
THE SENATE DEBATES

(OFFICIAL REPORT)

SECOND SESSION 1976 – 81

THE SENATE

Wednesday, 26th November, 1980.

The Senate met in the Senate Chamber, Public Buildings, on Wednesday the 26th November, 1980, at 2.40 p.m., today.

PRESENT

His Honour Senator the Honourable Sir ARNOTT CATO, M.B., Ch.B., LL.D., (President); His Honour Senator the Rev. G. ANDREW HATCH, M.A., (Deputy President); Senator the Hon. N. A. BARROW, B.A., LL.B., (Minister of Information) (Leader of the Senate); Senator O'BRIEN TROTMAN, (Parliamentary Secretary, Prime Minister's Office); Senator Sir MENCEA COX; Senator H. F. G. ROCHEFORD, B.A.; Senator R. L. FIELD; Senator AARON TRUSS; Senator H. R. LINTON, LL.B.; Senator K. E. HINDS; Senator Miss O. A. LYNCH, B.A., Dip.Ed.; Senator C. I. E. DEANE; Senator K. R. HEWITT, B.Sc., C.A.; Senator Mrs. E. M. LYNCH, B.A.; Senator Miss M. I. StC. BLACKMAN; Senator D. H. G. HUNTE; Senator J. A. CONNELL, LL.B.; Senator the Hon. D. G. BLACKMAN, (Minister of Labour and Community Services) and Senator R. E. BRATHWAITE.

ABSENT

Senator J. D. S. MacKENZIE and Senator J. C. W. WICKHAM.

Prayers were read by Father L. Crawford.

EXCUSES FOR ABSENCE

Excuses for absence were offered for Senators J. C. Wickham and J. D. S. MacKenzie.

PRESENTATION OF PAPERS

SENATOR THE HON. N. A. BARROW: Mr. President, I beg leave to lay the following documents:

Report of the Activities of the International Year of the Child in Barbados, 1979;

Annual Report of the Commissioner of Police for the years 1978 and 1979;

Report of the Fire Service Department for the year 1979;

11th Annual Report of the Barbados Development Bank for the year 1979-1980;

Statements showing Net Customs and Net Excise receipts for six months ended 30th September, 1975;

21st Annual Report of the Transport Board for the year ended 30th September, 1976;

22nd Annual Report of the Transport Board for the year ended 30th September, 1977;

The Customs (Amendment) Regulations, 1980;

Report of the Commission of Enquiry into Unsolved Murders, 1980;

Statements showing sums advanced to the Postmaster General for the payment of Money Orders for the months of June and July 1980;

Statements showing Money Orders transactions through the Crown Agents for Overseas Governments and Administrations for the months June and July 1980.

INTRODUCTION OF BILLS

SENATOR THE HON. N. A. BARROW: Mr. President, on today's Order Paper there are two Bills which we find as Orders Nos. 4 and 5 which have not yet had their first reading in this Chamber and in giving notice of these two, I wish to crave the indulgence of this Honourable Chamber to allow us to proceed with these two Bills in all of their stages today.

The Clerks ^{have} been kind enough by letter of the 19th November in order to save the Senate meeting for the purpose of giving notice, was kind enough to circulate the letter in which he informed members that I would wish to seek leave to deal with certain items in all of their stages today.

We do not intend to proceed today with the land acquisition matters and at this stage I wish also to give notice of an additional land acquisition matter "Resolution to approve the compulsory acquisition of land at White Park, St. Michael" but what we would wish to do, Sir, we would like to proceed in all of its stages with the Bill concerning the Better Administration of Elections and the Bill to provide for the Establishment of the Office of Ombudsman.

Accordingly, Sir, I move that Standing Order 45(2) be suspended for today's Sitting.

The question was put to the Senate and agreed to.

PUBLIC BUSINESS

ELECTORAL (MISCELLANEOUS PROVISIONS) ACT, 1980

The Fourth Order of the Day was called — To move the First Reading of a Bill to amend certain enactments in order to provide for the better administration of elections.

Mr. PRESIDENT: In relation to these two Bills, I take it that the Clerk records that they have been read a First time and the Senate has agreed to proceed with the Second Reading.

SENATOR THE HON. N. A. BARROW: Mr. President, in moving this Bill which is designed to provide for the better administration of elections, it is not my intention, Sir, to spend a great deal of time speaking about the framework of Electoral Legislation or indeed to seek to offer any proposals concerning the Consolidation of the Laws and so I believe members on both sides will agree is something we should move to sometime in the near future but merely, Sir, to concentrate on the provisions which exist in this Bill before us this afternoon.

The point about Consolidation is that it is a lengthy exercise and this is why I do not propose to spend a lot of time dealing with that aspect of it because sometime soon, whether it is the next year or two I expect, Sir, that the members of both Chambers of Parliament will have to look at Consolidated Electoral Legislation.

While this is a lengthy process it does not, however, stop Parliament from dealing with what inadequacies there are in the present Law and for this reason the Legislation before us seeks to do a number of things, perhaps simple things, perhaps not so simple things.

I would like first of all to dispose of one particular point because I think it can be disposed of quickly and also because it is a point which I know has attracted some comment and that is that this Legislation has a specific provision which will ban the wearing of tee-shirts which has become an interesting feature in modern campaigning in this country as indeed elsewhere.

It may seem, Sir, to be a small matter. To a number of practising politicians it is not because as they see it being able to have their shirts worn is a means of advertising their campaign and so indeed it is but it runs against the fundamental principle within the framework of Parliamentary democratic societies and it is this, Sir, that all of the moves which have been taken towards universal adult suffrage, would be negated if once again the doors should be opened to encourage money to be the determining factor of who should be elected in Parliament.

I believe, Sir, that there are many hon. persons around this Table, many hon. Senators, who are aware of the old practice of the voter on the way to the polls being fed before he went in to cast his vote.

That was but one of the crudest forms in which money was meant to play its part. We can move to the implication to the fact, that today legislators are paid and it is again tied up with the fact, that you cannot talk about the advance of Parliamentary democracy, if a man, or woman has to be able to afford to render service for nothing, in order to sit in Parliament. When, therefore, we move to a stage of campaigning, such as obtains in North America, where money talks, it is extremely important for us to seek to preserve some of the basics in our society, by ensuring that money does not talk that much.

The opinion of the Chief Electoral Officer on this is that giving of shirts is no different, from giving of drinks and if you cannot do one because it is bribery, then why are you allowed to do the other, which is equally bribery? I believe, Sir, that it takes little to recognise that that is a fact.

How much a candidate can spend on his campaign is by Law limited. Indeed, Sir, it is argued, that the limit of 50 cents is too small to take care of all the candidate's legitimate expenditure. If a candidate is not to be encouraged to break the Law, if the Law which limits expenditure is to be honestly regarded by candidates and administrators alike, then the limit of 50 cents, if it is meant to include shirts would perhaps have to be something more like the limit of \$4.00 or \$5.50.

Sir, if as an elector, you purchase a shirt which — Senator Linton is not here, I believe that that is safe now Sir — Senator Linton, as a candidate has for the purpose of advertising his campaign, then, the purchase of that shirt would constitute a financial contribution to the campaign of Senator Linton. As soon as, enough shirts are sold, it would clearly be seen, that the candidate has long past, outstripped, exceeded the amount which the Law allows him.

If, on the other hand, Sir, the candidate chooses to give the shirt away, as I mentioned before, that is straight bribery and Sir, there is of course, the doubtful area, where the candidate happens to discover, that somebody has been kind enough to give away shirts within his constituency and although that person has been guilty of bribery, you cannot really touch the candidate, if he knows nothing about it.

So, if we are going to take the Law seriously, then, we either recognise, that one is allowed to sell the shirts and in that sense, one is allowed to spend much, much more on the campaign, than is presently allowed, or if we are going to go the other route, then we recognise, that to do this, it would mean imposing on every candidate, a level of expenditure, which will leave politics in this country, the seeking of political office open to those who have money and the avenue closed to those who cannot afford that level of expenditure.

There is no doubt, Sir, that as the Law now stands, the giving of shirts is bribery. There is equally no doubt, that had the Chief Electoral Officer sought vigorously, to apply the Law, as indeed, he should, if we are to keep elections fair, clean and honest, if he were to seek to administer the Law with the vigour that he would wish to and the vigour that he should, then it would perhaps have had quite an effect on the complexion of the number of seats held in the elected Chamber.

