-General to add a list of bodies, and I will undertake to take up that point with the Cabinet at the earliest opportunity. It will not be necessary to come back to the Legislature for it, but I should certainly report on the comment which has occurred on this Bill to see whether statutory bodies ought to be included. I think it has been a valuable debate. I hope the public of Barbados will pay more regard to it, and I end up by saying again that not only for the Government and the Labour Party is this the fulfilment of a manifesto promise, but for the country it adds to the area of remedies available for the citizen at large to enforce his rights or to see that his rights are adequately enforced as against the State and in circumstances where State action has been increasing more and more to affect the small man in the street, the average citizen, I believe that the Government has shown courage and it has shown foresight in bringing this legislation in fulfilment of a solemn manifesto promise.

The question that the Bill be now read a second time was put and resolved in the affirmative without division.

On motion of Hon. H. deB. FORDE, seconded by Hon. D. O. BRADSHAW, Mr. SPEAKER left the Chair and the House went into Committee on the Bill, Mr. ODLE in the Chair.

Clause 1 was called and passed.

Clause 2 was called.

Hon. H. deB. FORDE: Mr. Chairman, I beg to move that Clause 2 stand part.

Hon. D. O. BRADSHAW: I beg to second that.

Mr. TAITT: Mr. Chairman, I wonder if the Hon. Attorney General would indicate if for no other reason than the record how he envisages clause 2(2) would operate. I am aware that there are other officers under

the Constitution who are responsible directly to Parliament, for example, the Auditor General. (*Asides*) There are other officers who under the Constitution report directly to Parliament and the methodology is fairly clearly set out. I wonder if the Attorney General would indicate what is the methodology he envisages in Clause 2(2). Clause 2(2) reads:

"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."

Now, Sir, the other aspect of this which concerns me a little is that I cannot recall seeing provision for the removal of the Ombudsman. I am aware that the attempt here is to ensure that he has the same integrity of office as the judges, and Clause 2(5) makes the point that the Ombudsman may resign office at any time by written notice to the Governor-General. I am sorry. I am reading Clause 3. I will have to wait for Clause 3 before I go any further on this. If he could reply now to clause 2(2), I will leave the rest until we reach Clause 3.

Hon. H. deB. FORDE: Mr. Chairman, he has to cause the report to be laid. It is obvious that just as happens in the case of the Director of Public Prosecutions or the case of the Judges, the Minister under whose portfolio the Ombudsman comes will lay the report for him or make any report to Parliament. A little later on in the Bill there is a section dealing with reports under Clause 13 and you will see that in Clause 13(6) the Ombudsman has in each calendar year to cause to be laid before each House of Parliament such reports as he thinks fit. Now he either transmits them as the Auditor General does through Mr. Speaker or he transmits them through the Minister who is ostensibly responsible. The Auditor General's reports are sometimes also brought in by the Minister of Finance.

Now in relation to the removal point, that is provided for by reference to Section 105 of the Constitution.

Mr. TAITT: Mr. Chairman, I wonder if the Attorney General would not wish to establish.....I raised the question specifically because it would seem to me that in the context of this particular office we might wish to establish clearly that such report should always be through Mr. Speaker to remove it from any area of ministerial suggestion. I think that the Auditor General always submits his report through Mr. Speaker, and I think that is provided for.

3.55 p.m.

It would seem to me that this office, more than any other, would wish to be demonstratively cleared of any Ministerial direction and while we are aware that

this House does not, according to the Objects and Reasons of the Act, he should be cleared of any Ministerial direction and according to the first half of 2(2) he should be able to carry out his functions in accordance with his own independent judgment..

It seems to me that we could even put it in the reporting stage later on in the day but it seems to me that we should make clear provision and the Bill would be strengthened if there is clear provision for the reporting to be made through the Speaker. I wonder if the Attorney General would allude to this point.

Mr. SANDIFORD: Mr. Chairman, I refer to Clause 2(1) where there is reference to the phrase "allegations of improper, unreasonable or inadequate administrative conduct." I refer to that particular phrase because it is at the heart of the investigatory functions of the Ombudsman and there is another reference to the same phraseology in Clause 5(1) where there is reference again to "improper, unreasonable or inadequate administrative conduct" and I have been pressing for some explanatory statement of what constitutes improper, unreasonable or inadequate administrative conduct and I am wondering if the Attorney General would be appreciative of accepting an amendment along the lines that such wording include bias, neglect, ill-attention, delay or arbitrariness or any of the three words or so which he mentioned in his introductory speech. I believe that this is of fundamental importance so that there should be some type of guidelines for the Ombudsman to follow.

Hon. H. deB. FORDE: Mr. Speaker, on the question of guidelines, anything that I say would not necessarily bind the Ombudsman but I agree with all of the categories which my friend has set out. Those are the areas which one normally look at and there are several learned tomes on the subject, the experiences of other countries where the Act that constitute these broad categories have been adverting to. I do not think that we can set out in the Bill any more carefully or more adequately the definition of what is embraced in the phraseology to which my learned friend referred.

In so far as the point made by the hon. member for St. Michael South is concerned, in the case of the Auditor General there is a specific provision in 133 of the Constitution about submitting his Report to the Speaker. The point is that the Report here is going before both Houses of Parliament, in that we could not draft the Clause but I can assure my friend that in the case of the Director of Public Prosecutions who has an independent function, that Clause makes it clear that there is no Ministerial responsibility for the Ombudsman and that, therefore, his method of communication is the Speaker. I do not think we necessarily have to set it out that he should communicate to Parliament through

the Speaker because he is Parliament's officer in that regard and I think the purpose of Clause 3 was to make it quite clear that he is independent and that Parliament is the person to whom he looks and not to a Minister of Government at all.

The question that Clause 2 stand part was put and resolved in the affirmative without division.

Clause 3 was called.

Hon. H. deB. FORDE: I beg to move that Clause 3 as amended in the Amendment circulated stand part.

Hon. DeL. BRADSHAW: I beg to second that.

The question was put and resolved in the affirmative without division.

Clause 4 was called.

Mr. TAITT: Mr. Chairman, Sir, I wonder if the Attorney General would not like to take another look at the implications of Clause 4(3). Clause 4(3) states that 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. Now the Governor General what he prescribes is going to be prescribed on the advice of the Minister or the advice of the Ombudsman. It seems to me, Sir, that when once you say "such fees as the Governor General may provide" that we, in Parliament, are in fact going to be fixing the fees.

Hon. H. deB. FORDE: Sir, under Clause 15 the Governor General may make regulations generally for the administration of this Act and, in particular, for prescribing anything required to be prescribed under this Act. Regulations shall be subject to negative Resolutions, so they are actually made by the Governor General and laid on the Table of the House.

Now, where the Governor General acts he has to act on the advice of Cabinet in those circumstances but we have decided to bring them down to the House. There are only fees but the category of fees the House would want to see so that they can be looked into.

Mr. TAITT: I take the point. I know the mechanics but the point I am going to say is ostensibly the Ombudsman is the little man's person and since fees are being fixed you know, Sir, that fees have a tendency to be fixed in relation to the economic situation and/or a number of other categories. Recently we have been seeing revision of the fees in the Courts and the valid reason has to do with the time. What I am suggesting is that the legislation should be sufficiently tidy that the question is not left for interpretation.

Now I know that later in the Bill attempts are made to do this but in this one it says the Ombudsman may charge such fees. The "may" is not mandatory, point taken, but if the fees are prescribed, the tendency is going to be that there is a fixed fee for a particular activity. I would have preferred to see the question of fees dealt with in a more satisfactory way. I hear the Attorney General to be saying that the regulations will deal with that. Under the circumstances one can leave the point.
4.05 p.m.

I do not understand if you are establishing posts, for want of a better term, I should like to describe it as a post and the whole rationale of this post is that any ordinary citizen, who has a complaint against the Administration can approach the office and the person holding office and make his complaint, or her complaint as the case may be. According to the Interpretation Act, it is Section 34, the male includes the female and singular and the plural. I am not being a male chauvinist if I say, make his complaint.

There are two objections which I have to this particular Clause. The first one is, why should you want to charge fees because it appears to me, that one is putting a premium on the position of the Ombudsman making it difficult for the poor elements in the community to approach, let us call it, the throne of grace. To tell us that the "may" is operative, that he does not have to charge the fees is ridiculous because if you give a man the authority to charge fees as this Clause, Clause 4(3) that:

"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."

I understand from the interchange that went on, I am not using the word in a pejorative sense, between the Hon. Member for St. Michael South West and the learned Attorney-General, that he is going to leave it in the Regulations, but that is one thing that the Regulations did not say and it would have to be in the Act. First, I do not agree that the Ombudsman should charge fees and I should like to invite the Hon. Attorney-General to take it out. But, if he is going to charge fees, there should be a Provision that all sums of money, which I do not see in this Clause and I cannot recollect seeing it in any other Clause, we have not come to the other Clauses as yet and I stand to be corrected. When we went through it, I cannot remember seeing it in any other Clause, that all sums of money received by the Ombudsman should be paid into the Consolidated Fund. You cannot put that in the Regulations because then, the Regulations would be *ultra vires* to Statute because here is a person who is being remunerated for his job.

But, in my humble opinion, the best kind of person to fill that kind of post will be somebody who is doing it for nothing. His staff should be paid but it should be some person with wisdom and experience. In other words, of a retired kind of category from active political, and or economic life and he should be someone who would be glad to serve the country, by acting in a post such as this, maybe for nothing. But, you are paying him a salary, according to what you have done in the Bill, which we are discussing and I gather that he will be paid a handsome salary and then, you give him power to charge fees and then, you do not say what is going to happen to the fees, except, that inferentially, by the very wording of the Clause, you say that he can charge fees for the services which the taxpayers are providing through his office, for his services, subject only to the conditions laid down by some rule, or regulations which the officer administering the Government of the country may prescribe. That does not appear to me, to be right and I would like the Hon. Member for Christ Church West to let me know what he thinks about an Ombudsman who is going to have the authority to charge fees, or not to charge fees, but when he charges fees, there is nothing in the Act itself which says how those fees are going to be disbursed. But, inferentially, if you say that you are charging them for his services, then, those fees, must necessarily go into his pocket, by the reading of that particular Clause.

Whenever we have provisions about people charging for services, in Barbados, it is usual to include a Clause to the effect, that "all receipts to cover everything that comes into the office must be paid into the Consolidated Fund" and that is the point which I would like to make on that particular Clause. I will have something perhaps to say on subsequent Clauses, but that is the point which I should like to make.

Hon. H. deB. FORDE: Let me take some points, Sir. It is not intended, by any regulations whatsoever to make the Ombudsman charge for his services as an Ombudsman. It is anticipated, that there may be circumstances, where a person wishes, for instance, ten copies of the Ombudsman's Report. In such a case then, obviously, you prescribe the amount which should be paid for the copies of the Report. Now, I can go somewhere towards dealing with my friend's point. If they wish regulations to be subject to affirmative resolution, so that Parliament has control over the sort of expenses which must be recouped and therefore, we could amend Clause 15(2), instead of "negative resolution", to subject to regulations "to affirmative resolution". I have no objection at all to that, Sir. It is that the Honourable House would have another opportunity, at every time that functions of the Ombudsman come up for discussion to consider those functions and how he is going on. So, I am prepared to change Clause 15(2) to "affirmative resolution", so that hon. members will be satisfied,

that exorbitant charges, not for his being Ombudsman, but for copies of the documents will be dealt with. That is the first point on regulation Sir.

