

REPUBLIC OF TRINIDAD AND TOBAGO

THE OMBUDSMAN

23RD

ANNUAL REPORT

JANUARY 1ST, 2000

TO

DECEMBER 31ST, 2000

VISION STATEMENT

**COMMITTED TO ENSURING THE PROTECTION OF
THE INDIVIDUAL AGAINST BUREAUCRATIC
INJUSTICE**

MISSION STATEMENT

1. To investigate complaints against Government departments, agencies and authorities.
2. To provide an impartial, informal and expeditious service to the public.
3. To educate the public as to their rights and duties in a free, democratic society vis-à-vis the responsibilities and accountability of public officers.
4. To promote an effective and efficient public service that is responsive to the needs of the citizenry.

May , 2001.

The Honourable Speaker
Parliament,
Red House,
St Vincent Street,
PORT OF SPAIN.

Dear **Mr Speaker**,

I have the honour to present the **TWENTY-THIRD ANNUAL REPORT of the OMBUDSMAN** for the period January 01, 2000 to December 31, 2000.

The Report is submitted pursuant to Subsection 5 of Section 96 of the Constitution of the Republic of Trinidad and Tobago.

Yours faithfully,

GEORGE A. EDOO
OMBUDSMAN,
REPUBLIC OF TRINIDAD AND TOBAGO.

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OMBUDSMAN'S PERSPECTIVE

The year 2000 marked the end of the millennium and is significant in the fact that it has been an eventful year for the Office of the Ombudsman.

A strategic plan of operation was formulated. This was to cover the period 2000-2003. The plan was in keeping with the Government's objective plan to provide quality service to members of the public. The plan provides for the continuous quality improvement in all areas of operation and is fully detailed in this Report under the heading "Strategic Review."

The year 2000 also saw the relocation of the Office from St Ann's, Port of Spain to its present site at No.132 Henry Street, Port of Spain providing spacious and convenient facilities for the staff and easier and more convenient access to the public. It is also better equipped to serve the needs of the staff and the public. The Office which was established at St. Ann's, Port of Spain since its inception in 1978 had outgrown its physical accommodation and had become inconvenient for the staff and members of the public alike.

A permanent Office has also been established at No.32, Wilson Road, Tobago in order to fulfill a provision in the Tobago House of Assembly Act requiring the delivery of services by the Ombudsman in Tobago. It is hoped that the Office will become fully functional in the not too distant future. Provision has been made for the appointment of an Investigator and supporting staff. Meanwhile visits are being paid by staff of the Ombudsman's Office once per month or as often as necessity demands.

The Year 2000 also witnessed the inauguration in June of the Caribbean Ombudsman Association in St Lucia at a Workshop held under the auspices of the Government of St Lucia and the Commonwealth Secretariat. The first Workshop was held in Antigua in March, 1998 under the auspices of the Commonwealth Secretariat and the International Ombudsman Institute. An interim Constitution was adopted and the following persons assumed duty as office bearers: Dr Hayden Thomas, Ombudsman of Antigua and Barbuda as President; Justice George A. Edoe, Ombudsman of Trinidad and Tobago as Vice-President and Miss Lawrence Laurent, Parliamentary Commissioner of Saint Lucia as Honorary Secretary/Treasurer. I was accompanied to this Workshop by Ms. Martina Phillip, Investigator of the Ombudsman's Office, Trinidad and Tobago. I presented two papers at the Workshop which are included in this Report as appendices.

I have to report also of my attendance and participation in the VIII International Conference of the International Ombudsman Institute which was held at the International Convention Centre in Durban, South Africa from October 30 to November 2, 2000 and which was hosted by Adv. Selby Baqwa, Public Protector of South Africa. The theme of the Conference was "Balancing the Exercise of Governmental Power and its Accountability – the role of the Ombudsman." The Workshop dealt with a number of topics which were of

universal concern to Ombudsmen. Notable highlights were the presentations by former President Nelson Mandela and the King of the Zulus, Goodwill Zwelitini.

These two events are reported in detail in the Report.

For the year 2000, I received a total of nine hundred and ninety (990) complaints, one less than I received in 1999. The Ministries/Departments which recorded a substantial number of complaints are as follows:

Prisons	102
Local Government	60
Social & Community Development	52
Police	48
National Insurance Board	47
Judiciary	45
Tobago House of Assembly	45
Housing and Settlements Trinidad & Tobago	43
Electricity Commission	43
Water & Sewerage Authority	43

The majority of complaints in respect of the Prisons were from prisoners who complained *inter alia* about their accommodation, food, medical attention and pending appeals.

Those in respect of Local Government concerned the condition of roads, drainage and other infrastructural deficiencies which affected complainants' homes and properties and their ability to get to and from their homes due to the condition of the roads.

Complaints against the Social and Community Development Departments were mainly with respect to the provision of old age pensions and social assistance.

Complaints against the Police related to matters of harassment, wrongful arrest and violence to their persons. These were referred to the Police Complaints Authority. Other complaints related to the seizure of motor vehicles and the delay in returning them to the respective owners.

Complaints against the National Insurance Board related mainly to delays in receiving retirement and survivors' benefits and the quantum in respect of benefits provided by the Board.

Complaints in respect of the Judiciary related to the provision of assistance to litigants, and lack of information regarding matters filed in the High Court and with respect to the Magistracy, to the delay in providing the Court of Appeal with relevant records.

Complaints against attorneys-at-law were referred to the Disciplinary Tribunal of the Law Association.

Complaints against the Tobago House of Assembly related mainly to discrimination in employment practices.

Complaints against the Ministry of Housing and Settlements related mainly to the accessing of deeds from the National Housing Authority after satisfaction of mortgage payments and assistance in obtaining housing accommodation.

Complaints against the Trinidad and Tobago Electricity Commission related to retroactive billing, delays in the replacement of rotted and defective electricity poles, failure to pay compensation for damage to electrical appliances and other property and failure to obtain an electricity supply after premises had passed inspection by the Electrical Inspectorate Department.

Complaints against the Water and Sewerage Authority related to the duplication of bills, wrongful classification of property, failure to supply water and the issuing of more than one bill with respect to the same property.

On the whole, during the past year as in previous years, I received the assistance and co-operation of public officers in the resolution of complaints. The main obstacle in the resolution of complaints relates to delay in replying to correspondence and taking action with respect to recommendations. In many cases by the time the complaint is remedied it provides little benefit to the complainant. It appears that the problem continues to be systemic in nature. Unless bureaucratic methods are improved by the speedy handling and disposal of correspondence and taking action with respect to the recommendations of the Ombudsman, complainants will continue to suffer hardship and injustice.

PART I

GENERAL

Strategic Review

The Office of the Ombudsman has been in existence now for twenty-three (23) years. It was established with the enactment of the Republican Constitution in 1976 for the purpose of investigating complaints of maladministration against government departments, statutory authorities and other government agencies.

Since the Office's first year of operation in 1977, there have been significant changes in Trinidad and Tobago and concomitantly in the Public Service. The environment in which the Public Service now operates is one of on-going public infrastructural development. The transformation process of the Service continues with the implementation of the Government's modernisation programme which includes the development of new styles of management, maximum use of computer technology, an emphasis on openness and accountability as well as the delivery of public services in a customer friendly manner.

The country's economic growth has also created certain challenges which now confront the Public Service. These include shortages in public housing, growing expectations in relation to healthcare, education, crime and the administration of justice. Complaints to the Office of the Ombudsman relating to these and other areas are expected to increase.

It is imperative therefore that the Office's operations evolve to meet the challenges of the changing environment in order to discharge its statutory duty and to continue to provide an effective and efficient service to the citizens of Trinidad and Tobago. While the fundamental functions remain intact, internal structures and administrative systems must be refocused and reengineered.

The formulation of a Strategic Plan of Operation for the Office of the Ombudsman over the period 2000 – 2003 was prompted by a number of factors. These included the commitment of the Ombudsman and key officers to continuous quality improvement in all areas of operations. In order to fulfil our statutory mandate in the years to come critical functions must be undertaken in a manner which is efficient, effective, open and strategic.

It is anticipated that complaints over the period 2000 – 2003 will escalate. Regardless of the number of complaints however, we must be accessible to all persons who rely on the services of the Office. Our investigations must continue to be impartial, independent and thorough. We must continue to pursue vigorously recommendations to authorities for the improvement of administrative practices. The strategic management planning process was guided by a desire to achieve these goals effectively and efficiently. The plan focuses on improved quality of service to complainants.

The Ombudsman and key members of staff namely, the Executive Officer, the Head of the Legal Division and Investigators were able during the planning session, to establish a direction for the organization, that took into consideration the views of all present.

This strategic review exercise of the Office's operations formed the basis of a three-year operational plan covering the period 2000-2003. The following areas are specified in the plan:

- ◇ enhanced access to and awareness of the role and function of the Office;
- ◇ effective complaint resolution; and
- ◇ maintenance of the independence and credibility of the Office.

In the course of setting goals and selecting the strategies which will be used to achieve them, certain planning considerations were taken into account. These were:

- ⇒ a transformed public service;
- ⇒ demands for a speedier service;
- ⇒ ongoing need to educate the public of their rights and the effectiveness of the Office of the Ombudsman;
- ⇒ increasing public and media demands for higher standards of public administration and accountability from government agencies including the Office of the Ombudsman;
- ⇒ changes in administrative services caused by new legislation;
- ⇒ the need for the training of personnel to maintain/develop the necessary skills which will enable them to adapt to changes in the environment and to provide delivery of quality services; and
- ⇒ the use of computer technology to provide alternative methods of access and assistance.

In the conduct of the review exercise, considerable time was taken to examine the future expectations of the general public that we serve and other key stakeholders. Cognisance was also taken of the technical, functional and human resource requirements of the organization. These were examined with the view to retaining relevance in our operations and attaining excellence in service delivery well into the 21st Century.

New Office Accommodation

As referred to previously, on October 2nd 2000, the Office of the Ombudsman was relocated from its original premises in St Ann's to No.132, Henry Street in Port-of-Spain. This relocation is

reflective of the attention drawn by previous Annual Reports to the fact that the Office had long surpassed the physical premises and conveniences available at the St Ann's site. The new premises are more conveniently located for the easy access of complainants in the heart of Port of Spain thus making the trek to St Ann's unnecessary. These offices are also more convenient for staff members and better equipped to service the technological improvements that are planned for the Office of the Ombudsman.

The new permanent office in Tobago is located at Tateco Building, Wilson Road, Scarborough and will be operational soon. Staffing needs are expected to be fulfilled by the appointment of an Investigator and administrative staff to be based at this new Office.

In 2001, this Office will launch monthly visits to Chaguanas and Siparia to facilitate complainants in these areas in lodging their complaints. These visits will occur in addition to the current visits to San Fernando, Sangre Grande, Rio Claro and Tobago.

The Dispute Resolution Commission

The Tobago House of Assembly invoked the jurisdiction of the Dispute Resolution Commission provided for under Section 56 of the Tobago House of Assembly Act, 1996 by memorandum dated 14th January, 2000. Section 56 of the Act provides for the establishment of the Commission "to resolve disputes between the Assembly and the Government on budgetary allocations to the Assembly and matters in connection therewith."

The Commission was appointed under Sections 57 and 59 of the Act and was chaired by me as provided for in Section 57 of the Tobago House of Assembly Act. Other members of the Commission were:

Mr Justice Gerard des Iles, C.M.T.(g);

Mr Justice Bissoondath Ramlogan, S.C.;
(appointed by the Government)

Mr Russell Martineau, S.C.; and

Dr Vanus James,
(appointed by the Assembly).

Ms Michelle Austin, Head, Legal Division of the Office of the Ombudsman was appointed Secretary to the Commission.

The Commission met in formal and informal sessions and was presented with written and oral submissions. A report was submitted to the Prime Minister and to the Chief Secretary of the Tobago House of Assembly on September 4th 2000. The staff of the Office of the Ombudsman

provided invaluable assistance to the Commission in the fulfilment of its mandate. The Report was laid in Parliament on September 22nd, 2000.

Conferences/Workshops

The Caribbean Ombudsman Association

The Caribbean Ombudsman Association in collaboration with the Government of Saint Lucia and the Commonwealth Secretariat held a Regional Workshop for Caribbean Ombudsmen from the 13th to 16th June, 2000 at the Bay Gardens, Gros Islet, St. Lucia. The theme of the workshop was “The Challenges Facing the Caribbean Ombudsman in the New Millenium”.

This was the second workshop held in the Caribbean. The first workshop was held in Antigua in March, 1998 under the auspices of the Commonwealth Secretariat and the International Ombudsman Institute, the theme being “Strengthening National Ombudsmen and Human Rights Institutions in the Caribbean”. The establishment of the Caribbean Ombudsmen Association was agreed to at this Workshop.

Participants at the second Workshop comprised Ombudsmen from Antigua and Barbuda, Barbados, Guyana, Jamaica, Saint Lucia, Trinidad and Tobago and Puerto Rico as well as the Ombudsmen of Botswana and Peru. The former Ombudsmen of Barbados and Ontario were also present. Other participants were representatives of the following regional and international organizations: the Commonwealth Secretariat; the International Ombudsman Institute; the United Nations High Commission for Human Rights; the Organisation of American States; the Secretariat of the Caribbean Community; the University of the West Indies and the Centre for Ombudsman Studies of the University of Reading.

In addition, the Minister of Public Administration of Trinidad and Tobago, Senator Wade Mark, attended as a special participant.

I was accompanied to the Workshop by Ms. Martina Phillip, Investigator of the Ombudsman’s Office, Trinidad and Tobago.

Among the topics which the Workshop addressed were:

- (i) International Experiences of Ombudsmanship: Developing the Role of the Ombudsman;
- (ii) Reactive and Proactive Ombudsman Role;
- (iii) Ombudsman as Mediator;
- (iv) the Independence of the Ombudsman;
- (v) the Ombudsman and Public Administration;
- (vi) the Ombudsman and the Media;
- (vii) Judicial Review and Human Rights issues;

- (viii) Role of International Agencies in Promoting Ombudsmanship in the Caribbean and the Relationship between the Ombudsman and other Complaint-handling Institutions.