I believe, Sir, that almost every candidate had shirts for the last Elections including those who discovered, that people had given away shirts in the constituency in which they ran. So, I think Sir, the point is that we would wish to clean the matter up and also not to leave any incentive for excessive expenditure. That is the matter with shirts.

I might just add one last thing and it is this, that anybody who would wish to argue, that the business of banning shirts is unfair to any particular party must recognise, that if that is the kind of election you want to run, that it would be a matter of encouraging political parties to develop a war chest for the elections and those who will give, who generally tend, in any country to give to a Government and if it is a disadvantage to ban shirts, the Party that now holds the Government will be putting itself at a disadvantage, so it is not a matter of political advantage involved in this measure. It is a matter of whether we mean it seriously, when we say, that expenditure must be held within certain limits, or let money take over and whether we mean it seriously, when we say, that there should be no bribery. That Sir, is the point which seems to me, is perhaps the most topical among all the measures within this Bill.

It has been felt for a long time, Sir by a number of persons, that it is only fair to recognise a two Party system within the parliamentary democracy, by allowing candidates to identify with their Political Party. As it is, the present Law prohibits this and there is a Section here in this legislation to permit candidates to be identified by reference to the party to which they belong.

I think Sir, the reference to employees and time on Polling Day is clear and I believe Sir, that is a point which is generally honoured. Then, there is the provision which concerns the electoral register. I believe, Sir, that in the course of debate in the Other Place, that it had to be pointed out, that there was really no point in our continuing a system, in which we came out periodically, with a provisional register which, with respect to some constituencies consisted of three blank sheets and that it was far better to use the legislation, which provided for enumeration, and enumeration which is held for general registration purposes, not just political registration. Registration for the purposes of National Insurance Scheme, registration for the purpose of the National Health Service, in addition to the political registration.

It is a registration scheme, Sir, which I think it has been pointed out again will make it easier for persons who are over 65 to be identified so that they may receive whatever benefits, such as riding on a bus, which are rightfully theirs. If we have such enumeration which gives us better and more reliable statistics than there were in the past, it then means that we should use that same statistical base for compiling the electoral register. It permits us therefore to see who will be 18 on polling day, so that as far as is possible no one who reaches the age of 18 will then be denied the right to vote, because in a technical sense that person had not been registered. It also means that even though the law does not require it in the same way it required publication of the provisional lists, that when election time comes the provisional lists can be published by the Chief

Electoral Officer in order to facilitate the public generally.

I do not believe, Sir, that I need to go into any reference to certain irresponsible comments that had been made relating to registration of foreigners, because I believe that publicly the record has now been put quite straight in relation to that. The computer is programmed to reject those who are not by law entitled to vote, and therefore we are dealing with a system which is as near to foolproof as any which we can devise in this modern day, and age. The lists have been suitably analysed to ensure that indeed no such persons may slip through the net, and we are satisfied that the charges relating to registration of foreigners are completely groundless.

The other provision in this legislation, Sir, is the provision which will allow each candidate to send one election circular out to his potential, or perhaps imagined, constituents free of charge. I believe that this piece of legislation can be seen as one which merely looks at certain problems and seeks to deal with them by giving a more sensible, reasonable and modern system of registration. It brings us more in line with those countries in which up to the last minute have a chance to get on the rolls and therefore not to be denied the vote, and it tends to straighten out certain things by removing a certain inducement for excessive expenditure and by removing one of the on the surface perhaps attractive but certainly deep down potentially corrupt practices, which is an extension really of bribery.

Mr. President, I move that this Bill be read a second time.

SENATOR C. I. E. DEANE: Mr. President, the thing that struck me was that the candidate may identify himself with the party to which he belongs. I suppose that infers that he can put a sticker on his car, or something like that. Mr. President, can you help me with that? Can he?

Mr. PRESIDENT: I think the Minister will answer when the time comes for him to answer.

SENATOR C. I. E. DEANE: Because with the increased violence which takes place in Barbados now, I could see mobbing of the car or something like that, and of the person in the car, if that continues. That is the only thing I wanted to know, because with the shirt that is obvious.

SENATOR J. A. CONNELL: Mr. President, I rise simply to ask the Minister, through you, a question. The Bill does not indicate on the face of it whether it will come into operation by proclamation or not, and I assume from that that it will not come into operation by proclamation. I notice that the last clause of the Bill,

clause 2 subclause (2), provides that the Parish Boundaries Act is repealed. That Act, Sir, appears at Cap. 109 and I simply wanted to ask the Minister what would be the administrative position in the meanwhile if this Act comes into law. Are we going to have a hiatus before the new boundaries are substituted? What is going to be the position? He did not deal with that in his introduction, and this Act says that a particular plan should be referred to and that the boundaries in that plan shall be deemed to be taken to be true and real boundaries of the parishes for all purposes whatsoever. I just want to know what is the position. One Order is going and presumably a new Order is coming, and what happens in the meanwhile?

SENATOR THE REV. A. HATCH: Mr. President, I have a small question to ask the Leader of Government Business on this, it is on the Schedule, section 10A, about the wearing of shirts. I understand that in Barbados political parties are not identified by colours, and Senator Enid Lynch tells me this is because Bajans can read. But it is not beyond the realm of possibility that as exists in most other Caribbean countries where the political parties are identified by colour, and some of them can read, and emblems and slogans, but by colour — this is the point I am making — that one or other party decides at some stage to have a party colour. Would this mean that — be it far from me to suggest that the BLP should choose the colour blue — but suppose they were to do so, would it mean during, before or after an election no one could sell a blue shirt, or wear a blue shirt without infringing the provisions of this legislation?

If people use soubriquet, a firm could put out a shirt which says, "Tom, Tom the Piper's son". Would people not be able to wear that in any kind of situation in which it would happen to conduce towards an election so I am not persuaded unless the Leader can persuade me that the application of this, as Senator Deane says, would be all that easy for all time.

SENATOR THE HON. N. A. BARROW: Mr. President, I'm thinking about which of the points to take first but when I am talking about identification of a candidate with a party, I am indeed referring to the fact that there is prohibition in the Law against having on a ballot what party a candidate is a member of. I am not dealing with general advertising material and the general promotion of the candidate's cause.

The point is raised by Senator Connell in relation to the parish boundaries. The Senate is well aware that there is a Select Committee in the Other Place sitting on electoral boundaries and there is legislation shortly to come before Parliament concerning the establishment of the election of boundaries Commission and if these two facts are taken together, then the significance of the Parish Boundaries Act in the context of the Electoral Law, I think, disappears hence the reason for its repeal.

SENATOR J. CONNELL: I do not want to be difficult but I was just indicating that these things are still *in futuro*. We are dealing with an Act now. I simply wanted to ask what happens in the interim whether the existing administrative boundaries are going to be removed before that which is to be replaced by them become legally operative.

SENATOR THE HON. N. A. BARROW: I take it, Sir, that the Senator is referring to the parish boundaries within the significance of Election Law because most of the administration now is related. I see the point which Senator Connell is making. It is not a point to which I have a ready answer and therefore it is a point which I am quite prepared to raise for his information at some future date and for the information of the Senate as well.

I am quite prepared, Sir, to seek advice on this specific point for the benefit of Senator Connell specifically and for the benefit of the Chamber, including myself generally.

The point raised by Senator Hatch is another point which I think, perhaps, deserves a little more extensive treatment. The real answer is this, Sir, that with this change in the Law, the wearing of such apparel will be *prima facie* cause for activating the provisions of the Law against the person wearing it and against the candidate.

It is a completely different matter from being able to prove that either the candidate has given this shirt or that shirt which is being worn falls neatly into a particular description. Let me put it another way as I am becoming rather involved myself. Suppose you have a plain ordinary shirt and you take something and put on that shirt, it seems to me that that cannot fall within the ambit of the Law as it now stands in the same way as it seems to me that if the Party colours of the Barbados Labour Party are red and white that people dressed in red and white could not be committing an election offence.

What is behind the Law at this stage is that we do not permit people to buy these shirts and give them away. That is the essence of it so in other words, in practical terms, everybody who has been on the campaign trail knows and understands what is involved in this. Here is a shirt which has a picture of the candidate and which has certain words on it and so on and anybody looking at that shirt knows that this is not a .5c job and could not possibly fall within the election expenditure limits.