My friend assumes that any fees paid to the Ombudsman becomes his private property. Certainly, no such regulation will be made. It is not intended that this should be done because any money which the Ombudsman takes in, he is paid by Parliament — for funds provided by Parliament, obviously goes into the Consolidated Fund. Particularly, Sir, the officers are appointed in accordance with Section 94 of the Constitution. If my friend wants that spelt out specifically in the Act, we would have to do a specific amendment to the payment of those fees into the Consolidated Fund.

Rt. Hon. E. W. BARROW: I wonder if my learned friend would give way. The point that I am making is, let us say that I was the Ombudsman, I do not speak Norwegian very well, Sir — I could challenge, if the Auditor General, or somebody asked me, what happened to the fees which you collected? I would tell him, it is none of your business because the Act says that I, the officer holding the post, to get around pronouncing the word Ombudsman can charge such fees for my services, once the regulations tell me what fees I can charge. What happens to them, according to this Clause is my business. Therefore, I am suggesting that specifically, you say all your money received shall be paid into the Consolidated Fund or otherwise, he does not have to account for it. This is my interpretation, I am not trying to make a political point out of it. I think that it is a question of *casus omissus*.

Hon. H. deB. FORDE: Mr. Chairman, I have no objection to amending Clause 4(3):

"and all such fees received shall be paid into the Consolidated Fund."

That is easy Sir. That is what is intended. So, at the end of Clause 4(3), "prescribe" to put a comma there,

", and all such fees received shall be paid into the Consolidated Fund."

Mr. TAITT: I beg to second that.

Mr. SANDIFORD: Mr. Chairman, just one other question on this. We are hearing about this Ombudsman and how he is to be appointed and so on. I, myself hope that it will not be restricted to those with legal training because there is a tendency to believe that such offices should only be filled by persons with legal training. I wonder if the Hon. Attorney-General would tell us what he is envisaging as the level of office for this particular post?

4.15 p.m.

Will it be at the level of Permanent Secretary or higher? Will the Minister tell us exactly what type of High Court Judge, what does he have in mind for this particular area?

Hon. H. deB. FORDE: Sir, I would envisage that the person should be one who of course is respected in the community. That is the first thing. Someone whose word and whose level would carry respect both with the Prime Minister, whoever he or she may be, and the Leader of the Opposition, and of course members of Parliament and the community at large. The person need not have legal expertise, and the office is not being confined only to lawyers, there are other outstanding citizens without legal training who are quite capable of filling the office, and it is not being envisaged that this is the sort of office reserved only for lawyers at all. In fact, in the experience of some countries non-lawyers have made an outstanding contribution in this area. It is true that in Guyana and in Trinidad and Tobago the first holders of the office were legal people. I think Mr. Justice Evan Reeves was the first holder of the office in Trinidad and Tobago, but in the United Kingdom the retired Auditor General — I think he is Sir Leslie Compton — was appointed Ombudsman, Parliamentary Commissioner, and performed his office very outstandingly, and I think the same can apply in Barbados.

I really would not want to go any further than that, I certainly do not know when the Act will be proclaimed who will be Prime Minister and who will be Leader of the Opposition and who they would wish to hold the office. I can assure the hon. member that I do not aspire to the office of Ombudsman, but if the Leader of the Opposition wishes it, he would be a first-class candidate, Sir.

The question that Clause 4 as amended stand part was put and resolved in the affirmative without division.

Clause 5 was called.

Hon. H. deB. FORDE: Mr. Chairman, I beg to move that Clause 5 stand part.

Hon. DeL. O. BRADSHAW: I beg to second that.

Mr. SANDIFORD: Mr. Chairman, we are back to that phrase again — “improper, unreasonable or inadequate administrative conduct” — and what those terms mean. I am thankful to the Attorney General for admitting that act of omission or commission on the part of the administration might be called into question, and I am wondering if the Minister could tell us, or make some comment on this particular case, where you may have a distinguished Barbadian journalist who might be detained by the authorities of a foreign

country or a CARICOM country, like Guyana, and where the omission on the part of the administration of this country, maybe the Ministry of External Affairs, in making any representations on behalf of that particular journalist would be subject to investigation by the Ombudsman.

Hon. H. deB. FORDE: The hon. member is obviously acting on an assumed case, because I am sure the hon. member would never assume on the part of this Minister of External Affairs that he would not deal with any problem that may occur to our citizens, be he a journalist or be she something else, Sir, so I expect the hon. member is assuming a situation. Why it should apply to the country of Guyana I really do not know, because I would hope that the country of Guyana would be sagacious enough not to detain a citizen of Barbados illegally or unlawfully, Sir, because such would bring the wrath not only of the Government but also of course of the Opposition on their heads.

If my friend is referring to a particular case which he saw in the newspaper a few days ago, I do not think it would be appropriate for me to reply to that particular case in view of the fact that I have raised that particular matter with the Barbadian citizen concerned and I am awaiting his final word on that particular case before anything is done about it.

Mr. TAITT: Mr. Chairman, on this whole question of the inadequate, clause 5(1), “whether injustice has been caused by improper, unreasonable or inadequate conduct,” I would prefer to see an amendment which followed that clause, which went on to say: “Such conduct will include.....” and include the words that have been described as the Crossman Catalogue, that is to say, Sir, bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness, and so on. That is the classic clause that has been used when the British introduced their Parliamentary Commissioner Act, which the Crossman had to include it as the wide area, and in fact it became part of the definition which my friend and colleague has been trying to seek.

Now, Sir, the New Zealand Act, strangely enough, uses the terms “unreasonable, unjust, oppressive and wrong.” Now it is the “wrong” that manages to capture all the others, and it also raises the question of the merits of a decision versus the mal-administration of the decision. Mr. Chairman, there is a distinction that has been made by all Parliamentary Commissioners or Ombudsmen in all the countries between mal-administration and the merits of a decision, and they have tended to see within the context of mal-administration the procedural aspects of the decision making process rather than to judge the merits of the decision itself. As a matter of fact, it is only very recently that the Parliamentary Commissioner in the

United Kingdom commented in his report on the actual wrongness or the merits of a particular decision, and that decision was so awful that the Select Committee of Parliament of Britain agreed that that was one where deviation was desirable.

Mr. Chairman, in our present description, "improper, unreasonable or inadequate," I have to join with my colleague in saying that the area is too unspecific, it leaves too much to be interpreted. At which point is a decision unreasonable? The decisions dealing with unreasonableness run all the way from two weeks to two years, depending on the kind of issue that is involved, and I think it would be wrong to leave it at inadequate or unreasonable or improper. What may be considered improper by a group of parliamentarians who were fighting an election might not be considered improper by a group of school teachers, or *vice versa*, and the Parliamentary Commissioner is left to make his own decision, because remember we have just passed a clause which says that he must carry out the functions independent of any advice, therefore if he is left with these three words, "improper, inadequate and unreasonable" he is left entirely to determine for himself what is unreasonable, what is improper and what is inadequate.

4.25 p.m.

I am suggesting that by using the United Kingdom technique or indeed the New Zealand technique or if the Attorney General prefers if he would look at the Jamaica legislation, again he will see that the Jamaicans have been specific in the areas where the Ombudsman might investigate, and I am suggesting to him that this is one of the times where to leave it as vague or as broad as it is will not be in the interest of the Bill or the purports of the Bill. I wait to hear the Attorney General on this.

Mr. SIMMONS: I do not want to get into this battle of semantics. I am indeed impressed by the hon. member for St. Michael South West and the depth of learning that he has brought to this debate. Of course he is only following the Hon. Attorney General's stance when he was in Opposition and he has obviously read the debates very well.

Mr. Chairman, there is a lot of merit in what the hon. member for St. Michael South West has said about spelling out to put beyond doubt the various gradations of improper conduct or inadequate conduct or whatever, but perhaps having regard to the New Zealand experience all that needs to be done is to delete the word "or" between "unreasonable and inadequate", put a comma there and include after the word "inadequate" the words "or wrong", and that would be all-embracing. It would shorten it to just include the words "or wrong" following the New Zealand model. Delete the word "or" between "unreasonable and inadequate" and substitute thereafter

the words "or wrong administrative conduct". I think it would be neater. If experience shows that the Ombudsman needs greater guidance in the operation of the Act then the Crossman model could probably be looked at by way of amendment.

Hon. H. deB. FORDE: One of the dangers we have is using words that may be tautologous although they look clear. My submission is that if a thing is wrong it is improper, and if one looks at the Oxford Dictionary for the ordinary and natural meaning of the word, and this is how we construe words that we use, you will see that "improper" means "not proper, the opposite to proper, not strictly belonging to the thing under consideration, not in accordance with truth, fact, reason and rule, abnormal, incorrect, wrong." That is the whole point I am making, Sir. That is what improper means. It does not only mean "not proper" in the *stricto sensu* sense. It includes "wrong", and when we were drafting this Clause we looked at the other persons and indeed Professor Wade writing at length, I think the hon. member knows that, on this subject considered that these were words of the widest import to include the several matters which my friend from St. Michael South West so adequately characterised as representing conduct that ought to be investigated by the Ombudsman, and we considered that the three words improper, unreasonable or inadequate would cover a plethora of circumstances some of which were already adumbrated by biased discriminatory practices etc., and others which we may not yet have anticipated, and that it was better to use that general phraseology in the light of all the criticisms we have seen of the New Zealand, Australian and other drafts, and this would probably be more comprehensive than anything else. That is the reason why it was drafted that way.

Mr. TAITT: Mr. Chairman, I think that the Hon. Attorney's submission would be perfectly acceptable if in fact the interpretation was going to be done in a court of law. What we are discussing here is providing the framework within which the Ombudsman himself will be able to function. It is not a question of whether "improper" captures "biased"; that is not the point at issue at all. Perhaps I can better demonstrate what I am talking about if I quote from an article written by Jeffrey Marshall who is a Fellow of Queens College at Oxford. I am sure the Hon. Attorney General would accept him as reasonable. (Hon. H. deB. FORDE: No, Sir; he is not from Cambridge.) I believe that as a Fellow of Queens College he would have sat at the feet of Wade the Elder, but be that as it may, mal-administration is the name of the article by Jeffrey Marshall, I think it is 18 JCLQ or 16, but he had this to say at page 33 after looking at the Select Committee of the Parliamentary Commissioners formed in the 1968 Report. He talks about Sir Edmund Compton who was the first parliamentary Commissioner

who was reporting to the Select Committee and this is what he said. I do not want to read too much.

"My investigation is not directly concerned with the merits of the administrative action or decision complained of, but rather with the way the department acted or the way the department reached its decision."

Then there were ellipses and he goes on:

"What I cannot do is to form a view about the merits of the decision and whether the complainant suffered injustice from it if I have found no element of administration in the process by which the department arrived at this decision."