I presented two papers at the Workshop viz: The Independence of the Ombudsman and The Ombudsman and Judicial Review which form appendices to this Report.

The following conclusions and recommendations emerged from the Workshop:

- “(a) The Workshop reiterated the importance of the Ombudsman institution in the Caribbean for the promotion of accountability, transparency and good governance in the light of the emerging challenges of the time. Accordingly, it called on all countries that are considering the establishment of the institution to give it utmost priority. The Workshop also noted that a number of countries had already passed relevant legislation and urged that these be fully implemented.
- (b) The Workshop recognized that prevailing international realities demanded that the Ombudsman perform increasingly a human rights role in addition to his/her traditional functions. It therefore called on all Offices to focus this role more seriously. In the same vein, the Workshop expressed support for on-going efforts by some governments to establish institutions with specific human rights mandates but cautioned against failing to take full account of the statutory mandate of existing Ombudsman Offices or their capacity to carry out their work effectively.
- (c) The Workshop observed that prevailing national and regional challenges of the Ombudsman Office also call for a more proactive approach. It called on all Offices to adopt this strategy and to ensure that they work more closely with media institutions and other relevant national and regional agencies; and
- (d) The Workshop underscored the importance of the independence of the Ombudsman Office. The Workshop therefore called on all governments to ensure that Offices are provided adequate financial and material resources, which were essential to maintaining the independence of the institution.”

The Caribbean Ombudsmen present at the Workshop adopted the Constitution of the Caribbean Ombudsman Association with the proviso that this be in operation for no longer than two years from the date of adoption. In accordance with the provisions of the interim Constitution, the following persons assumed duty as office bearers of the Association: Dr. Hayden Thomas,

Ombudsman of Antigua and Barbuda as President; Justice George Edo, Ombudsman of Trinidad and Tobago as Vice-President; and Miss Lawrence Laurent, Parliamentary Commissioner of Saint Lucia as Honorary Secretary/Treasurer.

International Ombudsman Institute (IOI) **VIIIth International Conference**

The VIIIth World Conference of the International Ombudsman Institute (I.O.I) was held at the International Convention Centre in Durban, South Africa from October 30th to November 3rd, 2000. I attended as a voting member of the I.O.I and took part in the workshop and conferences.

The Conference was hosted by Adv. Selby Baqwa, Public Protector of South Africa. The theme was “Balancing the Exercise of Governmental power and its Accountability – the Role of the Ombudsman.”

The Opening Addresses were delivered by the President of South Africa, Thabo Mbeki, Councillor Obed Miaba representing the Mayor of Durban; Adv. Baqwa and Sir Brian Elwood, President of the I.O.I.

Notable highlights of the conference were the presentations by former President Nelson Mandela and the King of the Zulus Goodwill Zwelithini.

The Workshop dealt with the following topics:

- ❖ Protecting the Integrity and Independence of the Ombudsman Institution;
- ❖ The Development and Future of the Ombudsman concept in Africa;
- ❖ The Impact of Social and Political Environments and Their Influence on the Work of the Ombudsman;
- ❖ The Effectiveness of the Ombudsman in the Oversight of the Administrative Conduct of Government;
- ❖ Broadening the Human Rights Perspective into the Pursuit of Achieving the Objective of the Citizen’s Rights to Good Governance;
- ❖ Democracy in Transition – the Inevitable Challenges, Corruption, Freedom of the Media and Access to Information;
- ❖ Moving From Adversarial Toward Non-Adversarial Approaches A contemporary Approach in Ombudsmanship;
- ❖ The Government-Citizen Relationship. What do Citizens Expect of Government;

- ❖ The Ombudsman in the Achievement of Administrative Justice and Human Rights in the New Millennium;
- ❖ Interaction with Public Authorities - The Proactive, Preventive and Educative Roles of the Ombudsman.

The Conference was attended by delegations from eighty-four (84) countries out of a total of one hundred and seven (107) countries which hold membership in the I.O.I.

The communiqué agreed to unanimously by delegates and issued at the conclusion of the Conference conveyed two important messages in the following terms:

- *“To live in a society which pursues good governance practices is considered by the Conference to be a basic human right. The quality of an individual citizen’s life is materially affected by both the decisions taken by government and the manner in which those decisions are implemented.*
- *A just and civil society requires a system of Government which whilst operating within the rule of law and adherence to human rights, provides for a wider recognition of the need for accountability to citizens on whose behalf government undertakes its responsibilities. The institution of the Ombudsman provides an effective accountability mechanism, which is now in place in more than 100 countries. This Conference endorses the role of the Ombudsman in providing a mechanism which can balance the fundamental requirement that governments be able to govern but also be subject to appropriate accountability.”*

Membership of the I.O.I and participation in its conferences and activities have significant advantages for its members. As I commented in a previous report, Ombudsmen and their staff have the right to participate in educational and other types of programmes. The I.O.I provides scholarships, fellowship grants and other types of financial support in order to encourage the development of the Ombudsman concept and the encouragement of study and research into the Institution of Ombudsman.

Seminar On Challenges In The Workplace For The Office Of The Ombudsman

A series of seminars were held in November 2000 for all staff members under the direction of the ANSA Mc Al Psychological Research Centre. The seminars were comprised of sessions on:

- (1) Stress and Stress Management;
- (2) Dealing with the Mentally Challenged Person; and

- (3) Conflict Resolution: A Role for the Investigator in the Office of the Ombudsman.

The programme was of great assistance to staff members who were awarded Certificates of Participation upon its conclusion. Further programmes geared toward staff development are planned.

Communication/Publications

A new brochure was produced entitled ‘Having Problems With a Government Department?’ The brochure is the first step in a planned initiative to improve upon the visibility of the Office of the Ombudsman and to ensure that members of the public fully understand the services offered. The brochure was distributed with the kind assistance of TT Post. Further distribution is planned. The brochure contained the information which appears later in this Report under the heading “Questions Frequently Asked by Members of the Public”.

The Office of the Ombudsman is now accessible via e-mail at ombuds@tstt.net.tt. The establishment of a web-site for the Office is planned for the coming year.

The effort to enhance the use of information technology to improve existing methods of disseminating information internally and externally was advanced by the purchase of computer equipment to complete the computerization of the Office. Further software purchases are planned for the coming year.

In a continuing attempt to provide enhanced services to the public, the Head of the Legal Division of the Office of the Ombudsman has prepared for inclusion in the Appendix to this Report a paper entitled “The Ombudsman as a Promoter of Best Practices for the Public Service”. The theme of the paper recognizes the need for a proactive and positive approach in dealing with public service providers. It signals the intention of the Ombudsman to use available communication tools to positively influence the level of service provided to the public.

Financial Independence

In my 21st ANNUAL REPORT, I referred to the importance of the independence of the Office of the Ombudsman. In this regard I suggested that:

“there is no reason why the Office of the Ombudsman should not have a separate vote under the control of the Executive Officer of the Ombudsman’s Office.”

This matter continues to be of some concern to me. The independence of this Office clearly necessitates the provision of that which is necessary to facilitate our financial independence. The

vote for expenditure relating to the Office of the Ombudsman is currently under the control of the Clerk of the House of Representatives. This creates the perception that the Clerk exercises some degree of administrative influence over the Office of the Ombudsman. Such financial independence is among the recommendations of the 1998 Working Paper on The Ombudsman – Improving his Effectiveness, published by the Law Commission. Recommendation 30 states that:

“30. Consideration should be given to affording the Office of the Ombudsman an independent vote under the annual budgetary appropriation with the authority of the Ombudsman to administer the funds and account for them through the appointment of its own Accounting Officer.”

The Law Commission endorses a view expressed by the then Ombudsman Mr Justice Rees in the Fourth Annual Report in 1980. Justice Rees commented that:

“27. In my view the Office of the Ombudsman of Trinidad can improve its effectiveness and image if it were not totally dependent for its goods and services on Government departments, which from time to time, may possibly be under investigation.

28. It becomes more difficult for an Ombudsman to make an objective examination of decisions by public officers or feel free to censure government departments when his office is solely dependent on these public officers and Government departments for its operation and services.”

In a similar vein, I requested in my 14th ANNUAL REPORT in 1990 that,

“an independent accounting unit be set up and placed under the control of the most senior public officer in my office He would be responsible for the disbursement of funds from the block vote in accordance with the Exchequer and Audit Act.”

These repeated requests and recommendations concerning the financial independence of this Office have unfortunately gone unheeded.

The administrative staff of this Office is headed by a senior public officer, the Executive Officer, who is more than capable of applying and supervising all relevant financial rules and requirements. It is hoped that approval will be granted for the establishment of a sub-Accounting Unit within the Office of the Ombudsman in the near future.

QUESTIONS FREQUENTLY ASKED BY MEMBERS OF THE PUBLIC

What does an Ombudsman do?

The principal function of the Ombudsman is the investigation of complaints from citizens against government departments and institutions.

The office was established solely for the purpose of giving assistance to persons who believe that they have suffered injustices at the hands of public officers employed by government departments/agencies as a result of maladministration.

Thus, any individual who is dissatisfied with the action/decision taken by a government authority or who has been adversely affected due to inaction/omission can ask the Ombudsman to look into the matter.

Although the Ombudsman is an Officer of Parliament he is totally free from political ties or government influence. This freedom allows him to treat with complaints objectively and find a resolution that is fair and unbiased.

If the complaint concerns a matter which falls outside the jurisdiction of the Ombudsman the person who made the complaint will be advised or referred to the appropriate authority concerned with the matter.

What is meant by maladministration?

Maladministration occurs when a government department or authority makes a wrong decision, acts outside its statutory authority or fails to take required action. Examples of maladministration are unnecessary delays, bias, failure to follow proper procedures, negligence, wrong decisions and improper service.

How can an aggrieved individual make a complaint?

All complaints to the Ombudsman are required by law to be put in writing. Persons in need of assistance can write directly to the Ombudsman providing full details of the complaint with copies of all the relevant documents.

Alternatively, they may visit the office at 132, Henry Street, Port-of-Spain where assistance will be provided by the Complaints Officer. This service is also provided once per month at a regional office in San Fernando, Chaguanas, Sangre Grande, Rio Claro, Siparia and Tobago.

How much does it cost to complain?

Assistance is rendered to the general public by the Ombudsman and members of his staff free of charge. There is no cost for the service provided to persons who seek help with their problems.

Often these problems may be resolved after a few phone calls or letters. If the matter is more complex a thorough investigation will be undertaken by the Ombudsman and a recommendation made to the department concerned to remedy/redress any injustice which occurs.

Where the Ombudsman finds that the action taken by the department was appropriate in the particular circumstances he will provide an explanation on how he reached his conclusion.

How does the Ombudsman deal with a complaint?

On receiving a complaint, the Ombudsman, first seeks to verify and obtain the facts by referring the complaint to the department or authority concerned. He also seeks to obtain the comments of the Head of Departments with respect to the complaint. If the complaint is justified, it is passed on to an investigator to make further investigation. The results of the investigation are then put before the Ombudsman for his recommendation.

The Ombudsman, at all times, acts independently and impartially and takes no side in the process of investigating a complaint. If upon the completion of an investigation he is of the opinion that the complaint is justified he will make an appropriate recommendation to the Government department or authority concerned and try to ensure that his recommendation is acted upon.

What areas are excluded from the Ombudsman's jurisdiction?

The Ombudsman may investigate complaints related to the functions and duties of most government department and agencies but he may not investigate the following matters:

- ❖ Disputes between private individuals/companies.
- ❖ Personnel matters related to service in any office or employment in the Public Service.
- ❖ Matters relating to members of the armed forces with regard to their terms and conditions of service, orders or punishment.
- ❖ Proceedings and decisions of the Courts of Trinidad and Tobago.
- ❖ Matters relating to contractual or environmental transaction with a government department.

Does the Ombudsman investigate policy decisions?

Under the provisions of the Constitution the Ombudsman cannot investigate decisions of a Minister or question his policy, but he can investigate any advice given or recommendation made to a Minister. His jurisdiction is also excluded in relation to cabinet or ministerial decisions by sec 94(1) of the Constitution which reads as follows:

“In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not enquire into or question the policy of the Minister in accordance with which the decision was made.”

Notwithstanding the above provision the Ombudsman may seek a review of a decision where the information furnished to Cabinet and which guided that decision was inaccurate or did not reflect the true circumstances of a particular case.

How long does an investigation take?

The length of time taken to complete an investigation of a complaint is influenced by a number of factors some of which are outside the control of the Ombudsman. These factors include:

- ❖ The nature and complexity of the issues of complaint.
- ❖ Unwarranted delays on the part of department/agencies in responding to requests for information from the Ombudsman.
- ❖ The degree of resistance or willingness to conciliate matters on the part of public officials.
- ❖ The non-implementation of Ombudsman's recommendations.
- ❖ The level of casework currently being handled by the office.

When citizens complain to the Ombudsman they not only help themselves but assist others who may have encountered similar problems. By raising issues and concerns which need to be addressed they will help improve a government service that will benefit everyone in Trinidad and Tobago.

A modern democracy depends for its health and quality on an open and trusting relationship between the citizen and the government. Increasingly people are demanding explanations for what the government does and that they be treated with consideration and sensitivity by public officials with full recognition of their rights to a life of quality within a democracy.

PART II

AREA OF CONCERN

Area of Concern

Denial of Retirement Benefits

From time to time, the Office of the Ombudsman receives complaints from State employees, who have been convicted by a Court or discharged from the Public Service for various reasons and whose retirement benefits have been forfeited as a result of such conviction or discharge.

Section 15 of the Pensions Act Ch.23:52, provides that no pension, gratuity or other allowance shall be granted to any officer who has not attained the age of fifty-five years (in special cases fifty years).