SENATOR THE REV. A. HATCH: If I may interrupt the Minister, Sir, because I do not see how he gets this explanation out of the second paragraph of the Schedule. I understand what he is saying but it is not what the Bill says. The Bill says immediately after Section 10 the following. This is in the Schedule, Page 3, the second paragraph. "A person is guilty of an illegal

practice who before, during or after an election." The first thing he is guilty of is if he supplies to another person but the second thing is if he "wears any apparel or form of dress bearing a political slogan" so if you leave out the business of supplies to another person, it reads: "A person is guilty of an illegal practice who before, during or after an election wears any apparel or form of dress bearing," and so on and I am suggesting now that if a colour becomes identifiable with a party he might be guilty of a breach of the Law by wearing the colour.

It may seem facetious but I want us to avoid making problems for ourselves down the road. I am saying, Mr. Leader, that it is not only a question of supplying this to somebody else and therefore bribing them but even the wearing of a specific thing, according to this wording, seems to imply that it would be illegal to wear any apparel which could identify you with a Party.

SENATOR THE HON. N. A. BARROW: Mr. President, I do understand that point. The point is, that if you do not make it an offence for somebody to wear, then how do you indeed get to the point where people claim that somebody just happened to dish these things out in the constituency. You have to have a check at both levels. That is really the point. I think, that nobody in Election Law really likes to put the commission of an offence on the voter, where you would want to put it always is on the candidate, where it properly belongs. But indeed, if the person who wears it is not guilty of an offence, it would be virtually impossible for the Supervisor of Elections to get the necessary information on which to check people's election returns properly. Basically, that is the problem.

The question that the Bill be read a second time was put to the Senate and agreed to.

On the motion of SENATOR THE HON. N. A. BARROW, the Senate resolved itself into a Committee on the Bill, SENATOR THE REV. A. HATCH in the Chair.

On the motion of SENATOR K. HINDS, the Bill was taken as read.

Clause 1 was called and passed.

Clause 2 was called.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I beg to move, that Clause 2 stand part.

Mr. CHAIRMAN: The question is that Clause 2 stand part of the Bill, as many as are of that opinion please say aye, of a contrary..... Senator Linton.

SENATOR H. R. LINTON: Sorry, Mr. Chairman, I just want to speak here on Clause 2, with reference

to the problem raised by Senator Connell, to which the Leader said he may not be in possession of an immediate answer.

I do believe, though, Mr. Chairman, that there may in fact be a fairly simple answer to the problem because this Bill does not really become an Act, until such time as it shall have received the Governor-General's Assent and consequently, until that time, the Parish Boundaries Act would not have been repealed. So, the simple answer is to defer sending this to the Governor General for his Assent until such time, as it is repealed, by the Electoral Boundaries Act, or some other Act, which is going to repeal the Parish Boundaries Act. I think, that is the simple answer to the problem. I wanted to convey it earlier, but I could not get opportunity to reach the Leader.

Thank you very much.

Mr. CHAIRMAN: Senator Connell.

SENATOR J. A. CONNELL: Mr. Chairman, I do not wish to belabour the point, but it is not just an academic problem that is being raised.

If Honourable Senators will look at the Magistrates' Jurisdiction and Procedure Act, which is Cap. 116, the First Schedule thereof sets out the Magisterial Districts. It goes on to say:

"The island is hereby divided into the following Magisterial Districts, that is to say, District A comprising..."

Then, Bridgetown is mentioned, St. Michael is mentioned and then, the various other parishes in the country, like Christ Church, St. George. District C, for example, comprising the parishes of St. Philip and St. John, District D comprising the parish of St. Thomas.

Clearly, this Act that is being repealed today still has administrative functions. Registration of vehicles as another Honourable Senator is saying, and whereas, as Senator Linton has indicated, that is one possible solution, I think, that we, as Honourable Senators, who are considering legislation have a duty to the country just to check, that there is not an unfortunate hiatus, which could lead to administrative embarrassment. It is not a contemptuous matter. I am simply drawing the Leader's attention to the fact, that if this goes on to the point, where it is signed by the Governor-General, without some sort of Saving Provision to maintain the boundaries for administrative purposes, that there might be problems. That is the point.

Mr. CHAIRMAN: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I have listened to both contributions on this point

and I was aware of Senator Linton's submission. But, the reason I never advanced that as an answer is that that cannot, in this particular case be the answer because it is not intended to delay bringing this Act into force because before this comes into force, the Chief Electoral Officer is without the legal authority to compile the Register, on the basis of the enumeration exercise just completed, so that I am aware, that Senator Linton might not necessarily be aware of this and therefore would have seen what seemed also to me to be a possible answer, but this is the authority, on which Mr. Smith is waiting for compiling the Register, on the basis of the recently concluded enumeration. Therefore, it cannot be intended to delay it.

So, I repeat my assurance, that I will have the point checked and communicate the necessary information for the benefit of the Honourable Chamber.

Mr. CHAIRMAN: Senator Linton.

SENATOR H. R. LINTON: If that is indeed the case, Mr. Chairman, I must of course agree with my friend Senator Connell. It would in fact be nonsense to repeal the Parish Boundaries Act with this piece of legislation without making alternative provision immediately. Then, the Leader would of necessity have to strike out Clause 2 of this Bill because so much depends on the Parish Boundaries legislation. I could not believe, that he could overlook something as important as that.

I thought, that the Act, which he said is due to come before the Other Place next week was going to take care of everything, that is now in the Parish Boundaries Act, and that then, this could be laid soon after. But, if what he says is the case, I strongly suggest, that we defer repealing the Parish Boundaries Act because it could cause untold difficulty with simple, ordinary folk, not to mention the difficulties it could cause administratively and on a national scale.

Mr. CHAIRMAN: Senator Barrow.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, from the files before me, it is and I believe, that it should be clear to all Honourable Senators, that the answer to the problem is not here with us this evening. This is why I said, I will seek the information and give it to the Honourable Chamber, at the appropriate time. I believe, Sir, that it is not particularly advisable for us to go down the road of instantly advising ourselves legally, when the people who have had to work on this might well have seen what the problems are and the answers may, in fact, be readily available to us.

It is something which I obviously have my regrets, but full enough information is not here for me to give the answer right here and now, but what I am saying is

that the answer is not in these files right before me because the problem has probably been dealt with perhaps in legislation which is being introduced next week.

The question that Clause 2 stand part was put to the Senate and agreed to.

The Schedule was called.

Mr. CHAIRMAN: The question is that the Schedule be the Schedule to the Bill.....Senator Rocheford.

SENATOR H. F. G. ROCHEFORD: I just wanted, Mr. Chairman, to comment on what has been mentioned before about the wearing of apparel and form of dress and just to draw attention, that there are a lot of members of the public, who still wear shirts and slogans, from a previous Election, that after the passing of this legislation, they are now committing an illegal practice.

SENATOR H. R. LINTON: Mr. Chairman, are we not here arguing about the *raison d'être* or the import of this Bill at all? I can see the necessity for it, and I do in fact support it, but I want to make sure that we are — you, your good self, said when you were in the chair next to you — on the correct path when we come to the interpretation of this Bill. I have not given it thorough thought, but what I can see of it, I know that it gives rise to some difficulty.

Let me refer you in the Schedule to this section 10A, for example, where it says a person is guilty of an illegal practice who, before, during or after an election supplies to another person, or wears any apparel or form of dress bearing a political slogan, photograph or image advertising any particular candidate or party in the election. The concluding three words are the ones I am worried about, because when we turn the page and look at the definition section — “In this Act a reference to a period at an election or during an election is a reference to a period commencing with the issue of the Writ for that election and ending on Polling Day.”

Mr. Chairman, there you have a definition. They tell you what they mean when they refer to a period at an election or during an election. What I am wondering is what they mean here by in the election. I can see it refers back to during or after an election meaning in that election, but it could mean during that election or at that election, in which case it would make section 10A partly contradictory in terms, because it says if you wear this apparel or what have you during, after or before, and then restricts it to in the election to advertising the candidate in the election, so it seeks at one moment to open it to those persons wearing this apparel or purchasing it or whatever during, after or before, but then it goes on to restrict it to the period beginning

with the issue of the Writ and ending on Polling Day. I see that as a real difficulty.

Now, as I said, I would like to see the Leader when he takes legal advice on clause 2, I would like to see him take legal advice on the likely interpretation which that is likely to receive as well.