Now you can see that in spite of the Crossman Catalogue which had been spelt out for Sir Edmund, even when he approached his task as the Ombudsman interpreted his task to be that so long as the procedure in the department was right, he was not going to get involved in the merits of the decision. Now subsequently the New Zealanders when they were introducing an Ombudsman recognised that most of the injustice occurs not so much at the procedural level but at the merit level where the decision is wrong in itself and it manifests injustice. For these reasons they therefore included the word "wrong" in their equivalent of our Clause 5(1), and that is why I believe the Attorney General could accept our suggestion that if he does not feel disposed to add a long list that comprises the Crossman Catalogue that he might lose the New Zealand approach which I am sure he will agree that the exponents from Cambridge are now following, the latest one of which is a young man Francis Alexis from Jamaica. He is straight Cambridge, so the Attorney General could accept that; but in his dissertation which he has just completed for the doctorate he is dealing with this matter in some depth and has suggested that the New Zealand approach has come nearest to satisfying this difficulty of distinguishing between merits and procedure, and I would suggest "unreasonable, unjust, oppressive and wrong" or in the words of my friend the hon. member for St. Philip North "improper, unreasonable, inadequate or wrong". I will take out "inadequate" because.....(*Asides*) Here we are back with "perverse". I think that on all sides hon. members are expressing the view that the Attorney should take the point that we are not satisfied that in spite of the brilliance which exists in the Attorney General's Chambers the present description will go towards giving the Ombudsman, and this is the important point, the kind of guidelines which we suspect he will need.

Now, Sir, I go a step further. In light of the fact that following the hon. member for St. Michael South the Attorney General has now indicated that there may indeed be an Ombudsman without legal training, there is all the more reason why such an Ombudsman should have

a clearly defined, set out, if you will pardon the expression, terms of reference. Let us assume for argument sake that His Honour the Speaker became an Ombudsman.

Mr. CHAIRMAN: I believe you mean, Mr. Chairman.

Mr. TAITT: Mr. Chairman. I said Mr. Speaker, but I meant Mr. Chairman. Let us assume the present Head of the Civil Service became Ombudsman. Neither one of these gentlemen would be acquainted with the intricacies and there are intricacies of interpretations as seen by those who are learning the law therefore when either one of these gentlemen enter into their respective fields come to the office of Ombudsman, we in Parliament ought to leave them in no doubt as to what their task is otherwise the very noble powers which are espoused by the Hon. Attorney General will fall at the point of implementation merely because the Ombudsman in the absence of proper guidelines went off in a tantrum.

I humbly submit that the suggestion of the New Zealand approach would enhance the Bill. I seek in no way in so recommending to gain any political mileage. I merely want to see that if we have an Ombudsman Bill that we have the best Bill in the Caribbean.

Mr. SIMMONS: Sir, I just want to make a suggestion which the hon. member may accept that the excursions to academia by the hon. member for St. Michael South West has been useful and ~~assimilating~~ but since the hon. member is obviously the one who is seized with all of the learning and the articles concerned with this piece of legislation, the Commonwealth writings, the Jamaican forms, and what he can do by way of assistance to the person appointed as Parliamentary Commissioner is to collect all and as a gift and a noble gesture for one who spoke so eloquently on this Bill, deliver the same pile of documents for the erudition and elucidation of the Ombudsman.

Rt. Hon. E. W. BARROW: The position is, Mr. Chairman, that we are making law and no pile of memoranda delivered by any member after the law has been made is going to make the law any better than when we passed it and I think the hon. member who just sat down is aware of that.

Now, there was a problem in the United Kingdom in 1967 to 1968 when Sir Edmund Compton was Parliamentary Commissioner because the wording that

they had dealt with was mal-administration and what has been described as the Crossman's Catalogue dealt with comments like ineptitude, unbias, incompetent, but the one word which appeals to me was perverse conduct and I think that the Commissioner at that time, and the hon. member for St. Michael South West has quite rightly pointed out, said that he was more concerned whether everything that should have been done was done. It arrived at a decision. People always forget that there is a presumption, however, that everything has been done rightly until the contrary is proven but I do not think that the purpose of this Parliament is to go into procedural matters.

Of course, procedural matters are relevant because if you find that somebody has cut corners and has not given a party the right to be heard, or the right to submit a tender — I will come to that in a moment — or that his tender was not opened, or somebody else's tender as has happened here in Barbados, was opened after the official closing time, and that sort of thing, those are procedural matters which would go to the root of the final decision to say, award a contract which was made, but we are concerned primarily with the decision because it is true that procedures are important because procedures can lead to the wrong decisions if decisions are not observed but I think that the Commissioner at that time regarded instruction to be concentrating on procedures so that the Crossman's Catalogue, as it is called, as spelling "bias" and "incompetence" and that kind of thing did not really assist the case.

I think and even from what the hon. member for Christ Church West had said, that we are really concerned about conduct and decisions and we have not just blanketed the whole investigation with inquiries into mal-administration because mal-administration could not possibly be interpreted, as Sir Edmund interpreted, as merely procedural functions but we have said in this Clause that we are dealing with that the purpose of the investigation should be to ascertain whether injustice has been caused by improper, unreasonable or inadequate conduct on the part of a Government, a Ministry, Department, or authority subject to this Act.

Now, Sir, I think that we ought to specify decisions and perverse decisions because a perverse decision is a good ground of appeal from any Court because if a decision is perverse, therefore, it cannot be supported and we ought not to be misled by the errors that have been made in the so-called Mothers of Parliament as long ago as 14 or 15 years ago and try to perpetuate that kind of error here in Barbados.

Young countries like New Zealand have been cited as countries which should be emulated in this respect. I am not so sure that even the New Zealand experience is necessarily one which we should follow

blindly but we should look at the kinds of laws that we are trying to remedy here in Barbados and tailor the legislation in such a way that it would give power to the person who is discharging the function of Ombudsman the authority to remedy and to make recommendations on those discards and those discards that frequently arise in decisions. Now, to give an illustration which may be a bit in anticipation of the Clauses which come after in the Third Schedule.
4.45 p.m.

I am very surprised that action taken in matters relating to contractual, or commercial transactions, except what I call the Crichton Clauses, those relating to acquisition of land, or disposition of surplus land which is straight Crichton. A famous case, when I think Mr. Doug Taylor was Minister of Agriculture and Sir Frank Sorsby was Solicitor General in England, we had some very famous pronouncements in the course of that parliamentary debate on ministerial responsibility.

In the Third Schedule, we are deliberately contracting out contracts and that is where you can get a lot of miscarriage and injustice. You get situations where normally, in a Government advertising for people to submit tenders for the supply, let us say of aggregate, aggregate is another expression used for the stone that you use in metalling roads and that kind of thing, and the Tenders Committee, as it usually does once it is satisfied as to the capability of the person tendering, the Tenders Committee makes a recommendation, that the man submitting the lowest tender should be awarded a contract let us say, to supply stone to Highways and Transport and the Minister looks at it and says, no way is he going to get this tender, not because he cannot supply the stone, but because that person did not support a particular Minister. That kind of thing can happen, it does happen. (ASIDES) I am hearing from the Other Side, that it actually happened, I am flabbergasted, I am shocked. I was only quoting a hypothetical case, but now I hear — now you see there Sir, my fears are not groundless. I have been supported by eminent authorities, legal and political authorities on the Other Side, that such a thing can happen. But, we are deliberately excluding — but that is the kind of thing that we wish to investigate.

I do not think that an Honourable Minister, or a Tenders Committee should be above the purview of this legislation because that is the kind of thing that people get concerned about in Barbados. You know the other thing that people are concerned about in Barbados, Sir, the Law's delay. I want to know why the Ombudsman cannot enquire into — I have waited for a decision from the Supreme Court of Barbados and cannot get the decision yet, twenty-three years, not in any personal case, a case for a client of mine, 23 years. (ASIDE: The judge must be dead) No, the judge is still alive, he is not on the Bench any more, thank God. (ASIDE) Not that one.

I know of another case, Sir, in which a worker was killed in a quarry down in Triapath in St. Andrew and we got judgment in the case for the children, the dependants, and the man boasted, the owner of the quarry boasted, that he was not going to pay the money and there was no way that I could file any action on that at all. It is true, that my Solicitor who was working with me was partially negligent as well. It is a waste of time, as all of us here know reporting any member of the legal profession to the Disciplinary Council of the Bar Association, as far as I can see because I only know of one case in which any action was taken and that action almost took itself.

A lot of people are frustrated. The economy of Barbados loses a lot of man hours because people are loafing about the courts waiting for their case to be called and they go week after week, month after month, that is why I do not go near the law courts. I do not have that kind of time to waste, much as I would like to cross swords with some of my friends on the Other Side. I just cannot, my constitution cannot afford that kind of wastage of time, my economic time and so on, Sir. My time is much more valuable to me. But, those poor litigants have to trudge — now the Ombudsman is not going to call up the Registrar, or the Chief Justice, or the Chief Magistrate, or whoever it is and ask him why it is that these people have to come sometimes for a year and a half to get a simple matter resolved.

We are deliberately excluding the very areas which need investigation, Government contracts and the third most important thing I would have thought that the Hon. Attorney General would have introduced this, as the first thing which needed investigation, judging from the number of commissions which have been set up while he has been in office as Hon. Attorney General, the Housing Authority, a big commission of Enquiry on that. You want to tell me that a lot of these matters, people who apply for houses and did not get them, or they were given to the wrong person should not be investigated by the Ombudsman. Yet, we exclude Statutory Corporations, the Barbados Marketing Corporation, the Chairman is not in his place, but I am sure that he would welcome an investigation into the Marketing Corporation and probably it would stop some of the criticism that I hear being levelled against that Corporation, if you knew that an independent authority were investigating what was going on down there. It is not only in this Administration, it was in the former Administration, you used to hear these criticisms as well.

So, why do we exclude Statutory Corporations, why do we exclude the Tenders Committee because that comes within the definition of investigation, no matter what country you go to. They are excluded, Contracts, look at the Third Schedule. Anyhow, Sir, I am anticipating it, but I thought it best to deal with it at this

stage. I would spare you any more intervention at this stage, but later on, I may have something further to say.

Mr. CHAIRMAN: Does any other hon. member wish to speak on this Clause?

Hon. H. deB. FORDE: Mr. Chairman, Sir, I would not want to answer all points at the end.

Mr. CHAIRMAN: Would you wish to answer them as they arise?

Hon. H. deB. FORDE: I am answering them as they arise, Sir. The suggestion here is that we should include the specific word "perverse". A decision which is perverse, or conduct which is perverse is conduct which is unreasonable and this is the point Sir, grossly unreasonable. We could use any number of adjectives and we tried really to find a form of words which would include that type of conduct and it is both unreasonable and improper and would come under both of those arms and if we look at the synonyms used for these words, you would see that there are only a different shape of that type of conduct and that is one of the reasons why I do not think it is necessary to make a change to this Clause.

The other point raised by my friend is a wider point, Sir as to whether we want to maintain the Schedule to exclude the commercial activity of the Government itself and that is a matter of policy at which I would have to look. I have already replied on the Statutory Boards' cases.

I think that my friend took the opportunity of course, to talk about the Law's delays. But, let me say a few positive things, perhaps to the judges. At the beginning of this year, we had a Conference in Jamaica, in which the Judiciary in Barbados and the Caribbean was represented and including the President of the Privy Council, Lord Diblock and various United Kingdom judges. We took the opportunity to review delays which are caused in the administration of justice in the Caribbean countries and in the United Kingdom, that is, including, of course, Scotland, as well. Let me say that Barbados' record was the most outstanding, both on the civil side and the criminal side, in relation to the speed at which matters were adjudicated fully in the courts in these countries. We admit that in all of the Commonwealth countries, that there are various reasons for the delays in the courts. The Rt. Hon. Member spoke on delays in the adjudication of cases involving maintenance of children and of spouses of marriage. More often than not, those delays are caused not by the magistrates, or by the judges, but by Counsel concerned wanting adjournments for one reason, or another.

4.55 p.m.