The Pensions Act was passed in 1934 at a time when a civil servant held office at the pleasure of the Crown and whatever perquisites and retirement benefits he became eligible for were at the discretion of the Crown.

The practice in the British jurisdiction has been mitigated to some extent by the enactment of the Superannuation Act, 1972 under the provisions of which the Civil Service Department has power to withhold benefits where a civil servant or former civil servant is convicted of gross misconduct against the State. However, before benefits may be forfeited, the person concerned will be entitled to appeal against the forfeiture to an independent Board.

Although there is no legislation in this jurisdiction with respect to the forfeiture of an employee's retirement benefits in cases where he is convicted of an offence, there has been an established practice of denying him his retirement benefits even though he has reached retirement age.

Support for such a practice in Trinidad and Tobago is derived mainly from 'obiter dicta' pronouncements of the Industrial Court. However, none of the judgements of the Industrial Court concern the forfeiture of pension rights with respect to dismissal as a consequence of conviction by a Court. One of the judgements relied upon is that of *Public Transport Service Corporation v. Transport and Industrial Workers Union*, No. 42 of 1969. This case concerned the dismissal of a cleaner of the Public Service Transport Corporation on the ground that he had been absent from work for more than three consecutive days without permission.

The workman had been absent because he had been convicted of an offence which occurred on the premises of the Corporation's property. He had been incarcerated for seven days prior to reporting for duties. His dismissal was justified on the ground that he "could not claim the lawful consequences of his own criminal act as justifiable reason for his absence from work."

A recent complaint concerned a daily rated employee employed by the Ministry of Infrastructure who was convicted of an offence unrelated to any crime committed in the course of his employment. The crime was not committed on any premises of the Ministry nor within working hours. At the time of his conviction he was fifty-nine (59) years of age and served for a period of twenty-six (26) years prior to his conviction. He served a sentence of three (3) years in prison.

After his discharge, he reported for duty and was deemed to have abandoned his job by the Ministry. He then applied for his retirement benefits, the qualifying age for which was sixty (60) years under the current collective agreement but was denied same for the reasons stated in the judgement of the Industrial Court referred to above.

The effect of this decision was to deprive the complainant of financial support in the twilight of his life and to reduce him and his family to a state of penury.

This is not the only type of complaint with respect to retirement benefits which has been brought to my attention.

In a previous Report, I had reported the case of a teacher who was seconded to the National Council for Technology in Development (NCTD) and who was deprived of her retirement benefits mainly as a result of the fault of the Ministry of Education and the Comptroller of Accounts Department in failing to preserve her pension rights and in guiding her when her job became redundant at NCTD. She had completed twenty-five (25) years of service both in the Teaching Service and as an employee of NCTD. By that time she was short of fifty (50) years by a few months and could have applied for permission to retire on attaining that age.

Refusal of retirement benefits was based on the ground that she should have returned to the Teaching Service and completed the qualifying period for pension purposes.

Under the Pensions Act, an employee becomes eligible for retirement benefits after he has completed ten (10) years of service but is only entitled to such benefits under certain circumstances, for example, by being medically boarded or called upon to retire in the exigencies of the Service; yet in circumstances such as detailed above, a public officer who has completed a substantial period of service loses all his rights to retirement benefits as a result of technicalities brought about by the law and practice.

Strict observance and application of the provisions of the Pensions Act has resulted in injustices to many retired State employees.

In the light of recent legislation such as The Law Reform (Pensions) Act, 1977 which preserves the service of a State employee who completes five (5) years of unbroken service and becomes eligible for the receipt of superannuation benefits, it is desirable that a fresh look be directed to existing pensions legislation, to its application and its amelioration in practice so that retired employees of the State can be treated with some measure of justice when it comes to the payment of benefits to them on retirement.

PART III

- 1. STATISTICAL OVERVIEW**
- 2. SELECTED CASE SUMMARIES**
- 3. SUMMARY OF OTHER
COMPLAINTS RECEIVED IN 2000**

Statistical Overview

In the year 2000 I received a total of 990 complaints one less than I received in 1999. 171 of the new complaints were essentially private matters, which fell outside my jurisdiction. As customary, I referred these complaints to the relevant authorities or agencies or advised the complainants on the proper course of action to be followed in having their complaints addressed. It should be noted that a significant number of these complaints were from citizens who expressed dissatisfaction with the manner in which their attorneys were handling their matters.

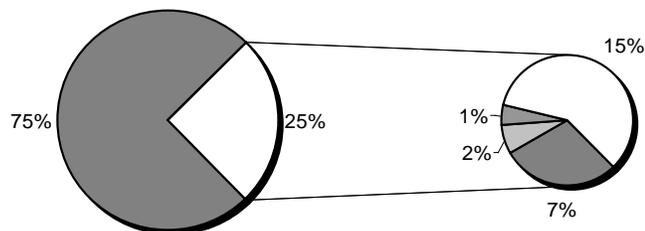
I commenced investigations on 819 complaints, which fell, within my jurisdiction. This represents 83% of the new complaints received. At the close of the year investigation was concluded on 208 or 25% of these complaints. A total of 611 or 75% remained under investigation.

Table 1 and Figure 1 show the number of new complaints which were received during the period under review and the manner of their disposal.

TABLE 1
STATISTICS ON NEW COMPLAINTS
RECEIVED DURING THE PERIOD
JANUARY – DECEMBER 2000

	NUMBER	%
Total number of complaints received	990	100
Total number of complaints against Private Institutions	171	17
Total number of complaints proceeded with	819	83
Total number of complaints concluded	208	25
Sustained/Rectified	60	7
Not Sustained	15	2
Withdrawn/Discontinued	11	1
Advised/Referred	122	15
Total number under investigation	611	75

Figure 1
Statistics on New Complaints Received in 2000



<input type="checkbox"/> under investigation	<input type="checkbox"/> concluded	<input type="checkbox"/> sustained/rectified
<input type="checkbox"/> not sustained	<input type="checkbox"/> withdrawn/discontinued	<input type="checkbox"/> advised/referred

Table II shows in detail the number of complaints received by ministries and agencies and the manner of their disposal during the same period.

TABLE II
DISTRIBUTION OF NEW COMPLAINTS
IN RESPECT OF MINISTRIES/DEPARTMENT

Ministry/Authority/Agency	Total No. of Complaints	Sustained/Rectified	Not Sustained	Withdrawn/Discontinued	Advised/Referred	Under Investigation
Agriculture	17	0	0	0	0	17
Attorney General	4	0	0	0	0	4
Caroni Limited	7	0	0	0	0	7
Consumer Affairs	2	0	0	0	1	1
Education	18	2	0	1	4	11
Elections and Boundaries Commission	1	1	0	0	0	0
Finance	39	3	2	1	7	26
First Citizen Bank Limited	1	0	0	0	1	0
Health	39	1	1	0	2	35
Housing and Settlement	43	2	0	0	0	41
Judiciary	45	1	0	3	15	26
Labour and Co-operative	9	0	1	0	5	3
Law Association	5	0	0	0	2	3
Legal Affairs	19	0	1	0	4	14
Local Government	60	3	0	0	7	50
Magistracy	16	3	1	1	2	9
National Maintenance Training and Security Company (MTS)	2	0	0	0	0	2
National Petroleum Marketing Co. Ltd.	1	1	0	0	0	0
National Security	8	1	1	0	0	6
Defence Force	3	0	0	0	1	2
Fire Services	9	1	0	0	1	7
Immigration	3	0	0	0	0	3
Police	48	2	0	1	15	30
Prison	102	5	0	1	14	82
National Gas Company Limited	1	0	0	0	0	1
National Insurance Board	47	11	3	0	7	26
NIPDEC	1	0	0	0	0	1
NUGFW	1	0	0	0	0	1
Office of the Prime Minister						
Central Statistical Office	2	1	0	0	0	1
Petrotrin	1	0	0	0	0	1
Planning and Development	1	0	0	0	0	1
Police Complaints Authority	1	0	0	0	1	0
Port Authority	9	0	0	1	1	7
Public Administration and Information	1	1	0	0	0	0
Public Transport Service Corporation	3	0	0	0	0	3

Ministry/Authority/Agency	Total No. of Complaints	Sustained/Rectified	Not Sustained	Withdrawn/Discontinued	Advised/Referred	Under Investigation
Public Utilities	1	0	0	0	0	1
Postal Services	2	0	0	0	0	2
TSTT	11	2	0	0	0	9
T&TEC	43	5	1	1	5	31
WASA	43	8	0	0	6	29
Service Commissions Department	11	0	0	0	2	9
Social and Community Development	52	5	1	0	9	37
Teaching Service Commission	2	0	0	0	0	2
TIDCO	1	0	0	0	0	1
Tobago House of Assembly	45	1	1	0	4	39
Trinidad Broadcasting Company Limited	1	0	0	0	1	0
Workers Bank Trust Company (T&T) Limited	1	0	0	0	0	1
Works and Transport	28	0	2	1	2	23
TOTAL	812	60	15	11	119	607
Private	178	0	0	0	174	4
GRAND TOTAL	990	60	15	11	293	611

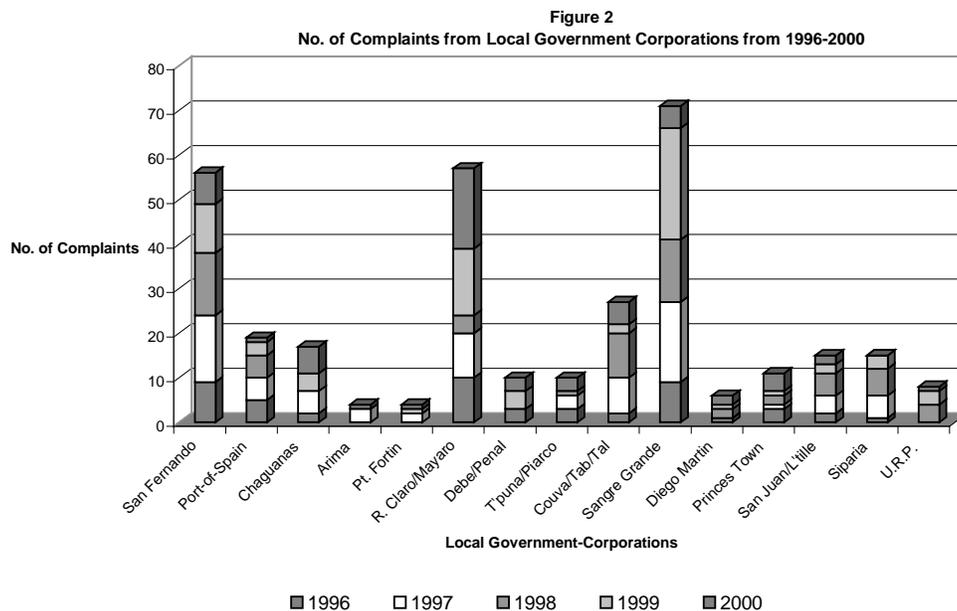
The ministries/departments which recorded the highest number of complaints were: the Prison Services 102; Ministry of Local Government 60; Ministry of Social & Community Development 52; Police 48; National Insurance Board 47; Judiciary 45; Tobago House of Assembly 45; Ministry of Housing and Settlements 43; Trinidad and Tobago Electricity Commission (T&T.E.C) 43; and Water and Sewerage Authority (W.A.S.A) 43.

The highest number of complaints was registered against the Prison Authority. In general, complaints made by prisoners are with respect to conditions at the prisons and the difficulties they experience in obtaining medical, dental and optical services at these institutions. Given the large prison population and the lack of resources to effectively manage the penal system it is expected that such problems will continue to occur. I wish, however, to commend the excellent work done by the Commissioner of Prisons and members of his staff in coping with the difficult situations with which they are faced in the performance of their daily duties at the penal institutions and with the resources which they have at their disposal. My staff and I have received the utmost cooperation from the prison authorities in the course of investigation of complaints by prisoners, which for the period under review numbered 102.

Table III and Figure 2 show the distribution of complaints lodged against the regional corporations over the years 1996 – 2000. A total of 59 complaints were received in the year 2000 with the Rio Claro Regional Corporation showing the highest number of 18 complaints.