SENATOR K. R. HEWITT: I just want to ask the question whether the definition on page 4, which seems to me to refer to Cap. 12, but I myself was looking for a similar definition in Cap. 3. I did not see it, but I do not know if it is there, so I am not so sure that this before during or after an election, though that phrase is defined in Cap. 3, and the mere fact that.... (ASIDE). Maybe that is the explanation, but as a layman in this particular aspect I was a little bothered when I searched under Cap. 3 and did not find a definition for ‘before, during or after’.

Now, in Cap. 3 here it talks about at an election or during an election, it does not really talk about before or after. To a layman not trained in the law the phraseology ‘before, during and after’ on the surface appears to me to say for all time.

SENATOR H. F. G. ROCHEFORD: Mr. Chairman, I must support Senator Hewitt on this, because even if you accept that in the Representation of the People Act that amendment specifying what is meant by the period of election, ‘before’ means before that period and ‘after’ means after that period, so it means for all time. I do not see how else you could have another interpretation.

SENATOR THE HON. N. A. BARROW: Mr. Chairman, I could understand if an Hon. Senator was making the point that he agrees or disagrees with the thing being made illegal before, during and after, and says that it should be during and after or before and during, or before and after but not during, or whatever combination, but I do not see why Senator Hewitt should argue about the fact that he understands it correctly. Before, during and after can only mean before, during and after, and I am at a loss that my good friend should want before, during and after to mean something other than before, during and after.

In relation to the point made by Senator Linton, if we define ‘in an election’ then that is the only way we can talk about before, during and after what. If the Representation of the People Act, Cap. 12, is what provides for an election, then the appropriate place for an election to be defined is Cap. 12, and if Cap. 3 deals with controversies and offences relating to elections, then if you define elections in respect of Cap. 12, I do not see that there is any particular difficulty. I believe,

Sir, that the Hon. Senator wants to say something else, I believe the Senator wants to say that you should make it an offence to wear the shirt which advertises the candidate, and it says "advertising an election candidate". That is what we mean by a candidate in the election, somebody who is a candidate between the time of the issue of the Writ and Polling Day. I think he wants to suggest that we should make it an offence if you should wear the shirt after, but not before or during. But I cannot understand how you can make it an offence if you do not catch before, during and after, and I think if Hon. Senators address their minds to it they must recognise that all you have to do is to promise the shirt and get it after the election. So if it is before and during the little bread has gone the other way, and if you say during and after, give the fellow the shirt and make sure that coming up to Polling Day the shirts disappear for a little while.

The point, Sir, is that we either have to deal with the issue of the shirts or we do not deal with it. If my friends who feel that they may be in the race somewhere within the next year would like a little elbow room, I think they will have to come out and say they do not like this legislation, but do not quibble about it, and do not suggest that there is a way to make the thing illegal without catching it up front, in the middle and also behind. You have to catch it all three places or you cannot catch it. I think that is the position, Sir.

The question that the Schedule be the Schedule to the Bill was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: I move that the Senate do now resume and the Bill be reported.

The question was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: Mr. President, I beg to report that the Bill has passed Committee without amendment and beg to move that it be read a third time forthwith.

The question was put to the Senate and agreed to.

On the motion of SENATOR THE HON. N. A. BARROW, the Bill was passed.

OMBUDSMAN ACT, 1980

SENATOR THE HON. N. A. BARROW: Mr. President, the Commission which reviewed the Constitution under the distinguished chairmanship of Senator Sir Mencea Cox, that Commission, Sir, addressed itself during its deliberations and reported thereon to the question of an Ombudsman.

An Ombudsman is an officer whose concern is to investigate instances of maladministration by State

Authorities where these instances of maladministration give rise, Sir, to personal grievances and affects the complainant in his individual capacity. That formulation, taken from the report, accurately represents what we are talking about when we are talking about an Ombudsman and this is why, in some instances, the person carrying out the function of the Ombudsman is referred to as a Parliamentary Commissioner because it is usual to find such persons responsible to Parliament.

You will find, Sir, that we have to go back to Sweden and to the year 1809 if we wish to develop some historical account of the office of Ombudsman but suffice it to say that there are many countries in the world, and indeed in the United States of America, although federally there may be no Ombudsman there, in some States, for example, the State of Oregon, an Ombudsman.

Indeed, in Oregon, the Ombudsman is a member of the personal staff of the Governor. She is charged with investigating a number of complaints affecting people in their individual capacity and she uses whatever means they are at her disposal in order to produce quick results and to remove the grievance.

One could, I believe, Sir, speak about various kinds of Ombudsmen, talk about whether the area to be covered by the Ombudsman is in this case or in that case a large area or a small area and it would not be difficult, indeed to develop some arguments against having an Ombudsman in countries where there are other examples of machinery where a citizen may take his grievance.

If, for example, we look at our own situation, there are a number of areas in which an aggrieved person does have a right to have a situation reviewed by some properly constituted authority. A number of appeal agencies for the benefit of both the public and the civil servant exist in Barbados but we always have to be concerned with that other area in which things are difficult of definition and where the citizen does not know that there is some form of redress available to him or to whom he might go to. Indeed, he has to seek some form of redress and this, Sir, is really the case for the establishment of the office of Ombudsman.

The case does not lie in being able to produce a plethora of facts and figures and what has happened and what has not happened. It lies really in our own perceptions of the certainty that a number of individuals in this society with some form of legitimate grievance do not know where to go if they feel a sense of wrong to the extent, therefore, that there is no readily recognizable office available to them where they might go and seek a remedy and I am not talking about a remedy only in the legal sense because if we have to go to Court in order to have everything settled, then we are indeed a society in a very bad way, and where one would go and raise a complaint and have it thoroughly investigated and have what

we in Barbados call satisfaction. Unless we have such machinery, I believe, Sir, the society is the poorer for it.

An office such as this is not an office without a cause but it need not be the kind of exercise which one might impose a very great burden or cause if one follows fairly simple and generally recognizable lines in establishing the post.

The Bill which is before us does, Sir, seek to establish the post of Ombudsman in a way which is at once recognizable to those of us who have spent any time trying to familiarise ourselves with what such an office is all about.

I have somewhere here, Sir, and it should not take me a minute to find it, the Commonwealth Law Bulletin, Volume 6, for October, 1980, in which one finds that in this issue, last month's issue, a number of examples in here relating to discussion about the office of Ombudsman.

It is one of these areas, Sir, which already is of some great interest and the interest continues to grow among constitutionalists whether on the political side or among lawyers and so we find reference in here to the Solomon Islands and the Ombudsman Further Provisions Act of 1980. One of the provisions, Sir, being that the Ombudsman's investigations would not prevent a department into which an inquiry is being made from taking its own action so that people are always free to remedy ills even though the Ombudsman has moved in with the investigation.

Vanuatu, former New Hebrides are cases, Vanuatu, where the Independence Constitution establishes the office of Ombudsman. There is some discretion in the system of Ombudsman, which now exists in the United Kingdom. There is some reference, Sir, to cases of special interest, where a publication put out, by the University of Alberta in Canada on the developmental side, some discussion relating to New Zealand and Australia and in the United Kingdom case, there is discussion of the call for greater powers for the Health Ombudsman because in the field of Health, the Health Service Commissioner is himself an Ombudsman, but for a very narrow field. I am doing that, Sir because I think, that we ought to be aware, that a trend which started in 1809 is very much today a matter, that is very alive among Constitutional Lawyers and among political scientists because there is the ongoing search for building into the society, machinery that tends to enhance the rights of the citizen.

I believe, therefore, Sir, that in principle, one is unlikely to find, in this Honourable Chamber, an expression of view, which may be interpreted as opposing

the establishment of the office, and to the extent, therefore, that debate reflects differences in approaches, as to what an Ombudsman should do, differences in approaches, as to the establishment of the office, I believe Sir, that debate would merely reflect, that we represent in here some, perhaps the same diversity of view, which exists in many other places.

I just wish very briefly to refer to the form of this legislation. To me, Section 10 has the crux of the matter because that is where the Ombudsman is empowered to get information. I might, in passing, say Sir, that it has been my own view for sometime, in looking at the example of countries which have gone the route of freedom of information legislation, a point, Sir, which also concerns this Government and which not only concerns us, but we are committed to freedom of information legislation.