My learned friend spoke about a matter in which he appeared some 23 years ago in which a decision has not been given. I believe that that Judge subsequently left and went to Sierra Leone and various other parts of the Commonwealth, but I can assure the hon. member if there is any way he wishes the case revived, and I am given full details of the name of the case, I would write to the present Chief Justice and draw the case to his attention to see whether the case ought to be reheard. I am sure the right hon. member, when he had responsibility for the Judiciary, would have considered that matter, and I do not know whether he felt that because he was no longer in the law courts he himself could not have initiated action in writing to the Head of the Judiciary on the matter, but I am quite prepared in any cases in which there has been inordinate delay and which have been drawn to my attention, to write the Judge and say to him that we understand that there is this delay, always bearing in mind, of course, that the day-to-day functioning of the court is a matter for the Judges and not for the Ministers who have some responsibility to the Legislature to report on the functioning of the Judiciary.

Sir, in constitutional practice it is a very delicate balance, because although for instance I have responsibility for matters affecting the Judiciary, in actual fact I have no constitutional responsibility by way of resignation or otherwise for failure or conduct on the part of a High Court Judge, and constitutionally likewise, if the DPP prosecutes someone, or fails to prosecute, Parliament may be able to pass their judgement on that, but I have no ministerial responsibility for that matter. A Minister is not called on to resign because a Judge has given a wrong judgement, or because a Judge delays in giving judgement, or because the Director of Public Prosecutions fails to prosecute X in relation to a crime, or because the Commissioner of Police would not bring in Scotland Yard. That is not what a Minister resigns for, the Constitution has given them an independent role to play and it does not expect a Minister to carry responsibility for those roles that have been shifted off from ministerial responsibility.

Where ministerial responsibility will arise is if I fail to provide enough funds to ensure that the administration of justice functions properly. I do not give adequate, for instance, support staff for the law courts, or an adequate number of Judges, and I do not come down to Parliament and explain adequately to Parliament why the Government has failed to do this, so that although it is difficult for the public to understand these roles, they are roles that for different reasons we have managed to carve out.

The question which arose here is how far do we want a Court of Appeal on the Judiciary, and the precedents in other countries, including going back to some of the Scandinavian countries, have shown that it is

better to have to put up with some of the difficulties that arise in the administration of justice than to have an Ombudsman or anyone investigating judicial conduct. You will find that even under the existing Crown Proceedings Act that actions taken pursuant to judicial conduct are not justiciable at law to the extent of leaving the compensation by way of damages. That is section 4, subsection (6), of the Crown Proceedings Act, Cap. 197.

I am citing these areas to say that the views which the right hon. member has expressed are views that have been canvassed from time to time, but because of this need to maintain a delicate balance we have had to draw the line somewhere rather than to go absolutely in putting everything open to scrutiny. That, I think, is my explanation of why the Judiciary has not been brought under scrutiny of the Ombudsman.

The hon. member made reference to contracts not being awarded to the lowest tender. Every tender notice states quite clearly that the Tenders Committee, or indeed the Government, is not bound to award a tender to the lowest tender. The reasons for this are obvious. There have been several cases where awards have been made to the lowest tender, and it turned out that the person to whom the contract is awarded has neither the facilities nor the equipment or personnel for carrying out the contract adequately. Let me cite one such case, Sir. A tender was awarded during the last administration to a gentleman to finish the St. Lucy Secondary School, and it turned out that that person did not have the equipment nor the personnel to carry out that contract properly, although he was supposed to be the lowest tender. We have also found instances where you award a contract to the lowest tender, and I have given opinions on this on several occasions during the last administration and the present, in which despite the fact that the tender document has been signed, they come back and say there has been a change in circumstances during the period of time and they want more money. In some of those cases we have advised that strictly they may not be entitled to it, but my legal officers have said the circumstances are such that the Government can consider giving an *ex gratia* payment. I am not here alleging any skulduggery or perversity on the part of the Tenders Committee, the Ministers, or indeed of the contractor, the point is that this sort of thing happens in commercial relations, and indeed the Financial Rules were revised when the right hon. member was Minister of Finance, both the Financial and Audit Act and the Financial Rules were brought up to date, and the Rules make it quite clear that no Government or Tenders Committee need award a contract to the highest or to the lowest tender, because they must always be a discretion in these matters.

The other point which must be borne in mind is that sometimes Government might as a deliberate policy decide with good faith to award a contract to a small man, a small

manufacturer, whose contractual price may be higher but who deserves to get an opportunity to do business with the Government, particularly in circumstances where he has not got the spread that larger contractual establishments such as Shipping and Trading or any of the big firms may have, or the big construction firms, or for that matter the big suppliers of aggregate, to use the hon. member's very example, people who supply the aggregate that is used in road construction. There are two or three big firms, but if they are the people who put in the lowest tender with a form of monopoly all the time to force out the small man, then you must have a discretion, and the Government of the day through the Minister or the Cabinet or the Tenders Committee will be able to vary that agreement, and indeed the right hon. member knows that under the Financial Rules the agreement cannot be varied by the Minister, the Minister can approve of the Tenders Committee if there is a sole tender, but if there are several tenders and the Minister does not accept the Tenders Committee's recommendation, that must go to Cabinet for the Cabinet to approve as a whole.

5.05 p.m.

Such safeguards have been built into the legislation. I have spoken at length on this because I think the Rt. Hon. member is aware of the Financial Rules as I am. In fact he ought to be more aware having been Minister of Finance. This is really not the responsibility of the Attorney General. The only thing is that on this front bench we can talk on any subject as adequately as anybody else, and even the acting members sometimes are able to range wide and large on other areas. But I take the opportunity to reply to the points here, Sir. I would have to take under advisement whether or not the Cabinet wishes to change the Third Schedule in order to take up the points as to contracts, and I really could not accept the suggestion for its deletion at this stage. I would really, when we have gone through the Bill, probably postpone consideration to look at that other point.

We have not excluded from consideration the investigation of administration affecting compulsory acquisition of land or the disposal of surplus land. Whether Government wants all of its contracts to be subject to a similar investigation is a matter on which there would have to be a policy decision, and I could not in Committee accept the suggestion without reference back to Cabinet on that particular point, because I think it raises a fundamental issue of policy, but I think other than that, I have tried to answer all the other matters raised by the Rt. Honourable Gentleman.

Rt. Hon. E. W. BARROW: Since the Financial Administration and Audit Act was enacted in 1964 comprehensively revised and the Rules thereunder done at the same time and the next amendment was 1975, I am well

aware that the Government is not bound to accept the lowest or any tender for that matter, but I just want to make two positive statements. I do not agree and I have never agreed although there were some members in the Cabinet before who did not agree with me that if somebody submits a low tender and it is awarded to that person and he cannot carry it out, I think the proper thing to do is to re-advertise because that person has had an unfair advance. I do not want to go into any cases, but you will find that on every occasion on which they have tried that with me, they did not get anywhere at all, and one man walked up and down Broad Street with a gun looking for me because it was reported that I would not allow him to come back and get more money when he had put in the lowest tender. Never ever allow it to happen. Advertise again and let everybody have a fair chance again and he can put in his higher bid.

I am aware that the Government is not bound, or the Tenders Committee, to accept the lowest tender for the reasons which the Hon. Attorney General has stated. Some people are just not able sometimes to do this and that is why in big contracts with the IADB and the World Bank and so on they have pre-qualification tenders. You have to satisfy before you even tender that you have the necessary equipment and qualifications. That is not what I am objecting to. I am objecting to the Tenders Committee having submitted a recommendation after mature consideration to any other person saying there is no way, he is wasting time, cross through the man's name. That is mal-administration. (A VOICE: Like Byer.) Right! I do not like calling names, but you all know on both sides the cases that I am new to. The man that you called is the one that walked about up and down Broad Street with a gun saying he was going to shoot me because I would not give him a little uppance, a laniappe as the Trinidadians call it on top of the tender, but I did not owe him anything. I pay for my goods when I go in the store, so he did not have anything on me. That is the way a Minister of Finance has to live. But you see what I am saying is that there are cases.

I do not want to go into the case of Cricheldown, but Cricheldown was a case where the people were acting perversely. I know that case well because the people who own the property, the farms and the villages in England because I have been and spent vacation there and I have flown there. I know the people well and that is the most celebrated case in England, and you get these functionaries, I call them, who feel they are bigger than you.

Right now in Barbados there is something going on that the Attorney General must be aware of, that is, people's lands are being invaded, and people do not know how much compensation they are going to get for their land. We are passing Resolutions here for compulsory acquisition, and before you know what has happened, a

bulldozer comes and knocks down the House. The Government is now putting themselves in a very awkward position. I will give you one case up in Oistin. They are putting this business in the hands of people who do not know what they are doing; they are trying to expand the programme so rapidly that the competent people, the valuers and so on, are not getting in there or they are not negotiating with the owners of the properties. This is the position the Government find themselves in today. I hope I am not referring to something that is *sub judice* because I am not sure that the writ has been issued. A man knows that his house is to come down, but nobody goes and discusses price with him. The next thing you know as they say in Barbados, "bradung" and some big tremendous D-17s because they cannot be D-9s or D-11s for the size bulldozers I see operating now, and a two-storey house has gone into the sea; from being Dieppe-on-Sea it is Dieppe in the sea now. The Government has not discussed compensation with the gentleman. He has filed a claim now or is filing a claim against the Government. What is Government's position? The Government cannot send anybody now to make a true assessment of the property because the property is in the sea already, so if he was not an upright citizen, and I am not referring to any physical attributes or disabilities, but if he was not an upstanding or upright citizen, he could file any fantastic claim against the Government and tell the Government come and prove that I did not have all mahogany staircases, mahogany this, mahogany floors. This is a danger.

I have had complaints from people all over the country that they cannot get anybody to sit down and discuss compensation with them. It is all right if it is a chattel house because you can usually give a fair guess if it is a 16 x 9 or 14 x 10 with shedroof attached what is the market value. But you go and knock down a two-storey guesthouse that was used as a hotel at one time and the Government finds itself in a position of what? This is where although Parliament has given the authority under the Land Acquisition Act for the authorities to go in and carry out such preliminary works as may be necessary, they should not have the right to go and knock down people's houses until they have some change in their pockets or until people have been adequately compensated.

That is a point I was making and the only point that the Learned Attorney General did not answer was the one about the Statutory Boards, because my experience is that the Statutory Boards are the ones that are the most difficult to keep a check on. It is true that the present administration now has members of Parliament as Chairman of the Statutory Boards. I do not know whether that is a good thing. I have been studying this very very carefully but I am not convinced it is a step in the right direction. I am not prepared to enter into any argument about that. They have the authority and the power to do it; I am not so sure that I would

like to follow in their footsteps in that regard. But Statutory Boards are traditionally hard to control. They do not play according to the Rules. We all know that because they do not even know the rules. If you ask them what the rules are they ask you what rules, we are a Statutory Board. That has been my experience of them. They do not know that rules exist, and when you tell them about rules, they say that is for the Civil Service, that is not for us, and they tell you furthermore we are independent citizens, if you want us to serve on a Board, then leave us alone or go and find somebody else. This is the kind of reaction we get, therefore there are people who need more invigilation than anybody else in any Government Department, because a Government Department is hide-bound by the rules whereas these amorphous bodies that we have knocking about the place do not play it according to the book. I am not saying that they necessarily do things wrong, but they do not do them rightly. It is a different thing altogether. They do not always act perversely, but they do not always act consistent with the best interest of the public or even the Government that has appointed them.