TABLE III
LOCAL GOVERNMENT
CITY/BOROUGH AND REGIONAL CORPORATION

CORPORATIONS	TOTAL NUMBER OF COMPLAINTS RECEIVED				
	1996	1997	1998	1999	2000
SAN FERNANDO CITY CORPORATION	9	15	14	11	7
PORT OF SPAIN CITY CORPORATION	5	5	5	3	1
CHAGUANAS BOROUGH	2	5	0	4	6
ARIMA BOROUGH	0	3	0	0	1
POINT FORTIN BOROUGH	0	2	0	1	1
RIO CLARO/MAYARO CORPORATION	10	10	4	15	18
PENAL DEBE CORPORATION	3	0	0	4	3
TUNAPUNA/PIARCO CORPORATION	3	3	1	0	3
COUVA/TABAQUITE/TALPARO CORPORATION	2	8	10	2	5
SANGRE GRANDE CORPORATION	9	18	14	25	5
DIEGO MARTIN CORPORATION	1	0	2	1	2
PRINCES TOWN CORPORATION	3	1	2	1	4
SAN JUAN/LAVENTILLE CORPORATION	2	4	5	2	2
SIPARIA CORPORATION	1	5	6	3	0
U.R.P	0	0	4	3	1
TOTAL	50	79	67	75	59



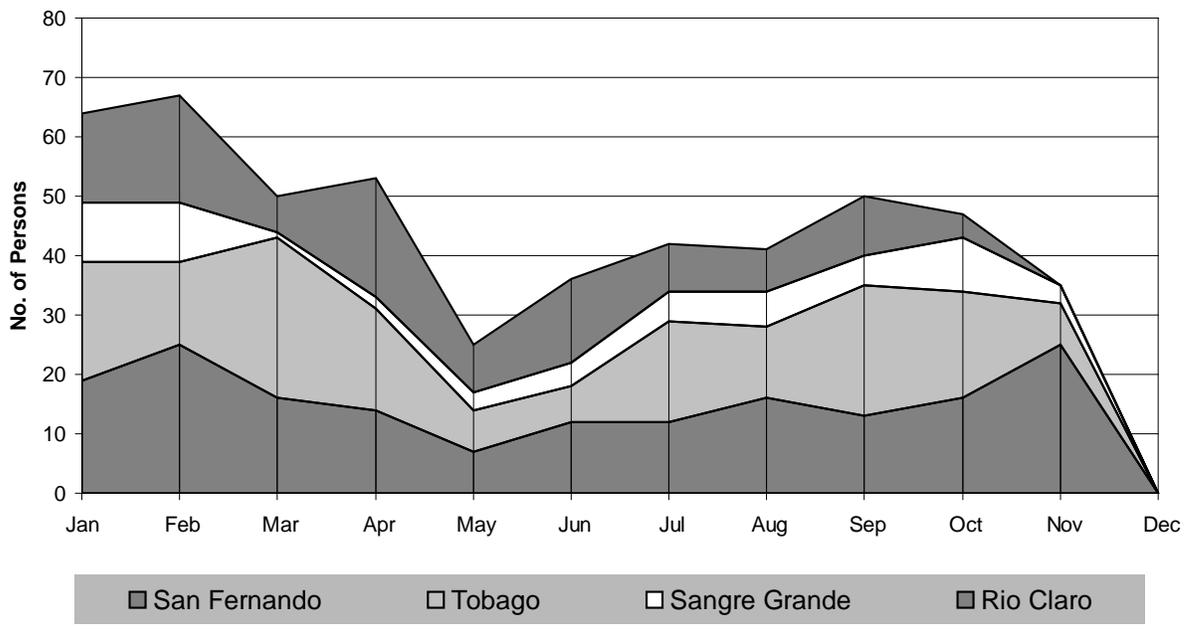
It has always been the aim of the Office of the Ombudsman to provide outreach services to the public at large and this has been undertaken without regard to socio economic background, ethnic origin or geographical location. For this purpose temporary offices have been established in Tobago, San Fernando, Sangre Grande and Rio Claro at which monthly visits are paid by the staff. Table IV and Figure III show the number of visitors to our regional offices for the period under review.

TABLE IV
NUMBER OF PERSONS WHO VISITED
THE REGIONAL OFFICES IN THE YEAR 2000

MONTHS	Total	San Fernando	Tobago	Sangre Grande	Rio Claro
JANUARY	64	19	20	10	15
FEBRUARY	67	25	14	10	18
MARCH	50	16	27	1	6
APRIL	53	14	17	2	20
MAY	25	7	7	3	8
JUNE	36	12	6	4	14
JULY	42	12	17	5	8
AUGUST	41	16	12	6	7
SEPTEMBER	50	13	22	5	10
OCTOBER	47	16	18	9	4
NOVEMBER	35	25	7	3	-
DECEMBER	-	-	-	-	-
TOTAL	510	175	167	58	110

These services were extended to Chaguanas and Siparia during 2001.

Figure 3
No. of Persons Visiting Regional Offices from Jan-Dec 2000



In the main the most common complaint received at these offices concerned allegations of discrimination in employment practices. Other frequent complaints made were delays in eradicating health nuisances and the repair and maintenance of roads and drains in the respective communities.

In addition to the new complaints received in the year 2000, investigations were continued on 1388 complaints, which were brought forward from the preceding year. Of these a total of 529 matters were concluded during the year. Table V shows the manner of their disposal.

TABLE V
STATISTICS ON COMPLAINTS BROUGHT
FORWARD FROM PRECEDING YEARS

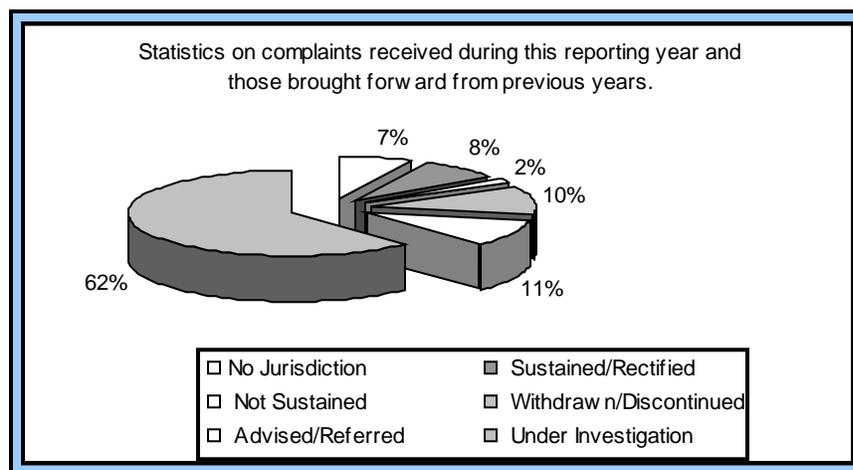
		TOTAL
Total number of complaints brought forward from previous years		1388
Total number of complaints concluded		529
Sustained/Rectified	124	
Not Sustained	35	
Withdrawn/Discontinued	236	
Advised/Referred	134	
Number of complaints still under investigation		859

Investigation was undertaken into 2378 complaints during the year 2000. This figure represents the total of 990 new complaints in addition to those brought forward from the preceding year. Table VI and Figure 4 show the manner of their disposal. At the end of 2000, 1470 complaints remain under investigation.

TABLE VI
STATISTICS ON COMPLAINTS RECEIVED DURING THIS REPORTING PERIOD AND THOSE BROUGHT FORWARD FROM PREVIOUS YEARS

	NUMBERS	%
Total number of complaints brought forward from previous years	1388	
Total number of complaints received in 2000	990	
TOTAL	2378	
Total number of complaints without jurisdiction	171	7
Total number of complaints proceeded with	2207	93
Total number of complaints concluded	737	33
Sustained/Rectified	184	8
Not Sustained	50	2
Withdrawn/Discontinued	247	11
Advised/Referred	256	12
Total number of complaints under investigation	1470	67

Figure 4



In addition to the number of complaints received during the year under review, the workload, as in previous years, was increased considerably by the number of visitors seeking advice on various problems and by a number of telephone calls made for the same purpose. No record has been made of these visits or calls.

**SUMMARY OF
SELECTED CASES**

Ref.OMB:0328/96

MINISTRY OF AGRICULTURE
Lands and Surveys Division

The Complainant is the owner of a parcel of land in Bejucal, Caroni, access to which ought to have been facilitated by the Bejucal Canal Reserve which runs through his land. However, this Reserve was never developed and the Complainant gained access through State lands on the eastern boundary of his land. Part of these said State lands was used by the State for the construction of the Uriah Butler Highway. Since the highway was constructed the Complainant has been unable to gain access from the eastern boundary. He complained that a lease of the reserved area was promised to him but it never materialized and he pointed out that a lease had been granted to International Aeradio (Caribbean) Limited which owned lands which abutted the canal reserve north of his land.

The Complainant sought the Ombudsman's assistance in procuring a lease of the reserve area or being given the option of purchasing the reserve area so that he would be able to gain access to his property.

The matter was taken up with the Ministry which referred it to the Town and Country Planning Division of the then Ministry of Housing and Settlements.

The Town and Country Planning Division has advised that the parcel of land falls within the Caroni Swamp which the Government's present planning policy has designated a conservation area. In such an area no "built" development is permitted because of environmental, ecological and drainage considerations. The department would object to any form of built/engineering works or access provision for any use which would compromise the said policy and conservation objectives.

This decision was brought to the attention to the Complainant.

Ref:OMB:0100/99

MINISTRY OF AGRICULTURE, LAND AND
MARINE RESOURCES

The Complainant was formerly employed by the Forestry Division, Ministry of Agriculture as a permanent daily rated checker for a period of 15 years. Following a prolonged period of illness she was forced to resign from her job on medical grounds on 29th February, 1988. She sought my assistance eleven years later having failed in her efforts to obtain terminal benefits in respect of her period of service.

During the course of investigation, visits were made to the offices of the Comptroller of Accounts and the Forestry Division in St. Joseph in order to review the relevant records. The records showed that prior to her retirement the Complainant was on continuous extended sick leave for several months due to complications from a surgical procedure. Her retirement on medical grounds was accepted by the department and the necessary documents for the processing of payment of terminal benefits were forwarded to the Comptroller of Accounts.

By letter dated 14th April, 1992 the Comptroller of Accounts informed the Ministry of Agriculture that the advice of the Chief Personnel Office was being sought in the matter. The Chief Personnel Officer had ruled that the Complainant was not eligible for the grant of retirement benefits. The Assistant Conservator of Forests subsequently informed the Complainant that retirement from the Government service on medical grounds could only be considered on the basis of a medical certificate endorsed by a local District Medical Officer or one issued by a local health institution.

Upon receipt of the Ministry's communication the Complainant submitted a Medical Certificate which was endorsed by the District Medical Officer but she was still denied payment of retirement benefits.

Further checks were made by this Office at the Sangre Grande and Port of Spain General Hospitals. Hospital records at both institutions revealed that the Complainant had been warded on several occasions up to 1986.

In view of the Complainant's established medical history I sought clarification from the Chief Personnel Officer for the reasons which guided the department's decision to not grant retirement benefits.

The Chief Personnel Officer advised that the department's initial decision was based on the fact that the Complainant had not been examined by a Medical Board. The department further advised that the matter was reviewed and that in light of the peculiar nature of the case and the fact that one of the medical certificates was counter-signed by a Government medical officer it was proposed to advise the Comptroller of Accounts that the Complainant should be paid terminal benefits in accordance with the collective agreement and where applicable the Pension Regulations, Chapter 23:52 governing the payment of retirement benefits.

Ref:OMB:1182/96

MINISTRY OF EDUCATION

The Complainant, a retired watchman employed by the Ministry of Education complained that three years of his service were not taken into account in the computation of his retirement benefits.

The Complainant was employed with the Trinidad Government Railway from 1962 to 1965. When the Railway was phased out his post became redundant and he was absorbed into the Public Service and transferred to the Ministry of Education. He was posted as a Watchman at

St. Francois Girls College. His pension and leave records for the years 1962 to 1965 had been lodged at the Public Transport Service Corporation which had taken over the responsibilities of the defunct Railway. The Public Transport Service Corporation intimated that the records pertaining to the Complainant and other employees who were transferred might have been inadvertently destroyed when renovation works were being carried out on their premises.

However, on investigation of the matter evidence was unearthed in the personnel file of the Complainant at St. Francois Girls College attesting to the fact that the Complainant was employed at the Railways during the period 1962 to 1965 prior to his transfer to the Ministry of Education.

The Comptroller of Accounts then advised that the Public Transport Service Corporation should either reconstruct the records of the complainant or approach Cabinet, through the Ministry of Public Utilities to have his period of service from 1962 to 1965 deemed pensionable in accordance with the provisions of Section 23 of the Pensions Act Chap. 23:25.

The Comptroller also advised that all similarly affected officers be included in the submission to Cabinet.

This matter is being pursued.

Ref:OMB:0158/99

MINISTRY OF HEALTH

The Complainant, a retired Radiographer employed by the Ministry of Health had injured her ankle whilst on duty at the General Hospital, San Fernando in 1993.

Directly thereafter she applied for compensation but up to the time of her retirement in 1996, the matter had not been settled. She however, continued to pursue the matter. In 1998, she was informed by the Ministry of Health that the Solicitor General had advised that she be awarded the sum of Thirty Thousand Dollars (\$30,000.00) as compensation for her injuries and that she should indicate her acceptance as full and final settlement. She subsequently agreed to this proposal in writing but up to the time that she brought her complaint in March 1999 she had heard nothing further on the matter.

Investigations at the Ministry of Health revealed that the matter had been submitted to the Minister for his approval before submission to the Comptroller of Accounts for the processing of payment. The Comptroller of Accounts had however queried the authorisation for payment since the amount recommended required Cabinet's approval. She approached the Solicitor General for an opinion as to how payment of the award should be made and was advised that the award be made as an ex-gratia payment and that the Minister's approval under delegated authority would be acceptable in this instance.

The Complainant was eventually paid the compensation due to her in November 2000, a period of seven (7) years having elapsed since she suffered the injury.

Ref:OMB:0357/95

MINISTRY OF LOCAL GOVERNMENT
San Juan/Laventille Regional Corporation

The Complainant who resides at Barataria became concerned when she observed that her neighbour had begun construction of a building less than two feet away from her boundary line. She also complained that the building did not have guttering facilities to take the run off water which fell into her premises, settled and created a breeding ground for mosquitoes.

She immediately lodged a complaint at the Town and Country Planning Division of the Ministry of Housing and Settlement and was advised to refer the matter to the San Juan/Laventille Regional Corporation. After failing to get a response from either of these two agencies, she sought my assistance in having the matter resolved.

I referred the matter to the Permanent Secretary, Ministry of Planning and Development, the Chief Executive Officer, San Juan/Laventille Regional Corporation and the County Medical Officer of Health, St George Central. I received a comprehensive report from the Director, Town and Country Planning Division which stated *inter alia* that planning permission had not been obtained for this development, as required under Section 8(1) of the Town and Country Planning Act Chapter 35:01 (“the Act”).

The Offender was informed via letter dated 29th September, 1995 of the breach in failing to comply with the law and was directed to cease the unauthorized development. He chose not only to ignore the directives of the Town and Country Planning Division but to engage in further development, infringing both side and rear property building line setback requirements. The Town and Country Planning Division decided therefore to pursue the matter by enforcement action under the provisions of the Act.

The County Medical Office of Health, St George Central also reported that the complaint was justified and advised that the matter be referred to the San Juan/Laventille Regional Corporation .