But, looking particularly at the example of the United States of America it is possible to enter into forms of legislation, which will then bring us very little, I am sorry, Sir, I should not put it this way, might bring benefits to the community, but it can bring those benefits in an extremely expensive manner and therefore, I belong to the school for some time that says, that if we establish the office of Ombudsman, that any freedom of information legislation should reflect, that the Ombudsman is an appropriate person to whom application should be made, where there is information, which the citizen seeks to spring out of some designated office, or department.

This is why, I, for example, speak on the point which is represented in Section 10 because in Section 10, it says:

"Subject to subsection (3), the Ombudsman may, for the purpose of an investigation require any Minister, officer or member of the department, or authority concerned, or any other person (including the complainant) to supply any information, produce any document or thing, attend for examination, or allow access, by the Ombudsman to any premises of the department, or authority."

That Sir is the power without which in my view, the office of Ombudsman would have no meaning and I believe, that once we have a power of that sort, which where we move in the area of freedom of information legislation, that power given to an Ombudsman is the appropriate power to use, so that indeed, in this one section, we may indeed have legislation as much as, any freedom of information Act can legislate in this country. Yes, Sir, I am not digressing, it relates very closely to this.

I am referring something which I, myself, had the opportunity to observe in the United States, as a result of the passing of freedom of information Act, an entire department spending millions of dollars every year in extensive litigation had to be set up. It may be, that they had no cheaper way of achieving the business of making records relatively open and accessible to the public, but with the discretion of people in the department, I would think and because a fair amount of time, for example, is taken up with resisting applications for information, which for example, one person wants to get information on another and that information is to be found in some Government files, so the whole area there is complex.

If we use the approach of the Ombudsman, we will find Sir, that where there is information in Government files, in which a person has a legitimate interest and that person makes his complaint to the Ombudsman, the Ombudsman will be able to examine whether in the first place, the interest is legitimate and will allocate that information, from files of the Government.

I believe, Sir, that all other provisions of the Act, as indeed Section 10 would have commended itself to Honourable Members' attention and in fact, insofar as, it may be necessary to look at section 3, Sub-section (3), where it says, that the "Ombudsman may be removed from office, in accordance with the provisions of section 105 of the Constitution". There is very little, that provision indeed says, that it would be as difficult to remove an Ombudsman from office, as it is to remove a judge from office. That is to say, it will be well nigh impossible. If you look at Section 105, you see the procedures for removal of a judge from office, then it might well be understood how secure the position of the Ombudsman is and therefore, if once the man is appointed, there will be no reason to fear, that he has to look over his shoulder to take any decision.

There is one Section in the Bill, as I recall, Sir, I am looking for the particular section, which before I close, Sir, I should draw attention to.

I believe, Sir, it is in section 5. Section 5, sub-section (5) reads: "An investigation by the Ombudsman shall not be prevented by any provision in any enactment, other than the *Constitution*, to the effect (however expressed) that any matter or thing shall be final or conclusive or shall not be disputed, reviewed or called in question." In other words, Sir, the authority of the Ombudsman is there debarred only in respect of those areas of the Constitution, for example, the Services Commission, or I think it is section 32 or the Constitution which says that whether the Governor General has acted in accordance with advice shall not be enquired into in any court. Only in those areas where the Constitution has itself sought to make the issue non-justiciable,

only there is the authority of the Ombudsman to be excluded. That, I believe, Sir, is extremely important.

The provision, however, which I myself do not like, but which is a provision which is generally to be found in legislation of this sort, and which reflects a provision in the Constitution itself, where in the human rights section of the Constitution you will find a provision which says that where a remedy is to be found, an ordinary legal remedy is to be found in the ordinary law, that the High Court is not to abuse its special powers to grant relief, we find the same here in section 7: "..... the Ombudsman shall not investigate any case where, in his opinion, the complainant would at any time have had a remedy or right of appeal in a court of law, tribunal or similar body established by the Constitution or by or under any enactment or by or on behalf of Her Majesty."

I know, Sir, it is a minority view, it may well be a minority view, but I still belong to the school that says that notwithstanding that there is legal remedy available, it is often in the interest of particularly small persons who do not know their rights that investigations of this sort should be encouraged, and I do not myself like to debar the probing powers of an Ombudsman merely on the ground that legal remedy exists elsewhere. That, Sir, is the only point with which I would disagree on anything in the Bill, and indeed this is, I am forced to admit, a point in which there is quite definite divergence of academic view, and in so far as the provision of this Bill here reflects anything, it reflects the same thinking that shaped the provision in the human rights section of the Constitution to which I have already referred.

Mr. President, I move that this Bill be read a second time.

SENATOR J. A. CONNELL: May it please you, Mr. President, I for one am in agreement with the principle behind the establishment of an Ombudsman. I know that there is some very educated opinion in the country that thinks the establishment of an Ombudsman to be unnecessary, and this opinion to which I refer is not all politically partisan. Some persons are persuaded that enough machinery already exists in the country for persons who feel that they are aggrieved to set in motion to have their grievances looked into and remedied.

For my own part, Sir, I see modern Government as approximating more and more to the Hobsian Leviathan. It is becoming larger and larger, its tentacles extend more and more into areas of life which were hitherto regarded as sacrosanct to the private citizen. I think therefore that it is of value to have an official like the Ombudsman who can take up the cause of an aggrieved citizen and examine it, and if necessary have

the grievance put right. I say this in full knowledge that the courts exist and in full knowledge of the fact that powers exist to establish Commissions of Enquiry.

I think that it makes for a healthy society for the citizen to feel that he has constitutional mechanisms which he can set in motion to remedy any grievance that he considers that he has against any part of the increasingly huge state apparatus.

Having said that, Sir, having indicated my agreement in principle with the Bill, I must however go on to regret that the Bill significantly limits the area in which the Ombudsman can be of assistance to the private citizen by excluding a very large area of Government activity, namely, the Statutory Boards. Now on that there are two comments that I wish to make. The Bill seems to have borrowed fairly substantially from the British legislation. When the first British legislation was passed, there were areas of Government activity, for example the Local Government, which were excluded from the ambit of the Ombudsman's powers. It may be that Government has in mind at some time in the future to enlarge the area of enquiry by the Ombudsman, even as the British legislation subsequently enlarged the area of the Ombudsman's power to enquire. If that is the Government's intention to bring special legislation to deal with Statutory Boards, I should be grateful for an answer from the Leader of the Senate to this effect. If this is not the intention, I would equally like to know what was the policy reason for the exclusion of the Statutory Authorities. Now, it has been said that part of the policy reason is that the Chairman of Statutory Authorities are represented in the Other Place.

I do not think, Sir, that this is really a satisfactory reason for not including Statutory Authorities. Not only are all of the Statutory Authorities not represented there, but I do not think that the primary time table and the well established procedures of Parliament make it possible for a member of Parliament to answer the thousand and one enquiries and to provide solutions to the myriad, the number of problems that adversely affect the citizen in the day to day running of Government.

What I am saying, Sir, is that although we have made recent changes to permit the Chairman of certain Statutory Boards to be represented in the House of Assembly, that is not enough in terms of a Constitution for having an Ombudsman and when one considers that we are increasingly using the device of a Statutory Authority to assist Government to discharge its functions more efficiently and more effectively, then it is a matter for concern that this area of Governmental activity has been excluded from the purview of the Ombudsman.

Government is involved in Statutory Authorities that administer the Governments of the country in a

wide spectrum of areas, banking, sanitation and cemeteries and a whole number of authorities that affect the citizen in his day to day life and the problems that can appear to arise to the citizen from his contact with these authorities are so numerous and so complex that it is beyond the competence of a Parliamentarian operating with existing procedures to answer.

Another point, Sir, that I would like to make has to do with the question of qualifications, training and experience of the Ombudsman. The hon. Leader of the Senate can correct me if I am wrong but I have been scanning the Act very closely and I have not seen where it provides that the qualification and experience of the Ombudsman shall be any specific one.

Now, I think, Sir, that that is a significant omission. I listened with interest when the hon. Leader of the Senate said that Section 105 in the Constitution makes it as difficult to fire the Ombudsman as it is to replace a Judge. Now, that is a very interesting analogy that has been drawn. The Constitution recognises the fact that a Judge is a person who has a certain qualification and training. In respect of the Director of Public Prosecutions, the Law makes a similar requirement. Section 101 of the Constitution provides that the qualification of the Director of Public Prosecutions shall be the same as that of a person who is a Judge. Section 101, sub-section 2 "a person shall not be qualified to hold or to act in the office of Director unless he qualifies for appointment as a Judge."