Mr. SANDIFORD: Mr. Chairman, I am certain the Attorney-General recognises that what we are doing here is trying to improve a piece of legislation which can be a significant piece of legislation and we are trying to make it better.
5.15 p.m.

This is not a tedious exercise. This is Parliament carrying out its essential functions and if the Government believe that they are going to run away or get away easily on this particular matter, we are going to go through this particular measure with a fine tooth comb in order to make this provision which is for the redress of grievances in this country and it is an area in which certainly this Opposition is very much interested in because this is what we have been trying to do ever since 1961 when we came into power to remove some of the burden and some of the grievances of the citizens in this country.

In my Second Reading speech I did refer to the question of the Statutory Corporations and we are pressing again for either an explanation why the Statutory Boards have been excluded from among the authorities who would be subjected to the investigatory processes of the Ombudsman and if this has not been due to an oversight, for the Attorney General to give an undertaking that they will be included when he does a review because we believe that those Statutory Corporations are important.

There is another area and I hope I am reading this particular section correctly because it refers to the

Second Schedule which sets out the Government Departments and authorities subjected to the Ombudsman investigations and it also sets out in the Third Schedule those areas which are excluded from those investigations and I hope that I am reading this correctly but it seems to me that the activities of the public officers of the External Affairs Ministry abroad may be excluded from those investigatory powers and I would really like to know why. I will like to hear an explanation. I am raising these questions. It may be that those officers, let us say, an officer based in London or in New York or Washington, or Ottawa or wherever else they may be based, may be carrying on an investigation or may be dealing with nationals of Barbados abroad and if it so happens that there is some administrative inelegance which may amount to perversity or bias or arbitrariness or any of those terms which would lead to mal-administration, it seems to me that merely because they are serving abroad, even though they are dealing with Barbadian nationals, that they would be excluded from the investigatory powers of the Ombudsman and I would like to know why they are in this privileged position. I believe that this Committee is entitled to an explanation of that particular matter.

Mr. TAITT: Mr. Chairman, Sir, I have dealt with an earlier aspect of Clause 5. As one looks at Clause 5(4), I am wondering why the Attorney General considers it necessary to come down with a partial list and to leave for amendment by the Governor General the inclusion of a number of institutions which impinge on the rights, civil liabilities and economic lives of the citizens of this country.

Now, Sir, on the face of it, the Barbados Development Bank is merely a Statutory Board. We have heard, I believe in this debate so far, about the National Housing Corporation, but the Barbados Development Bank has managed successfully to be excluded from all legislation which falls within the nature of control by Parliament. All legislation which falls within the ambit of the control of Parliament which has been brought down here which includes other Statutory Corporations or other Institutions seems somehow to allow the Barbados Development Bank to be excluded.

Now, Sir, there is a lot of propaganda about the Barbados Development Bank having made a large number of loans to a number of citizens but for every citizen for which the Barbados Development Bank claims it has made a loan, there are a number of other citizens who feel rightly or wrongly aggrieved at the way their application to the Barbados Development Bank has been treated.

Very recently a citizen came to me, raised a question as to why that citizen on going to the Barbados Development Bank for a loan was invited that

before he should go to the officers in the Bank, he should have discussion with some other citizen and when I investigated the matter I discovered, Mr. Chairman, that these would have been matters which any Ombudsman would have wanted to investigate.

Mr. Chairman, I will give you one example. I do not wish to go into great detail at this point in time. A man had a tractor to sell. It has to do with using subvention from the taxpayers. A taxpayer wanted to purchase this piece of equipment. He wanted to see a piece of equipment and it had a price on it of, let us say, \$8,000. He was told by a person at the Development Bank who sits on the Board, that if he applies to the Development Bank using a certain technique, he would be able to purchase the piece of equipment. He subsequently applied to the Development Bank using the technique and he purchased the piece of equipment. The only difference, is, Mr. Chairman, that the piece of equipment was sold to him for \$16,000.
5.25 p.m.

Yes, Sir, this is the kind of thing, that if we are using the concept of the Ombudsman to bring administrative justice in the community, in those areas which taxpayers' money is used, then persons will want to know how a company with a paid up capital of \$149,000.00 could borrow \$2.8 million, when the Chairman of the Government Corporation from which it is borrowing the \$2.8 million is a major shareholder in the same operation. I am talking about the Wonder Bread operation.

Mr. CHAIRMAN: We have to remember that we are not discussing the Barbados Development Bank, as such.

Mr. TAITT: But, Sir, we are discussing why the Barbados Development Bank is not on this Schedule. We want to know why the Barbados Development Bank is not included in this Schedule because if it were, then the Ombudsman would be in a position to say to me, what you have said is not true, it is heresay. I am saying that my investigations indicate that \$2.8 million have been made available for use in the creation of a bakery. *(Asides)* The Hon. Member for Christ Church East says that we would get better bread, Wonder Bread. I am not going to go into the other loans of which we know. We will do that on the platform, so that they will not say that I was using parliamentary privilege, Sir.

Mr. CHAIRMAN: Just remember that we are not really discussing the bank as such.

Mr. TAITT: No, Sir, I only used that as an example.

Mr. CHAIRMAN: A rather long example.

Mr. TAITT: I am only using that as an example. I do not intend, for example to use the Barbados Develop-

ment Bank's lending the Turf Club money as an example, Sir. I would not use that as an example Sir. I am going to use — I am raising the question as to why these institutions are being left out, when we are being told that the Ombudsman is going to be available primarily to provide redress for the citizen, when the citizen feels aggrieved, he may be wrongly feeling so, but the fact remains that he feels aggrieved. If we say that we are appointing an Ombudsman, then, we should include all of those areas, as the Hon. Member for Christ Church East said, the National Housing Corporation should be included. I share his view but that is not nearly as bad as, some of the other agencies which have been left out.

There are not many citizens who feel aggrieved *per se* about what happens at the IDC because only a very select number of citizens go for the services of the IDC and therefore, if the IDC is left out, one could see that the citizens are not considered to have reason for the IDC being in. But, when you come to some of the other governmental agencies and I am specifically complaining because the BDB seems constantly to get this special treatment.

I will deal with other aspects of this Ombudsman Bill, as it relates to some other matters of a similar kind. But, I think that the Hon. Attorney General should give us a clear explanation, as to why the BDB is being left out. Mr. Chairman, it may seem at first glance, that I am merely discussing the politics of Barbados, but that is not so, Sir. When this same kind of measure was introduced into the United Kingdom, it was sought to leave out Local Government. Now, if you recall, the corporations in this country were established to replace Local Government and whatever might be said about the merits, or demerits of having local Government, the fact remains that we have been told and it has been accepted on all Sides, that the Statutory Boards are, to a large extent, replacing the Local Government.

Now, in the United Kingdom, after strong representation was made, it was agreed that a number of matters which fell within the purview of Local Government were proper matters to be investigated by the Parliamentary Commissioner in the United Kingdom, and I am saying that if we take the point, that our Statutory Boards are replacing, in large measure, the Local Government which we had in Barbados, then, it follows, by definition, that the Local Government replacement ought to fall within the ambit of the Ombudsman. I really would like the Hon. Attorney General, I am very serious about this, to give us his rationale for leaving out some of these Boards because I do not think, that if we are passing such a momentous piece of legislation, that we should be leaving it to some amendment to come sometime down the road and so we would add corporations. I would not even bother to suggest, that the BMC should be included because

one can see, that the BMC now only carries out certain functions. All they do now, is sell, buy and import. That is not the same kind of broad function that it would have had to cause me to say, that it should be in, before these functions were removed by the Hon. Member for St. Michael West. So, if you leave out the BMC, it is just like leaving out a supermarket Sir. That is no big thing.

But, you cannot leave out the BDB, you cannot leave out the National Housing Corporation and indeed there may be a strong case, I am not saying that there is, but I am sure that there are citizens out there, who might make a strong case for including the Caribbean Broadcasting Corporation. We would like an explanation from the Hon. Attorney General Sir.

Mr. CHAIRMAN: Thank you. Does any other Hon. Member Would you wish to reply?

Hon. H. deB. FORDE: If I may reply, Sir. I think that — I would not say it is complaint — the statements being made by Hon. Members have shifted to they wish to know why certain subjects are excluded from scrutiny by the Ombudsman and among these subjects are those listed in the Third Schedule. In relation to the Second Schedule, they wish to know why certain particular Boards are not included and in the process, the Hon. Member for St. Michael South West skilled politician as he is known to be and alleged to be has taken the opportunity to make some swipes, based on knowledge which is not always accurate, but knowledge, in any event, which he has gleaned in the process and I think that he has used this opportunity genuinely to gain correct knowledge, but also to score political points. So, if I reply, by way of giving him knowledge and making some political knock outs as well, I hope that he would not believe that I am not taking this debate in the spirit in which it has been conducted so far. Let me leave the political points for the last though, Sir.

I will make the first point. There are certain areas that, on the grounds of public policy, I do not believe that any Government would want to include. One such area must be security matters and another such area ought to be international relations and obligations, since invariably, it involves third states and information occasionally which is highly sensitive information. Now, that is the reason why we have excluded matters relating to crime, Defence and Security a subject like extradition and matters pertaining to the External Affairs Ministry, as set out in Clause One. I think that these exclusions are intelligible and clearly intelligible, on the grounds of public policy.

Now, there are other matters which are excluded because of course, there are alternative procedures for

ventilation of grievances and usually, these are matters involving personnel matters. In fact, in Barbados, the Civil Servant who would normally be affected by personnel grievances are to some extent, more than adequately provided with machinery for review. The Constitution contains machinery for the review. There are various regulations made ever since 1961 preventing the Public Service Commission from sacking a civil servant unfairly and in addition to that, Sir, there is appeal right up to the Privy Council and over and above that, both the National Union of Public Workers and the Barbados Workers' Union are sufficiently strong to ensure, that on personnel questions affecting the Public Service, as a whole, the machinery for grievances will be activated and if necessary, steps taken to prevent an abuse of rights in those circumstances. That explains the reasons for exclusion.

Now, our Bill is like the British Bill, in some respects, in that it permits investigation of action on the part of Hon. Ministers. I want to stress this. It permits investigation of conduct, on the part of Hon. Ministers which might be unjust, improper, or unreasonable, and if you will notice, the Schedule to the Bill refers to the Ministries, which include the Ministers' conduct as well, under section 72 of the Constitution, including the conduct of the Prime Minister. It has gone as far as that.

5.35 p.m.

Mr. Chairman, I would be the first to admit that there has been a good deal of argument as to why public contracts should be excluded from scrutiny by the Ombudsman or Parliamentary Commissioner. This matter was raised in England, as it has been raised in other Parliaments where this exclusion has been provided, and the justification usually offered for this is the following, and I believe that there is some merit in this justification, that Government is in no different position from a company, be it a local company or multi-national company, or a regional company in the private sector, and the Ombudsman is not being given the power to investigate actions by the private sector relating to contracts about which the citizen may have a grievance, and there is no reason therefore to do the same in relation to the Government, because there is the danger of exposing the Government to unfair competition in the commercial sector. That is one of the reasons.

In addition, it is often felt that when you are dealing with sensitive contracts — and in some cases contracts involving international organisations like the World Bank, etc. — that you are dealing with opinions and information

that is confidential, and I think there is some merit in these reasons being given.