On March 03, 1997 the San Juan/Laventille Regional Corporation eventually wrote advising that at the Public Health Committee meeting held on February 04, 1997, a decision had been taken to have the County Medical Officer of Health investigate the complaint. Despite several reminders I received no further response from any of these agencies but the Permanent Secretary, Ministry of Planning and Development informed me on January 18, 1999 that the Town and Country Planning Division now fell within the portfolio of the Ministry of Housing and Settlement. The matter was referred to that Ministry on January 26, 1999.

In March, 1999 and September, 2000 the County Medical Officer of Health advised that revisits had been made to the site. The unauthorized structures had not been removed and despite his referral of the matter on several occasions to the San Juan/Laventille Regional Corporation, it has to date failed to respond and/or take action. It is to be noted that the complaint had been filed since 1995 and has remained outstanding due to the circumstances detailed above.

The matter is being pursued.

NOTE: *When the reorganization of departments and agencies takes place, it contributes to the delay and frustration experienced by Complainants in having their complaints remedied. This complaint was made more than six (6) years ago.*

Ref:OMB:0159/98

MINISTRY OF LOCAL GOVERNMENT
San Fernando City Corporation

The Complainant who lived in the City of San Fernando, complained that the San Fernando City Corporation had served him a notice to show cause as to the reason he had contravened provisions of the Municipal Corporation Act, 1990 by converting the ground floor of his building to a woodworking factory without the written consent of the Corporation.

The Complainant stated that he was injured in a motor vehicle accident and had sustained a broken thigh and knee cap and because of his handicap was operating a woodwork shop at his home where he made *inter alia* souvenirs, handicrafts and cupboard doors. He had consulted his neighbours as to whether his operations constituted a health nuisance to them and their answers were in the negative. He also stated that the Corporation's hygienist who visited his premises assured him that his operations did not constitute a health hazard.

On investigation of the matter, the Corporation stated that the complaints received by it did not constitute a public health nuisance but related to "change of use" and that the matter had been referred to the Town and Country Planning Division of the Ministry of Planning and Development for their attention.

The Town and Country Planning Division, having investigated the matter, determined that the change of use had been instituted prior to 1994 and therefore the Division could not proceed further with the matter. The Town and Country Planning Act, provides for a limitation period of four years within which the Minister can correct any change in user.

The Division however advised that the Complainant's use of the premises was not compatible with a residential area and that he should seek to mitigate all nuisances caused to residents by his operations.

The Complainant was informed of this advice.

Ref:OMB:0794/96

MINISTRY OF NATIONAL SECURITY
Trinidad and Tobago Defence Force (Coast Guard)

The Complainant, a retired Chief Petty Officer with the Trinidad and Tobago Defence Force, (Coast Guard), (T&TDF), stated that he had been employed by the Defence Force for a period of twenty one (21) years until his retirement on 26th October, 1992. Immediately prior to his retirement, he had proceeded on a mandatory Resettlement Training Course for a period of two (2) years with effect from 1st July, 1990 to 30th June, 1992 at the Eastern Caribbean Institute of Agriculture and Forestry.

Normally, the Complainant would have proceeded on vacation leave, during the July/September school vacation, but in 1990 he was unable to do so because he was called out for active duty as a result of civil unrest in the country. He remained on active duty with effect from 27th July, 1990 and resumed his Course on 1st October, 1990. He did not proceed on vacation leave in 1991 during the normal school vacation period because he was assigned, first to Caroni (1975) Limited in August, 1991 and then to the Ministry of Agriculture, Land and Marine Resources in September, 1991 for practical training.

He submitted a claim for payment in respect of eighty three (83) days vacation leave which would have accrued to him during his period of study leave 1990-1992. The Chief of Defence Staff, however, took the view that the complainant's claim could not be entertained because he was aware that at the time he applied for and was granted leave to attend the Resettlement Training Course, his compulsory retirement date of October 26, 1992 would have fallen during the period of the course.

I referred the matter to the Chief of Defence Staff and indicated that the Complainant's claim should be re-examined on two grounds:

- that the Complainant would normally have proceeded on vacation leave during the July/September school vacation. Since the Complainant was called out on active duty during the 1990 civil unrest, he could not have proceeded on vacation leave, a situation which could not have been envisaged at the time;
- that the Complainant, not having been allowed to proceed on vacation leave in 1991 during the normal school vacation, was compulsorily assigned for practical training to Caroni (1975) Limited and the Ministry of Agriculture, Land and Marine Resources during that period.

In response, the Chief of Defence Staff advised that the Complainant was "published in orders" as proceeding on his pre-retirement leave (142 days annual leave and 28 days terminal leave) with effect from 9th May, 1992, which covered a period of fifty three (53) days prior to the completion of the Course. He reconsidered the complainant's claim on the fact that the Complainant could not have proceeded on annual leave during the August/September 1990

Course break as a result of the civil unrest as events which he could not have foreseen and that he was still on a period of official duty when “promulgated in orders” as having proceeded on pre-retirement leave.

The Chief of Defence Staff therefore recommended to the Ministry of National Security that the complainant be reimbursed in respect of the fifty-three (53) days for which he had been “published as proceeding on annual leave” whilst still on the resettlement course. As a consequence, approval was sought by the Ministry of National Security and Cabinet vide Minute No. 1620 dated 1st July, 1999 agreed to payment of Fourteen Thousand Eight Hundred and Fifty-one Dollars and Twenty Cents, (\$14,851.20) being salary in lieu of fifty-three (53) days un-utilized leave.

Payment has been effected.

Ref:OMB:0194/2000

MINISTRY OF NATIONAL SECURITY

The Complainant who at present is residing in London sought my assistance in having her Trinidad and Tobago citizenship restored.

A citizen of Trinidad and Tobago by birth, she had left Trinidad in 1956 on a British Commonwealth passport. In 1959 she was married to a Nigerian national, took up residence in Nigeria in 1963 and acquired Nigerian citizenship in 1966.

She had expressed her desire to return to Trinidad and had applied for the restoration of her Trinidad and Tobago citizenship.

She produced all the documents required for such restoration with the exception of her Nigerian Citizenship Certificate. In a sworn declaration of 20th October, 1998 she stated that on applying for her Nigerian passport in 1971 she was required to surrender her Nigerian Citizenship Certificate. The Certificate was never returned to her and all efforts to locate it at the Ministry of Home Affairs in Nigeria proved futile.

Based on the documents submitted, the Chief Immigration Officer recommended that her Trinidad and Tobago citizenship be restored and sought the approval of the Permanent Secretary, Ministry of National Security.

The Permanent Secretary, however has insisted in correspondence to the Chief Immigration Officer that before approval could be given, the Complainant should produce her Nigerian Citizenship Certificate since:

“The Immigration Act, Chapter 18:01 provides that, apart from proof of citizenship, the actual date of acquisition of citizenship of another country

determines the date of loss of citizenship of Trinidad and Tobago from which date such citizenship is restored.”

There is no such requirement under the Act.

I have drawn the attention of the Permanent Secretary, to the sworn declaration of the Complainant attesting to the fact that the Certificate was never returned to her by the Nigerian authorities and that all efforts to locate it have proved futile.

The matter is being pursued.

Ref:0400/2000

MINISTRY OF PUBLIC UTILITIES
Trinidad & Tobago
Electricity Commission

The Complainant and her relatives had been living on a large parcel of land located at Point Cumana, Carenage for over 40 years. The land in question was originally owned by their deceased grandfather. Through the years family members had built their homes and settled there with their families.

In the year 2000 the Complainant demolished her house which was provided with electricity service by the Trinidad and Tobago Electricity Commission and constructed a larger and modern structure on the site. The new building was passed for inspection by the Electrical Inspectorate Department. However, when the Complainant applied to the Electricity Commission to have electricity service connected she claimed that she was asked to produce documents signed by a judge which showed that she was entitled to live and build on the premises.

The matter was taken up by my Office at the request of the Complainant when the Commission failed to provide her with the service.

The Commercial Manager subsequently wrote to advise that the Complainant's attorney had informed the Commission that the regularization of ownership of the land was being addressed under the Real Property Act, Ch: 27 No. 11. The Commission's legal advisers indicated that there could be no regularization until the Court had awarded rights to the property under the Real Property Act hence their request for such a document.

In light of my Office's intervention, investigations were undertaken by the Commission into the Complainant's tenure on the land. It was revealed that the family had in fact been in occupation for a considerable period of time. As a consequence the Commission finalised the contract with the Complainant to provide electricity service to her home. The contract however included a stipulation that should any conflict arise as to the Complainant's ownership/occupancy, the Commission reserved the right to terminate the contract after due notice is given.

NOTE: *Several complaints of a similar nature have been received. In the 22nd Annual Report I had occasion to comment on the hardship and injustice which applicants for an electricity supply undergo. The Commission is obligated to provide a service to customers whose premises have passed inspection by the Electrical Inspectorate. Neither the Electrical Inspectorate nor other service providers such as the telephone company and the cable companies insist upon title to land being proven before providing such service as they consider such a matter to be of no concern to them, but a matter between the occupier and the owner.*

Ref:OMB:0566/98

MINISTRY OF PUBLIC UTILITIES
Water And Sewerage Authority

In mid 1995 the Complainant acquired one of a number of repossessed agricultural properties, which had been put up for sale by the Agricultural Development Bank. As part of the purchase he was required to liquidate all outstanding taxes and rates levied against the property.

To this end he visited the Water and Sewerage Authority's Commercial office and requested a statement of the outstanding charges for the property and was presented with a bill in the sum of One Thousand Three Hundred and Seventy-five Dollars and Fifty-five cents (\$1,375.55).

He subsequently took possession of the property in August 1996. At a later date, much to his surprise he received another bill from the Water and Sewerage Authority for outstanding charges in the sum of Sixteen Thousand Dollars and Eighty-eight Cents (\$16,000.88). This bill was in respect of an account relating to the same property which had not been drawn to his attention at the time of his initial request. When he queried the billing at the commercial office the attending officer informed him that he, the complainant, had liquidated all outstanding charges and that an investigation would be conducted to correct the billing against the second account. Thereafter, he continued to receive bills against the first account which he continued to pay.

In January 1997 he was informed by the Authority of a change in the classification of this account from A1 to A3 (pipe-borne service).

In July 1988 his service was disconnected without notice for an unsettled bill of Twenty-five Thousand and Seventy Dollars and Forty-three cents (\$25,070.43) relating to the second account.

He sought my assistance one year later after he failed to resolve the matter with the Authority.

In response to my request to the Authority for a report, the following information was provided:

- ❖ the original account for the property was initially classified as A1 and changed to A3 in 1997;

- ❖ the property was metered in 1993 and a new account opened;
- ❖ following investigations in 1998 the Authority closed the second account and transferred all the outstanding metered rates against this account to the original account.

From the facts presented it was obvious that the Authority had inadvertently billed the property against two (2) accounts for a period of five (5) years. The error remained uncorrected for this period despite the Complainant's queries. When the meter was installed in 1993 the classification of the original account should have been adjusted to reflect the change in service. Instead a new account was opened.

When the Complainant enquired of the outstanding balance of charges in 1995 he was not informed of the existence of another account with an accumulated balance of Sixteen Thousand Dollars and Eighty-eight Cents (\$16,000.88). He was therefore misled into believing that the only amount outstanding against the property was One Thousand Three Hundred and Seventy-five Dollars and Fifty-five Cents (\$1,375.55). Since water rates are a charge on the land, rates which are outstanding are taken into account by a purchaser in determining the actual purchase price of the property to be acquired. The Complainant had taken into account the charges of One Thousand Three Hundred and Seventy-five Dollars and Fifty-five Cents (\$1,375.55), which had been described to him by the Authority as outstanding when he purchased the property.

In light of the circumstances I intimated to the Chairman of the Authority that it was unfair for the Authority to insist that the Complainant should assume liability for these charges and requested that the Board take the necessary steps to have the charges which were transferred from the second account written off.

I was subsequently informed by the Chairman of the Board that in light of my comments, the outstanding balance against the second account would be written off and the original account would be billed for metered service from 1st December 1995, the date on which the Complainant was informed of the outstanding balance on the original account.

Ref:OMB:1318/96

MINISTRY OF WORKS AND TRANSPORT

The Complainant was employed as a blacksmith/sheet metal worker in the Mechanical Division of the Ministry of Works and Transport for thirty-five (35) years, prior to his retirement on medical grounds in 1993 at the age of fifty-four (54) years. He had been medically boarded primarily on the basis of a medical report by a Government Medical Officer who described his condition as a progressive hearing loss over a number of years which affected both his ears. His condition was due to the fact that he had been working in an environment for more than 35 years where the noise level was quite high and he had not been wearing any ear protection.

The complainant submitted a hearing evaluation report from the Trinidad and Tobago Association in Aid of the Deaf (DRETCHI) in support of his claim for compensation as a result of his premature retirement on the ground of the failure of the Ministry to provide him with a safe system of work. DRETCHI confirmed the report of the Government Medical Officer.

On investigation of the matter, the Chief Medical Officer advised that in order to determine the role of the work environment in the complainant's illness he should submit himself to further evaluation. The complainant has done so. The Ministry of Health has further advised the Ministry of Works and Transport that since the matter has become one of compensation, it fell outside the ambit of the Medical Board and that the views of a rheumatologist and an ENT Specialist should be sought.

Meanwhile, the Ministry of Works and Transport has sought the advice of the Solicitor General on whether an award to the complainant can be possibly determined on the ground that he was not allowed to continue working until the attainment of his retirement age.

The matter is being pursued.

Ref:OMB:0540/99

MINISTRY OF WORKS AND TRANSPORT

The Complainant, a former employee of the Ministry of Works and Transport complained that he was being denied payment of retirement benefits in respect of his service which spanned a period of 26 years.

My investigations revealed that the Complainant had been employed as a daily rated labourer since 1969. In 1995 he was convicted of a criminal offence and served a sentence of three years in prison. His conviction was unrelated to his employment. When he reported for duty following his release from prison he was told that he was deemed to have abandoned his job with effect from 10.01.96. Since he was 62 years old he applied for payment of his retirement benefits but was advised that he was not entitled to it because of his conviction.