Now I am saying, Sir, that when you are establishing an office which has to be of the importance of that of an Ombudsman in a community for the first time, that it is of vital importance to indicate what are the qualifications necessary. I am not even saying that there should be any academic qualifications as such, though I am inclined to believe that it would be far better if this person had specific training of an academic nature but even if you are going to rely on experience, the Act should say what experience is necessary to qualify for that post.

To give an example, Sir. If you turn to the Parliamentary Debates and Establishment Act, the one that regulates Parliament and its staff, in Section 4, Part 3 of that Act, it provides that the person, for example, who holds the office of Deputy Clerk of Parliament shall be a qualified Barrister. Well, it is now Attorney-at-Law, Sir. The exact provision in the Act says that "no person shall be appointed to the office of Clerk or Deputy Clerk of Parliament unless (a) he is qualified to practice as a barrister or in accordance with the Barristers Act or (b) he is a Solicitor within the meaning of Section 2 of the Solicitors Act and (c) he satisfies the Debates Committee that he has had in the case of the office of Clerk of Parliament 10 years or in the case of the office of Deputy Clerk of Parliament 5 years experience of Parliamentary

procedure" so you see although this Act that regulates the staff of Parliament does not insist that the Clerk of Parliament must be a trained lawyer, stipulates that they must have had 10 years of Parliamentary experience so no administration which was practising a blatant spoilt system could bring in every and any person and put them in the office of Clerk of Parliament because the Act has provided that the person must be either trained in the legal profession or if not so trained, they must have at least 10 years Parliamentary experience.

This means that they must have worked in Parliament as a Reporter, or Librarian or been close enough to Parliament over a period of 10 years to have gathered the experience to function effectively in the office and what I am saying is that if it is regarded as being snobbish to say that the person who is appointed as Ombudsman should have some form of academic qualification, at least it should be provided that there should be some basic period of training and experience in something, a Civil Servant, or a businessman working for a firm with some years experience.

But, I am submitting, that it is brought with some danger to leave it wide open like that, having regard particularly to the fact, that it is not easy to dislodge the person from office, once that person is appointed. I did not see, Sir, that provision, I scrutinised it with care. If I am wrong on that, would someone kindly show me where this provision is made for qualification and experience, I see nothing within the Act. I am concerned about that, I think, that that is a matter which should concern us.

Now, the Leader of the Senate made reference to Section 7 of the Bill which provides that:

"the Ombudsman shall not investigate any case where, in his opinion, the complainant would at any time have had a remedy or right of appeal in a court of law, tribunal or similar body established by the Constitution or by or under any enactment or by or on behalf of Her Majesty."

I believe, Sir, that the reason for that provision is fairly obvious. Long ago, in legal history, when there used to be a Chancellor administering one system of justice and the Common Law Courts administering another, there used to be problems of conflict, and eventually, there had to be a compromised situation, in which it was provided, that the rule of the Chancellor shall prevail. It seems to me, that the reason for establishing this provision in the Act is to prevent competition between the Ombudsman and the Courts of Law. If you gave the Ombudsman concurrent jurisdiction to the courts, there would be no end of legal problems. I think, that that would come near to subverting the system of justice,

as we know it. The system of justice that we now enjoy is one that took several hundreds of years to evolve, it is the result of a lot of experience, by trial and error and a lot of intellectual connotation.

It will take the Ombudsman several years before they work out the wealth of procedure and academic learning, that one associates with the courts of law. I think, therefore, it is a wide procedure to keep the two of them very far apart.

Sir, another matter relating to this piece of legislation, that I would like to comment on is a provision in Clause 9(3) Sir. It says:

"The Ombudsman may determine whether any person may be represented by an attorney-at-law or otherwise in an investigation."

Sir, that is a provision that gives me a little concern. The Honourable Leader of the Senate read an important extract from Clause 10 of the Bill, to the effect that:

"the Ombudsman may, for the purpose of an investigation, require any Minister, officer or member of the department or authority concerned or any other person (including the complainant) to supply any information, produce any document or thing, attend for examination, or allow access by the Ombudsman to any premises of the department or authority."

Now, Sir, the repetition of the word "any" is tantamount to giving the Ombudsman quite sweeping powers over the private citizen and I am submitting that, in that sort of situation, the person should have a right to legal representation, if the person so wishes.

What Section 9(3) says is that:

"The Ombudsman may determine whether any person may be represented by an attorney-at-law or otherwise in an investigation."

We have seen some investigations by Tribunals in this country recently, Sir, and we have seen, that interested parties in the investigations were allowed to have legal representation. Now, Sir, the word "may" in Clause 9(3) really places a discretionary power in the Ombudsman.

Now, in the courts of law, there is a long tradition buttressed by judicial rules, to the effect, that a discretion must be exercised judicially. I would say, that in Parliament, the presiding officer, through the long tradition of Parliament, can be depended upon not to act arbitrarily in the exercise of any discretionary power, which that officer might have. This is because the courts

and Parliament have practised and have been in existence for a very long time and they are well laid down traditions.

You are setting up an office for the first time of an Ombudsman, persons have to appear before that Ombudsman and the Law says, that he may, or may not permit the person to be represented by a lawyer. I am saying, that herein lies a problem. I have seen may it please you, Mr. President, in departmental enquiries in the Civil Service, where Counsel turned up and there are problems, as to whether the person conducting the enquiry will permit counsel to be heard on the person's behalf, or not. I have called then in those situations and I call now for some specific rule on this question.

In this Bill, I notice Sir, that the Governor-General may make regulations, "the Governor-General under Clause 15 may make regulations generally for this act and in particular for prescribing anything required to be prescribed under this Act. Regulations made under this Act are subject to affirmative resolution". I am suggesting that, at least, the Honourable Leader of the House should recommend, that this matter should be made specific. There should be some procedure laid down to determine, whether a person will be allowed to have legal representation, or not. It should not be left to the whims and fancy of the ombudsman, or those advising him, at a given time, since it is likely to lead to problems, because since he has those powers, in terms of summoning witnesses and commandeering the production of documents, the individual rights of citizens may be infringed and those citizens might wish to have their lawyers. In that sort of situation, the Ombudsman may rule arbitrarily, you cannot have any lawyer, I will look after your interest, and there problems may arise.

Finally, Sir, this question of the Oath. It is a matter of interest depending on what is the degree of philosophical, or theological interest of the person involved. What struck me, was the brevity of the Oath that the Ombudsman is required to swear for due execution of the office of Ombudsman.

When one turns to the Constitution and looks at the first Schedule and compares the other Oaths, that other important functionaries have to swear, one is struck by certain differences that appear. This one to be sworn by the Ombudsman is obviously more Republican than the others. The others all make reference, with the exception of that of the Rt. Hon. Prime Minister, makes reference to Her Majesty Queen Elizabeth II, Her Heirs and Successors. I am seriously asking, whether this new version we have is a conscious drafting departure.

The ones in the Constitution end by saying, "So help me God". Now, we, in the courts understand, that

an oath must bind the conscience of the person taking the oath. Indeed, it is not just a hollow form, it has theological significance and perhaps, Senator Hatch can express a view, as to whether the omission of "So help me God" diminishes the quality of being bound.

Why the difference? Someone may come afterwards and challenge it. We do that in courts of law, whether the witness is properly sworn. I say this generally and particularly as under clause 10 of the Bill the Ombudsman himself can administer the Oath to others. The Bill provides under clause 10(2) that the Ombudsman shall, for such purposes, have the same powers as the High Court (including the power to administer oaths and affirmations). Now the Judges take an oath that is set out in the Constitution, and that ends with "so help me, God." In the courts every day that expression is used. In the Evidence Act, however, a form of oath is set out which does not end with "so help me, God", I am speaking of the form of oath set out in Cap. 121 at section 33 subsection (a), but again that refers to the Almighty. It says, "the form of words to be used in administering the oath under subsection (1) shall be as follows: 'I swear by Almighty God, as I shall answer to God at the great day of Judgment, that I will speak the truth, the whole truth and nothing but the truth.'" In the courts we use a slightly different form as a general rule, but at the end of it is "so help me, God" and one wonders whether having omitted that, Sir, the Ombudsman when he comes to swear will in fact be bound.

I think this is a point that needs to be taken, because I do not understand why it is not cast in the normal way for doing these things, and if the Leader of the Senate rises in his place and tells me that this is the new form of drafting, I suppose I should have to accept that and perhaps take the matter up somewhere else.