The third is that sometimes there is an inflammable subject politically, all sorts of allegations are made that are not good, although I do not believe in my own mind that that is a very sound reason, because that reason can be an argument both for as well as against inclusion of public contracts. The other reason, which I think is a solid reason, that because we already have the Auditor General, as well as the other procedures, but particularly the Auditor General, he is in a position in his enquiries, once he carries out his job seriously, to uncover cases of serious impropriety, and indeed if the Public Accounts Committee and the Auditor General are functioning there will be proper machinery to deal with this area of contract. That is the reason that I am advancing here.

Now the hon. members took the opportunity to deal with Statutory Corporations. Let me say that subject to my discussing this a little further with the relevant authorities, we will have to look at that problem for the future. Now, Sir, I am not satisfied that all the allegations that the hon. member has made are really based on other than political expediency and trying to score a political point. The Barbados Development Bank is today under this Government better run than it has been run at any time in the past. I will repeat that, Sir. The Barbados Development Bank is today under this administration is functioning better, more properly, more fairly and more reasonably than it did under the past Government. First, Mr. Bernstein consistently made a loss. That is the first point, when he was Chairman of the Bank. Let us get down to things. If the hon. member is pleased with this Bill, I wish this Bill had been on the Statute Book a long time because we would have been investigating why, for instance,.....

Mr. TAITT: On a point of order, Sir. If this Bill as it now stands had been on the Statute Book, nothing done at the Barbados Development Bank could be investigated by the Ombudsman. That is the whole gravamen of my speech. If he wishes to investigate what goes on at the Development Bank either under Mr. Bernstein or Mr. Seale, we want to have it in here so the Ombudsman would have authority to go. Whether it is Bernstein, whether it is Seale or whether it is Forde, it does not matter. That is immaterial.

Hon. H. deB. FORDE: I will give the hon. member, Sir, subject to your ruling, 50 occasions to answer me when I am finished. I sat down and heard him. He does not realise that I know just as much of the history of Mr. Bernstein in that Bank, in cases where companies with which Mr. Bernstein was associated received loans from the Bank, and in instances as well where other people concerned with the day-to-day administration of the DLP

received loans. What is the hon. member to tell me now? I know that the hon. member got on the platform once and said that he heard that I was going for a loan of \$1.5 million to build a hotel, from the Development Bank. I do not want \$1.5 million from the Development Bank, I do not want a cent from the Development Bank. (ASIDES). You see, the hon. member hears a lot of rumour and he believes that it is true. I have never under the sun applied to any Government institution, either under the past Government or this one, for the loan of a penny. I do not operate that way. Even if I had.....(Mr. SIMMONS: Is there anything wrong with it?) No, it is not wrong, but I am making the point so the hon. member would not repeat it again. It is not wrong, because in my view any member of this House or of Barbados is entitled to go to the Development Bank and apply for money, so we must not fool people that it is wrong. (ASIDE). If they can get it, that is the point.

The point is, I know the hon. member made that statement, he could have done me the courtesy of phoning me up and asking me if it was so. One of the reasons why I have hesitated to develop my family land while I am a Minister of Government is exactly to avoid this type of political allegation although it hurts me. I know that it is easy politics and it is the type of politics people like to jump up and clap at, to hear that a member of Parliament is borrowing money, and to suggest therefore that it is something improper. When I leave this job nobody can come and say that I have ever gone and begged the Government to lend me or my family one cent. I can go without that, because I cannot take that sort of foolishness in political life. Like the right hon. member for St. John, I prefer to go without than to get involved. While I am serving the public I cannot get on with my private business, but I appeal to the hon. member not to go around on unfounded rumours.

Now, Sir, normally Ministers are generally responsible for general policy about the banks, and I would expect that matters relating to the Bank would be raised under the Ministry of Finance.
5.45 p.m.

Let me be the first to say that I would take advisement about that from Cabinet, the question as to whether at this stage we wish to state the Statutory Boards in detail in this section of the Act. It is a fact that in England they have established a Local Government Commissioner who proceeds to look at certain matters which normally are now carried out by Statutory Boards in Barbados which are still matters under Local Government in England. That is a fact. For instance, take the National Housing Corporation. Imagine hearing the Opposition and the past Govern-

ment admitting that the National Housing Corporation could have done with some proper investigation for citizens' grievances. On Mondays I see approximately 50 people from all over the Island and the biggest complaint I have had is that they had applied for houses ten years ago and have not got one up to now, and they say other people who went in and got, not when the present Minister was Minister or the present member was Chairman of the Board, but under the last administration people who applied after them got houses. Let me give you an instance, Sir. The hon. member wants to hear the complaints; people who applied after them and had no emergencies got houses before them. That is a fact. So let us deal with that. I am sorry about the Rt. Hon. member. He should not have opened this power keg because there it is.

I personally would welcome it happening because it would remove it, so this is the point. Perhaps we would have.....

Mr. TAITT: If the hon. member would give way, I really find it difficult to understand what the hon. member is saying, because the Minister of Housing in our administration lost his seat and he had five housing estates in his constituency. It would have been virtually impossible for anybody with five housing estates in his constituency who was distributing houses how they are now distributing them to have lost his seat in the manner the hon. member has said. I do not understand it.

Hon. H. deB. FORDE: The reason is this, Sir. The hon. member says that there could not be any because there were five housing estates in the constituency of St. Michael North West. That is true, but despite all that he got beaten by a better man whom the public had more confidence in and whom the public will continue to place confidence in and who will now at the National Housing Corporation as its current Chairman set up machinery to put right that citizen's grievance so that they will not have to complain about that in the future. That is the point. As a matter of fact I am glad to see the Opposition have now come home to the necessity to prevent this sort of abuse from occurring in the community and to have them exposed to the public's scrutiny. I have got to make the point for them again. I thank the Lord that I have lived long enough to hear in here the Opposition calling for an Ombudsman to look into the award of houses at the Housing Authority, because I remember when the present Government introduced a Resolution asking them for an investigation of the Housing Corporation, the Rt. Hon. member for St. John said they brought the wrong measure in the wrong place at the wrong time, and voted against it, and we could not prevent these abuses from occurring.

Rt. Hon. E. W. BARROW: Just on a point of order, the hon. member did not bring a Resolution about the award of houses; they brought a Resolution about the award of contracts and there was a lot of material in it which up to now I say if they were correct and they could prove them, they should give them to the Director of Public Prosecutions, but instead of giving them to the Director of Public Prosecutions they are awarding bigger contracts to the offender. Can you make any sense of that?

Hon. H. deB. FORDE: There were several allegations at that time against the conduct of the National Housing Corporation in which citizens had grievances. These grievances were not under our administration; they were grievances that had gone on, I would not like to say for 15 years, but at least for ten years they had gone on under the Democratic Labour Party. There were varied objections by the citizens, but there was no means for redress. You see, Sir, it takes a little time. I am going to keep them in Opposition for a long time because they would learn. But the fact that they are calling for it is a little advance for us. Of course they recognise the danger that has occurred and we must guard against the danger in the future in relation to the National Housing Corporation. I am very pleased to say that I hope the hon. member is going to acknowledge that the setting up of the Commission of Enquiry into Housing was justified by the facts, and I hope I hear from the public platform particularly in the constituency of St. Andrew that plea "Oh Lord forgive us the Democratic Labour Party for the errors we committed during our administration in relation to Housing." I hope we hear that. The hon. member is not going to get away now. He made his political points and I told him I am going to deal with him politically. I am a politician too and that is why I am in here.

I am going back to the Development Bank because I am not finished with that. Do you know why I have not exempted compulsory acquisition of lands and the purchase of land and why I would like to see the ADC in as well? I made the point that I saw the Government allow the ADC to sell off land to a company in which Mr. Bernstein had an interest. He was not a member of the ADC, but he was a member of the BDB and he had an interest in the company.

Rt. Hon. E. W. BARROW: On a point of order, I have heard this kind of slanderous allegation before. The land was sold after it was advertised, although Mr. Jimmy Cozier who was a contributor to the Advocate News and probably still is a contributor said that he did not see the advertisement, that the advertisement was not big enough. It was advertised several times and the ADC at that time needed money because the ADC was in financial difficulties, and they sold off land after adver-

tising the land about three different times. Mr. Bernstein who was the Chairman of the Barbados Development Bank was not a member of the ADC and he tendered for the land and his tender was accepted by the Agricultural Development Corporation, and that land laid down there for a considerable number of years and it has only now started to become developed because I believe it was sold to another company. The point is that Mr. Bernstein did not borrow any money from the Barbados Development Bank which is the allegation which I understand the hon. member for St. Michael South West is making.

Now again there is no objection to a person who is a member of a Board borrowing money from that Board provided he is qualified and the project is a praiseworthy one to provide employment. I know of a member of the Barbados Development Bank who borrowed money from the Barbados Development Bank, not \$2.8 million or anything like that, and who I believe has paid off all his loan and has been a very successful business man and was a good member of the Board. But the point is that he could not attend that meeting when that decision was being made, and there was no political pressure being put at that particular time. (*Rt. Hon. J. M. G. M. ADAMS rose.*) You want to answer that now? You have come in here to cause a noise now? We were trying to go home.

Rt. Hon. J. M. G. M. ADAMS: No, Sir, I really must just say something. I did not intend to get into all this, but I must say something about the BDB. Because the hon. member for St. John has defended Mr. Bernstein, he feels that must prevent me from defending the present Chairman of the Board. I cannot follow the hon. member's logic, but I am comforted in the fact that he cannot follow his own logic either. The matter of a bakery. I am going to be specific since others have been specific.
5.55 p.m.

This is not the first occasion on which a loan involving a Bakery has been made by the Development Bank. Exactly what the member for St. John said. Had he not got a little disputatious, I would have left the answer for the hon. member for St. Michael South West in the hands of the Leader of the Opposition because the answer is very simple that a Chairman or a member of the Board can do business with the Board subject to the procedure which is laid down by law and no more than Mr. Zephirin when he was Deputy Chairman of the Board broke the law by borrowing money from the Development Bank did Mr. Seale broke the law, that is if we are talking names.

Mr. TAITT: On a point of order, Sir. I did not even know that it was David Seale who had borrowed the money. The point I was making, Sir, was that the

Barbados Development Bank should be included in the Clause. I thank the Prime Minister for the information. I am now able to speak under authority. I really did not know that it was David but I thank you.

Rt. Hon. E. W. BARROW: I think the hon. member understands and I agree with the Hon. Attorney General that I do not think that members of the House of Assembly and I want to get my position straight, or members of the Board should be precluded from anything which the facilities or the Government or the laws of Barbados — I am not talking about salaries now — I am saying that if a member is a backbencher and he is running a business that he should be able to go to a Commercial Bank, or the Development Bank, or the National Bank for whatever he needs provided that he does not use any undue influence or he does not participate in the decision.

I do not know anything about the Bakery business with the present regime but I only want to say that the problem here is that I have been hearing complaints that a lot of small people are not getting loans. When they were getting them they had to have their pictures published in the newspapers and so on which I thought was vulgarity to its extreme but that has stopped. Thank God, but you see the Bank has limited funds although they got a grant recently from the Inter-American Development Bank.

You cannot compare a loan of \$150,000 or \$120,000 with \$2.8 million in a small country like Barbados so I think that they should deal at arm's length when they are in these positions and if people have complaints that they cannot get a loan and somebody else can get it, I think this is a point which should be made that somebody else cannot get the loan. Not that there is anything wrong with the Chairman or anybody else getting a loan but if he is stopping other people from getting a loan so that only he can get, that would be bad.