Under the provisions of the Collective Agreement on wages and conditions of service for Government hourly, daily and weekly rated employees the compulsory age of retirement is 60 years. The Agreement provides workers with the option of retiring at any time after they have reached the age of fifty years. The Agreement also provides for severance benefits to be paid to retrenched workers who have completed at least one year of effective service.

In view of these provisions I enquired of the Permanent Secretary as to the reason why the complainant was deprived of his retirement benefits. I was informed that the department had followed the ruling handed down by the Industrial Court in its judgment No. 42 of 1969: Public Transport Service Corporation v. Transport and Industrial Workers' Union - which determined that "a worker convicted and incarcerated on a criminal charge could not claim the lawful

consequences of his own criminal act as a justifiable reason for his absence from work.” On the basis of this decision the Complainant’s service was terminated and he was deprived of his terminal benefits.

NOTE: *I have received several complaints of a like nature. I have dealt with this matter under the section Area of Concern.*

Ref:OMB:0313/97

TOBAGO HOUSE OF ASSEMBLY
(Agriculture Division)

The Complainant who was employed at the Kendal Farm School, Tobago discovered on her transfer in March, 1988 to the Eastern Caribbean Institute of Agriculture and Forestry, as Hostel Manageress, that she had not been paid her third longevity increment which was due in 1985.

On July 15, 1991 she wrote to the Technical Officer, Agriculture Division, Tobago House of Assembly, advising of the discrepancy and requested that the matter be rectified.

Although the Tobago House of Assembly acknowledged that a mistake had been made in computing the quantum of the complainant’s salary, the matter remained outstanding for over six (6) years and after repeated unsuccessful attempts to have it resolved, the Complainant eventually sought the Ombudsman’s assistance in March, 1997.

On investigation, I discovered that much of the delay resulted from the fact that neither the Ministry of Agriculture, Land and Marine Resources nor the Tobago House of Assembly would accept the responsibility for the error in payment. Each department insisted that it was awaiting information from the other. Eventually I was able to ascertain that on 29th November, 1995 the Permanent Secretary, Ministry of Agriculture, Land and Marine Resources had written to the Clerk, Tobago House of Assembly, explaining that the Complainant was paid by the Chief Personnel Officer with effect from 1st November, 1974 to 31st July, 1976 in the post of Domestic Supervisor II (Range 21C) while on study leave. This post was reclassified retroactively with effect from 1st January, 1974 to that of Hostel Manageress (Range 23). As a result the Complainant’s salary had to be adjusted with effect from 1st January, 1974. Salary particulars were not submitted to the Chief Personnel Officer with the result that the Complainant was paid in the post of Domestic Supervisor II.

The Clerk, Tobago House of Assembly was then requested to submit salary particulars to the Chief Personnel Officer in order that the outstanding salaries be paid to the Complainant. This was not done because the Clerk, Tobago House of Assembly was not prepared to submit salary particulars unless the actual Pay Sheets for the period were located, on the ground that on many occasions entries on Pay Record Cards were not the same as those on the Pay Sheets. As a result a recommendation was made for the Accountant/Salary Clerk to visit the Ministry of

Agriculture, Land and Marine Resources storage areas at Chaguaramas, Trinidad to locate the relevant payment vouchers. This recommendation was never accepted.

I continued to pursue this matter with the Ministry of Agriculture, Land and Marine Resources and the Tobago House of Assembly. The Internal Auditors of both departments met in Tobago and reviewed the relevant records and recommendations were eventually made for the payment of the outstanding increments to the Complainant.

In December, 1999 the Tobago House of Assembly advised that the Complainant would be paid Ten Thousand, Six Hundred and Ninety-one Dollars and Fifty-three Cents (\$10,691.53). In August, 2000 the Tobago House of Assembly wrote informing me that payment to the Complainant had been finalized and that she would be paid Eleven Thousand Four Hundred and Forty-Four Dollars and Three Cents (\$11,444.03), as arrears of outstanding increments with effect from 1st November, 1983.

Payment has been effected.

SUMMARY OF OTHER COMPLAINTS RECEIVED IN 2001

1. Ministry of Education

- ❖ Application for student transfer not accepted by School's Principal.
- ❖ Inordinate delay in the payment of salary to Teacher.
- ❖ Difficulty in gaining employment as a Teacher.

2. Ministry of Finance

- ❖ Assistance to obtain refund from Inland Revenue for interest deducted by bank on savings after attaining the age of sixty-five (65) years.
- ❖ Delay in payment of Income Tax refund.
- ❖ Charged late filing penalty on return which was misplaced by the Board of Inland Revenue.
- ❖ Delay in effecting refund of registration fees paid for the purchase of foreign used vehicles.
- ❖ Excessive increase in land and building taxes charged on property.

3. Ministry of Local Government – Regional Corporation

- ❖ Discriminatory employment practices.
- ❖ Failure to take appropriate action in keeping with the provisions of the Public Health Ordinance to eradicate existing health nuisances.
- ❖ Health nuisance caused by poor drainage facilities on neighbour's property.
- ❖ Delay in removing the blockage placed by neighbour across the natural water course and road reserve.
- ❖ Denied access to property by illegal blockage of the road reserve.
- ❖ Roads impassable and causing damage to vehicles due to a lack of maintenance and repair.
- ❖ Drastic increases in house rates imposed by City Corporation.

4. Social Welfare Department

- ❖ Delays in the processing of claims for old age pension.
- ❖ Denied public assistance.
- ❖ Application for re-instatement of old age pension.

5. Police Service

- ❖ Failure to take action in relation to the report of an assault.
- ❖ Delay in the service of outstanding warrants.
- ❖ Failure to deliver stolen vehicle when recovered.
- ❖ Premises searched without a warrant.

6. Public Transport Service Corporation

- ❖ Senior citizens treated discourteously by PTSC Drivers.

7. Ministry of Health

- ❖ Unable to obtain Medical Certificate from Hospital.
- ❖ Health hazard created by effluent flowing from neighbour's septic tank not addressed by Public Health Officials.

8. Magistracy

- ❖ Appeal hearing delayed due to the failure of the Magistrate to

provide reasons for the conviction.

- ❖ Part heard matter not completed due to the transfer of presiding Magistrate to another district.
- ❖ Unable to obtain record of the Court's dismissal of charges due to the misplacement of the relevant Magistrate Extract Book.

9. Tobago House of Assembly

- ❖ Discriminatory employment practices.
- ❖ Unjust termination of employment.
- ❖ Assistance to obtain compensation for crops allegedly damaged by Assembly workers.

10. Water & Sewerage Authority

- ❖ Water supply disconnected although there are no overdue charges on the account.
- ❖ Assistance to obtain regular supply of pipe-borne water.
- ❖ Duplication of bills for service to single property.

- ❖ Bills received regularly although supply of water to premises is non-existent.

11. National Housing Authority

- ❖ Assistance to obtain deed for property upon the discharge of mortgage.
- ❖ Assistance to obtain housing accommodation.

12. Judiciary

- ❖ Assistance in having time spent on remand off-set against prison sentence.
- ❖ Inordinate delay in having matter placed on list for hearing at the High Court.
- ❖ Assistance to obtain date for appeal hearing.

13. Trinidad & Tobago Electricity Commission

- ❖ Unfair retroactive billing for electricity service.
- ❖ Failure to remove rotted electricity poles.
- ❖ Denied compensation for the damage of appliances arising from frequent electricity power surges.
- ❖ Failure to provide electricity service

- ❖ Delay in the delivery of Judgment following the conclusion of High Court action.
- ❖ Unable to obtain notes of evidence.
- ❖ Re arrested for an offence for which prison sentence had been served.

14. Telecommunication Services of Trinidad and Tobago

- ❖ Bills received for unknown overseas calls.
- ❖ Query on internet bill of \$14,000.00.
- ❖ Assistance to obtain refund of malfunctioning phone cards.

[This list is not exhaustive of the complaints received during the year 2000]

APPENDICES

THE INDEPENDENCE OF THE OMBUDSMAN

by

Justice G. A. Edo

Ombudsman of Trinidad and Tobago

One of the principal characteristics attributed to the Office of the Ombudsman is that of independence.

The bye-laws of the International Ombudsman Institute identifies the characteristics of a legislative Ombudsman as follows:

“The office of a person who has been appointed or elected pursuant to an Act of the Legislature; whose role it is to investigate citizens’ complaints concerning administrative acts or decisions of Government agencies from which the Ombudsman is independent and who makes recommendations to the Legislature as an Officer of that body.”

The countries of the Commonwealth Caribbean which have opted for the institution either in their Constitutions or by Acts of Parliament have adopted the New Zealand model and have incorporated provisions of the New Zealand legislation with necessary adaptations in their legislation. These countries are, in alphabetical order: Antigua, Barbados, Dominica, Guyana, Jamaica, St. Lucia and Trinidad and Tobago.

Among the matters which may be considered as necessary for securing the independence of the Ombudsman, the following may be noted:

Method of Appointment and Removal

The usual method of appointment of an Ombudsman is by the Head of State after consultation with the Prime Minister and the Leader of the Opposition. If political and administrative considerations influence his appointment, then there will be some doubt as to whether his independence can be ensured.

Statutory safeguards are necessary to ensure that his term is fixed and that he cannot be dismissed prematurely. If his dismissal is subject to strict provisions, such as the appointment of a statutory tribunal to enquire into his work and conduct, this will go a long way in ensuring his independence.

Accountability

The Ombudsman should not be accountable to any authority within the State, whether political, executive or judicial. He should only be accountable to Parliament and only within the terms of the legislative requirements. Usually his only obligation to Parliament is to present an annual report and such special reports as he deems fit. Parliament should not have any control over his work and conduct unless there is provision by legislation providing for such controls.

If a standing committee is appointed, for example, to deal with his annual or special reports, then its limits should be defined by legislation.

Service to the Public

Service to the public is the rationale for the creation of the institution. Specifically, the Ombudsman is required to investigate injustices brought about by maladministration. In this respect, the services provided by the Ombudsman are open to all strata of the society. Any fetter on the ability of any member of the society to bring his complaint directly to the attention of the Ombudsman is an interference with his (the Ombudsman's) independence. So too, if a complaint has to be routed through a third party, this amounts to an interference with the Ombudsman's independence. This is particularly true in regard to persons who are incarcerated by the State and whose freedom of movement is restricted.

Usually complaints are brought against Government departments, authorities and agencies by the public. Public Officers themselves, however, are members of the public and there should be no restriction or deterrent against a public officer who wishes to complain to the Ombudsman against Government departments in general or even against the department or authority in which he is employed.

Pro-active Role

The Ombudsman is an institution which has been created for the protection of the public against abuses by the Executive.

The usual method of approach to the Ombudsman is to file a complaint. There are, however, many members of the society, who for various reasons either fail or refuse to complain against maladministration which affects them. The Ombudsman will be failing in his duty and independence if he does not go to the aid of such persons. Any provision by legislation or otherwise setting formal methods for approaching the Ombudsman is an interference with his jurisdiction and independence.

Location of Office and Funding

The Ombudsman and his staff are outside the Public Service establishment and his Office should be accommodated in premises which does not give the impression that it is another Government department or authority. When this view is held by the public they become wary of bringing their complaints to the attention of the Ombudsman since they may consider that by doing so they are going from "*Caesar to Caesar*" in their quest for justice.

The question of funding also is a matter for consideration. The Office is not truly independent if it has to depend on the Executive for its funds and for its goods and services. The effectiveness of the Office will be compromised if it were totally dependent on Government departments which may possibly be under investigation by the Ombudsman. The ideal situation is for Parliament or the legislative body to provide funding directly to the Ombudsman and for the Ombudsman to be accountable directly to Parliament.

In this paper, I have set down the matters which I believe are capable of restricting the independence of the Ombudsman. However, the legislation which provides for the Institution in the countries referred to above have all, with the exception of the location of the office and funding, made favourable provision for the matters discussed above. It is left to the individual Ombudsman to ensure that his independence is not eroded.

THE OMBUDSMAN AND JUDICIAL REVIEW

by

Justice G. A. Edoe

Ombudsman of Trinidad and Tobago

What is judicial review? - Broadly speaking it is the manner in which Courts of law, specifically the High Court, in the context of Commonwealth Caribbean Countries, supervises the decisions and actions of Ministers, government departments, agencies, local authorities and other public bodies in the exercise of their powers and functions.

The procedure of judicial review has been in existence in the English jurisdiction since the seventeenth century and by extension in the British territories and colonies since that time. As a means of ensuring proper administration, three Orders (later known as Writs) were devised by the Crown in exercise of its prerogative powers for the purpose of enabling the High Court to exercise a supervisory jurisdiction over the acts and decisions of inferior tribunals, government departments and authorities, as previously indicated.

Remedies of mandamus, certiorari and prohibition became available to the citizen whose rights were infringed. The Order of Mandamus was used to compel the performance of a public duty; the Order of Certiorari to quash the unlawful decision of a public authority and the Order of Prohibition to prohibit the future performance of an unlawful act by a public authority.

In time these procedures became technical and cumbersome. Rules and case law added to the frustration of those who sought to invoke the remedies of the prerogative writs. The progressive growth of the bureaucracy added to the frustration of the public and placed a burden on the Court in the exercise of its supervisory jurisdiction over inferior tribunals, government departments, agencies and public authorities.

The time had come for the reform of the procedures applicable to the prerogative writs.

Like considerations which led to the creation of the institution of Ombudsman or Parliamentary Commissioners in the Commonwealth countries influenced the reform of the procedures for obtaining remedies under the prerogative writs. This is illustrated in a booklet published by the Constitution Commission of Trinidad and Tobago in 1975, for the purpose of informing the public of its recommendations for changes in the Constitution. As its rationale for the creation of the institution of the Ombudsman in Trinidad and Tobago, the Commission stated as follows:

“No government today can limit its functions to maintaining internal stability and providing defence from external attack. It must help stimulate the economy to create employment. It must regulate the use of national resources to prevent waste and promote reasonably fair distribution. It must provide facilities for educating the society and for helping to take care of the aged when they can no longer work..