Sir, in conclusion then I should like to summarise. I agree in principle with the establishment of the office of Ombudsman, I think that even on the principle that justice must not only be done but must manifestly appear to be done, that the more of that manifest appearance of justice that is available to the citizen in the community, the more is the public good health assured. Nonetheless, I question the omission of that large sector of Government activity, namely the Statutory Authorities, and I ask whether in its grand design Government plans to bring down other legislation to deal with that separately, as was done in the United Kingdom in the case of the Local Authorities. I also question the failure to prescribe what shall be the qualifications and experience of the Ombudsman, and I sound a note of warning that this can lead to problems in the future. It is of vital importance that in the establishment of the office and the appointment of the first occupant

thereof that a high level of competency and integrity be achieved, be set and attained, so that the image of the Ombudsman in Barbados shall be good, and I raise this procedural and theological question touching on the form of the oath.

In the absence of the Leader I also dealt with this question of carefully avoiding establishing competing jurisdictions between the Ombudsman and the Supreme Court. I referred to legal history in which at one time the Chancellor had jurisdiction that the common law courts had, and persons would shuttle between the common law courts and the Chancellor, and eventually it had to be decided that where there was a conflict the Chancellor's ruling would prevail. I think that that is a major consideration in providing the Ombudsman with his own area of activity and leaving another and distinct area of activity to the law courts. Thank you, Sir.

SENATOR THE REV. A. HATCH: I am sorry, Sir, that I am not able to take up the challenge that Senator Connell made as regards the form of oath to be taken by the Ombudsman, because clearly one would need to have researched the nature of oaths, the history and so on, but it does appear to a casual observer that there is some diminution in the theologically binding nature of this oath in the recognition of the Almighty, and I think it is a valid point, because while I think it is true that the Christian Church cannot enforce its views on a society in general, so long as the society in general adheres to the Christian Faith, and it has been our tradition to swear by Almighty God, I think we should not lightly or easily diminish what has been our tradition, because as the Senator rightly adduced, the traditions of Parliament like the courts are long established, and I think there should be a conscious decision to depart from tradition, and if there is no conscious and good reason why the tradition should be departed from in this instance it would seem to be an omission that ought to be corrected.

I want to refer to two other points. It says on page 5 section 6(2) that the Ombudsman can refuse to investigate any matter on the ground that it is trivial, or that the complaint is frivolous or vexatious or not made in good faith. Now, I may misunderstand the purpose of an Ombudsman, but it seems to me that an Ombudsman ought to be there to defend people who perhaps cannot afford recourse of other means, which is recourse to the law courts. No doubt there are other reasons for an Ombudsman, but without being sure of my history, I would take it that this was one of the original ideas which brought this institution into being, that people who cannot afford other means should not be prohibited or inhibited from having their just complaints examined. Therefore, I am surprised that on page 3, clause 4, subsection (3) the Ombudsman may

charge such fees in connection with his functions in such amounts and subject to such conditions as the Governor General may prescribe.

Now, if the office is carried on with impartiality one imagines that the Ombudsman would not obviously use this as an excuse for not wishing to investigate a complaint laid before him.

Since he has the power not to proceed in any investigation with which he is not inclined to, at least for a good cause, to add to that the fact that he can charge fees may debar just from those who need the service of an Ombudsman if he does not exercise his discretion.

There is one further point on the same Page 3, Clause 3, sub-section 4. As Senator Rocheford is not here, the wording of that Section does seem to be rather clumsy. It says "the Ombudsman shall vacate office on attaining the age of 65 years but may be appointed by the Governor General in the same manner as in sub-section 1 for one further period not exceeding 5 years."

This implies to my casual reading of it that he was appointed for an earlier period but in fact the Clause in the sub-section in which he is appointed, he is appointed to the age of 65 so I feel that those words "for one further period not exceeding five years" are misleading. They suggest that there had been a specific period earlier on whereas in fact the only period earlier on is determined by arriving at the age of 65. It seems to me that the wording is infacetious.

Mr. PRESIDENT: Just one moment please. I regret that I have a very urgent matter for which I must leave and I must ask the Deputy President to take the Chair for the remainder of this Sitting. It follows that the House will have to appoint a temporary Chairman of Committees later on.

Mr. PRESIDENT left the Chair and Mr. DEPUTY PRESIDENT took the Chair.

SENATOR MRS. ENID LYNCH: Mr. Deputy President, I also was concerned about the point previously raised concerning fees because I notice that in Clause 16 all expenses incurred by the Ombudsman in connection with his functions under the Act or Regulations should be defrayed out of monies voted for the purpose by Parliament and therefore one wonders why there should be fees charged and one hopes that if these fees must be charged, that they will not be so high as to be prohibitive so that poor persons would be deterred from appealing to the Ombudsman. I would have expected that with Clause 16 you would not have needed Clause 4(3). Thank you.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, there have been a number of points raised, none so worthy of attention as that raised by you yourself when you referred to the provision for the Ombudsman to determine whether a matter is frivolous or vexatious.

Sir, you will find that in the Constitution itself where one complains that the rights which are guaranteed to him under Chapter II of the Constitution are being abridged or that they are threatened with abridgement or that they have been abridged or abridged, then when you raise this point and seek relief from the Court that the Court shall determine whether the point raised is frivolous or vexatious and indeed there are cases such as the Barbadian Magistrate in Bobby Clarke's case and when the Constitutional Law point was raised just proceeded to determine without settlement whether the point raised was frivolous or vexatious and there are other cases, Beckles, Cox and about four or five of them.

The point is, Sir, that every point which is raised by the complaint is not necessarily a point of substance and, as I understand it, it is however a point on which the Court must rule, if we are dealing with the Ombudsman. If it is raised by him, it is a point on which he must rule. He must not just ignore the point and proceed in the same way that the Magistrate is forced where a point is raised in his Court either to refer it to the High Court or else to deem it as frivolous and vexatious. In other words, having examined it and having found that there was really no substance in the point, to rule that it is frivolous or vexatious, in the same way the responsibility imposed on the Ombudsman not merely to say I am not going to investigate that but to examine the complaint before him and to determine that it is a complaint which is worthy of examination.

I think, Sir, once we recognise what is involved here without putting this thing, since the Ombudsman must have discretion, we would find it a little difficult to feather his discretion such as the nature of the enquiry which the Ombudsman must have to carry out.

We believe where it is a matter of Ministerial discretion, it is easier without a provision of this sort, it is easier to enforce, what is now come to be, an important rule in Administrative Law that the discretion must be exercised responsibly so that for a Minister who has the discretionary power to appoint a Committee to investigate something, he must take the decision. He cannot just decide to throw it out the window and say that it is for the birds. In the same way what this means is that the Ombudsman must examine the complaint and if he concludes that it is a frivolous matter, if he concludes that the matter is frivolous and vexatious, and there is nothing in this to investigate, then he must clearly set out

basically what the point is so that it is not a diminution of the citizen's rights.

He must reach a determination. In the original draft of this Bill Sir, by Professor Wade, the Oath which has attracted so much attention is indeed the Oath such as Professor Wade had recommended in that part of the Bill. That Sir does not make it right, or wrong but I must confess, that since I am not an authority on Oaths, that I got the impression, that what this represented was a more modern form, which would be acceptable to the christian and the non christian alike. That Sir is what I suspected it was.

Sir, there are other points raised. In Section 4(3), there is the power of the Ombudsman to charge and I think, that we should recognise, that that power is a power prescribed. It is stated there, that he could charge fees, subject to certain conditions laid down by the Governor-General and I would suggest, that it is unthinkable to me, at least, that the Governor-General would lay down such conditions, as would enable the Ombudsman to charge fees, which would prevent the small man from having his case heard. It seems to me, that what is involved here is the fact, that there are expenses incidental to an investigation, by the Ombudsman where, for example, there might have to be disbursements, searches being made, or where there is secretarial, or other work of that sort, that will have to be done, where there is paper work. It seems to me, that for this kind of general office expense, in the same way, that if you want a copy of this and a copy of that in the Registry, one has to go and pay fees, but charges are not prohibitive, in the same way, there can be modest charges to defray certain kinds of expenses, which are entailed in the operation of the office of the Ombudsman. I believe Sir, as Honourable Members condition their minds to that fact, that there is nothing to fear in the provision for such charges.