Rt. Hon. J. M. G. M. ADAMS: But, Mr. Chairman, I really must go into greater length in all this. The hon. member for St. Michael South West, encouraged by the hon. member for St. Lucy, who only lends his encouragement rather than his voice, got very excited when he said he was getting information. It is a little premature. There is no truth in any suggestion that the Chairman of the Barbados Development Bank is the principal shareholder in a Bakery. There is not a shadow of truth in that suggestion and the point made by the hon. member for St. John is well taken and deserves a proper answer.

The circumstances under which Wonder Bakery got a loan were that the Barbados Development Bank permits its funds in certain categories, so much to Tourism, so

much for Industry, so much for small Loans and so much for Manufacturing. The circumstances under which it gets funds from abroad dictate that these categories be maintained in certain ratios. Money is given to the Bank to lend out to a particular category in almost, you could say, quota.

Now the Barbados Development Bank found that its loans for industry were being very seriously under-subscribed. Not enough industries were coming forward to borrow money from the Barbados Development Bank. I am informed that a Bakery operation far from soliciting the bank or solicited by the Chairman of the Bank to bring its business through the Bank, and it is to my knowledge, that when allegations were first made about this matter, the Bakery sought to escape from its commitment and a Commercial Bank offered it similar terms. We carefully ascertained at Cabinet that nobody who was connected with the Bank took any part with the Barbados Development Bank's decision on the matter. We carefully ascertained that because this went through Cabinet after hearing that certain malicious and ill-informed people had been making remarks, not all of them on the Opposition either.

Rt. Hon. E. W. BARROW: The matter is now very clear but, Sir, I just want to say this, I have accepted everything that he says and we do not wish to prolong the debate but it is unfortunate that an institution which is established primarily to assist small people that one of the first acts of the Chairman, check this one out, was to go to Mr. Nicholls up in Bibby's Lane, who is a home baker, a popular Bakery and tell Mr. Nicholls that if he would close down his Bakery they would wrap bread with his name on it and he can drive it about and distribute it. That is a fact; a small business, driving them out of business. Everything else is in order but that is bad.

Mr. CHAIRMAN: Let us get ahead with the debate. We are not discussing the Barbados Development Bank.

Rt. Hon. J. M. G. M. ADAMS: How can these remarks be made in here and are going to go into the records of the House if a Mr. Nicholls has been a maker of excellent bread that I eat myself who is now at Bushy Park Plantation, St. Thomas, is the person being referred to by the hon. member. Is he suggesting that Mr. Nicholls does not bake his own bread?

Rt. Hon. E. W. BARROW: On a point of explanation, Sir. What I was saying is that a suggestion was made to Mr. Nicholls that he stops baking and allow Wonder Bakery to bake for him and he distribute the bread wrap with Mr. Nicholl's inscription. That is all I am saying. Then you are putting small people out of business.

Rt. Hon. J. M. G. M. ADAMS: I will make it my business to telephone Mr. Nicholls after the House is fin-

ished. Perhaps I will go and see him on Sunday morning – I have not been by Bushy Park for a very long time – and just ascertain the truth of this entire matter.

I cannot say anything about anybody's business practices. I do know that bread is a very competitive business. I do not know how we are talking about bread in a matter which concerns the Ombudsman. I thought we wanted to go home, but it is a very competitive matter. I know that Purity Bakery, Wonder Bakery, all of them are fighting the Supermarket owners. They are trying to get the Supermarket owners and the wholesalers to take shares in Wonder Bakery in order to tie them in the distribution of bread. There is a war going on as far as I know but I know that Government is not involved in financing anybody in a partisan way in this war.

I know that there is a loan for Zephirin's Bakery, and a loan for Wonder Bakery far less than any \$2 million. I cannot remember what it is but it is far less than that. I know that there is a loan for that and as far as I am concerned also Purity. There is a loan also, to the best of my knowledge, for Mr. Nicholls and I believe that the Barbados Development Bank has impartially supported some of the Bakeries in Barbados in the past month which probably is three-quarters or four-fifths of the Bakeries. I know that in the fullness of time the Barbados Development Bank will even have to consider supporting a Cook Shop at the University.
6.05 p.m.

Would you like a chicken leg as well? I hope then, that we will not be accused of supporting dissension within the Democratic Labour Party, if we make such a loan. I only wish that I could go to the University and have the pleasure of being served rice and stew by two ex-Senators and a Deputy Prime Minister. I think that that really would be a welcome experience, but we cannot reduce the debate on the Ombudsman to this level.

As far as, the Statutory Boards are concerned, I certainly was not the first to mention bread, Sir. Am I near my fifteen minutes? I am sorry Sir. There are other means of handling Statutory Boards, you can complain to an Hon. Minister because the Statutory Boards are more under the control of an appointed Board, than a Civil Service Department is under the control of those who make policy. Statutory Boards have policy set for them and execute policy. Nobody can handle a civil servant. If a civil servant in my Department treats the public badly, I can ask for him to be transferred, I can draw the facts to the attention of the Public Service Commission, but I cannot move that man from contact with the public. If an employee of a Statutory Corporation mistreats the public, the Board can dismiss him, can remove him from contact with the public, within the context of its own rules and within the context set by the Unions of this country. There are no asbestos employees of Statutory

Boards. People in the Civil Service may, to some extent, be fire proof. I have to put up with all kinds of things.

Very recently, Mr. Chairman, I am going to give you an example of something – we had a complaint that really should have gone to an Ombudsman and it is only by accident that I was in a position to do something about it because it was a temporary employee, on more or less, a week to week contract and I am going to set out the facts in the open. An Immigration Officer apparently took a passport and a sum of money from a Vincentian, who it was known, was a prohibited immigrant in Barbados, in return for a promise to obtain a work permit for this person. When the matter was investigated because the Vincentian was then perhaps arrested by other Immigration Officers, with a view to being deported and when the matter was investigated because naturally the immigrant said what had happened, he said, but I paid so many hundred dollars to such and such a person who has my passport. The Immigration Officer concerned and this is not an ex-policeman, this is virtually a trainee, the Immigration Officer concerned admitted receiving a sum of money, from the immigrant, but said that it was in return for buying a ticket back to St. Vincent for the immigrant, who it was known had no right to be in Barbados.

Now, on those facts, there is no employee on earth, who would keep that employee in their employment one day beyond such an admission in writing and it is only fortunate because prior to this, disciplinary conditions for Immigration Officers were under all kind of...they still are subject to all kinds of controversy with the Public Service Commission and my department, due to the fact that in 1975, the Immigration Act which was passed by the previous Government said that:

"The appointment, discipline and condition of service of Immigration Officers shall be in the hands of the Minister responsible for Immigration."

The Public Service Commission is arguing that this is unconstitutional and is a nullity. Very fortunately, there is a middle ground and I had to say in respect of this matter because I revoked the person's appointment, as an Immigration Officer and I said that the Public Service Commission can employ them in their Immigration Service, but I am not having them in mine, and that is down in writing in a minute which has been seen by the Public Service Commission.

Now, I have deliberately given that example because this is the kind of thing that you need an Ombudsman to deal with since it is very invidious for Hon. Ministers to have to deal with complaints of this sort with public servants, over whom they have no ultimate control. This is the real point of dealing with Government Depart-

ments, in respect of an Ombudsman and this is the reason why we feel, that it is easier to investigate difficulties at the Housing Corporation, the BDB, ADC, even IDC. A court has found, do not forget, that a former Chairman of the IDC could have gone to prison, as a result of dealings which he had with a furniture firm in Grazettes. In a slander action, it was specifically found, that no slander was committed in saying, that Senator so and so could have gone to prison for doing such and such. Therefore, allegations which are made in here about the corporations are matters which have been canvassed, which can be dealt with, by the more serious allegation in this regard, the more serious matters are those which affect the Public Service.

If it had been a former policeman and I must say, Sir, every policeman who is an Immigration Officer, as far as, we can judge is doing an excellent job. We cannot complain of that, the former Immigration Officers and 99% of the new recruits are working perfectly well, but what would happen if an immigrant to this country complained of having given an Immigration Officer money to perform a corrupt act and the matter then got bogged down in ordinary Civil Service controversy?

The Hon. Members opposite will be familiar with a civil servant who used to come into this Honourable House every Tuesday, a young man from Rates and Taxes, he represented the Democratic Labour Party once at one of Burnham's Congresses in Guyana — I discovered what appeared to me, to be a case of corrupt dealing with the former Member for St. Andrew and that civil servant at Rates and Taxes. I discovered that he issued a receipt which was a false receipt. It took me something like eight months to get the Public Service Commission to transfer him. That was all, not discipline, transfer.

He was then sent to St. James Rates and Taxes, where he came under suspicion of stealing money. He is now under indictment, in respect of that and he was transferred again to the Bridgetown Petty Debt Court, where, after he was there for some time, a sum of \$30,000.00 vanished from the safe and he is now, I believe, under charge from the police in respect of that. Is any Hon. Member satisfied with that situation? Is any Hon. Member really satisfied that it should happen, that a civil servant suspected of dishonesty should be transferred to a place, where he was not just dealing in the issuing of receipts and tax clearance, but he was dealing with cash and when, having allegedly stolen that cash, so that he had to be suspended, he was sent somewhere else to deal with cash. They are the things which are difficulties at the moment in administration. You cannot complain against a civil servant and get something done about the complaint.

You can complain about people in Statutory Corporations. The Hon. Member for St. Lucy, Assistant

General Secretary of the Barbados Workers' Union will be well aware, that the Union co-operates fully with the Statutory Corporation in dealing with complaints of the public. I have no complaint against the Barbados Workers' Union, for example, the way it co-operates with the Transport Board because they seek to induce proper work habits and respect of courtesy towards the public. There are the areas where you need a complaint procedure, such as set out in this Act, not by any means to the same extent, does the public have unredressed complaints, in respect of the Statutory Corporation and this is why the Cabinet decided to confine the Ombudsman to the Government Departments mentioned in the Schedule.

The Hon. Attorney General had indicated, that he may wish to take this matter under advisement. I do not know what his thoughts are. Of course, the Cabinet will be guided in the fulness of time, by his reactions to comments made in the debate because we like to give democracy its full rein and if a good point is made from the Opposition, we do not ring down the curtain in front of it, we ring down the curtain on what the Opposition did in the past, not on what it is doing now, saying now and trying to do for the future. But I thought, that since we have spent so much time on Statutory Corporations and not on the Departments of Government which give difficulty in offence, that these few words should be said.
6.15 p.m.

Mr. TAITT: Mr. Chairman, I am very glad that the Prime Minister has made his contribution on this clause of this Bill, because the Prime Minister's input has fortified me in my view earlier expressed that the Bill as it now stands does not have enough teeth to deal with the matters which obviously the Prime Minister believes that the Ombudsman would be able to deal with.

If you take the whole question of immigration, he just suggested that that immigrant would be in a position to appeal to the Ombudsman, but as the Parliamentary Commissioner has functioned in the United Kingdom, and this is a very serious matter, Mr. Chairman, and it is one which I am going to speak about. As the matter has unfolded in the United Kingdom, one of the groups that have no rights in so far as the Ombudsman is concerned is the immigrants. Mr. Chairman, there is the case of Dr. Soblen. If the Home Secretary, as he did in the case of Dr. Soblen, deported an alien in circumstances which created the suspicion of mal-administration, there was no help for the alien to be found in the office of the Parliamentary Commissioner. That is a case in point. There would have been in the circumstances which the Prime Minister just described if the precedent of the Parliamentary Commissioner in Britain is to be followed. As there were no rights to be found in the office of the Parliamentary Commissioner in the case of Dr. Soblen,

so this Vincentian would not have been able to find any rights in the Parliamentary Commissioner, and it is indeed correct for the action which the Prime Minister has described that he took, that is the only action that would have been available. The alien has no rights in so far as the Parliamentary Commissioner is concerned, and I see nowhere in this Act where it is proposing to treat the matter differently.