To secure these ends, laws are made imposing controls - for example, controls on the use of land, price controls, compulsory deductions for national insurance and licenses for the importation of goods or the export of money. More and more public officials are employed to administer these controls, and their decisions affect more and more people.

Problems arise from the sheer size of the establishment, or the bureaucracy as it is sometimes called. Close supervision is difficult and often the consequence is maladministration causing hardships to many. There are also problems of injustice arising from unintended or deliberate misuse of executive power."

The reform of the law with respect to the judicial review of administrative action and the appointment of Ombudsmen and Parliamentary Commissioners in the Commonwealth countries occurred about the same time - in the latter half of the twentieth century. A new procedure was devised for invoking remedies under the prerogative writs known simply as an application for judicial review.

The new procedure was intended to introduce a beneficent reform in the practice and procedure relating to administrative law by making it simpler and cheaper. It was meant to create a uniform, flexible and comprehensive code of procedure for the exercise by the High Court of its supervisory jurisdiction over the proceedings and decisions of inferior courts and tribunals or other bodies of persons charged with the performance of public acts and duties. Thenceforth, an applicant who wished to invoke remedies under the prerogative writs was able to make all his claims in one application. There is some doubt as to whether the new procedure has achieved its objectives.

This is an appropriate stage to discuss the creation of the institution of Ombudsman or Parliamentary Commissioner in the Commonwealth Caribbean. The countries which have provided for the institution either in their Constitutions or by Acts of Parliament have all adopted or patterned their legislation after the New Zealand model. Antigua, Dominica, Guyana, St Lucia and Trinidad and Tobago have provided for the institution in their Constitutions while Jamaica and Barbados have opted for theirs in Acts of Parliament.

The jurisdiction of the Trinidad and Tobago Ombudsman is confined to the investigation of "*decisions or recommendations made, including advice given or recommendation made to a Minister or of any act done or omitted by any department of Government or any other authority being action taken in exercise of the administrative functions of that department or authority,*" the operative words being "*action taken in exercise of the administrative functions.*" Like provisions have been made in the legislation of the Commonwealth Caribbean countries referred to above. In this respect, the jurisdiction of the Ombudsman or Parliamentary Commissioner exists concurrently with that of the High Court.

Compared with the procedure by judicial review, it may be contended that the Ombudsman provides a cheaper and more effective service than the High Court in matters over which they have a concurrent jurisdiction. Although the judicial review procedure has had some beneficial

effect, litigants still complain of the cost of taking matters before the High Court and the complexity of the issues which have arisen.

The Ombudsman operates in a more informal atmosphere. There is no cost to the complainant. The Ombudsman is enabled by law to investigate complaints by interviewing public officers and other persons as he thinks fit, undeterred by rules and regulations. He has access to the books and records of Government departments and authorities and can call upon the latter to supply information, produce records and attend before him for examination.

This informal approach has in many cases, proved more effective in resolving complaints than the more formal methods before the High Court by way of judicial review proceedings. Admittedly some matters which involve complex issues of law are more suitable to be tried by judicial review.

One Final Note. In July, 1996, a regional workshop on Administrative Law was held in Barbados under the auspices of the Commonwealth Secretariat to discuss ways in which the administration of government and public business could be improved. It was attended by members of the Judiciary, University Lecturers, Ombudsmen and senior public officers of the Commonwealth Caribbean.

Among the conclusions arrived at, was the central importance of administrative law in the conduct of government and the recognition of the important complementary role played by the Office of the Ombudsman, Human Rights Commissions and similar bodies in jurisdictions, both within the region and beyond where such institutions exist.

Since then, some of the Commonwealth Caribbean countries have taken steps to improve the machinery for dealing with administrative problems. Such improvements whether by legislation or otherwise can have but little effect on the work and jurisdiction of the Ombudsman.

**THE OMBUDSMAN AS A PROMOTER
OF “BEST PRACTICES” FOR THE
PUBLIC SERVICE**

by
Michelle Ann Austin,
Head, Legal Division
Office Of The Ombudsman

There is no doubt as to the functions and powers of the Office of the Ombudsman as provided for by the Constitution and the Ombudsman Act. According to the Constitution, section 93(1) the principal function of the Ombudsman is that of investigation, but in his pursuit of justice and his fight against maladministration the modern Ombudsman is called upon not merely to investigate and if possible ‘right’ that which is wrong, but to promote the best possible practices among public servants. The modern Ombudsman must be cognizant of the need for a proactive and positive approach in his dealings with public service providers. Such service providers must be encouraged to deliver a standard of service to the public which equates to and surpasses that which is available from the private sector. Offices of the Ombudsman throughout the world have embraced this new responsibility.

In one instance, the Ombudsman of Quebec has implemented a fifty-six rule Social Contract to “orient the civil service toward a more positive relationship with the public” (see: A Social Contract on Relations Between Citizens and Government by Daniel Jacoby, International Ombudsman Yearbook, September, 1999). In another, the Ombudsman of Ireland in his 1996 Annual Report provides a guide to Standards of Best Practice in an effort to “be more positive” in fulfillment of his duties. Ombudsmen such as these are embracing a new role – one which is revolutionary and yet at the same time evolutionary; one, which demands that they promote and encourage change rather than merely identifying dysfunction.

To effectively promote such change, an Ombudsman must bring to the attention of Government Departments and Agencies the fact that:

- (i) members of the public who interact with them can be likened to DAVID facing GOLIATH and as such are vulnerable, sometimes fearful, uninformed or unable to understand; and that
- (ii) these Departments and Agencies exist to serve the public and must therefore be fair, responsible, accessible and visionary in their provision of such service.

Using Jacoby’s Social Contract as a guide, it is submitted that, with these two factors in mind, Government officers must be encouraged to be mindful of their duty to –

- be open;
- ensure easy access to services;
- ensure that their actions are legal and fair;
- respect principles of natural justice;

- implement services in the best interest of the public;
- improve services in a manner that reflects the expectations of the public;
- respect the dignity of members of the public; and
- act responsibly.

In attempting to assist in the fulfillment of these duties, the Office of the Ombudsman is in a unique position to promote values and guidelines by which Departments can measure their achievements in this regard. The following questions should be asked and answered:

1. Is your Department transparent enough in its activities?
 - Are members of the public informed of decisions that concern them?
 - Are these decisions explained in terms that are easily understood?
 - Are members of the public given all the information they need in a timely manner?
 - Do members of the public understand the rights and recourse available to them with respect to the administrative decisions of your department including recourse to the Office of the Ombudsman?
 - Does your Department promote the publication of information?
 - Does your Department consult the public when planning, implementing and changing programmes?
 - Are the needs of members of the public considered when forms and information brochures are designed? Is simple, everyday language used in the production of such brochures?
2. Are the services of your Department easily accessible?
 - Do reception and information services promote a personalized and respectful approach to dealing with members of the public with special attention to senior citizens or physically challenged persons?
 - Is telephone service planned to be able to efficiently respond to demand and to ensure that members of the public do not face continual busy signals or unanswered phones?
 - Is the right to privacy respected when you interact with members of the public?

- Are the physical needs of the elderly and physically challenged catered for?
3. Does your Department seek to ensure that its actions are legal and reasonable?
- Do you comply with Acts and Regulations?
 - Do you respect the basic rights and freedoms of members of the public?
 - When the decision-making process is discretionary, is there a framework for the objective application of criteria and relevant measures?
 - Do decisions not only comply with the law but are they also reasonable, fair and appropriate?
 - Is a decision-making process used which prevents arbitrariness and abuse of power?
 - Does the means exist to act, where necessary, on a purely equitable basis if exceptional circumstances warrant it?
 - Is a narrow interpretation of the law encouraged or is an open approach which respects the true sense, spirit and intention of legislation pursued?
4. Is your Department careful to abide by the rules of natural justice?
- Are members of the public given the chance and assistance to express their views or provide all relevant information before decisions are made?
 - Do members of the public get the chance to provide missing information before their requests are refused?
 - Is partiality and conflict of interest studiously avoided?
 - Is discrimination in all its forms and inequality of treatment studiously avoided?
5. When programmes are planned in your Department is the primary objective to act in the best interest of members of the public?
- Is the spirit of the law respected in design, implementation or improvement of programmes?
 - Are rules and procedures adopted which promote the well-being of members of the public rather than mere administrative expediency?
 - Are the expectations of members of the public investigated and taken into account when programmes are developed and implemented?

6. Does your Department respect the dignity of members of the public?
- Are members of the public treated like numbers or like human beings? Are their vulnerabilities and peculiarities respected?
 - Is the maxim: *do unto others as you would have them do unto you*, implemented?
 - Are members of the public treated as though they seek a favour from you or as though they are entitled by right to your service?
 - Are you excessively rigid in your dealings with members of the public?
7. Is your Department responsible in its performance of duties?
- Are decisions subject to review and appeal?
 - Is there a complaints handling procedure?
 - Is there provision for conciliation or mediation?
 - Are promises made to members of the public kept?
 - Are services and information provided in a reasonable period of time? And are such periods continually scrutinized and shortened where possible?
 - Does a practical code of ethics exist which governs relations between yourself and members of the public? Is there a means of evaluation of the use of this code?

The Office of the Ombudsman in the 21st Century can hardly expect to remain merely a voice of accusation and retribution but it must also be a voice of lasting change. Modern theories of administration all emphasize the issue of goal setting and in the promotion of best practices in the public service, the Ombudsman embraces this principle whole heartedly. The implementation of a system which promotes best practices would in fact encourage the setting of goals to be pursued by public servants. In 1998, the Queensland Ombudsman in Australia commented that:

*“The lot of the modern Ombudsman is not simply to open the door, the switchboard and the mail each day and respond to the complaints which waft in, many of which have common elements and generic causes at the Commonwealth level and in other jurisdictions with the Westminster models of government, the emphasis is on making the office **proactive**, **systemic** and **preventative** in its actual work practices”*
[Report of the Strategic Review of the Queensland Ombudsman, 1998].

The introduction and promotion of best practices for the public service certainly exemplifies this new emphasis as it is:

- (i) proactive - implementing initiatives prior to the problem;
- (ii) systemic - directed at the whole of the potential problem area and all its elements; and
- (iii) preventative - designed to prevent the occurrence of the problem.

While conscious of the specific mandate laid down in the Constitution for the operation of the Office of the Ombudsman, one can hardly deny the existence of other demands upon the Ombudsman in this modern era. In an effort to meet these demands the promotion of best practices for the public sector would seem to be a viable “first step.” It is further submitted that this step fits squarely within the new Mission Statement proposed for the office of the Ombudsman which advances goals for this institution which include, the need to “4. *promote an effective and efficient public service that is responsive to the needs of the citizenry.*”

EXTRACTS FROM THE CONSTITUTION
OF
TRINIDAD AND TOBAGO
CHAPTER 1

The Recognition and Protection of Fundamental Human Rights
and Freedoms
Rights enshrined

**Recognition and
declaration of rights
and freedoms**

4. It is hereby recognized and declared that in Trinidad and Tobago there existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:-
- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
 - (b) the right of the individual to equality before the law and the protection of the law;
 - (c) the right of the individual to respect for his private and family life;
 - (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;
 - (e) the right to join political parties and to express political views;
 - (f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;
 - (g) freedom of movement;
 - (h) freedom of conscience and religious belief and observance;
 - (i) freedom of thought and expression;
 - (j) freedom of association and assembly;
- and

(k) freedom of the press.

**Protection of
rights and
freedoms**

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognized and declared.
- (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not-
- (a) authorise or effect the arbitrary detention, imprisonment, or exile of any person;
 - (b) impose or authorise the imposition of cruel and unusual treatment or punishment;
 - (c) deprive a person who has been arrested or detained;
 - (i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention;
 - (ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;
 - (iii) of the right to be brought promptly before an appropriate judicial authority;
 - (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;
 - (d) authorise a court, tribunal commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to

insure such protection, the right to legal representation;

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right -
 - (i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;
 - (ii) to a fair and public hearing by an independent and impartial tribunal; or
 - (iii) to reasonable bail without just cause;
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

EXTRACT FROM THE CONSTITUTION OF TRINIDAD AND TOBAGO**ACT NO. 4 OF 1976****PART 2****OMBUDSMAN**

- | | | |
|---|-----|---|
| Appointment
and conditions
of office | 91. | <p>(1) There shall be an Ombudsman for Trinidad and Tobago who shall be an officer of Parliament and who shall not hold any other office of emolument whether in the Public Service or otherwise nor engage in any occupation for reward other than the duties of his office.</p> <p>(2) The Ombudsman shall be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.</p> <p>(3) The Ombudsman shall hold Office for a term not exceeding five years and is eligible for re-appointment.</p> <p>(4) Subject to subsection (3) the Ombudsman shall hold office in accordance with section 136.</p> <p>(5) Before entering upon the duties of his Office, the Ombudsman shall take and subscribe the oath of office before the Speaker of the House of Representatives.</p> |
| Appointment
of staff
of Ombudsman | 92. | <p>(1) The Ombudsman shall be provided with a staff adequate for the efficient discharge of his functions.</p> <p>(2) The staff of the Ombudsman shall be public officers appointed in accordance with section 121(8).</p> |
| Functions of
Ombudsman | 93. | <p>(1) Subject to this section and to sections 94 and 95, the principal function of the Ombudsman shall be to investigate any decision or recommendation made, including any advice given or recommendation made to a Minister, or any act done or omitted by any department of Government or any other authority to which this section applies, or by officers or members of such a department or authority, being action taken in exercise of the administrative functions of that department or authority.</p> |

- 2) The Ombudsman may investigate any such matter in any of the following circumstances -
- (a) where a complaint is duly made to the Ombudsman by any person alleging that the complainant has sustained an injustice as a result of a fault in administration;
 - (b) where a member of the House of Representatives requests the Ombudsman to investigate the matter on the ground that a person or body of persons specified in the request has or may have sustained such injustice;
 - (c) in any other circumstances in which the Ombudsman considers that he ought to investigate the matter on the ground that some person or body of persons has or may have sustained such injustice.
- (3) The authorities other than departments of Government to which this section applies are -
- (a) local authorities or other bodies established for purposes of the public service or of local Government;
 - (b) authorities or bodies the majority of whose members are appointed by the President or by a Minister or whose revenue consist wholly or mainly of monies provided out of public funds;
 - (c) any authority empowered to determine the person with whom any contract shall be entered into by or on behalf of Government;
 - (d) such other authorities as may be prescribed.