I think that it is you yourself, Sir, who make reference to the wording of Section 3, Subsection 4, in which you referred to the fact, that this made it seem as though the Ombudsman had been appointed for an initial period. I believe Sir, in the Law, it is correct to say, that we have an initial period, but it is like say a tenancy, Sir, for a period, which can be determined even though, the only determination of month to month tenancy might be by notice. You can bring it to an end and therefore, you may subscribe certain features to it.

I would just like, Sir, with your permission to appeal to the Clerk, to ask those who form this Side at least, who may be nearer to tea and sandwiches, that they can resume.

What I was saying is that in the same way one talks about a lease, a lease has to be for a term of years and

I believe an estate and for a term of years. It looks in some instances, as though term of years is not clearly ascertainable. It is ascertainable because there is some event, which would render itself, in the same way, I think, that a lawyer might hold, that the Ombudsman may be appointed for a period, in that the length of that period is that he must attain age 65 and there is no way, in which you can stand still. Therefore, if there is a renewal of appointment, the normal expansion is for a period. On this, there is a specific time. That takes care, Sir, of a number of points.

Senator Connell made the point, I believe in response to my observation, that in my view, the jurisdiction of the Ombudsman should not be ousted merely because there is some legal remedy available. I believe, Sir, that competing jurisdictions of courts — that is not the point I made within the framework of this Bill — the framework of this Bill does not make the Ombudsman a competing officer, but an officer subject to the jurisdiction of the courts and this is why, for example, one finds it is not an office set up constitutionally, it is an office, which was set up, under the ordinary law and as long as, you do that, then the Crown will attach circulation of powers and also because of the entrenched nature of the defence within the Constitution. There is no way, that the office of Ombudsman may be regarded, as a competing office, within the courts.

The point I was making, Sir, is a different point and that is that there are many areas in which people may have a remedy. It may be an easy case for them to win, but they do not because they cannot afford, or because they might not be able to understand. Their position is such, that they do not seek the assistance of the courts. I am saying, Sir, that where it may have otherwise be an appropriate case for an Ombudsman, that it should so remain in the standard, that there is a legal remedy available. I see nothing wrong in persons having two remedies available to them, an administrative remedy and the other one, a legal remedy. I do not think that that falls into it. It does not call, in my mind, the image which is inherent in competing jurisdictions in courts.

The right to legal representation, this is a point on which I would not disagree with Senator Connell. I think, that instead of a blanket right to deny I believe, Sir, that the regulations ought to make it quite clear, what are the conditions, under which legal representation might be denied.

I have searched Professor Wade's draft to see whether he himself had recommended any specific qualifications for the Ombudsman, by way of academic qualifications, training, or experience. I notice Sir, that he too was silent on the point.

I have the feeling that while we are talking about people within a particular profession it is not too difficult to lay down certain regularly, clearly, ordinary acceptable standards by which one might measure their qualification for the job, in such a case where it is not necessary for the man to be a legal person by training, where there are many ways in which he might become qualified, but one really has to rely on the appointing machinery to guarantee one that there will be an appointment of a person of sufficient stature. I do not believe that where an appointment has to be made to an important office, and it is the appointment of somebody that you cannot remove, Sir, that the people who are making that appointment will treat that appointment so lightly that we have to set out some detailed paper qualifications which in themselves may not be the qualifications most relevant for the particular office. After all, Sir, when the Prime Minister has recommended and the Leader of the Opposition has been consulted, Parliament has to vote, and it is very difficult to see how the name of someone who is not worthy can reasonably be put forward. As I said before, those who would be doing the appointment are not likely to fasten on the country when it means also fastening on themselves an unworthy person when they cannot remove him.

The final point made, Sir, had to do with Statutory Corporations. Let me say at the outset I do not know of the explanation concerning members of Parliament being Chairmen. That may or may not have been an explanation given, it is certainly not an explanation that I care for. To me the matter is simple. We cannot look to Statutory Boards doing a specific job and employing certain kinds of techniques, and then unnecessarily seek to hamstring them.

I remember, Sir, in the course of the debate on the Constitution Review Commission's Report I made it clear that I was not in support of one recommendation which had to do with bringing the membership of the Statutory Boards under the Statutory Boards Services Commission. I believe that equally consistently I could not agree that Statutory Boards ought to be within the ambit of the Ombudsman's responsibility. If a Statutory Board is to be brought in, then private businesses must be brought in, because the philosophy behind the establishment of the Statutory Boards is that they are to perform a function which a Government Department is not properly structured to perform, and they are to employ the methods and good business practices which private business employs. I would find it a little bit laughable, Sir, if a radio station owned by the people of Barbados and operated by a Statutory Corporation were to be under the jurisdiction of the Ombudsman but a radio station owned by the Nation Limited and operated by the Nation Limited or its representatives within the area of private enterprise was not so made subject. I think

we have to recognise that if we are operating in a mixed economy, then there has to be some equation of the circumstances which are to affect services of Corporations operating in the same area. The fact that it is Government owned is not in my view enough to attract the responsibility of the Ombudsman. If you want to do that, make it a Government Department.

My view, Sir, is that we must look at what it is we are trying to deal with. We are talking about people who have a grievance as a result of the operation of some Ministry or Government Department. The concept of a Statutory Board is a completely different thing. If we want to say that Sanitation and Cemeteries should not be administered by a Statutory Board, that is a different matter. Let us say so, but do not say that because they must be administered by a Statutory Board then Statutory Boards must be brought within the purview of the Ombudsman. I think we need to recognise that the Statutory Board device when Local Government was abolished was merely employed to cover a number of areas without so much thought being given as to whether it was the appropriate mechanism to be applied in those circumstances, and it would seem therefore that if we want to examine certain areas and say that the behaviour of the Sanitation Department may be illegitimate may give rise to the kinds of problems which legitimately a citizen may wish to draw to the attention of the Ombudsman, then we are not talking necessarily about Statutory Boards, we would be dealing with the kind of service which itself gives rise because of its general effect on the community of this kind of complaint.

I believe, Sir, I have dealt with all of the points raised and therefore have no further justification for detaining members any longer, Sir.

The question that the Bill be read a second time was put to the Senate and agreed to.

APPOINTMENT OF CHAIRMAN OF COMMITTEES

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, I beg to move that Senator Sir Mencea Cox be appointed Chairman of Committees for the rest of this sitting.

The question was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: Mr. Deputy President, I move the Senate do now resolve itself into Committee on this Bill.

SENATOR R. L. FIELD: Mr. Deputy President, I am wondering if after you have left the Chair and another member takes the Chair if there would be a quorum.

Mr. DEPUTY PRESIDENT: I leave the Chair but not the Chamber.

SENATOR R. L. FIELD: I asked because I would not think that your absence from the Chair would still constitute a quorum, Sir.

Mr. DEPUTY PRESIDENT: That is right. A quorum is eight and the Chair. It is proposed that I leave the Chair but not the Chamber.

On the motion of Mr. DEPUTY PRESIDENT, the Senate resolved itself into Committee to study the Bill, SENATOR SIR MENCEA COX in the Chair.

On the motion of SENATOR K. HINDS, the Bill was taken as read.

Clauses 1 — 16 inclusive were called and passed.

The First, Second and Third Schedules were called and passed.

On the motion of Senator the Hon. N. A. BARROW, Mr. CHAIRMAN reported the passing of the Bill in Committee and Mr. DEPUTY PRESIDENT resumed the Chair and reported accordingly.

SENATOR THE HON. N. A. BARROW: I beg to report the Bill as having passed before the Committee without amendment, and I move that it be read a third time forthwith.

The question was put to the Senate and agreed to.

SENATOR THE HON. N. A. BARROW: I beg to move that this Bill do now pass.

The question was put to the Senate and agreed to.

ADJOURNMENT

SENATOR THE HON. N. A. BARROW: As I mentioned at the beginning of the Sitting this afternoon, we do not propose to proceed any further on the Order Paper today. I believe, Sir, that Hon. Senators are not exactly looking forward to a Monday Bank Holiday and a Wednesday Meeting. I know of no urgency in relation to the subject matters on the Order Paper. I expect, therefore, that we can seriously look forward to meeting on Wednesday, 10th December, 1980.

Accordingly, Sir, I move that the Senate be now adjourned *sine die*.

The question was put to the Senate and agreed to, and Mr. PRESIDENT adjourned the Senate accordingly.

5.30 p.m.