I want to go a step further. He spoke of a person whose suspicion

Mr. SIMMONS: On a point of order, Mr. Chairman. I think that there is a little confusion with respect to the mind of the hon. member. The alien, or the immigrant, has certain rights of appeal that were built in by the Select Committee when we revised the Immigration Act late last year. He has certain rights of appeal now, from an administrative decision of the Minister, and if the Minister refuses or there is a problem in the Immigration Office, he has rights, but the point the Prime Minister was making was not even relevant with respect to the Parliamentary Commissioner. The Immigration Officer was taking a straightforward bribe and she should be put before the courts and charged. That has nothing to do with the Parliamentary Commissioner or Ombudsman, you should put her before the courts. That is a way you could deal with it.

Mr. TAITT: This is precisely the point that I am making. The Prime Minister went on to say that that is why we need something like the Ombudsman, and the point I am trying to make is that so far as the Immigration Officer is concerned, that is a straight case of bribery and that would be dealt with by the straight legal arrangements, and I recall the Prime Minister saying the alien would be able to complain to the Ombudsman, and I want to make the point that the Bill we are now putting together here makes no provision for an alien to be able to complain to the Ombudsman, because in the case of Dr. Soblen it has been established clearly that the Parliamentary Commissioner or the Ombudsman will not accept any jurisdiction for any alien.

Under Schedule III of the United Kingdom Act — it seems to be a waste of time, except to put it in the record anyhow, because the Attorney General has ceased to listen, and if the Attorney General is not listening I would only be wasting time, but let me put it in the record.

So far as the question of the suspicion of stealing again, Sir, the Parliamentary Commissioner or the Ombudsman under this Act that we are about to pass does not have the prerogative to prosecute. (Rt. Hon. H. deB. FORDE: It was never intended to give him the right to prosecute). The Prime Minister obviously misunderstands what the role of the Ombudsman is, because

the question of prosecuting the person who he could not get transferred, or moved, or go anywhere, the Ombudsman would still not assist in the transfer of that particular individual, and I form the impression that the Prime Minister misunderstands himself what the Ombudsman is all about, because he spoke in terms of this person that he, the Prime Minister and Minister, could not get dealt with, and he dealt in terms of his Public Service Commission. After we pass this Bill the *status quo* is going to remain, because it is not included in here that personnel matters will be dealt with by the Ombudsman, and we discussed this all day, so that we are wasting time if the arguments that the Prime Minister has put forward to suggest that he will be getting some assistance from the passing of this Bill, either he misunderstands the Bill or the Attorney General misunderstands the Bill. I prefer to believe in the light of what I have seen here today that the Attorney General understands the Bill he has brought down.

Mr. CHAIRMAN: Clause 5.

Mr. TAITT: Clause 5, Sir, but what he says seems to apply to 5, 4, 7 and 9. 5, Sir, deals with the Schedule, and I am satisfied that the Attorney General knows what he wants. I am merely suggesting to him that even members of his side — and I am not saying this in a pejorative way — when I started out to talk about this Bill altogether I pointed out that we ought not to leave people with the impression that from the day after the Senate passes this and it has the assent, that something else is going to happen, because we have even someone as elevated in the administrative system as the Prime Minister himself obviously misinforming himself of what this matter is all about. I have no doubt that in due course in the privacy of the party caucus it will be pointed out to him that what the hon. member for St. Michael South West had to say was very valid. I do not expect it to be pointed out to him from the floor of the House, but I expect him eventually to come to realise that when we shall have passed this Bill that we would not have done anything today in terms of yesterday.

Mr. Chairman, I do not want to go any further on this, I understand what the Attorney General is doing and I am not trying to put it down, but I am only pointing out that the Prime Minister's speech has confirmed me in my conviction that not everybody understands what it is the Attorney General is doing today.

The question that clause 5 stand part was put and resolved in the affirmative without division.

Clauses 6 and 7 were called and passed.

Clause 8 was called.

Hon. H. deB. FORDE: Mr. Chairman, I beg to move that clause 8 stand part.

Mr. SIMMONS rose.

Mr. CHAIRMAN: Are you seconding it, and then speaking on it?

Mr. SIMMONS: I cannot second it because I want to move an amendment to it, Sir.

Mr. TAITT: Mr. Chairman, is the Attorney General disposed to recommit clause 7? Apparently it was called and I did not hear. I just want to make a point on clause 7.

Mr. CHAIRMAN: Clause 7 is recommitted.
6.25 p.m.

Mr. TAITT: Mr. Chairman, I just wanted to make this point. Clause 7(1) says:

"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 or appeal in a court of law, tribunal or similar body established by the Constitution etc. etc."

Then it goes on to say on what grounds he may so investigate a case. I would like to suggest to the Attorney General that that is a very restrictive clause in the sense that if one looks at the reports coming out of Guyana especially and to a lesser extent Trinidad, you will see that a substantial number of complaints which the Ombudsman received had to do with delays and, shall we say, apparently mal-administration in the administration of justice.

Now I can appreciate that no one wishes to get involved in interfering with the administration of justice, but since it would be the Ombudsman who would be making the observation, it would be the Ombudsman, not the Government Minister, so that it would be perfectly proper for an Ombudsman, who it will be recalled will be above the partisan exchange, to draw to the attention of the Chief Justice that in the administration of justice, not the substance of justice but in the procedural administration of justice something is going on which in itself is bringing injustice to the citizen.

I think the hon. member for Christ Church East earlier talked about three or four year delays in getting a decision in the magistrate's court. Obviously that is a miscarriage of justice if and when it does occur, and it seems to me that to exclude its investigation by the Ombudsman might somewhere be short-sighted. If the hon. member will take a look across the water at Trinidad and Tobago where there are complaints of cases being held up seven, eight and nine years, I think it is not

necessarily the best thing for us to legislate in this fashion where we say he shall not, because once you say that a proper Ombudsman would stay very clear of anything even vaguely relating to the law courts. I offer it for what it is worth to the Attorney General.

Hon. H. deB. FORDE: Sir, the point raised by my honourable friend relates really to whether we will allow investigation of matters coming within the powers of the court where there is a right of appeal to be subject to scrutiny by the Ombudsman. The view has been taken that as a matter of public policy since there are several avenues of appeal and redress open to citizens that there is no necessity for an Ombudsman to be looking at the court.

The other principle involved here, and it is a principle, is how far do you allow judicial independence to be curtailed, and it poses a real difficulty for constitutional lawyers. The best view has been to leave it in the manner in which it is set out here especially where we have just improved the administration of justice remedies and where we are trying to compel tribunals to give reasons for their decisions. In so far as the practicalities are concerned, we really do not have the long delays which occur in other jurisdictions here. I know that the Right Honourable Leader of the Opposition has referred to a matter in which he appeared when he was at the Bar prior to 1961 being still outstanding, but in the case concerned the Judge concerned left the jurisdiction and took up judicial office somewhere else without giving a decision, and I believe that there are probably two or three other cases in which you may find that the decision has been delayed for over a year. There may be special reasons for that, but invariably the courts do give their decision rather rapidly and quickly, and most of the delay that occurs is really in many instances because the lawyers on the other side are asking for postponement and adjournments. When we discussed this Bill with the judiciary they felt that that clause would have protected their constitutional position as well, and that is the reason why we have taken it that way.

The question that Clause 7 stand part was put and resolved in the affirmative without division.

Clause 8 was called.

Hon. H. deB. FORDE: Mr. Chairman, I beg to move that Clause 8 stand part.

Hon. Miss B. A. MILLER: I beg to second that.

Mr. TAITT: Sir, in Clause 8 (2) we had alluded to this in the second reading I believe, and I think we would like to offer an amendment to Clause 8 (2) after the word "himself" to include the words "or by his agent,". If the Hon. Attorney General would accept

that we would feel that this goes somewhere towards broadening the restriction which the clause in its present form appears to be imposing. If Clause 8 (1) and 8 (2) are read together, it seems to me that notwithstanding what the Attorney General has said that an interpretation conceivably could be made of Clause 8 (2) which would give a *eiusdem generis* approach and which would seem to require a complainant to make the complaint himself. I do not think I need to spend more time on that because we have discussed it, but what we wish to do here is to make sure that there is no doubt that a person is not restricted to making a complaint by himself, and it would take the point made by the hon. member for St. Michael South as well because it would permit a Parliamentarian on behalf of his constituent to make a complaint. Now in one fell swoop we would have been able to do as is done in the majority of cases in the United Kingdom where it is the parliamentary representative who makes a complaint, and at the same time it would not preclude a person from making a complaint himself. I hope that the Attorney General will find it possible to accept this amendment which I believe will find approval on both sides.

Mr. SIMMONS: Mr. Chairman, I just rise to say that the proposed insertion of words to show that an aggrieved person could file his complaint either personally or vicariously I have discussed with the hon. member for St. Michael South West. The Attorney General has given me certain assurances which I think he will make to the House which are acceptable to me.

Hon. H. deB. FORDE: Mr. Chairman, I will accept the principle involved, but the actual wording I am not going to accept now because textually I would have to redraft Sub-Clause 2. Let me tell you how it would read. "A complaint shall be made by the person aggrieved himself or by his agent, except that where he has died...." and although "himself" is again repeated, "he" in there becomes very doubtful. We would want to be able to redraft Section 8.

What I am going to propose since later in any event I am going to ask for leave to sit again on this Bill, if we can pass the clauses as is, that clause and a later clause to take up the point made by the hon. member for St. Michael South West, I think it is Clause 13 where he asked how the report will get before Parliament, I wish to reformulate that clause to say that the report shall be presented to the Speaker and the Senate.

I am also going to reformulate Clause 15 (2) for an affirmative Resolution. But that is a textual arrangement and I am on record in this House, so I am not going to resile from my word; so I will ask to pass it as is, I will not ask the Speaker to conclude, I will then at the end of it ask you to report progress and ask for leave to sit again, because I would then exclude the Third Schedule from being passed now so that we can make any amendments a little later. If that is acceptable to members, unless you want at this stage for me to do that, because there are about two or three amendments that I will make, I will do that.

Mr. TAITT: I think it would be better to do it now.
6.35 p.m.

Mr. SANDIFORD: Mr. Chairman, I am wondering if it would not be a neater and a tidier arrangement to take the adjournment now and in terms of all the points that we have made, the Attorney General can look at those matters, the three points he has made, and come down with the amendments and let us start from that particular point onwards. I believe that procedurally would be much better.

Hon. H. deB. FORDE: Mr. Chairman, I recognise that you have been sitting there for a long time and therefore I would like you to report progress and ask for leave to sit again.

Hon. DeL. BRADSHAW: I beg to second that.

The question was put and resolved in the affirmative without division and Mr. SPEAKER resumed the Chair and reported accordingly.

ADJOURNMENT

Hon. H. deB. FORDE: Mr. Speaker, that concludes Government Business for today and I beg to move that the House do now adjourn until next Tuesday, 11th November, 1980 at 12 o'clock noon.

Hon. DeL. BRADSHAW: I beg to second that.

The question was put and resolved in the affirmative without division and Mr. SPEAKER, adjourned the House accordingly.
6.45 p.m.