**Restrictions
on matters
for investigation**

94.

- (1) In investigating any matter leading to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister in accordance with which the decision was made.
- (2) The Ombudsman shall have power to investigate complaints of administrative injustice under section 93 notwithstanding that such complaints raise questions as to the integrity or corruption of the public service or any department or office of the public service, and may investigate any conditions resulting from, or calculated to facilitate or encourage corruption in the public service, but he shall not undertake any investigation into specific charges of corruption against individuals.
- (3) Where in the course of an investigation it appears to the Ombudsman that there is evidence of any corrupt act by any public officer or by any person in connection with the public service, he shall report the matter to the appropriate authority with his recommendation as to any further investigation he may consider proper.
- (4) The Ombudsman shall not investigate -
 - (a) any action in respect of which the Complainant has or had
 - (i) a remedy by way of proceedings in a court; or
 - (ii) a right of appeal, reference or review to or before an independent and impartial tribunal other than a court; or
 - (b) any such action, or actions taken with respect to any matter, as is described in the Third Schedule. **Third Schedule**
- (5) Notwithstanding subsection (4) the Ombudsman:

- (a) may investigate a matter notwithstanding that the Complainant has or had a remedy by way of proceedings in a court if satisfied that in the particular circumstances it is not reasonable to expect him to take or to have taken such proceedings;
- (b) is not in any case precluded from investigating any matter by reason only that it is open to the Complainant to apply to the High Court for redress under section 14 (which relates to redress for contravention of the provisions for the protection of fundamental rights).

95. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to sections 93 and 94, act in his discretion, the Ombudsman may refuse to initiate or may discontinue an investigation where it appears to him that - **Discretion of Ombudsman**

- (a) a complaint relates to action of which the Complainant has knowledge for more than twelve months before the complain was received by the Ombudsman.
- (b) the subject matter of the complaint is trivial;
- (c) the complaint is frivolous or vexatious or is not made in good faith; or
- (d) the Complainant has not a sufficient interest in the subject matter of the complaint.

96. (1) Where a complaint or request for an investigation is duly made and the Ombudsman decides not to investigate the matter or where he decides to discontinue investigation of the matter, he shall inform the person who made the complaint or request of the reasons for his decision. **Report on Investigation**

(2) Upon completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation

and if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he sees fit. The Ombudsman may in his original Recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.

- (3) Where the investigation is undertaken as a result of a complaint or request, the Ombudsman shall inform the person who made the complaint or request of his findings.
- (4) Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under sub-section (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.
- (5) The Ombudsman shall make annual reports on the performance of his functions to Parliament which shall include statistics in such form and in such detail as may be prescribed of the complaints received by him and the results of his investigation.

**Power
to obtain
Evidence**

97.

- (1) The Ombudsman shall have the powers of the High Court to summon witnesses to appear before him and to compel them give evidence on oath and to produce documents relevant to the proceedings before him and all persons giving evidence at those proceedings shall have the same duties and liabilities and enjoy the same privileges as in the High Court.
- (2) The Ombudsman shall have power to enter and inspect the premises of any department of government or any authority to which section 93 applies, to call for, examine and where necessary retain any document kept on such premises and there to carry out any investigation in pursuance of his functions.

**Prescribed
Matters
concerning
Ombudsman**

98. (1) Subject to subsection (2), Parliament may make provision -
- (a) for regulating the procedure for the making of complaints and requests to the Ombudsman and for the exercise of the functions of the Ombudsman;
 - (b) for conferring such powers on the Ombudsman and imposing such duties on persons concerned as are necessary to facilitate the Ombudsman in the performance of his functions; and
 - (c) generally for giving effect to the provisions of this Part.
- (2) The Ombudsman may not be empowered to summon a Minister or a Parliamentary Secretary to appear before him or to compel a Minister or a Parliamentary Secretary to answer any questions relating to any matter under investigation by the Ombudsman.
- (3) The Ombudsman may not be empowered to summon any witness to produce any Cabinet papers or to give any confidential income tax information.
- (4) No Complainant may be required to pay any fee in respect of his complaint or request or for any investigation to be made by the Ombudsman.
- (5) No proceedings, civil or criminal, may lie against the Ombudsman, or against any person holding an office or appointment under him for anything he may do or report or say in the course of the exercise or intended exercise of the functions of the Ombudsman under this Constitution, unless it is shown that he acted in bad faith.
- (6) The Ombudsman, and any person holding office or appointment under him may not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.
- (7) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any enquiry by or

proceedings before an Ombudsman under this Constitution is privileged in the same manner as if the enquiry or proceedings were proceedings in a Court.

- (8) No proceedings of the Ombudsman may be held bad for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of an Ombudsman is liable to be challenged, reviewed, quashed or called in question in any Court.

THIRD SCHEDULE
MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by the Attorney General to affect relations or dealings between the Government of Trinidad and Tobago and any other Government or any International Organization.
2. Action taken in any country or territory outside Trinidad and Tobago by or on behalf of any officer representing or acting under the authority of the Government of Trinidad and Tobago.
3. Action taken under any law relating to extradition or fugitive offenders.
4. Action taken for the purposes of investigating crime or of protecting the security of the State.
5. The commencement or conduct of civil or criminal proceedings before any court in Trinidad and Tobago or before any international court or tribunal.
6. Any exercise of the power of pardon.
7. Action taken in matters relating to contractual or other commercial transactions, being transactions of a department of government or an authority to which section 93 applies not being transactions for or relating to –
 - (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
 - (b) the disposal as surplus of land acquired compulsorily or in circumstances in which it could be acquired compulsorily.

8. Actions taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any office or employment in the public service or under any authority as may be prescribed.
9. Any matter relating to any person who is or was a member of the armed forces of Trinidad and Tobago in so far as the matter relates to -
 - (a) the terms and conditions of service as such member; or
 - (b) any order, command, penalty or punishment given to or affecting him in his capacity as such member.
10. Any action which by virtue of any provision of this Constitution may not be enquired into by any Court.

LAWS OF TRINIDAD AND TOBAGO
CHAPTER 2:52
OMBUDSMAN ACT

**An Act to make provision for giving effect to
Part 2 of Chapter 6 of the Constitution**

(Assented to 24th May, 1997)

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:

**Short Title
Mode of
Complaint**

1. This Act may be cited as the Ombudsman Act.
2. (1) All complaints to the Ombudsman and requests for investigation by him shall be made in writing.
- (2) Notwithstanding anything provided by or under any enactment, where any letter written by any person detained on a charge or after conviction of any offence is addressed to the Ombudsman, it shall be immediately forwarded, unopened to the Ombudsman by the person for the time being in charge of the place where the writer is detained.

**Procedure
in respect
of investigation**

3. (1) Where the Ombudsman proposes to conduct an investigation under section 93 (1) of the Constitution he shall afford to the principal officer of the department or authority concerned, an opportunity to make, orally or in writing as the Ombudsman thinks fit, representations which are relevant to the matter in question and the

Ombudsman shall not, as a result of such an investigation, make any report or recommendation which may adversely affect any person without his having had an opportunity to make such representations.

- (2) Every such investigation shall be conducted in private.
- (3) It shall not be necessary for the Ombudsman to hold any hearing and, subject as hereinbefore provided, no person shall be entitled as of right to be heard by the Ombudsman. The Ombudsman may obtain information from such persons and in such manner, and make such inquiries as he thinks fit.
- (4) Where, during or after any investigation, the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority to which section 93 of the Constitution applies, the Ombudsman may refer the matter to the Authority competent to take such disciplinary or other proceedings against him as may be appropriate.
- (5) Subject to this Act, the Ombudsman may regulate his procedure in such manner as he considers appropriate in the circumstances of the case.
- (6) Where any person is required under this Act by the Ombudsman to attend before him for the purposes of an investigation, the Ombudsman shall cause to be paid to such person out of money provided by Parliament for the purpose, the fees, allowances and expenses, subject to qualifications and exceptions corresponding to those, that are for the time being prescribed for attendance in the High Court, so, however, that the like functions as are so prescribed and assigned to the Registrar of the Supreme Court of Judicature shall, for the purposes of this subsection, be exercisable by the Ombudsman and he may, if he thinks fit, disallow, in whole or in part, the payment of any amount under this subsection.
- (7) For the purposes of section 93 (2) of the Constitution a complaint may be made by a person aggrieved himself or, if he is dead or for any reason unable to act for himself, by any person duly authorized to represent him.
- (8) Any question whether a complaint or a request for an investigation is duly made under this Act or under Part 2 of Chapter 6 of the Constitution shall be determined by the Ombudsman.

Evidence

4. (1) The power of the Ombudsman under Section 97 of the Constitution to summon witnesses and to compel them to give evidence on oath and to produce documents shall apply whether or not the person is an officer; employee or member of any department or authority and whether or not such documents are in the custody or under the control of any department or authority.
- (2) The Ombudsman may summon before him and examine on oath:
 - (a) any person who is an officer or employee or member of any department or authority to which section 93 of the Constitution applies or any authority referred to in the Schedule to this Act and who in the Ombudsman's opinion is able to give any relevant information;
 - (b) any complainant; or
 - (c) any other person who in the Ombudsman's opinion is able to give any relevant information, and for that purpose may administer an oath. Every such examination by the Ombudsman shall be deemed to be a judicial proceeding for the purposes of the Perjury Ordinance.
- (3) Subject to subsection (4) no person who is bound by the provisions of any enactment, other than the Official Secrets Act, 1911 to 1939 of the United Kingdom In so far as it forms part of the law of Trinidad and Tobago, to maintain secrecy in relation to, or not to disclose, any matter shall be required to supply any information to or answer any questions put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or paper or thing relating to it, where compliance with that requirement would be in breach of the obligation of secrecy or non-disclosure.
- (4) With the previous consent in writing of any complainant, any person to whom subsection (3) applies may be required by the Ombudsman to supply any information or answer any question or produce any document or paper or thing relating only to the complainant, and it shall be the duty of the person to comply with that requirement.
- (5) Except on the trial of any person for an offence under the Perjury Act in respect of his sworn testimony, or for an offence under section 10, no statement made or answer

given by that or any other person in the course of any inquiry or any proceedings before the Ombudsman under the Constitution or this Act shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

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

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

(a) might prejudice the security, defence or international relations of Trinidad and Tobago

(b) (including Trinidad and Tobago relations with the Government of any other country or with any international organizations);

(b) will involve the disclosure of the deliberations of Cabinet; or

(c) will involve the disclosure of proceedings of Cabinet or any Committee of Cabinet, relating to matters of a secret or confidential nature, and would be injurious to the public interest, the Ombudsman shall not require the information or answer to be given or, as the case may be, the document or paper, or thing to be produced.

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

**Secrecy of
information**

6. A person who performs the functions appertaining to the Office of the Ombudsman or any office or employment thereunder –

- (a) shall regard as secret and confidential all documents, information and things which have been disclosed to any such person in the execution of any provisions of sections 93 and 96 of the Constitution, so, however, that no disclosure made by any such person in proceedings for an offence under section 10, or under the Perjury Ordinance by virtue of section 4 (2) or which the Ombudsman considers it requisite to make in the discharge of any of his functions and for the purpose of executing any of the said provisions of section 3 (4) or section 9, shall be deemed inconsistent with any duty imposed by this paragraph; and
- (b) shall not be called upon to give evidence in respect of, or produce, any such documents, information or things in any proceedings, other than proceedings mentioned in the exception to paragraph (a).

**Notice of entry
on premises**

- 7. Before entering upon any premises pursuant to section 97(2) of the Constitution the Ombudsman shall notify the principal officer of the department or the authority which the premises are occupied.

**Delegation
of powers**

- 8. (1) With the prior approval in each case of the Prime Minister, functions hereinbefore assigned to the Ombudsman may from time to time, by direction under his hand, be delegated to any person who is appointed to any office or to perform any function referred to in section 6.
- (2) No such delegation shall prevent the exercise of any power by the Ombudsman.
- (3) Any such delegation may be made subject to such restrictions and conditions as the Ombudsman may direct, and may be made either generally or in relation to any particular case or class of cases.
- (4) Any person purporting to perform any function of the Ombudsman by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

Reports

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

- (2) The form of statistics of complaints received by the Ombudsman and the results of his investigation required by section 96 (5) of the Constitution to be included in the annual report to Parliament by the Ombudsman on the performance of his functions shall be prescribed by regulations made under section 12.

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

- (a) without lawful justification or excuse, wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise of his powers under this Act;
- (b) without lawful justification or excuse refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act;
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of his powers under this Act; or
- (d) in a manner inconsistent with his duty under section 6 (a), deals with any documents, information or things mentioned in that paragraph.

**Prescription
of authorities
subject to the
Ombudsman's
jurisdiction**

11. (1) The authorities mentioned in the Schedule are authorities to which section 93(3)(d) of the Constitution applies.
- (2) The President may, by Order, amend the Schedule by the addition thereto or deletion therefrom of any authorities or the substitution therein, for any authorities of other authorities.

Regulations

12. The President may make regulations for the proper carrying into effect of this Act, including in particular, for prescribing anything required or authorised to be prescribed.